



BENEFITFOCUS[®]

BLUE CROSS AND BLUE SHIELD OF KANSAS, INC.

CUSTOMER SERVICE AGREEMENT

This SERVICE AGREEMENT and the exhibits attached hereto (collectively, the "Agreement") is entered into as of the ____ day of ____, 20__ (the "Effective Date"), by and between

Blue Cross and Blue Shield of Kansas, Inc. ("Carrier"), a Kansas Corporation having a place of business at:
1133 SW Topeka Blvd.
Topeka, KS 66629-0001

Benefitfocus.com, Inc. ("Benefitfocus"), a South Carolina Corporation having a place of business at:
100 Benefitfocus Way
Charleston, South Carolina 29492

____ ("Customer"), having a place of business at:

Scope of Services

Benefitfocus provides implementation services and certain employee enrollment and communication services to the Customer. Benefitfocus hereby agrees to provide the data obtained from those services to Carrier and its partner companies.

The Benefitfocus "System" will provide an electronic database, which will be available to the Customer via an Internet browser. This database and employee communications system also will be made available to each employee of the Customer. This recurring service includes open enrollment sessions, employee self-service information and human resource management tools.

ARTICLE I. CUSTOMER PROVIDED INFORMATION

1.1 Data. All Data supplied to Benefitfocus by Blue Cross and Blue Shield of Kansas, Inc. ("Carrier"), the Customer or the Customer's payroll provider(s), insurance provider(s), auditor(s), legal counsel or other representative(s) shall be provided either in writing or in one or more electronic/magnetic formats acceptable to Benefitfocus. Benefitfocus will consider all such information to have been reviewed and certified as correct by the Customer. Benefitfocus and/or Carrier shall have no responsibility to inquire into the correctness or accuracy of any data, and will not be responsible for any losses and/or expenses that arise due to the submission of incorrect or incomplete Data, or Data transmitted to Benefitfocus in an improper format. Whenever Blue Cross and Blue Shield of Kansas, Inc. is mentioned within this agreement, it also refers to its wholly owned subsidiaries.

1.2 Instructions. Benefitfocus is authorized to rely and act upon instructions transmitted electronically from Carrier or Customer through a data entry system, or any other similar electronic instruction system approved by Benefitfocus. Benefitfocus is authorized to rely and act upon instructions received by Benefitfocus via telephone, U.S. Mail or other similar carrier/delivery service, or a facsimile transmission device which Benefitfocus reasonably and in good faith believes to be given by individuals authorized by the Customer or Carrier.

1.3 Accuracy of Data. Benefitfocus has no obligation to determine the accuracy or completeness of any Data submitted by either the Customer or the Customer's authorized representatives.

1.4 Data Exchange. The Customer hereby authorizes Benefitfocus to provide and exchange Data and other information with the Customer's payroll provider(s), insurance provider(s), auditor(s), legal counsel or other representative(s) for any such purpose as contemplated by this Agreement and as permitted by law.

1.5 Beneficiary Documents. Benefitfocus shall have no obligation to maintain, or make any determination regarding any legally required beneficiary documents, whether mandated by ERISA or other law or regulation. Customer and Carrier agree to indemnify and hold harmless Benefitfocus for any breach of Customers or Carrier obligations related to thereto. The Customer and Carrier shall, as mandated by applicable law or agreement be responsible for maintaining required documents regarding employee eligibility for insurance coverage as required. Benefitfocus will at no time be held liable for discrepancies between the beneficiary data within the System and the information on file with either the Customer or the Carrier.

ARTICLE II. USE AND OWNERSHIP

2.1 Grant of License(s). Subject to the terms and conditions of this Agreement, Benefitfocus hereby grants to Customer, during the term of this Agreement, one or more non-exclusive, non-transferable, non-sub licensable license(s) to permit Authorized Users to access the Benefitfocus portals (through Online Access) and to use Benefitfocus to enter, modify, view, display, download, transmit, reproduce and otherwise process Customer Data and the results thereof and to perform the other functions included within the System.

2.2 Restrictions. The license(s) granted in Section 2.1 is limited to the commercially available version of the Systems offered by Benefitfocus as updated from time to time, and Customer agrees to continuously transition to the updated versions as requested by Benefitfocus. Customer shall not, and shall not permit any party, to (a) copy or modify the System or any portion thereof, or (b) decompile, reverse engineer, disassemble, or otherwise determine or attempt to determine the source code (or the underlying ideas, algorithms, structure or organization) of the System, or (c) use the System for any purpose other than its intended business use.

