



*An independent licensee of the Blue Cross and Blue Shield Association*

**AGREEMENT REGARDING PRODUCTION AND DISTRIBUTION OF  
SUMMARY OF BENEFITS AND COVERAGE ON BEHALF OF PLAN**

This Agreement is entered into between Blue Cross Blue Shield of Wyoming (BCBSWY) and Laramie County Government (The Employer).

**WHEREAS**, The Employer is the Plan Sponsor and Plan Administrator of a self-funded Employee Welfare Benefit Plan (Plan) established and maintained by The Employer for the benefit of the Plan's participants and beneficiaries;<sup>1</sup>

**WHEREAS**, the Patient Protection and Affordable Care Act of 2010 (P.L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152), mandates that groups offering self-funded group health plan coverage, such as The Employer, provide a Summary of Benefits and Coverage (SBC) for each benefit package it offers to the Plan's participants and beneficiaries;

**WHEREAS**, BCBSWY is the Claims Supervisor of the Plan and desires, at no additional fee to The Employer, to work with The Employer to create and distribute SBCs on behalf of The Employer for its participants and beneficiaries pursuant to the parties' Agreement herein;

**NOW THEREFORE**, the parties agree to work together with regard to meeting The Employer's federally mandated requirements to create and distribute SBCs to Plan participants and beneficiaries as follows:

**A. CONDITIONS PRECEDENT TO BCBSWY'S DUTIES**

1. As a condition precedent to any duties or obligations of BCBSWY under this Agreement, The Employer must:
  - a. Have completed a Major Account Application with BCBSWY and an Initial Information for SBCs form (see Attachment A) so that BCBSWY can obtain details needed for the SBC; and
  - b. Execute and return this Agreement to BCBSWY.

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<sup>1</sup> A participant is defined as "an employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees and members of such organization, or whose beneficiaries may be eligible to receive any such benefit." A beneficiary is defined as "a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder."

## **B. BCBSWY'S INITIAL CREATION OF SBCS ON BEHALF OF THE EMPLOYER**

### **1. SUMMARY OF LEGAL REQUIREMENT**

Pursuant to federal statutory and regulatory requirements,<sup>2</sup> The Employer is required to create and deliver an SBC without charge to its participants and beneficiaries with respect to each benefit package offered by The Employer for which that participant or beneficiary is eligible. The laws set forth specific timelines for The Employer's production and delivery of SBCs.

### **2. PROCEDURE FOR MEETING REQUIREMENT**

a. Within ten (10) calendar days of BCBSWY's receipt of the documents in Section A above, BCBSWY shall create all required SBCs for each of the Plan's benefit packages and provide a draft of each SBC to The Employer for approval in accordance with the following terms and disclaimers:

(1) The parties acknowledge that the federal agencies have indicated further guidance and instruction may be forthcoming to clarify and further define some of the SBC requirements. With that understanding, BCBSWY agrees that it will work to the best of its ability under the current federal regulations and guidance to ensure that The Employer's SBCs comply with the required appearance, content and language mandates of PHSA Section 2715(b)(3) and any other applicable Federal statutes and regulations substantively addressing SBC requirements.

(2) The Employer acknowledges that it is required by law to make statements within its SBC(s) that indicate whether or not its Plan(s) meets the "Minimum Essential Coverage" and "Minimum Value" standards as defined by the Affordable Care Act. The Employer must inform BCBSWY whether these statements should read in the affirmative or negative in the SBC and must subsequently advise BCBSWY of any changes to the Plans that may affect the Minimum Essential Coverage or Minimum Value statements in The Employer's SBC. The Employer's approval of an SBC shall constitute a certification by The Employer that all statements contained in that SBC are true and correct to the best of The Employer's knowledge. The Employer acknowledges that BCBSWY cannot make these determinations for or on behalf of The Employer and that The Employer will indemnify BCBSWY to the extent BCBSWY incurs any costs, expenses or liability for The Employer's incorrect determination regarding either Minimum Essential Coverage or Minimum Value with regard to its Plan(s).

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<sup>2</sup> See Health and Human Services regulations beginning at 45 CFR 147.200. See Department of Labor regulations beginning at 29 CFR 2590.715-2715. See Department of Treasury regulations beginning at Treas. Reg. §54.9815-2715.

