

Prescription Drug Guarantee Addendum

This Prescription Drug Guarantee Addendum (“Rx Addendum”) amends and is made part of the Administrative Services Contract (“ASC”) between Blue Cross Blue Shield of Michigan (“BCBSM”) and City of Ann Arbor (“Group”), as the plan sponsor and administrator of its group health care plan. The provisions of this Rx Addendum will override and control any conflicting provision of the ASC. All non-conflicting provisions of the ASC will remain in full force and effect.

Group and BCBSM have agreed to certain guarantees related to Group’s prescription drug benefit plan (“Rx Plan”) administered by BCBSM as set forth below.

BCBSM and Group agree as follows:

- 1) **DEFINITIONS.** The following definitions shall apply to this Rx Addendum. All capitalized terms not defined in this Rx Addendum shall have the meaning set forth in the ASC.
 - a) **340B Claims** – Prescription Claims submitted by 340B contracted pharmacies that adjudicate at a 340B price or are submitted with a submission clarification code of “20” or such equivalent codes for such Participating Pharmacies in the Participating Pharmacy Network under the applicable NCPDP format (or any successor format). In addition, 340B Claims include Paid Claims submitted by a covered entity owned or contracted pharmacies which are categorized as Type 39 or Type 38 in the NCPDP DataQ database.
 - b) **90-Day Retail Network** – A network where claims are filled for commercial Enrollees for a three-month supply. Three-month supply shall mean equal to or greater than 84 days’ supply per prescription/refill.
 - c) **Average Wholesale Price or AWP** – The average wholesale price of a Covered Drug on the date the order is dispensed as reflected by the information set forth in the BCBSM contracted Pharmacy Benefit Manager’s (“PBM”) claim processing system on the date the claim is processed, based on information received from Medi-Span’s Master **Drug** Database (“MDDB”), at least once each seven (7) calendar days. The applicable AWP shall be based on the manufacturer’s full eleven-digit NDC code of the actual package size and date from which the Covered Drug is dispensed by the Participating Pharmacy. For mail order Covered Drugs, BCBSM shall not use AWP’s of licensed repackagers where the data reporting source identifies an AWP price greater than the AWP price reported by the drug manufacturer who manufactured the product. If MDDB or other applicable reporting sources discontinue providing AWP or change the methodology for calculating AWP in a way that materially changes the economics of this Rx Addendum, the parties will discuss in good faith a reasonable modification to the program pricing terms to preserve the parties’ relative economics before such changed methodology.
 - d) **Biosimilar Drug** – A “biosimilar” biological product as defined in the Biologics Price Competition and Innovations (BPCI) Act of 2009 at 42 U.S.C. section 262(i)(2) and approved under Section 351(k) of the Public Health Services Act.
 - e) **Brand Drug** - All single source and multi-source drugs, products, and supplies, excluding Generic Drugs, as set forth in Medispan, or such other nationally recognized source, as reasonably

determined by BCBSM and its PBM. For adjudication purposes, BCBSM may, for select circumstances, override the brand status for benefit copay reasons.

- f) **Compounded Drug** - A Paid Claim where one (1) or more U.S. Food and Drug Administration ("FDA") approved ingredients are mixed together and prepared by a pharmacist in a non-commercially available dose or dosage form to meet a Member's individual medical needs. The product will not be considered a Compound Prescription Claim if it is reconstituted or if, to the active ingredient, only water, alcohol, flavoring, coloring, or sodium chloride solutions are added. Each ingredient contained in a Compound Prescription Paid Claim shall be billed and priced using the National Council on Prescription Drug Programs (NCPDP) D.0 standard.
- g) **Cost Sharing Amount** – Such amounts that are required to be collected by Participating Pharmacy's and to be paid by an Enrollee for each prescription or authorized refill, which may include copayments, coinsurance or deductibles.
- h) **Covered Drugs** – Drugs or supplies used to treat medical conditions which are set forth in the Universal Group Application or Part C of the Group Enrollment and Coverage Agreement.
- i) **Dispensing Fee** – The fee that Group pays BCBSM for the dispensing of a Covered Drug.
- j) **Drug List or Formulary** – The list of Brand Drugs and Generic Drugs as set forth by BCBSM and which shall be dispensed through pharmacy providers to Enrollees. BCBSM shall develop formularies with identified preferred prescribed drug alternatives.
- k) **Exclusive Limited Distribution** – Exclusive distribution Specialty Drugs which are only available through no more than two (2) pharmacy providers due to exclusive or preferred vendor arrangements with drug manufacturers.
- l) **Generic Drug** – All drugs, products, and supplies, drug, whether identified by its chemical, proprietary, or non-proprietary name, that is pharmaceutically equivalent and interchangeable with drugs having an identical amount of the same active ingredient(s) and approved by the Food and Drug Administration (FDA), and which is identified as such using indicators from Medispan (or other source nationally recognized in the prescription drug industry) on the basis of a standard Brand/Generic Algorithm as determined by BCBSM and PBM.
- m) **Hemophilia Drugs** – Certain pharmaceuticals used in the treatment or management of hemophilia.
- n) **Incentive Fee** – The fee that is paid by PBM on behalf of BCBSM to a Participating Pharmacy to dispense a Generic Drug or to compound a prescription drug.
- o) **Ingredient Cost** – The amount equal to the lowest of (i) the pharmacy's usual and customary price, as submitted ("U&C") less the Dispensing Fee, (ii) the applicable Maximum Allowable Cost ("MAC"), where applicable, (iii) AWP less the applicable AWP discount, or (iv) pharmacy submitted ingredient cost.

