

**ADMINISTRATIVE SERVICES AGREEMENT
BETWEEN
BLUECROSS BLUESHIELD OF TENNESSEE, INC.
AND
TOWN OF ASHLAND CITY**

This Administrative Services Agreement, including all Attachments hereto ("Agreement"), is entered into by and between Town of Ashland City ("Employer") and BlueCross BlueShield of Tennessee, Inc. ("BlueCross") for administration of Employer's Health Reimbursement Arrangement ("HRA"), and is effective as stated in Article IV of this Agreement. Employer and BlueCross are collectively referred to in this Agreement as the "Parties."

Employer has established a plan to reimburse eligible Employees of the Employer for certain eligible health care expenses incurred ("HRA Plan"). The eligible Employees and their eligible Dependents are collectively referred to as "Members" in this Agreement, and that term is further defined in the Employer's health benefit plan ("Plan"). The HRA Plan and the Plan are component parts of a single medical welfare benefit sponsored by the Employer. BlueCross administers the HRA Plan as a component of the medical Plan. Eligible Employees who enroll in the Employer's health benefit plan are referred to as "Subscribers." "Members" and "Subscribers" are further defined in the Employer's HRA Summary Plan Description ("SPD").

This Agreement outlines the rights and responsibilities of the Parties related to the administration of HRA Plan. In consideration of the Parties' mutual promises, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I – RESPONSIBILITIES OF THE PARTIES

- 1.1 BlueCross. BlueCross is responsible for providing ministerial administrative services in accordance with the terms of the HRA Plan, and other duties specifically assumed by it pursuant to this Agreement. BlueCross does not assume any financial risk or obligation with respect to HRA funding or reimbursements. BlueCross will use its reasonable business judgment in performing its duties under this Agreement, and will administer the benefits under the HRA Plan in accordance with BlueCross' customary administrative standards and practices. BlueCross shall perform its duties in accordance with the terms of this Agreement and generally accepted standards applicable to claims administration, including other plans licensed by the BlueCross BlueShield Association ("Association"). BlueCross may designate a third party vendor to perform any of its duties; however, such designation shall not release BlueCross from its obligations pursuant to this Agreement.
- 1.2 Employer. Employer is responsible for providing BlueCross with any changes to the SPD, and the necessary information to determine Employee and Dependent eligibility under the health benefit plan and the HRA Plan, and other duties and services as described elsewhere in this Agreement. Employer shall fund all Eligible Medical Expenses, and shall pay BlueCross an administrative services fee for providing its services under this Agreement. Employer may designate a third party to perform any of its duties under this Agreement; however, such designation shall not release Employer from its obligations pursuant to this Agreement. Any reference to "Employer" in this Agreement shall also include third party(ies) designated by Employer to perform any of its duties or obligations under this Agreement.

- 1.3 Fiduciary Responsibility. Employer is solely responsible for the fiduciary responsibilities of administering its health benefit plans and the HRA and maintaining adequate funding to support these plans. Employer is also responsible for, among other things, preparing and providing its covered employees with copies of SPDs describing its HRA Plan and, as applicable, with copies of summaries of material modifications. Although Employer's health benefit plan is not subject to ERISA, Employer acknowledges that BlueCross is acting in a ministerial capacity and is not the "Administrator," the "Claims Fiduciary," nor the "Named Fiduciary" of its health benefit plans, as that term is defined in ERISA. The "Plan Administrator," as that term is defined in ERISA, is Employer.
- 1.4 Confidentiality. The Parties acknowledge that this Agreement and information provided to the other Party that is identified as confidential information, including, but not limited to, reimbursement information, group membership lists, marketing information and information obtained from and/or about the Association and its programs ("Confidential Information"); shall be treated as confidential, proprietary or trade secret information. A Party may release Confidential Information to providers or its affiliates, or their respective directors, partners, officers, employees, advisors and other representatives ("Representatives") who: have a need to know such Confidential Information, for purposes of their participation in or oversight of matters within the scope of this Agreement; and are under a duty or obligation of confidentiality at least as restrictive as those set forth in this Agreement. Each Party shall advise its Representatives of their obligation to maintain the confidentiality of such information. Each Party is responsible if its Representative breaches this section. Neither Party shall otherwise release nor disclose such Confidential Information to third parties without the other Party's prior written consent, except as required by law. This paragraph shall survive the termination of this Agreement.

Notwithstanding anything herein to the contrary, the following shall not constitute Confidential Information for the purposes of this Agreement: (a) Confidential Information that is or becomes generally available to the public other than as a result of a disclosure by a Party or its Representatives; (b) Confidential Information that was available to the Parties on a non-confidential basis prior to its disclosure by a Party or its Representatives; or (c) Confidential Information that becomes available to the Parties on a non-confidential basis from a third party, provided that third party is not known to be subject to any prohibition against transmitting that information.

The Parties have entered into a Business Associate Agreement, the terms of which control the release and use of Protected Health Information.

ARTICLE II - DEFINITIONS

All capitalized, defined terms in this ASA shall have the meanings specified in the various Articles in which they appear, or as defined in the HRA SPD.

ARTICLE III – PAYMENT OF ADMINISTRATIVE SERVICES FEES AND FUNDING OF HRA CLAIMS

- 3.1 Administrative Services Fees in General. The Employer shall pay the invoiced amount for BlueCross' administrative services fees. Such payments shall be made within Thirty (30) days of the Due Date specified on the invoice or bill from BlueCross.
- 3.1.1 The initial administrative services fee shall be due and payable on the effective date of this Agreement. The administrative services fee is due on the date reflected on the invoice each month thereafter.

- 3.1.2 The administrative services fee will be determined on a month-by-month basis based on enrollment. The process that BlueCross will follow to determine each monthly administrative services fee total is set out below.
- 3.1.3 Changes in Administrative Services Fee. The administrative services fee shall remain in effect for the period stated in Article IV, subject to the exceptions stated in the following subparagraphs.
 - 3.1.3.1 BlueCross may increase the administrative services fee to cover reasonably anticipated increased costs resulting from changes in the HRA, legislation or regulation, with the increase to become effective on the date such changes are effective.
 - 3.1.3.2 In the event of the termination of a subsidiary, operation or class of employees covered under this Agreement, BlueCross may revise the administrative services fee on the effective date of such termination.
 - 3.1.3.3 In the event of the addition of a subsidiary, operation or class of employees not previously covered under this Agreement, BlueCross may revise the administrative services fee on the effective date of such addition.
 - 3.1.3.4 In the event the number of employees covered under this Agreement fluctuates more than Ten (10%) percent, BlueCross may revise the administrative services fee on the first day of any month following the change upon giving Employer at least Thirty (30) days advance written notice.

3.1.4 Administrative Services Fee. Employer shall pay to BlueCross the following administrative services fee during the Term of this Agreement:

\$4.00 per month per Subscriber, as that term is defined in the Plan.

The above charges and/or expenses shall be computed separately with respect to each Agreement Year, and no amounts shall be carried forward with respect to any Agreement Year. Employer shall pay the administrative services fee for all Subscribers enrolled in the HRA or added during the month. If Employer adds a Subscriber retroactively, Employer shall pay the appropriate administrative services fee for that Subscriber, calculated from the Subscriber's correct enrollment date to the current date. If a Subscriber becomes enrolled in the HRA after the Fifteenth (15th) of any month, there shall not be a partial administrative services fee for that month; Employer will pay an administrative services fee for that Subscriber for the first full month of participation in the HRA. Similarly, if a Subscriber terminates coverage under the Plan on or before the Fifteenth (15th) of any month, BlueCross will credit Employer for the administrative charge for that Subscriber for that entire month. That credit will appear on Employer's administrative services fee invoice within Sixty (60) days of termination of that Subscriber's coverage. However, Employer will pay a full month's administrative services fee for any Subscriber that terminates participation in the HRA on or after the Fifteenth (15th) of any month, and a full month's administrative services fee for any Subscriber that enrolls on or before the Fifteenth (15th) of any month.

- 3.1.4.1 Included in the administrative services fee is the cost of certain reports, as listed below:
 - HRA Monthly Summary Report

HRA Weekly Claims Billing Invoice
HRA Weekly Claims Billing Summary
HRA Weekly Claims Billing Detail

- 3.1.5 Funding Timing Methodology for Administrative Services Fee. BlueCross will adhere to the following schedule in notifying Employer of the funds necessary to pay the administrative services fee:

On the Twentieth (20th) day of each month, BlueCross shall notify Employer of amounts that BlueCross estimates will be needed to pay BlueCross' administrative services fees for the following calendar month, and funds necessary to complete any adjustments to claims, fixed, previously agreed-upon charges, previous administrative services fees and any due late fees. The Employer will remit the amount specified by BlueCross within Thirty (30) days of the first of each month ("Due Date"). If the full amount specified by BlueCross pursuant to this paragraph is not received by BlueCross within that time period, BlueCross may immediately suspend adjudication of all claims on behalf of Employer, regardless of the date claims were incurred, until all amounts due are received by BlueCross. If BlueCross elects to not suspend claim adjudication on behalf of the Employer, the Employer shall pay a late payment penalty of One (1%) percent per month on the amount of all amounts that are due and unpaid to BlueCross, pro-rated for each day that such amounts remain outstanding.

