



Addendum To Agreement With Business Associate

This addendum (“Addendum”) is effective upon execution, and amends and is made part of the underlying agreement (“Agreement”) by and between the business associate noted on the signature page of this Addendum and BlueCross BlueShield of Tennessee, Inc. (“Organization”).

Organization and Business Associate modify the Agreement to incorporate the terms of this Addendum to comply with the requirements of the implementing regulations of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as modified by the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”). Specifically, the “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164. The HIPAA Privacy Rule is the Standards for Privacy of Individually Identifiable Health Information at 45 CFR, part 160 and part 164, subparts A and E. The HIPAA Security Rule is the HIPAA Security Standards (45 C.F.R. Parts 160 and 164, Subpart C). The HIPAA Breach Notification Rule is the Notification in the Case of Breach of Unsecured Protected Health Information, as set forth at 45 CFR Part 164 Subpart D. Business Associate recognizes and agrees that it is obligated by law to meet the applicable provisions of the HIPAA Rules.

1. Privacy of Protected Health Information

- a) **Permitted Uses and Disclosures** Business Associate is permitted to use and disclose Protected Health Information that it creates or receives on Organization’s behalf or receives from Organization (or another business associate of Organization) and to request Protected Health Information on Organization’s behalf (collectively, “Organization’s Protected Health Information”) only as follows:
 - i. **Functions and Activities on Organization’s Behalf** To perform functions, activities, services, and operations on behalf of Organization, consistent with the Privacy Rule and as specified in Agreement.
 - ii. **Business Associate’s Operations** For Business Associate’s proper management and administration or to carry out Business Associate’s legal responsibilities, provided that, with respect to disclosure of Organization’s Protected Health Information, either
 - A) The disclosure is Required by Law; or
 - B) Business Associate obtains reasonable assurance, evidenced by written contract, from any person or entity to which Business Associate will disclose Organization’s Protected Health Information that the person or entity will:
 1. Hold Organization’s Protected Health Information in confidence and use or further disclose Organization’s Protected Health Information only for the

purpose for which Business Associate disclosed Organization's Protected Health Information to the person or entity or as Required by Law; and

2. Promptly notify Business Associate (who will in turn notify Organization in accordance with Section 4(a) of this Addendum) of any instance of which the person or entity becomes aware in which the confidentiality of Organization's Protected Health Information was breached.
- b) **Minimum Necessary and Limited Data Set** Business Associate's use, disclosure or request of Protected Health Information shall utilize a Limited Data Set if practicable. Otherwise, Business Associate will, in its performance of the functions, activities, services, and operations specified in Section 1(a) above, make reasonable efforts to use, to disclose, and to request of a Covered Entity only the minimum amount of Organization's Protected Health Information reasonably necessary to accomplish the intended purpose of the use, disclosure or request. In addition, Business Associate also agrees to implement and follow appropriate minimum necessary policies in the performance of its obligations under this Addendum.
 - c) **Prohibition on Unauthorized Use or Disclosure** Business Associate will neither use nor disclose Organization's Protected Health Information, except as permitted or required by this Addendum or in writing by Organization or as Required by Law. This Addendum does not authorize Business Associate to use or disclose Organization's Protected Health Information in a manner that will violate the 45 C.F.R. Part 164, Subpart E "Privacy of Individually Identifiable Health Information" ("Privacy Rule") if done by Organization, except as set forth in Section 1(a)(ii) of this Addendum.
 - d) **Sale of PHI** Business Associate shall not directly or indirectly receive remuneration in exchange for PHI except where permitted by the Agreement and consistent with applicable law.
 - e) **Marketing** Business associate shall not directly or indirectly receive payment for any use or disclosure of PHI for marketing purposes except where permitted by the Agreement and consistent with applicable law.
 - f) **Information Safeguards**
 - i. **Privacy of Organization's Protected Health Information** Business Associate will develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to protect the privacy of Organization's Protected Health Information. The safeguards must reasonably protect Organization's Protected Health Information from any intentional or unintentional use or disclosure in violation of the Privacy Rule, 45 C.F.R. Part 164, Subpart E and this Addendum, and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this Addendum.
 - ii. **Security of Organization's Electronic Protected Health Information** Business Associate will develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that Business Associate creates, receives, maintains, or transmits on Organization's behalf as required by the Security Rule, 45 C.F.R. Part 164, Subpart C, Business Associate also shall develop and implement policies and procedures and meet the Security Rule documentation requirements.

