

## TERMS OF USE

### BLUE CROSS AND BLUE SHIELD ASSOCIATION

The following terms and conditions ("Terms and Conditions") govern your use of this Evidence Positioning System website (the "Site"). BCBSA may revise these Terms and Conditions by posting them on this Site, without further notice. By accessing, viewing, or using the material on the Site, you indicate that you understand and accept these Terms and Conditions (as may be modified from time to time) and agree to be legally bound by them. If you do not agree with the Terms and Conditions, you are not granted permission to use the Site and should exit immediately.

The Site is intended only for use by participating Blue Plans and certain other third parties permitted by BCBSA ("Permitted Users"), for purposes only in connection with efforts to demonstrate market leadership by providing early notification or feedback as it relates to medical management matters (the "Purpose"). Permitted Users must protect, and cannot share, their logins or identification numbers required to access and use this Site. A Permitted User's permission to use this Site is specific to that individual Permitted User and is not transferable or assignable to any other person or entity.

#### **1. About Evidence Positioning System, Generally.**

Evidence Positioning System ("EPS") is a technology based system that allows quick, efficient signal detection on medical management activities within BCBS system and with national competitors. Through EPS, Plans will demonstrate market leadership by providing early notification or immediate feedback to accounts on medical management matters. EPS offers general information and does not provide medical, legal, or financial advice. For medical issues, check with your healthcare provider. Neither BCBSA nor any Blue Cross and/or Blue Shield Plan recommends, endorses, warrants, or guarantees, nor are they responsible for damages based on any program, provider, product, or service whose information may appear on EPS's website. Information collected and used on the Site is done so from publicly available resources.

**This Site and BCBSA do not determine medical policy, provide health insurance benefits information, or adjudicate coverage claims for any Blue Cross and/or Blue Shield Plan ("Blue Plan"). Each local Blue Plan, as an independent entity, determines its own medical policies, benefits, and adjudicates its own members' claims, and may accept or reject information appearing on this Site in its own discretion. Similarly, this Site and BCBSA do not provide medical, legal or financial advice; and do not intend consumer use of this Site. For medical issues, check with your healthcare provider. Neither BCBSA nor any Blue Plan recommends, endorses, warrants or guarantees, nor are they responsible for damages, based on any program, provider, product, or service whose information may appear on this Site. Site content expresses the opinion of BCBSA and/or the respective authors cited therein, not those of any Blue Plan.**

#### **2. Proprietary Rights; Limitation of Use.**

BCBSA collects and evaluates information on the Site for reference purposes only, to provide informational resources to assist Blue Plans in reaching their own respective decisions. All materials contained in this Site are protected by law, including but not limited to, United States copyright law. Except as indicated, BCBSA is the owner of the copyright in the entire content (including images, text and look and feel attributes) of [www.BCBSA.com](http://www.BCBSA.com), including but not limited to all content pertaining to EPS, and reserves all rights in that regard. Removing or altering the copyright notice on any material on the Site is prohibited. BCBSA also owns a copyright in this Site as a collective work and/or compilation, and in the selection, coordination, arrangement, organization and enhancement of Site content. Any commercial use of Site content is prohibited without the prior written consent of BCBSA. Except as indicated, BCBSA owns all trademarks, service marks or other logos featured on the Site. Use or misuse of these trademarks, service mark or logos is expressly prohibited and may violate federal and state law. Removing or altering the copyright notice on any material on the Site is prohibited. Please be advised that BCBSA actively and aggressively enforces its intellectual property rights to the fullest extent of the law.

By using this Site, you also agree:

- Not to publish any portion of this Site, its content, or any reports or information derived therefrom without BCBSA's prior written consent before each such use, except for internal use within your own company and with your local Blue Plan;
- Not to copy, download, scrape, or extract any raw data or any screen contents from this Site, other than the report(s) that this Site is designed to provide for you, as a registered user, for the Purpose described above;
- Not to copy, download, scrape, extract, reprint, modify, link, deep link, lease, distribute, assign, sell content, license, reverse engineer or create derivative works retrieved from this Site or any of the third-party web sites to which we may provide links;
- Not to use any device or computer program in order to interfere or attempt to interfere with the proper operation of this Site (e.g., hacking, denial of service attacks, etc.), including any activity that attempts, or precedes any attempts, to breach security (such as scanning, probing, or other testing or vulnerability assessment activity), or engaging in or permitting any network or hosting activity that results in the blacklisting or other blockage of BCBSA's IP space;
- Not to code or introduce any Harmful Code into any part of this Site ("Harmful Code" shall mean any self-propagating program that infects, damages, or disables another program; contains any virus, Trojan horse, or worm; or contains any code designed to permit unauthorized access or monitoring, or that alters or erases any data or programs without control of the person operating the computer on which it resides);
- Not to use this Site in a manner that may adversely affect this Site's resources or its availability to others, or that violates U.S., federal, state, or local law;
- Not to use the BLUE CROSS or BLUE SHIELD words, symbols, trademarks, or service marks (collectively, "Blue Brands"), and not to make any reference to BCBSA, any Blue Plans, the Site, or EPS name (including, but not limited to, in your advertising, letterhead, symbol or logo, or press releases) without prior written approval of BCBSA;

