

## STANDARD TERMS AND CONDITIONS

- In these Standard Terms and Conditions, the “**Marketing Organization**” means [Copeland Group USA, LLC
- Marketing Organization is affiliated with other independent marketing organizations (individually an “**Affiliated Company**” and collectively the “**Affiliated Companies**”) that market certain products and services that have established contractual relationships with several insurance companies (“**Carriers**”) authorizing independent insurance agents to market and sell the Carriers’ products and services (“**Products and Services**”);
- Licensed independent insurance agents may apply for appointment thru Marketing Organization or any of the Affiliated Companies to market the Products and Services thru appointment by the Carriers as independent sales representatives; and
- Agent is an independent contractor who desires to serve as an independent agent for Marketing Organization or one of Marketing Organization’s Affiliated Companies to solicit and sell to consumers the Products and Services.

### 1. Agent Responsibilities and Authority

1.1. **Agent Responsibilities.** During the term of this Agreement, Agent shall, and shall ensure each of its Sub-Agents (as defined in paragraph 1.3 below):

- i. Are responsible for providing and maintaining Agent’s own office or other place of business as well as any and all business expenses incurred in connection with the performance of services pursuant to this Agreement. Business expenses include, without limitation, all travel expenses, entertainment expenses, equipment, office supplies, licensing fees, education fees and brokerage fees;
- ii. Adhere to all requirements as set forth in the contracts with the Carriers, including requirements pertaining to licensing, continuing education, and fees;
- iii. Comply with the procedures, manuals, and policies of Marketing Organization, its affiliates (if any) and the Carriers;
- iv. Attain and maintain an accurate working knowledge of the Products and Services provided by Marketing Organization and to solicit and sell such Products and Services through customer leads provided by Marketing Organization or its affiliates, when requested by Agent, and through such other customer leads as Agent may develop through Agent’s own efforts;
- v. Use Agent’s best efforts to ensure that all Sub-Agents attain and maintain an accurate working knowledge of the Products and Services provided by Marketing Organization and to solicit and sell such Products and Services;
- vi. Complete and promptly file with Marketing Organization all requested reports documenting all sales of Products and Services by Agent, or the Sub-Agents, as well as insurance applications (if requested) and other related matters which are required by Marketing Organization from time to time so that sales by Agent and/or Sub-Agents of the Products and Services can be appropriately recorded and commissions determined;
- vii. Accurately represent premium costs and policy coverage to prospective customers and conduct himself or herself in an ethical and professional manner that reflects well on the reputation and professionalism of Agent, Marketing Organization and the Carriers;

- viii. Promptly alert Marketing Organization if there is any pending or threatened litigation, action, arbitration or legal, administrative, regulatory or other governmental investigation or proceeding (including an allegation of fraud or misrepresentation by another company)

that exists against Agent or any of its Sub-Agents that could have a material adverse effect on Agent's, and Sub-Agent's or Marketing Organization's business, assets, reputation, financial condition or good standing, or on Agent's or any Sub-Agent's licenses or appointments;

- ix. Do not do anything that will damage the business, good name or reputation of Marketing Organization or any of its Affiliated Companies and/or their respective officers, directors, and employees;
- x. Fully comply with all applicable laws related to privacy and data security as more fully detailed in the **Privacy Compliance Appendix** (which may be amended from time to time by Marketing Organization); and
- xi. Fully comply, and ensure that any vendor Agent engages, fully complies with all applicable laws related to any lead acquisition as more fully detailed in the **Lead Acquisition Terms Appendix**.
- xii. Fully comply with the Health Insurance Portability and Accountability Act of 1996, as amended, as more fully detailed in the **Subcontractor Business Associate Appendix**.
- xiii. Respond promptly to requests for information, investigations and questions on behalf of carriers, regulatory agencies including CMS, consumers and policyholders or members, including any audit request pursuant to Section 12.
- xiv. Promptly notify Marketing Organization of any changes to your personal information including: address, telephone number, email address, banking information, and maintain current tax identification information through annual W-9 updates.

1.2. **Agent General Warranties.** Agent represents and warrants that Agent is of the legal age of majority in the state or commonwealth in which Agent resides on the date that Agent signs this Agreement; is properly licensed, otherwise competent to enter into this Agreement, and has the authority to enter into this Agreement. By virtue of entering into this Agreement and consummating the transactions contemplated hereby, or otherwise. Agent is not, and will not, be in breach of, violate, or interfere with, any other contract, agreement, business relationship or obligation which Agent has with any third party, company, agency, association, firm, person, corporation, or other entity. Agent has not engaged, and will not engage, in any business, practice or behavior or take any action which has resulted, or will result, in any violation of any restriction or covenant to which Agent is subject pursuant to any agreement.

1.3. **Recruitment.** Agent is authorized to recruit independent agents, brokers and other acceptable producing representatives for Marketing Organization and Carriers. For purposes hereof, all of the contracted agents, brokers and other acceptable producing representatives and agencies within the production hierarchy of Agent which are duly contracted with and appointed by Carriers are referred to as "**Sub-Agents**". Carriers and Marketing Organization, jointly or individually, reserve the sole discretion and right to approve or disapprove the appointment of any Sub-Agent and to terminate any Sub-Agent for any or no reason. Agent is solely and strictly responsible for the performance, fidelity and honesty of Agent's Sub-Agents, employees and independent contractors, all of whom shall act in accordance with this Agreement. Agent shall be responsible to the Marketing Organization for the supervision of all business entrusted to Sub-Agents or enrollers employed by the Agent, and no such appointee, Sub-Agent or enroller shall have any claim against the Marketing Organization for commissions or otherwise. Marketing Organization may terminate a

Sub-Agent without Agent's approval. Agent shall remain jointly and severally liable for any and all actions by any of its Sub-Agents. Upon the termination of this Agreement, Marketing Organization may re-contract or reassign Agent's Sub-Agents. In any recruitment efforts by Agent, Agent shall fully comply with the **Social Media Appendix**.

1.4. **Limitation on Authority.** Agent's authority shall not extend beyond the limited authority as set forth in this Agreement. Agent has no authority to act in any manner whatsoever contrary to the laws and regulations governing the business of insurance. Agent shall not incur nor enter into any agreement or contract, debts or obligations in the name of Marketing Organization or any of its affiliates or obligate Marketing Organization or any of its' affiliates in any manner whatsoever. Agent shall not (i) misrepresent any Carriers' policy terms, conditions, coverages, or exclusions; (ii) promise issuance of coverage, reinstatement of coverage, or any particular result or decision on a claim; (iii) waive or change Carriers' policy terms, rates, rules, or customary requirements, or represent to anyone that you are able to do so; (iv) deliver policies except in accordance with the Carrier's instructions; (v) deliver any policy when Agent or any Sub-Agents know of any fact(s) not disclosed on the application (or which arise after application but before delivery) that could affect a Carrier's coverage or premium rate decisions, including undisclosed facts about the applicant's health condition(s); (vi) collect any premium other than the initial premium unless the applicable Carrier authorizes you to do so; (vii) extend credit to applicants or insureds, pay premiums for applicants or insureds (directly or indirectly), or grant extra time to pay premiums; (viii) accept or incur risks, liabilities, debts, or contractual obligations in Marketing Organization's name or on Marketing Organization's behalf; (ix) interfere with any person's business or contractual relationship with Marketing Organization; (x) outsource or assign any responsibilities under this Agreement without prior approval of Marketing Organization; (xi) start legal actions in Marketing Organization's or any Carrier's name; (xii) endorse checks or any other negotiable instrument payable to or intended for Marketing Organization or (xiii) undertake any act on behalf of Marketing Organization other than expressly authorized herein. .

1.5. **Expenses.** Except as prohibited by law, the following terms shall apply: Agent shall promptly pay, including through offsets against Pending Commissions, all expenses relating to this Agreement, including but not limited to indebtedness to Marketing Organization or any of its affiliates. Agent shall also be obligated to promptly repay Marketing Organization for indebtedness incurred by any of Agent's Sub-Agents including any insurance payments such as E&O required pursuant to Section 4, loss profits or indemnity.

1.6. **Marketing Organization Resources.** In using any resources provided by Marketing Organization or its affiliates, including, without limitation, any marketing resources, technology resources, sales and other content in any media ("**Resources**"), Agent shall, and shall ensure its Sub-Agents, use the Resources only for the purpose of marketing and selling the Products and Services, and shall comply with all applicable law and instructions from Marketing Organization regarding the use of the Resources. Agent shall, and shall ensure its Sub-Agents, adhere to all terms of use and terms of service pertaining to the Resources.

1.7. **Sub-Agent Compliance.** Agent shall ensure that Agent and all Sub-Agents comply with any guidelines issued by any Carrier, Marketing Organization or any Affiliated Company, and all applicable regulations or laws.