2.3 Title. Benefitfocus shall retain all right, title and interest (including, without limitation, all copyrights and registrations, patents and applications, service marks, trademarks, trade secret and other intellectual property rights) in and to System (including all modifications and enhancements thereto) and all confidential and proprietary support and training methods and materials provided by Benefitfocus. Except for the license(s) granted

pursuant to this Agreement, Customer shall not acquire any interest in or to any of the aforementioned items.

2.4 Customer Ownership of Customer Data. Any Customer Data obtained by Benefitfocus hereunder, both in hard copy or electronic format, is and shall remain Customer's property. Customer hereby grants to Benefitfocus a royalty-free license to use, copy, reproduce, display, and transmit Customer Data only for the purposes of facilitating Customer's use of System and for the provision of Services. Customer will own the reports and output generated with Customer Data through access to System in accordance with this Agreement.

2.5 System/Usage Audit. Customer hereby grants permission for Benefitfocus to conduct system audits and usage audits of, and conduct maintenance on, System, during which time Benefitfocus may have access to Customer Data.

2.6 Availability/Throughput. Benefitfocus shall use reasonable commercial efforts to provide a level of throughput to the Internet to ensure service/response times agreed to by Benefitfocus with the Carrier and to minimize down times to the System and Customer Data.

ARTICLE III. FEES

3.1 Implementation Fees paid by Carrier. The Customer will not be responsible for implementation fees for connectivity to Carrier and its partner companies. This service level is defined as standard Carrier service. There will be no implementation fees for connectivity to the Customer's payroll system that requires no custom programming by Benefitfocus.

Customer Implementation Service Tier Levels: (Size of groups based on number of Employees)

Tier 1	Small Groups 1 – 10 Employees	\$75
Tier 2	Small Groups 11 – 20 Employees	\$150
Tier 3	Small Groups 21 – 50 Employees	\$225
Tier 4	Large Groups 51 - 100 Employees	\$829
Tier 5	Large Groups 101 - 500 Employees	\$1,688
Tier 6	Large Groups 501 – 2,000 Employees	\$2,550
Tier 7	Large Groups 2,001 – 5,000 Employees	\$7,125
Tier 8	Large Groups 5,001 +Employees	Quoted

The above fees will be paid by Carrier.

3.2 Implementation fees paid by Customer. Implementation fees for connectivity to the Customer's payroll system that do require custom programming will be the sole responsibility of the Customer. If the Customer offers its employees insurance coverage from a company other than the Carrier and its partner companies, the Customer shall be solely responsible for the implementation fees for connectivity to the other companies. Should the Customer elect these additional connections they will be detailed along with their respective fees as an additional service and added to this Agreement as an Exhibit.

3.3 Recurring Fees. Recurring fees for use of the System to access Carrier group information will be paid for by the Carrier to Benefitfocus as long as the Customer is a Carrier group. The Customer is responsible for the cost of services provided by Benefitfocus which are not provided with the System. Should the Customer elect services in addition to those provided with the

System, they will be detailed as additional services along with their respective fees and added to this Agreement as an Exhibit.

3.4 Fee Changes. Notwithstanding any other provision of this Agreement, recurring fees under this Section may be modified by Benefitfocus with thirty (30) days notice to the Customer and this Agreement shall be amended to reflect the modified fee schedule. This only applies to the recurring fee the Customer is paying exclusive of the recurring fees paid by Carrier.

ARTICLE IV. CONFIDENTIALITY

4.1 Confidentiality. Each party agrees that the Customer Data (referred to herein as the "Customer Confidential Information") is the confidential property of Customer, and that all nonpublic information, documentation and material incorporated in, related or referring to System (including trade secrets) or the Services or the terms of this Agreement (referred to herein as the "Benefitfocus Confidential Information") whether created by Benefitfocus, Customer or any third party, is the confidential and proprietary property of Benefitfocus (Customer Confidential Information and Benefitfocus Confidential Information referred to hereinafter collectively as the "Confidential Information"). The party receiving the Confidential Information, including such party's employees, officers, directors and agents, (collectively, the "Receiving Party") shall hold in strict confidence all Confidential Information and shall not use or disclose the Confidential Information except to its professional service providers (e.g., lawyers and accountants) on a strict "need to know" basis for the purpose of performance of this Agreement or as required by valid legal process. Confidential Information under this Section 4.1. shall not include information that: (i) is or has become publicly available without restriction through no fault of the Receiving Party; (ii) has been received without restriction from a third party lawfully in possession of such information; (iii) does not identify Customer or Customer Data; or (iv) was in the possession of the Receiving Party before receiving it from the disclosing party.