g) Subcontractors and Agents Business Associate will require any of its subcontractors and agents, to which Business Associate is permitted by this Addendum or in writing by Organization to disclose Organization's Protected Health Information, to provide reasonable assurance, evidenced by written contract, that such subcontractor or agent will comply with the same privacy and security safeguard obligations with respect to Organization's Protected Health Information that are applicable to Business Associate under this Addendum.

2. Compliance with Transaction Standards If Business Associate conducts in whole or part electronic Transactions on behalf of Organization for which DHHS has established Standards, Business Associate will comply, and will require any subcontractor or agent it involves with the conduct of such Transactions to comply, with each applicable requirement of the Transaction Rule, 45 C.F.R. Part 162. 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 on behalf of Organization that:

- a) Changes the definition, data condition, or use of a data element or segment in a Standard Transaction
- b) Adds any data element or segment 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

3. Individual Rights

a) Access Business Associate will, within 30 days following Organization's request, make available to Organization or, at Organization's direction, to an individual (or the individual's personal representative) for inspection and obtaining copies Organization's Protected Health Information about the individual that is in Business Associate's custody or control, consistent with the requirements of 45 C.F.R. § 164.524, so that Organization may meet its access obligations under 45 C.F.R. § 164.524. Business Associate shall make such information available in an electronic format where directed by Organization.

b) Amendment Business Associate will, upon receipt of written notice from Organization, promptly amend or permit Organization access to amend any portion of Organization's Protected Health Information, so that Organization may meet its amendment obligations under 45 C.F.R. § 164.526.

c) Disclosure Accounting So that Organization may meet its disclosure accounting obligations under 45 C.F.R. § 164.528:

- i. Disclosures Subject to Accounting** Business Associate will record the information specified in Section 3(c)(iii) below ("Disclosure Information") for each disclosure of Organization's Protected Health Information, not excepted from disclosure accounting as specified in Section 3(c)(ii) below, that Business Associate makes to Organization or to a third party.

ii. **Disclosures Not Subject to Accounting** Business Associate will not be obligated to record Disclosure Information or otherwise account for the following disclosures of Organization's Protected Health Information:

- A) That occurred before April 14, 2003 (year may be 2004 if Organization qualifies as a "small health plan" for its fiscal year that ended immediately before April 14, 2003)
- B) For Treatment, Payment or Health Care Operations activities
- C) To an individual who is the subject of Organization's Protected Health Information disclosed, or to that individual's personal representative
- D) Pursuant to an authorization compliant with 45 C.F.R. § 164.508 that is signed by an individual who is the subject of Organization's Protected Health Information disclosed, or by that individual's personal representative
- E) For notification of and to persons involved in the care or payment related to the health care of an individual who is the subject of Organization's Protected Health Information disclosed and for disaster relief
- F) To law enforcement officials or correctional institutions in accordance with 45 C.F.R. § 164.512(k)(5)
- G) For national security or intelligence purposes in accordance with 45 C.F.R. § 164.512(k)(2)
- H) In a Limited Data Set
- I) Incident to a use or disclosure that Business Associate is otherwise permitted to make by this Addendum; and
- J) Otherwise excepted from disclosure accounting as specified in 45 C.F.R. § 164.528

iii. **Disclosure Information** With respect to any disclosure by Business Associate of Organization's Protected Health Information that is not excepted from disclosure accounting by Section 3(c)(ii) above, Business Associate will record the following Disclosure Information as applicable to the type of accountable disclosure made:

- A) **Disclosure Information Generally** Except for repetitive disclosures of Organization's Protected Health Information as specified in Section 3(c)(iii)(B) below and for disclosures for large Research studies as specified in Section 3(c)(iii)(C) below, the Disclosure Information that Business Associate must record for each accountable disclosure are the requirements set forth in the HIPAA Privacy Rule, including but not limited to: (i) the disclosure date, (ii) the name and (if known) address of the entity to which Business Associate made the disclosure, (iii) a brief description of Organization's Protected Health Information disclosed, and (iv) a brief statement of the purpose of the disclosure.
- B) **Disclosure Information for Repetitive Disclosures** For repetitive disclosures of Organization's Protected Health Information that Business Associate makes for a single purpose to the same person or entity (including Organization), the Disclosure Information that Business Associate must record is either the Disclosure Information specified in Section 3(c)(iii)(A) above for each accountable disclosure, or (i) the Disclosure Information specified in Section 3(c)(iii)(A) above for the first of the

repetitive accountable disclosures, (ii) the frequency, periodicity, or number of the repetitive accountable disclosures, and (iii) the date of the last of the repetitive accountable disclosures.

- iv. **Availability of Disclosure Information** Unless otherwise provided by applicable law, Business Associate will maintain the Disclosure Information for at least 6 years following the date of the accountable disclosure to which the Disclosure Information relates. Business Associate will make the Disclosure Information available to Organization within 30 days following Organization's request for such Disclosure Information to comply with an individual's request for disclosure accounting.

- A) **Restriction Agreements and Confidential Communications** Business Associate will comply with any agreement that Organization makes that either (i) restricts use or disclosure of Organization's Protected Health Information pursuant to 45 C.F.R. § 164.522(a), or (ii) requires confidential communication about Organization's Protected Health Information pursuant to 45 C.F.R. § 164.522(b), provided that Organization notifies Business Associate in writing of the restriction or confidential communication obligations that Business Associate must follow. Organization will promptly notify Business Associate in writing of the termination of any such restriction agreement or confidential communication requirement and, with respect to termination of any such restriction agreement, instruct Business Associate whether any of Organization's Protected Health Information will remain subject to the terms of the restriction agreement.

4. Privacy Obligation Breach and Security Incidents

a) Reporting

- i. **Privacy Breach** Business Associate will report to Organization any use or disclosure of Organization's Protected Health Information not permitted by this Addendum or in writing by Organization. In addition, Business Associate will report, following discovery and without unreasonable delay, but in no event later than ten (10) business days following discovery, any "Breach" of "Unsecured Protected Health Information" as these terms are defined by the Breach Notification Regulation. Business Associate shall cooperate with Organization in investigating the Breach and in meeting the Organization's obligations under the Breach Notification Regulation and any other security breach notification laws.
- ii. Any such report shall include the identification (if known) of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach. Business Associate will make the report to Organization's Privacy Division not more than ten (10) business days after Business Associate learns of such non-permitted use or disclosure. Business Associate's initial report will include the following items to the extent they are known:
 - A) Identify the nature of the non-permitted access, use or disclosure, including the date of the Breach and the date of discovery of the Breach
 - B) Identify Organization's Protected Health Information accessed, used or disclosed as

part of the Breach (e.g., full name, social security number, date of birth, etc.)

- C) Identify who made the non-permitted access, use or disclosure and who received the non-permitted disclosure
- D) Identify what corrective action Business Associate took or will take to prevent further non-permitted access, uses or disclosures
- E) Identify what Business Associate did or will do to mitigate any deleterious effect of the non-permitted access, use or disclosure; and
- F) Provide such other information, including a written report, as Organization may reasonably request

iii. **Security Incidents** Business Associate will report to Organization any attempted or successful (A) unauthorized access, use, disclosure, modification, or destruction of Organization's Electronic Protected Health Information or (B) interference with Business Associate's system operations in Business Associate's information systems, of which Business Associate becomes aware. Business Associate will make this report upon Organization's request, except if any such security incident resulted in a disclosure of Organization's Protected Health Information not permitted by this Addendum, Business Associate will make the report in accordance with Section 4(a)(i) above.