## 2. **Not An Employee; Independent Contractor Status**

2.1. The relationship between Agent and Marketing Organization shall be that of independent contractors, and nothing herein shall be construed to create an employment relationship, a joint venture, or partnership. Agent's relationship with Marketing Organization is separate from the Marketing Organization's relationship with the Carriers. Any requirements or mandates made by the Carriers to Marketing Organization are not imputed to Agent from Marketing Organization. None of the benefits, if any, that Marketing Organization provides to its employees, shall be available to Agent (or Agent's employees, if any). For the purpose of this Agreement, benefits means, without limitation, any employee benefit, pension, profit sharing, savings, retirement, deferred compensation, stock option, phantom stock, restricted stock, or stock purchase, insurance, health, dental, disability, employee welfare benefit, sick pay, workers' compensation coverage, bonus, vacation pay, severance pay, and any other similar plans, programs and agreements, whether or not reduced to writing. Nothing shall be construed to constitute Agent as a partner, employee, or representative of

Marketing Organization such that Agent could speak for or on behalf of Marketing Organization. Agent acknowledges that references made by any licensing body, website, social media site and/or any document or form, referencing Agent as an "employee" of Marketing Organization, its affiliates, or the Carriers is incorrect and does not change Agent's status with Marketing Organization and Agent is an independent contractor pursuant to the terms and conditions of this Agreement. Agent shall conduct and control his/her business activities, manner and means of work, including, but not limited to, work hours, selection of customers, office location and sales methods.

2.2. Agent shall conduct and control any and all of Agent's business activities;

2.3. Agent is free to engage in any other remunerative contract, calling or occupation during the duration of this Agreement, so far as it is not inconsistent with or in conflict with the terms of this Agreement;

2.4. Agent shall procure and maintain any and all insurance coverage and permits of work of every nature and kind required by federal or state law (including, without limitation, applicable workers' compensation coverage). At Marketing Organization's request, the Agent shall provide Marketing Organization certificates of insurance in a reasonably acceptable form to Marketing Organization evidencing that Agent is in compliance with this paragraph;

2.5. Agent shall have no recourse against Marketing Organization or any of its affiliated companies for any losses, damages, claims, costs, or expenses in relation to any occurrence connected with the services provided under this Agreement or the Agent's delivery of the services; and

2.6. Agent shall be responsible for the timely payment of any and all taxes including Federal, State and local taxes and any business license fees arising out of the Agent's activities hereunder.

### 3. Regulatory Obligations

3.1. **Licensure.** Agent shall and shall ensure it each of its Sub-Agents (i) obtain such professional licenses and Carrier appointments as necessary for Agent and Sub-Agents to sell the Products and Services attempting to be sold, and (ii) remain in good standing with respect to all such professional licenses and Carrier appointments.

3.2. **Compliance with Laws.** Agent shall, and shall ensure it each of its Sub-Agents, (i) comply with all laws and regulations relating to the solicitation and sale of the Products and Services, and (ii) comply with the Medicare Marketing Guidelines to the extent such guidelines are applicable to the Products and Services sold by Agent.

3.3. **Anti-Money Laundering.** Agent shall and shall ensure it and each of its Sub-Agents are in compliance with all applicable anti-money laundering laws, rules, regulations and government guidance including any reporting, recordkeeping or compliance requirements. These include requirements to identify and report currency transactions and suspicious activity, to verify customer identity and to conduct customer due diligence. Agent shall promptly report any suspicious activity to Marketing Organization. Marketing Organization may, at its discretion, require Agent to complete anti-money laundering training.

3.4. **Anti-Bribery.** Agent shall and shall ensure it and each of its Sub-Agents are also in compliance with all anti-corruption laws, and will not engage in any activity that could be considered bribes or engage in any other unlawful or improper methods of remuneration to any person.

3.5. **Relationships with Healthcare Providers.** Agent shall not, and shall ensure that each of its Sub-Agents do not, enter into any referral arrangements with healthcare providers, pursuant

to which any Agent or Sub-Agent receives anything of value from healthcare providers in exchange for the referral of patients to the healthcare provider.

3.6. **Discrimination.** Agent agrees that all insurance premiums must be charged to all consumers on a non-discriminatory basis, without consideration of race, gender, national origin or age.

3.7. **Actual and Potential Violations.** Agent must notify Marketing Organization immediately if Agent or a Sub-Agent receives any communication indicating that Agent or a Sub-Agent is or may be out of compliance with any regulatory, licensure, Carrier requirements, or any of the requirements of this Section 3

#### 4. **Errors and Omissions Insurance.**

Agent shall, and shall ensure it carry, at all times, Errors and Omissions liability insurance policy with minimum coverage of One Million Dollars (\$1,000,000) per occurrence and an aggregate amount of \$3,000,000 or such other higher amount as Carriers may require. Agent shall ensure each of its Sub-Agents, obtain and keep in effect, at all times, errors and omission insurance coverage in the minimum amount of (\$1,000,000) per occurrence and an aggregate amount of \$1,000,000 or such other higher amount as Carriers may require. The cost and expense of the Sub-Agents liability insurance policy shall be the sole responsibility of each Sub-Agents. Each such policy shall name Marketing Organization as an additional insured. Agent or any of its Sub-Agents shall be solely responsible for obtaining any additional errors and omissions insurance policies as may be required by any carrier on behalf of which Agent or Sub-Agent is soliciting and/or selling insurance policies pursuant to the Carriers business relationship with Marketing Organization set forth herein. In the event Agent or Sub-Agent shall be required to obtain such additional errors and omissions insurance coverage, it shall be at the Agent's or the Sub-Agent's sole cost and expense. Agent will notify Marketing Organization in writing immediately if any coverage required under his Section is terminated or suspended.

#### 5. **Background Checks.**

5.1. Agent represents and warrants that Agent is not and will continue to not be on any exclusion list provided by the Office of the Inspector General, the General Services Administration and any similar state or territory agency or regulatory body.

5.2. Agent acknowledges that the business of insurance is subject to the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C. § 1033) ("**VCCLEA**"). In accordance with the VCCLEA, Agent shall not assign or permit any individual, whether an employee of Agent or any of its Sub-Agents, to perform services for Marketing Organization or any of the Carriers under this Agreement who has ever been convicted of a felony involving dishonesty or a breach of trust. However, an exception is if the individual has obtained the prior written consent of all relevant Governmental Authorities to engage in the business of insurance.

5.3. Agent shall not knowingly or willfully permit any employee, contractor or subcontractor who engages in activities contrary to the VCCLEA provide any services under this Agreement. Agent shall take reasonable steps to determine if any employees, contractors or subcontractors have ever been convicted of any criminal felony involving dishonesty or breach of trust or a violation of the VCCLEA. Further, Agent shall promptly notify Marketing Organization, in writing, of any employee, contractor or subcontractor who, after the Effective Date of this Agreement, is convicted of a criminal felony involving dishonesty or breach of trust or violation of the VCCLEA.

5.4. Agent agrees that Marketing Organization shall have the right to run any credit, employment and other financial and background investigations on the Agent at any time as Marketing Organization deems useful, whether such investigation is conducted by Marketing Organization or by an outside service or third party. The Agent shall provide any necessary consents to such investigations.

Agent additionally consents to the disclosure by any person or entity to Marketing Organization or its designee, of any financial, background and employment information conducted by Marketing Organization or by an outside service or third party. Agent further consents to the disclosure by Marketing Organization of such information to any Carrier to which Agent desires to get appointed.

## **6. Compensation; Expenses and Taxes; Deductions.**

6.1. **Compensation.** Agent is compensated under this Agreement only from the sale or referral of the Products and Services offered thru Marketing Organization or any of Marketing Organization's Affiliated Companies by Agent or any of Agent's Sub-Agents. Such compensation shall be set in policies and schedules issued by Marketing Organization or any of Marketing Organization's Affiliated Companies to Agent which are subject to change from time to time in the sole discretion of Marketing Organization or the applicable Carrier and are fully incorporated by reference into this Agreement. All commission is subject to any offset or other deduction described in this Agreement, including, but not limited to, the offset for indebtedness described in Section 7.

6.2. **Commission Earned.** Commission is not considered earned by Agent and will not be due and payable by Marketing Organization or any of Marketing Organization's Affiliated Companies except only if: (a) Agent is in full compliance with all provisions of this Agreement, including Sections 3 and 4, (b) either Marketing Organization or the applicable Affiliated Company has received full payment without any deduction for commissions from the applicable Carriers on the commissionable sales and the Agent has not been paid a commission by the carrier, and (c) the calculation of the commission due to Agent has been completed. All payments to Agent are contingent on the full payment from the applicable Carrier. Any timing of a commission payment to an Agent, including whether such payment is "as earned" or payable in advanced shall be set at the sole discretion of Marketing Organization and the applicable Carrier and may be changed at any time in their sole discretion. Should Marketing Organization or the applicable Affiliated Company receive a payment from a Carrier that is less than anticipated for the commissionable sales, Marketing Organization may proportionally reduce the commission payable to Agent on a pro-rata basis.

6.3 **Commission Vesting.** Generally, commissions payable shall vest as specified by the applicable Carrier. The Marketing Organization may set forth additional vesting set forth in schedules issued by Marketing Organization or an Affiliated Company. Notwithstanding anything to the contrary in this Agreement, if Agent's commission are vested but this Agreement is terminated by Marketing Organization "for cause" pursuant to Section 8.3, Agent forfeits any right to receive any commissions post-termination unless prohibited by applicable law.

6.4. **Commissions Payable by Marketing Organization.** This Section 6 shall be effective to the extent that any commissions are payable to Agent by Marketing Organization or any Affiliated Company. All commissions payable by Marketing Organization to Agent hereunder are dependent upon payments made by the Carriers directly or through another entity. Marketing Organization is not a guarantor of the payment of any particular amount of commissions to Agent, but rather is responsible only for paying to Agent the correct amount of commissions due to Agent from those monies actually received by Marketing Organization or an Affiliated Company from Carriers. Marketing Organization shall have no responsibility to account to Agent for any amount of commissions that are the subject of any dispute between Agent and the Carriers regarding the amount of commissions due and payable to Agent, nor to intervene in, mediate and/or resolve any such dispute concerning the same.