ARTICLE V. TERM AND TERMINATION

5.1 Term. The term of this Agreement shall begin on the Effective Date and shall continue thereafter until terminated by any party as provided in Section 5.3 or as otherwise provided in this Section 5 (the "Term").

5.2 Termination at Will. Any party may terminate this Agreement at any time by providing thirty (30) days prior written notice to the other parties.

5.3 Termination for Breach. In the event of the material default or failure by any party under this Agreement, the non-performing party shall have thirty (30) days after receipt of written notice from either of the other parties to cure such default or failure, and if not corrected within the said period, the notifying party shall have the right, at its option, to terminate this Agreement.

5.4 Termination by Insolvency. Any party may terminate this Agreement by providing written notice to the other parties if any party becomes insolvent, makes an assignment for the benefit of creditors, files a petition in bankruptcy, permits a petition in bankruptcy to be filed against it, or admits in writing its inability to

pay its debts as they mature, or if a receiver is appointed for a substantial part of its assets.

5.5 Return of Confidential Information. In the event of termination of this Agreement, upon Benefitfocus's request Customer shall promptly return all Benefitfocus Confidential Information in its possession, custody or control to Benefitfocus, and shall pay in full all Fees due and payable by Customer to Benefitfocus. To the extent Benefitfocus has in its possession, custody or control any other Customer Confidential Information, Benefitfocus shall promptly return it to Customer and Carrier.

ARTICLE VI. WARRANTIES AND LIMITATION OF LIABILITY

6.1 Disclaimer of Warranties. Notwithstanding anything to the contrary, to the maximum extent permitted by law, Benefitfocus specifically disclaims all warranties with regard to System and the services, express or implied, including the warranties of merchantability, noninfringement, uninterrupted service or fitness for a particular purpose.

6.2 Limitation of Liability. No party should be liable to any other party for any punitive or consequential damages, including, but not limited to damages arising from loss of data, loss of business or other loss arising out of or resulting from this agreement even if the other parties have been advised of the possibility of such damages. The foregoing shall apply regardless of the negligence or other fault of the party and regardless of whether such liability arises from contract, negligence, tort, strict liability or any other theory of legal liability.

6.3 Customer Acknowledgement. Notwithstanding any obligations or commitments of Benefitfocus hereunder, Customer acknowledges and agrees that Benefitfocus has no duty or liability in connection with the accuracy or retention of Customer Data for any reasons or purposes including, but not limited to, Customer's compliance with federal, state, administrative or local laws or regulations that may apply to retention of such records. Furthermore, Customer agrees to accept full responsibility for immediately notifying Benefitfocus when Customer desires to discontinue access by an Authorized User and Customer understands that, unless it provides such immediate notification, there is potential for unauthorized access to and use of the System.

ARTICLE VII. GENERAL PROVISIONS

7.1 Assignment of Agreement. No party shall assign (whether by operation of law or otherwise) this Agreement or any of its rights, duties or obligations under this Agreement without the prior written consent of the other parties, which consent shall not be unreasonably withheld. This Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns.

7.2 Entire Agreement; Precedence. This Agreement contains the entire understanding among the parties and supersedes and replaces any prior or contemporaneous verbal or written agreement or understanding among the parties with

respect to the subject matter hereof. No amendment or modification of the Agreement shall be valid, unless made in writing and signed by both parties hereto. Each of the exhibits attached hereto are incorporated by reference into the Agreement as if fully stated herein. In the event of any inconsistency or conflict between the terms and conditions of this Agreement and any term or condition of any exhibit hereto or any transactional or other document issued in connection herewith (including, without limitation, purchase orders, invoices, bills of lading, etc.), the terms and conditions of this Agreement shall, in all instances, govern and control.

7.3 Governing Law. This Agreement shall be governed by the laws of the State of South Carolina without giving effect to the principles thereof relating to conflicts of law.