- p) **Limited Distribution Drugs** – Specialty Drugs used to treat conditions affecting only a small number of patients with special requirements. The manufacturer, or as recommended by the FDA, may choose to limit the distribution of a drug to only a few pharmacies.
- q) **Mail Order Pharmacy Program** – the program in which Enrollees may submit a prescription, as allowed by a Plan, PBM to dispense Covered Drugs to Enrollees via mail order by a non-specialty pharmacy owned or operated by PBM under lines of business as agreed between the parties.
- r) **Maximum Allowable Cost or MAC** – The current maximum allowable cost of certain Covered Drugs as identified by BCBSM or PBM. MAC pricing will be applied to all distribution channels, including (if applicable) retail, 90-day retail maintenance, and mail order channels. The composition of the MAC lists will be the same across all distribution channels using the same industry standard data element for all lists. The MAC pricing that applies at the Mail Service Pharmacy shall be equal to or better (e.g., deeper discounts) than the MAC pricing that applies at retail Participating Pharmacies. Variation of MAC pricing among retail Participating Pharmacies shall be minimized to limit Member disruption.
- s) **National Drug Code or NDC** – The 11-digit National Drug Code as assigned by the pharmaceutical drug manufacturer and as reported by Medispan or other agreed upon source.
- t) **New to Market** – Specialty Drugs approved by FDA, available in market, and added by BCBSM to the Specialty Drug Price List. New to market designation applies for no more than six (6) months.
- u) **Participating Pharmacies** – Entities which contract with BCBSM or its PBM to provide Covered Drugs to Enrollees.
- v) **Rebates** – Retrospective formulary rebates from drug manufacturers that are paid to BCBSM by Rebate Administrator pursuant to the terms of a formulary rebate contract negotiated by the Rebate Administrator or BCBSM and directly attributable to the utilization of certain Covered Drugs by Enrollees.
- w) **Rx Claim** – A request for payment from (1) a pharmacy provider for providing a Covered Drug to an Enrollee or (2) directly from an Enrollee for a Covered Drug. Rx Claims billed to Group include all amounts that BCBSM pays to PBM or directly to pharmacy providers or Enrollees for such claims, including Dispensing Fees, Incentive Fees, and Ingredient Cost, and any BCBSM fees disclosed on Group’s Schedule A less any Cost Sharing Amount and Enrollee sanction, if applicable.
- x) **Specialty Drug** – Biotech drugs, including high cost infused medications, oral and self-injectable drugs, products, supplies, services, and other drugs related to specialty disease categories or other categories, as included on the BCBSM Specialty Drug Price List.
- y) **Standard Retail Network** – A network where claims are filled for commercial Enrollees, for a one-month supply. One-month supply shall mean 1-83 days’ supply per prescription/refill.
- z) **Subrogation Claims** – subrogation claims submitted by any state or a person or entity acting on behalf of a state or similar United States or state government health care programs, for which BCBSM is deemed to be the primary payor by operation of applicable federal or state laws.

aa) Usual & Customary or U&C – The usual and customary or retail price charged by a Participating Pharmacy for a Covered Drug in a cash transaction on the date the drug is dispensed.

bb) Zero Balance Claims or ZBC – Rx Claims where the Enrollee pays the full cost of the Covered Drug and Group is billed \$0 (zero) dollars.

2) TERM AND TERMINATION.

