2021 General Agency Agreement
For Commercial Individual Market

This 2021 General Agency Agreement for Commercial Individual Market Products is made between Group Hospitalization & Medical Services, Inc. and CareFirst of Maryland, Inc. and their affiliates (hereinafter collectively "Insurer") and ____
a duly licensed Agency (hereinafter referred to as "Agency").

Insurer issues, administers and markets health benefit plans and other insurance products for its members in the State of Maryland, portions of Northern Virginia and the District of Columbia ("Service Area"). This Agreement sets for the terms and conditions under which an Agency may sell Insurer's health coverage. The purpose of this Agreement is to describe the roles and responsibilities of the Agency and the Insurer in selling, renewing and growing business with the Insurer. This Agreement defines the Insurer's expectations and measures of success and describes the Compensation for achieving those measures through commissions and bonus programs.

Insurer and Agency agree as follows:

I. EFFECTIVE DATE.

This Agreement shall be effective the 1st day of February, 2021.

II. DEFINITIONS.

A. BONUS: Payments to Agency pursuant to **Exhibit A(II).**

B. BLOCK TRANSFER: the movement of an entire book of business, or some portion of business among Agents, Full-Service Producers and/or General Producers.

C. BROKER OF RECORD: an Agency that has filed with, and has received approval from Insurer for a Broker of Record document, and is appointed by Insurer in accordance with the Annotated Code of Maryland or equivalent statute in the appropriate state or legal jurisdiction in which it holds a current license to sell insurance.

D. COMMERCIAL INDIVIDUAL MARKET: products marketed to Subscribers in the Individual under 65 market, over-65 market, and dental. These products are not sold through a group or association.

E. COMMERCIAL INDIVIDUAL BENEFIT CONTRACT: the agreement between Insurer and an individual for the provision of health care benefits.

F. **COMMERCIAL INDIVIDUAL BROKER DASHBOARD**: a self-service tool accessible through the CareFirst Broker portal that allows contracted General Agencies to manage their Commercial Individual Market book of business. The tool provides daily updates and standard reports relative to enrollment and billing.

G. **COMMISSION**: Payments to Agency pursuant to **Exhibit A(I).**

H. **COMPENSATION**: Payments made pursuant to **Exhibit A(I)** Commissions and **Exhibit A(II)** Bonus.

I. **EXPLANATION OF PAYMENT**: is a statement which details on a regular basis all commissions remitted to Agency for each individual where Insurer received paid premium for the given period commissions are remitted.

J. **INSURER**: CareFirst of Maryland, Inc., Group Hospitalization & Medical Services, Inc., CareFirst BlueChoice, Inc., First Care, Inc. and any of their subsidiaries or affiliates.

K. **PREMIUM**: the periodic payment to Insurer required to keep the Commercial Individual Benefit Contract in force.

L. **SUBSCRIBER**: an individual with whom Insurer has a Commercial Individual Benefit Contract to provide individual coverage under a Commercial Individual Benefit Contract.

M. **SUB-AGENT:** A person duly licensed in all applicable Service Areas and appointed by Insurer to solicit insurance applications through Agency.

III. SCOPE OF AGREEMENT.

This Agreement shall apply to business that is sold through a State or Federally Facilitated Exchange (On Exchange) and business that is sold directly through the Insurer and not through an Exchange (Off Exchange) in the Commercial Individual Market as defined by applicable Federal and State law. To the extent that this Agreement is in direct conflict with rules promulgated by an Exchange, then such provision or portion of the Agreement shall not apply to the extent of that conflict.

IV. AUTHORITY AND RESPONSIBILITIES OF AGENCY.

A. Authority.

Agency is authorized by Insurer to solicit insurance business as set out herein and take other actions specifically enumerated in this Agreement in the jurisdictions approved by Insurer for Commercial Individual Market Benefit Contracts. Agency is authorized to record and submit enrollment applications for disposition by Insurer. Agency has no authority to act on Insurer's behalf except as expressly provided in this Agreement. Agency may not alter or waive terms regarding enrollment, coverage, amounts to be paid or benefits of any contract or policy form.

B. Responsibilities.

Agency is compensated to grow and maintain targeted lines of Insurer's business. Agency shall to the extent reasonable/practicable:

i. **Understand.** Know and understand Insurer's products, programs and capabilities.

ii. Educate.

a. Educate Sub-Agents on Insurer's products and programs.

b. Effectively explain Insurer's products and programs to current and prospective Subscribers.

iii. Maintain.

a. Make Insurer's quotes available to interested Subscribers.

b. Retain targeted lines of business with current Subscribers.

iv. Serve. Accurately and completely record and submit to Insurer all information Insurer requires to enroll Subscribers.

v. Comply.

a. Fulfill all responsibilities and obligations of this Agreement.

b. Comply with requisite laws in performing services under this Agreement.

c. Conform to Insurer's requirements, standards and procedures that are communicated to the General Agency in writing.

C. Additional Responsibilities.

i. Pay Sub-Agents. Agency shall pay Sub-Agents all Commission due pursuant to this Agreement. Agency shall not be obligated to pass through Commission to any payroll or contract employee, regardless of whether such employee may be a Sub-Agent.

ii. Training. Agency must successfully complete any training Insurer requires after being notified by Insurer that such training is required.

iii. Adequate records required. Agency must maintain adequate books and records in accordance with applicable law. Agency agrees to maintain accurate and complete records of all transactions with and on behalf of Insurer for a period of seven (7) years at Agency's expense.

iv. System Updates. Agency shall modify its systems and processes to ensure compliance and compatibility with commercially reasonable Insurer specifications.

v. Commercial Individual Broker Dashboard. Agency shall access and use the Commercial Individual Broker Dashboard in accordance with operating instructions and procedures issued by Insurer. Agency shall make best efforts to prevent unauthorized access to or use of the Commercial Individual Broker Dashboard and promptly notify Insurer of any unauthorized use of which the Agency is aware. At least once every six months, Agency shall review those users that are attributed to it that have access to the Commercial Individual Broker Dashboard and certify that those users should have access to the Commercial Individual Broker Dashboard for their function. Failure to do so may result in termination of the Agency access to the Commercial Individual Broker Dashboard.