- (3) The parties acknowledge that the SBCs will contain the required coverage examples to illustrate benefits provided by the Plan for common benefit scenarios, including pregnancy and diabetes. The coverage examples will estimate what proportion of expenses under these illustrative benefits scenarios might be covered by the Plan. The purpose is to allow consumers to use this information to compare their share of the costs of care under different coverage options to make an informed selection decision. However, due to substantial inaccuracies created by the use of the “coverage calculator” created by the federal agencies for calculating the amounts under these coverage examples, BCBSWY has created its own calculator which better represents to the participants and beneficiaries their potential cost-sharing amounts under the examples as mandated by the agencies.
- (4) Where the Plan utilizes BCBSWY’s pharmacy network, the pharmacy benefits will be included and integrated into the SBC. If the Plan utilizes a pharmacy network other than BCBSWY’s and a separate SBC for the pharmacy benefits is not being created and distributed by The Employer or its pharmacy benefits vendor, BCBSWY will, at The Employer’s request, work with The Employer to integrate the pharmacy benefits into the SBC created by BCBSWY for the Plan’s medical benefits. However, BCBSWY’s obligation to integrate these pharmacy benefits is conditioned upon The Employer providing BCBSWY with the pharmacy benefit information in a timely manner as set out in Section A.1.a. above. The Employer acknowledges that BCBSWY shall not be responsible for the accuracy of any pharmacy benefits reported to BCBSWY by The Employer and included in the SBC, nor shall BCBSWY have any responsibility for integrating the pharmacy benefits into the SBCs it creates on behalf of The Employer if the pharmacy benefit information is not provided to BCBSWY in a timely manner.
- (5) If The Employer offers participants and beneficiaries health reimbursement arrangements (HRA) in coordination with its medical benefit packages, and the HRA benefits could affect the participants’ or beneficiaries’ cost-sharing requirements under the benefit packages, BCBSWY will, at The Employer’s request, as set out in Section A.1.a above, add information about the HRA into its SBC. Where such a request is made, the existence of the integrated HRA will be notated on the SBC. The Employer acknowledges that due to the wide variety of HRAs and their differing effects on benefits, the HRAs will not be taken into consideration in the coverage examples in the SBCs, but proper notations of this fact will be made in each example. Stand-alone HRAs needing separate and distinct SBCs will not be provided or delivered by BCBSWY.
- (6) Per federal regulations, in lieu of summarizing coverage for items and services provided outside the United States, BCBSWY will provide in the SBC, where appropriate, an internet address or similar contact information

where the participant or beneficiary may obtain information about his/her benefits and coverage outside the United States.

- (7) The SBC will contain a notification that the SBC can be provided in a culturally and linguistically appropriate manner as required by law. If such a request is made by a participant or beneficiary, BCBSWY can, upon request, arrange for a vendor to translate the appropriate SBC, but the cost of translation of the SBC will be The Employer's.
- (8) Additional SBC content requirements are scheduled to apply in the future. BCBSWY and The Employer agree to work together to meet these requirements and divide responsibility for these additional requirements by means of written amendments to this Agreement if necessary. If the parties are unable to come to a mutual agreement regarding the division of responsibility or costs for new or additional requirements, this Agreement may be terminated by either party pursuant to Section F below.
- b. Within ten (10) calendar days of receiving a draft SBC from BCBSWY, The Employer shall approve the SBC as being a true and correct summary of the Plan's benefit package in the appropriate format, or if corrections are needed, notify BCBSWY in writing of the corrections to be made.
- c. Within five (5) calendar days of receiving a written notice from The Employer that a draft SBC needs correction, BCBSWY shall revise the SBC and provide a revised copy to The Employer, which shall either be approved or sent back to BCBSWY for further corrections within five (5) calendar days.
- d. The parties recognize that time is of the essence in producing and distributing SBCs. Because the timelines set out in this Agreement must be met in order for the SBCs to be provided to the participants and beneficiaries in a timely fashion, the parties agree to work together in good faith and use their best efforts to get SBCs produced and approved within thirty (30) calendar days.
- e. A party who fails to meet these timelines/deadlines without just cause shall be liable for any fines, penalties or damages imposed as a result of such failure and shall indemnify and hold harmless the other party for any and all fines, penalties, damages and attorney's fees imposed on or incurred by that other party as a result of the failure to meet the timelines/deadlines. Where both parties have worked in good faith and in substantial compliance with the terms of this Agreement but the timelines/deadlines could not be met, neither party shall be liable to the other for any and all fines, penalties or damages imposed as a result of such failure.

#### **C. BCBSWY'S DISTRIBUTION OF SBCS ON BEHALF OF THE EMPLOYER**

The Employer is required to provide an SBC without charge to its participants and beneficiaries with respect to each benefit package offered by The Employer for which

that participant or beneficiary is eligible. The laws set forth specific timelines for The Employer's delivery of SBCs.

The SBC may always be distributed to participants or beneficiaries in paper form. Alternatively, where the technology is available, SBCs may also be distributed to participants and beneficiaries electronically.

For Plans subject to ERISA or the Internal Revenue Code (IRC) (other than a non-federal governmental plan), SBCs may be provided electronically if the requirements of the Department of Labor's electronic disclosure safe harbor are met.

