

Agency Agreement

This Agreement is made by and between BlueCross BlueShield of Tennessee*, Inc., a Tennessee not-for-profit corporation, (hereinafter referred to as "BCBST"), and the Agency listed on the signature page of this Agreement (hereinafter referred to as the "Agency").

1. RECITALS

BCBST is a Tennessee not-for-profit corporation, which is duly licensed in accordance with applicable Laws. BCBST is an independent corporation operating under a license from the BlueCross BlueShield Association (the "Association.") That license permits BCBST to use the Association's service marks within its assigned geographical location. BCBST is not a joint venturer, agent or representative of the Association nor any other independent licensee of the Association. BCBST is offering coverage to eligible persons through the health care program offered by the State of Tennessee (State) commonly referred to as CoverTN.

The Agency is appropriately licensed and hereby agrees to represent BCBST in accordance with applicable laws and the terms of this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants of the parties, the sufficiency of which is hereby acknowledged, the parties have agreed as follows:

2. DEFINITIONS

Defined terms, which are capitalized in this Agreement, have the following meanings:

- A. "**Addendum**" is a document executed by BCBST and the Agency, which is incorporated into this Agreement by reference, and sets forth additional information regarding the terms and conditions upon which the Agency will be compensated for placing Business with BCBST, and otherwise amends the Agreement.
- B. "**Business**" is coverage of Members participating in the CoverTN program.
- C. "**Commission(s)**" is the compensation paid to the Agency in accordance with the terms of the applicable Addendum.
- D. "**Coverage**" is the CoverTN Evidence of Coverage (EOC) and other documents that describe the covered benefits that BCBST has agreed to provide to Members.
- E. "**Employer Participation Agreement**" is the document completed by an Employer eligible to participate in the CoverTN program, that wants coverage to be available to its eligible employees.
- F. "**Laws**" are applicable State or Federal laws, statutes, regulations and other requirements.
- G. "**Member**" is: (1) a person who is eligible to participate in the CoverTN program; (2) who meets all applicable legal requirements and Underwriting Standards; (3) whose coverage with BCBST is currently in force and was placed through the Agency; and (4) whose coverage is through the CoverTN program, administered by BCBST.
- H. "**Officer**" is a person so designated by BCBST's Board of Directors, or his/her designee.
- I. "**Premiums**" are the periodic payments required to keep Coverage in force.
- J. "**Producing Agent**" is a licensed agent who is employed or contracts with the Agency and has agreed that any Commissions payable pursuant to this Agreement shall be paid to the Agency.

- K. "Underwriting Standards" are policies established and distributed by BCBST, which detail the necessary qualifications a Member must have in order to apply for Coverage from BCBST in the CoverTN program.

3. AGENCY DUTIES

- A. Appointment.** The Agency represents that the information contained in each Producing Agent's application for appointment by BCBST, which is incorporated into this Agreement by reference, is and shall remain true and accurate throughout the term of this Agreement. The Agency shall promptly notify BCBST of any:
1. material changes in the information set forth in a Producing Agent's application;
 2. inquiries or disciplinary actions initiated against a Producing Agent, including, but not limited to, by regulatory agencies or law enforcement authorities;
 3. termination of the Agency's or a Producing Agent's authority to represent other insurers or health maintenance organizations;
 4. cancellation, material modification or non-renewal of the Agency's or a Producing Agent's liability insurance coverages, including errors and omissions coverages, or fidelity bonds; or
 5. other matters which adversely affect the Agency's or Producing Agent's ability to perform their duties pursuant to this Agreement.

