

## DECLARATION OF TRUST

### THE MONTANA HEALTHCARE FOUNDATION

#### A Montana Charitable Trust

I, Timothy C. Fox, in my representative capacity as Attorney General of the State of Montana, as Trustor, deliver to E. Edwin Eck, as the Initial Interim Trustee, the property described in Exhibit A, together with any other property later delivered which is provided pursuant to the Orders of the Commissioner of Securities and Insurance, Montana State Auditor (Commissioner) and the Montana Attorney General *In the Matter of the Conversion of Blue Cross and Blue Shield of Montana, Inc., and Alliance with Health Care Service Corporation* (the “Conversion Transaction”); all properties received are to be held, administered and distributed as provided in this Declaration, as the **Montana Healthcare Foundation** (“the Trust”).

#### ARTICLE 1

##### Intent and Purposes

1.1. The Trustor intends that at all times the Trust meet the requirements for a recipient foundation described by the health entity conversion statute at Mont. Code Ann. 50-4-701 et. seq. as such statute exists on the date of the Trust creation (the “Conversion Statute”). Specifically, the Trust is not, and shall not ever be an agent or instrumentality of the government; its assets may not be used to supplant government funds; and its Trustees, officers and staff must be, and shall remain, independent of the parties to the Conversion Transaction and their affiliates within the restrictions provided by Mont. Code Ann. § 50-4-720(1)(e). Public officials, elected or appointed, may not serve as an officer, trustee, or staff member for the Trust.

1.2. The Trustor intends that at all times the Trust shall be an organization exempt from federal income tax under Code §501(a) and described in Code §§ 170(c)(2), 501(c)(3), 2055(a) and 2522(a)(2). The Trust shall be held exclusively for charitable, scientific and educational purposes, all within the meaning of Code §501(c)(3), including, but not limited to providing financial support to improve the quality, availability, and awareness of healthcare programs and services for Montanans. Subject to the limitations and prohibitions listed in Mont. Code Ann. § 50-4-720 (as it exists on the date of the Trust’s creation), such programs and services shall include without limitation: (a) to improve the availability of and access to healthcare and services to the uninsured, underinsured and other underserved populations and to improve the health status of all Montanans; (b) to develop and maintain initiatives to address short-term health care needs and concerns; (c) to provide grants and establish programs in

Montana to carry out such purposes; and (d) otherwise to serve the health care needs of the people of the State of Montana.

1.3. The Trustees shall have no power, right, duty, immunity or discretion that prohibit the Trust from being recognized as a tax exempt entity described by Code § 501(c)(3). The Trustor directs that this Declaration be construed to assure such charitable recognition. In furtherance of the foregoing intent, the Trustees may, at any time and from time to time, amend this Declaration, or reduce or release any powers granted to the Trustees, in either case without the necessity of court approval, for the sole purpose of complying with Code §§170(c)(2), 501(a), 501(c)(3), 2055(a) and 2522(a)(2), and the regulations from time to time in effect under those Sections. Trustor hereby directs the Initial Interim Trustee immediately to apply under Code §508(a) for a determination by the Internal Revenue Service that the Trust is an organization described in Code §501(c)(3) and exempt from federal income tax under Code §501(a).

1.4. No part of the assets or net earnings of the Trust shall inure to the benefit of or be distributable to any Trustee or other private persons, except that the Trustees shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Section 1.1 of this Declaration. No substantial part of the activities of the Trust shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Trust shall not participate in, or intervene in (including the publishing and distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. The Trust shall not carry on any activities not permitted to be carried on (a) by a trust exempt from federal income tax under Code §501(a) as an organization described in Code §501(c)(3), or (b) by a trust, contributions to which are deductible under Code §§170(c)(2), 2055(a) and 2522(a).

## **ARTICLE 2**

### **Authority and Duties of Initial Interim Trustee**

2.1. The Initial Interim Trustee designated herein shall serve with the following restricted powers and responsibilities:

- A. To receive and accept all assets directed to the Trust that are associated with the Conversion Transaction pursuant to the procedures and restrictions set forth by the Conversion Statute.