- 3.2 Claims Funding Methodology. The Employer shall pay the invoiced amount for claims processed and approved for payment by BlueCross in accordance with this Agreement. Such payments shall be made in accordance with the Direct Debit Authorization Agreement, which is an Automated Clearing House Authorization Agreement ("ACH"), and is attached by reference to this Agreement. Nothing in this Agreement shall obligate or shall be deemed to obligate BlueCross to use its funds to satisfy any of the Employer's obligations pursuant to this Agreement. Employer's assets are the only source of payment of claims or any other benefit provided by the HRA Plan.

- 3.2.1 Claims Funding Methodology. On a mutually acceptable day of each week, BlueCross shall notify Employer of amounts that will be needed to fund claims for the preceding week. BlueCross shall simultaneously initiate the debit for claims to be paid. The debit will clear the Employer's account the following business day. BlueCross adjudicates claims in accordance with its internal administrative procedures.

- 3.2.1.1 If the full amount specified by BlueCross pursuant to this paragraph is not available to BlueCross within that time period, BlueCross may immediately suspend payment of all claims on behalf of Employer, regardless of the date claims were incurred, until all amounts due are received by BlueCross.
- 3.2.1.2 If BlueCross elects not to suspend claim payments on behalf of the Employer, the Employer shall pay a late payment penalty of One and half (1½%) percent per month on the amount of all amounts that are due and unpaid to BlueCross, pro-rated for each day that such amounts remain outstanding.
- 3.2.1.3 If a partial amount is available, BlueCross may elect to utilize those funds to pay claims until full payment is made by Employer. BlueCross has full

discretion to determine which claims will be paid with these partial funds, and may or may not exercise that discretion.

3.2.1.4 BlueCross shall provide Employer with a list of claims paid on behalf of the Employer, within Thirty (30) calendar days following the end of each month during which this Agreement remains in effect.

3.2.1.5 Security Interest. As collateral for the payment of any amounts due BlueCross under this Agreement, Employer hereby grants to BlueCross a preferential security interest in all proceeds of Employer's debiting account, both with respect to the funds deposited initially and any additional amounts paid thereafter. In the event of a default by the Employer of any of its obligations under this Agreement, including the prompt payment when due of any invoice sent to it by BlueCross, BlueCross shall have the immediate right, upon written notice to the Employer, to offset the proceeds of the Account against the amount of any unpaid invoice or other obligation owed to BlueCross.

3.3 Additional Administration Charge. In addition to the monthly administrative services fee, the cost of the service outlined below will be billed as a direct cost to the Employer.

3.3.1 BlueCross will collect the following recoveries for Employer.

3.3.1.1 Subrogation recoveries. BlueCross will enforce Employer's subrogation rights; as consideration for this service, it will receive a fee of Fifteen (15%) percent the recovery from each subrogation case. Employer will be responsible for:

- Any outside attorneys' fees incurred in enforcing the Plan's subrogation rights; and
- Other expenses arising in connection with litigation to enforce its subrogation interest, including, but not limited to, court costs, discovery expenses and expert witness fees. BlueCross will obtain Employer's approval before incurring any expert witness fees or expenses. Employer will advance said expenses if required in the preparation of its case(s) for trial.

Once a subrogation case has been finalized, and BlueCross has received the money, it will deduct its fee, the attorneys' fee (if any) and any other litigation expenses from the recovery. The remaining amount is the net recovery, and the net recovery will be credited on Employer's next claims invoice.

ARTICLE IV - TERM AND TERMINATION

4.1 Term. This Agreement becomes effective at 12:01 A.M. July 1, 2021 ("Effective Date") and shall remain in effect until the earliest of the following events:

4.1.1 Until June 30, 2022, unless the Employer and BlueCross agree to extend the term prior to June 30, 2022;

4.1.1.1 After the initial term of this Agreement, either Party may give the other Party Sixty (60) days advance written notice of its intent to terminate this Agreement.

4.1.2 Any other date mutually agreed upon by the Parties; or

4.1.3 Any of the events specified in Section 4.2.

4.2 Termination by BlueCross. Notwithstanding the provisions of Section 4.1 above, this Agreement will automatically terminate upon the occurrence of any of the following events, as determined by BlueCross:

4.2.1 The Employer's failure to provide adequate funds, as set forth in Article III, as necessary for the reimbursement of Eligible Medical Expenses pursuant to the HRA;

4.2.2 The Employer's failure to pay any administrative services fees or late payment penalty;

4.2.3 The Employer ceases to maintain the health benefits plan or the HRA;

4.2.4 At any time BlueCross reasonably believes that Employer does not have the financial ability to adequately fund the HRA, and the Employer has failed to immediately provide adequate assurances of such ability to BlueCross; or

4.2.5 At any time the Employer otherwise materially breaches this Agreement, after the procedures in Section 4.6 have been followed.

4.3 Termination for Invalid Use of Information. Employer will use any information BlueCross makes available solely for the purpose of administering the Employer's HRA Plan under this Agreement and in accordance with applicable law. Employer agrees to hold BlueCross harmless for any claim, action or loss that may arise at any time in the future out of Employer's unauthorized or unlawful use of any such information. Furthermore, if the Employer uses the information for another purpose, BlueCross will consider that action a material breach. This Agreement will then be subject to immediate termination.

4.4 BlueCross' Right to Reinstate. BlueCross has the sole discretion to decide to reinstate this Agreement if it was terminated pursuant to Subsections 4.2 or 4.3. If BlueCross elects to reinstate this Agreement, Employer shall be responsible for reinstatement fees that may apply.

4.5 Termination by Employer. Notwithstanding the provisions of Section 4.1 above, the Employer may terminate this Agreement immediately if the following occurs:

4.5.1 If BlueCross has been declared insolvent by the State of Tennessee, and its assets and obligations have been turned over to a receiver appointed by the State; or

4.5.2 At any time BlueCross materially breaches its duties under this Agreement, after the procedures in Section 4.6 have been followed.

4.6 Material Breach Defined. A material breach is the failure by one Party ("breaching Party") to perform or carry out a function or duty required by the terms of this Agreement, where the failure to perform that function or duty seriously impairs the ability to perform of the other Party ("non-breaching Party"). If the non-breaching Party determines that a material breach has occurred, it must notify the breaching Party in writing of the breach as soon as it is practicable to so notify, and must allow the breaching Party Thirty (30) days to cure or correct the breach. If the breach is not cured or corrected in that Thirty (30) day period, the non-breaching Party may provide Thirty (30) days' notice of termination.

4.6.1 If either Party disputes a claimed material breach or that a material breach has been cured or corrected, it may immediately request dispute resolution, pursuant to the terms of this Agreement.

4.6.2 BlueCross' termination of this Agreement in accordance with Subsection 4.2.1, 4.2.2, and 4.2.3, shall not be subject to the notice provisions of this subsection, nor

entitle the Employer to submit the dispute for resolution pursuant to Article VI, below.

- 4.7 Effect of Termination. The terms and conditions set forth herein shall be of no further force or effect if this Agreement is terminated, except as follows:
- 4.7.1 The Parties' rights and obligations intended to survive termination of this Agreement, including Section 1.4 of this Agreement, shall continue in effect notwithstanding its termination.
 - 4.7.2 Termination of this Agreement, except as provided to the contrary herein, shall not affect the rights, obligations and liabilities of the Parties arising out of transactions occurring prior to termination.
 - 4.7.3 The termination of this Agreement does not excuse the Employer from forwarding to BlueCross any and all fees, monies, or reimbursements accrued through the date of termination. If termination occurs retroactively, any and all fees, monies, or reimbursements accrued through the date that actual written notice of termination is received by BlueCross shall be payable to BlueCross by Employer.
- 4.8 Administration after Termination. The termination of this Agreement shall not relieve either Party from any obligations formed under this agreement. BlueCross shall process Run Out Claims that BlueCross receives within the 180 day period following the date of termination of this Agreement or within such other period that the Parties agreed to in writing ("Run Out Period"). "Run Out Claims" refer to those claims for HRA reimbursements for Eligible Medical Expenses incurred prior to, but received after, the date of termination of this Agreement. The date an Eligible Medical Expense is "incurred" is the date the particular service was rendered. There is no administrative fee for BlueCross to administer Run Out claims. BlueCross will not process any claims it receives after the end of the Run Out Period.

