

## Individual Products Agency Agreement

This Individual Products Agency Agreement (hereinafter referred to as the “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”).

### Recitals

WHEREAS, BCBST is non-profit corporation which desires to contract with and appoint the Agency to market, sell and distribute certain health insurance products and services of BCBST 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; and

WHEREAS, the Agency desires to contract with and be appointed by BCBST to market, sell and distribute BCBST’s offerings 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:

### Definitions

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

“**Addendum**” is the document executed by BCBST and the Agency, which is incorporated into this Agreement by reference, and sets forth the terms and conditions upon which the Agency will solicit and be compensated for placing Business with BCBST, and otherwise amends the Agreement.

“**Agency Account**” is a Member whose Contract with BCBST is currently in force and was placed through the Agency.

“**Application**” is the document completed by an individual for the issuance of a Contract from BCBST.

“**Business**” shall be classified as either:

1. “New Business” which are Contracts with individuals that have not previously been covered by BCBST; or whose coverage from BCBST has lapsed, been canceled, or expired for a period of thirty (30) days or more; or
2. “Renewal Business” which is not New Business.

“**Commission**” is the compensation paid to the Agency in accordance with the terms of the applicable Addendum.

“**Contract**” is the agreement between BCBST and the individual.

“**Coverage**” is the Contract and other documents that describe the covered benefits that BCBST has agreed to provide to Members.

“**Laws**” are applicable State or Federal statutes, regulations and other requirements.

“**Member**” is an individual who is enrolled for Coverage under a Contract.

“**Officer**” is a person so designated by BCBST’s Board of Directors, or his/her designee.

“**Premiums**” are the periodic payments required to keep a Contract in force.

“**Producing Agent**” is a licensed agent who is employed by or contracts with the Agency and has agreed that any Commissions payable pursuant to this Agreement shall be paid to the Agency.

“**Underwriting Standards**” are policies established and distributed by BCBST specifying which individuals are eligible to apply for Coverage.

## Agency Duties and Performance Obligations

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 by regulatory agencies; (3) termination of the Agency's or a Producing Agent's authority to represent other insurers or health maintenance organization; (4) cancellation, material modification or non-renewal of the Agency's or a Producing Agent's liability insurance coverage or fidelity bonds; or (5) other matters which adversely affect the Agency's or Producing Agent's ability to perform his/her duties pursuant to this Agreement.

If BCBST elects to contract with the 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 and that its representation of BCBST will not conflict with its obligations to, or interfere with the rights of, any third parties. 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 Individuals.** The Agency shall exercise its best efforts to identify and solicit eligible individuals to apply for Coverage from BCBST during the term of this Agreement. The Agency shall make reasonable efforts to assure that prospective individuals are eligible for Coverage in accordance with BCBST's Underwriting Standards. BCBST shall furnish the Agency with a copy of its Underwriting Standards, which may be

amended upon notice to the Agency during the term of this Agreement. BCBST shall provide the Agency with a reasonable supply of individual Application forms and other solicitation materials necessary to accurately describe the Coverage offered to prospective individuals.

C. **Solicitation Materials.** The Agency shall not use the name, service marks or symbols or otherwise make reference to BCBST, without the express written consent of an Officer of BCBST. The Agency shall not use the name, service marks or symbols or otherwise make reference to BCBST on any Agency Website without the express written consent of an Officer of BCBST.

D. **Modification and use of Materials.** Underwriting Standards, Applications, solicitation materials or proposals provided by BCBST 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 BCBST upon request or upon the termination of this Agreement.

E. **Submission of Applications.** The Agency shall make a good faith effort to submit Applications to BCBST within a reasonable time period prior to the effective date of the Contract. BCBST may postpone the effective date of the Contract if the Agency does not submit a fully completed Application prior to the proposed effective date of a Contract.

