

## Privacy Addendum Agency Agreement with Business Associate

This addendum (“Addendum”) is effective upon execution and amends and is made part of the Agency Agreement (“Agreement”) by and between the agency listed on the signature page of this Addendum (“Business Associate”) and BlueCross BlueShield of Tennessee, Inc. (“BCBST”).

BCBST and Business Associate mutually agree to modify Agreement to incorporate the terms of this Addendum to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Parts 160-64) (the “Act”). If there is any conflict between the terms of the Agreement and that Act, the Agreement shall be construed in accordance with the Act.

### I. Privacy of Protected Health Information.

**A. Permitted Uses and Disclosures.** The Business Associate is permitted or required to use or disclose Protected Health Information (“PHI”) it creates or receives for or from BCBST or to request PHI on BCBST’s behalf only as follows:

1. *Functions and Activities on BCBST’s Behalf.* Except as otherwise limited in this Addendum, the Business Associate is permitted to request the minimum necessary PHI on BCBST’s behalf, and to use and to disclose the minimum necessary PHI to perform functions, activities, or services for or on behalf of BCBST, as specified in the Agreement.
  - a. For the purposes of marketing BCBST’s health related products; and
  - b. For customer service as set forth in the Agreement.
2. *Business Associate’s Operations.* The Business Associate may use the minimum necessary PHI for the Business Associate’s proper management and administration or to carry out the Business Associate’s legal responsibilities. The Business Associate may disclose the minimum necessary PHI required for the Business Associate’s proper management and administration or to carry out the Business Associate’s legal responsibilities only if:
  - a. That disclosure is required by law; or
  - b. The Business Associate will require any of its subcontractors, agents or other parties to whom it is permitted to disclose PHI, in accordance with this Addendum or by BCBST, in writing, (the “Receiving Party”) to execute a written contract, either using the form agreement available from BCBST or upon substantially similar terms and conditions, which provides reasonable assurance that the Receiving Party will:
    - (1) Hold such PHI in confidence and use or further disclose it only for the purpose for which the Business Associate disclosed it to the Receiving Party or as required by law; and
    - (2) Promptly notify the Business Associate (who will in turn promptly notify BCBST) if the Receiving Party becomes aware of any breach of the confidentiality of such PHI.

**B. Prohibition on Unauthorized Use or Disclosure.** The Business Associate will neither use nor disclose PHI except as permitted or required by this Addendum, as otherwise permitted in writing by BCBST, or as required by law. This Addendum does not authorize the Business Associate to use or disclose PHI in a manner that would violate the requirements of the Act if done by BCBST, except as set forth in Section I.A (2).

**C. Compliance with Privacy Rules.** The Business Associate will comply with:

1. 45 Code of Federal Regulations Parts 160-64 as applicable to a “Business Associate” of a “covered entity”;
2. Applicable State laws that are not preempted pursuant to 45 Code of Federal Regulations Part 160, Subpart B.

**D. Information Safeguards.** The Business Associate will develop, implement, maintain and use appropriate administrative, technical and physical safeguards, in compliance with Social Security Act § 1173(d) (42 U.S.C. § 1320d-2(d)), 45 Code of Federal Regulation § 164.530(c) and any other implementing regulations issued by the U.S.

Department of Health and Human Services. The safeguards will be designed to preserve the integrity and confidentiality of, and to prevent intentional or unintentional non-permitted or violating use or disclosure of PHI created or received for or from BCBST. The Business Associate will document and keep such information safeguards current.

## II. Compliance with Standard Transactions.

If the Business Associate conducts Standard Transactions for or on behalf of BCBST, the Business Associate will comply, and will require any subcontractor or agent involved with the conduct of such Standard Transactions to comply, with each applicable requirement of 45 Code of Federal Regulations Part 162. The Business Associate will not enter into, or permit its subcontractors or agents to enter into, any trading partner agreement in connection with the conduct of Standard Transactions for or on behalf of BCBST that:

- A. Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;
- B. Adds any data elements or segments to the maximum defined data set;
- C. Uses any code or data element that is marked “not used” in the Standard Transaction’s implementation specification or is not in the Standard Transaction’s implementation specification; or
- D. Changes the meaning or intent of the Standard Transaction’s implementation specification.