Throughout the Run Out Period, Employer shall maintain its account in accordance with Article 3 of this Agreement.

Employer shall pay Run Out Claims invoiced within 180 days following the end of the Run Out Period.

- 4.9 Upon termination of this Agreement, the Employer must pay charges for the cost of producing any report in advance of receiving the requested report. Among other things, this applies to post-termination audits, requests from replacement claims administrators, and requests from the Plan Administrator.

ARTICLE V – LIABILITY AND INDEMNIFICATION

- 5.1 BlueCross. BlueCross neither insures nor underwrites any of the Employer's obligations or liabilities under the HRA Plan. Employer will indemnify BlueCross for actions taken at the Employer's direction. BlueCross is responsible solely for its acts and for the acts of its agents and employees acting within the scope of their duties under this Agreement. The term "agents" includes, but is not limited to, third parties utilized by BlueCross to perform BlueCross' administrative duties under this Agreement. BlueCross is not responsible for any acts or omissions of any outside vendors associated with or contracted by the Employer.
- 5.1.1 BlueCross hereby agrees to indemnify and hold harmless the Employer, its directors, officers, employees and agents against any and all vicarious liability, actions, claims, lawsuits, settlements, judgments, costs, interest, penalties, expenses and taxes, including but not limited to, attorneys' fees and court costs, resulting from or arising directly or indirectly out of, or in connection with, actions or

decisions arising directly from a failure by BlueCross, or its employees or agents, to exercise the standard of care that is expected of a similarly situated administrator, with the same level of expertise, that is providing the services described herein, unless the cause of such liability was the result of the fault, criminal conduct or fraudulent acts of Employer or any of its directors, officers, employees or agents, or resulted from the direction given by Employer or its directors, officers, employees or agents in the administration of the Plan.

5.1.2 BlueCross' liability to Employer pursuant to Subsection 5.1.1 of this Agreement shall be limited to the value of the administrative services fees received by BlueCross prior to the occurrence of the act, action, or failure to act that forms the basis of BlueCross' liability, whichever is greater.

5.1.3 Notwithstanding the foregoing, BlueCross' duty to indemnify and hold Employer harmless shall not extend to acts or omissions of the Employer, its officers, directors, or employees or to acts or omissions of any non-employee providers who provide services to participants in Employer's HRA Plan.

5.2 Employer. Employer retains ultimate responsibility for making eligibility and benefit determinations in connection with the Plan, paying all claims for covered services and paying any other expenses related to or arising in connection with the Plan, except as have been expressly assumed by BlueCross pursuant to this Agreement. The Parties acknowledge that a governmental entity, as the same is defined in the Tennessee Code Annotated Section 29-20-102, may be protected by the limitation of liability imposed by the Tennessee Governmental Tort Liability Act, as defined in Tennessee Code Annotated Section 29-20-101 et seq.

ARTICLE VI - DISPUTE RESOLUTION

6.1 Binding Arbitration. Any dispute related to this Agreement that the Parties are unable to resolve through informal discussion shall be resolved through binding arbitration or some other mutually acceptable dispute resolution procedure (e.g., mediation). The American Arbitration Association in Chattanooga, Tennessee, shall conduct such arbitration or mediation, unless the Parties mutually agree in writing upon some other dispute resolution agency or venue.

6.2 Award. The arbitrator shall be required to issue a written decision explaining the basis of the 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. The arbitrator's decision may be entered and enforced in any State or Federal court. That decision 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.

6.3 Final Nature of Arbitration. The award of the arbitrator shall be final, and not subject to appeal to any other authority. This does not preclude enforcement, as stated in Subsection 6.2.

ARTICLE VII – EMPLOYER'S DUTIES

7.1 Services. As long as this Agreement remains in effect, Employer shall:

7.1.1 Provide BlueCross with a current, detailed description of the HRA Plan and any changes in such HRA Plan;

7.1.2 Provide BlueCross with the necessary Subscriber and Member eligibility information to enable BlueCross to administer the HRA Plan; and

7.1.3 Perform other duties and services as described in this Agreement.

- 7.2 Notification Regarding Members. Employer shall notify BlueCross of the addition or deletion of Members to the HRA Plan as it does in its health benefit plan described below:
- 7.2.1 When a new Member should be added, Employer shall notify BlueCross within Thirty (30) days of the effective date of coverage for that Member. If BlueCross is not notified that a new Member should be added within this time frame, BlueCross shall have no obligation to adjudicate any claims that were incurred prior to this time frame.
- 7.2.2 When a Member should be terminated from coverage under the HRA Plan, Employer shall notify BlueCross within Thirty (30) days of the effective date of that Member's termination.
- 7.2.3 If the HRA Plan covers domestic partners, Employer shall ensure the HRA Plan's compliance with all laws and regulations, including but not limited to, the IRS requirement regarding domestic partners. It is the Employer's sole responsibility to comply with these requirements and to ensure that the HRA Plan does not lose its tax exempt status due to any violations or failure to meet any legal requirements.
- 7.3 Annual Benefits Provided by the Employer. Employees and their Dependents shall be entitled to reimbursement for their documented, Eligible Medical Expenses incurred during the Benefit Period. The Employer sets the annual fixed amount in writing.
- 7.4 Final Authority. Except as otherwise specifically stated in this Agreement, Employer retains all final authority and responsibility for the HRA Plan including, but not limited to, claims payment decisions, cost containment program decisions, compliance with the requirements of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), compliance with reporting and remitting abandoned property funds if required by law, and compliance with any other state and federal laws or regulations applicable to the Employer or the administration of the HRA Plan.

If Employer uses the services of a third party to provide enrollment data and that third party's data does not match BlueCross' data, BlueCross' data will be used to determine the administrative services fee. BlueCross will work with Employer to resolve the discrepancy. If no agreement can be reached, BlueCross' records will control. Until the dispute is resolved, Employer must pay the administrative services fee as indicated, based on BlueCross' records.

Employer must submit all information to BlueCross in writing. The accuracy of any changes performed and administered by BlueCross at the instruction of Employer in benefit design, enrollee status, etc., is the responsibility of Employer. BlueCross is entitled to rely on Employer's instructions in performing its duties under this Agreement.

BlueCross will administer claims in accordance with the terms and conditions of this Agreement. A Member has the right to appeal any decision regarding or arising out of this Agreement, which is governed by the grievance process defined in the Plan.

- 7.5 Eligibility and Enrollment. As of the first day of the Term of this Agreement, the Employer will have delivered enrollment information regarding Members to BlueCross. The Employer shall deliver all Employee and Dependent eligibility status changes to BlueCross on a monthly basis, or more frequently as mutually agreed by the Parties.
- 7.5.1 The Employer shall be responsible for providing each Subscriber with a copy of the SPD.

7.6 Financial Obligations.

7.6.1 Claims Funding. Employer is financially responsible for the funding of all Approved Claims, and is the Payor of benefits for Members. Employer will provide BlueCross with such authorizations as are necessary to ensure that required instruments are valid with respect to funding Approved Claims for Covered Services under the Plan.

7.6.2 Administrative Services Fees; Late Charges. Employer agrees to pay promptly all administrative services fees and/or other charges specified in this Agreement.

7.7 Taxes.

7.7.1 If at any time, during or after the term of this Agreement, BlueCross is required to pay any federal, state or local taxes based upon or measured by the amount of (i) fees paid or payable to BlueCross for services provided under this Agreement, or (ii) claims paid pursuant to this Agreement (collectively "Taxes") or is required to pay any penalties or interest assessed or accrued on any Taxes (collectively "Penalties"), Employer will pay BlueCross an additional amount equal to the Taxes and Penalties plus any Taxes and Penalties based upon or measured by the payment by Employer of these additional amounts.

7.7.2 Employer will pay these additional amounts to BlueCross within Thirty (30) days following mailing of written notice to Employer of the additional amounts due. Payments not received within the Thirty (30) day period are subject to the late payment charge described in Article III of this Agreement.

7.7.3 Employer will pay these additional amounts even if the validity of Taxes or Penalties has not been finally determined. If it is finally determined that such Taxes or Penalties were not valid, to the extent such Taxes and/or Penalties are refunded or otherwise returned to BlueCross by the appropriate federal, state or local governmental entity, BlueCross will refund to Employer an amount equal to those additional amounts previously paid by Employer plus interest, if any, determined in accordance with BlueCross' regular procedures then in effect, less a pro rata share of any expenses incurred by BlueCross in contesting the validity of such Taxes or Penalties.

7.7.4 If Employer has paid BlueCross an additional amount equal to the Taxes but, as of the time of this payment, Penalties had not yet accrued or been assessed, Employer will not be required to pay any additional amount to BlueCross based upon or measured by subsequently accrued or assessed Penalties.