7.4 Notices. Any notices required or permitted hereunder shall be in writing and shall be delivered in person, by nationally recognized overnight courier service, or by certified U.S. mail, postage prepaid, return receipt requested, addressed to the party to be notified to the attention of such party's Legal Department or, in the case of Customer, to President/Owner at the address for such party first set forth above or such address as any party may hereafter specify in accordance herewith.

7.5 Arbitration. The parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the parties agree to use the following alternative dispute resolution procedure as their sole remedy with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

At the written request of a party, each party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration and conclusion of these discussions shall be at Carrier facilities in Topeka, Kansas. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, exempt from discovery and production, which shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise admissible, be admitted in evidence in the arbitration or lawsuit.

If the negotiations do not resolve the dispute within sixty (60) days of the initial written request, the dispute shall be submitted to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. A party may demand such arbitration in accordance with the procedures set out in those rules. Discovery shall be controlled by the arbitrator and shall be permitted to the extent set out in this section. Each party may submit in writing to a party, and that party shall so respond, to a maximum of any combination of thirty-five (35) (none of which may have subparts) of the following:

(1) interrogatories,

(2) demands to produce documents, and

(3) requests for admission

Each party is also entitled to take the oral deposition of one individual of another party. Additional discovery may be permitted upon mutual agreement of the parties. The arbitration hearing shall be commenced within sixty (60) days of the demand for arbitration. The arbitration shall be held in St Louis County in St. Louis, MO, at facilities to be mutually agreed to by the parties. The arbitrator shall control the scheduling so as to process the matter expeditiously. The parties may submit written briefs. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) days after the close of hearings. The times specified in this section may be extended upon mutual agreement of the parties or by the arbitrator upon a showing of good cause. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

7.6 Force Majeure. No party hereto shall be in breach or default of any provision of this Agreement by reason of its delay or failure to meet any of its obligations hereunder due to any event, circumstance, or cause beyond its control such as, but not limited to, acts of God, strikes, lock-outs, general governmental orders or restrictions, war, threat of war, hostilities, revolution, riots, epidemics, fire, earthquake, failures of internet infrastructure, or flood. The performance of this Agreement shall then be suspended for as long as any such event shall prevent the affected party from performing its obligations under this Agreement.

7.7 Invalidity; Waivers. If any provision or portion of this Agreement is held invalid, illegal, void or unenforceable as it appears in this Agreement by reason of any rule of law, administrative or judicial provision or public policy, then such provision shall be construed as being enforceable to the extent allowed thereunder. All other provisions of this Agreement shall nevertheless remain in full force and effect. None of the parties shall be deemed to have waived any of its rights, powers or remedies hereunder unless the waiving party expresses such a waiver in writing.

7.8 Survival of Terms. Notwithstanding the expiration or earlier termination of this Agreement for any reason, the provisions of Articles IV, VI, VII and Sections 2.3, 2.4, 4.1 (to the extent such obligations arose prior to the expiration or earlier termination hereof) and 5.5 of this Agreement shall remain in full force and effect.

IN WITNESS THEREOF, the parties have caused this Agreement to be executed by their respective authorized representatives as of the Effective Date.

Customer

Benefitfocus.com, Inc.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Carrier

By: _____

Name: _____

Title: _____

In order to expedite the processing of this Agreement please complete the information below. If you have any questions please contact your Benefitfocus representative:

CUSTOMER INFORMATION

1. Carrier Sales or Service Rep. Name: _____ Telephone: _____
Carrier Service Region: _____
2. Broker Name: _____
3. Benefitfocus Representative Name: _____
4. New Carrier Group, or Existing Carrier Group (provide group number(s) below; add lines if necessary)
Group# _____ # covered employees: _____ (approx)
Group# _____ #covered employees: _____ (approx)
5. Employer Main Contact Name: _____ Title: _____
Telephone: _____ Fax: _____ Email: _____
6. Services / Benefits
 Medical (#/type _____) Life (#/type _____)
 LTD (#/type _____) STD (#/type _____)
7. Open Enrollment Period (select one)
All changes requested during Open Enrollment Period will be made effective on the Group's renewal
 The month prior to the Group's renewal date of _____.
 The period of _____ prior to the Group's Renewal date of _____.
 Additional products or services (refer to Section V., Additional Services)