

## BUSINESS ASSOCIATE AGREEMENT AMENDMENT

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This Amendment is made part of the License Agreement ("Agreement") dated September 26, 2002 by and between Capital BlueCross with an address at 2500 Elmerton Avenue, Harrisburg, PA 17110 ("Company") and Milliman USA, Inc., 259 North Radnor-Chester Road, Radnor, PA 19087 ("Business Associate") and is effective April 14, 2003.

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 and Nonpublic Personal Financial Information (both as defined below) as required by the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (*45 C.F.R. Parts 160-164*), 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. and 31 Pa. Code § 146b et seq.*).

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

NOW, THEREFORE, intending to be legally bound hereby, Company and Business Associate mutually agree to the terms of this Amendment in order 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 and Nonpublic Personal Financial 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 and Nonpublic Personal Financial Information it creates or receives for or from Company to perform those functions, activities and services outlined in the Agreement.
  - 1.2. Business Associate's Operations. Business Associate may use Protected Health Information and Nonpublic Personal Financial 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, but not such Nonpublic Personal Financial Information, as necessary for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities only if:
    - 1.2.1. The disclosure is required by law; or
    - 1.2.2. 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.
  - 1.3. Business Associate may use PHI to provide Data Aggregation services to Company as permitted by the Privacy Rule.

- 1.4. Business Associate may statistically deidentify PHI provided by Company and maintain such deidentified health information; provided that all identifiers are destroyed or returned in accordance with Section 4 of this Agreement.
- 1.5. Business Associate may create a limited data set for the purpose of providing the Services; provided that Business Associate:
  - 1.5.1. Does not use or further disclose the information contained in the limited data set except as necessary to provide the Services or as provided in this Agreement or otherwise required by law;
  - 1.5.2. Uses appropriate safeguards to prevent the use or disclosure of the information contained in the limited data set other than as provided by this Agreement.
  - 1.5.3. Reports to Company any use or disclosure of the information contained in the limited data set of which Business Associate becomes aware that is not provided for by this Agreement;
  - 1.5.4. Ensures that any agents or subcontractors to whom it provides access to the limited data set agrees to the same restrictions and conditions that apply to Business Associate under this Agreement; and
  - 1.5.5. Does not identify the information or contact for Individuals whose information is contained within the limited data set.
2. **Prohibition on Unauthorized Use or Disclosure.** Business Associate will neither use nor disclose Protected Health Information or Nonpublic Personal Financial Information it creates or receives for or from Company or from another business associate of Company; except as permitted or required by this Amendment, or as required by law, or as otherwise permitted in writing by Company.
3. **Prohibition on Unauthorized Use or Disclosure of Consumer Lists.** Business Associate will not develop any list, description or other grouping of individuals using Nonpublic Personal Financial Information received from or on behalf of Company, except as permitted by this Amendment, by law, or in writing by Company. Business Associate will not use or disclose any list, description or other grouping of individuals that is derived using such Nonpublic Personal Financial Information, except as permitted by this Amendment, by law, or in writing by Company.
4. **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 Code of Federal Regulation § 164.530(c), and any other applicable implementing regulations issued by the U.S. Department of Health and Human Services, and with the requirements of all insurance commissioner regulations implementing Title V of the Gramm-Leach-Bliley Act that are applicable to Company's relationship with Business Associate, to preserve the integrity and confidentiality of and to prevent non-permitted use or disclosure of Protected Health Information or Nonpublic Personal Financial Information created or received for or from Company. Business Associate will document and keep these safeguards current.
5. **Sub-Contractors and Agents.** Business Associate will require any of its subcontractors and agents, to which Business Associate is permitted by this Amendment or in writing by Company to disclose any of the Protected Health Information or Nonpublic Personal Financial 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 or Nonpublic Personal Financial Information.
6. **Access to Protected Health Information.** Business Associate will promptly, upon Company's written request, make available to Company any Protected Health Information about the individual which Business Associate created or received for or from Company and that is in Business Associate's custody or control in a designated record set, so that Company may meet its access obligations under 45 Code of Federal Regulations § 164.524.

