

**BUSINESS ASSOCIATE AGREEMENT ADDENDUM  
TO STANDARD AGENT ACKNOWLEDGMENT FORM**

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This addendum (“Addendum”) is made part of the Standard Agent Acknowledgement Form (“Agreement”) by and between the Standard Agent identified in Section 1.1 of the Agreement (“Business Associate”) and Capital BlueCross, Capital Advantage Insurance Company, and Keystone Health Plan Central (hereafter referred to collectively as “Company”).

WHEREAS, Company is in the business of providing insured health insurance products in the individual and group markets, and providing administrative services for self funded group health plans, and as such is subject to restrictions on the Use and Disclosure of Protected Health Information as required by the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (*45 C.F.R. Parts 160-164*) (hereafter referred to as the “HIPAA Rules”), and Title V of the Gramm-Leach-Bliley Act (*15 U.S.C. § 6801 et seq.*) and its implementing regulations issued by the Pennsylvania Insurance Department (*31 Pa. Code § 146a et seq., 31 Pa. Code § 146b et seq. and 31 Pa. Code § 146c et seq.*) (hereafter referred to as the “GLBA Regulations”).

WHEREAS, Business Associate performs certain services for or on behalf of Company in support of its business that involve the receipt by Business Associate of Protected Health Information from Company.

NOW, THEREFORE, intending to be legally bound hereby, Company and Business Associate mutually agree to the terms of this Addendum in order for Company to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 and Title V of the Gramm-Leach-Bliley Act.

**1. Permitted Uses and Disclosures.** Business Associate is permitted to Use or Disclose Protected Health Information it creates or receives for or from Company only as follows:

- 1.1. Functions and Activities on Company’s Behalf. Business Associate is permitted to Use and Disclose Protected Health Information it creates or receives for or from Company to perform those functions, activities, and services outlined in the Agreement. Business Associate may perform Data Aggregation related to these functions, activities, and services.
- 1.2. Others’ Payment Activities and Health Care Operations. Business Associate may Disclose Protected Health Information in accordance with 45 C.F.R. § 164.506(c) for the Payment activities of another Covered Entity or Health Care Provider and for the qualifying Health Care Operations of another Covered Entity.
- 1.3. Business Associate’s Operations. Business Associate may Use Protected Health Information it creates or receives for or from Company as necessary for Business Associate’s proper management and administration or to carry out Business Associate’s legal responsibilities. Business Associate may Disclose such Protected Health Information, as necessary for Business Associate’s proper management and administration or to carry out Business Associate’s legal responsibilities only if:

- 1.3.1. The Disclosure is Required By Law; or

1.3.2. Business Associate obtains reasonable assurance, evidenced by written contract, from any person or organization to which Business Associate will Disclose such Protected Health Information that the person or organization will: (i) hold such Protected Health Information in confidence and Use or further Disclose it only for the purpose for which Business Associate Disclosed it to the person or organization or as Required By Law; and (ii) notify Business Associate (who will in turn promptly notify Company) of any instance of which the person or organization becomes aware in which the confidentiality of such Protected Health Information was breached.