7.8 Use of Names and Service Marks. The Employer agrees to allow BlueCross to use the Employer's name and service mark on identification cards and other forms necessary to implement this Agreement, and to promote the Employer's relationship with BlueCross to potential or existing providers. BlueCross shall not use the Employer's name or service mark for any other purpose without the prior written consent of the Employer.

The Employer agrees that the names, logos, symbols, trademarks, trade names, and service marks of BlueCross, whether presently existing or hereafter established, are the sole property of BlueCross and BlueCross retains the right to the use and control thereof. The Employer shall not use BlueCross' name, logos, symbols, trademarks or service marks in advertising or promotional materials or otherwise without the prior written consent of BlueCross and shall cease any such usage immediately upon written notice by BlueCross or upon termination of this Agreement, whichever is sooner.

Employer agrees that the names, logos, symbols, trademarks, trade names, and service marks of the Association, whether presently existing or hereafter established, are the sole property of the Association and the Association retains the right to the use and control thereof. Employer shall not use the Association's name, logos, symbols, trademarks or service marks in advertising or promotional materials or otherwise without the prior written consent of the Association and shall cease any such usage immediately upon written notice by the Association or upon termination of this Agreement, whichever is sooner.

7.9 Audit of BlueCross. During the term of this Agreement, Employer has the right to audit certain of the functions performed by BlueCross in administering its HRA Plan. Employer may not have access to provider reimbursement or other proprietary information under the control of BlueCross, unless Employer has a compelling reason, to be determined at the discretion of BlueCross, and needs such information to perform its duties in administering the HRA Plan. If Employer needs access to Confidential Information in order to perform such an audit of BlueCross, it shall be subject to Section 7.10 of this Agreement.

7.9.1 If Employer uses the services of a third party to perform all or any part of an audit, the Employer and that third party must both execute BlueCross' current Audit Agreement.

7.9.2 Employer may perform a simple audit of BlueCross once during the Calendar Year while this Agreement is in force without any charge by BlueCross. A "simple audit" is one that requires less than Fifty (50) person hours of work by BlueCross employees to assist in the audit. The Employer must negotiate the cost, parameters, etc. with BlueCross for an audit that does not fit this definition.

7.9.3 Should Employer contract with a third party to perform a contingent fee audit, where the third party's compensation is based on a percentage of errors (or savings, or "uncovered recoveries", etc.) that may be found by the third party in its audit, BlueCross will cooperate with said third party in the conduct of such contingent fee audit. The Parties agree that BlueCross will incur costs in defending its claims adjudication. In consideration for this and BlueCross' cooperation with the auditor, Employer agrees that, in the event the auditor cannot specifically prove that certain claims were adjudicated incorrectly by BlueCross, Employer will reimburse BlueCross the lesser of:

7.9.3.1 Three (3%) percent of the claims the auditor cannot specifically prove were adjudicated incorrectly; or

7.9.3.2 BlueCross' costs to defend each claim that the auditor alleges were incorrectly adjudicated; or

7.9.3.3 A flat fee of \$1,500.00.

7.9.4 Employer's right to audit BlueCross without any additional charge terminates with the termination of this Agreement.

7.10 Access to Confidential Information. From time to time, representatives of Employer may need access to certain Confidential Information in order to perform its duties under the HRA Plan. Before BlueCross will release any Confidential Information regarding a Member covered under the Plan, BlueCross must receive from the Employer:

7.10.1 Authorization to release the Confidential Information to a specific representative; and

7.10.2 A statement that the representative must have such information in order to perform their job as it relates to the administration of the Plan.

Additionally, the representative must sign and return BlueCross' current Confidentiality Agreement to BlueCross before BlueCross is under any obligation to release any Confidential Information.

7.10.3 The Parties have entered into a Business Associate Agreement, the terms of which control the release and use of Protected Health Information.

ARTICLE VIII - BENEFITS UNDER HRA

- 8.1 Annual Benefits Provided by the HRA Plan. Each Subscriber shall be entitled to reimbursement for his/her documented, Eligible Medical Expenses incurred during the Benefit Period in an amount not to exceed the amount specified in this Agreement and in accordance with the payment ordering rules, which determine whether benefits are paid under this Plan before or after some other plan or reimbursement arrangement.
- 8.2 Cost of Coverage. With the exception of coverage continuation situations, the Employer bears the entire expense of providing the benefits set out in Section 8.1.
- 8.3 Claims for Benefits. No benefit shall be paid unless a Member's claim for benefits has been submitted to BlueCross. BlueCross will pay the claim as soon as administratively feasible.

ARTICLE IX – BLUE CROSS' DUTIES

- 9.1 Generally. It is understood and agreed that BlueCross is empowered and required to act with respect to the HRA Plan only as expressly stated in this Agreement and its Attachments and amendments. Employer and BlueCross agree that BlueCross' role under this Agreement is to provide administrative services in accordance with the terms of the HRA for Members that BlueCross does not assume any financial risk or obligation with respect to HRA Plan claims; and that the services rendered by BlueCross under this Agreement are merely ministerial, and shall not include the power to exercise control over the HRA Plan's assets, if any, or discretionary authority over the HRA Plan.
- 9.2 Enrollment Forms. BlueCross shall enroll those individuals who have completed an enrollment form for the health plan, and are identified by the Employer as eligible for benefits under the HRA Plan on the effective date of the HRA Plan, and subsequently during the continuance of this Agreement. The Employer shall provide BlueCross with enrollment information in a mutually agreeable format, (i.e., electronically, faxed, paper, etc.). BlueCross is not responsible for verifying data submitted by Employer. BlueCross shall be entitled to rely on the information furnished to it by the Employer, and the Employer shall hold BlueCross harmless for inaccurate information provided by the Employer or the Employer's failure to provide such information in a timely manner.
 - 9.2.1 BlueCross shall furnish to the Employer, for distribution to Members, forms to be used for enrollment and submission of any other forms determined to be necessary by BlueCross for the administration of the HRA Plan under this Agreement.
 - 9.2.2 Once Employer has notified BlueCross in writing that a new Member is eligible for benefits, BlueCross shall update its systems to reflect that Member's coverage.
 - 9.2.3 Once Employer has notified BlueCross in writing that a Member should be terminated as no longer eligible for coverage, BlueCross shall update its systems to reflect that change in the Member's coverage.
 - 9.2.3.1 If Employer notifies BlueCross of a Member's termination within Ninety (90) days of the Member's termination, BlueCross will credit Employer with any administrative services fees that were paid for that Member for that time period.

9.2.3.2 If Employer does not notify BlueCross of a Member's termination within Ninety (90) days of the Member's termination, BlueCross will only credit Employer for the most recent Ninety (90) day period of administrative services fees that were paid by Employer for that Member's coverage.

9.2.4 BlueCross will provide its HRA SPD describing benefits provided under the HRA to Employer for it to distribute to Members.

9.3 Claims Processing. BlueCross shall provide claims processing services on behalf of Employer for all properly submitted claims, in accordance with the terms of the HRA Plan's benefits. BlueCross shall only use funds furnished solely by Employer to process said claims. BlueCross will follow current industry practices and its internal claims processing procedures regarding adjudication of claims, including timeliness and accuracy of claims payments. For purposes of this Agreement, the term "claim(s)" is defined as a request from a provider of Covered Services and/or a Member for payment of monies due for the rendering of Covered Services under the terms of the HRA Plan.

9.3.1 When necessary, BlueCross shall furnish to the Employer, for distribution to Members, forms to be used for claims submission, and any other forms determined to be necessary by BlueCross for the administration of the HRA Plan under this Agreement.

9.3.2 BlueCross shall furnish each Member claiming benefits under the HRA Plan with an explanation of each claim that is paid, denied or rejected.

9.3.3 BlueCross shall give Members a reasonable opportunity to appeal a denied claim or any portion of a claim within the time frames specified by ERISA, according to the grievance procedure defined in the SPD; however, the Employer shall retain final discretionary authority and responsibility for claims payment decisions.

9.3.4 If Employer notifies BlueCross of a Member's termination from coverage after the termination date, and claims for that Member were paid in the interim, BlueCross shall request reimbursement from providers on Employer's behalf. However, if the Employer does not notify BlueCross of a Member's termination from coverage for Ninety (90) days or more after the date of Member's termination, BlueCross shall not be obligated to attempt to collect any claim payments that were incurred more than Ninety (90) days before notice of termination was received by BlueCross.

9.3.4.1 If benefits were paid directly to a Member, BlueCross will attempt recovery. If Employer does not wish BlueCross to attempt recovery from a specific Member, Employer must direct BlueCross accordingly in writing.

9.3.4.2 If Employer's health benefit plan includes coverage for pharmacy benefits that are paid by BlueCross' pharmacy vendor, claims paid after a Member's termination cannot be recovered from the provider. BlueCross will attempt recovery from the Member on these claims. If Employer does not wish BlueCross to attempt recovery from a specific Member, Employer must direct BlueCross accordingly in writing.