If BCBST elects to contract with Agency, it will appoint those Producing Agents who are appropriately licensed to place Coverage with BCBST pursuant to applicable Laws. The Agency warrants that its Producing Agent(s) will comply with all applicable Laws, including but not limited to, any and all state and federal privacy and do-not-call laws, when representing BCBST pursuant to this Agreement; its representation of BCBST will not conflict with its obligations to, or interfere with, the rights of any third parties, and its agreements expressly provide that Producing Agents agree to be bound by the terms of this Agreement. Producing Agents shall be bound by the terms of this Agreement when representing BCBST and, if there is any conflict between the terms of this Agreement and any agreement between the Agency and a Producing Agent, this Agreement shall be controlling.

- B. Solicitation of Eligible Members.** The Agency shall exercise its best efforts to identify and solicit eligible Members to apply for Coverage from BCBST during the term of this Agreement. The Agency shall make reasonable efforts to assure that prospective Members are eligible for Coverage in accordance with BCBST's Underwriting Standards and the CoverTN program.
- C. Solicitation Materials.** The Agency shall not use the name, service marks or symbols, or otherwise make reference to BCBST or CoverTN without the express written consent of an Officer of BCBST. BCBST shall prepare or assist the Agency in preparing solicitation materials for submission to prospective Members. The Agency shall not use the name, service marks or symbols or otherwise make reference to BCBST or CoverTN on any Agency Website without the express written consent of an Officer of BCBST.
- D. Modification and Use of Materials.** Underwriting Standards, Employer Participation Agreements, Member Enrollment Forms, solicitation materials, proposals or other documents provided by BCBST:
1. shall not be amended or altered by the Agency;
 2. shall only be used in connection with the Agency's activities on behalf of BCBST pursuant to this Agreement;
 3. shall remain the property of BCBST; and
 4. shall promptly be accounted for or returned to BCBST upon request or upon the termination of this Agreement.
- E. Submission of Employer Participation Agreements.** The Agency may submit the Employer Participation Agreement to BCBST, or the Employer may submit it directly. It must be received by BCBST prior to the proposed effective date of a Member's Coverage.

1. The Agency shall not collect any application fees, deposits, or Premiums from Members, unless expressly authorized to do so, in writing, signed by an Officer of BCBST. The Agency may collect a One Hundred (\$100) Dollar initial remittance from the employer for each Member Enrollment Form submitted without violating this provision.
2. BCBST may postpone the effective date of or decline to issue a Member's coverage if a fully completed Member Enrollment Form has not been submitted prior to the proposed effective date of Coverage.

F. Service Responsibilities. The Agency shall cooperate with BCBST's representatives, upon reasonable request, to assist with the installation of coverage and provision of ongoing support services to Members. The Agency shall receive notice of rate increases within a reasonable time period before such increases go into effect. The Agency must be available to respond to Members' and Employers' questions regarding the CoverTN program.

G. Limitation of Authority. The Agency agrees to the following limitations on its authority:

1. the Agency shall have no authority to bind BCBST to provide Coverage, alter BCBST's established Premiums, or modify the terms, conditions, limitations or exclusions of BCBST's Coverage, without the prior express written consent of an Officer of BCBST;
2. BCBST shall have the sole discretionary authority to determine the conditions upon which it will offer Coverage to any prospective Members; and
3. this Agreement shall not grant the Agency an exclusive or preferential right to represent BCBST, or solicit Members in a geographical area or to solicit any specified Member(s), except as otherwise specifically provided in this Agreement or an Addendum.

H. Electronic Marketing. Should the Agency elect to promote BCBST offerings via the Internet, the Agency agrees that it shall:

1. Maintain a state-of-the-art technological infrastructure capable of supporting the needs of users purchasing BCBST offerings. Such infrastructure shall include, but not be limited to:
 - a. Seamless connectivity to an up-to-date and accurate online provider directory; and
 - b. Consumer accessibility to the Agency's website at least 98% of the time.
2. Be responsible for the following administrative and customer services:
 - a. Provide licensed professional insurance agents to respond to information requests of site users; and
 - b. Provide graphical integration, website design, web interface(s) and ongoing platform support.