6.5. **Carrier Payment of Commissions to Marketing Organization.** Agent hereby directs and authorizes any Carrier to pay any and all commissions, or other compensation, if any, related to or arising out of the Products and Services sold by Agent hereunder directly to Marketing Organization. Agent hereby waives any and all right, title and interest in and to such commissions or other compensation due from such Carriers. Agent further acknowledges that

any commissions or other compensation attributable to the Products and Services shall be determined and paid by Marketing Organization to Agent pursuant to this Agreement. The amount, rate, timing, payment, determination of when a commission is earned and payable, forfeiture, and other aspects of such



commissions shall be determined solely by Marketing Organization or the Carriers. However, Marketing Organization shall provide Agent with reasonable notice of pertinent information regarding such commissions and the processes and procedures by which Agent may earn and receive such commissions.

6.6. **Assignment of Commissions.** In furtherance of the foregoing, with respect to each and all of the Products and Services sold by Agent during the term of this Agreement, Agent irrevocably assigns to Marketing Organization any and all first year and renewal commissions hereafter to become due to Agent. Agent agrees to execute and deliver to Marketing Organization such further documents and instruments necessary or desirable, in Marketing Organization's sole and absolute discretion, to evidence or effectuate the foregoing irrevocable assignment of commissions by Agent to Marketing Organization.

6.7. **Deductions for Fines, Penalties, and Compliance Costs Resulting from Action or Inaction by Agent or Sub-Agents.** Agent acknowledges and agrees that Agent is responsible for any and all costs, including any costs of investigation and legal expenses, incurred by Marketing Organization resulting from Agent's or any Sub-Agent's action or inaction and the Marketing Organization incurring additional or costs in the correction of such compliance violation as well as any and all regulatory fines or penalties imposed upon the Marketing Organization as a result of the actions of Agent or any of its Sub-Agents. Agent shall reimburse Marketing Organization for the full amount of the additional fine, penalties or costs incurred by Marketing Organization immediately upon notice from Marketing Organization. Marketing Organization may deduct the full amount of such costs from amounts otherwise owed by Marketing Organization or one of its Affiliates to Agent and shall provide Agent with information supporting the amount of any such deductions taken pursuant to this provision. This provision shall survive termination of the Agreement.

6.8. **Regulatory Changes.** Should there be any change in applicable law or regulation that impacts the amount of any commissions payable to Agent, Agent's commissions shall be reduced accordingly. If any such change impacts any commission previously paid to Agent, Agent shall promptly repay the portion of any previously paid commission impacted by such change.

7. **Indebtedness.** Agent agrees to fully promptly pay any indebtedness, including any chargebacks, that it or any of its Sub-Agents owe to Marketing Organization or any Carrier as more described in the **Indebtedness Appendix** to this Agreement. Agent understands that Marketing Organization may offset any commissions due to Agent from any indebtedness or chargebacks owed to Marketing Organization or any Affiliated Company.

## 8. Term and Termination

8.1. **Term.** This Agreement shall commence on the Effective Date and shall remain in effect until terminated pursuant to its terms.

8.2. **Termination Without Cause.** This Agreement may be terminated by either Party upon thirty (30) days' written notice to the other Party.

8.3. **Termination for Cause.** Marketing Organization, in its sole discretion, may terminate this Agreement "for cause" immediately upon Agent's breach of this Agreement.

8.4. **Carrier Release.** Agent agrees and understands that upon termination of this Agreement, any release from any carrier to permit Agent to serve as an agent for another upline agency that requires Marketing Organization's consent shall only be granted at the sole discretion of Marketing Organization. Should Marketing Organization, in its sole discretion, grant such release, Agent agrees to enter into Marketing Organization's standard release agreement.

8.5. **Post-Termination Obligations.**

8.5.1. Upon termination of this Agreement, regardless of the cause, Agent shall: (i) immediately deliver to Marketing Organization all Resources and all other property of Marketing Organization; (ii) immediately cease holding itself out as being affiliated with Marketing Organization, including through use of email, logos, and Marketing Organization's name; and (iii) return to Marketing Organization all of Marketing Organization's Confidential Information, and delete such information from its books and records and computer systems, except as required by law.

8.5.2. If this Agreement is terminated by Marketing Organization or Agent for any reason, and Agent's outstanding indebtedness exceeds the amount of any pending commissions owed, if any, as of termination, Agent must promptly repay Marketing Organization the outstanding indebtedness. Marketing Organization maintains the right to exercise any and all legal rights and remedies available to it to collect any outstanding indebtedness, including but not limited to, referring such balances to a collection agency and arbitration and Agent shall be responsible for all of Marketing Organization's costs incurred, including reasonable attorney's fees, in such collection efforts.

8.6. **Survival.** The parties' rights and obligations that by their nature are intended to survive this Agreement will survive expiration or termination of this Agreement, including the following sections: 6.7 (Deductions for Fines, Penalties, and Compliance Costs Resulting from Action or Inaction by Agent or Sub-Agents), 8.4 (Post-Termination Obligations), 10 (Confidentiality), 11 (Policy Replacement; Non-Solicitation), 13 (Indemnification), 14 (Limitation of Liability), 15 (Miscellaneous), as applicable.

## 9. Intellectual Property

9.1. **Intellectual Property Rights.** Agents agrees that all marketing and promotional materials, advertisements, circulars, brochures or similar material, rate and benefit schedules, contracts, records files, software, manuals, forms, and other materials and information furnished by Marketing Organization, whether furnished in paper forms, electronic format or through the Internet, is and shall remain confidential and proprietary to either Marketing Organization or the applicable Carrier. Agent agrees that such proprietary and confidential information shall only be used by Agent in connection with performance under this Agreement and only in the manner provided by this Agreement. Agent shall not use any of Marketing Organization's proprietary and confidential information to compete with Marketing Organization, or to assist any competitor of Marketing Organization to compete with Marketing Organization, during the term of this Agreement or at any time thereafter.

9.2. **Marketing Organization Trademarks.** Agent shall and shall ensure that all of its Sub-Agents shall not use the other Marketing Organization's or any of its affiliates trademarks, service marks, logos or other proprietary trade dress, in connection with the sale of products or services, or in any advertising, press releases, publicity matters or other promotional materials, unless Marketing Organization has given its prior written consent for such use, which consent Marketing Organization may grant or withhold in its sole and absolute discretion. Should Marketing Organization grant such prior written consent, Agent shall only have a non-exclusive, non-transferable, non-sublicensable, limited right and license to use the specific item identified in such consent and use shall be limited to the manner set forth in the **Use of Trademarks Appendix**. Agent shall not, in connection with any personal entity or activity, joint venture, partnership or corporation, appropriate or use Marketing Organization's or any of its affiliates service mark(s) or trademark(s), name(s) or any phrase, designation, or label, including the term "Marketing Organization" or other similar designations or derivatives whether separately, or in conjunction with any notation indicative of a business organization.

## 10. Confidentiality

10.1. **Confidential Information.** In the course of this Agreement with Marketing Organization, Agent will have access to confidential and proprietary information of Marketing Organization and/or its affiliates, including, without limitation, (i) the methods and systems used in soliciting,

selling and providing

Products and Services; (ii) the names, addresses, telephone numbers, profiles and other information regarding past, current, or prospective customer leads of Marketing Organization and its affiliates and of the Carriers; (iii) information regarding the policies, and Products and Services; (iv) policies, procedures, training information and techniques, commission structures, financial data, sales and marketing information; and (v) information concerning Marketing Organization's business relationship with the Carriers and its business relationship with other persons, firms, corporations and other entities (individually and collectively referred to in this Agreement as "**Confidential Information**"). For purposes of this Agreement, Confidential Information shall be defined in its broadest possible terms as set forth above, specifically including, but not limited to, all information of Marketing Organization (including affiliate and predecessor entities), the unauthorized disclosure of which could be detrimental to the interest of Marketing Organization.

10.2. **Non-Disclosure.** Agent may use Confidential Information solely to perform its Responsibilities hereunder. Agent shall not at any time or in any manner, directly or indirectly, divulge, disclose or communicate any Confidential Information to any person, firm, corporation or other entity for any reason except the direct performance of its Responsibilities without the prior express written consent of Marketing Organization, unless such information: (i) is in the public domain through no wrongful act of Agent; (ii) has been rightfully received from a third party without restriction and without breach of this Agreement; or (iii) except as may be required by law.

10.3. **Ownership of Confidential Information.** All Confidential Information developed, created or maintained by Agent, alone or with others while contracting as an independent contractor with Marketing Organization, and all Confidential Information maintained by Agent thereafter, and any and all Marketing Organization property which Agent obtained from the Marketing Organization during the term of this Agreement shall remain at all times the exclusive property of Marketing Organization, including, without limitation, lists and information regarding customer and agent leads, Agent handbooks and other policies. Agent shall return to Marketing Organization all such property and Confidential Information, and reproductions thereof, that are in his or her possession immediately upon request and in any event upon the expiration or termination of this Agreement. Agent agrees that Agent will not in any manner use the Confidential Information or any of Marketing Organization's property against the best interests of Marketing Organization at any time.

## 11. **Policy Replacement; Non-Solicitation.**

11.1. **Policy Replacement Prohibited.** During the term of this Agreement, Agent and the Sub-Agents shall not directly or indirectly contact, solicit, communicate or meet with any of the policyholders for the purpose of replacing policies with a policy from a carrier other than the Carriers or with a policy not written under Marketing Organization's hierarchy.