- **vi. Broker of Record and Block Transfers.** Notify Insurer of any Broker of Record or Block Transfer requests and provide all required documentation as required by the Commercial Individual Agent Manual. Company shall continue to service Subscriber(s) until new Broker of Record/Block Transfer date is effective per the schedule found in the Commercial Individual Agent Manual. Agency shall support the orderly transfer of business.

V. REQUIRED QUALIFICATIONS.

To perform services and receive Compensation under this Agreement, at the time of inception of this Agreement and at all times during the term of this Agreement, Agency shall meet the following requirements:

A. Licensing.

i. Agency shall:

a. Possess and maintain, at Agency's expense, any license required by law to perform services under this Agreement.

b. Notify Insurer in writing of any expiration, termination, revocation, suspension or any other action by a Department of Insurance or any other governmental agency affecting licenses required to perform services under this Agreement within five (5) business days of such occurrence.

ii. Provide copies of all licenses for itself and its licensed Agency employees and Sub-Agents on a continuous basis. Agency shall notify Insurer of all new, terminated, suspended or expired licenses.

iii. Both Agency and Sub-Agents must be licensed in the jurisdiction where a Commercial Individual Benefit Contract is sold to be eligible to receive Compensation.

B. Legal Obligations.

i. Compliance with Laws. Agency shall remain in compliance with all applicable Federal, State and local laws. Agency shall comply with any requests made by Insurer to ensure continued compliance with any such laws.

ii. Federally Facilitated Exchanges. To the extent that this Agreement delegates any duties or administrative services to the Agency relating to Federally Facilitated Exchange business, the Agency shall comply with the requirements and standards of Federal law as well as any other applicable laws or regulations. Pursuant to 45 CFR 156.340, Agency agrees to permit access to the Secretary of the Department of Health and Human Services (HHS) or the Office of Inspector General of the HHS to evaluate through audit, inspection or other means, the Agency's books, contracts, computers or other electronic systems, including medical records and documentation related to a health plan issued through a Federally Facilitated Exchange.

iii. **State Facilitated Exchanges.** To the extent that this Agreement delegates any duties or administrative services to the Agency relating to State Facilitated Exchange business, the Agency shall comply with the requirements and standards of State law as well as any other applicable laws or regulations.

iv. **Compliance with Privacy Laws.** Agency will comply with all applicable state and federal laws that governs the maintenance or disclosure of personal, health or financial information. Agency understands and acknowledges that while performing services under this Agreement, Agency may receive from Insurer or create or receive on behalf of Insurer certain information that is defined as Protected Health Information ("PHI") under the privacy regulations issued under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Agency shall comply with any applicable requirements of HIPAA and shall sign and comply with the Business Associate Agreement ("BAA") attached hereto and incorporated herein by reference as **Exhibit B** prior to performing any services under this Agreement.

v. **Violent Crimes Control Act.** Agency shall adhere to and comply with the Federal Insurance Fraud Provisions of the Violent Crime Control Act (18 USC Sec. 1033 et. seq.) and similar State laws in the performance of this Agreement.

C. Insurer Rules.

i. **Compliance with Insurer Rules.** Agency shall conform to Insurer's rules, policies and procedures found in the Commercial Individual Agent Manual.

ii. **Compliance with Insurer Code of Conduct.** Agency shall comply with the policies and procedures in the Contractor Code of Ethical Business Conduct and Compliance, which is hereby incorporated by reference, and which can be found on Broker Portal at www.carefirst.com.

iii. **Appointment.** Agency shall apply to Insurer for Appointment and must receive confirmation of Appointment from Insurer prior to handling Insurer business. Insurer may terminate an Agency's appointment at any time without terminating this Agreement in its entirety.

VI. ADVERTISING.

Insurer must approve, in writing, circulars, advertisements or other materials containing Insurer symbols, service marks, trademarks or trade names.

VII. COMPENSATION.

A. Compensation Payable to Agency. Insurer agrees to pay Agency in accordance with **Exhibit A** - Commercial Individual Compensation Schedules. Insurer shall determine which Premiums and Commercial Individual Benefit Contracts paid by the Subscriber are subject to payment of Compensation.

B. Modification or Termination of Compensation. Insurer may terminate or amend **Exhibit A** by giving thirty (30) days' prior notice to Agency.

C. Payment.

i. Commission: Commission shall be earned and payable monthly for Commercial Individual Benefit Contracts issued and for which the Premium has been paid and reconciled for each Subscriber if this Agreement is in effect.

ii. Bonus: Bonuses shall be paid in accordance with the Commercial Individual Bonus terms in **Exhibit A**.

D. Adjustments.

i. Agency shall repay to Insurer, on demand, all Compensation previously allowed and paid on any refunded premium. Form of payment is at Insurer's discretion.

ii. Either Party may notify the other in writing, of any objection or correction to the Explanation of Payment, similar insurance record or Commission payment. Absent fraud or intentional misrepresentation on the part of Insurer, such notice must be made within eighteen (18) months of issuance of the Explanation of Payment, similar insurance record or Commission payment. No interest shall be due on any resulting adjustment absent fraud or intentional misrepresentation on the part of Insurer.

iii. Any indebtedness of Agency to Insurer arising from this Agreement, any prior Agreement or any transaction between Agency and Insurer, shall be a First Lien on any compensation (including Commissions and/or potential incentive payments and Bonuses) due or to become due the Agency under this Agreement and may be applied as a set-off against any moneys due or which become due by Insurer to Agency.

E. No Additional Compensation. Agent shall not accept any portion of a General Agency's compensation as additional compensation, fee or incentive if not expressly allowed under this Agreement.

VIII. TERM AND TERMINATION.

A. Term. The term of this Agreement shall be for a period of one (1) year ("Agreement Term") and annual revisions made by the Insurer will be communicated to Agency in writing for successive one (1) year periods unless terminated earlier in accordance with this Section.

B. Termination Without Cause. Either Party may terminate the Agreement within the Agreement term by giving ninety (90) days written notice. Termination shall take effect immediately and automatically upon the date stated in the notice so given.