With respect to individuals who are eligible but not enrolled for coverage, the SBC may be provided electronically if: (1) the format is readily accessible; (2) the SBC is provided in paper form free of charge upon request; and (3) in a case in which the electronic form is an Internet posting, The Employer timely notifies the individual in paper form (such as by postcard or letter) or email that the documents are available on the Internet, provides the Internet address, and notifies the individual that the documents are available in paper form upon request.

For non-federal governmental plans, the SBC may be provided electronically if the distribution of the SBCs conforms to either the ERISA/IRC standards above, or the provisions governing electronic disclosure for individual health insurance issuers. Application of the provisions governing electronic disclosure by individual health insurance issuers would allow these non-federal governmental plans to distribute an SBC in a manner that can reasonably be expected to provide actual notice regardless of the format. Several methods of delivery may satisfy this requirement: (1) hand-delivery of a printed copy of the SBC to the participant or beneficiary; (2) mailing a printed copy of the SBC to the mailing address provided to the Plan by the participant or beneficiary; (3) providing the SBC by email after obtaining the participant's or dependent's agreement to receive the SBC by email; (4) posting the SBC on the Internet and advising the participant or beneficiary in paper or electronic form consistent with requirements; or (5) proving the SBC by any other method that can reasonably be expected to provide actual notice.

If the electronic form is an Internet posting, The Employer must timely advise the participant or beneficiary in writing (postcard or letter) or via email, that the SBCs are available on the Internet, provide the Internet address, and notify the participant/beneficiary that the documents are available in paper form upon request.

When electronic delivery is used, the following additional rules must be complied with: (1) the format is readily accessible; (2) the SBC is placed in a location that is prominent and readily accessible; (3) the SBC is provided in an electronic form which can be electronically retained and printed; (4) the SBC is consistent with the appearance, content and language requirements of the rule; (5) The Employer notifies the participant or beneficiary that the SBC is available in paper form without charge upon request and provides it upon request.

Only a single SBC must be sent to a participant and beneficiary at the participant's last known address, unless a particular beneficiary has a different last known address, in which case a separate SBC will need to be sent to the beneficiary at his or her last known address.

It is not necessary for the participant or beneficiary to acknowledge his or her receipt of the SBC.

**1. AGREEMENT FOR DISTRIBUTION OF SBC UPON ANNUAL RENEWAL**

**a. Summary of Legal Requirement.** The Employer must provide an SBC for the benefit package the participant or beneficiary is enrolled in at the time of renewal. The Employer must also provide SBCs for other benefit packages the participant or beneficiary is eligible for, but not enrolled in, upon request. If a written or electronic application is required for renewal, The Employer must provide the SBC as part of the application materials distributed to the participants and beneficiaries. If benefits are automatically renewed, The Employer must provide the SBC to participants and beneficiaries at least thirty (30) calendar days prior to the first day of the new plan year. The distribution of the SBC at renewal is required regardless of whether or not there are any changes taking effect to the benefit package upon the renewal that would impact the SBC's content.

**b. Procedure For Meeting Requirement**

**(1) Where Employer Requires Written or Electronic Application For Renewal**

- (a) The Employer must complete and return a Plan Changes Form and SBC Request Form for Annual Renewal (see Attachment B) to BCBSWY no later than forty (40) calendar days prior to the date The Employer has designated as the date it will distribute the application materials to participants and beneficiaries. The Plan Change and SBC Request Forms must be returned to BCBSWY within this forty (40) calendar day timeframe even if there are no changes to the benefit packages at renewal that will impact the SBC's content.
- (b) BCBSWY shall create the necessary SBCs and The Employer must approve the final SBCs pursuant to the procedure in Section B.2 above.
- (c) No later than ten (10) calendar days prior to the date The Employer has indicated it will distribute the application material to participants and beneficiaries, BCBSWY shall perform one of the following, at The Employer's election:

- (i) Provide The Employer with an electronic copy of the SBC so that The Employer may print, copy and include the SBC with its application materials and/or electronically deliver the SBC to its participants and beneficiaries; or
  - (ii) Provide The Employer with an electronic copy of a letter to participants and beneficiaries advising the participants and beneficiaries where they may locate their SBC on the Internet (if the technology is available). The Employer may print, copy and include the letter with their application materials and/or electronically deliver this letter to its participants and beneficiaries.
  - (iii) If the relevant technology is not available under (ii) above to allow BCBSWY to post the SBCs on the Internet, BCBSWY will mail a sufficient number of paper copy SBCs directly to the Employer to enable The Employer to distribute the SBCs to its participants and beneficiaries. However, where BCBSWY is able to make the SBCs available to participants and beneficiaries on the Internet, this election will not be available to The Employer.
- (d) Where it is not possible for the parties to meet the timelines stated above due to the time between the execution of this Agreement (including The Employer's ability to meet its conditions precedent set forth herein) and the date upon which the SBC must be produced and distributed, the parties, where possible, shall work backward from the deadline date, with all times for the preceding steps shortened on a pro-rata basis in order to attempt to meet the deadlines. Where it is not possible to meet the deadlines, the parties shall use their best efforts to produce and distribute SBCs as soon as possible after the deadline.
- (e) A party who fails to meet these timelines/deadlines without just cause shall be liable for any fines, penalties or damages imposed as a result of such failure and shall indemnify and hold harmless the other party for any and all fines, penalties, damages and attorney's fees imposed on or incurred by that other party as a result of the failure to meet the timelines/deadlines. Where both parties have worked in good faith and in substantial compliance with the terms of this Agreement but the timelines/deadlines could not be met, neither party shall be liable to the other for any and all fines, penalties or damages imposed as a result of such failure.