2. **Prohibition on Unauthorized Use or Disclosure.** Business Associate will neither Use nor Disclose Protected Health Information it creates or receives for or from Company or from another business associate of Company; except as permitted or required by this Addendum, or as Required By Law, or as otherwise permitted in writing by Company.
3. **Minimum Necessary.** Business Associate will, in the performance of its functions and activities on Company's behalf, make reasonable efforts to Use, to Disclose, or to request of a Covered Entity only the minimum necessary amount of Protected Health Information to accomplish the intended purpose of the Use, the Disclosure, or the request when Company would be required to do so by 45 C.F.R. § 164.502(b).
4. **Compliance with Privacy Notice.** Business Associate will neither Use nor Disclose Protected Health Information in any manner inconsistent with the content of Company's then current Privacy Practices Notice.
5. **Information Safeguards.** 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 C.F.R. Part 164, Subpart C, 45 C.F.R. § 164.530(c), and any other applicable implementing regulations issued by the U.S. Department of Health and Human Services, to preserve the integrity, confidentiality, and availability of and to prevent non-permitted Use or Disclosure of Protected Health Information created or received for or from Company. Business Associate will document and keep these safeguards current.
6. **Sub-Contractors 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 Company to Disclose any of the Protected Health Information Business Associate creates or receives for or from Company, to provide reasonable assurance, evidenced by written contract, that subcontractor or agent will comply with the same privacy and security obligations as Business Associate with respect to such Protected Health Information.
7. **Compliance with Standard Transactions.** If Business Associate conducts in whole or part Standard Transactions for or on behalf of Company, Business Associate will comply, and will require any subcontractor or agent involved with the conduct of such Standard Transaction to comply, with each applicable requirement of 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 for or on behalf of Company that:
  - 7.1. Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;
  - 7.2. Adds any data element or segment to the maximum defined data set;
  - 7.3. 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

7.4. Changes the meaning or intent of the Standard Transaction's implementation specification.

**8. Access to Protected Health Information.** Business Associate will promptly, upon Company's request, make available to Company or, at Company's direction, to the Individual (or the Individual's personal representative), for the purpose of inspection and/or obtaining copies, any Protected Health Information about the Individual that Business Associate created or received for or from Company and that is in a Designated Record Set and in Business Associate's custody or control, so that Company may meet its access obligations under 45 C.F.R. § 164.524.

**9. Amendment of Protected Health Information.** Business Associate will, upon receipt of notice from Company, promptly amend or permit Company access to amend any portion of the Protected Health Information that Business Associate created or received for or from Company that is in a Designated Record Set, so that Company may meet its amendment obligations under 45 C.F.R § 164.526.

**10. Disclosure Accounting of Protected Health Information.** So that Company may meet its disclosure accounting obligations under 45 C.F.R § 164.528:

10.1. Disclosure Tracking. Business Associate will record for each Disclosure, not excepted from disclosure accounting under Addendum Section 10.2 below, that Business Associate makes to Company or a third party of Protected Health Information that Business Associate creates or receives for or from Company: (i) the Disclosure date; (ii) the name and (if known) address of the person or entity to whom Business Associate made the Disclosure; (iii) a brief description of the Protected Health Information Disclosed; and (iv) a brief statement of the purpose of the Disclosure (items i-iv, collectively, the "disclosure information"). For repetitive Disclosures Business Associate makes to the same person or entity (including Company) for a single purpose, Business Associate may provide: (i) the disclosure information for the first of these repetitive Disclosures; (ii) the frequency, periodicity or number of these repetitive Disclosures; and (iii) the date of the last of these repetitive Disclosures. Business Associate will make this disclosure information available to Company promptly upon Company's request.

10.2. Exceptions from Disclosure Tracking. Business Associate need not record disclosure information or otherwise account for Disclosures of Protected Health Information that this Addendum or Company in writing permits or requires: (i) for the purpose of Company's Treatment activities, Payment activities, or Health Care Operations; (ii) to the Individual who is the subject of the Protected Health Information Disclosed or to that Individual's personal representative; (iii) pursuant to a valid authorization by the person who is the subject of the Protected Health Information Disclosed; (iv) to persons involved in that Individual's health care or payment for health care; (v) for notification for disaster relief purposes; (vi) for national security or intelligence purposes; (vii) as part of a Limited Data Set; or (viii) to law enforcement officials or correctional institutions regarding inmates.

10.3. Disclosure Tracking Time Periods. Business Associate must have available for Company the disclosure information required by Addendum Section 10.1 for the 6 years preceding Company's request for the disclosure information (except Business Associate need not have disclosure information for Disclosures occurring before April 14, 2003 or before the effective date of this Addendum).

