

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

BUSINESS ASSOCIATE AGREEMENT

between

**Blue Cross & Blue Shield of Mississippi, a Mutual Insurance Company
(Hereinafter the “Claims Administrator”)**

**City Of Laurel
(Hereinafter the “Employer”)**

And

**Employee Health Protection Plan for City Of Laurel
(Hereinafter “GHP”)**

**February 1, 2020
(the “Effective Date” of this agreement)**

BUSINESS ASSOCIATE AGREEMENT

This Agreement is entered into on the Effective Date named above by and among Claims Administrator, Employer, and GHP ("Agreement"). The term of the Agreement will run consecutively with the term of the current Administrative Services Only Agreement ("ASO Agreement") between the Claims Administrator, Employer and GHP. This Agreement will renew when the ASO Agreement, is renewed. In the event the ASO Agreement is terminated, this Agreement will also be terminated on the same date as the ASO Agreement. In consideration of the premises, the mutual understanding of the Claims Administrator, Employer, and GHP, as reflected in this Agreement, the parties agree to be bound by the following terms and conditions.

WITNESSETH AS FOLLOWS:

WHEREAS, Employer has established and maintains GHP as an employee welfare benefit plan as defined by Section 3(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), and described in GHP's Plan Document; and

WHEREAS, the benefit programs offered by GHP, and sponsored by Employer, for eligible employees and their eligible dependents ("Covered Persons") include Comprehensive Major Medical Program; and

WHEREAS, Claims Administrator has established and maintains its Comprehensive Major Medical Program; and

WHEREAS, Employer and GHP desire to retain Claims Administrator to establish and maintain Comprehensive Major Medical Program for GHP to offer Covered Persons, and to provide certain administrative services with respect to GHP; and

WHEREAS, Employer, GHP and Claims Administrator mutually agree to comply with applicable requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Parts 160-64) as modified by the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), and the implementing regulations (the "HIPAA Rules"). Specifically, the "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164. The HIPAA Privacy Rule is the Standards for Privacy of Individually Identifiable Health Information at 45 CFR, part 160 and part 164, subparts A and E. The HIPAA Security Rule is the HIPAA Security Standards (45 C.F.R. Parts 160 and 164, Subpart C). The HIPAA Breach Notification Rule is the Notification in the Case of Breach of Unsecured Protected Health Information, as set forth at 45 CFR Part 164 Subpart D. Business Associate recognizes and agrees that it is obligated by law to meet the applicable provisions of the HIPAA Rules. This Agreement further includes provisions that Employer, GHP and Claims Administrator desire to have as part of this Agreement;

NOW, THEREFORE, in consideration of these premises and the mutual promises and agreements hereinafter set forth, Employer, GHP and Claims Administrator hereby agree that as of the effective date of this Business Associate Agreement, same supersedes and replaces any Business Associate Agreement previously entered into between the parties and as follows:

PART 1—CLAIMS ADMINISTRATOR'S RESPONSIBILITIES

I. PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION

A. Confidentiality of Claim Information and Other Protected Health Information

Claims Administrator will keep confidential all Claim records and all other Protected Health Information that Claims Administrator creates or receives in the performance of its duties under the ASO Agreement ("GHP's Protected Health Information"). Except as permitted or required by this Agreement for Claims Administrator to perform its duties under the ASO Agreement, Claims Administrator will not use or disclose such Claim information or other Protected Health Information without the authorization of the Covered Person who is the subject of such Protected Health Information or as Required by Law.

B. Prohibition on Non-Permitted Use or Disclosure

Claims Administrator will neither use nor disclose Covered Persons' Protected Health Information (including any Covered Persons' Protected Health Information received from a GHP Business Associate) except (1) as permitted or required by this Agreement, (2) as permitted in writing by GHP, (3) as authorized by Covered Persons, or (4) as Required by Law.

C. Permitted Uses and Disclosures

Claims Administrator will be permitted to use or disclose Covered Persons' Protected Health Information only as follows:

1. Functions and Activities on GHP's Behalf

Claims Administrator will be permitted to use and disclose Covered Persons' Protected Health Information (a) for the management, operation, and administration of Comprehensive Major Medical Program that GHP offers Covered Persons, and (b) for the services set forth in the ASO Agreement, which include Payment activities, Health Care Operations, and Data Aggregation, consistent with the HIPAA Privacy Rule.

2. Claims Administrator's Own Management and Administration

a. Protected Health Information Use

Claims Administrator will be permitted to use Covered Persons' Protected Health Information as necessary for Claims Administrator's proper management and administration or to carry out Claims Administrator's legal responsibilities.

b. Protected Health Information Disclosure

Claims Administrator will be permitted to disclose Covered Persons' Protected Health Information as necessary for Claims Administrator's proper management and administration or to carry out Claims Administrator's legal responsibilities only (i) if the disclosure is Required by Law, or (ii) if before the disclosure, Claims Administrator obtains from the entity to which the disclosure is to be made reasonable assurance, evidenced by written contract, that the entity will (A) hold Covered Persons' Protected Health Information in confidence, (B) use or further disclose Covered Persons' Protected Health Information only for the purposes for which Claims Administrator disclosed it to the entity or as Required by Law; and (C) promptly notify Claims Administrator of any instance of which the entity becomes aware in which the confidentiality of any Covered Persons' Protected Health Information was breached.