11.2. **Non-Solicitation of Policyholders.** Agent agrees that for a period of two (2) years following the termination of this Agreement, Agent and its Sub-Agents shall not directly or indirectly contact, solicit, communicate or meet with any of the policyholders for the purpose of servicing, rewriting, canceling, lapsing or replacing policies, and Agent and its Sub-Agents shall not rewrite, cancel, lapse or replace any policy.

11.3. **Non-Recruitment.** Except as prohibited by law, during the period that Agent is an Agent of Marketing Organization or any of its affiliates and for a period of two (2) years following the termination of this Agreement for any reason, Agent shall not, either individually or in partnership or jointly or in conjunction with any other person or entity, as principal, agent, consultant, contractor, employer, employee or in any other manner, directly or indirectly, solicit, induce or entice away or in any other manner persuade or attempt to persuade any individual who is a current agent of Marketing Organization or any of its affiliates and with whom the Agent had business contact with on behalf of Marketing Organization or its affiliated or related entities, to terminate or alter such individual's agent relationship with Marketing Organization to join a competing organization. This non-recruitment restriction is limited and only applies with respect to any recruitment of an agent

that resided in or engaged in business activities in the geographic area within fifty (50) miles of Agent's office(s) during the twelve (12) month period preceding the solicitation.

11.4. Failure to comply with any of the provisions of this Section will result in forfeiture of any and all commissions from Marketing Organization and entitle Marketing Organization to indemnification pursuant to Section 13.

## **12. Audit**

The accounts and records of the Agent shall be subject to audit and inspection by Marketing Organization, any applicable carrier or their respective duly authorized representative at all times, including but not limited to a period of ninety (90) days after termination of this Agreement. Marketing Organization may, at any time, make copies of or extracts from such accounts and records as it may deem necessary.

## **13. Indemnification**

Agent agrees to indemnify and hold harmless, Marketing Organization, its affiliates, and its respective officers, directors, agents and employees from any and all Indemnified Losses which are incurred, sustained, or suffered because of, arising out of or as a result of (i) any acts or omissions relating to Agent's performance under this Agreement,

(ii) the acts or omissions of any Sub-Agent or anyone directly or indirectly engaged by Agent in connection with this Agreement, or (iii) any breach of Agent's obligations and representations under this Agreement. The term "**Indemnified Losses**" means all liability, claims, demands, obligations, assessments, loss, cost, damage and expense, of any nature, contingent or otherwise, including, without limitation, any and all judgments, decrees, equitable relief, extraordinary relief, settlements, awards, attorney's fees, court costs, punitive damages, and arbitration costs, including arbitrators' fees. Marketing Organization shall be entitled to use counsel of its own choosing, shall be entitled to determine the validity of the Indemnified Loss, and shall not be required to notify Agent of the existence or progress of any claims or Indemnified Loss as a condition precedent to requiring payment by Agent to the indemnified Party for an Indemnified Loss. To secure Agent's promise of indemnification, Agent assigns to Marketing Organization and agrees to execute any additional instruments or documents necessary to perfect a continuing security interest to Marketing Organization in all commissions or advances otherwise payable to Agent by Marketing Organization, to the extent necessary to satisfy Marketing Organization for any such Indemnified Losses. This assignment is given to Marketing Organization to secure Agent's obligations as set forth in this Agreement. Marketing Organization therefore has the right to withhold commissions relating to this indemnity.

## **14. Limitation of Liability**

TO THE FULLEST EXTENT PERMISSIBLE UNDER LAW, IN NO EVENT WILL COMPANY NAME'S AND ITS AFFILIATES' TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH OR UNDER THIS AGREEMENT (UNDER ANY THEORY OF LIABILITY) EXCEED THE COMPENSATION PAID BY COMPANY NAME TO AGENT UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING THE APPLICABLE CLAIM.

## **15. Miscellaneous**

15.1. **Communications from Marketing Organization.** Agent consents to communications from Marketing Organization and its affiliates pertaining to Agent's obligations hereunder, including via email, texting, calls, recorded messages, and autodialer. Agent may opt out of communications at any time by submitting a written request to opt out to Marketing Organization.

15.2. **Photos.** Agent irrevocably consents to and forever authorizes the use by Marketing Organization or anyone authorized by Marketing Organization, its legal representatives or assigns, the absolute and unqualified right to use all photographs in which the Agent has appeared for Marketing Organization and any of its affiliates and reproductions thereof, in which the Agent has been included in whole or part, made through any media without inspection or approval of the finished product or use to which it may be applied, in any manner Marketing Organization may desire, factually or fictionally, including the right to make adaptations of said material of every and any kind and character. For such purpose, Marketing Organization may obtain copyright in

all countries on such use by Marketing Organization of such material in any form and upon any and all adaptations thereof to renew such copyrights. The Agent releases and discharges Marketing Organization, its affiliates, their assigns, agents, or licensees from any and all claims and demands that the Agent may have, which arise out of or in connection with the use of such photographs or reproductions, including but not limited to, any and all claims of libel, slander, and invasion of privacy.

### **15.3. Dispute Resolution.**

**15.3.1. Mandatory Mediation.** Except as otherwise provided in this Agreement, all claims, disputes, and controversies arising out of or in any manner relating to this Agreement, or any other agreement executed in connection with this Agreement, or to the performance, interpretation, application or enforcement hereof, including but not limited to occurrence hereof (in each case, "Dispute"), shall be referred to mediation before, and as a condition precedent to, the initiation of any adjudicative action or proceeding, including arbitration, and any suit, action or arbitration shall be barred unless mediation has been attempted in good faith. If there is a Dispute, the Party claiming the existence of a dispute must make written demand for mediation prior to instituting a lawsuit, action or arbitration proceeding. The mediation shall be conducted in Dallas County, Texas. Each Party shall bear its own expenses incurred as a result of submitting the matter to mediation with the expense of the mediator borne equally by the Parties. The mediator shall be chosen by the joint agreement of Marketing Organization and Agent. In the event an agreement cannot be reached with respect to a mediator, either Party may request that Judicial Arbitration and Mediation services, Inc. ("JAMS") or its successor appoint a mediator. Selection of the mediator by JAMS shall be binding.

**15.3.2. Mandatory Binding Arbitration.** Should mediation be unsuccessful, it is agreed that the Dispute shall be submitted to binding, non-appealable arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association in force at the time the demand is filed, unless the Parties mutually agree otherwise. Either Party may within sixty (60) days from the date of such unsuccessful mediation or one (1) year from the date of the alleged occurrence resulting in the Dispute, whichever is later, make a demand for arbitration by filing a demand in writing with the other Party and serving the same by depositing it in the U.S. Mail, certified mail, return receipt requested. Each of the Parties shall choose, within sixty (60) days after demand for arbitration is made, its arbitrator and the two appointed arbitrators shall choose a third arbitrator possessing the same qualifications. All arbitration hearings conducted hereunder, and all judicial proceedings to enforce any of the provisions hereof, shall take place in Dallas County, Texas. The hearing before the arbitrators of the matter to be arbitrated shall be at the time and place within said County as is selected by the arbitrators. The decision of any two arbitrators with respect to a Dispute shall be binding and conclusive and non-appealable and shall be submitted to the court for confirmation with the same effect as a judgment. Each of the Parties hereby irrevocably waives punitive, exemplary, consequential and other non-compensatory damages in connection with any arbitration award with respect to any dispute.

**15.4. Assignment.** This Agreement is a continuing obligation and shall be binding upon the Parties and their respective heirs, successors, transferees and assigns, and shall inure to the benefit of and be enforceable by the Parties and their respective heirs, successors, transferees and assigns. Agent may not, without the express prior written consent of Marketing Organization, assign any of its rights or responsibilities hereunder. No assignment of commissions payable by Marketing Organization to Agent other than as provided herein shall be valid unless authorized by Marketing Organization in advance in writing, and Marketing Organization shall at all times have a superior, continuing security interest in all commissions prior to the rights of any permitted assignee. Any assignment so authorized shall be subject to any and all indebtedness of Agent or its Sub-Agents to Marketing Organization then existing or thereafter accruing. Marketing Organization may assign its rights hereunder to a third-party, including but not limited to any lender, without notice to or consent of Agent.

**15.5. Applicable Law and Venue.** The Parties acknowledge that significant aspects of performance of this Agreement will occur in the State of Texas, and that the provisions of this Agreement shall be

governed by the laws of the State of Texas without regard to Texas conflict of laws. Exclusive venue with respect to all matters hereunder shall be Dallas County, Texas.

15.6. **Jury Trial.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY MATTER ARISING HEREUNDER.

15.7. **Not a Franchise.** This Agreement is not intended to be a franchise agreement and does not create a franchise relationship between Marketing Organization and Agent. If any provision of this Agreement is deemed to create a franchise between the parties, then that specific provision shall be deemed void and unenforceable and shall not impact the validity of any of the other provisions of this Agreement.

15.8. **Severability.** If any term of this Agreement is to any extent illegal, otherwise invalid, or incapable of being enforced, such term shall be excluded to the extent of such invalidity or unenforceability; all other terms hereof shall remain in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term. If application of this Severability provision should materially and adversely affect the economic substance of the transactions contemplated hereby, the Party adversely impacted shall be entitled to compensation for such adverse impact, provided the reason for the invalidity or unenforceability of a term is not due to serious misconduct by the Party seeking such compensation.