C. Termination upon Cessation of Agency's Business. This Agreement shall terminate automatically upon Agency's dissolution, receivership, insolvency, bankruptcy or death (if Agency is a natural person) and no Commission or Bonus shall accrue on or following the effective date of such termination. Insurer shall immediately cease to recognize the Agency as a Broker of Record on all Subscribers.

D. Termination for Cause. Insurer may terminate this Agreement for cause immediately by notifying Agency in writing of the effective date of termination. The following events/occurrences will constitute cause for termination:

i. **Fraud and/or Dishonest Acts.** Commission of or knowingly assisting another in the commission of fraudulent and/or dishonest activity in connection with the services under this Agreement.

ii. **Loss of License.** Termination, expiration or suspension of Agency's licenses as required by law. Insurer may consider reinstatement after any suspension period. Whether reinstatement of this Agreement shall occur will be solely at the discretion of Insurer after the submission and approval of a new Agency application and upon such terms and conditions as may be prescribed by Insurer.

iii. **Intentional Interference with Business Relationship.** Commission of or knowingly assisting another in the commission of any knowing or intentional act that interferes with the business relationship between Insurer and any of its customers, accounts and/or employees, and/or Insurer's agents except where Agency is acting in accordance with good business practices and in the interest of Agency's client.

iv. **Agency's Breach.** Agency breaches a material term of this Agreement or fails to meet any Required Qualifications stated in this Agreement.

v. **Conviction.** Agency is convicted of a felony or a crime of moral turpitude.

E. Effects of Termination.

i. **No Solicitation Permitted.** Agency may not solicit or sell on behalf of Insurer after the Agreement has been terminated.

ii. **Compensation**.

a. **Termination without Cause.** If Insurer terminates this Agreement without cause under Section B, Commission shall continue to be payable for the duration of the Subscriber's existing plan year so long as the terminated Agent remains the Broker of Record, meets all qualifications in Section V, and business remains with Insurer. No Bonus shall accrue on or following the effective date of such termination.

b. **Termination for Cause.** If the Agreement is terminated for cause, no Compensation shall accrue on or following the effective date of such termination. Agency and any Producing Agency(s) will immediately cease to be recognized by Insurer as a Broker of Record on all Subscribers.

c. **Fraud and/or Dishonest Acts.** Insurer may recover any Compensation paid to Agency after Agency engaged in, or knowingly assisted another to commit, the fraudulent or dishonest act without regard to when the Agency earned such Compensation.

F. Survival. The following terms shall survive termination of this Agreement: Adequate Records, Section IV(C)(iii); Compliance with Privacy Laws, Section V(B)(iv); Adjustments, Section VIII(F); Audit, Section X; Indemnification, Section XI(A); Agreement is Confidential, Section XII(C); and, Proprietary Information, Section XII(D).

IX. AUDIT.

A. Audit. During the term of this Agreement and any applicable record retention period, upon reasonable notice, Agency shall permit Insurer or any authorized representative of Insurer to inspect and audit all information and records related to services Agency performs for Insurer under this Agreement.

B. Provide Information upon Request. Agency shall provide Insurer with all information and copies of documents requested by Insurer relating to the services provided by Agency under this Agreement at Agency's cost.

X. INSURANCE AND INDEMNIFICATION.

A. Indemnification. Agency agrees to indemnify and hold harmless the Insurer from and against any and all claims, loss, damage, injury, expense and liability arising out of or resulting from, or in any way connected with matters arising under this Agreement or by any negligence or willful misconduct on the part of the Agency or Sub-Agents. Damages subject to indemnification under this Section may include, but are not limited to, compensatory, punitive, costs and attorney fees. Agency agrees that Insurer will be held harmless for any liability that results from misrepresentation or any other error or omission by Agency, Sub-Agents or Agency's employees.

B. Confidentiality. With respect to any nonpublic or proprietary information furnished by either party or its agents or representatives to the other party or its agents and representatives, whenever furnished and regardless of the manner or media in which such information is furnished, which the receiving party knows or reasonably should know to be confidential, each party shall treat such information as confidential and only use it in the performance of its obligations under this Agreement. All Subscriber and other customer information disclosed to each other in furtherance of this Agreement shall remain confidential and shall not be disclosed by the receiving party to any individual, corporation, other business organization or governmental agency without the disclosing party's written consent unless required by law, or as necessary for the performance of the Party's duties related to the services it provides under this Agreement or as allowed under this Agreement. The parties shall use such Subscriber or other customer information solely in connection with this Agreement and for no other purpose whatsoever. This Section shall survive termination of this Agreement.

C. Insurance.

i. **Errors & Omissions Insurance**. Agency shall maintain Errors & Omissions coverage with a carrier having an A.M. Best rating of not less than A- or captive approved by Insurer with a minimum $1,000,000.00 per occurrence and $2,000,000.00 aggregate. The Errors & Omissions policy shall provide for coverage for duties and responsibilities set forth in this Agreement. If the aforementioned policy is written on a claims-made basis, the retroactive date of the policy, if any, shall precede or be concurrent with any prior periods in which Agency had an in-force Agreement with Insurer.

ii. **Cyber Liability Insurance**. Agent shall maintain Cyber Liability Insurance with an aggregate limit based on Insurer membership as follows:

Members	Limit
1-3,999	$ 250,000.00
4,000-7,999	$ 350,000.00
8,000-11,999	$ 450,000.00
12,000-15,999	$ 550,000.00
16,000-19,999	$ 600,000.00
20,000-29,999	$ 650,000.00
30,000-39,999	$ 750,000.00
40,000-49,999	$ 800,000.00
50,000-59,999	$ 950,000.00
60,000-79,999	$ 1,000,000.00
80,000-99,999	$ 5,000,000.00
100,000+	$ 10,000,000.00

iii. **Commercial General Liability Insurance.** Agent shall maintain commercial general liability insurance with a minimum $1,000,000.00 per occurrence and $2,000,000.00 aggregate. The policy must provide for $1,000,000.00 per occurrence for bodily injury/property damage; $1,000,000.00 per occurrence for personal injury/advertising injury; $2,000,000.00 per occurrence for products and completed operations aggregate; and $1,000,000.00 per occurrence for fire legal liability.

iv. A Certificate of Insurance (COI), or other evidence acceptable to Insurer shall be submitted and attached to this Agreement and furnished to Insurer as evidence of coverage.

v. Agency must immediately notify Insurer in writing if Agency's insurance terminates, is cancelled, suspended, or changes in a material way, including but not limited to a change in the amount of insurance. Agency shall provide ten (10) days' notice prior to any lapse in insurance coverage.

vi. Agency shall provide to Insurer proof of Errors & Omissions coverage for all Sub-Agents.