3. Creation of Limited Data Sets and De-Identified Health Information

Claims Administrator may use GHP's Protected Health Information to create Limited Data Sets, in conformance with 45 C.F.R. § 164.514(e)(2), and De-Identified Health Information, in conformance with 45 C.F.R. § 164.514(b). The Limited Data Sets that Claims Administrator may create include a Limited Data Set containing the minimum necessary amount of GHP's Protected Health Information that Claims Administrator reasonably needs for any Research, Public Health Activity, or Health Care Operation in which Claims Administrator engages, as specified in Section I.C.5.a below.

4. Use and Disclosure of Limited Data Sets and De-Identified Health Information

Claims Administrator may use and disclose De-Identified Health Information for any purpose, including after any termination or other conclusion of the ASO Agreement. Except as allowed under Section I.C.5 below, Claims Administrator may use and disclose a Limited Data Set only as permitted in writing by GHP.

5. Data Use Agreement – Claims Administrator’s Permitted Use and Disclosure of Limited Data Set

Claims Administrator may use and disclose a Limited Data Set that Claims Administrator created in conformance with Section I.C.3 above for Claims Administrator’s Research, Public Health Activity, or Health Care Operations, provided that Claims Administrator complies with the obligations of Sections I.C.5.a through e below. Claims Administrator may make such use and disclosure of the Limited Data Set after any termination or other conclusion of the ASO Agreement, unless the ASO Agreement is terminated by GHP pursuant to Section I.5.J below because of Claims Administrator’s breach of privacy or security obligations under this Agreement. Claims Administrator will not be allowed to use or disclose a Limited Data Set, as provided by this Section I.C.5, if the ASO Agreement is terminated by GHP pursuant to Section I.5.J below.

a. Limitation on Permitted Uses and Disclosures

Claims Administrator will limit the uses and disclosures it makes of the Limited Data Set to the following Research, Public Health Activity, or Health Care Operations, *e.g.*, business planning and development such as conducting cost-management and planning-related analysis related to managing and operating the Claims Administrator business, formulary development and administration, development and improvement of methods of payment or coverage policies, customer service, including the provision of data analysis for policy holders, plan sponsors, or other customers, provided that protected health information is not disclosed.

b. Prohibition on Unauthorized Use and Disclosure

Claims Administrator will neither use nor disclose the Limited Data Set for any purpose other than as permitted by Section I.C.5.a above, as otherwise permitted in writing by GHP, or as Required by Law. Claims Administrator will never use or disclose the Limited Data Set in a manner that would violate the HIPAA Privacy Rule, 45 C.F.R. Part 164, Subpart E, if done by GHP. Claims Administrator will not attempt to identify the information contained in the Limited Data Set or contact any individual who may be the subject of information contained in the Limited Data Set.

c. Information Safeguards

Claims Administrator will adopt and use appropriate administrative, physical, and technical safeguards to preserve the integrity and confidentiality of the Limited Data Set and to prevent its use or disclosure other than as permitted by this Section I.C.5 or as Required by Law.

d. Subcontractors and Agents

Claims Administrator will not disclose the Limited Data Set to a subcontractor or agent, unless permitted by Section I.C.5. or in writing by GHP. Claims Administrator will require any subcontractor or agent to which Claims Administrator may disclose a Limited Data Set to agree by written contract to comply with the same restrictions and conditions that apply to Claims Administrator’s use and disclosure of the Limited Data Set pursuant to this Section I.C.5.

e. Reporting Non-Permitted Use or Disclosure

Claims Administrator will report to GHP any use or disclosure of the Limited Data Set not permitted by this Section I.C.5 or in writing by GHP. Claims Administrator will make the report to GHP not more than 30 days after Claims Administrator learns of such non-permitted use or disclosure.

D. Minimum Necessary

Claims Administrator will, in the performance of its functions and activities under the ASO Agreement and this Agreement, make reasonable efforts to use, to disclose, and to request of a Covered Entity only the minimum necessary amount of Protected Health Information to accomplish the intended purpose of the use, the disclosure, or the request, except that Claims Administrator will not be obligated to comply with this minimum necessary limitation with respect to:

1. Disclosure to or request by a health care provider for Treatment;
2. Use for or disclosure to a Covered Person who is the subject of GHP's Protected Health Information, or that Covered Person's Personal Representative;
3. Use or disclosure made pursuant to an authorization compliant with 45 C.F.R. § 164.508 that is signed by a Covered Person who is the subject of GHP's Protected Health Information to be used or disclosed, or by that Covered Person's Personal Representative;
4. Disclosure to the United States Department of Health and Human Services ("DHHS") in accordance with Section VI below;
5. Use or disclosure that is Required by Law; or
6. Any other use or disclosure that is excepted from the minimum necessary limitation as specified in 45 C.F.R. § 164.502(b)(2).

In addition, Claims Administrator also agrees to implement and follow appropriate minimum necessary policies in the performance of its obligations under this Agreement.

E. Patient Identifying Information

Claims Administrator and GHP acknowledge that information subject to the Part 2 Rule (as defined below) may be exchanged under the terms of this Agreement. This section addresses the Parties' obligations with respect to such information.

1. **Definitions.** For purposes of this section:

"Part 2 Rule" means the Confidentiality of Substance Use Disorder Patient Records Rule (42 C.F.R. Part 2).