9.3.4.3 If a claim payment is less than Fifty (\$50) dollars, BlueCross has no obligation to attempt to collect said claim payment.

9.3.4.4 If Employer directs BlueCross to use the services of an outside collection agency to collect a claim payment, the fees charged by such entity shall be the sole responsibility of Employer.

- 9.3.4.5 If benefits are not recoverable from a provider or Member, this will not alter Employer's responsibility to fund all claims.
- 9.3.5 BlueCross, or its designee, may perform periodic audit of charges to verify that payments have been made in accordance with electronic claims payment assumptions, in order to provide reasonable certainty that payments are allowable under the IRS rules and regulations.
- 9.3.6 BlueCross, or its designee, will notify the appropriate Subscriber and Employer when funds have been improperly withdrawn.
- 9.3.7 BlueCross, or its designee, will post balances in accounts, and post additional deposits and withdrawals as they occur.
- 9.3.8 Incentives. Employer shall fully fund any incentives offered as part of the HRA Plan. Such expense shall be billed to Employer by BlueCross, as appropriate, in the same manner as Claims (Please see Section 3.2 – Claims Funding Methodology). Employer shall periodically, in a time and format agreed to between the Parties, inform BlueCross of Subscribers that are entitled to receive incentives under the HRA Plan.
- 9.4 Claims Payments Adjustments.
- 9.4.1 Whenever BlueCross becomes aware of an overpayment under the HRA, BlueCross shall make a diligent attempt to recover such overpayment, in accordance with its customary administrative procedures. In the event any part of an overpayment is recovered, the HRA Plan will receive a credit from BlueCross. BlueCross shall not be required to institute any legal proceeding to recover such overpayment. BlueCross may use its reasonable judgment to compromise and settle overpayments.
- 9.4.2 BlueCross will assume liability for an unrecovered overpayment only if and when it is determined that:
- 9.4.2.1 the overpayment was caused by an act or omission of BlueCross that did not meet its standard of care set out in this Agreement;
- 9.4.2.2 all reasonable means of recovery under the circumstances have been exhausted; and
- 9.4.2.3 BlueCross' acts or omissions were not undertaken at the express direction of Employer.
- 9.4.3 BlueCross is not liable for interest on recovered overpayments.
- 9.4.4 Except in cases of fraud committed by the Provider, BlueCross cannot, under Tennessee state law, recover overpayments from Providers more than Eighteen (18) months after the date that BlueCross paid the claim submitted by the Provider.
- 9.4.5 In no event does BlueCross have an obligation to recover on liability for overpayments of claims that were adjudicated for payment more than One (1) years before the overpayment is discovered and reported to BlueCross by the Employer.
- 9.5 In the event that BlueCross becomes aware that a claims payment to a Provider or Member was or might have been the result of a fraud committed on or against the Plan, BlueCross shall:
- Notify the Plan as soon as possible about the alleged fraudulent claims;

- Provide reasonable assistance to the Plan in recovering the alleged fraudulent claims; and
- Report the suspected fraud to the appropriate law enforcement agency.

9.6 Legal Actions.

9.6.1 If a demand is asserted that is based upon actions taken or the language of this Agreement, and litigation, arbitration and/or other legal proceeding is commenced against BlueCross by a Member ("Action"):

9.6.1.1 BlueCross will provide written notice to Employer as soon as practicable, but in no event more than One Hundred Twenty (120) days after the initial notice of such Action was received by BlueCross, where Employer is not also a party to such Action. Additionally, BlueCross will provide Employer with information with respect to the status of such Action at reasonable intervals. BlueCross may select and retain counsel as it deems appropriate in connection with such Action with respect to the interests of BlueCross. Employer has the right to approve or disapprove this selection, within reason.

9.6.1.2 Subject to the indemnity provisions of this Agreement, Employer shall indemnify and defend BlueCross in any such action, and shall be responsible for the defense costs for BlueCross.

9.6.1.3 Employer will provide BlueCross with reasonable cooperation in the defense of such Action.

9.6.1.4 Subject to the indemnity provisions of this Agreement, Employer shall remain liable for the full amount of any benefits paid as a result of such Action, in addition to all costs of legal fees, penalties, interest and other expenses recovered by a Member or health care provider in connection with the Action. In no event will BlueCross be liable for any amount of benefits paid as a result of any Action or any legal fees or costs recovered by a Member, or provider in connection therewith.

9.6.2 If an Action is brought against Employer:

9.6.2.1 Employer will select and retain counsel and will assume liability for the payment of legal fees, costs and disbursements in connection with such Action.

9.6.2.2 BlueCross will provide Employer with reasonable cooperation in the defense of such Action.

9.6.2.3 Subject to the indemnity provisions of this Agreement, Employer shall be liable for the full amount of any benefits paid as a result of such Action, as well as any legal fees, penalties, interest and costs recovered by a Member or provider in connection therewith. In no event will BlueCross be liable for any amount of benefits paid as a result of such Action or any legal fees or costs recovered by a Member or provider in connection therewith.

9.7 Records and Reports. BlueCross will establish, maintain and provide to the Employer, in its standard reporting package, records and reports generated as a result of the administration of the HRA Plan.

- 9.8 Books and Records. BlueCross shall maintain books and records directly related to its payment of claims on behalf of Employer pursuant to this Agreement, in accordance with its customary business practices. It shall make such books and records available for inspection by authorized representatives of Employer at BlueCross' home office, during normal business hours, upon reasonable advance written request, at the Employer's expense, during the term of this Agreement and for Six (6) years from the date of the final payment under this Agreement, subject to the Employer entering into an Information Sharing Agreement or Confidential Information and Non-Disclosure Agreement.
- 9.9 Claims Data. BlueCross maintains Members' claims data in its data warehouse. This claims data is available to the Employer during the term of this Agreement. Upon termination of this Agreement, this claims data will no longer be available to the Employer from the data warehouse, but it will continue to be maintained by BlueCross. Pursuant to the HIPAA privacy standards, it is infeasible for BlueCross to return or destroy the Member's claims data received from the group health plan due to, but not limited to:
- underwriting;
 - research;
 - state and federal law retention requirements;
 - governmental audits;
 - potential litigation; and
 - system restraints for segregating data.

BlueCross will protect the data and limit further uses or disclosures as required by HIPAA.

- 9.10 Subrogation. BlueCross shall enforce Employer's right to subrogation, as established in the SPD.
- 9.10.1 Once subrogation recoveries begin, BlueCross will provide monthly reports to Employer upon request, detailing: (a) recoveries for the immediately past month; (b) year-to-date recoveries; (c) open cases as of the end of the immediately past month; and (d) cases closed with no recovery.
- 9.10.2 BlueCross may use its reasonable judgment to determine when a subrogation claim should be compromised and settled for less than its full value.

ARTICLE X - MISCELLANEOUS PROVISIONS

- 10.1 Acceptance. The attached Employer Group Application form is a part of this Agreement. It is incorporated by reference.
- 10.2 Acceptance by Payment of Fees.
BlueCross expects that Employer will demonstrate its acceptance of the terms of this Agreement by signing the below. In the event that Employer has not signed the Agreement by July 1, 2021, this Agreement will be considered accepted by and binding upon both parties if and when Employer makes a payment to BlueCross in order to receive the services described in this Agreement.
- 10.3 Amendment. This Agreement may be modified, amended, renewed or extended only upon mutual agreement, in writing, signed by the duly authorized officers of the Employer and BlueCross.

The Employer shall notify BlueCross of any planned changes Employer intends to make to the terms and/or conditions of the Plan. Notification shall be made sufficiently in advance of any such changes so as to permit BlueCross reasonable time to review and/or implement such changes.