XI. GENERAL AND ADMINISTRATIVE.

A. **Assignment.** Neither this Agreement nor the authority conferred hereunder is transferable or assignable by Agency unless Insurer has provided prior written consent thereto to Agency. Insurer may assign this Agreement to any affiliate, subsidiary or successor in interest without the consent of Agency.

B. **Relationship of the Parties.** This Agreement does not, nor is it intended to, in any way create a relationship of joint venture, partnership, employee/employer or general agency between Agency and Insurer.

C. **Agreement is Confidential.** Insurer and Agency agree to safeguard, maintain and preserve the confidentiality of this Agreement during the life of the Agreement and after termination. At no time may the provisions or terms of this Agreement be disclosed to a third party unless required by law.

D. **Proprietary Information.** Proprietary information disclosed by one party to the other party under this Agreement shall be and remain the sole and exclusive property of the disclosing party.

The receiving party shall maintain the confidentiality of such proprietary information. The receiving party shall not disclose, in whole or in part, any proprietary information provided by the disclosing party without the express prior written consent of the disclosing party.

E. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

F. Entire Agreement. This Agreement constitutes the full and entire understanding of the parties and supersedes any and all prior representations, statements, or agreements between them.

G. Amendment. This Agreement may be modified or amended only in writing signed by both parties.

H. Severability. If any part, term or provision of this Agreement shall be held void, illegal, or unenforceable for any reason, the validity of the remaining Agreement shall not be affected.

I. No Waiver. Failure of either party at any time to require performance of any of the provisions or obligations created under this Agreement shall in no way affect the right of either party thereafter to enforce the same. No delay in acting with regards to any breach of this Agreement shall be a waiver of the breach.

J. Headings. Headings are intended as reference guides only and are not to be considered part of the Agreement.

K. Signatory Authority. Each signatory hereto certifies and warrants that all necessary authority and approval have been obtained and that this Agreement is validly executed by an authorized officer or Agency and is binding upon such party and enforceable in accordance with its terms.

L. **Notices**. All notices pertaining to this Agreement shall be in writing unless otherwise agreed to by both parties, shall be sent by first-class mail, postage paid, or in the alternative by email with return receipt requested and addressed to the individual below unless otherwise stated in this Agreement:

For Insurer:

Rebecca Greenberg
Senior Director
Broker Administration & Compliance
CareFirst BlueCross BlueShield
Mail Stop: OWML2-25009
10455 Mill Run Circle
Owings Mills, MD 21117-5559

Email: Rebecca.Greenberg@carefirst.com

For Agent:

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Email: ________________________

EQUAL EMPLOYMENT OPPORTUNITY

Insurer is an Equal Opportunity and Executive Order #11246 Affirmative Action Employer and hereby incorporates by reference, the Equal Opportunity clause set forth in 41 CFR-60-1.4, 60-250.4, and 60-741.4 as amended or revised. Insurer supports a policy which prohibits discrimination against any employee or applicant for employment, on the basis of age, race, sex, color, national origin, religion, physical or mental disability, veteran status or any other classification protected by law or ordinance. Agency agrees that it is in full compliance with this Equal Opportunity statement as expressed herein.

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IN WITNESS WHEREOF, the parties, by their duly authorized representative, have signed this Agreement in acknowledgment thereof.

AGENCY Name**:** ______________________________

AGENCY Tax ID ______________________________

National Producer Number: ______________________________

Maryland License Number: ______________ Expiration: ______________

District of Columbia License Number: ______________ Expiration: ______________

Virginia License Number: ______________ Expiration: Perpetual

List below the "Responsible Individual" (or "Principal and Primary Decision Maker".) Note: *In Maryland and in the District of Columbia, the person we request be identified below is the same person that the Agency designated as their "Responsible Individual" on their state licensing forms. In Virginia, the person is commonly referred to as the "Principal and Primary Decision Maker" for Agencies.*

"Responsible Individual" Name**:** ______________________________

"RI" Social Security Number: ______________________________

National Producer Number: ______________________________

Maryland License Number: ______________ Expiration: ______________

District of Columbia License Number: ______________ Expiration: ______________

Virginia License Number: ______________ Expiration: Perpetual

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGE TO FOLLOW]

FOR AGENCY:

Signature: ______________________________ Date: ______________________

Printed Name: ______________________________ Title: ______________________

Address: ______________________________

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City, State, Zip: ______________________________ Email: ______________________

County: ______________________________ Phone: ______________________

FOR INSURER:

Signature: ______________________________ Date: ______________________

Printed Name: David Corkum

Title: Executive Vice President, CareFirst BlueCross BlueShield

EXHIBIT A
COMMERCIAL INDIVIDUAL COMPENSATION

I. <u>COMMERCIAL INDIVIDUAL COMMISSION</u>

Agency will be paid Commission for the product types listed in the chart below that are sold to individuals who have not had a Commercial Individual Market Benefit Contract with Insurer for one (1) year immediately preceding the Commercial Individual Benefit Contract for which the Agency seeks payment under this Agreement. Agency will be paid at a per Subscriber, per Month (PSPM) rate for Commercial Individual Benefit Contracts that Insurer has determined to be paid and accepted. Commission is paid monthly after receipt of Premium.

Product Type	PSPM Rate
Under 65	$12.00
Over 65 (For Subscribers effective 02/01/18 and later)	$20.00
Over 65 (For Subscribers effective prior to 02/01/18)	$17.50
Dental	$6.00

II. <u>COMMERCIAL INDIVIDUAL MARKET MEDICAL BONUS</u>

Bonus is paid on a quarterly basis, forty-five (45) days after the close of the quarter.