## III.Chain of Trust.

Security of electronically exchanged data: If BCBST and Business Associate exchange data electronically, BCBST and Business Associate will comply and will require any subcontractor or agent involved in the electronic exchange of data to comply with the following in addition to all other provisions of this Addendum:

- A. BCBST and Business Associate shall provide and require their respective agents and subcontractors to provide security for all data that is electronically exchanged between BCBST and Business Associate.
- B. BCBST and Business Associate shall implement and maintain, and shall require their respective agents and subcontractors to implement and maintain administrative, technical and physical safeguards to protect the security, integrity and

confidentiality of data electronically exchanged between BCBST and Business Associate, including access to data as provided herein.

- C. The Business Associate shall report any security incident of which it becomes aware to BCBST within seven (7) days of its knowledge of said security incident.

## IV. Individual Rights.

- A. Access.** The Business Associate will make available to BCBST or, at BCBST’s direction, to the individual (or the individual’s personal representative) copies of any PHI about that individual that is in the Business Associate’s custody or control, for inspection and obtaining, within 30 days after receiving BCBST’s request that it make such information available, so BCBST can satisfy its access obligations under 45 CFR Section 164.524.
- B. Amendment.** Upon receipt of notice from BCBST, the Business Associate will promptly amend or permit BCBST to amend any portion of the PHI in the Business Associate’s custody or control, so BCBST can satisfy its amendment obligations under 45 Code of Federal Regulations § 164.526.
- C. Disclosure Accounting.** The Business Associate shall make disclosure information available to BCBST, upon request, as required by 45 Code of Federal Regulations, for the 6 years preceding BCBST’s request for that disclosure information (except the Business Associate will not be required to disclose information for disclosures occurring before April 14, 2003).
- D. Inspection of Books and Records.** The Business Associate will make its internal practices, books, and records, relating to its use and disclosure of PHI available to BCBST and to the U.S. Department of Health and Human Services to determine compliance with 45 Code of Federal Regulations Parts 160-64 or this Addendum.
- E. Confidential Communications.** The Business Associate will comply with any agreements made by BCBST to confidentially communicate with enrollees pursuant to 45 C.F.R. § 164.522(b) by communicating with those enrollees by using agreed upon alternative means or alternative locations.

## V. Breach of Privacy Obligations.

- A. Reporting.** The Business Associate will report any use or disclosure of PHI not permitted by this Addendum or in writing by BCBST to BCBST’s Privacy Office within two business days

after the Business Associate learns of such non-permitted or violating use or disclosure of that PHI. Business Associate's report will at least:

1. Identify the nature of the non-permitted use or disclosure;
2. Identify the PHI used or disclosed;
3. Identify who made the non-permitted use or disclosure and who received the non-permitted or violating disclosure;
4. Identify what corrective action the Business Associate took or will take to prevent further non-permitted uses or disclosures;
5. Identify what the Business Associate did or will do to mitigate any deleterious effect of the non-permitted use or disclosure; and
6. Provide such other information, including a written report, as BCBST may reasonably request.

#### **B. Termination of Agreement.**

1. **Right to Terminate for Breach.** BCBST may terminate Agreement if it determines, in its sole discretion, that the Business Associate has materially breached any provision of this Addendum. BCBST shall provide a reasonable opportunity for Business Associate to cure the breach and may reasonably extend the time to cure. BCBST may require that Business Associate prepare a corrective action plan to cure the breach if Business Associate requests that the time to cure be extended. BCBST may exercise this right to terminate the Agreement by providing the Business Associate with written notice of termination, describing the breach of the Addendum that provides the basis for such termination. Any such termination will be effective immediately or at such other date specified in BCBST's notice of termination.
2. **Right to Terminate not Feasible.** If it is not feasible for BCBST and Business Associate to terminate this Agreement or the underlying Agreement, BCBST will report the breach to the Secretary of Health and Human Services, as required by the Privacy regulations.
3. **Obligations upon Termination.**
  - a. **Return or Destruction.** Upon termination, cancellation, expiration or other conclusion of the Agreement, the Business Associate will, if feasible, at BCBST's direction, either return or destroy all PHI in whatever form or medium (including any electronic medium) and all copies of any data or