b) Termination of Agreement

i. **Right to Terminate for Breach** Organization may terminate Agreement if it determines, in its sole discretion, that Business Associate has breached any provision of this Addendum. Organization may, in its sole discretion, provide a reasonable opportunity for Business Associate to cure the breach and may, in its sole discretion, reasonably extend the time to cure. Organization may, in its sole discretion, require that Business Associate prepare a corrective action plan to cure the breach if Business Associate requests that the time to cure be extended. Organization may exercise this right to terminate Agreement by providing Business Associate written notice of termination, stating the breach of the Addendum, or the failure to cure the breach of the Addendum that provides the basis for the termination. Any such termination will be effective immediately or at such other date specified in Organization's notice of termination. If for any reason Organization determines that Business Associate has breached the terms of this Addendum and such breach has not been cured, but Organization determines that termination of the Agreement is not feasible, Organization may report such breach to the U.S. Department of Health and Human Services.

ii. Obligations on Termination

A) **Return or Destruction of Organization's Protected Health Information as Feasible** Upon termination or other conclusion of Agreement, Business Associate will, if feasible, return to Organization or destroy all of Organization's Protected Health Information in whatever form or medium, including all copies thereof and all data, compilations, and other works derived therefrom that allow identification of any individual who is a subject of Organization's Protected Health Information. Business Associate will require any subcontractor or agent, to which Business Associate has

disclosed Organization's Protected Health Information as permitted by Section 1(e) of this Addendum, to if feasible return to Business Associate (so that Business Associate may return it to Organization) or destroy all of Organization's Protected Health Information in whatever form or medium received from Business Associate, including all copies thereof and all data, compilations, and other works derived therefrom that allow identification of any individual who is a subject of Organization's Protected Health Information, and certify on oath to Business Associate that all such information has been returned or destroyed. Business Associate will complete these obligations as promptly as possible, but not later than 60 days following the effective date of the termination or other conclusion of Agreement.

- B) Procedure When Return or Destruction Is Not Feasible** Business Associate will identify any of Organization's Protected Health Information, including any that Business Associate has disclosed to subcontractors or agents as permitted by Section 1(e) of this Addendum, that cannot feasibly be returned to Organization or destroyed and explain why return or destruction is infeasible. Where Organization agrees that such return or destruction is infeasible, Business Associate will limit its further use or disclosure of such information to those purposes that make return or destruction of such information infeasible. If Organization does not agree, subparagraph A above shall apply. Business Associate will, by its written contract with any subcontractor or agent to which Business Associate discloses Organization's Protected Health Information as permitted by Section 1(e) of this Addendum, require such subcontractor or agent to limit its further use or disclosure of Organization's Protected Health Information that such subcontractor or agent cannot feasibly return or destroy to those purposes that make the return or destruction of such information infeasible. Business Associate will complete these obligations as promptly as possible, but not later than 60 days following the effective date of the termination or other conclusion of Agreement.
- C) Continuing Privacy and Security Obligation** Business Associate's obligation to protect the privacy and safeguard the security of Organization's Protected Health Information as specified in this Addendum will be continuous and survive termination or other conclusion of Agreement and this Addendum.
- D) Other Obligations and Rights** Business Associate's other obligations and rights and Organization's obligations and rights upon termination or other conclusion of Agreement will be those set out in the Agreement or this Addendum as obligations or rights surviving the termination of the Agreement.
- c) Indemnity** Business Associate will indemnify and hold harmless Organization and any Organization affiliate, officer, director, employee or agent from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any non-permitted use or disclosure of Organization's Protected Health Information or other breach of this Addendum by Business Associate or any subcontractor or agent under Business Associate's control.
- i. Right to Tender or Undertake Defense** If Organization is named a party in any judicial,