The Agency shall not collect any application fees, deposits, or Premiums, other than the initial Premium, from applicants, unless expressly authorized to do so, in writing, signed by an Officer of BCBST. BCBST shall bill individuals for any Premiums payable for their Coverages and pay Commissions to the Agency pursuant to the section of this Agreement entitled "Commission Payments", below, following receipt of such payment.

F. **Service Responsibilities.** The Agency shall cooperate with representatives of BCBST, upon reasonable request, to assist with the installation

of coverage and provision of ongoing support services to Agency Accounts

administrative action, investigation or proceeding against BCBST or which involves BCBST.

**G. Limitation of Authority.** 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. BCBST shall have the sole discretionary authority to either accept or reject an Application and to establish the terms and conditions upon which it will offer Coverage to any prospective individuals. This Agreement shall not grant the Agency an exclusive or preferential right to represent BCBST, or solicit individuals in a geographical area or to solicit any specified individual or category of individuals, 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

## **BCBST Duties and Performance Obligations**

**A. Individual Products.** BCBST shall provide the Agency with the individual product offerings available under the BCBST brand. BCBST shall provide underwriting, fulfillment, billing, claims processing, adjudication and customer service.

**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 BCBST 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 in the state of Tennessee.
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.

## **Books and Records**

**A. Maintenance.** The Agency shall maintain complete and accurate business records concerning its activities pursuant to this Agreement, in accordance with its customary business practices. 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.

**B. Record Ownership.** In the event this Agreement is terminated, the Agency's records shall remain the property of the Agency and left in the Agency's undisputed possession. In the event this Agreement is terminated, then BCBST may continue to service BCBST customers directly.

**C. Purchasers.** Individuals who purchase a BCBST offering from an Agency are neither the property of BCBST nor the property of the Agency. If an individual purchases a BCBST offering, the Agency will be considered to be the agent of such individual for that particular transaction, and the individual shall be a policyholder of BCBST. This Agreement shall not prohibit either the Agency or BCBST from soliciting said individual for other products. The fact that the Agency may have offerings from other carriers shall not be considered to be "solicitation" by the Agency.

### **Commission Payments**

**A. Commissions.** BCBST shall bill and collect all Premiums, other than the initial Premium, from an Agency Account. The Agency shall not, under any circumstances, bill, charge or collect Premiums, other than the initial Premium, or any other charges from Members, unless expressly authorized in writing to do so by an Officer of BCBST. Commissions shall not be due or payable pursuant to this Agreement, until BCBST has received and accepted the Premium payment from a Member pursuant to the individual Contract. Commissions payable by BCBST shall be subject to adjustment in accordance with subsection 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.

**C. Adjustment of Commissions.** BCBST shall adjust the Commissions payable to the Agency to reflect any retroactive adjustment of the Premium paid by Agency Accounts in accordance with the terms of their Contract. BCBST may deduct the amount of any refund of Premiums or other indebtedness owed to BCBST pursuant to this Agreement from future Commissions payable to the Agency by BCBST, as a first lien against such payments to the Agency.

BCBST may require the Agency to repay the amount of the indebtedness, upon reasonable notice, as an alternative to offsetting the outstanding indebtedness against future Commission payments to the Agency.

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

**D. Continuation of Commission.** BCBST shall pay Commissions to the Agency, in accordance with the terms of this Agreement, provided: (1) the Contract remains in effect and the Member pays required Premiums pursuant to that Contract; (2) the Agency remains appointed by BCBST; and (3) such payments are not prohibited by applicable Laws.

### **Marketing, Advertising and Publicity**

**A. In General.** BCBST and the Agency shall mutually agree on any BCBST offerings portfolio which 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 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.