- B. To only deposit such funds in short term (not to exceed 12 months) debt instruments issued by the U.S. Government and agencies of the U.S. Government, certificates of deposit, short term (not to exceed 12 months) investment-grade (rated A or better) debt instruments issued by corporations, bank repurchase agreements and/or money market funds.
- C. To organize and coordinate the activities of a Search and Screening Committee comprised of the Initial Interim Trustee and two other individuals appointed by the Montana Attorney General to (i) advertise for the five positions of Operating Trustee for the Trust, which advertisement shall include the statutory requirements of Mont. Code. Ann § 50-4-720 and other criteria the Committee deems relevant; (ii) screen Operating Trustee applicants and conduct, as the committee deems appropriate, reference checks, interviews, background checks, and other screening activities of those applicants who appear to best meet the statutory requirements and other relevant criteria; and (iii) submit a list of at least five (5) nominated trustee applicants and an explanation regarding how each nominated individual meets the statutory requirements and other relevant criteria. The Montana Attorney General may request the names of additional nominees.
- D. To coordinate and assist in the Trust's application for recognition of federal tax exempt status pursuant to Code §501(a) as an organization described in Code §§ 170(c)(2), 501(c)(3), 2055(a) and 2522(a)(2).

2.2. The Initial Interim Trustee's powers and obligations shall terminate upon the date of the organizational meeting of the Operating Trustees following the appointment of such Operating Trustees by the Montana Attorney General and the written acceptance of such position by all Operating Trustees. The organizational meeting of the Operating Trustees shall take place no later than December 31, 2013.

### **ARTICLE 3**

#### **Distribution of Income and Principal**

3.1. The Operating Trustees shall distribute the income and principal of the Trust in such manner, in such amounts and at such times as the Operating Trustees deem appropriate within the charitable purposes specified above in Section 1.2.

3.2. Upon termination of the Trust, after paying or providing for the payment of all liabilities of the Trust, the Operating Trustees shall dispose of all of the assets of the Trust exclusively for the charitable purposes of the Trust in such manner as the Operating Trustees in their sole discretion determine, including distributing the assets to one or more charitable, literary, scientific and educational institutions within the State of Montana as shall at the time qualify as exempt organizations under Code §501(c)(3). Any assets not so distributed shall be disposed of by the District Court of the county in which the principal office of the Trust is then located exclusively for charitable purposes or to organizations organized and operated exclusively for charitable purposes within the State of Montana. All assets distributed upon termination of the Trust must be transferred with the restrictions and prohibition on the use of the assets and the structure of the governing board set forth in Mont. Code Ann. § 50-4-720, as such statute existed at the time of the creation of the Trust.

3.3. The Operating Trustees shall distribute income of the Trust for each year and, to the extent income is insufficient, principal at such time and in such manner as not to become subject to the tax on undistributed income imposed by Code §4942, and the Trust shall not engage in any act of self-dealing as defined in Code §4941(d), nor retain any excess business holdings as defined in Code §4943(c), nor make any investments in such manner as to incur tax liability under Code §4944, nor make any taxable expenditures as defined in Code §4945(d).

3.4. The Operating Trustees shall prepare and submit an annual report to the Commissioner and the Montana Attorney General every year that identifies the award of grants and other charitable activities of the Trust. The annual report shall be made available to the public at the principal office of the Trust.

#### **ARTICLE 4** **General Provisions**

4.1. All references in this Declaration to Code sections (§ or §§) are to sections of the Internal Revenue Code of 1986, and shall include future amendments to those sections and corresponding provisions of future federal tax laws from time to time in effect.

#### **ARTICLE 5** **Administrative Provisions**

5.1. "Trustees" shall mean the Initial Interim Trustee or the original Operating Trustees or any successor Operating Trustee or co-Trustees from time to time acting.

5.2. A vacancy in the office of an Operating Trustee shall occur upon an Operating Trustee's resignation or refusal or inability to act. Any Trustee may resign at any time.

5.3. At the organizational meeting of the original Operating Trustees appointed by the Montana Attorney General, the five original Operating Trustees shall be divided into three separate initial terms of office. Two Operating Trustees shall serve a term of 6 years, Two Operating Trustees shall serve a term of 5 years and the final Operating Trustee shall serve a term of 4 years. The initial terms shall commence from July 1, 2013. Thereafter, upon a vacancy, Operating Trustees shall be elected for a term of six years by majority vote of the remaining Operating Trustees. Operating Trustees may serve consecutive terms, provided that an individual may only serve two consecutive full terms.