administrative or other proceeding arising out of or in connection with any non-permitted use or disclosure of Organization's Protected Health Information or other breach of this Addendum by Business Associate or any subcontractor or agent under Business Associate's control, Organization will have the option at any time either (A) to tender its defense to Business Associate, in which case Business Associate will provide qualified attorneys, consultants, and other appropriate professionals to represent Organization's interests at Business Associate's expense, or (B) undertake its own defense, choosing the attorneys, consultants, and other appropriate professionals to represent its interests, in which case Business Associate will be responsible for and pay the reasonable fees and expenses of such attorneys, consultants, and other professionals.

- ii. **Right to Control Resolution** Organization will have the sole right and discretion to settle, compromise or otherwise resolve any and all claims, causes of actions, liabilities or damages against it, notwithstanding that Organization may have tendered its defense to Business Associate. Any such resolution will not relieve Business Associate of its obligation to indemnify Organization under this Section 4(c).

5. General Provisions

- a) **Inspection of Internal Practices, Books, and Records** Business Associate will make its internal practices, books, and records relating to its use and disclosure of Organization's Protected Health Information available to Organization and to DHHS to determine Organization's compliance with the Privacy Rule, 45 C.F.R. Part 164, Subpart E, and the Security Rule.
- b) **Definitions** The terms "Covered Entity," "Electronic Protected Health Information," "Protected Health Information," "Standard," "Trading Partner Agreement," and "Transaction" have the meanings set out in 45 C.F.R. § 160.103. The term "Standard Transaction" has the meaning set out in 45 C.F.R. § 162.103. The term "Required by Law" has the meaning set out in 45 C.F.R. § 164.103. The terms "Health Care Operations," "Payment," "Research," and "Treatment" have the meanings set out in 45 C.F.R. § 164.501. The term "Limited Data Set" has the meaning set out in 45 C.F.R. § 164.514(e). The term "use" means, with respect to Protected Health Information, utilization, employment, examination, analysis or application within Business Associate. The terms "disclose" and "disclosure" mean, with respect to Protected Health Information, release, transfer, providing access to or divulging to a person or entity not within Business Associate. For purposes of this Addendum, Organization's Protected Health Information encompasses Organization's Electronic Protected Health Information. Any other capitalized terms not identified here shall have the meaning as set forth in the HIPAA Rules.
- c) **Amendment to Agreement** Upon the compliance date of any final regulation or amendment to final regulation promulgated by DHHS that affects Business Associate's use or disclosure of Organization's Protected Health Information or Standard Transactions, the Agreement and this Addendum will automatically amend such that the obligations imposed on Business Associate remain in compliance with the final regulation or amendment to final regulation.
- d) **Other Acceptable Forms of this Addendum** The following shall have the same legal effect as original: facsimile copy, imaged copy, scanned copy, or an electronic version.

e) **Communications** Member requests or other communications or notices require or contemplated by this Addendum shall be in writing and shall be delivered by hand, by overnight courier service, or by first class mail, postage prepaid, addressed to the appropriate party at the address below, or to such other party or address as may be hereafter specified by written notice:

BlueCross BlueShield of Tennessee
Privacy Office 1.4
1 Cameron Hill Circle
Chattanooga, TN 37402
Telephone: 888-455-3824

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

6. **Conflicts** The terms and conditions of this Addendum will override and control any conflicting term or condition of Agreement. All nonconflicting terms and conditions of Agreement remain in full force and effect.

IN WITNESS WHEREOF, Organization and Business Associate execute this Addendum in multiple originals to be effective on the last date written below.

BUSINESS ASSOCIATE

**BLUECROSS BLUESHIELD
OF TENNESSEE, INC.**



By: _____

By: _____

Title: _____

Title: _____

**Vice President Sales and Account Management,
BlueCross BlueShield of Tennessee**

Date: _____

Date: _____



BlueCross BlueShield of Tennessee
1 Cameron Hill Circle | Chattanooga, TN 37402
bcbst.com