**11. Restriction Agreements and Confidential Communications.** Business Associate will comply with any agreement that Company makes that either (i) restricts Use or Disclosure of Company's Protected Health Information pursuant to 45 C.F.R. § 164.522(a), or (ii) requires confidential

communication about Company's Protected Health Information pursuant to 45 C.F.R. § 164.522(b), provided that Company notifies Business Associate in writing of the restriction or confidential communication obligations that Business Associate must follow. Company 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 Company's Protected Health Information will remain subject to the terms of the restriction agreement.

**12. Inspection of Books and Records.** Business Associate will make its internal practices, books, and records, relating to its Use and Disclosure of the Protected Health Information it creates or receives for or from Company, available to Company and to the U.S. Department of Health and Human Services to determine Company's compliance with 45 C.F.R. § 164 *et seq.*

**13. Privacy Obligation Breach and Security Incidents.**

13.1. Privacy Obligation Breach. Business Associate will report to Company any Use or Disclosure of Protected Health Information not permitted by this Addendum or in writing by Company. Business Associate will make the report to Company's Legal Department not more than 24 hours after Business Associate learns of such non-permitted Use or Disclosure. Business Associate's report will at least:

13.1.1. Identify the nature of the non-permitted Use or Disclosure;

13.1.2. Identify the Protected Health Information Used or Disclosed;

13.1.3. Identify who made the non-permitted Use or received the non-permitted Disclosure;

13.1.4. Identify what corrective action Business Associate took or will take to prevent further non-permitted Uses or Disclosures;

13.1.5. Identify what Business Associate did or will do to mitigate any deleterious effect of the non-permitted Use or Disclosure; and

13.1.6. Provide such other information, including a written report, as Company may reasonably request.

13.2. Security Incidents. Business Associate will report to Company any successful (a) unauthorized Access, Use, Disclosure, modification, or destruction of Company's Electronic Protected Health Information or (b) unauthorized interference with system operations in Business Associate's Information System, of which Business Associate becomes aware. Business Associate will, upon Company's request, report to Company any attempted, but unsuccessful (a) unauthorized Access, Use, Disclosure, modification, or destruction of Company's Electronic Protected Health Information or (b) unauthorized interference with system operations in Business Associate's Information Systems, of which Business Associate becomes aware. Business Associate will make the report in accordance with Section 13.1 above.

**14. Termination of Addendum.**

14.1. Right to Terminate for Breach. Company may terminate this Addendum and/or any other agreements or arrangements entered into between Company and Business Associate if Company determines, in its sole discretion, that Business Associate has materially breached any provision of this Addendum. Company may exercise its right

to terminate this Addendum and/or any other agreement or arrangement by providing Business Associate written notice of termination outlining the breach that provides the basis for the termination. Any such termination will be effective immediately or at such other date specified in Company's notice of termination.

14.2. Sanctions and Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of Protected Health Information by Business Associate in violation of the requirements of this Addendum.

14.3. Return or Destruction of Protected Health Information upon Termination of Agreement. Upon termination, cancellation, expiration, or other conclusion of Agreement, Business Associate will, if feasible, return to Company or destroy all Protected Health Information, in whatever form or medium (including in any electronic medium under Business Associate's custody or control), that Business Associate created or received for or from Company, including all copies of and any data or compilations derived from and allowing identification of any Individual who is a subject of the Protected Health Information. 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 Agreement. Business Associate will identify any Protected Health Information that Business Associate created or received for or from Company that Company agrees cannot feasibly be returned to Company or destroyed, and will limit its further Use or Disclosure of that Protected Health Information to those purposes that make return or destruction of such Protected Health Information infeasible. Within such 30 days, Business Associate will certify under oath in writing to Company that such return or destruction has been completed, will deliver to Company the identification of any Protected Health Information for which return or destruction is infeasible and, for such Protected Health Information, will certify that it will only Use or Disclose such Protected Health Information for those purposes that make return or destruction infeasible.

14.4. Continuing Privacy Obligation. Business Associate's obligation to protect the privacy of the Protected Health Information it created or received for or from Company will be continuous and survive termination, cancellation, expiration, or other conclusion of Agreement.