5.4. Trustees shall serve until the Trustee's successor is duly elected and qualified. If at any time there are two or fewer Trustees in office with no named successors, the remaining Trustees may designate a successor to fill a vacancy in the office of Operating Trustee.

5.5. Any successor Operating Trustee must meet the minimum qualifications for trustee set forth in Mont. Code Ann. § 50-4-720 as such statute existed at the time the Trust was created.

5.6. Each successor Operating Trustee shall have the same trusts and powers as the prior Trustee without the necessity of a conveyance. No successor Operating Trustee shall be required to examine the accounts or records or be responsible for the acts or omissions of any prior Trustee. Each successor Operating Trustee may accept a final accounting of the prior Operating Trustee as conclusive of the amount, nature and allocation of Trust assets.

5.7. The Initial Interim Trustee and the Operating Trustees may receive reasonable compensation for services and reimbursement of reasonable expenses incurred in the course of conducting services on behalf of the Trust. The Trustee's regular compensation shall be charged half against income and half against principal, except that the Board of Trustees, in its sole discretion, may charge a larger portion or all against income.

5.8. No Trustee shall be required to give any bond or security or be liable for any error in judgment or good faith reliance on advice of counsel. No Trustee shall be required to qualify before or account to any court, in the absence of an alleged breach of trust.

5.9. Persons dealing in good faith with the Board of Trustees under this Declaration shall not be required to see to the application of any money or property delivered to the Board of Trustees, and may rely without inquiry upon the Board of Trustee's certificate that the Trust involved is in full force and effect, the Board of Trustees or an individual designated by Board resolution, is authorized to act, and the Board of Trustee's act is in accordance with the provisions of this Declaration.

5.10. Each appointment, designation, delegation, acceptance, revocation, and resignation shall be in writing signed by the makers and placed with the Trust records. Copies of each delegation, acceptance, and resignation shall also be delivered to each then acting Co-Trustee.

5.11. If only two Trustees are acting, neither shall be liable for the acts of the other Co-Trustee. If more than two Trustee are acting, the Trustees may act by a majority without prior notice to each other Trustee, but a Trustee who is not one of the majority and who, within a reasonable time of receiving actual knowledge of the act by the majority, shall notify the majority in writing of the Trustee's dissent shall have no liability for the acts of the majority.

5.12. The Board of Trustees may establish one or more Advisory Committees to provide advice and recommendation regarding Trust programs or administrative matters.

## **ARTICLE 6** **Trustee Powers**

6.1. The Initial Interim Trustee and the Operating Trustees shall have, without authorization from any court, the following enumerated powers, and, in addition, all powers otherwise granted to fiduciaries by law, provided that the powers of the Interim Initial Trustee must only be performed within the context of the duties set forth in Article 2:

- A. to sell, exchange or grant options to purchase any property at public or private sale, for cash or on credit; to enter into leases for any period of time, even though extending beyond the termination of the Trust;
- B. to borrow money or extend existing loans, and to mortgage, pledge or otherwise encumber any property;
- C. to transfer from time to time the situs of any trust or property to another jurisdiction provided that the purpose of such transfer is solely to further the

purposes of the Trust and to benefit the people of the state of Montana; to designate or appoint a trustee to act in this or any other jurisdiction as sole trustee or co-trustee of any trust or property; to pay the appointed trustee reasonable compensation; to confer upon the appointed trustee any or all powers of the Trustee under this Declaration; to remove the appointed trustee; to appoint another trustee, including the appointing Trustee, at will (the Trustee may act as adviser to the appointed trustee and receive reasonable compensation for so acting) all as determined by the Trustee;