- You acknowledge that all use of the Blue Brands, if so permitted by BCBSA, must inure to the benefit of BCBSA and must comply with all applicable BCBSA rules and regulations; and
- You acknowledge that BCBSA, Blue Plans, or other interested entities may send you communications (via email or other media) on matters pertaining to the Site or its contents.

### **3. Confidential Information.**

This Site, its contents, and all reports generated by this Site are deemed “Confidential Information” of BCBSA. You agree not to disclose any of the Confidential Information to any person or entity other than your own company’s directors, officers, and employees and your local Blue Plan, except with BCBSA’s prior written consent for each such use. You will safeguard all Confidential Information from unauthorized disclosure or access, and will maintain it in strict confidence, protecting it with the same degree of care that you exercise with your own confidential information, but in no event less than a reasonable degree of care. Except as provided in these Terms and Conditions, you will not use or disclose any Confidential Information without the BCBSA’s prior written consent, and then only for the Purpose described above. You will notify BCBSA promptly of any unauthorized access or disclosure of which your company becomes aware. The parties agree that all the Terms and Conditions shall be kept confidential except as required by law, or pursuant to court order or in the course of litigations between the parties.

### **4. Communications With Our Web Site.**

BCBSA welcomes your feedback and suggestions about how to improve our products and services and this Site. By transmitting any suggestions, information, material, or any other content (collectively, "Content") to BCBSA, you automatically grant BCBSA the royalty-free, perpetual, irrevocable, non-exclusive right and license to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, redistribute, transmit, perform and display such Content (in whole or in part) worldwide and/or to incorporate it in other works in any form, media, or technology now known or later developed for the full term of any rights that may exist in such content. Further, BCBSA is free to use any ideas, concepts, know-how, techniques, and suggestions contained in any communications you send to this Site for any purpose whatever, including, but not limited to, creating and marketing products and/or services using such information. BCBSA is not responsible and shall not be liable for the Content, or materials posted to the Site by Permitted Users, visitors, or persons other than BCBSA employees. Opinions or comments contained in Content reflect the views of the author and not of BCBSA unless BCBSA expressly states to the contrary.

### **5. No Solicitation or Offer.**

This Site is designed to provide general information about BCBSA, its products and services, and its BCBS companies. Information on the Site is not intended to constitute an offer to sell or a solicitation of any particular product or service. Some products and/or services may not be available in all states or countries and in many instances may be offered only through employers or BCBS companies and their affiliates or other BCBSA licensees. BCBSA is a trade association comprised of independent, locally-owned and operated Blue Cross and Blue Shield companies.

## **6. No Medical Services or Advice.**

Nothing contained, expressed or implied in the Site is intended as, nor shall be construed as medical advice. No doctor-patient relationship is established between BCBSA and you by reason of your use of this Site or under any circumstances whatsoever. Individual inquiries about medical issues, or sensitive or confidential matters should be addressed to appropriate health care professionals. The mention of specific products or services at this Site or inclusion of links to other sites does not constitute or imply a recommendation or endorsement by BCBSA or any Blue Plans.

## **7. NO MEDICAL POLICY, BENEFITS, COVERAGE, CLAIMS, OR INSURANCE ADVICE.**

This Site and BCBSA do not determine medical policy, provide health insurance benefits or coverage information, or adjudicate claims for any Blue Plan. Each local Blue Plan, acting as an independent entity, determines its own medical policies, benefits, coverage, and adjudicates its own members' claims. No relationship is established between any Blue Plan, BCBSA and you by reason of your use of this Site or other circumstances under this Agreement. Inquiries about medical policy, benefits, coverage, claims, or other insurance matters should be addressed to the appropriate local Blue Plan. Site content expresses the opinion of BCBSA and/or the respective authors cited therein, and not those of any Blue Plan.

## **8. No Legal Advice.**

Nothing contained, expressed, or implied in this Site is intended as, nor shall be construed or understood as, legal advice, guidance, or interpretation. No attorney-client relationship is established between BCBSA and you by reason of your use of this Site or under any circumstances whatever. The information in this Site is for general informational purposes only. If you have questions about any law, statute, regulation, or requirement expressly or implicitly referenced in this Site, you should contact your own legal counsel.