15.9. **Remedies Not Exclusive.** Unless expressly stated to be exclusive, the remedies provided in this Agreement are not exclusive.

15.10. **Notices.** Notices to either Party shall be given by certified or overnight mail and shall be deemed received on the day of delivery if delivered during normal business hours, or the next following business day if delivered after normal business hours. Delivery of all notices shall be made to the following persons at the respective addresses of the Parties as set forth on the signature page.

15.11. **Waiver.** No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof, whether or not similar, nor shall any such waiver constitute a continuing waiver unless otherwise expressly so provided.

15.12. **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement between the Parties and supersedes and replaces any and all prior agreements between the Parties. Marketing Organization shall have the right to modify, amend, or supplement this Agreement, any Appendix or any exhibit hereto unilaterally and without the consent of Agent by either written notice from Marketing Organization or by posting the updated version on its website and shall take immediate effect unless such modification, amendment, or supplement is required by state law, federal law, or CMS regulations or sub-regulatory guidance to take effect on an earlier date.

15.13. **Order of Precedence.** In the event of a conflict between provisions or documents that comprise this Agreement, the order of precedence is as follows: (a) Appendixes and (b) the terms and conditions of this Agreement that precede all exhibits, attachments, addenda and schedules hereto; and (b) Appendixes.

15.14. **Force Majeure.** Neither Party shall be liable to the other for any delay in the performance of its obligations hereunder that is unavoidable with reasonable diligence, which occurs without its fault or negligence, and which is caused by an event or third-party not within its reasonable control. The Party so delayed in performance shall promptly notify the other Party of the delay and its expected duration and use commercially reasonable efforts to minimize such delay.

15.15. **Electronic Signatures and Delivery.** The parties agree that signatures to this Agreement may be electronic and that final executed documents may be delivered by e-mail or facsimile. Each party waives any claim that an electronic signature or electronic delivery is not effective. This Agreement may be executed in any number of counterparts and by different parties to each counterpart, all of which counterparts taken together will constitute one and the same instrument.





## PRIVACY AND SECURITY APPENDIX

1. **"Personal Information"** means information for which Marketing Organization provides access to Agent, or information which Agent has collected from an individual, in accordance with this Agreement that: (i) directly or indirectly identifies an individual; or (ii) can be used to identify or authenticate an individual.

### 2. Generally

Agent represents and warrants that, in generating the performing its services, Agent complied with all applicable law, including, without limitation, the California Consumer Privacy Act, and all other state and federal data privacy and protection laws and guidance (collectively the **"Privacy Laws"**)

### 3. Consents

a. Agent will ensure it has obtained any required consents as required under the Privacy Laws for Marketing Organization and its affiliates to use any Personal Information:

- i. as necessary for Marketing Organization to fulfill its obligations under this Agreement,
- ii. as needed for Marketing Organization to comply with applicable law and as needed for Marketing Organization's own internal business purposes including building its own products and enhance its services; and
- iii. to ensure that Marketing Organization and its affiliates may aggregate, de-identify, or anonymized data, which shall no longer be considered Personal Information, for its own research and development as well as to enhance their own products and services.

### 4. Information Security

At a minimum, Agent shall use commercially reasonable efforts to protect all Personal Information in its possession including: (i) securing business facilities, data centers, paper files, servers, back-up systems and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (iii) implementing network, device application, database and platform security; (iv) securing information transmission, storage and disposal; (v) implementing authentication and access controls within media, applications, operating systems and equipment; and (vi) encrypting any Personal Information when stored on any media or transmitted over public or wireless networks.

### 5. Data.

a. Agent will be responsible for any unauthorized creation, collection, receipt, transmission, access, storage, disposal, use, or disclosure of Personal Information under its control or in its possession or the control or possession of its Sub-Agents.

b. Except as necessary to carry out its duties under this Agreement, Agent shall not use or disclose Personal Information about individuals who seek to obtain Products and Services through Marketing Organization or its affiliates.

c. Agent will treat Personal Information as confidential, and limit access to Personal Information to those individuals who need to use the information in connection with the Agent's services hereunder. Agent will establish appropriate safeguards for safeguarding the Personal Information within Agent's control. Upon termination of this Agreement, Agent shall deliver Personal Information to Marketing Organization and destroy all Personal Information relating to this Agreement, except as otherwise required by law.

d. Agent will disclose, without unreasonable delay and in no event more than two (2) business days following discovery of potential or true instances of data breach incidents to Marketing Organization. This includes potential instances of incidents involving data that was encrypted. Potential incidents are not intended to include port scans, ping sweeps, unsuccessful login attempts, or other low-severity attempts that do not pass through Agent's firewall, intrusion prevention system, or other external security protections.

e. Agent will not collect, use, retain, disclose, sell, or otherwise make Personal Information available for Agent's own commercial purposes in a way that does not comply with the Privacy Laws.

f. Agent will limit personal information collection, use, retention, and disclosure to activities reasonably necessary and proportionate to market the Products and Services or another compatible operational purpose.

g. Agent must promptly comply with any consumer request or instruction requiring Agent to provide, amend, transfer, or delete the personal information, or to stop, mitigate, or remedy any unauthorized processing.

h. Agent will ensure it has obtained any required consents as required under the Privacy Laws for Marketing Organization and its affiliates to use any Personal Information:

1. as necessary for Marketing Organization to fulfill its obligations under this Agreement,
2. as needed for Marketing Organization to comply with applicable law and as needed for Marketing Organization's own internal business purposes including building its own products and enhance its services; and
3. to ensure that Marketing Organization and its affiliates may aggregate, de-identify, or anonymized data, which shall no longer be considered Personal Information, for its own research and development as well as to enhance their own products and services.

## LEAD ACQUISITION APPENDIX

Agent shall comply, and will ensure that all Sub-Agents and all vendors engaged with respect to the acquisition of curated contact information by either Agent or Sub-Agent (a “**Lead Vendor**”) complies, with the following in connection with the acquisition of any such curated contact information (a “**Lead**”):

1. There is full compliance with all applicable law, including, without limitation, all state laws, the Telephone Consumer Protection Act of 1991 (“**TCPA**”), the Telemarketing Sales Rule (“**TSR**”), and the California Consumer Privacy Act (the “**CCPA**”), to the extent these laws are applicable. Lead Vendor shall also obtain consent obtained from the consumer that is adequate to constitute a “prior express written consent” under the TCPA and adequate consent under all state laws, including the CCPA, for the subject to be contacted by Agent or any of its Sub-Agents.
2. Agent and Sub-Agents shall not contact any individuals via the following methods: any autodialer (including any dialer that dials more than one number at once) or ringless voicemail.
3. Agent and Sub-Agents may employ the following outbound communications methods in accordance with applicable state and federal laws, with an appropriate consent on file: text messaging, manual calls, pre-recorded messages.
4. Agent and Sub-Agents shall maintain an effective process by which individuals who request to opt out of communications, are not contacted in the future.
5. Agent and Sub-Agents may not employ any deceptive practices when contacting prospective customers or agents.
6. Agent must promptly be notified by the Lead Vendor if the Lead Vendor receives a request to opt-out of future communications from any person whose information was provided as a Lead.
7. Agent shall ensure that when generating any Lead:
  - a. No services were provided nor was any subcontractor used that was located outside of the United States;
  - b. No person was either:
    - i. contacted by phone, text, or fax if the number was listed on the National Do-Not-Call Registry or any applicable state do-not-call registry; or
    - ii. contacted unless express prior written consent has been obtained and that all information about the individual, including any meta data related collection of the information such as IP address, directly correlates to all of the contact information provided.
  - c. There was no misrepresentation of the purpose for which the contact information was collected or the party from which the request was sent, including the misleading or deceptive use of third-party information such as financial institution names;
  - d. There was full compliance the terms of service of any website or social media platform used to generate the Lead;
  - e. The Lead Vendor did not contact, generate, or use contact information or any other materials in any way that is not compliant with any federal or state law including, without limitation, TCPA, TSR, and CCPA; or

- f. The Lead Vendor is required to immediately disclose to Agent or any Sub-Agent, as applicable that Lead Vendor sold or intends to sell any Lead to another person.
- 8. To the extent that any of Lead is generated by telephonic communication, Agent shall ensure there is a record of such communication, such recording is retained as required by state and applicable law and provide access to any such recordings for audit and regulatory compliance purposes.
- 9. There is no use of any trademark, trade name or corporate business name of Marketing Organization or any of its affiliates without Marketing Organization's express prior written consent.
- 10. Ensure all information initially submitted by a consumer, if any, matches the information otherwise obtained in any communication with the consumer.
- 11. Ensure the Lead is not a known TCPA litigant.
- 12. At the time of delivery of a Lead, require documentation evidencing that such Lead was acquired in compliance with these terms as well as provide the actual creative, permission contact, relevant IP addresses and any other "call to action" that resulted in capturing the Lead as well as the Jornaya Lead ID and/or Active Prospect Trusted Form Cert, or a similar industry accepted proof of consent to allow the retrieval of independent third-party verification of the consumer consent for such Lead.
- 13. Require all Lead Vendors to indemnify and hold Marketing Organization, its affiliates and all Carriers harmless against any allegation brought by a third party arising out of or caused by any violation of these terms or any applicable law and permit Marketing Organization to defend any such claim, at Lead Vendor's sole expense, with counsel of its choosing.

Upon Marketing Organization's reasonable request, Agent shall provide a copy of any agreement it has with a Lead Vendor to confirm Agent's compliance with this Appendix.