A. <u>Bonus Rate.</u>

The Bonus rate is based on total paid medical Premium for the twelve (12) months prior to the quarter for which payment is being made.

B. <u>Bonus Calculation.</u>

Step 1: Identify the cumulative 12-month medical Premium represented by the General Agent's block to determine the appropriate PSPM rate tier.

Step 2: Determine the number of paid medical Subscribers per month for the relevant quarter.

Step 3: Add together the medical Subscribers per month from Step 2.

Step 4: Multiply the sum from Step 3 by the PSPM Rate from Table 1 below.

Sum of medical Subscribers in each month in the relevant quarter	X	PSPM Rate from Table 1	=	Quarterly CD Market Medical Bonus

Table 1	
Cumulative 12-month Medical Premium	**PSPM Rate**
$0 - $1,499,999	$0.00
$1,500,000 - $3,499,999	$3.00
$3,500,000 - $6,499,999	$5.00
$6,500,000 - $10,999,999	$7.00
$11,000,000- $19,999,999	$8.00
$20,000,000 and above	$9.00

EXHIBIT B
BUSINESS ASSOCIATE AGREEMENT

This Exhibit B amends and is incorporated into each underlying agreement in effect between CareFirst of Maryland, Inc. dba CareFirst BlueCross BlueShield on behalf of itself and CareFirst-Related Companies ("Covered Entity") and Company, (collectively "the Parties") and will, in addition, be incorporated automatically into each and every agreement into which the Parties and/or between Company and any CareFirst-Related Company enter henceforth (collectively referred to as the "Agreement").

WHEREAS, Covered Entity is committed to complying with the requirements of Subtitle F of Title II of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 Code of Federal Regulations Part 160-164) (the "HIPAA Rules".)

WHEREAS, Covered Entity is committed to complying with the Model Regulation prepared by the National Association of Insurance Commissioners to implement at the State level Title V of the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.) ("GLB Regulations".)

WHEREAS, Company is committed to complying with the HIPAA Rules and GLB Regulations.

WHEREAS, Company will have access to and/or receive from Covered Entity and/or create on behalf of Covered Entity certain Protected Health Information and Nonpublic Personal Information that can be used or disclosed only in accordance with this Exhibit, the HIPAA Rules and GLB Regulations.

NOW, THEREFORE, Covered Entity and Company (collectively "Parties") agree as follows:

I. **DEFINITIONS**

Capitalized terms that are defined in this Exhibit, either below or in the provision(s) in which they appear, will have the meanings set forth in such definitions. Capitalized terms used in this Exhibit, which are not defined in this Exhibit, will have the meanings ascribed to them in the HIPAA Rules.

CAREFIRST-RELATED COMPANY means any entity that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership and control with Covered Entity.

DHHS means the U.S. Department of Health and Human Services or any successor agency of the United States.

GLB REGULATIONS means the Model Regulation prepared by the National Association of Insurance Commissioners to implement at the State level Title V of the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.) When the following terms are capitalized in this Exhibit, they will have the same meaning ascribed to them in the GLB Regulations:

- Nonpublic Personal Information
- Nonpublic Personal Financial Information or NPFI
- Nonpublic Personal Health Information

HIPAA means the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, its implementing regulations (45 C.F.R. Parts §160-164) and any guidance issued by DHHS regarding requirements of HIPAA in each instance as amended from time to time.

HIPAA RULES mean, collectively, the requirements of HIPAA applicable to business associates. HIPAA Rules include:

- Privacy Rule
- Standards for Electronic Transactions
- Security Rule
- HITECH Act – The Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009.
- Final Omnibus HIPAA/HITECH Rules (78 Fed. Reg. 5566 (Jan. 25, 2013)) ("the Final Rules").

SUBCONTRACTOR means any Producer, vendor or subcontractor of Company that performs services involving the receipt, use, disclosure creation, maintenance, and/or creation transmission of Personal Health Information (PHI) on behalf of Covered Entity or on behalf of Company.

II. **PRIVACY OF PROTECTED HEALTH INFORMATION**

A. Company agrees to use and disclose the minimum necessary PHI and NPFI (or a limited Data Set, if practicable) it creates or receives for or from Covered Entity only as permitted by the Privacy Rule, as expressly permitted by this Exhibit, and only as necessary to perform functions, activities or services for, or on behalf of, Covered Entity as specified in the Agreement. Company is prohibited from using or disclosing PHI and NPFI in its possession, except as permitted or required by this Exhibit, or as required by law, the Agreement, or as otherwise expressly permitted in writing by Covered Entity.

B. Company will disclose PHI and NPFI for the purposes authorized by this Exhibit only
   1. To its employees
   2. To its Subcontractors, only in accordance with paragraph F of this Section 2
   3. As directed by Covered Entity in writing
   4. As otherwise permitted by the terms of this Exhibit, or
   5. As required by law

C. Unless otherwise limited herein or prohibited by law, Company is authorized by this Exhibit to use the PHI it creates or receives for or from Covered Entity if necessary, for Company's proper management and administration or to fulfill any present or future legal responsibilities of the Company.

D. Unless otherwise limited herein or prohibited by law, Company is authorized by this Exhibit to disclose such PHI to a third party if necessary for Company's proper management and administration or to fulfill any present or future legal responsibilities of the Company, provided that the disclosure is required by law or the Company obtains reasonable assurance, evidenced by written contract, from any third party to which Company discloses such PHI, that the third party will:
   1. Hold such PHI in confidence and use or further disclose it only for the purpose for which Company disclosed it to the third party or as required by law; and
   2. Notify Company (who will in turn notify Covered Entity according to the terms of Section 6, B of this Exhibit) of any breaches of confidentiality.