## **9. No Disclosure of PHI or PII**

No exchange is anticipated between you and BCBSA of any Protected Health Information ("PHI"), as that term is defined by Subtitle F of Title II of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 Code of Federal Regulations Parts 160-164) ("the "HIPAA Rules"), and/or Nonpublic Personal Information ("PII"), as defined by applicable state statutes and/or regulations implementing Title V of the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 *et seq.* ) ("GLB Regulations"). Should that change, the parties will promptly enter into a Business Associate Agreement with BCBSA before any such information could or would be disclosed, if ever, by BCBSA.

## **10. Confidentiality cannot be Guaranteed.**

Please be advised that the confidentiality of any communication or material transmitted to BCBSA via [www.BCBS.com](http://www.BCBS.com) or Internet electronic mail cannot be guaranteed, including personal information such as your address or social security number. For private and personalized attention, you may also contact BCBSA by telephone at 312 -297-6000, or write us at BCBSA, 225 N. Michigan Avenue, Chicago, Illinois 60601, Attn. Web Team.

## **11. Privacy Statement.**

BCBSA has a Privacy Statement disclosing what information we collect about visitors, how we use such information, the steps we take to secure such information, how you can view and correct such information, and how you can decline to have information about you collected or used. To view the Privacy Statement, go to the home page and click on the Privacy Statement link. The Privacy Statement is incorporated herein by reference, as if set forth fully herein.

## **12. Securities Information.**

This Site and the information contained herein do not constitute an offer or a solicitation of an offer for the purchase or sale of any securities. The Site contains information and press releases about BCBSA, and although this information was believed to be accurate as of the date prepared, BCBSA disclaims any duty or obligation to update such information. To the extent that any information is deemed to be a "forward looking statement" as defined in the rules and regulations of the Securities Act of 1933, as amended, such information is intended to fit within the "safe harbor" for forward looking information and is subject to material risk factors which may or may not be disclosed herein.

## **13. Disclaimer of Warranty and Liability.**

USE OF THIS SITE IS ENTIRELY AT YOUR OWN EXPENSE AND AT YOUR OWN RISK. NEITHER BCBSA NOR ITS AFFILIATES, AND EACH OF THEIR SUBSIDIARIES, AGENTS, CONTRACTORS, OR AFFILIATES ARE RESPONSIBLE FOR THE CONSEQUENCES OF RELIANCE ON ANY INFORMATION CONTAINED IN OR SUBMITTED TO THE SITE, AND THE RISK OF INJURY FROM THE FOREGOING RESTS ENTIRELY WITH YOU. THESE MATERIALS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. BCBSA SHALL NOT BE LIABLE FOR ANY DIRECT, SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUES OR LOST PROFITS, WHICH MAY RESULT FROM THE USE OF, ACCESS TO, OR INABILITY TO USE THESE MATERIALS. UNDER NO CIRCUMSTANCES WILL THE TOTAL LIABILITY OF BCBSA TO YOU EXCEED THE PRICE PAID, IF ANY, FOR USE OF THE SITE (OR \$0, IF NO PRICE WAS PAID). ANY DISPUTE RESOLUTION PROCEEDINGS, WHETHER IN ARBITRATION OR IN COURT, WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS OR REPRESENTATIVE ACTION.

#### **14. Corrections and Changes; Termination.**

BCBSA has made reasonable efforts to present accurate information on this Site; it is possible, however, that information found on this Site may be or may become out-of-date. While we endeavor to keep the materials on the Site up to date, BCBSA shall not assume responsibility for any errors or omissions in these materials. The information on this Site comes from a variety of sources. Some of this information may not be verified. All information on this Site is subject to change without notice. Further, BCBSA does not warrant the accuracy or completeness of the information, text, graphics, links or other items contained within these materials. BCBSA may make changes to these materials, or to the products or services described herein, at any time without notice, and makes no commitment to update the information contained herein. BCBSA reserves the right to terminate your access to the Site in the event that you violate these Terms and Conditions, or for any reason at BCBSA's sole discretion; and, upon termination, your authorization to access or use this Site and its contents will cease immediately.

#### **15. Indemnification.**

You agree to defend, indemnify, and hold harmless BCBSA, its affiliates and subsidiaries, and each of their respective directors, officers, employees, representatives, proprietors, partners, shareholders, servants, principals, agents, predecessors, successors, assigns, and attorneys from and against any and all claims, proceedings, damages, injuries, liabilities, losses, costs, and expenses (including attorney's fees and litigation expenses) relating to or arising from your use of the Site and/or any breach by you of these Terms and Conditions.