"Patient Identifying Information" means information that (a) would identify, directly or indirectly, an individual as having been diagnosed, treated, or referred for treatment for a substance use disorder, such as indicated through standard medical codes, descriptive language, or both and (b) is subject to the Part 2 Rule, limited to the Patient Identifying Information that Claims Administrator receives from or on behalf of GHP.
2. **Claims Administrator's Obligations.** Claims Administrator shall:
 - a. Comply with the requirements of the Part 2 Rule with respect to all Patient Identifying Information it receives;

- b. Implement appropriate safeguards to prevent unauthorized uses and disclosures of Patient Identifying Information; such safeguards will comply with 42 C.F.R. § 2.16;
- c. Report to GHP any unauthorized use, disclosure, or breach of Patient Identifying Information following discovery and without unreasonable delay, but in no event later than 3 days following discovery;
- d. Refrain from re-disclosing Patient Identifying Information to any person or entity other than GHP, unless such re-disclosure is permitted by an applicable provision of the Part 2 Rule; and
- e. Use Patient Identifying Information for the payment and health care operations activities Claims Administrator performs on behalf of GHP and for no other purpose, unless such use is permitted by an applicable provision of the Part 2 Rule.

F. Disclosure to GHP and GHP's Business Associates

Other than disclosures permitted by Section I. C and other disclosures agreed to between the parties herein, Claims Administrator will not disclose Covered Persons' Protected Health Information to GHP or to a GHP Business Associate, except as directed by GHP in writing.

G. Disclosure to Claims Administrator's Subcontractors and Agents

Claims Administrator will require each subcontractor and agent to which Claims Administrator is permitted by this Agreement or in writing by GHP to disclose Covered Persons' Protected Health Information to provide reasonable assurance, evidenced by written contract, that such other entity will comply with the same privacy and security obligations with respect to Covered Persons' Protected Health Information as this Agreement applies to Claims Administrator.

H. No Disclosure to Employer

Claims Administrator will not disclose any Covered Persons' Protected Health Information to Employer, except as permitted by and in accordance with Section X below or XII below.

I. Reporting Non-Permitted Use or Disclosure and Security Incidents

1. Privacy Breach

Claims Administrator will report to GHP any use or disclosure of Covered Persons' Protected Health Information not permitted by this Agreement or in writing by GHP. Claims Administrator will make the report to GHP not less than 30 days after Claims Administrator learns of such non-permitted use or disclosure. In addition, Claims Administrator will report, following discovery and without unreasonable delay, but in no event later than 3 days following discovery, any "Breach" of "Unsecured Protected Health Information" as these terms are defined by the Breach Notification Regulation. Claims Administrator 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. Any such report shall include the identification (if known) of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Claims Administrator to have been, accessed, acquired, or disclosed during such Breach, along with any other information required to be reported under the Breach Notification Regulation.

2. Security Incidents

Claims Administrator 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 Claims Administrator's system operations in Claims Administrator's information systems, of which Claims Administrator becomes aware. Claims Administrator 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 Agreement, Claims Administrator will make the report to GHP not more than 30 days after Claims Administrator learns of this security incident.

J. Duty to Mitigate

Claims Administrator will mitigate to the extent practicable any harmful effect of which Claims Administrator is aware that is caused by any use or disclosure of GHP's Protected Health Information in violation of this Agreement.

K. Termination for Breach of Privacy or Security Obligations

1. GHP will have the right to terminate this Agreement if Claims Administrator has engaged in a pattern of activity or practice that constitutes a material breach or violation of Claims Administrator's obligations regarding Protected Health Information under this Agreement and, on notice of such material breach or violation from GHP, fails to take reasonable steps to cure the breach or end the violation. If for any reason GHP determines that Claims Administrator has breached the terms of this Agreement and such breach has not been cured, but GHP determines that termination of the ASO Agreement is not feasible, GHP may report such breach to the U.S. Department of Health and Human Services.

2. Claims Administrator will have the right to terminate the ASO Agreement if GHP has engaged in a pattern of activity or practice that constitutes a material breach or violation of GHP's obligations regarding GHP's Protected Health Information. If GHP fails to end the violation within 30 days after receipt of Claims Administrator's notice, Claims Administrator may terminate the ASO Agreement by providing GHP written notice of termination, stating the uncured material breach or violation that provides the basis for the termination and specifying the effective date of the termination. Termination of the ASO Agreement will immediately terminate this Agreement. If for any reason Claims Administrator determines that GHP has breached the terms of this Agreement and such breach has not been cured, but Claims Administrator determines that termination of the ASO Agreement is not feasible, Claims Administrator may report such breach to the U.S. Department of Health and Human Services.

If Claims Administrator fails to cure the material breach or end the violation after GHP's notice, GHP may terminate this Agreement by providing Claims Administrator written notice of termination, stating the uncured material breach or violation that provides the basis for the termination and specifying the effective date of the termination.

L. Disposition of Protected Health Information

1. Return or Destruction Upon ASO Agreement End

Upon cancellation, termination, expiration or other conclusion of this Agreement, Claims Administrator will if feasible return to GHP or destroy all Claim records and all other Protected Health Information that Claims Administrator created or received for or from GHP. The information Claims Administrator will return or destroy if feasible includes all Protected

Health Information in whatever form or medium (including any electronic medium) and all copies of and any data or compilations derived from and allowing identification of any Covered Person who is a subject of the information. Claims Administrator will complete such return or destruction as promptly as practical.

Employer will reimburse Claims Administrator's reasonable cost incurred in returning or destroying such Protected Health Information.