I. Notice of Complaint or Legal Action. The Agency shall immediately notify BCBST of receipt of any customer complaint or if it is served any paper or has knowledge of any legal or administrative action, investigation or proceeding against BCBST or which involves BCBST.

4. BCBST'S DUTIES

A. CoverTN Product. BCBST shall provide the Agency with the CoverTN product offerings. BCBST shall provide appropriate fulfillment, billing, claims processing and adjudication, and customer service to Members.

B. Website Support. In the event the Agency elects to promote BCBST offerings via the Internet, BCBST shall provide the Agency with the reasonably necessary resources to allow the Agency to post BCBST offerings on the Agency's website. These resources and materials shall not be amended or altered by the Agency, shall only be used in connection with the Agency's activities on behalf of BCBST pursuant to this Agreement, shall remain the property of BCBST, and shall promptly be accounted for or returned to that Affiliate upon request or upon the termination of this Agreement.

- C. Rights Reserved By BCBST.** BCBST specifically reserves the right, without the approval of the Agency:
1. To cease doing business, or discontinue or withdraw from sale any BCBST product anywhere.
 2. To modify, change, or amend any certificate, contract or premium rate issued in conjunction with any of its products.
 3. To determine all terms, conditions or limitations of any certificate or contract issued in conjunction with any of its products and to modify or change the terms under which any product may be sold, except as otherwise provided in this Agreement.
- D. Underwriting Guidelines.** BCBST shall furnish the Agency with a copy of its Underwriting Standards, which may be amended at any time during the term of this Agreement. BCBST shall provide Agency with any changes to its Underwriting Standards.
- E. Employer Participation Agreements and Participant Enrollment Forms.** BCBST will send Employer Participation Agreements and Participant Enrollment forms directly to employers once the State determines the Employer's eligibility to participate in the CoverTN program.
- F. Billing of Groups.** BCBST shall bill for any Premiums payable for Coverage and pay Commissions to the Agency pursuant to section 5 below, following receipt of such payments from the Member, Employer and State, where applicable.
- G. Prompt Review of Materials.** BCBST shall review any sales or solicitation materials that make reference to BCBST or the CoverTN program. The Agency shall not utilize such materials without BCBST's prior written approval, which shall not be unreasonably withheld by BCBST. BCBST shall also prepare or assist the Agency in preparing proposals for submission to prospective Members.

5. COMMISSION PAYMENTS

- A. Commissions.** BCBST shall bill and collect all Premiums from a Member. The Agency shall not, under any circumstances, bill, charge or collect Premiums or any other charges from Member on behalf of BCBST, unless expressly authorized in writing to do so by an Officer of BCBST. The Agency may collect a One Hundred (\$100) Dollar initial remittance from the employer for each Member Enrollment Form submitted without violating this provision. Commissions shall not be due or payable pursuant to this Agreement, until BCBST has received and accepted the Premium payment from a Member. Commissions payable by BCBST shall be subject to adjustment in accordance with subsection 5(C), below.
- B. Payment of Commissions.** Commissions payable pursuant to this Agreement shall be calculated and paid in accordance with the applicable Addendum, within forty five (45) days after BCBST accepts payment of the Premium from a Member. BCBST shall not be obligated to pay a Commission that would violate applicable Laws. BCBST shall pay Commissions to the Agency, in accordance with the terms of this Agreement, provided:
1. the Member's Coverage remains in effect and the Member pays required Premiums; and
 2. such payments are not prohibited by applicable Laws.
- C. Adjustment of Commissions.** BCBST shall adjust Commission payments to Agency as follows:
1. BCBST shall adjust the Commissions payable to the Agency to reflect any retroactive adjustment of the Premium paid by Members.
 2. BCBST may deduct the amount of any refund of Premiums or other indebtedness owed by the Agency to BCBST pursuant to this Agreement from future Commissions payable to the Agency, as a first lien against such payments to the Agency.
 3. BCBST reserves the right to require the Agency to repay the amount of any indebtedness, upon reasonable notice, as an alternative to offsetting the outstanding indebtedness against future Commission payments to the Agency.