E. Except as permitted by the Agreement, this Exhibit or in writing by Covered Entity, Company will:
   1. Not develop any list, description or other grouping of individuals using NPI in its possession
   2. Not use or disclose any list, description or other grouping of individuals that is derived using such NPFI in its possession
   3. Use appropriate safeguards to prevent use or disclosure of PHI or NPFI

F. Company agrees that as required by the HIPAA Rules, Company will enter into a written contract with all Subcontractors that:

1. Requires them to comply with the Privacy and Security Rule provisions of this Exhibit in the same manner as required of Company; and
2. Notifies such Subcontractors that they will incur liability under the HIPAA Rules for non-compliance with such provisions Accordingly, Company shall ensure that any Subcontractors agree to the same privacy and security restrictions, conditions and requirements that apply to Company with respect to PHI. Company upon request will provide to Covered Entity a copy of the written contract with the Subcontractor.

G. Company may disclose PHI to a Subcontractor only to the extent not prohibited by the Agreement and subject to the terms of this Exhibit. Further, Company will disclose to its Subcontractor only the minimum necessary PHI to perform or fulfill a specific function required or permitted hereunder.

H. Company will ensure all PHI information is properly encrypted and policies and procedures are in place to verify non-compliance.

III. PHI ACCESS, AMENDMENT AND DISCLOSURE ACCOUNTING

A. Within fifteen (15) business days following the request of Covered Entity, Company will:
1. Make available to Covered Entity for inspection and to make copies, any PHI about the individual which Company created or received for or from Covered Entity and that is in the custody of control of the Company as required by 45 C.F.R. §164.524 and, where applicable, the HITECH Act. Company will make such information available in an electronic format where directed by Covered Entity.
2. Make available PHI for amendment or permit Covered Entity access to amend any portion of the PHI which Company created or received for or from Covered Entity, as required by 45 C.F.R. §16.4.526.

B. As required by 45 C.F.R. §164.528, Company will record for each disclosure of PHI, not excepted from disclosure accounting below, that Company makes to a third party (item 1-4, collectively "Disclosure Information");
1. The disclosure date
2. The name and (if known) address of the person or entity whom Company made the disclosure
3. A Brief description of the PHI disclosed
4. A brief statement of the purpose of the disclosure

Company further will provide any additional information to the extent required by the HITECH Act, the Final Rules and any accompanying regulations. For repetitive disclosures Company makes to the same person or entity for a single purpose, Company will provide:
i. The disclosure information for the first of these repetitive disclosures
ii. The frequency or number of these repetitive disclosures
iii. The date of the last of these repetitive disclosures

C. Company will make disclosure-tracking information available to Covered Entity within fifteen (15) business days from the date Covered Entity made the request. Company need not record disclosure tracking information or otherwise account for disclosure of PHI that this Exhibit or Covered Entity, in writing, permits or requires:
1. For the purpose of Covered Entity's payment activities or health care operations (except where such recording or accounting is required by the HITECH Actor the Final Rules and as of the effective dates for these provisions);
2. For the purpose of health care providers' treatment activities, or (other) covered entities' payment activities or certain health care operations (as set forth in 45 C.F.R. §164.506(c)(4)
3. To the Individual who is the subject of the PHI disclosed
4. Which are incidental to a use or disclosure otherwise permitted or required

5. Pursuant to an authorization
6. To persons involved in that Individual's care
7. For notification for disaster relief purposes
8. For national security or intelligence purposes
9. To correctional institutions or law enforcement officials regarding inmates
10. As part of a Limited Data Set
11. For disclosures prior to April 14, 2003

D. If Company makes disclosure of PHI for a particular research purpose in accordance with 45 C.F.R. §164.512 (i) for fifty (50) or more individuals, Company will provide Covered Entity a report of the disclosure accounting in accordance with the requirements of 45 C.F.R. §164.528(b)(4)(i)(A)-(F).

E. Unless otherwise provided under the HIPAA Rules, Company will make available to Covered Entity an accounting of disclosures of PHI for the six (6) year period prior to the date on which Covered Entity requested the accounting.

F. In addition, where Company is contacted directly by an individual based on information provided to the individual by Covered Entity and where so required by the HITECH Act, the Final Rules and/or any accompany regulations, Company will make such Disclosure Information available directly to the individual.

G. Company will comply (and Company will ensure that its Subcontractors comply) with any agreement that Covered Entity makes that either
   1. Restricts use or disclosure of Covered Entity's PHI pursuant to 45 C.F.R. §164.522(a) or
   2. Requires confidential communication about Covered Entity's PHI pursuant to 45 C.F.R. §164.522(b), provided that Covered Entity notifies Company in writing of the restriction or confidential communication obligations that Company must follow.

   Covered Entity will promptly notify Company 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 Company whether any of Covered Entity's PHI Information will remain subject to the terms of the restriction agreement. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI under this Agreement. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI under this Agreement. Covered Entity, in performing its obligation and exercising its rights under this Agreement shall use and disclose PHI in compliance with the HIPAA Rules and shall not request Business Associate to use or disclose PHI in any manner that would violate this Agreement of the HIPAA Rules. Covered Entity representatives that a request for PHI from Business Associate to Covered Entity shall only be the minimum amount of PHI necessary to accomplish the permitted purpose of the applicable request or use.

IV. <u>COMPLIANCE WITH STANDARD TRANSACTIONS</u>

A. If Company conducts all or part of an electronic transaction on behalf of Covered Entity, Company will comply and will require any Subcontractor involved with the conduct of such Standard Transactions to comply, with each applicable requirement of 45 C.F.R. Parts 160 and 162.

B. In compliance with 45 C.F.R. §162.915, Company will not enter into, or permit any Subcontractor to enter into, any trading partner agreement in connection with the conduct of Standard Transactions for or on behalf of Covered Entity that:
   1. Changes the definition, data condition or use of a data element or segment in a standard

2. Adds any data elements or segments to the maximum defined data set
3. Uses any code or data elements that are either marked "not used" in the standard's implementation specification or are not in the standard's implementation specification(s)
4. Changes the meaning or intent of the standard's implementation specification(s), as these terms are defined in 45 C.F.R. Part 162

V. SAFEGUARDS FOR SECURING ELECTRONIC PROTECTED HEALTH INFORMATION (EPHI)

A. Company will develop, implement, maintain, and use appropriate administrative, technical and physical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of EPHI ("Safeguards") that Company creates, receives, maintains, or transmits on behalf of Covered Entity as required by the Security Rule, 45 C.F.R. part 164, Subpart C and as required by the HITECH Act and the Final Rules. Company also will develop and implement policies and procedures that meet the Security Rule documentation requirements as required by the HITECH Act and the Final Rules.