## SUBCONTRACTOR BUSINESS ASSOCIATE APPENDIX

This Subcontractor Business Associate Appendix ("BAA") adds to and is made a part of the Independent Agent Agreement ("Agreement") by and between Marketing Organization hereinafter referred to as "**Company**" and Agent (hereinafter referred to as "**Service Provider**" and collectively with Company each a "Party" and collectively the "Parties"). This BAA is an integral part of the Agreement as if fully set forth therein.

A. Company and Service Provider have an arrangement (or arrangements) pursuant to which Service Provider carries out certain activities for or on behalf of Company, which activities may require Service Provider to receive, create, maintain, store, transmit, or otherwise use and/or disclose individually identifiable health information of Individuals for which Company is responsible.

B. Company is a Business Associate, as defined in the HIPAA Rules (as defined below), and, therefore, with respect to the Services (as defined below), Service Provider is considered a Subcontractor of Customer (and thus also a Business Associate), as those terms are defined for purposes of the HIPAA Rules.

C. Consistent with the foregoing statements, and as required by the HIPAA Rules, Company and Service Provider hereby agree to the following terms and conditions in connection with the Services, and intend that this BAA shall serve as the satisfactory written assurance of Service Provider that it will appropriately safeguard the PHI (as defined below).

1. **Definitions.** Except as otherwise defined in this BAA, capitalized terms used herein shall have the meanings ascribed to those terms under the HIPAA Rules, including without limitation: Breach; Business Associate; Covered Entity; Data Aggregation; Designated Record Set; Disclosure; Electronic Protected Health Information; Health Care Operations; Individual; Protected Health Information; Required by Law; Secretary; Security Incident; Standard Transaction; Subcontractor; Unsecured PHI; and Use. Any reference within this BAA to the HIPAA Rules, or to a specific section thereof, shall mean the statute or regulation in effect and as amended from time to time. Any ambiguity in this BAA shall be resolved in favor of a meaning that permits the Parties to comply with the HIPAA Rules.

a. "**HIPAA Rules**" means the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and the CFR regulations promulgated under HIPAA and HITECH, including the Privacy, Security, Breach Notification, Electronic Transactions, and Enforcement Rules codified at 45 C.F.R. Parts 160, 162 and 164, all as amended.

b. "**Protected Health Information**" or "**PHI**" shall have the meaning ascribed to it in the HIPAA Rules, but shall be specific to that PHI: (1) received by Service Provider from or on behalf of Company; (2) created, maintained, stored, or transmitted by Service Provider for or on behalf of Company; or (3) made accessible to Service Provider by or on behalf of Company. As used herein, the term "PHI" shall include, as applicable, physical PHI and Electronic PHI ("ePHI").

c. "**Services**" shall mean those services performed by Service Provider for and/or on behalf of Company, whether under one or more agreement(s), to the extent (and only to the extent) that such services involve the accessing, receipt, creation, maintenance, storage, transmission, or other Use or Disclosure of PHI by Service Provider.

d. "**Successful Security Incident**" shall mean a Security Incident that actually results in the unauthorized access, Use, Disclosure, modification, or destruction of PHI or any interference with system operations in an Information System.

e. "**Unsuccessful Security Incident**" shall mean any Security Incident that does not actually result in the unauthorized access, Use, Disclosure, modification, or destruction of PHI or interference with system operations in an Information System, such as pings or other broadcast attacks on a firewall, port scans, attempts to log onto any system or enter a database using an invalid username or password, denial-of-service attacks that do not result in the system being taken off-line, and malware (e.g., worms and viruses).

2. **Permitted Uses and Disclosures by Service Provider.**

a. **Permitted Uses of PHI.** Service Provider may use PHI as reasonably necessary: (1) to perform the Services; (2) for its proper management and administration; or (3) to carry out its legal responsibilities. If (and only to the extent) it is a part of the Services, Service Provider may perform Data Aggregation with regards to the Health Care Operations of Company or its customers.

b. **Permitted Disclosures of PHI.** Service Provider may disclose PHI as reasonably necessary to perform the Services, or for its proper management and administration, or to carry out its legal responsibilities; provided: (1) the Disclosure is Required by Law or (2) prior to making the Disclosure, Service Provider obtains written assurances from the person or entity to which the PHI is to be disclosed that (i) PHI will be held in confidence and used or further disclosed only as Required by Law or for the lawful purpose for which the PHI is disclosed to such person/entity, and (ii) in the event that the confidentiality of the PHI is compromised, such person/entity will promptly notify Service Provider in writing.

3. **Service Provider's Acknowledgment.** Service Provider acknowledges that certain HIPAA Rules apply directly to Service Provider as a matter of federal law and regardless of this BAA. Accordingly, Service Provider acknowledges and agrees that, in addition to the provisions of this BAA, Service Provider must comply with those provisions of the HIPAA Rules that are applicable to it as a Business Associate.

4. **Service Provider's Obligations.** Service Provider agrees that it shall:

a. **Compliance.** Not use or disclose PHI other than as permitted by this BAA or as Required by Law and, in any case, not use or disclose PHI in any manner that would violate the HIPAA Rules if done by Company or a Business Associate in general;

b. **Minimum Necessary.** Unless excepted by 45 C.F.R. § 164.502(b), limit its requests for, and Uses and Disclosures of, PHI to the minimum amount necessary to accomplish the intended purpose(s) of such request, Use or Disclosure;

c. **PHI Safeguards.** Implement and utilize appropriate safeguards intended to prevent the unauthorized Use and/or Disclosure of PHI, including administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, privacy, integrity, security and availability of ePHI, in accordance with 45 C.F.R. Part 164 Subpart C (the "Security Rule");

d. **Access.** If the Services involve maintaining PHI in a Designated Record Set, make such PHI available to Company (or, if directed by Company, to an Individual), in the form and format requested, and at the time and in the manner directed, by Company in writing, as necessary to satisfy Company's obligations under 45 C.F.R. § 164.524; and, in the event that Service Provider receives an Individual's request for access to, or a copy of, his or her PHI, Service Provider shall forward the request to Company within three (3) business days;

e. **Amendment.** If the Services involve maintaining PHI in a Designated Record Set, incorporate any amendment(s) to such PHI as directed by Company in writing, in accordance with 45 C.F.R. § 164.526; and, in the event that Service Provider receives an Individual's request to amend PHI, Service Provider shall forward the request to Company within three (3) business days;

f. **Documentation and Accounting.** Document Disclosures of PHI and all information related thereto as necessary for Company to provide an accounting of each Disclosure of PHI by Service Provider in accordance with 45 C.F.R. § 164.528, and make such information available, at the time and in the manner directed by Company in writing; and, in the event that Service Provider receives an Individual's request for an accounting of Disclosures of PHI, Service Provider shall forward the request to Company within three (3) business days;

g. **Confidential Communications.** Accommodate reasonable requests for confidential communications of PHI by alternative means or at alternative locations, as directed by Company on behalf of an Individual, in writing, in accordance with 45 C.F.R. § 164.522(b); and, in the event that Service Provider receives an Individual's

request for such confidential communications of PHI, Service Provider shall forward the request to Company within three (3) business days;

h. **Restrictions.** Abide by restrictions on Uses/Disclosures of an Individual's PHI that such Individual requests and Company implements pursuant to 45 C.F.R. § 164.522(a); provided, however, that Service Provider is given timely written notice of such restrictions by Company;

i. **Reporting of Unauthorized Disclosures.** Report to Company, in writing and as soon as practicable, but in any event within five (5) business days after discovering or becoming aware of, any: (1) Use or Disclosure of PHI by Service Provider or any of its Subcontractors or agents that is not permitted by this BAA; (2) Successful Security Incident impacting Service Provider or any of its Subcontractors or agents; or (3) acquisition, access, use or disclosure of PHI in a manner not permitted by this BAA or 45 C.F.R. Part 164 Subpart E (the "Privacy Rule"), including but not limited to any Breach of Unsecured PHI (each an "Incident"), which report shall include all relevant details then known to Service Provider, and, as soon as practicable thereafter, but in any event within five (5) business days following the initial report, supplement the initial report with such information as necessary for Company to provide notification to affected Individuals, the Secretary, and the media, in accordance with 45 C.F.R. Part 164 Subpart D (the "Breach Notification Rule") and/or other applicable laws and regulations;

j. **Mitigation.** Mitigate, to the extent practicable and at Service Provider's sole cost, any known harmful effect of any Incident, whether caused by Service Provider or any of its agents or Subcontractors, and take immediate steps to prevent any such further Incident or violation, per 45 C.F.R. § 164.530(f);

k. **Cooperation.** Cooperate with Company in connection with any investigation, risk assessment and analysis, notification and mitigation activities undertaken by Company in response to any Incident; abide by Company's decisions with respect to whether such Incident is a reportable Breach; and follow Company's reasonable instructions regarding the response to such Incident;

l. **Subcontractors.** Ensure that Service Provider's agents and Subcontractors that may access, create, receive, maintain, store, transmit, or otherwise use or disclose PHI for or on behalf of Service Provider enter into a written agreement with Service Provider pursuant to which such agent or Subcontractor agrees to abide by the restrictions, conditions, and obligations that apply to Service Provider under this BAA, in accordance with 45 C.F.R §§ 164.308(b)(2) and 164.502(e)(1)(ii); provided, Service Provider shall be and remain liable to Company for any and all acts, errors, and omissions of such agents and Subcontractors as if they were Service Provider's own acts, errors, and omissions, to the extent permitted by law;

