

## **AMENDMENT TO BUSINESS ASSOCIATE AGREEMENT**

This amendment (“Amendment”), effective February 17, 2010, amends and is made a part of that Business Associate Agreement (“BA Agreement”), dated August 15, 2003, by and between Capital BlueCross, Capital Advantage Insurance Company, Keystone Health Plan Central and/or Avalon Insurance Company (collectively “Company”) and Milliman USA, Inc. (“Business Associate”).

**NOW, THEREFORE**, intending to be legally bound hereby, Company and Business Associate agree to the terms of this Amendment in order to bring the BA Agreement into compliance with the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the “HITECH Act”).

- 1. Definitions.** Unless otherwise defined herein, capitalized terms have the meanings assigned to them in the BA Agreement. The term “HIPAA Rules” will include any amendments to the “HIPAA Rules” as defined in the BA Agreement.
- 2. Permitted Uses and Disclosures.** Business Associate shall Use or Disclose Protected Health Information only as permitted by the HITECH Act and the HIPAA Rules. Business Associate shall Use, Disclose, or request Protected Health Information in a Limited Data Set if practicable. Company shall not provide Business Associate with more PHI than that which is minimally necessary for Business Associate to provide the services and, where possible, Company shall provide any PHI needed by Business Associate to perform the services in the form of a Limited Data Set, in accordance with the HIPAA regulations. Business Associate shall determine what constitutes the minimum necessary Protected Health Information to accomplish the intended purpose of any Disclosure and shall not rely on a request from a third party being for the minimum necessary, except as allowed by amendments to the HIPAA Rules that interpret the HITECH Act.
- 3. Security Rule Compliance.** Business Associate shall comply with applicable provisions of the Security Rule (45 C.F.R. §§ 164.308, 310, 312, 316), as required by the HITECH Act, including developing and implementing written information security policies and procedures and otherwise meeting the Security Rule documentation requirements.
- 4. Breach of Unsecured Protected Health Information.** Business Associate shall report, following discovery and without unreasonable delay, any incident that would constitute a “Breach” of “Unsecured Protected Health Information,” as these terms are defined by the HITECH Act and any implementing regulations and guidance without regard to whether the “Breach” poses a significant risk of financial, reputational, or other harm to an individual. Business Associate shall make an initial report to Company’s Legal Department not more than three (3) business days after Business Associate learns of the Breach. Business Associate shall cooperate with Company in investigating the Breach and in meeting the Company’s obligations under the HITECH Act and any other security breach notification law. Business Associate shall report:

- A. The identity of each individual (if known) whose Unsecured Protected Health Information was, or is reasonably believed by Business Associate to have been, accessed, acquired, Used, or Disclosed as a result of the Breach.
  - B. The nature of the non-permitted access, Use, or Disclosure, including the date of the Breach and the date the Breach was discovered;
  - C. The Protected Health Information accessed, Used, or Disclosed as a result of the Breach (e.g., full name, social security number, date of birth, etc.);
  - D. The identity of the person who made the non-permitted access, Use, or Disclosure and of the person who received the non-permitted Disclosure;
  - E. A description of each corrective action Business Associate took or will take to prevent further non-permitted access, Uses, or Disclosures;
  - F. A description of what Business Associate did or will do to mitigate any deleterious effect of the non-permitted access, Use, or Disclosure; and
  - G. Such other information, including a written report, as Company may reasonably request.
5. **Business Associate Termination of BA Agreement.** Business Associate may terminate the BA Agreement if it determines, after reasonable consultation with Company, that Company has breached any material provision of the BA Agreement and, upon written notice to Company of the breach, Company fails to cure the breach within sixty (60) days after receipt of the notice. Business Associate may exercise this right to terminate the BA Agreement by providing Company written notice of termination, stating the failure to cure the breach that provides the basis for the termination. Any termination will be effective upon a date on which the parties reasonably agree. Business Associate may report the breach to the U.S. Department of Health and Human Services, provided that (a) Business Associate reasonably determines that Company has breached the terms of the BA Agreement, (b) Company has not cured the breach within the cure period described above, and (c) Business Associate and Company mutually determine that termination of the Agreement is not feasible.
6. **Conflicts.** The terms and conditions of this Amendment will override and control any conflicting term or condition of the BA Agreement and any agreement to which the BA Agreement applies. All nonconflicting terms and conditions of the BA Agreement and any agreement to which the BA Agreement applies remain in full force and effect.
7. **Binding Effect.** Business Associate may reject the terms of this Amendment by providing written notice of rejection to Company's Legal Department within thirty (30) days of receiving this Amendment. If Business Associate fails to provide such notice, Business Associate will be deemed to have agreed to this Amendment pursuant to the "Amendment to Agreement" provision of the BA Agreement. This Amendment will then be binding on Business Associate on the effective date named above without signature or other action by Business Associate. Business Associate acknowledges that Company will be required to terminate the BA Agreement and any underlying agreement upon Business Associate's rejection of this Amendment.