The effective date of this Rx Addendum shall be 1/1/2024 and shall continue in full force and effect until 12/31/2024 (the “Term”), unless Group or BCBSM terminates the ASC prior to the end of the Term or Group or BCBSM terminate Group’s prescription drug coverage by giving the other party at least thirty (30) days’ prior written notice. Group acknowledges that BCBSM does not offer prescription drug benefit services separate from its administrative services for medical benefits.

If Group terminates prescription drug coverage before the end of the Term, Group shall pay BCBSM a \$2.00 per contract per month (“PCPM”) fee multiplied by Group’s average monthly contract count prior to termination multiplied by the remaining months in the Term in order to compensate BCBSM for the costs of setting up and implementing Group’s Rx Plan. Furthermore, if the effective date of termination is prior to the end of or during a Contract Year, Section 3 covering the guarantees shall not be in effect null and void for that respective Contract Year. However, BCBSM shall provide to Group credit due for Rebates less the Rebate Administrator Fee and the BCBSM Rebate Service Fee related to claims incurred prior to the actual date of termination.

3) GUARANTEES

a) AWP Discount and Dispensing Fee Guarantees. BCBSM guarantees the average AWP discount (“Guaranteed AWP Discount”) and Dispensing Fees (“Guaranteed Dispensing Fee”) for the retail, mail order, and specialty Participating Pharmacies will be as follows:

i) Retail-30 Network Discounts and Dispensing Fee Guarantees.

Type of Drug	Discount	Dispensing Fees
Brand	AWP – 19.20%	\$0.55
Generic	AWP – 84.40%	\$0.55

ii) Mail Order Discounts and Dispensing Fee Guarantees.

Type of Drug	Discount	Dispensing Fees
Brand	AWP – 27.10%	\$0.00
Generic	AWP – 88.85%	\$0.00

iii) **Overall Specialty Drug Discounts and Dispensing Fee Guarantees – Exclusive.**

Type of Drug	Discount	Dispensing Fees
Brand and Generic	AWP – 21.10%	\$0.00

iv) **AWP Discount and Dispensing Fee Guarantee Calculation.**

- (1) Within ninety (90) days of the end of each Contract Year, BCBSM will calculate the actual average AWP discount (“Actual AWP Discounts”) and Dispensing Fees (“Actual Dispensing Fee”) for all Covered Brand Drugs, Generic Drugs, and Specialty Drugs (exclusive of Excluded Claims as defined below) dispensed and submitted by Participating Pharmacies for Enrollees, in the aggregate, for the applicable Contract Year. If the aggregated Actual AWP Discount is less than the corresponding Guaranteed AWP Discount for Brand Drugs, Generic Drugs, or Specialty Drugs or if the aggregated Actual Dispensing Fee is greater than the Guaranteed Dispensing Fee, BCBSM will credit Group the shortfall amount dollar for dollar.
- (2) If Group’s actual aggregate discounts and Dispensing Fees achieved are worse than the Guaranteed AWP Discounts and Dispensing Fees, BCBSM will credit GROUP dollar-for-dollar for any shortfall subject to BCBSM retention described in Schedule A and BCBSM offset rights as set forth below. Group acknowledges and agrees the amount BCBSM pays its contracted PBM for a prescription drug may be more or less than the amount Group pays BCBSM for such drug, and BCBSM may retain the difference as administrative compensation as specified below when the amount is less.
- (3) Group’s actual AWP Discount will be calculated as follows:

$$1 - (\text{Actual Total Discounted Drug AWP Paid} \div \text{Total Undiscounted Drug AWP})$$
- (4) Group’s actual Dispensing Fees will be calculated as follows:

$$\text{Total Dispensing Fees paid} \div \text{Number of Total Rx Claims Paid}$$
- (5) The retail and mail order guarantee calculations include ZBCs and U&C (applicable to retail) Rx Claims but exclude non-Covered Drugs, Specialty Drugs, Long term care (“LTC”), Home infusion therapy, Indian Health Service, Tribal/Urban Indian Health, Veteran/Military provider claims, vaccines, Compounded Drugs, direct Enrollee reimbursement claims, coordination of benefit (“COB”) claims, claims for drugs purchased by a pharmacy pursuant to the 340B program, and subrogation recoveries (“Excluded Claims”).
- (6) The Specialty Drug guarantee calculations exclude the Excluded Claims, Exclusive Limited Distribution products, Limited Distribution Drugs not dispensed by the Blue Cross preferred specialty pharmacy, New to Market Specialty Drugs, New to Market Biosimilar Drugs and New to Market Limited Distribution Drugs, but includes Specialty Drug Rx Claims including ZBC and U&C (if applicable).