- D. to exercise all powers of an individual owner with respect to securities, partnership interests and other investments, including exercising stock options, voting, giving or receiving proxies, entering into voting trusts or shareholder, buy-sell, or other stock restriction agreements, participating in mergers, acquisitions, foreclosures, reorganizations, or liquidations, and exercising or selling subscriptions or conversion rights;
- E. to pay taxes, including interest and penalties, and reasonable expenses incurred in administering and distributing the Trust;
- F. to employ, with or without discretionary powers and with reasonable compensation, attorneys, accountants, investment counsel, managers, and other agents, even though a Trustee may be a partner or shareholder thereof or affiliated therewith;
- G. to contest, prosecute, compromise, release or abandon claims, including taxes and interest and penalties thereon, or other charges in favor of or against the Trust;
- H. to execute contracts, notes, conveyances and other instruments, including indemnities in connection with securities offerings and the like, whether or not containing covenants and warranties binding upon and creating a charge against Trust property or excluding personal liability;
- I. to receive additional property from any source and, in the absence of any direction, to hold, administer, and distribute such property as part of the Trust;
- J. to invest in or hold undivided interests in property;
- K. to acquire, invest, reinvest, exchange, retain, sell, and manage principal and, pending distribution or accumulation, income in every kind of property, real or personal, and every kind of investment, without being limited by any statute restricting investments by fiduciaries, without being required to maintain any particular ratio between fixed income securities and equity investments and regardless of lack of diversification;
- L. to establish, increase, decrease, discontinue or re-establish reasonable reserves for obsolescence, depreciation, depletion or the like for property which is subject to the creation of such reserves under generally accepted accounting principles as the Trustee, in the Trustee' sole discretion, determine;

- M. to deal with the fiduciary or counsel of any other trust or estate notwithstanding the fact that such person is a Trustee of, or counsel to, the Trust;
- N. to cause securities and other investments, real or personal, to be registered and held in the name of a nominee without mention of the Trust in any instrument or record constituting or evidencing title thereto (the Trustee shall not be liable for the acts of nominees selected in good faith), but a Trustee that owns a nominee shall have absolute liability for the acts of the nominee;
- O. to rely upon a court order, certificate, affidavit, letter, or other evidence reasonably believed to be genuine, and on the basis of any such evidence to exercise any power or make any payment, distribution or reimbursement (these provisions shall protect the Trustee from liability for actions taken in good faith, but shall not affect the rights an appointee, taker in default, or other beneficiary may have against persons to whom distributions are erroneously made); and
- P. to do all other acts relating to investment, management, disposition, and control of property which shall be advisable for the proper and advantageous management of the Trust.

Each of the foregoing powers shall be exercised during the administration of the Trust under this Declaration and for a reasonable period after termination of the Trust. The Trustee powers are exercisable solely in a fiduciary capacity consistent with and in furtherance of the charitable purposes of the Trust as specified in Section 1.2.

6.2. Consistent with the charitable purposes of the Trust as specified in Section 1.2, the Operating Trustees may invest Trust funds primarily or entirely in common stocks, including stock of foreign corporations, whether or not listed on a securities exchange, and new or emerging companies, real estate or similar types of investments, having in mind appreciation in value of the principal as well as the attainment of a reasonable income. The Operating Trustees shall be empowered to maintain a margin account with a stock brokerage firm, to execute all documents necessary for the opening and maintenance of the account, to borrow money from a brokerage firm, to pledge securities owned by the trust as collateral and to grant a security interest therein, and to permit the stock brokerage firm to re-lend these securities in the ordinary course of its business. The Operating Trustees are empowered to maintain a stock and index option account with a stock brokerage firm, to execute all documents necessary for the opening and maintenance of such an account, and to buy, sell and otherwise trade stock and index options, including puts and calls, whether or not covered by the underlying securities held in the brokerage account. In making investments, the Operating Trustees may consider the Trust estate as a whole and determine the appropriateness of any particular investment as part of the overall investment portfolio rather than in isolation. No Trustee shall be liable for any loss resulting

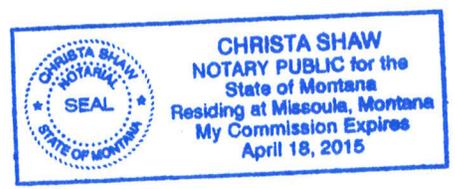


DATED: June 27, \_\_\_\_\_, 2013.

E. Edwin Eck  
E. Edwin Eck, Initial Interim Trustee

STATE OF MONTANA )  
: ss.  
County of Missoula )

The foregoing Declaration was acknowledged before me on June 27,  
2013 by E. Edwin Eck in his representative capacity as the Initial Interim Trustee.



Christa Shaw  
\_\_\_\_\_  
(Typed or Printed Name of Notary)  
Notary Public for the State of \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

**EXHIBIT A**

One U. S. Dollar.