7. **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 which Business Associate created or received for or from Company, so that Company may meet its amendment obligations under 45 Code of Federal Regulations § 164.526.
8. **Disclosure Accounting of Protected Health Information.** So that Company may meet its disclosure accounting obligations under 45 Code of Federal Regulations § 164.528:
  - 8.1. Disclosure Tracking. Starting April 14, 2003, Business Associate will record for each disclosure, not excepted from disclosure accounting under Amendment Section 8.2 below and as identified to Business Associate in writing, 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 written request.
  - 8.2. Exceptions from Disclosure Tracking. Business Associate need not record disclosure information or otherwise account for disclosures of Protected Health Information that this Amendment or Company in writing permits or requires: (i) for the purpose of Company's 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.
  - 8.3. Disclosure Tracking Time Periods. Business Associate must have available for Company the disclosure information required by Amendment Section 8.1 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).
9. **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 upon reasonable written notice and during regular business hours and to the U.S. Department of Health and Human Services to determine Company's compliance with 45 Code of Federal Regulations Part 164.
10. **Reporting.** Business Associate will report to Company any use or disclosure of Protected Health Information or Nonpublic Personal Financial Information not permitted by this Amendment or by Company in writing. Business Associate will make the report to Company's Legal Department not less than 24 hours after Business Associate learns of such non-permitted use or disclosure. Business Associate's report will at least:
  - 10.1. Identify the nature of the non-permitted use or disclosure;
  - 10.2. Identify the Protected Health Information or Nonpublic Personal Financial Information used or disclosed;
  - 10.3. Identify who made the non-permitted use or received the non-permitted disclosure;
  - 10.4. Identify what corrective action Business Associate took or will take to prevent further non-permitted uses or disclosures;

- 10.5. Identify what Business Associate did or will do to mitigate any deleterious effect of the non-permitted use or disclosure; and
- 10.6. Provide such other information, including a written report, as Company may reasonably request.

11. **Termination of Agreement.**

- 11.1. Right to Terminate for Breach. Company may terminate the Agreement if Company determines, in its sole discretion, that Business Associate has breached any provision of this Amendment. Company may exercise this right to terminate the Agreement by providing Business Associate written notice of termination outlining the breach that provides the basis for the termination. Prior to such termination, Company shall provide an opportunity for Business Associate to cure the breach or end the violation, and shall terminate Agreement if Business Associate does not cure the breach or end the violation within the time specified by Company. Notwithstanding the foregoing, Company may immediately terminate Agreement if Business Associate has breached a material term of the Agreement and cure is not possible. Any such termination will be effective immediately or at such other date specified in Company's notice of termination.
  - 11.2. Return or Destruction of Protected Health Information or Nonpublic Personal Financial Information upon Termination of Agreement. Upon termination, cancellation, expiration or other conclusion of the Agreement, Business Associate will, if feasible, return to Company or destroy all Protected Health Information and Nonpublic Personal Financial 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 or Nonpublic Personal Financial Information. Except as otherwise provided in this Amendment, 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. Business Associate will identify any Protected Health Information or Nonpublic Personal Financial Information that Business Associate created or received for or from Company that cannot feasibly be returned to Company or destroyed, and will limit its further use or disclosure of that Protected Health Information or Nonpublic Personal Financial Information to those purposes that make return or destruction of such Protected Health Information or Nonpublic Personal Financial 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 or Nonpublic Personal Financial Information for which return or destruction is infeasible and, for such Protected Health Information or Nonpublic Personal Financial Information, will certify that it will only use or disclose such Protected Health Information or Nonpublic Personal Financial Information for those purposes that make return or destruction infeasible.
  - 11.3. Continuing Privacy Obligation. Business Associate's obligation to protect the privacy of the Protected Health Information and Nonpublic Personal Financial Information it created or received for or from Company will be continuous and survive termination, cancellation, expiration or other conclusion of the Agreement.
  - 11.4. 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 the Agreement will be those set forth in the Agreement.
12. **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 Nonpublic Personal Financial Information or other breach of this Amendment by Business Associate or any subcontractor, agent, person or entity under Business Associate's control.

### **13. General Provision**

- 13.1. Definitions. The capitalized terms "Protected Health Information" has the meanings set out in, *45 Code of Federal Regulations § 164.501*. The capitalized term "Nonpublic Personal Financial Information" has the meanings set out in the Pennsylvania Insurance Department regulations implementing Title V of the Gramm-Leach-Bliley Act Title V that are applicable to Company's relationship with Business Associate (*31 Pa. Code§ 146a et seq. and 31 Pa. Code § 146b et seq.*).
- 13.2. Amendment to Amendment. Upon the compliance 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 Amendment will automatically amend such that the obligations they impose on Business Associate remain in compliance with these regulations.
- 13.3. Conflicts. The terms and conditions of this Amendment will override and control any conflicting term or condition of the Agreement entered into between Company and Business Associate. All nonconflicting terms and conditions of the Agreement entered into between Company and Business Associate remain in full force and effect.

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

**Milliman USA, Inc.**

By: Christ P. McNe  
Its: Country Actuary  
Date: 5/3/03

**Capital BlueCross**

By: Christopher M. Smith  
Its: Executive Vice President and COO  
Date: 5/15/03