B. Company agrees to mitigate, to the extent practicable, any harmful effect that is known to Company resulting from a use or disclosure of EPHI by Company in violation of the requirements of this Section.

C. Company will document and keep these Safeguards current. Upon Covered Entity's request, Company will provide Covered Entity with access to and copies of documentation regarding such Safeguards. These Safeguards will extend to transmission, processing and storage of EPHI. Transmission of EPHI will include transportation of storage media, such magnetic tape, disks or compact disk media, from one location to another.

VI. REPORTING NON-PERMITTED DISCLOSURE OR BREACHES

A. Company will report to Covered Entity any use or disclosure of PHI and/or NPFI not permitted by this Exhibit, by the Agreement, or in writing by Covered Entity, or that is in violation of any provision of the Privacy Rule or GLB Regulations ("Non-Permitted Disclosure") (whether such prohibited use or disclosure is by Company or by a Subcontractor) within ten (10) business days of when Company learns or should have learned of such Non-Permitted Disclosure, Breach of Unsecured Protected Health Information or suspected Breach. Company in its report to Covered Entity will identify at a minimum: each individual whose PHI has been, or is reasonably believed by Company to have been, accessed, acquired, used or disclosed as a result of the Non-Permitted Disclosure or the Breach; the nature of the non-permitted access, use or disclosure, including the date of the Non-Permitted Disclosure or Breach and the date of discovery of the Non-Permitted Disclosure or Breach; the PHI or NPFI accessed, used or disclosed as part of the Non-Permitted Disclosure or Breach (e.g., name, social security number, date of birth, etc.); party or parties who made the non-permitted access, use and who received the Non-Permitted Disclosure or Unsecured Protected Health Information; what corrective action Company took or will take to prevent further Non-Permitted Disclosure or Breach; what Company did or will do to mitigate any harmful effect of the Non-Permitted Disclosure or Breach; and such other information, including a written report, as Covered Entity may request.

B. Company will cooperate with Covered Entity in investigating the breach and in meeting the Covered Entity's obligations under the HITECH Act, the Final Rules and any other security breach notification laws. As provided for in 45 C.F.R. § 164.402, Company recognizes and agrees that any acquisition, access use or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule (Subpart E of 45 C.F.R. Part 164) is presumed to be a Breach. As such,

Company shall assist Covered Entity in performing (or at the Covered Entity's direction, perform) a risk assessment to determine if there is a low probability that the PHI has been compromised. Company agrees to abide by Covered Entity's risk assessment.

VII. REPORTING SECURITY INCIDENTS

A. Company agrees to the following reporting procedures for Security Incidents that result in unauthorized access, use, disclosure, modification or destruction of EPHI or interference with system operations ("Successful Security Incidents") and for security incidents that do **not** result in unauthorized access, use, disclosure, modification or destruction of EPHI or interference with system operations ("Unsuccessful Security Incidents".) In the event that a Successful Security Incident involves EPHI, then Company will also be required to submit a breach report as required by Subsection 6.A and 6.B, in addition to the report described below in Section 7.B.

B. Company will report to Covered Entity any Successful Security Incident of which it becomes aware of within ten (10) business days. At a minimum such report will contain the following information:
   1. Date and time when the security incident occurred and/or was discovered
   2. Name(s) of system(s), program(s), or network(s) affected by the security incident
   3. Preliminary impact analysis
   4. Description of and scope of EPHI used, disclosed, modified, or destroyed by the security incident
   5. Description of any mitigation steps taken
   6. Company will provide the report to the CareFirst Security Official at 10455 Mill Run Circle, Owings Mills, MD 21117 and to the individual specified under the Notice Provision in the Agreement and will send such report by traceable carrier.

C. To avoid unnecessary burden on either party, Company will report to Covered Entity any Unsuccessful Security Incident of which it becomes aware of only upon request of Covered Entity. The frequency, content and the format of the report of unsuccessful security incidents will be mutually agreed upon by the parties.

VIII. COMPANY OBLIGATION UPON BREACH

A. At Covered Entity's direction, Company will take corrective action(s) as a result of any breach that Company discovers under Section VII, above. In the event that Covered Entity determines that a Breach of Unsecured Protected Health Information has occurred, and Covered Entity directs Company to perform the notifications, Company will provide such notification to the affected individuals without unreasonable delay but no longer than 60 calendar days after discovery of the Breach. The notification shall contain the following elements:
   1. Description of the incident that caused the unauthorized access, use or disclosure, including the date of the event and the date of discovery
   2. Description of the types of PHI that were involved in the unauthorized access, use or disclosure
   3. Summary of the steps to investigate and prevent further unauthorized access, use or disclosure and to mitigate harm to the affected individuals
   4. Contact procedures for those affected individuals wishing to ask questions or learn additional information, including a toll-free telephone number, website and/or postal address
   5. Steps affected individuals should take to protect themselves from the unauthorized access, use or disclosure

6. If breach involves Social Security Numbers, offer and provide free credit monitoring for each affected individual for one (1) year.

B. At Covered Entity's option, Covered Entity may choose to provide the notification directly to the affected individuals. If Covered Entity provides the notification, then Company will be responsible for the cost and expense of such notifications including the cost of free credit monitoring costs for responding to inquiries from affected individuals.

C. Company will pay any cost or expense, claim, cause of action, liability, fine, penalty or damage (including, for example, notification expenses, attorney's fees, and court or processing costs) arising out of or resulting from any unauthorized access, use or disclosure of PHI by Company, Company's, Subcontractors. Company's liability arising out of or in connection with this Exhibit will be governed solely by the terms of this Exhibit and no provision set forth in the Agreement, including indemnification provisions hereunder or any terms that define, restrict or limit the types or amounts of damages, costs or expenses, will in any way alter, expand, restrict or limit Company's liability hereunder.