- 10.4 Assignment. This Agreement may be assigned to a subsidiary or affiliate of the Employer upon Ninety (90) days prior written notice to, and with the express written consent of, BlueCross. BlueCross shall not unreasonably withhold its consent to any such assignment by Employer.
- 10.5 Binding Effect of Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties, their agents, servants, employees, successors, and assigns unless otherwise set forth herein or agreed to by the Parties hereto.
- 10.6 Impossibility of Performance. If an act or omission by a third party, including governmental entities, Network Providers or vendors, renders the performance of this Agreement illegal, impossible or impractical, the affected Party shall notify the other of the nature of that act or omission ("Adverse Event"). The Parties shall meet and, in good faith, attempt to negotiate a modification to this Agreement that minimizes the Adverse Event. Notwithstanding any other provision of this Agreement, if the Parties fail to reach a negotiated modification concerning the Adverse Event, then the affected Party may immediately terminate this Agreement upon giving written notice to the other Party.
- 10.7 Governing Law. This Agreement is subject to and shall be governed by the laws of the United States and State of Tennessee, without regard to conflict of laws provisions.
- 10.8 Independent Contractors.
- 10.8.1 This Agreement is not intended to create nor deemed or construed to create any relationship between Employer and BlueCross other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. Neither the Parties nor their respective directors, officers, employees or representatives shall be construed to be the partner, joint venturer, agent, employer, or representatives of the other Party.
- 10.8.2 On behalf of itself and its participants, Employer hereby acknowledges its understanding that this Agreement constitutes a contract solely between Employer and BlueCross which is an independent corporation operating under a license from the BlueCross BlueShield Association, an association of independent BlueCross and BlueShield Plans permitting BlueCross to use the BlueCross and BlueShield Service Marks in the State of Tennessee, and that BlueCross is not contracting as the agent of the Association.
- 10.8.3 The Employer acknowledges that BlueCross is independent from any provider rendering services to Members, and that BlueCross is not responsible for any acts or omissions by a provider in rendering care or services to a Member.
- 10.8.4 Employer further acknowledges and agrees that it has not entered into this Agreement based upon representations by any person other than BlueCross and that no person, entity, or organization other than BlueCross shall be held accountable or liable to Employer for any of BlueCross' obligations created under this Agreement. This paragraph shall not create any additional obligations whatsoever on the part of BlueCross other than those obligations created under other provisions of this Agreement.
- 10.9 Notices. Any notice required to be given pursuant to this Agreement shall be in writing, sent by certified or registered mail, return receipt requested, or by overnight mail delivery for which

evidence of delivery is obtained by the sender, to BlueCross or the Employer at the addresses indicated herein, or such other addresses that the Parties may hereafter designate. The notice shall be effective on the date the notice was posted.

- 10.10 No Third Party Rights. Except as specifically stated herein, none of the provisions of this Agreement is intended to create third party rights or status in any person or entity.
- 10.11 Severability. If any provision of this Agreement is declared illegal, void or unenforceable, the remaining provisions shall remain in force and effect, unless the severance of that provision substantially deprives a Party of the benefit of its bargain or increases the cost of performing its duties pursuant to this Agreement.
- 10.12 Subsidiaries and Affiliates. Any of the functions to be performed by BlueCross under this Agreement may be performed by BlueCross or any of its subsidiaries, affiliates or designees.
- 10.13 Survival. The rights and obligations of the Parties as set forth herein shall survive the termination of this Agreement to the extent necessary to effectuate the intent of the Parties as expressed herein.
- 10.14 Venue. All actions or proceedings instituted by the Employer or BlueCross against the other hereunder shall be brought in a court of competent jurisdiction located in Hamilton County, Tennessee.
- 10.15 Waiver of Breach. Waiver of a breach of any provision of this Agreement shall not be deemed a waiver of any other breach of the same or a different provision.
- 10.16 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.
- 10.17 Section 111 Mandatory Secondary Payor Reporting. Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 ("MMSEA"), titled Medicare Secondary Payor, (hereinafter "Section 111") mandates that, effective January 1, 2009, all group health plans or their representatives submit certain information to Center of Medicare & Medicaid Services. BlueCross is registered as a medical "Required Reporting Entity" as required under Section 111. BlueCross shall report the Plan's medical information required by Section 111. Under no circumstances will BlueCross be required to report workers' compensation or liability insurance information required under Section 111. Employer shall provide all Social Security numbers, tax identification numbers, and the "total number of employees" (as that is defined in the MMSEA) information to BlueCross. BlueCross will not be responsible for any deficiency resulting from Employer's failure to provide such information to BlueCross.

BLUECROSS BLUESHIELD OF TENNESSEE, INC.

TOWN OF ASHLAND CITY

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address: _____

Address: 233 Tennessee Waltz Parkway

Employer ID No.

Ashland City, TN 37015

62-6000239

Attachment 1 to Health Reimbursement Arrangement

DIRECT DEBIT AUTHORIZATION AGREEMENT

The Employer has signed a separate Direct Debit Authorization Agreement, which is hereby incorporated by reference as part of this Agreement.

Attachment 2 to Health Reimbursement Arrangement

BUSINESS ASSOCIATE AGREEMENT **Between** **BLUE CROSS BLUE SHIELD OF TENNESSEE, INC.** **and** **Town of Ashland City**

This Business Associate Agreement (“BAA”) is effective upon execution and amends and is made part of the Administrative Services Agreement (“ASA”) by and between BlueCross BlueShield of Tennessee, Inc. (“BlueCross”), Town of Ashland City (“Employer”) assigned Employer Group Number 125011, and the Group Health Plan (“GHP”).

The ASA is modified to incorporate the terms of this HIPAA Agreement to comply with the requirements of the implementing regulations at 45 Code of Federal Regulations (“C.F.R.”) Parts 160-64 for the Administrative Simplification provisions of Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as modified by the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (“HITECH Act”), and the implementing regulations (“HIPAA Rules”) that are applicable to BlueCross, along with any guidance and/or regulations issued by United States Department of Health and Human Services (“DHHS”). BlueCross and GHP agree to incorporate into this HIPAA Agreement any regulations issued with respect to the HITECH Act that relate to the obligations of BlueCross. BlueCross recognizes and agrees that it is obligated by law to meet the applicable provisions of the HITECH Act.

1. Privacy of Protected Health Information.
 - a. Permitted Uses and Disclosures. BlueCross is permitted to use and disclose Protected Health Information that it creates or receives on GHP’s behalf or receives from GHP (or another business associate of GHP) and to request Protected Health Information on GHP’s behalf (collectively, “GHP’s Protected Health Information”) only as follows:
 - i. Functions and Activities on GHP’s Behalf. BlueCross will be permitted to use and disclose GHP’s PHI to perform functions, activities, services, and operations on behalf of GHP, consistent with the Privacy Rule and the HITECH Act as specified in the ASA, including but not limited to: (a) management, operation, and administration of the GHP offered to Members; and (b) services set forth in the ASA, which include payment activities, Health Care Operations, and Data Aggregation.
 - ii. BlueCross’ Operations. For BlueCross’ proper management and administration or to carry out BlueCross’ legal responsibilities, provided that, with respect to disclosure of GHP’s Protected Health Information, either:
 - A) The disclosure is Required by Law; or
 - B) BlueCross obtains reasonable assurance from any person or entity to which BlueCross will disclose GHP’s Protected Health Information that the person or entity will:
 - 1) Hold GHP’s Protected Health Information in confidence and use or further disclose GHP’s Protected Health Information only for the

purpose for which BlueCross disclosed GHP's Protected Health Information to the person or entity or as Required by Law; and

2) Promptly notify BlueCross (who will in turn notify GHP in accordance with Section 4(a) of this HIPAA Agreement) of any instance of which the person or entity becomes aware in which the confidentiality of GHP's Protected Health Information was breached.

C) BlueCross also may use GHP's Protected Health Information to provide Data Aggregation Services. BlueCross may de-identify GHP's PHI it obtains or creates in the course of providing services to Employer.

- b. Minimum Necessary and Limited Data Set. BlueCross' use, disclosure or request of Protected Health Information shall utilize a Limited Data Set if practicable. Otherwise, BlueCross will, in its performance of the functions, activities, services, and operations specified in Section 1(a) above, make reasonable efforts to use, to disclose, and to request of a Covered Entity only the minimum amount of GHP's Protected Health Information reasonably necessary to accomplish the intended purpose of the use, disclosure or request, except that BlueCross will not be obligated to comply with this minimum necessary limitation with respect to:
- i. Disclosure to or request by a health care provider for Treatment;
 - ii. Use for or disclosure to an individual who is the subject of GHP's Protected Health Information, or that individual's personal representative;
 - iii. Use or disclosure made pursuant to an authorization compliant with 45 C.F.R. § 164.508 that is signed by an individual who is the subject of GHP's Protected Health Information to be used or disclosed, or by that individual's personal representative;
 - iv. Disclosure to the DHHS in accordance with Section 5(a) of this HIPAA Agreement;
 - v. Use or disclosure that is Required by Law; or
 - vi. Any other use or disclosure that is excepted from the minimum necessary limitation as specified in 45 C.F.R. § 164.502(b)(2).
- c. Prohibition on Unauthorized Use or Disclosure. BlueCross will neither use nor disclose GHP's Protected Health Information, except as permitted or required by the ASA and this HIPAA Agreement or in writing by GHP or as Required by Law. This HIPAA Agreement does not authorize BlueCross to use or disclose GHP's Protected Health Information in a manner that will violate the 45 C.F.R. Part 164, Subpart E "Privacy of Individually Identifiable Health Information" ("Privacy Rule") if done by GHP, except as set forth in Section 1(a)(ii) of this HIPAA Agreement.
- d. Information Safeguards.