**(2) Where Renewal Is Automatic**

- (a) The Employer must complete and return a Plan Changes Form and SBC Request Form for Annual Renewal (see Attachment B) to BCBSWY no later than seventy (70) calendar days prior to the date it wishes to receive the SBCs prior to the beginning of the plan year. The Plan Change and SBC Request Forms must be returned to BCBSWY within this seventy (70) calendar day timeframe even if there are no changes to the benefit packages at renewal that will impact the SBC's content.
- (b) BCBSWY shall create the necessary SBCs and The Employer must approve the final SBCs pursuant to the procedure in Section B.2 above.
- (c) No later than forty (40) calendar days prior to the Plan's anniversary date, or the date upon which The Employer indicated it wished to receive the SBCs prior to the anniversary date, BCBSWY shall perform one of the following, at The Employer's election:
  - (i) Provide The Employer with an electronic copy of the SBC so that The Employer may print, copy and distribute the SBC to the Plan's participants and beneficiaries and/or electronically deliver the SBC to participants and beneficiaries thirty (30) calendar days prior to the anniversary date; or
  - (ii) Provide The Employer with an electronic copy of a letter to participants and beneficiaries advising the participants and beneficiaries where they may locate their SBCs on the Internet (if the technology is available). The Employer may print, copy and distribute the letter to the Plan's participants and beneficiaries and/or electronically deliver this letter to its participants and beneficiaries at least thirty (30) calendar days prior to the anniversary date; or
  - (iii) If the relevant technology is not available under (ii) above to allow BCBSWY to post the SBCs on the Internet, BCBSWY will mail a sufficient number of paper copy SBCs directly to the Employer to enable The Employer to distribute the SBCs to its participants and beneficiaries. However, where BCBSWY is able to make the SBCs available to participants and beneficiaries on the Internet, this election will not be available to The Employer.
- (d) Where it is not possible for the parties to meet the timelines stated above due to the time between the execution of this Agreement (including The Employer's ability to meet its conditions precedent set forth herein) and the date upon which the SBC must be produced



and distributed, the parties, where possible, shall work backward from the deadline date, with all times for the preceding steps shortened on a pro-rata basis in order to attempt to meet the deadlines. Where it is not possible to meet the deadlines, the parties shall use their best efforts to produce and distribute SBCs as soon as possible after the deadline.

- (e) A party who fails to meet these timelines/deadlines without just cause shall be liable for any fines, penalties or damages imposed as a result of such failure and shall indemnify and hold harmless the other party for any and all fines, penalties, damages and attorney's fees imposed on or incurred by that other party as a result of the failure to meet the timelines/deadlines. Where both parties have worked in good faith and in substantial compliance with the terms of this Agreement but the timelines/deadlines could not be met, neither party shall be liable to the other for any and all fines, penalties or damages imposed as a result of such failure.

- (3) **Changes to Benefits Between Renewal and Coverage.** If, after the SBC is provided pursuant to the subparagraphs above, but before the anniversary date, there is any change to the benefit package affecting the information included in the SBC, the SBC must be updated and distributed to the affected participants or beneficiaries no later than the first day of coverage. The parties will follow the procedures in Section B.2. in order to meet the requirement that the revised SBC be provided before the first day of coverage, where possible.

**(4) AGREEMENT FOR DISTRIBUTION OF SBC AT OPEN ENROLLMENT (OFF ANNIVERSARY DATE)**

- a. **Summary Of Legal Requirement.** The Employer must provide an SBC for each benefit package an individual is eligible for. If a written application is required to enroll, The Employer must provide the SBC as part of the application materials distributed at enrollment. If The Employer does not distribute written application materials at enrollment, the SBC must be distributed no later than the first day the individual is eligible to enroll in coverage for himself or herself (or any beneficiaries).