m. **No De-Identification.** Not de-identify any PHI except as necessary to perform the Services and, in such case, Service Provider shall be prohibited from using or disclosing any such de-identified information for its own purposes without Company's prior written consent;

n. **No Remuneration.** Not receive remuneration, directly or indirectly, in exchange for PHI, other than from or on behalf of Company as consideration for the Services rendered by Service Provider or as otherwise expressly permitted by the terms of the service agreement(s) in effect between Company and Service Provider governing the Services;

o. **Subpoenas.** Unless prohibited by applicable law or court order, notify Company in writing within three (3) business days following the receipt of any subpoena or comparable legal process served upon Service Provider (or any of its agents or Subcontractors) that relates to PHI;

p. **Compliance with Privacy Rule.** To the extent that Service Provider carries out any of Company's obligations under the Privacy Rule, comply with the requirements of the Privacy Rule that apply to Company in the performance thereof;

q. **State Laws/Regulations.** Comply with the requirements of applicable state laws, rules and regulations pertaining to the confidentiality, privacy, security, availability, right of access to, and retention of a natural person's individually identifiable information;



r. **Access to Books/Records.** Make its internal policies, procedures, practices, books, and records pertaining to the safeguarding and Use/Disclosure of PHI available to the Secretary (or Company), in the time and manner as specified by the Secretary (or Company), for purposes of determining compliance with the HIPAA Rules;

s. **Retention.** Retain all documentation required by this BAA, the HIPAA Rules, and applicable state laws for the time periods required by the HIPAA Rules and applicable state laws, but in any case for no less than six (6) years following the expiration or termination of this BAA.

5. **Reporting of Unsuccessful Security Incidents.** The Parties acknowledge and agree that this BAA serves as written notice by Service Provider to Company that Unsuccessful Security Incidents may occur, from time to time, and that no further notice need be given by Service Provider to Company unless there is a Successful Security Incident, as required above in Section 4.i. Service Provider shall nevertheless maintain a reasonably detailed log documenting all Unsuccessful Security Incidents, to the extent known to Service Provider, and shall make a copy of such log available to Company promptly upon request.

6. **Standard Transactions.** To the extent that Service Provider conducts, in whole or in part, any Standard Transaction on behalf of Company, Service Provider shall comply, and will require its agents and Subcontractors involved with the conduct of such Standard Transaction (if any) to comply, with each applicable requirement of 45 C.F.R. Part 162 and any standards as may be mandated by applicable federal or state agencies. Service Provider will not enter into, or permit its agents or Subcontractors to enter into, any trading partner agreement in connection with the conduct of Standard Transactions that: (i) changes the definition, data condition, or use of a data element or segment in such Standard Transaction; (ii) adds any data element or segment to the maximum defined data set; (iii) uses any code or data element marked "not used" or that is not included in the Standard Transaction's implementation specification; or (iv) changes the meaning or intent of the Standard Transaction's implementation specification.

7. **Costs of Notification.** Service Provider shall, at the direction of Company, directly pay or reimburse the reasonable costs incurred by or on behalf of Company in response to any Incident caused by Service Provider or any of its agents or Subcontractors, including, without limitation: (a) the reasonable costs of providing notification to affected Individuals, the Secretary, the media, and/or other state or federal government agencies as may be required pursuant to 45 C.F.R. Part 164 Subpart D and/or other applicable law; (b) the reasonable costs associated with operation of a call center, for up to ninety (90) days, to handle inquiries/complaints regarding the Incident; and (c) the reasonable costs of providing affected Individuals with identity theft and/or credit monitoring services for up to twelve (12) months, if deemed appropriate by Company, in reasonable consultation with Service Provider, based on the nature and scope of the Incident.

8. **Obligations of Company.** Company shall: (a) promptly notify Service Provider of changes in or revocation of the permissions given by an Individual to use and/or disclose the Individual's PHI, if such changes may affect Service Provider's Use or Disclosure of PHI; and (b) not request Service Provider to use or disclose PHI in any manner that is not permitted under the HIPAA Rules if undertaken by Company.

9. **Term and Termination.** The terms and conditions contained in this BAA shall be effective as of the Effective Date and shall remain in full force and effect until the later of (a) expiration or termination of all contracts between Company and Service Provider that govern the Services or (b) when all PHI is either destroyed or returned to Company or, in the event that it is reasonably infeasible to return or destroy certain PHI, when protections are extended to such PHI as described in Section 10, below. Either Party may terminate this BAA and discontinue the Services, upon written notice to the other Party, if such Party determines, in its sole but reasonable discretion, that the other Party has violated a material provision of this BAA or the HIPAA Rules, which violation is not (or cannot be) cured and ended within a reasonable period of time, not to exceed thirty (30) days (the "Cure Period"), following its receipt of a written notice specifying the violation. Failure (or inability) of the breaching Party to satisfactorily cure such violation within the Cure Period shall be grounds for immediate termination of this BAA and discontinuation of the Services, subject to the provisions of Section 10, below.

10. **Obligations Upon Termination.** Upon termination of this BAA, Service Provider shall, at Company's option, return or destroy all PHI in Service Provider's possession, including in the possession of its

Subcontractors and agents. In the event that Service Provider reasonably determines that the return or destruction of certain PHI is infeasible, Service Provider shall extend all of the protections, limitations, restrictions, reporting requirements, and other obligations set forth in this BAA to such PHI and shall limit all further Use and Disclosure of such PHI to those purposes that make its return or destruction infeasible for as long as Service Provider maintains such PHI. Furthermore, in the event it is infeasible for any agent or Subcontractor of Service Provider to return or destroy certain PHI, Service Provider shall require such agent or Subcontractor to extend all protections, limitations and restrictions set forth in this BAA to such PHI and to limit all further Use and Disclosure of such PHI to those purposes that make the PHI's return or destruction infeasible for as long as such agent or Subcontractor maintains such PHI.

11. **Indemnification.** Service Provider shall indemnify, defend and hold harmless Company, its parents, subsidiaries, and affiliates, and its and their respective directors, officers, employees, contractors, agents and representatives from and against every claim, suit, action, cause of action, proceeding, demand, damage, loss, penalty, assessment, settlement, judgment, fine, cost, expense, including, but not limited to, reasonable attorneys' fees, and other liability to the extent arising from or related to: (a) Service Provider's breach of any representation, warranty, or covenant contained in this BAA; and/or (b) Service Provider's or any of its agents' or Subcontractors' (i) violation of the HIPAA Rules or (ii) Use or Disclosure of PHI other than as permitted under this BAA (each a "Claim").

14. **General Provisions.**

a. **Entire Agreement.** This BAA constitutes the entire agreement and understanding of the Parties concerning the subject matter hereof, and supersedes and replaces any and all prior and contemporaneous agreements and understandings of the Parties, written or oral, concerning the subject matter hereof. This BAA may not be supplemented, modified or amended, except in a separate writing as agreed to and signed by each Party hereto. The Parties hereby agree to take such action as is necessary to amend this BAA as necessary for compliance with the requirements of the HIPAA Rules as they are amended from time to time.

b. **Reformation and Severability.** If any provision of this BAA is found to be invalid or unenforceable by any court of competent jurisdiction, such court should reform such provision to such narrower scope as it determines to be valid and enforceable and, if such provision cannot be reformed as anticipated above, then such provision shall be deemed separate and severable and shall not invalidate or render unenforceable the remaining provisions hereof, the Parties' intent being to effectuate this BAA to the fullest extent permitted by law.

c. **Waiver.** No waiver of any provision of this BAA shall be binding upon a Party unless consented to in writing by such Party. No waiver by either Party of any breach or provision of this BAA shall operate as, or be construed as, a waiver of any subsequent breach of this BAA or of any other provision contained in this BAA.

d. **Assignability.** Neither Party may assign or delegate, in whole or in part, this BAA or any rights or obligations provided for in this BAA, without the prior written consent of the other Party; provided, however, Company may assign this BAA to a successor in interest in the event of a merger, consolidation, combination or sale of all (or substantially all) of its assets or equity, upon prior written notice to (but without the consent of) Service Provider. Any assignment or delegation in contravention of this Section shall be void. This BAA is binding upon, and shall inure to the benefit of, the Parties hereto and to their respective successors and permitted assigns.

e. **No Private Cause of Action/Third Party Beneficiaries.** This BAA is not intended to, and does not, create a private cause of action by any individual, other than the Parties to this BAA, as a result of any claim arising out of the breach of this BAA, the HIPAA Rules or other state or federal law or regulation relating to patients' health information. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Parties hereto any rights, remedies, obligations, or liabilities whatsoever.

f. **Ownership of PHI.** The Parties acknowledge and agree that, as between the Parties, all PHI subject to this BAA shall at all times be and remain the property of Company.

g. **Survival.** The terms and conditions of this BAA which, by their express language or their nature and context, are intended to survive the expiration or termination of this BAA shall survive any such expiration or termination. Without limiting the generality of the foregoing, the following Sections of this BAA shall survive its expiration or termination: 7, 10, 11, 12, 13 and 14.

i. **No HIPAA Agency Relationship.** The Parties do not intend an agency relationship (as defined under the Federal common law of agency) to be established hereby, expressly or by implication, for purposes of liability under HIPAA. No terms or conditions contained in this BAA shall be construed to make or render either Party an agent of the other Party.

## **SOCIAL MEDIA APPENDIX**

### **Be Truthful and Not Misleading**

It is of the utmost importance to be transparent, authentic, and honest. You should be truthful and accurate at all times, and you must be able to provide supporting documentation for everything you say or for any claim related to your business (otherwise your statements could be misleading).