### **Confidentiality, Proprietary Information, and Technology**

- A. **Nondisclosure.** 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 agrees that it shall not disclose such Confidential Information to third parties without the written consent of an Officer of BCBST. The Agency agrees to 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, regulations, or pursuant to a court order.
- B. **Exceptions.** It is understood and agreed between the parties 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.
- C. **Use.** The Agency shall only utilize Confidential Information as necessary or appropriate to perform its duties pursuant to this Agreement. The Agency 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 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 of the Agreement.
- D. **Disclosure to Third Parties.** 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 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.
- E. **Damages.** 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 equitable remedies available to it.
- F. **Joint Technologies.** Each party may elect, by a separate Attachment, 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.

G. **Health Insurance Portability and Accountability Act (“HIPAA”).** 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.

H. **Survival.** This section shall survive the termination of this Agreement.

### Termination

A. 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 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. Upon the termination of this Agreement, the Commissions payable to the Agency shall be limited to the Commissions payable on Premiums that:

1. have been paid; or
2. are owed prior to termination and subsequently paid to BCBST.

C. The parties agree to cooperate in good faith to promptly resolve any outstanding administrative

or payment issues following the termination of this Agreement.

D. The parties acknowledge that they each have a valuable interest in their relationship with Agency Accounts and Members. BCBST reserves the right to solicit Agency Accounts and Members to continue coverage after termination of this Agreement.

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 fails to comply with the Laws or regulations governing the insurance business in Tennessee;
2. If the Agency makes false or misleading statements about BCBST or BCBST products;
3. If the Agency induces any policyholder or BCBST Member to discontinue payments, cancel, or fail to renew his/her policy;
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 E 1-4 voids any obligation by BCBST to provide future compensation under the terms of this Agreement.

### Independent Contractor Relationship

A. **No Employer-Employee 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.

B. **Insurance Coverage.** 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.

C. **No Liability for Acts of Other Party.** 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 judgement 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 judgements; provided the indemnifying party has received timely notice of and been given the opportunity to defend against such actions.

D. **Survival.** This section shall survive the termination of this Agreement.

### **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, that relate to the sale of individual products by the Agency on behalf of BCBST are merged into this Agreement and shall be of no force and effect other than as expressly set forth in this Agreement.

C. **Severability.** The provisions of this Agreement are severable. If any provision or part of this Agreement is held by any court or other official body of competent jurisdiction to be invalid or unenforceable for any reason, the remaining provisions or parts hereof shall continue to be given effect and shall bind the parties hereto unless the unenforceability or illegality has the consequence of substantially altering the respective rights and obligations of the parties.

D. **Governing Law.** This Agreement shall be governed by and construed in accordance with applicable Tennessee Laws.

E. **Execution in Counterparts.** This Agreement may be executed by the parties hereto signing the same instrument, or by each party hereto signing a separate counterpart, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The parties agree that documents executed by facsimile shall be acceptable in this transaction, and the signatures thereof shall have the same force and effect as original signatures.

F. **Amendments.** This Agreement may only be amended with the prior written consent of the parties.

G. **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).

H. **Construction.** This Agreement shall be constructed 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.

I. **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.

J. **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 as a party may designate, in writing, during the term of this Agreement.

K. **Other Acceptable Forms of this Document.** The following shall have the same legal effect as an original: facsimile copy, imaged copy, scanned copy, and/or an electronic version.

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. **Disputes.** Any dispute related to this Agreement, which 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 the American Arbitration Association in Chattanooga, Tennessee, or another mutually agreed upon dispute resolution agency.

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 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.

IN WITNESS WHEREOF, the parties have executed this Agreement intending to be bound on and after the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (to be completed by BCBST)  
(Month) (Year)

**BlueCross BlueShield of Tennessee, Inc.**

**Agency:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Printed Name and Title:

Printed Name and Title:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Tax I.D. #: \_\_\_\_\_

Address/Telephone:  
801 Pine Street  
Chattanooga, TN 37402  
(423) 755-5600

Address/Telephone: \_\_\_\_\_



**BlueCross BlueShield  
of Tennessee**

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[www.bcbst.com](http://www.bcbst.com)

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