- b. **Procedure For Meeting Requirement**

- (1) The Employer must complete and return an SBC Request Form for Open Enrollment (see Attachment C) to BCBSWY no later than forty (40) calendar days prior to the first day of the open enrollment period or the date it wishes to receive the SBCs prior to the open enrollment date.
- (2) BCBSWY shall create the necessary SBCs and The Employer must approve the final SBCs pursuant to the procedure in Section B.2 above.

- (3) No later than ten (10) calendar days prior to the date The Employer has indicated it will distribute written application materials to participants for enrollment, or where no written application materials are distributed, no later than ten (10) calendar days prior to the first day of the open enrollment period, BCBSWY shall perform one of the following, at The Employer's election:
- (a) Provide The Employer with an electronic copy of the SBC so that The Employer may print, copy and distribute the SBC to the Plan's participants and beneficiaries and/or electronically deliver the SBC to participants and beneficiaries upon enrollment or during the open enrollment period; or
  - (b) Provide The Employer with an electronic copy of a welcome letter to participants and beneficiaries advising the participants and beneficiaries where they may locate their SBCs on the Internet (if the technology is available). The Employer may print, copy and distribute the letter to the Plan's participants and beneficiaries and/or electronically deliver this letter to its participants and beneficiaries upon enrollment or during the open enrollment period; or
  - (c) If the relevant technology is not available under (b) above to allow BCBSWY to post the SBCs on the Internet, BCBSWY will mail a sufficient number of paper copy SBCs directly to the Employer to enable The Employer to distribute the SBCs to its participants and beneficiaries. However, where BCBSWY is able to make the SBCs available to participants and beneficiaries on the Internet, this election will not be available to The Employer.
- (4) Where it is not possible for the parties to meet the timelines stated above due to the time between the execution of this Agreement (including The Employer's ability to meet its conditions precedent set forth herein) and the date upon which the SBC must be produced and distributed, the parties, where possible, shall work backward from the deadline date, with all times for the preceding steps shortened on a pro-rata basis in order to attempt to meet the deadlines. Where it is not possible to meet the deadlines, the parties shall use their best efforts to produce and distribute SBCs as soon as possible after the deadline.
- (5) A party who fails to meet these timelines/deadlines without just cause shall be liable for any fines, penalties or damages imposed as a result of such failure and shall indemnify and hold harmless the other party for any and all fines, penalties, damages and attorney's fees imposed on or incurred by that other party as a result of the failure to meet the timelines/deadlines. Where both parties have worked in good faith and in substantial compliance with the terms of this Agreement but the

timelines/deadlines could not be met, neither party shall be liable to the other for any fines, penalties, or damages.

- c. **Change in Benefits Between Open Enrollment and Coverage.** If, after the SBC is provided pursuant to the subparagraphs above, but before the coverage takes effect, there is any change to the benefit package affecting the information included in the SBC, the SBC must be updated and distributed to the affected participants or beneficiaries no later than the first day of coverage. The parties will follow the procedures in Section B.2. in order to meet the requirement that the revised SBC be provided before the first day of coverage, where possible.

**(5) AGREEMENT FOR DISTRIBUTION OF SBCS AT SPECIAL ENROLLMENT/NEW HIRES/COBRA ELECTIONS**

**a. Summary Of Legal Requirement**

- (1) Special Enrollees: The Employer is required to provide an SBC to special enrollees no later than ninety (90) calendar days after enrollment. However, these special enrollees retain the right to request an SBC with respect to any benefit package for which he/she is eligible, which must be delivered as soon as practicable, but in no event later than seven (7) business days following receipt of the request.
- (2) New Hires: An SBC must be provided at the time of enrollment of a newly hired individual.
- (3) COBRA Elections: An SBC must be provided at the same times an SBC would have to be distributed to a participant or beneficiary that has not elected COBRA.

**b. Procedure For Meeting Requirement**

- (1) The Employer must communicate with BCBSWY to ensure that it has an up-to-date copy of its SBCs at all times, and is knowledgeable about the Internet address of its SBCs for viewing, printing and copying (if such technology is possible).
- (2) Within the statutory deadlines, The Employer shall be solely responsible for providing SBCs or letters to participants and beneficiaries by paper copy or electronically.

**(6) AGREEMENT FOR DISTRIBUTION OF SBCS UPON MATERIAL MODIFICATION OF BENEFIT PACKAGE**

**a. Summary Of Legal Requirement**

1. **Modification Upon Renewal.** See Section C.1 above for requirements and procedures for modifications to benefit packages made at the time of the Plan's annual renewal of coverage.

2. **Mid-Term Modification**

- (a) **Summary Of Legal Requirement**

If The Employer makes any material modifications to any of the terms of its benefit packages that (1) would affect the content of the SBC, (2) are not reflected in the most recently-provided SBC, and (3) occurs mid-year (i.e., other than in connection with a renewal or reissuance of coverage), then The Employer must provide notice of the modification to the participants and beneficiaries by no later than sixty (60) days *before* the date the modification will become effective.