- (7) For ZBCs, the Actual AWP Discount will be calculated using the Enrollee’s Cost Sharing Amount. The Enrollee’s Cost Sharing Amount includes the ingredient cost and Dispensing Fee paid.
- (8) Specialty Drug AWP discounts are determined by the BCBSM Specialty Drug Price List, which is revised periodically as market conditions warrant.
- (9) For purposes of calculating retail, mail order and Specialty Drug guarantees, Brand Drug shall be defined as all drugs, products, and supplies with a valid NDC that meet all of the following criteria:
 - (i) Medi-Span Multi-Source Code of “M”, “N”, or “O” and
 - (ii) Medi-Span Brand Name Code of “T” and
 - (iii) DAW Code that is not 3, 4, 5, or 6

For avoidance of doubt Brand Drug shall include single-source Brand Drugs, multi-source Brand Drugs reimbursed as Brand Drugs.

Generic Drug shall be defined as all drugs, products, and supplies with a valid 11-digit NDC that meet at least one of the following criteria:

- (i) Medi-Span Multi-Source Code of “Y” or
- (ii) Medi-Span Brand Name Code of “B” or “G” or
- (iii) DAW Code that is one of 3, 4, 5, or 6

For avoidance of doubt Generic Drug shall include single-source Generic Drugs, multi-source Generic Drugs, multi-source Brand Drugs reimbursed as Generic Drugs, as well as patent-litigated Generic Drugs, limited supply Generic Drugs, and house Generic Drugs.

- b) Claim Level Rebate Guarantees.** For each Plan paid Covered Brand Drug dispensed by a pharmacy provider to an Enrollee and paid by Group, BCBSM guarantees that Group’s average Rebates will be at least the following amounts net of the Rebate Administrator Fees and BCBSM Rebate Service Fee:

Clinical Drug List	Average Rebate
Standard Retail	\$250.27
Mail Order	\$790.28
Specialty Drugs	\$3,150.00

The Rebate Guarantees are based on the BCBSM Clinical Drug List (Formulary) and Group’s benefit designs as of Group’s Contract Year 1.

The Claim Level Rebate Guarantees exclude non-Covered Drugs, direct Enrollee reimbursement claims, out of network claims, claims for drugs purchased by a pharmacy pursuant to the 340B program, subrogation recoveries, staff model/hospital pharmacies where such pharmacy is subject to its own manufacturer contracts, claims through pharmacies that participate in the Federal government pharmaceutical purchasing program, non-drug items, Biosimilar Drugs without a Brand name Drug designation, Hemophilia Drugs, vaccines, claims pursuant to a 100% Enrollee copayment plan, and claims older than

180 days.

For purposes of calculating the Claim Level Rebate Guarantee, Brand Drug shall be defined as all drugs, products, and supplies with a valid NDC that meet all of the following criteria:

- (i) Medi-Span Multi-Source Code of "M", "N", or "O" and
- (ii) Medi-Span Brand Name Code of "T" and
- (iii) DAW Code that is not 3, 4, 5, or 6.

For avoidance of doubt, Brand Drug shall include single source and multi-source Brand Drugs including any prescribed Brand Drug that is paid by PBM, on behalf of BCBSM, to the Participating Pharmacy, reimbursed as a Generic Drug (e.g., Brand Drug priced at MAC).

If the actual Rebates received by BCBSM from Rebate Administrators are less than the guaranteed amounts above, BCBSM will credit Group the difference.

Rebates will be passed to GROUP quarterly as an invoice credit based on actual Rebates received.

Most Rebates are received from the Rebate administrators approximately six (6) to nine (9) months after the end of the calendar quarter in which claims are incurred; therefore, annual reconciliation of Rebate guarantees to actual Rebates received will occur approximately six (6) to nine (9) months after the contract year.

d) General Provisions Applicable to Section 3 Guarantees.