4. BCBST may modify the commission structure with a replacement Commission Addendum, upon providing the Agency sixty (60) days advance written notice of the modification.

6. RECORDS

The Agency shall maintain complete and accurate business records concerning its activities pursuant to this Agreement, in accordance with BCBST's record retention requirements. BCBST shall have the right to review and copy records directly related to the Agency's activities pursuant to this Agreement, at its expense, upon reasonable advance notice, at the Agency's offices, during its normal business hours.

This section shall survive the termination of this Agreement.

7. MARKETING, ADVERTISING, AND PUBLICITY

A. In General. BCBST and the Agency shall mutually agree on any BCBST offerings portfolio that the Agency markets.

1. The Agency will be responsible for all advertising and marketing content and materials that are for the express purpose of marketing and/or advertising the Agency ("generic materials").
2. Advertising and marketing materials that make specific references to BCBST offerings or the CoverTN program will not be used without the prior written consent of BCBST.
3. Such materials shall not violate BCBST's guidelines regarding branding or health insurance market conduct.
4. All material, generic and specific, will be fully compliant with all applicable Department of Commerce and Insurance and other regulatory authority rules and regulations regarding the advertising and marketing of insurance products, via the Internet or in general.

B. Announcements or Press Releases. Except as may be required by law, neither party hereto shall, without the prior consent of the other, which consent shall not be unreasonably withheld or delayed, make any public announcement or issue any press release with respect to this Agreement. Prior to making any public disclosures required by applicable law, the disclosing party shall consult with the other to the extent feasible, as to the content and timing of such public announcement or press release.

8. CONFIDENTIALITY

The Agency acknowledges that BCBST may furnish information identified as trade secret, proprietary or confidential information ("Confidential Information") to it during the term of this Agreement. The Agency shall not disclose such Confidential Information to third parties without the written consent of an Officer of BCBST. The Agency shall promptly return all originals and copies of such Confidential Information to BCBST upon request or upon the termination of this Agreement. Both parties recognize that certain technologies, innovations, and processes may be considered as proprietary trade secrets and agree to make no disclosures of these technologies, innovations or processes except as required by applicable Laws, or pursuant to a Court Order.

The Agency shall only utilize Confidential Information as necessary or appropriate to perform its duties pursuant to this Agreement, and shall not otherwise utilize such Confidential Information for its benefit or the benefit of any third party. The Agency may disclose Confidential Information to its Producing Agents, employees and other representatives (its "Representatives") as necessary or convenient to permit the Agency to perform its duties pursuant to this Agreement, but only after informing those Representatives of their obligation to maintain the confidentiality of such Confidential Information. The Agency shall be responsible if its Representatives breach this section.

The parties agree that Confidential Information does not include or encompass information which is generally available to the public other than as a result of breach of this Agreement, nor does it include either of the following: information disclosed pursuant to a court or governmental agency order; or information required to be disclosed pursuant to applicable Laws. The Agency may disclose Confidential Information to third parties only with BCBST's written consent or if compelled to do so by a subpoena, court order or other legally binding order, but only after providing BCBST with notice

of and an opportunity to challenge such efforts to compel disclosure of that Confidential Information. This non-disclosure obligation shall not be applicable to any Confidential Information that is or becomes publicly available other than as a result of the Agency's breach of this non-disclosure obligation.

The Agency acknowledges that any actual or threatened violation of this section may cause irreparable damages to BCBST that are inadequately compensable by damages or other legal remedies. In the event of any such breach or threatened breach of this section, BCBST may seek and obtain injunctive relief, specific performance, or any other available legal or equitable remedies.

Each party may elect, by a separate Addendum, to license technologies, innovations, or processes for use by the other. Technologies, innovations, or processes developed by either party during the course of this Agreement for use in the sale of products offered through this Agreement shall be considered as joint property of the parties and may not be disclosed to or licensed for use by any third party without the express written consent of both BCBST and the Agency.