For ERISA Plans, this notice must be provided in advance of the date by which a summary of material modification ("SMM") must be furnished under the current DOL regulations. (See 29 CFR §2520.104b-3). Notice of a material modification via a new SBC provided in a timely manner will satisfy the requirement to provide an SMM (if applicable) for the same plan or coverage changes.

- (b) **Procedure For Meeting Requirement**

- (1) The Employer must complete a Plan Changes Form and an SBC Request Form for Mid-Year Modification of Benefits (see Attachment D) and deliver it to BCBSWY at least one-hundred (100) calendar days prior to the effective date for any planned change to a benefit package offered by The Employer.
    - (2) BCBSWY shall create the necessary SBCs and The Employer must approve the final SBCs pursuant to the procedure in Section B.2 above.
    - (3) No later than seventy (70) calendar days prior to the date The Employer has indicated the changes are to be effective, BCBSWY shall perform one of the following, at The Employer's election:
      - (i) Provide The Employer with an electronic copy of the SBC so that The Employer may print, copy and distribute the SBC to the Plan's participants and beneficiaries and/or electronically deliver the SBC to participants and beneficiaries sixty (60) calendar days prior to the effective date; or
      - (ii) Provide The Employer with an electronic copy of a letter to participants and beneficiaries advising the participants and

beneficiaries of the change and where they may locate their SBC on the Internet (if the technology is available). The Employer may print, copy and distribute the letter to the Plan's participants and beneficiaries and/or electronically deliver this letter to its participants and beneficiaries sixty (60) calendar days prior to the effective date; or

- (iii) If the relevant technology is not available under (ii) above to allow BCBSWY to post the SBCs on the Internet, BCBSWY will mail a sufficient number of paper copy SBCs directly to the Employer to enable The Employer to distribute the SBCs to its participants and beneficiaries. However, where BCBSWY is able to make the SBCs available to participants and beneficiaries on the Internet, this election will not be available to The Employer.
- (4) Where it is not possible for the parties to meet the timelines stated above due to the time between the execution of this Agreement (including The Employer's ability to meet its conditions precedent set forth herein) and the date upon which the SBC must be produced and distributed, the parties, where possible, shall work backward from the deadline date, with all times for the preceding steps shortened on a pro-rata basis in order to attempt to meet the deadlines. Where it is not possible to meet the deadlines, the parties shall use their best efforts to produce and distribute SBCs as soon as possible after the deadline.
- (5) A party who fails to meet these timelines/deadlines without just cause shall be liable for any fines, penalties or damages imposed as a result of such failure and shall indemnify and hold harmless the other party for any and all fines, penalties, damages and attorney's fees imposed on or incurred by that other party as a result of the failure to meet the timelines/deadlines. Where both parties have worked in good faith and in substantial compliance with the terms of this Agreement but the timelines/deadlines could not be met, neither party shall be liable to the other for any fines, penalties, or damages. .

## **(7) AGREEMENT FOR DISTRIBUTION OF SBCS UPON REQUEST**

### **(a) Summary Of Legal Requirement**

Participants or beneficiaries may request a copy of an SBC for any benefit package for which the participant or beneficiary is eligible to enroll. The Employer must provide the requested SBC to the participant or beneficiary as soon as practicable, but in no event later than seven (7) business days following receipt of the request.

### **(b) Procedure For Meeting Requirement**

- (1) No later than seven (7) business days after BCBSWY has received a valid SBC request from an individual entitled to an SBC under The Employer's Plan, BCBSWY will provide a copy of the applicable SBC to the individual in the manner requested by the individual or in a manner otherwise allowed by law; or
- (2) No later than seven (7) business days after The Employer has received a valid SBC request from an individual entitled to an SBC under The Employer's Plan, The Employer may provide a copy of the applicable SBC to the individual in the manner requested by the individual or in a manner otherwise allowed by law; or
- (3) No later than twenty-four (24) hours after The Employer has received a valid SBC request from an individual entitled to an SBC under The Employer's Plan, The Employer may complete an SBC Request Form for Individual Requests For SBCs (see Attachment E) and deliver it to BCBSWY, requesting that BCBSWY provide the applicable SBC to the individual in the manner requested by the individual or in a manner otherwise allowed by law, so long as, The Employer makes this request of BCBSWY at least six (6) business days prior to The Employer's deadline to provide the SBC to the individual.

#### **D. BCBSWY PRODUCTION AND DISTRIBUTION OF UNIFORM GLOSSARY ON BEHALF OF THE EMPLOYER.**

##### **1. Summary Of Legal Requirement**

The Employer is required to provide, in conjunction with the SBC, a Uniform Glossary, which includes definitions of health coverage terminology, upon request by a participant or beneficiary.