2. Disposition When Return or Destruction Not Feasible

Upon cancellation, termination, expiration or other conclusion of the ASO Agreement, Claims Administrator will identify to GHP any Claim records and other Protected Health Information that Claims Administrator created or received for or from GHP that cannot feasibly be returned to GHP or destroyed. After cancellation, termination, expiration or other conclusion of the ASO Agreement, Claims Administrator will limit its further use or disclosure of the Claim records and other Protected Health Information to those purposes that make their return to GHP or destruction infeasible.

II. ACCESS, AMENDMENT AND DISCLOSURE ACCOUNTING FOR PROTECTED HEALTH INFORMATION

A. Access

Claims Administrator will, upon receipt of GHP's written or electronic request, make available to GHP or, at GHP's direction, to the Covered Person (or the Covered Person's Personal Representative) for inspection and copying any of GHP's Protected Health Information about the Covered Person that qualifies as part of a Designated Record Set, and that is not exempted from access by 45 C.F.R. § 164.524(a), that Claims Administrator has in its custody or control, so that GHP can meet its access obligations under 45 C.F.R. § 164.524.

Claims Administrator may charge GHP or the Covered Person a reasonable fee for inspection and/or copying of any GHP's PHI concerning a Covered Person.

B. Amendment

Upon receipt of written or electronic notice from GHP, Claims Administrator will amend or permit GHP access to amend any portion of the Protected Health Information created or received for or from GHP in Claims Administrator's custody or control, 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, Claims Administrator will do the following:

1. Disclosure Tracking

Claims Administrator will record each disclosure of Covered Persons' Protected Health Information Claims Administrator makes to GHP or to a third party that is not excepted from disclosure accounting under paragraph 2, below.

The information about each disclosure that Claims Administrator must record ("Disclosure Information") is (a) the disclosure date, (b) the name and (if known) address of the person or entity to whom Claims Administrator made the disclosure, (c) a brief description of the Protected Health Information disclosed, and (d) a brief statement of the purpose of the disclosure.

For repetitive disclosures of Covered Persons' Protected Health Information that Claims Administrator makes for a single purpose to the same person or entity (including GHP), Claims Administrator may record (a) the Disclosure Information for the first of these repetitive disclosures, (b) the frequency, periodicity or number of these repetitive disclosures, and (c) the date of the last of these repetitive disclosures.

2. Exceptions from Disclosure Tracking

Claims Administrator will not be required to record Disclosure Information or otherwise account for disclosures of Covered Persons' Protected Health Information that this Agreement or GHP in writing permits or requires (a) for Payment activities or Health Care Operations, (b) to the Covered Person who is the subject of the Protected Health Information or to that Covered Person's Personal Representative, (c) pursuant to an authorization by the Covered Person (or the Covered Person's Personal Representative), (d) to persons involved in the Covered Person's care or payment related to the Covered Person's health care as provided by 45 C.F.R. § 164.510, (e) for notification for disaster relief purposes as provided by 45 C.F.R. § 164.510, (f) for national security or intelligence purposes, (g) to law enforcement officials or correctional institutions regarding inmates or , (h) for any disclosures that are incident to any of the disclosures that the ASO Agreement, or GHP in writing permits or requires Claims Administrator to make.

3. Disclosure Tracking Time Periods

Claims Administrator will have available for GHP the Disclosure Information required by Section II.C.1 above for the six (6) years immediately preceding the date of GHP's request for the Disclosure Information (except Claims Administrator will not be required to have Disclosure Information for disclosures occurring before April 14, 2003). In the event GHP request accounting for Disclosure Information on a Covered Person more than once in a twelve-month period, Claims Administrator may charge GHP a reasonable, cost based fee for the execution.

4. Provision of Disclosure Accounting

Upon GHP's written or electronic request, Claims Administrator will make available to GHP, or at GHP's direction to the Covered Person (or the Covered Person's Personal Representative) the Disclosure Information regarding the Covered Person, so that GHP may meet its disclosure accounting obligations under 45 C.F.R. § 164.528. In addition, where Claims Administrator is contacted directly by an individual based on information provided to the individual by GHP, Claims Administrator shall make such Disclosure Information available directly to the individual.

D. Restriction Requests

GHP will consult with Claims Administrator before GHP agrees to a Covered Person's request to restrict the use or disclosure of GHP's Protected Health Information relating to that Covered Person, pursuant to 45 C.F.R. § 164.522(a), that may affect Claims Administrator. GHP will promptly notify Claims Administrator in writing of any restriction on the use or disclosure of GHP's Protected Health Information that may affect Claims Administrator. Claims Administrator will not be in breach of the ASO Agreement or this Agreement for failure to comply with a restriction on the use or disclosure of GHP's Protected Health Information unless GHP (a) consults with Claims Administrator before agreeing to the restriction and (b) notifies Claims Administrator in writing of the terms of the restriction to which GHP agrees.

GHP will promptly notify Claims Administrator in writing of the termination of any restriction agreement, and will instruct Claims Administrator whether any of GHP's Protected Health Information created or received pursuant to the restriction agreement will remain subject to the terms of that restriction agreement.

E. Confidential Communications

GHP will promptly notify Claims Administrator in writing of any obligation pursuant to 45 C.F.R. § 164.522(b) to communicate with a Covered Person about GHP's Protected Health Information by confidential alternative means or alternative location, and will provide Claims Administrator with the information that Claims Administrator needs to be able to comply with that obligation. Claims Administrator will only be required to accommodate reasonable requests to receive communications of Protected Health Information about a Covered Person by alternative means or at an alternative location pursuant to 45CFR 164.522(B).