Agency agrees to comply with applicable provisions of the Health Insurance Portability and Accountability Act ("HIPAA"), including the HIPAA privacy regulation, 45 CFR 160 – 164 and the Business Associate Addendum of this Agreement (the "Business Associate Addendum"). The Business Associate Addendum shall supercede this subsection if it is determined that there is a conflict between the Business Associate Addendum and any provision of this Agreement.

The Business Associate Addendum shall survive the termination of this Agreement.

This section shall survive the termination of this Agreement.

9. INDEPENDENT CONTRACTOR RELATIONSHIP

The Agency and its Representatives are independent contractors of BCBST. This Agreement shall not be construed to create an employer-employee or joint venture relationship among those parties.

The Agency shall obtain and maintain all insurance coverages, including, but not limited to, errors and omissions, workers' compensation and comprehensive general liability coverages, in amounts that are reasonably acceptable to BCBST, and that are necessary or appropriate to insure the Agency against liability or to comply with applicable Laws. The Agency agrees to submit evidence of such coverages to BCBST upon request.

The Agency shall also be responsible for paying all wages, benefits, license fees and taxes for itself and its Representatives related to the provision of services to BCBST pursuant to this Agreement.

On behalf of itself and its participants, Agency hereby acknowledges its understanding that this Agreement constitutes a contract solely between Agency and BCBST, which is an independent corporation operating under a license from the BlueCross and BlueShield Association, an association of independent BlueCross and BlueShield Plans (the "Association") permitting BCBST to use the BlueCross and BlueShield Service Marks in the State of Tennessee, and that BCBST is not contracting as the agent of the Association.

Agency further acknowledges and agrees that it has not entered into this Agreement based upon representations by any person other than BCBST and that no person, entity, or organization other than BCBST shall be held accountable or liable to Agency for any of BCBST's obligations created under this Agreement. This paragraph shall not create any additional obligations whatsoever on the part of BCBST other than those obligations created under other provisions of this Agreement.

Neither party shall have imputed, constructive or vicarious liability for any loss or expense, including attorneys' fees, incurred in the settlement or satisfaction of any claim, action or judgment proximately resulting from any action or failure to act by the other party, its directors, officers, employees, agents or contractors. The responsible party shall indemnify and hold the other party harmless against any and all vicarious losses or expenses related to such claims, actions or judgments; provided the indemnifying party has received timely notice of and been given the opportunity to defend against such actions.

This section shall survive the termination of this Agreement.

10. TERM AND TERMINATION OF AGREEMENT

- A. Termination.** This Agreement or an Addendum may be terminated:
1. immediately upon written notice if either party loses any license which is required to perform its duties pursuant to this Agreement or an Addendum, or becomes insolvent, or is charged with a violation of any Laws or with an act of moral turpitude;
 2. upon thirty (30) days advance written notice if either party otherwise breaches this Agreement and does not cure that breach within thirty (30) days of being notified of such alleged breach by the non-breaching party; or
 3. without cause upon sixty (60) days advance written notice to the other party.
- B. Commissions on Termination.** Upon the termination of this Agreement, the Commissions payable to the Agency shall be limited to the Commissions payable on Premiums from Members that:
1. have been paid; or
 2. are owed and subsequently paid to BCBST by a Member.
- C. Cooperation after Termination.** The parties agree to cooperate in good faith to promptly resolve any outstanding administrative or payment issues following the termination of this Agreement.
- D. Members.** The parties acknowledge that they each have a valuable interest in their relationship with Members. BCBST reserves the right to solicit Members to continue coverage after termination of this Agreement and may, in the course of solicitation, also request that a new agent of record be selected.
- E.** This Agreement may also be terminated at any time immediately:
1. If while the Agency is conducting business on BCBST's behalf, either party shall fails to comply with the laws or regulations governing the insurance business in Tennessee;
 2. If the Agency induces any Member to discontinue payments, cancel, or fail to renew its policy;
 3. If the Agency shall makes false or misleading statements about BCBST or BCBST products;
 4. If the Agency fails to remit BCBST funds to BCBST or subjects BCBST to any liability (except for that incurred by BCBST under a properly issued policy or contract) or commits any fraud hereunder.
- Termination pursuant to subsections (1)-(4) voids any obligation by BCBST to provide future compensation under the terms of this Agreement.