14.5. Other Obligations and Rights. Business Associate's other obligations and rights and Company's obligations and rights upon termination, cancellation, expiration, or other conclusion of any other agreement between Company and Business Associate will be those set forth in such agreement.

**15. Indemnity.** Business Associate will indemnify and hold harmless Company and any Company 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 Protected Health Information or other breach of this Addendum by Business Associate or any subcontractor, agent, person, or entity under Business Associate's control.

15.1. Right to Tender or Undertake Defense. If Company 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 Protected Health Information or other breach of this Addendum by Business Associate or any subcontractor, agent, person, or entity under Business Associate's control, Company will have the option at any time either to: (i) tender its defense to Business Associate, in which case Business Associate will provide qualified attorneys to represent Company's interests at Business Associate's expense; or (ii) 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.

- 15.2. Right to Control Resolution. Company 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 Company may have tendered its defense to Business Associate. Any such resolution will not relieve Business Associate of its obligation to indemnify Company under Section 15 of this Addendum.

## **16. General Provision**

- 16.1. Definitions. The capitalized terms not defined herein have the meaning set forth in the HIPAA Rules and the GLBA Regulations.
- 16.2. Amendment to Addendum. Upon the effective date of any final regulation or amendment to final regulation promulgated by the U.S. Department of Health and Human Services with respect to Protected Health Information or by an insurance commissioner with jurisdiction over Company that implements Gramm-Leach-Bliley Act Title V so as to affect Company's relationship with Business Associate with respect to Nonpublic Personal Financial Information, this Addendum will automatically amend such that the obligations they impose on Business Associate remain in compliance with these regulations.
- 16.3. Conflicts. The terms and conditions of this Addendum will override and control any conflicting term or condition of any other agreement entered into between Company and Business Associate. All nonconflicting terms and conditions of any other agreement entered into between Company and Business Associate remain in full force and effect.
- 16.4. Captions. The captions of the sections of this Addendum are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Addendum.
- 16.5. Choice of Law. This Addendum shall be governed by and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, not including, however, the rules relating to the choice or conflict of laws.
- 16.6. No Third-Party Beneficiaries. No third-parties are intended to benefit from this Addendum and no third-party beneficiary rights will be implied from anything contained in this Addendum.
- 16.7. Interpretation. Any ambiguity in this Addendum will be resolved in favor of a meaning that permits the Company to comply with the HIPAA Rules and the GLBA Regulations.
- 16.8. Notices. Unless otherwise provided herein, notices will be deemed given when properly addressed to the party's Legal Department, upon the date of receipt if hand-delivered, or four (4) business days after deposit in the U.S. mail if mailed by registered or certified mail, postage prepaid, or one (1) business day after deposit with a national overnight courier for next business day delivery, or upon the date of electronic confirmation of receipt of a facsimile transmission.
- 16.9. Non-Waiver. A failure of either Company or Business Associate to enforce any term, provision, or condition of this Addendum, or to exercise any right or option herein, shall in no way operate as a waiver thereof, nor shall any single or partial exercise preclude any other right or option herein. In no way whatsoever shall a waiver of any term, provision, or condition of this Addendum be valid unless in writing, signed by the waiving party, and only to the extent set forth in such writing.

- 16.10. Addendum Drafted by All Parties. This Addendum is the result of arm's length negotiations between Company and Business Associate, and shall be construed to have been drafted by all parties such that any ambiguities in this Addendum shall not be construed against either party.
- 16.11. Independent Relationship. None of the provisions of this Addendum are intended to create, nor will they be deemed to create any relationship between Company and Business Associate other than that of independent parties contracting with each other as independent contractors solely for the purposes of effecting the provisions of this Addendum.
- 16.12. Successor and Assigns. This Addendum will inure to the benefit of and be binding upon the successors and assigns of Company and Business Associate. However, this Addendum is not assignable by any party without the prior written consent of the other party.