GHP will promptly notify Claims Administrator in writing of the termination of any requirement to communicate with a Covered Person about GHP's Protected Health Information by confidential alternative means or alternative location.

III. SAFEGUARD OF PROTECTED HEALTH INFORMATION

A. Privacy of GHP's Protected Health Information

Claims Administrator will develop, implement, maintain, and use appropriate administrative, physical, and technical 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 HIPAA Privacy Rule, 45 C.F.R. Part 164, Subpart E, and limit incidental use or disclosures made pursuant to a use or disclosure otherwise permitted by this Agreement.

B. Security of GHP's Electronic Protected Health Information

Claims Administrator will develop, implement, maintain, and use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that Claims Administrator creates, receives, maintains, or transmits on GHP's behalf as required by the HIPAA Security Rule, 45 C.F.R. Part 164, Subpart C. Claims Administrator also shall develop and implement policies and procedures and meet the Security Rule documentation requirement.

IV. COMPLIANCE WITH STANDARD TRANSACTIONS

A. Claims Administrator

Claims Administrator will comply with each applicable requirement for Standard Transactions established in the HIPAA Transactions Rule, 45 C.F.R. Part 162 when conducting all or any part of a Standard Transaction electronically for, on behalf of, or with GHP.

B. Claims Administrator's Subcontractors and Agents

Claims Administrator will require any of its subcontractors or agents to comply with each applicable requirement for Standard Transactions established in the HIPAA Transactions Rule, 45 C.F.R. Part 162 when they conduct all or any part of a Standard Transaction electronically for, on behalf of, or with GHP.

C. Trading Partner Agreements

Claims Administrator 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 for, on behalf of, or with GHP.

that (1) changes the definition, data condition, or use of a data element or segment in a Standard Transaction, (2) adds any data element or segment to the maximum defined data set, (3) uses any code or data element that either is not in the Standard Transaction's implementation specifications or is marked "not used" by the Standard Transaction's implementation specifications, or (4) changes the meaning or intent of the Standard Transaction's implementation specifications.

V. INSPECTION OF INTERNAL PRACTICES, BOOKS AND RECORDS

Claims Administrator 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 HIPAA Privacy Rule and the HIPAA Security Rule.

PART 2—GROUP HEALTH PLAN'S RESPONSIBILITIES

VI. GHP AS COVERED ENTITY

ERISA § 3(1) defines "employee welfare benefit plan" as any plan, fund or program that is established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund or program is established or maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical or hospital care or benefits, or benefits in the event of sickness, accident or disability.

Employer acknowledges (A) that an employee welfare benefit plan must be established and maintained through a separate plan document ("Plan Document"), (B) that the Plan Document may provide for the allocation and delegation of responsibilities for the employee welfare benefit plan, and (C) that the Plan Document may include or incorporate by reference the terms of an agreement for the provision of administrative services for the employee welfare benefit plan.

Employer represents and warrants (A) that GHP is an employee welfare benefit plan that has been established and is maintained pursuant to its Plan Document in compliance with ERISA, (B) that GHP's Plan Document provides for the allocation and delegation of responsibilities for GHP, including the responsibilities assigned to Claims Administrator under the ASO Agreement, and (C) that GHP's Plan Document includes or incorporates by reference the appropriate terms of this Agreement.

VII. CLAIMS ADMINISTRATOR'S STATUS

ERISA § 402(c)(2) provides that an employee welfare benefit plan's plan document may provide that a named fiduciary (including an administrator), or a fiduciary designated by a named fiduciary pursuant to a plan procedure, may employ one or more persons or entities to render advice with regard to any responsibility such fiduciary has under the employee welfare benefit plan.

Claims Administrator's responsibilities under the ASO Agreement are limited to those of a contract Claims Administrator rendering advice to and administering claims on behalf of GHP's administrator or fiduciary. As such, Claims Administrator is a service provider, and not a fiduciary with respect to GHP.

PART 3—EMPLOYER'S RESPONSIBILITIES

VIII. EMPLOYER'S OBLIGATIONS

A. Employer to Control GHP

Employer retains full and final authority and responsibility for GHP and its operation. Claims Administrator is empowered to act on behalf of GHP only as stated in the ASO Agreement, or as mutually agreed in writing by Employer and Claims Administrator.

Employer will have the sole responsibility for and will bear the entire cost of compliance with all federal, state and local laws, rules, and regulations, including any licensing, filing, reporting, and disclosure requirement, that may apply to GHP. Claims Administrator will have no responsibility for or liability with respect to GHP's compliance or non-compliance with any applicable federal, state, or local law, rule, or regulation.

B. Underwriting and Benefits Determinations

Employer retains the ultimate responsibility for Claims under GHP and all expenses incident to GHP, except as Claims Administrator has specifically undertaken in the ASO Agreement. Claims Administrator does not insure or underwrite the liability of Employer or GHP, and has no responsibility for determining the terms of or the benefits to be provided under GHP.

IX. DATA EXCHANGE BETWEEN EMPLOYER AND CLAIMS ADMINISTRATOR

A. Enrollment Data

Claims Administrator may disclose to Employer the minimum necessary information regarding whether an individual is a Covered Person participating in GHP or enrolled in or disenrolled from the Comprehensive Major Medical Program offered by GHP.