compilations derived from and allowing identification of any individual who is a subject of that PHI. The Business Associate will complete such return or destruction as promptly as possible, but not later than 30 days after the effective date of the termination, cancellation, expiration or other conclusion of the Agreement. The Business Associate will identify any PHI that cannot feasibly be returned to BCBST or destroyed. Within such 30 days after the effective date of the termination, cancellation, expiration or other conclusion of the Agreement, the Business Associate will: (1) certify on oath in writing to BCBST that such return or destruction has been completed; (2) identify any PHI which can not be feasibly be returned or destroyed; and (3) certify that it will only use or disclose such PHI for those purposes that make its return or destruction infeasible.

- b. **Continuing Privacy Obligation.** The Business Associate's obligation to protect the privacy of the PHI that it created or received for or from BCBST will be continuous and survive termination, cancellation, expiration or other conclusion of the Agreement.
- c. **Other Obligations and Rights.** The Business Associate's other obligations and rights and BCBST's obligations and rights upon termination, cancellation, expiration or other conclusion of the Agreement will be those set out in the Agreement.

**C. Communications.** Member requests or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below, or to such other party, facsimile number, or address as may be hereafter specified by written notice.

BlueCross BlueShield of Tennessee, Inc.  
Privacy Office 8P  
801 Pine Street  
Chattanooga, TN 37402  
Telephone: 888-455-3824  
Fax: 423-535-3520

Member requests or other communications shall be considered effectively given as of the date of hand delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of

mailing; or on the day the facsimile transmission is received mechanically by the facsimile machine at the receiving location and receipt is verbally confirmed by the sender.

## VI. General Provisions.

**A. Definitions.** The capitalized term “PHI or Protected Health Information” shall have the meaning set forth in 45 C.F.R. § 164.501, limited to the information created or received by the Business Associate from or on behalf of BCBST or another business associate of BCBST. The capitalized term “Standard Transactions” shall have the meaning set forth in 45 C.F.R. § 162.103.

**B. Amendment to Agreement.** Upon the effective date of any final regulation or amendment to final regulations promulgated by the U.S. Department of Health and Human Services with respect to PHI or Standard Transactions, this Addendum and the Agreement of which it is part will be automatically amended so the obligations of the Business Associate remain in compliance with those amended regulations. Any other amendments to this Addendum must be in writing and executed by both parties.

**C. No Private Rights of Action.** The Privacy regulations do not permit a private right of action; therefore, nothing in this Agreement should be construed to create a private right of action or any third party beneficiary rights.

## VII. Conflicts.

The terms and conditions of this Addendum will override and control any conflicting term or condition of the Agreement. All nonconflicting terms and conditions of the Agreement remain in full force and effect. The requirements of 45 C.F.R. 160-164 will override and control any conflicting term or condition of this Addendum.

## VIII. Other Acceptable Forms of this Document.

In the event an original of this Addendum cannot be located, the following shall have the same legal effect as an original: facsimile copy, imaged copy, scanned copy and/or an electronic version.

**IN WITNESS WHEREOF**, BCBST and the Business Associate execute this Addendum to be effective on the last date written below.

**BlueCross BlueShield  
Of Tennessee, Inc.**

**Business Associate**

By: Joan C. Harp  
Printed Name: Joan Harp

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

Title: Senior Vice President, Sales & Marketing  
Commercial Market Division

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Tax ID/SSN: \_\_\_\_\_



**BlueCross BlueShield  
of Tennessee**

801 Pine Street  
Chattanooga, TN 37402

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

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