- i. Privacy of GHP's Protected Health Information. BlueCross will develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to protect the privacy of GHP's Protected Health Information. The safeguards must reasonably protect GHP's Protected Health Information from any intentional or unintentional use or disclosure in violation of the Privacy Rule, 45 C.F.R. Part 164, Subpart E and this HIPAA Agreement, and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this HIPAA Agreement.
 - ii. Security of GHP's Electronic Protected Health Information. BlueCross will develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that BlueCross creates, receives, maintains, or transmits on GHP's behalf as required by the Security Rule, 45 C.F.R. Part 164, Subpart C and as required by the HITECH Act. BlueCross also shall develop and implement policies and procedures and meet the Security Rule documentation requirements as required by the HITECH Act.
 - e. Subcontractors and Agents. BlueCross will require any of its subcontractors and agents, to which BlueCross is permitted by the ASA and this HIPAA Agreement or in writing by GHP to disclose GHP's Protected Health Information, to provide reasonable assurance that such subcontractor or agent will comply with the same privacy and security safeguard obligations with respect to GHP's Protected Health Information that are applicable to BlueCross under this HIPAA Agreement.
2. Compliance with Transaction Standards. If BlueCross conducts in whole or part electronic Transactions on behalf of GHP for which DHHS has established Standards, BlueCross will comply, and will require any subcontractor or agent it involves with the conduct of such Transactions to comply, with each applicable requirement of the Transaction Rule, 45 C.F.R. Part 162. BlueCross 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 GHP that:
 - a. Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;
 - b. Adds any data element or segment to the maximum defined data set;
 - c. 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
 - d. Changes the meaning or intent of the Standard Transaction's implementation specification.
3. Individual Rights.

- a. Access. BlueCross will, within Thirty (30) days following GHP's request, make available to GHP or, at GHP's direction, to an individual (or the individual's personal representative) for inspection and obtaining copies of GHP's Protected Health Information about the individual that is in BlueCross' custody or control, consistent with the requirements of 45 C.F.R. § 164.524 so that GHP may meet its access obligations under 45 C.F.R. § 164.524 and, where applicable, the HITECH Act. BlueCross shall make such information available in an electronic format where directed by GHP.
- b. Amendment. BlueCross will, upon receipt of written notice from GHP, promptly amend or permit GHP access to amend any portion of GHP's Protected Health Information, so that GHP may meet its amendment obligations under 45 C.F.R. § 164.526.
- c. Disclosure Accounting. So that GHP may meet its disclosure accounting obligations under 45 C.F.R. § 164.528:
 - i. Disclosures Subject to Accounting. BlueCross will record the information specified in Section 3(c)(iii) below ("Disclosure Information") for each disclosure of GHP's Protected Health Information, not excepted from disclosure accounting as specified in Section 3(c)(ii) below, that BlueCross makes to GHP or to a third party.
 - ii. Disclosures Not Subject to Accounting. BlueCross will not be obligated to record Disclosure Information or otherwise account for the following disclosures of GHP's Protected Health Information:
 - A) That occurred before April 14, 2003;
 - B) For Treatment, Payment or Health Care Operations activities;
 - C) To an individual who is the subject of GHP's Protected Health Information disclosed, or to that individual's personal representative;
 - D) Pursuant to an authorization compliant with 45 C.F.R. § 164.508 that is signed by an individual who is the subject of GHP's Protected Health Information disclosed, or by that individual's personal representative;
 - E) For notification of and to persons involved in the care or payment related to the health care of an individual who is the subject of GHP's Protected Health Information disclosed and for disaster relief;
 - F) To law enforcement officials or correctional institutions in accordance with 45 C.F.R. § 164.512(k)(5);
 - G) For national security or intelligence purposes in accordance with 45 C.F.R. § 164.512(k)(2);
 - H) In a Limited Data Set;

- I) Incident to a use or disclosure that BlueCross is otherwise permitted to make by the ASA and this HIPAA Agreement; and
 - J) Otherwise excepted from disclosure accounting as specified in 45 C.F.R. § 164.528.
- iii. Disclosure Information. With respect to any disclosure by BlueCross of GHP's Protected Health Information that is not excepted from disclosure accounting by Section 3(c)(ii) above, BlueCross will record the following Disclosure Information as applicable to the type of accountable disclosure made:
- A) Disclosure Information Generally. Except for repetitive disclosures of GHP's Protected Health Information as specified in Section 3(c)(iii)(B) below and for disclosures for large Research studies as specified in Section 3(c)(iii)(C) below, the Disclosure Information that BlueCross must record for each accountable disclosure are the requirements set forth in the HIPAA Privacy Rule, including, but not limited to: (i) the disclosure date, (ii) the name and (if known) address of the entity to which BlueCross made the disclosure, (iii) a brief description of GHP's Protected Health Information disclosed, and (iv) a brief statement of the purpose of the disclosure. BlueCross further shall provide any additional information to the extent required by the HITECH Act and any accompanying regulations.
 - B) Disclosure Information for Repetitive Disclosures. For repetitive disclosures of GHP's Protected Health Information that BlueCross makes for a single purpose to the same person or entity (including GHP), the Disclosure Information that BlueCross must record is either the Disclosure Information specified in Section 3(c)(iii)(A) above for each accountable disclosure, or (i) the Disclosure Information specified in Section 3(c)(iii)(A) above for the first of the repetitive accountable disclosures, (ii) the frequency, periodicity, or number of the repetitive accountable disclosures, and (iii) the date of the last of the repetitive accountable disclosures.
 - C) Disclosure Information for Large Research Activities. For disclosures of GHP's Protected Health Information that BlueCross makes for particular Research involving Fifty (50) or more individuals and for which an Institutional Review Board or Privacy Board has waived authorization during the period covered by an individual's disclosure accounting request, the Disclosure Information that BlueCross must record is (i) the name of the Research protocol or activity, (ii) a plain language description of the Research protocol or activity, including its purpose and criteria for selecting particular records, (iii) a brief description of the type of GHP's Protected Health Information disclosed for the Research, (iv) the dates or periods during which BlueCross made or may have made these disclosures, including the date of the last disclosure that

BlueCross made during the period covered by an individual's disclosure accounting request, (v) the name, address, and telephone number of the Research sponsor and of the researcher to whom BlueCross made these disclosures, and (vi) a statement that GHP's Protected Health Information relating to an individual requesting the disclosure accounting may or may not have been disclosed for a particular Research protocol or activity. BlueCross will, upon request of GHP or an individual requesting the disclosure accounting, assist GHP or the individual to contact the Research sponsor and the researcher if it is reasonably likely that GHP's Protected Health Information relating to the individual was disclosed for the particular Research protocol or activity.

- iv. Availability of Disclosure Information. Unless otherwise provided by applicable laws, BlueCross will maintain the Disclosure Information for at least Six (6) years following the date of the accountable disclosure to which the Disclosure Information relates.

Business Associate will make the Disclosure Information available to GHP within Sixty (60) days following GHP's request for such Disclosure Information to comply with an individual's request for disclosure accounting.

- d. Restriction Agreements and Confidential Communications. BlueCross will comply with any agreement that GHP makes that either (i) restricts use or disclosure of GHP's Protected Health Information pursuant to 45 C.F.R. § 164.522(a), or (ii) requires confidential communication about GHP's Protected Health Information pursuant to 45 C.F.R. § 164.522(b), provided that GHP notifies BlueCross in writing of the restriction or confidential communication obligations that BlueCross must follow. GHP will promptly notify BlueCross in writing of the termination of any such restriction agreement or confidential communication requirement and, with respect to termination of any such restriction agreement, instruct BlueCross whether any of GHP's Protected Health Information will remain subject to the terms of the restriction agreement.

4. Privacy Obligation Breach and Security Incidents.

- a. Reporting.