Employer will electronically exchange data with Claims Administrator regarding the enrollment and disenrollment of Covered Persons as participants in GHP using the Enrollment and Disenrollment in Health Plan Standard Transaction (Benefit Enrollment and Maintenance) as specified in 45 C.F.R. Part 162, Subpart O.

B. Other Data Exchanges and Notifications

Employer will exchange with Claims Administrator all data not otherwise addressed in this Section X and any notification by using such forms, tape formats, or electronic formats as Claims Administrator may approve. Employer will furnish all information reasonably required by Claims Administrator to effect such data exchanges or notifications.

X. EMPLOYER'S PERFORMANCE OF PLAN ADMINISTRATION FUNCTIONS

The following provisions apply to Employer, GHP and Covered Persons. Employer will include these provisions in GHP's Plan Document.

A. Employer's Certification

Claims Administrator will not disclose Covered Persons' Protected Health Information to Employer, unless and until (1) Employer furnishes Claims Administrator through GHP certification that Employer has amended GHP's Plan Document to incorporate the provisions required by 45 C.F.R. § 164.504(f)(2), as set out in Section XI below, and agrees to comply with GHP's Plan Document as amended, and (2) GHP authorizes Claims Administrator in writing to disclose the minimum necessary Covered Persons' Protected Health Information to Employer for the plan administration functions to be performed by Employer as specified in the amendment to GHP's Plan Document.

Claims Administrator may rely on Employer's certification and GHP's written authorization, and will have no obligation to verify (1) that GHP's Plan Document has been amended to comply with the requirements of 45 C.F.R. § 164.504(f)(2) or this Agreement or (2) that Employer is complying with GHP's Plan Document as amended.

B. GHP's Plan Document Amendment

Before GHP will furnish Employer's certification described in Section XI above to Claims Administrator, GHP will ensure (1) that its Plan Document is amended to establish the uses and disclosures of Covered Persons' Protected Health Information consistent with the requirements of 45 C.F.R. Part 164 that Employer will be permitted and required to make for the plan administration functions Employer will perform for GHP, and (2) that Employer agrees to:

1. Neither use nor further disclose Covered Persons' Protected Health Information, except as permitted or required by GHP's Plan Document, as amended, or as Required by Law.
2. Neither use nor disclose Covered Persons' Protected Health Information for any employment-related action or decision, or in connection with any other of Employer's employee welfare benefit plans.
3. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Covered Persons' Electronic Protected Health Information that Employer creates, receives, maintains, or transmits on GHP's behalf.
4. Ensure adequate separation between, on the one hand, Employer and, on the other, GHP and Claims Administrator by (a) describing those employees or classes of employees or other persons under Employer's control who will be given access to Covered Persons' Protected Health Information to perform plan administration functions for GHP, including any employee or other person under Employer's control who will receive Covered Persons' Protected Health Information relating to Payment activities, Health Care Operations, or other matters relating to GHP, (b) restricting the access to and use of Covered Persons' Protected Health Information by such employees or other persons to the plan administration functions that Employer will perform for GHP, and (c) instituting an effective mechanism for resolving any noncompliance with GHP's Plan Document, as amended, by such employees or other persons, and (d) supporting this separation by reasonable and appropriate security measures.
5. Ensure that any agent or subcontractor to whom Employer provides Covered Persons' Protected Health Information agrees to the restrictions and conditions of GHP's Plan Document, as amended, including implementing reasonable and appropriate security measures, with respect to Covered Persons' Protected Health Information.
6. Report to GHP any use or disclosure of Covered Persons' Protected Health Information that is inconsistent with the uses and disclosures allowed by GHP's Plan Document, as amended.
7. Report to GHP, upon GHP's request, any attempted or successful (a) unauthorized access, use, disclosure, modification, or destruction of GHP's Electronic Protected Health Information or (b) interference with Employer's system operations in Employer's information systems, of which Employer becomes aware, except any such security incident that results in disclosure of GHP's Protected Health Information not permitted by GHP's Plan Document must be reported to GHP without regard for GHP's request.
8. Make Protected Health Information available to each Covered Person who is the subject of the information in accordance with 45 Code of Federal Regulations § 164.524.
9. Make Covered Persons' Protected Health Information available for amendment and, on notice from GHP, amend Covered Persons' Protected Health Information in accordance with 45 Code of Federal Regulations § 164.526.

10. Track disclosures it makes of Covered Persons' Protected Health Information that are not excepted from disclosure accounting as described in Section II.C.1 above so that it can make available the information required for GHP to provide an accounting of disclosures in accordance with 45 Code of Federal Regulations § 164.528.
11. Make its internal practices, books, and records relating to its use and disclosure of Covered Persons' Protected Health Information available to GHP and to the U.S. Department of Health and Human Services to determine compliance with 45 C.F.R. Parts 160-64.
12. Return or destroy, if feasible, all Covered Persons' Protected Health Information received from GHP or Claims Administrator when the Covered Persons' Protected Health Information is no longer needed for the plan administration functions for which the disclosure was made. The information Employer will return or destroy if feasible includes all Protected Health Information in whatever form or medium (including in any electronic medium) and all copies of and any data or compilations derived from and allowing identification of any Covered Person who is the subject of the information. If it is not feasible to return or destroy all Covered Persons' Protected Health Information, Employer will limit the use or disclosure of any Covered Person's Protected Health Information it cannot feasibly return or destroy to those purposes that make the return or destruction of the information infeasible.