- i) **Offset.** BCBSM may use any surplus achieved on a guarantee to make up for, and offset, a shortfall in any other guarantee within the same channel as set forth in this Rx Addendum.
 - (1) The channels shall be defined as:
 - (a) Retail-30 (1-83 day supply)
 - (b) 90-day (inclusive of retail-90 (84+ day supply) and mail order claims)
 - (c) Specialty Drugs will be included in specialty channel (regardless if dispensed by retail or mail order specialty pharmacy)
 - (d) Rebate guarantees
- ii) **Credit.** Any shortfall on the AWP Discount and Dispensing Fee guarantees will be credited to Group within ninety (90) days following the end of the Contract Year if such shortfall is not offset by BCBSM against any surplus achieved in the other applicable guarantees. Any shortfall on the Rebate guarantees will be credited to Group within six (6) to nine (9) months following the end of the Contract Year if such shortfall is not offset by BCBSM against any surplus achieved in the other Rebate guarantees.
- iii) **Modification of Guarantees.** BCBSM reserves the right to immediately revise or void, in its sole discretion, the above guarantees upon the occurrence of any of the following events:
 - (1) Group fails to use BCBSM as Group's exclusive pharmacy benefit administrator;
 - (2) Modification of Formulary content or benefit design;

- (3) Total contract enrollment or 90-day retail enrollment, if applicable, changes by more than 10 percent of the contract count as of the effective date of this Rx Addendum; or
 - (4) Group fails to be responsible for more than 50 percent of the Covered Drug cost under the Rx Plan which is measured over the entire plan year.
 - (5) Rebate revenue is materially decreased because Brand Drugs unexpectedly move off-patent to generic status, which includes if Generic Drugs, authorized Brand alternative drugs, low priced Brand Drugs or over-the-counter substitutes become unexpectedly available. BCBSM acknowledges that it has already taken into account the effect that scheduled Brand Drug patent expirations and Generic Drug availability will have on Rebates over the term of the Addendum.
 - (6) If a government action, change in law or regulation, change in the interpretation of law or regulation, or action by any drug manufacturer has a material effect on the availability of Rebates.
- v) **Quarterly and Annual Reporting.** BCBSM shall monitor and track AWP Discounts and Dispensing Fees on a quarterly basis and provide a written report within ninety (90) days following the end of each quarter in a format determined by BCBSM. BCBSM shall provide an annual report of Group's performance against the AWP Discount and Dispensing Fee Guarantees in a format determined by BCBSM within ninety (90) days following the end of the Contract Year. BCBSM shall also provide an annual report of Group's performance against the Claim Level Rebate Guarantees in a format determined by BCBSM within six (6) to nine (9) months after the end of the Contract Year.
- vi) **Guarantee Audits.**
- (1) Group, at its own expense, shall have the right to audit ("Guarantee Audit") Group's performance against the guarantees once for each Contract Year following Group's receipt of the annual report from BCBSM for the applicable Contract Year. After notice from the Group requesting a Guarantee Audit, BCBSM will have up to 90 days to gather the Rx Claims data for the applicable Contract Year in a format determined by BCBSM and to schedule the Guarantee Audit.
 - (2) Auditor. Prior to a Guarantee Audit, Group and BCBSM must mutually agree upon any independent third party auditor that Group wishes to perform the audit. Additionally, Group and any third party auditor shall sign any documents BCBSM believes necessary to conduct the audit.
 - (3) Findings. Group (or its auditor) shall provide BCBSM with a written report of any findings if Group (or its auditor) disputes the results of BCBSM's calculations of Group's performance against the guarantees in the annual report. If Group's audit findings show a shortfall on any guarantee and BCBSM accepts such findings, in BCBSM's sole discretion, BCBSM will provide a credit to Group of such shortfall subject to the Offset provision specified above.
 - (4) Scope and Timing of Guarantee Audit. The rights and obligations contained in this Guarantee Audit section apply only to Group's review of BCBSM's calculations of Group's performance against the guarantees. Any Group audit for accuracy and adjudication of Rx Claims processed by BCBSM ("ASC Audit") is subject to the terms and conditions of the

ASC "Group Audit" section. If Group is conducting an ASC Audit during a Contract Year, Group shall conduct a Guarantee Audit at the same time as the ASC Audit. Otherwise, Group shall be prohibited from conducting a Guarantee Audit at a different time than the ASC Audit during a Contract Year in which Group conducts an ASC Audit.

IN WITNESS WHEREOF, each party presents and warrants that the individual signing this Rx Addendum on its behalf is duly authorized to bind such party to all terms and conditions of this Rx Addendum. This Rx Addendum may be executed in any number of counterparts (by facsimile or otherwise), each of which shall be an original, but which together shall constitute one and the same instrument.

BLUE CROSS BLUE SHIELD OF MICHIGAN

FOR THE CITY OF ANN ARBOR

By: _____

By _____
Christopher Taylor, Mayor

Its: _____

By _____
Jacqueline Beaudry, City Clerk

Date: _____

Approved as to substance:

By _____
Milton Dohoney Jr., City Administrator

Approved as to form and content

By _____
Atleen Kaur, City Attorney