- i. Privacy Breach. BlueCross will report to GHP any use or disclosure of GHP's Protected Health Information not permitted by the ASA and this HIPAA Agreement or in writing by GHP. In addition, BlueCross will report, following discovery and without unreasonable delay, but in no event later than ten (10) business days following discovery, any "Breach" of "Unsecured Protected Health Information" as these terms are defined by the Breach Notification Regulation. BlueCross shall cooperate with GHP in investigating the Breach and in meeting the GHP's obligations under the Breach Notification Regulation and any other security breach notification laws.
- ii. Any such report shall include the identification (if known) of each individual whose Unsecured Protected Health Information has been, or is reasonably

believed by BlueCross to have been, accessed, acquired, or disclosed during such Breach. BlueCross will make the report to GHP's Privacy Division not more than Twenty (20) business days after BlueCross' notice pursuant to subsection (i). BlueCross will report the following as information is available:

- A) Identify the nature of the non-permitted access, use or disclosure, including the date of the Breach and the date of discovery of the Breach;
- B) Identify GHP's Protected Health Information accessed, used or disclosed as part of the Breach (e.g., full name, social security number, date of birth, etc.); and
- C) Identify who made the non-permitted access, use or disclosure and who received the non-permitted disclosure.

iii. Security Incidents. BlueCross will report to GHP any attempted or successful (A) unauthorized access, use, disclosure, modification, or destruction of GHP's Electronic Protected Health Information or (B) interference with BlueCross' system operations in BlueCross' information systems, of which BlueCross becomes aware. BlueCross will make this report upon GHP's request, except if any such security incident resulted in a disclosure of GHP's Protected Health Information not permitted by this HIPAA Agreement, BlueCross will make the report in accordance with Section 4(a)(i) above.

b. Termination of Agreement.

i. Right to Terminate for Breach. GHP may terminate ASA if it determines, in its sole discretion, that BlueCross has breached any provision of this HIPAA Agreement and upon written notice to BlueCross of the breach, BlueCross fails to cure the breach within Thirty (30) days after receipt of the notice. GHP may exercise this right to terminate Agreement by providing BlueCross written notice of termination, stating the failure to cure the breach of the HIPAA Agreement that provides the basis for the termination. Any such termination will be effective immediately or at such other date specified in GHP's notice of termination. If for any reason GHP determines that BlueCross has breached the terms of this HIPAA Agreement and such breach has not been cured, but GHP determines that termination of the Agreement is not feasible, GHP may report such breach to the DHHS.

ii. BlueCross may terminate Agreement if it determines, after reasonable consultation with GHP, that GHP has breached any material provision of this HIPAA Agreement and upon written notice to GHP of the breach, GHP fails to cure the breach within Thirty (30) days after receipt of the notice. BlueCross may exercise this right to terminate Agreement by providing GHP written notice of termination, stating the failure to cure the breach of the HIPAA Agreement that provides the basis for the termination. Any such termination will be effective upon such reasonable date as the parties mutually agree. If

BlueCross reasonably determines that GHP has breached the terms of this HIPAA Agreement and such breach has not been cured, but BlueCross and GHP mutually determine that termination of the Agreement is not feasible, BlueCross may report such breach to the DHHS.

c. Obligations on Termination.

- i. Return or Destruction of GHP's Protected Health Information as Feasible.
Upon termination or other conclusion of Agreement, BlueCross will, if feasible, return to GHP or destroy all of GHP's Protected Health Information in whatever form or medium, including all copies thereof and all data, compilations, and other works derived therefrom that allow identification of any individual who is a subject of GHP's Protected Health Information. BlueCross will require any subcontractor or agent, to which BlueCross has disclosed GHP's Protected Health Information as permitted by Section 1(e) of this HIPAA Agreement, to if feasible return to BlueCross (so that BlueCross may return it to GHP) or destroy all of GHP's Protected Health Information in whatever form or medium received from BlueCross, including all copies thereof and all data, compilations, and other works derived therefrom that allow identification of any individual who is a subject of GHP's Protected Health Information, and certify on oath to BlueCross that all such information has been returned or destroyed. BlueCross will complete these obligations as promptly as possible, but not later than Sixty (60) days following the effective date of the termination or other conclusion of Agreement.
- ii. Procedure When Return or Destruction Is Not Feasible. BlueCross will identify any of GHP's Protected Health Information, including any that BlueCross has disclosed to subcontractors or agents as permitted by Section 1(e) of this HIPAA Agreement, that cannot feasibly be returned to GHP or destroyed and explain why return or destruction is infeasible. Where GHP agrees that such return or destruction is infeasible, BlueCross will limit its further use or disclosure of such information to those purposes that make return or destruction of such information infeasible. If GHP does not agree, subparagraph A above shall apply. BlueCross will require such subcontractor or agent to limit its further use or disclosure of GHP's Protected Health Information that such subcontractor or agent cannot feasibly return or destroy to those purposes that make the return or destruction of such information infeasible. BlueCross will complete these obligations as promptly as possible, but not later than Sixty (60) days following the effective date of the termination or other conclusion of Agreement.
- iii. Continuing Privacy and Security Obligation. BlueCross' obligation to protect the privacy and safeguard the security of GHP's Protected Health Information as specified in this HIPAA Agreement will be continuous and survive termination or other conclusion of Agreement and this HIPAA Agreement.

- iv. Other Obligations and Rights. BlueCross' other obligations and rights and GHP's obligations and rights upon termination or other conclusion of Agreement will be those set out in the ASA.
- d. Indemnity. BlueCross will indemnify and hold harmless GHP and any GHP affiliate, officer, director, employee or agent from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any non-permitted use or disclosure of GHP's Protected Health Information or other breach of this HIPAA Agreement by BlueCross or any subcontractor or agent under BlueCross' control.
 - i. Right to Tender or Undertake Defense. If GHP is named a party in any judicial, administrative or other proceeding arising out of or in connection with any non-permitted use or disclosure of GHP's Protected Health Information or other breach of this HIPAA Agreement by BlueCross or any subcontractor or agent under BlueCross' control, GHP will have the option at any time either (A) to tender its defense to BlueCross, in which case BlueCross will provide qualified attorneys, consultants, and other appropriate professionals to represent GHP's interests at BlueCross' expense, or (B) undertake its own defense, choosing the attorneys, consultants, and other appropriate professionals to represent its interests, in which case BlueCross will be responsible for and pay the reasonable fees and expenses of such attorneys, consultants, and other professionals.
 - ii. Right to Control Resolution. GHP will have the sole right and discretion to settle, compromise or otherwise resolve any and all claims, causes of actions, liabilities or damages against it, notwithstanding that GHP may have tendered its defense to BlueCross. Any such resolution will not relieve BlueCross of its obligation to indemnify GHP under this Section 4(c).

5. General Provisions.

- a. Inspection of Internal Practices, Books, and Records. BlueCross will make its internal practices, books, and records relating to its use and disclosure of GHP's Protected Health Information available to GHP and to DHHS to determine GHP's compliance with the Privacy Rule, 45 C.F.R. Part 164, Subpart E.
- b. Definitions. The terms "Covered Entity," "Electronic Protected Health Information," "Protected Health Information," "Standard," "Trading Partner Agreement," and "Transaction" have the meanings set out in 45 C.F.R. § 160.103. The term "Standard Transaction" has the meaning set out in 45 C.F.R. § 162.103. The term "Required by Law" has the meaning set out in 45 C.F.R. § 164.103. The terms "Health Care Operations," "Payment," "Research," and "Treatment" have the meanings set out in 45 C.F.R. § 164.501. The term "Limited Data Set" has the meaning set out in 45 C.F.R. § 164.514(e). The term "use" means, with respect to Protected Health Information, utilization, employment, examination, analysis or application within Business Associate. The terms "disclose" and "disclosure" mean, with respect to Protected Health

Information, release, transfer, providing access to or divulging to a person or entity not within Business Associate. For purposes of this HIPAA Agreement, GHP's Protected Health Information encompasses GHP's Electronic Protected Health Information. Any other capitalized terms not identified here shall have the meaning as set forth in the HIPAA Rules.

- c. Amendment to Agreement. Upon the compliance date of any final regulation or amendment to final regulation promulgated by DHHS that affects BlueCross' use or disclosure of GHP's Protected Health Information or Standard Transactions, the Agreement and this HIPAA Agreement will automatically amend such that the obligations imposed on BlueCross remain in compliance with the final regulation or amendment to final regulation.
- d. Other Acceptable Forms of this HIPAA Agreement. The following shall have the same legal effect as an original: facsimile copy, imaged copy, scanned copy, or an electronic version.
- e. Communications. Member requests or other communications or notices required or contemplated by this HIPAA Agreement shall be in writing and shall be delivered by hand, by overnight courier service, or by first class mail, postage prepaid, addressed to the appropriate party at the address below, or to such other party or address as may be hereafter specified by written notice:

BlueCross BlueShield of Tennessee, Inc.
Privacy Office 1.4
1 Cameron Hill Circle
Chattanooga, TN 37402
Telephone: 888-455-3824

Member requests or other communications or notices shall be considered effectively given as of the date of hand delivery; as of the date specified for overnight courier service delivery; or as of Three (3) business days after the date of mailing.

- 6. Conflicts. The terms and conditions of this HIPAA Agreement will override and control any conflicting term or condition of the ASA. All non-conflicting terms and conditions of the ASA remain in full force and effect.

IN WITNESS WHEREOF, GHP and BlueCross execute this HIPAA Agreement in multiple originals to be effective on the last date written below.

BLUECROSS BLUESHIELD OF TENNESSEE, INC.

TOWN OF ASHLAND CITY

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address: _____

Address: 233 Tennessee Waltz Parkway
Ashland City, TN 37015

Employer ID No. 62-6000239