C. Minimum Necessary

If Employer has provided the certification described in Section XI above and GHP thereby permits Claims Administrator to disclose Covered Persons' Protected Health Information to Employer for plan administration functions, Claims Administrator will make reasonable efforts to limit its disclosure of Covered Persons' Protected Health Information to Employer to the minimum necessary for Employer to perform the plan administration functions that Employer will perform for GHP.

XI. SUMMARY HEALTH INFORMATION

Upon Employer's written request for the purpose either (a) to obtain premium bids for providing health insurance coverage for GHP, or (b) to modify, amend or terminate GHP, Claims Administrator will provide Summary Health Information regarding the Covered Persons in GHP to Employer.

PART 4— MISCELLANEOUS

XIII. TERMINATION

A. Termination With or Without Cause

Any party may terminate this Agreement, with or without cause, upon thirty (30) days prior written notice.

B. GHP Plan Termination

The Claims Administrator may terminate this Agreement automatically (without notice) on the date GHP's Plan is terminated. In the event this Agreement is terminated, the Claims Administrator may automatically terminate the Administrator Services Contract between the Claims Administrator, Employer and GHP.

XIV. AUTOMATIC AMENDMENT TO CONFORM TO APPLICABLE LAW

Upon the effective date of any final regulation or amendment to final regulations with respect to Protected Health Information, Standard Transactions, the security of health information or other aspects of the Health Insurance Portability and Accountability Act of 1996 applicable to this Agreement, this Agreement will automatically amend

such that the obligations imposed on Employer, GHP and Claims Administrator remain in compliance with such regulations, unless Claims Administrator elects to terminate this Agreement by providing Employer and GHP notice of termination in accordance with this Agreement at least thirty (30) days before the effective date of such final regulation or amendment to final regulations.

XV. SURVIVAL OF PRIVACY AND SECURITY OBLIGATIONS

Claims Administrator's obligations to preserve the privacy and security of GHP's Protected Health Information as specified in this Agreement will survive termination or other conclusion of the ASO Agreement.

XVI. LAW AND VENUE

This Agreement shall be construed and interpreted under the laws of the State of Mississippi except where preempted by federal law.

XVII. AMENDMENTS TO THIS AGREEMENT

This Agreement may be amended by written agreement between the Claims Administrator, Employer, and GHP.

XVIII. MULTIPLE ORIGINALS

This Agreement has been executed in multiple originals, any one of which may be used for any purpose without the necessity of accounting for the others.

XIX. AGREEMENT

This Agreement and any referenced attachments (attached hereto and incorporated by reference herein) contain the entire agreement between the parties relating to the subjects addressed herein. Any prior business associate agreement, other agreement, promise, negotiation, or representation, either oral or written, relating to the subject matter of this Agreement and not expressly set forth in this Agreement shall be of no force or effect.

XX. SEVERABILITY

If any provision of this Agreement is rendered invalid or unenforceable by the decision of any court of competent jurisdiction, that invalid or unenforceable provision shall be severed from this Agreement and all other provisions of this Agreement shall remain in full force and effect.

XXI. WAIVER OF BREACH

Waiver of breach of any provision of this Agreement shall not be deemed a waiver of any other breach of the same or a different provision.

XXII. NOTICES

Any notices required to be given pursuant to the terms and provisions of this Agreement shall be in writing and shall be sent by certified mail, return receipt requested, postage prepaid, to Claims Administrator at, Post Office Box 1043, Jackson, Mississippi 39215-1043, and to GHP at 401 North 5th Ave., Laurel, MS 39441. Notice shall be effective on the date indicated on the return receipt.

XXIII. INDEMNIFICATION

A. Employer and Claims Administrator

1. Employer will indemnify and hold harmless Claims Administrator, its affiliates and their respective Directors, Officers, and Employees against any damages, lawsuits, judgments, expenses and

attorney's fees incurred by Claims Administrator as a result of or in connection with any non-permitted use or disclosure of Protected Health Information by Employer.

2. Claims Administrator will indemnify and hold harmless Employer, its affiliates and their respective Directors, Officers, and Employees against any damages, lawsuits, judgments, expenses and attorney's fees incurred by Employer as a result of or in connection with any non-permitted use or disclosure of Protected Health Information by Claims Administrator.

B. GHP and Claims Administrator

1. GHP will indemnify and hold harmless Claims Administrator, its affiliates and their respective Directors, Officers, and Employees against any damages, lawsuits, judgments, expenses and attorney's fees incurred by Claims Administrator as a result of or in connection with any non-permitted use or disclosure of Protected Health Information by GHP.

2. Claims Administrator will indemnify and hold harmless GHP, its affiliates and their respective Directors, Officers, and Employees against any damages, lawsuits, judgments, expenses and attorney's fees incurred by Claims Administrator as a result of or in connection with any non-permitted use or disclosure of Protected Health Information by Claims Administrator.

XXIV. DEFINITIONS

All capitalized terms in this Agreement that are not defined by this Agreement will have the meaning ascribed to them by 45 C.F.R. Parts 160-64. Any other capitalized terms not identified here shall have the meaning as set forth in the HIPAA Rules. The following terms when used in this Agreement have the following meanings:

- A. **"Claim"** means notification in a form acceptable to Claims Administrator that service has been rendered or furnished to a Covered Person.
- B. **"Covered Person"** means the person to whom coverage under the Plan has been extended by GHP and to whom Claims Administrator has directly or indirectly issued an identification card bearing GHP's Number.