11. MISCELLANEOUS

- A. Binding Nature of Agreement.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.
- B. Entire Agreement.** This Agreement represents the entire agreement between the parties related to its subject matter. All prior agreements, negotiations, understandings, conversations, and communications, if any, shall be of no force and effect other than as expressly set forth in this Agreement.
- C. Governing Law.** This Agreement shall be governed by and construed in accordance with applicable Federal and Tennessee Laws.
- D. Amendments.** This Agreement, or any part, article, section, exhibit or Addendum hereto, may be amended, altered or modified only in writing as duly executed by an Officer of BCBST and the Agency.

- E. Captions.** The captions appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such paragraph(s).
- F. Construction.** This Agreement shall be construed without regard to the party that drafted it. Any ambiguity shall not be interpreted against either party but shall, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.
- G. Assignment.** The Agency shall not assign its rights or delegate its obligations pursuant to this Agreement to a third party without the prior written consent of BCBST, which shall not be unreasonably withheld.
- H. Notices.** Any notice required pursuant to the terms of this Agreement shall either be hand delivered or given in writing, sent by certified or overnight mail, return receipt requested, to the address listed on the signature page of this Agreement or such other address a party may designate, in writing, during the term of this Agreement.
- I. Disputes.** Any dispute related to this Agreement that the parties are unable to resolve through informal discussion within thirty (30) days after the initiation of that dispute, shall be resolved through binding arbitration or some other mutually acceptable dispute resolution procedure (e.g., mediation). Such arbitration or mediation shall be conducted by a dispute resolution agency that is selected and agreed upon by the parties and shall be conducted in Chattanooga, Tennessee.

The arbitrator shall be required to issue a written decision explaining the basis of that decision and the manner of calculating any award. The arbitrator may not award punitive or exemplary damages and must base the decision on the terms of this Agreement and applicable Laws. That decision shall be a final decision and may be entered and enforced in any State or Federal court. It may only be vacated, modified or corrected for the reasons set forth in section 10 or 11 of the United States Arbitration Act, if the award contains material errors of law or is arbitrary and capricious.

- J. Severability.** In the event that any part of any provision of this Agreement is rendered invalid or unenforceable under applicable Laws, or is declared null and void by any court of competent jurisdiction, such part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of such provision or the remaining parts of the Agreement.
- K. Execution.** To facilitate execution, this Agreement may be executed in one or more counterparts, each of which shall be considered an original, and which collectively shall constitute the Agreement.
- L. Signature.** A scanned, imaged, electronic, photocopy or stamp of the signatures hereunder shall have the same force and effect as an originally executed signature.
- M. Other Acceptable Forms of this Document.** The following shall have the same legal effect as an original: facsimile copy, imaged copy, and/or an electronic copy.

IN WITNESS WHEREOF, the parties have executed this Agreement intending to be bound on and after the _____ day of _____, ____ (to be completed by BCBST).

**BlueCross BlueShield
of Tennessee, Inc.:**

By: _____

Title: _____

Printed Name and Title:

Address/Telephone:

801 Pine Street
Chattanooga, TN 37402
(423) 755-5600

Agency:

By: _____

Title: _____

Printed Name and Title:

Tax I.D.#: _____

Address/Telephone:



of Tennessee
plans for better health. plans for a better life.™

801 Pine Street
Chattanooga, TN 37402