The Employer satisfies this requirement by providing an Internet address where the participant or beneficiary may review and obtain the Uniform Glossary. This Internet address may be a place the document can be found on The Employer's website. It may also be a place the document can be found on the website of either the Department of Labor (DOL) or the Department of Health and Human Services (HHS). However, The Employer must make a paper copy of the Uniform Glossary available to the participant or beneficiary when a paper copy is specifically requested.

The Uniform Glossary must be provided to a participant or beneficiary via paper copy or electronically within seven (7) business days of request.

The Glossary cannot be modified by The Employer or BCBSWY.

##### **2. PROCEDURE TO MEET THIS REQUIREMENT**

- a. No later than seven (7) business days after BCBSWY has received a valid Uniform Glossary request from an individual entitled to a Uniform Glossary under The Employer's Plan, BCBSWY will provide a copy of the Uniform Glossary to the individual in the manner requested by the individual or in a manner otherwise allowed by law; or
- b. No later than seven (7) business days after The Employer has received a valid Uniform Glossary request from an individual entitled to a Uniform Glossary under The Employer's Plan, The Employer may provide a copy of the Uniform Glossary to the individual in the manner requested by the individual or in a manner otherwise allowed by law; or
- c. No later than twenty-four (24) hours after The Employer has received a valid Uniform Glossary request from an individual entitled to a Uniform Glossary under The Employer's Plan, The Employer may complete an SBC Request Form For Individual Requests For Uniform Glossary (see Attachment F) and deliver it to BCBSWY requesting that BCBSWY provide the Uniform Glossary to the individual in the manner requested by the individual or in a manner otherwise allowed by law, **so long as**, The Employer makes this request of BCBSWY at least six (6) business days prior to The Employer's deadline to provide the Uniform Glossary to the individual.

#### **E. OTHER TERMS AND CONDITIONS**

1. **Disclosure of BCBSWY's Relationship With Blue Cross and Blue Shield Association:** The Employer, on behalf of itself and its participants and beneficiaries, hereby expressly acknowledges its understanding that this Agreement constitutes a contract solely between The Employer and BCBSWY, that BCBSWY is an independent corporation operating under a license with the Blue Cross and Blue Shield Association, an association of independent Blue Cross and Blue Shield Plans (the "Association") permitting BCBSWY to use the Blue Cross and Blue Shield Service Marks in the State of Wyoming, and that BCBSWY is not contracting as the agent of the Association. The Employer on behalf of itself and its participants and beneficiaries further acknowledges and agrees that it has not entered into this Agreement based upon representations by any person other than BCBSWY and that no person, entity, or organization other than BCBSWY shall be held accountable or liable to The Employer or any other person, entity, or organization for any of BCBSWY's obligations to The Employer created under this Agreement. This paragraph shall not create any additional obligations whatsoever on the part of BCBSWY other than those obligations created under other provisions of this Agreement
2. **Administrative Services Only:** Under ERISA and any applicable State and Federal legislation of similar nature, The Employer is the Plan Sponsor and Plan Administrator. BCBSWY provides administrative services only under this Agreement, and does not assume any financial risk or obligations, or any Fiduciary responsibilities, with respect to The Employer, the Plan, or its participants and

beneficiaries. BCBSWY has been given no discretionary authority or control with respect to the sponsorship or administration of the Plan and shall not be deemed a Fiduciary or party to the Plan by virtue of its duties as Claims Supervisor.

3. **Agreement Not Legal Advice:** The Employer acknowledges and agrees that this Agreement, including its summaries of legal requirements, is not meant to be legal advice to The Employer and has been given to The Employer for informational purposes only in understanding BCBSWY's contractually assumed responsibilities under this Agreement. The Employer agrees that it will seek and rely upon its own legal advice regarding its compliance in producing and delivering SBCs to participants and beneficiaries under the law.
4. **Limitation on Liability:** BCBSWY is not responsible for any liability arising from: (a) its failure to perform any services or other obligation with regard to SBCs and Uniform Glossaries other than those expressly agreed upon in this Agreement; (b) its acts or omissions based on instructions or directions from The Employer, its agents or representatives; (c) its acts or omissions based upon its good faith interpretation of the applicable laws and regulations; or (d) its errors or failure to provide the services required under this Agreement to the extent such errors or failures are caused by: (i) incomplete, inaccurate or untimely information provided by The Employer, its participants, beneficiaries, or third parties, (ii) failure of The Employer to perform its obligations under this Agreement or (iii) a Force Majeure event.
5. **Indemnification:** The Employer agrees to defend, at The Employer's sole expense, indemnify and hold harmless BCBSWY against all liability including any claims, legal fees, costs, judgments, settlements, damages (actual, punitive, exemplary or other), administrative expenses, penalties, fines and benefit payment requirements, that may result at any time arising from or in connection with this Agreement, unless it is determined that such liability was the result of BCBSWY's negligence, breach of its express responsibilities under this contract, or the dishonest, fraudulent or criminal acts of BCBSWY or its employees.