For purposes of providing benefits under the Plan, Covered Employee does not mean a person who has selected Medicare as primary coverage.

- C. **"Data Aggregation"** means the combining of Protected Health Information that Claims Administrator creates or receives for or from GHP and for or from other health plans or health care providers for which Claims Administrator is acting as a business associate to permit data analyses that relate to the Health Care Operations of GHP and those other health plans or providers. (See 45 Code of Federal Regulations § 164.501.)
- D. **"Health Care Operations"** mean any of the following activities of a health plan, such as GHP, as relates to the functions that make it a health plan (see 45 Code of Federal Regulations § 164.501):
 - 1. health care quality assessment and improvement activities;

2. reviewing and evaluating health care provider and health plan performance, qualifications and competence, health care training programs, health care provider and health plan accreditation, certification, licensing and credentialing activities;
 3. conducting or arranging for medical reviews, audits, and legal services, including fraud and abuse detection and prevention;
 4. underwriting and premium rating our risk for health coverage, and obtaining stop-loss and similar reinsurance for our health coverage obligations; and
 5. business planning, development, management, and general administration, including customer service, grievance resolution, claims payment and health coverage improvement activities, de-identifying medical information, and creating limited data sets for health care operations, public health activities, and research.
- E. **“Individually Identifiable Health Information”** means information, including demographic information collected from an individual, that (1) is created or received by a health plan, health care provider, employer, or health care clearinghouse, (2) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual, and (3) either identifies the individual, or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual. (*See* 45 Code of Federal Regulations § 164.501.)
- F. **“Limited Data Set”** means protected health information that excludes the following direct identifiers of the individual or of relatives, employers, or household members of the individual:
- (1) Names;
 - (2) Postal address information, other than town or city, State, and zip code;
 - (3) Telephone numbers;
 - (4) Fax numbers;
 - (5) Electronic mail addresses;
 - (6) Social security numbers;
 - (7) Medical record numbers;
 - (8) Health plan beneficiary numbers;
 - (9) Account numbers;
 - (10) Certificate/license numbers;
 - (11) Vehicle identifiers and serial numbers, including license plate numbers;
 - (12) Device identifiers and serial numbers;
 - (13) Web Universal Resource Locators (URLs);
 - (14) Internet Protocol (IP) address numbers;
 - (15) Biometric identifiers, including finger and voice prints; and
 - (16) Full face photographic images and any comparable images.
- G. **“Payment”** means any of the following activities of a health plan, such as GHP, as relates to a Covered Person (*see* 45 Code of Federal Regulations § 164.501):
1. Obtaining premium payments;
 2. Determining or fulfilling responsibility for coverage and provision of benefits under the health plan;
 3. Determining an enrollee’s eligibility or coverage;
 4. Coordinating benefits, determining cost sharing amounts, adjudicating or subrogating health benefit claims;

5. Adjusting risk amounts due based on enrollee health status or demographic characteristics;
 6. Engaging in billing, claims management, issuance of explanations of benefits, collection activities, and related health care data processing;
 7. Obtaining payment under a contract of reinsurance (including stop-loss insurance and excess of loss insurance);
 8. Reviewing health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges;
 9. Conducting utilization review, precertification and preauthorization of services, and concurrent and retrospective review of services; and
 10. Disclosure to consumer reporting agencies not more than the demographic data permitted by 45 Code of Federal Regulations § 164.501 ("Payment" ¶ 2(vi)).
- H. "Plan"** - the Plan of Benefits adopted by GHP as follows: Employee Health Protection Plan for City Of Laurel, Contract Type C522.
- I. "Protected Health Information"** means Individually Identifiable Health Information that is transmitted or maintained electronically, on paper, orally or in any other form or medium.
- Education records covered by the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and records described in Section 1232g(a)(4)(B)(iv) of Title 20 of the United State Code are excluded from Protected Health Information. (See 45 Code of Federal Regulations § 164.501.)
- J. "Summary Health Information"** means information, which may be Individually Identifiable Health Information, (1) that summarizes the claims history, claims expenses, or types of claims experienced by enrollees for whom a plan sponsor has provided health care benefits under a group health plan, and (2) from which the identifiers specified in 45 Code of Federal Regulations § 164.514(b)(2)(i) have been deleted (except that the zip code information described in 45 Code of Federal Regulations § 164.514(b)(2)(i)(B) may be aggregated to the level of a five (5) digit zip code). (See 45 Code of Federal Regulations § 164.504(a).)
- K. "Standard Transactions"** mean health care financial or administrative transactions conducted electronically for which standard data elements, code sets and formats have been adopted in 45 Code of Federal Regulations Part 162.

SIGNATURES

In witness whereof, the parties hereto have caused this Agreement to be executed by their respective Officer who has been duly authorized to execute this Agreement.

CLAIMS ADMINISTRATOR:

BLUE CROSS & BLUE SHIELD OF MISSISSIPPI, A
MUTUAL INSURANCE COMPANY

By: _____
Cheri D. Green,
General Counsel

Date: _____

EMPLOYER:

CITY OF LAUREL

By: _____

Title: _____

Date: _____

GROUP HEALTH PLAN:

Employee Health Protection Plan for

CITY OF LAUREL

By: _____

Title: _____

Date: _____