IX. <u>BREACH OF AGREEMENT AND TERMINATION</u>

A. Covered Entity has the right to immediately terminate this Exhibit and any related agreements between the parties if Covered Entity determines, in its sole discretion that Company, or any of its Subcontractors, has breach any material term of this Exhibit.

B. Either party may terminate agreement if it determines, after reasonable consultation with other party, that the other party has breached any material provision of this Exhibit ("Breaching Party") and upon written notice to Breaching Party of the breach, Breaching Party fails to cure the breach within thirty (30) days after receipt of the notice. Non-Breaching Party may exercise this right to terminate agreement by providing Non-Breaching Party written notice of termination, stating the failure to cure the breach of the Exhibit that provides the basis for the termination. Any such termination will be effective upon such reasonable date as the Parties mutually agree. If Non-Breaching Party reasonably determines that Breaching Party has breached the terms of this Exhibit and such breach has not been cured, but Non-Breaching Party and Breaching Party mutually determine that termination of the Agreement is not feasible, Non-Breaching Party may report such breach to the DHHS.

C. Company will automatically, at termination of the Agreement and the Exhibit, return, at its cost, all PHI and NPHI received from, or created or received by Company on behalf of Covered Entity. Prior to the return of PHI and NPHI to Covered Entity, Company may submit to Covered Entity a written request for permission to destroy the PHI and/or NPHI. Company will not retain any copies of PHI and NPHI unless expressly permitted in writing by Covered Entity. If return of destruction of the PHI and NPHI is not feasible, as determined by Covered Entity, Company will extend the protections of this Exhibit for as long as necessary to protect the PHI and NPHI and to limit any further use or disclosure. Company will certify in writing to Covered Entity that it will only use or disclose such PHI for those purposes that make return or destruction feasible. The Parties agree that it would not be feasible for Company to return or destroy the PHI reasonably needed to be retained by Company for its own legal and risk management purposes, including copies of PHI that may be included in information retained for archival purposes.

D. In the event of a breach of any material term of this Exhibit, Covered Entity has a right to seek injunctive relief to prevent future disclosure of PHI and/or NPHI, and Company will not oppose such relief if sought by Covered Entity.

X. **MISCELLANEOUS**

A. The applicable duties and responsibilities of the parties as set forth herein will inure to and will be enforceable by and against the CareFirst-related companies as defined herein.
B. Except as provided in this paragraph below, no supplement, modification or amendment of any term, provision or condition of this Exhibit will be binding or enforceable unless executed in writing by the parties. Notwithstanding the preceding sentence, upon the compliance date of any final regulation or amendment to final regulations of the HIPAA Rules, the HITECH Act and GLB Regulation, the final Rules and this Exhibit will automatically amend such that the obligations they impose on Company remain in compliance with these regulations.
C. No third parties are intended to benefit from this Exhibit and no third-party beneficiary rights will be implied from anything contained in the Exhibit.
D. The terms and conditions of this Exhibit will override and control any conflicting term or condition of any other agreements that may be in place between the parties. All non-conflicting terms and conditions of the Exhibit and any other agreement between the parties remain in full force and effect.
E. Any ambiguity in this Exhibit will be resolved in favor of a meaning that protects PHI and NPHI and allows Company and Covered Entity to comply with the HIPAA Rules and GLB Regulations.
F. Company will provide, at Covered Entity's request, reasonable access to any policies and procedures developed by or utilized by Company for the protection of PHI and NPHI.
G. Company will make its internal practices, books and records relating to the use and disclosure of PHI and NPHI to Covered Entity and DHHS to determine compliance with HIPAA Rules and the HITECH Act.
H. Company will provide notice to Covered Entity of any subpoena or other legal process seeking PHI and/or NPHI received from or created on behalf of Covered Entity, or otherwise relating to Company's services under the Agreement. Such notice will be provided within forty-eight (48) hours of receipt of a subpoena or other legal process.
I. All notices required to be given to Covered Entity under this Exhibit will be in writing and sent by traceable carrier to the address indicated below, or such other address as Covered Entity may indicate by at least ten (10) days prior written notice to Company. Notices will be effective upon receipt.

CareFirst BlueCross BlueShield
Attention: Privacy Office
10455 Mill Run Circle
Mail Stop CANTN-10152
Owings Mills, MD 21117-5559

J. This Exhibit will continue in full force and effect for the entire period(s) of time that there is one or more Agreement(s) in effect between the parties. If there is an interim period of time during which there are no Agreement(s) in effect between the parties, the duties and responsibilities of the parties will be suspended for the duration of such period, subject to the requirements of paragraph K of this Section X. However, if the parties thereafter enter into a subsequent Agreement, this Exhibit will be incorporated into such Agreement and the duties and responsibilities of the parties under this Exhibit shall be fully and completely restored as of the effective date of such Agreement.
K. The respective rights and obligations of Company under Section III, VI, VII and VIII, of this Exhibit will survive the termination of this Exhibit or any suspension of the duties and responsibilities of the parties as provided in paragraph J of this Section X.

GLOSSARY OF HIPAA TERMS

The definitions for the following HIPAA terms can be found in the regulations listed below:

TERM	CITE
Administrative Safeguards	45 C.F.R. §164.304
Availability	45 C.F.R. §164.304
Breach	45 C.F.R. §164.402
Code Set	45 C.F.R. §162.103
Confidentiality	45 C.F.R. §164.304
Electronic Protected Health Information (EPHI)	45 C.F.R. §160.103
Information Systems	45 C.F.R. §164.304
Integrity	45 C.F.R. §164.304
Limited Data Set	45 C.F.R. 164.514(e)(2)
Physical Safeguards	45 C.F.R. §164.304
Protected Health Information (PHI)	45 C.F.R. §160.103
Required by Law	45 C.F.R. §164.103
Security Incident	45 C.F.R. §164.304
Standard	45 C.F.R. §160.103
Subcontractor	45 C.F.R. §160.103
Technical Safeguards	45 C.F.R. §164.304
Transaction	45 C.F.R. §160.103
Unsecured Protected Health Information	45 C.F.R. §164.502