In the event that liability is the result of the negligence, breach, or dishonest, fraudulent or criminal misconduct of BCBSWY as defined in the paragraph immediately above, and The Employer is held liable, then BCBSWY agrees to indemnify and hold harmless The Employer against all liability including legal fees, costs, judgments, settlements, damages (actual, punitive, exemplary or other), administrative expenses, penalties and fines. However, BCBSWY shall have no liability to The Employer for any portion of a judgment or settlement that constitutes payment for a benefit under the Plan. Portions of any judgments or settlements constituting benefit payments shall be borne solely by The Employer subject to any applicable stop loss coverage.

This indemnification provision will continue in effect after the termination of this Agreement.



6. **Entire Agreement:** This Agreement, together with any attachments and amendments, constitutes the entire Agreement between the parties with regard to their obligations, responsibility and duties to produce and distribute SBCs and Uniform Glossaries as defined by the Patient Protection and Affordable Care Act of 2012 as amended by the Health Care and Education Reconciliation Act of 2010. No promises, terms, conditions or obligations other than those expressly contained in this Agreement shall be valid or binding. Any prior agreements, statements, promises, negotiations, inducements or representations, either oral or written, made by either party or agent of either party that are not contained in this Agreement are of no force and effect.
7. **Waiver:** The failure of either party at any time to require performance by the other party of any provision of this Agreement shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of this provision itself.
8. **Venue:** The parties mutually understand and agree the Agreement shall be governed by and interpreted pursuant to the laws of the State of Wyoming. If any dispute arises between the parties from or concerning this Agreement or the subject matter hereof, any suit or proceeding at law or in equity shall be brought in the District Court of the State of Wyoming, First Judicial District, sitting at Cheyenne, Wyoming. The foregoing provisions of this paragraph are agreed by the parties to be a material inducement to BCBSWY and Employer in executing this Agreement. This provision is not intended nor shall it be construed to waive Employer's governmental immunity as provided in this Agreement.
9. **Governmental/Sovereign Immunity:** Employer does not waive its Governmental/Sovereign Immunity, as provided by any applicable law including W.S. § 1-39-101 et seq., by entering into this Agreement. Further, Employer fully retains all immunities and defenses provided by law with regard to any action, whether in tort, contract or any other theory of law, based on this Agreement.

#### **F. TERM AND TERMINATION OF AGREEMENT**

1. **Contract Term.** This Agreement shall take effect upon the date of the last signature to execute this Agreement and shall continue from year to year unless terminated by the parties pursuant to the terms of the Agreement.
2. **Termination Upon End Of Business Relationship.** This Agreement will terminate immediately upon either party's termination of the underlying business relationship between BCBSWY and The Employer whereby BCBSWY has agreed to act as the Plan's Claims Supervisor.
3. **Termination Without Cause.** Either party may terminate this Agreement without cause by providing the other party with sixty (60) calendar days advanced written notice of their intent to terminate. It is understood that during this sixty

(60) calendar day period, the Agreement and the rights and responsibilities hereunder shall remain in full force and effect only with respect to SBC requests that were made prior to the notice of intent to terminate. Upon either party's notice of intent to terminate, no new or additional requests for SBCs may be submitted.

- 4. Termination With Cause.** In the event of a material breach of this Agreement by either party, the non-breaching party may terminate this Agreement by giving written notice to the breaching party, specifying the details of the material breach. The breaching party shall have thirty (30) calendar days to fully cure the breach. If the breaching party does not cure the breach to the reasonable satisfaction of the non-breaching party within thirty (30) calendar days of its receipt of the notice of breach, the non-breaching party may terminate this Agreement upon written notice to the breaching party that this Agreement is terminated. No acts or omissions on the part of the non-breaching party at any time or times following the occurrence of any material breach of this Agreement shall operate as a waiver of any past, continuing, or future breach, nor deprive the non-breaching party of its right to terminate this Agreement at any time pursuant to the other terms of this Agreement.

#### **G. EXECUTION OF AGREEMENT**

The parties hereto have caused this Agreement to be executed by their respective officers, duly authorized to do so, to take effect as of the date specified in Section F.

**Laramie County Government\*,**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\*This agreement must be executed by the Plan through The Employer's authorized officer and may not be executed by a consultant or agent on behalf of the Plan.

**BLUE CROSS BLUE SHIELD OF WYOMING,  
A Wyoming Nonprofit Corporation.**

By: Shaelli D Garas

Title: Staff Attorney

Date: June 4, 2019

RECEIVED AND APPROVED AS  
TO FORM ONLY BY THE  
DEPUTY LARAMIE COUNTY  
ATTORNEY 