#### **16. Links to Other Web Sites.**

This Site may, from time to time, contain links to other Internet Web sites for the convenience of users in locating information and services that may be of interest. Visitors to the Site acknowledge that these third-party sites are maintained by persons or organizations over which BCBSA exercises no control, and BCBSA expressly disclaims any responsibility for the content, the accuracy of the information and/or quality of products or services provided by or advertised on these third-party sites. BCBSA does not control, endorse, promote, or have any affiliation with any other Web site unless expressly stated in the Site.

#### **17. Use of the Internet.**

While BCBSA strives to make this Site accessible 24 hours per day, 7 days per week, the Site may be unavailable from time to time for any reason including, without limitation, routine maintenance. BCBSA shall have the right at any time to change or discontinue any content or feature of the Site, including discontinuing the Site and EPS, including any and all services within each.

Use of the Internet is solely at your own risk and is subject to all applicable state, national and international laws and regulations. Neither BCBSA nor its affiliates will be liable for any loss resulting from a cause over which they do not have direct control, including but not limited to failure of electronic or mechanical equipment or communication lines, telephone or other interconnect problems, computer viruses, unauthorized access, theft, operator errors, severe

weather, earthquakes, natural disasters, strikes or other labor problems, wars, or governmental restrictions.

## **18. Copyright Notice and Takedown Policy/Notice and Procedure for Making Claims of Copyright Infringement.**

BCBSA is committed to complying with copyright and related laws, and requires all users of the Site to comply with these laws. You may not store, post, modify, distribute, reproduce in any way, use or disseminate any material or content through the Site in any manner that constitutes an infringement of third party intellectual property rights, including rights granted by copyright law.

Owners of copyrighted works who believe that their rights under copyright law have been infringed may take advantage of certain provisions of the Digital Millennium Copyright Act of 1998 (the “DMCA”) to report alleged infringements. BCBSA does not, and will not, make any legal decisions about the validity of your claim of infringement or the possible defenses to a claim. Upon our receipt of a proper notice of claimed infringement under the DMCA, we will respond expeditiously to remove, or disable access to, the material claimed to be infringing and will follow the procedures specified in the DMCA to resolve the claim between the notifying party and the alleged infringer who provided the content in issue. BCBSA may contact the notice provider to request additional information. BCBSA reserves the right to disregard a notice that is not in compliance with the DMCA. Under the DMCA, BCBSA is required to take reasonable steps to notify the user who posted the allegedly infringing content. If you believe in good faith that a notice of copyright infringement has been wrongly filed against you, the DMCA permits you to send us a counter-notice. Notices and counter-notices must meet the then-current statutory requirements imposed by the DMCA. Notices and counter-notices with respect to the Site should be sent to the address below.

If you are uncertain whether particular material infringes a copyright held by you or a third party, you should contact an attorney. Anyone making a false or fraudulent notice or counter-notice may be liable for damages under the DMCA, including costs and attorneys' fees.

To be effective, your Notification of Claimed Infringement must be in writing, sent to our designated agent listed below and contain the following information:

1. An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
2. A description of the copyrighted work or other intellectual property that you claim has been infringed;
3. A description of where the material that you claim is infringing is located to permit us to locate the material;
4. Your contact information, including your name, address, telephone number, and email address;
5. A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright or intellectual property owner, its agent, or the law; and

6. A statement by you, made under penalty of perjury, that the information contained in your report is accurate and that you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

BCBSA's designated agent for notice of claims of copyright infringement can be reached as follows:

By E-Mail: [dmca@bcbsa.com](mailto:dmca@bcbsa.com) with the subject line "DMCA"

By Mail:

Blue Cross Blue Shield Association  
Attn: Office of the General Counsel  
225 N. Michigan Avenue  
Chicago, IL 60601-7680

By Fax: 312.297.5956

## **19. Governing Law and Jurisdiction.**

These Terms and Conditions will be governed by and construed in accordance with the laws of the State of Illinois, without reference to its choice of law rules. By accessing, viewing, or using the material on the Site, you agree and consent to the jurisdiction of the federal and state courts presiding in Chicago, Illinois, and agree to accept service of process by mail and hereby waive any and all jurisdictional and venue defenses otherwise available. This Site is controlled and operated by BCBSA from its offices within the United States. BCBSA makes no representation that materials in the Site are appropriate or available for use in other locations, and access to them from territories where their contents are illegal is prohibited. Those who choose to access this Site from other locations do so at their own volition and are responsible for compliance with applicable local laws.

## **20. ENTIRE AGREEMENT.**

These Terms and Conditions, the applicable BCBSA Privacy Policy, and any applicable BCBSA agreement constitute the entire agreement between you and BCBSA with respect to your use of this Site. If any part of these Terms and Conditions is held to be invalid or unenforceable for any reason, the remaining parts will remain in full force and effect. You acknowledge that in providing you access to and use of this Site, BCBSA has relied on your agreement to be legally bound by these Terms and Conditions.

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