### **Maintain Independence**

One of the advantages of insurance marketing organizations (IMOs), like Marketing Organization, is that they should allow each individual and organization to be fundamentally independent, even while striving for the same goals. In looking at any social media page, the public should be able to tell that each independent contractor and his/her agency and downlines are independent of the IMO.

You should correctly describe your relationship with Marketing Organization. When setting up your page on a social media platform, you should never misrepresent your independent contractor relationship. In other words, you should never suggest that you are an employee, officer, or franchisee of the Marketing Organization or any of the Affiliated Companies.

If a social media platform asks for your "Employer," "Marketing Organization," "Current Company" or other similar category for your profile, you should only enter "self-employed," "independent business owner," or identify your specific entity ("John Doe Insurance"). Because you are not an employee of Marketing Organization, please do not insert Marketing Organization as your employer on any social media platforms. If a social media platform asks for your "Position," "Title," or "Job Title," you should only enter "Independent Agent" or "Independent Insurance Agent."

If a social media platform asks for a "Description" or has an "About" section related to your profile or employment, your description should accurately reflect your business model, such as "As an Independent Agent, I protect people by selling insurance products that are right for them."

### **Comply with this Agreement**

You must comply with the Agreement in everything you do, including engaging in social media and online activity.

You also must comply with the terms and conditions of the social media platforms that you post on. Each social media platform has different terms and conditions. For example, certain social media platforms have terms and conditions that prohibit business related posts in certain industries and businesses. For that reason, you should carefully read the terms and conditions of every platform you use and avoid use of those platforms that in any way may violate those terms and conditions.

You should also avoid posting on job recruiting websites that require you to suggest you are hiring an employee or offering certain compensation ranges (unless you are actually posting for an employee position rather than an independent agent position).

### **Do Not Make Earnings Claims**

You should never make earnings claims with respect to yourself or successful agents in your business, even if those earnings claims appear true. Do not, for example, highlight that an agent has made or issued "\$15,000 this month." Similarly, you should not interview successful agents on a publicly posted video or podcast and ask how much that agent made or has made in a week, month or year. In addition, do not use graphics or images that could be understood to suggest that independent agents will make a certain amount of money. (For example, you should not advertise agents boarding private jets, driving luxury vehicles, wearing expensive jewelry, or engaging in similar luxury activities.)

You should not say that becoming an insurance agent will lead to "financial freedom" or "wealth." This could lead to your statements being considered as misleading representations and subject you to serious financial penalties.

**Do Not Misrepresent Business Opportunities**

You should not create promotional content that may misrepresent opportunities with your business. Do not advertise an “average” or “typical” amount that agents make with your business. Do not suggest that there is a low degree of risk involved to participate in a money-making opportunity.

Do not state that “anyone can do this” or that “no prior experience is necessary” to earn income. Do not disparage other jobs or industries as a way to promote your business. For example, do not state “I was a plumber, now I make 10 times that amount.” Any of these could be understood as misleading representations and subject you to serious financial penalties. If a friend comments on a post and asks how he can start his own business or buy an insurance product, you can simply respond “Message me” or proactively call him or send a private message.

Avoid statements about your experience that may imply that anyone can do this.

**Do Not Advertise Based On COVID-19**

You should not discuss COVID-19 or the pandemic in a post where you discuss your business or Marketing Organization. This includes your personal employment background (i.e., “I was a nurse who got burned out during COVID-19. Now I work for myself and have never been happier.”).

Even if well-intentioned, this could be viewed as taking advantage of a serious public health crisis. This, too, could subject you to serious financial penalties.

**Do Not Use Pressure Tactics in Recruiting Agents Online**

You should not use pressure tactics (i.e., saying an opportunity is available only to a limited number of participants or will expire) to convince someone to start a business. These types of claims can easily backfire online and cause complaints. Pressure tactics can endanger your business relationships with others and harm your and our reputation for honesty and fair dealing.

**Do Not Use Someone Else’s Intellectual Property**

You should not use someone else’s intellectual property, including copyrighted images, photographs, videos, songs, logos, or other materials.

**Do Not Suggest An Affiliation With A Celebrity or Event**

You should also not suggest that you have an affiliation with a business, celebrity, or non-Marketing Organization related event. For example, you should not photoshop a picture of a celebrity into a Marketing Organization shirt or hat. Similarly, you should avoid posting messages that incorporate big events that are not related to Marketing Organization. For example, you should not post something like “It feels like March Madness with how many families are looking for insurance products. #NCAA #MarchMadness.”

Companies that are official sponsors of events like NCAA tournaments, the Olympics, and the Academy Awards actively search for and will take legal action against businesses who are trying to sell products in a way that falsely suggests an affiliation.

**Be Positive and Professional**

All content should be appropriate for all age groups and potential viewers. Your posts should not contain text or images that could be construed as offensive, controversial (anything political, religious, or related to a minority group), distasteful (no cursing, nothing sexual), or unprofessional (disguises, costumes, wigs). If you believe a message is on the fence, do not post it. No matter what, you should always aim to communicate with others online in a positive and professional way. Avoid controversies and arguments. Without in-person context clues, statements can sometimes be understood differently than intended.

**Lead By Example**

Many independent contractors will mimic what they see you do on your own social media pages. This gives you an opportunity to demonstrate good behavior and to continue to be a leader in the industry.

## INDEBTEDNESS APPENDIX

Agent agrees to indemnify Marketing Organization, all of the Affiliated Companies and their respective officers, employees and other agents for any indebtedness, obligations, liabilities, losses, costs or expenses incurred or monies paid by Marketing Organization to any contracted carrier or to any person as the result of the misrepresentations, negligence or actions of the Agent or its employees, subcontractors, enrollers, or Sub-Agents associated with Agent.

Agent shall promptly inform Marketing Organization of any indebtedness of any of its Sub-Agents. Agent shall use its best efforts to collect on all such indebtedness including, where permitted by applicable law, promptly referring a Sub-Agent to a collections agency and reporting the Agent to a third-party reporting services like Vector One®. Agent understands that Marketing Organization may have a list of collection agencies that it will provide upon request. Where possible, Agent agrees to use those collection agencies to collect on any indebtedness.

Agent hereby personally guarantees the prompt payment and performance when due of all obligations of each Sub-Agent to Marketing Organization, including the obligation to pay when due all indebtedness of Agent and all Sub-Agents. Such personal guarantee shall not be affected by any change in the relationship of Agent and the Sub-Agents. Upon expiration or termination of this Agreement for any reason, all indebtedness of the Sub-Agents shall become due and payable to Marketing Organization from Agent. Should any monetary obligation to Marketing Organization, including any indebtedness, of a Sub-Agent remain unfulfilled more than ten days after it becomes due, Agent shall immediately pay to Marketing Organization such obligation.

Marketing Organization, in addition to the rights available under law or equity to recover any funds due it, may offset such obligation or indebtedness from any compensation payable under this Agreement or any other contract that the Agent may have with Marketing Organization or with any parent or affiliate of Marketing Organization, or any other assets of the Agent. In addition, the Agent agrees to reimburse Marketing Organization for any attorney's fees, expenses or collection costs incurred in the enforcement of this provision. The terms of this provision shall survive termination of this Agreement.

Any indebtedness of Agent to Marketing Organization shall be the personal obligation and liability of Agent and shall, at all times, be secured by a first lien against all commissions or other compensation now or hereafter due Agent under this Agreement. A Lien on all monies due to Marketing Organization from the Agent, is hereby irrevocably granted by Agent to Marketing Organization. Indebtedness shall include, without limitation, sums advanced by Marketing Organization to, or for the benefit of, Agent, loans, advanced commissions, or other compensation to Agent and any and all expenses incurred by Marketing Organization on behalf of Agent hereunder.

Agent's indebtedness to Marketing Organization shall be payable on demand and Agent expressly agrees to pay as such. Any indebtedness not paid within thirty (30) calendar days from the date of such demand shall bear interest from the end of such thirty (30) calendar days at a rate equal to 11% per annum or at a rate equal to the maximum legal rate of interest provided by applicable law. The total amount of interest accrued shall be added to the outstanding indebtedness. Any outstanding indebtedness will be offset against future commissions until fully recouped or paid.

The provisions of this Agreement shall be a sufficient security agreement to satisfy the Uniform Commercial Code, and no further security agreement shall be required. Agent warrants and represents that it has not granted any other party a security interest in the commissions or other compensation it will earn hereunder. Marketing Organization shall have the right to deduct from any commissions now or hereafter due to Agent under this Agreement and any supplement thereto such amounts to apply toward payment of Agent's then existing or future indebtedness to Marketing Organization. Marketing Organization reserves the right to apply any payments made by Agent, or any credits due or to become due Agent, in satisfaction in whole or in part of the indebtedness of Agent to Marketing Organization, in such order as may be elected by Marketing Organization in its sole discretion. Agent must pay and satisfy in full Agent's indebtedness to Marketing Organization within ninety (90) days of the termination of this Agreement for any reason.

## **USE OF TRADEMARKS APPENDIX**

In the event that Marketing Organization grants you its prior written consent to use any of Marketing Organization's or any of its affiliates trademarks, service marks, logos or other proprietary trade dress, in connection with the sale of products or services, or in any advertising, press releases, publicity matters or other promotional materials, you will:

1. Comply with any use guidelines provided or made available to you from Marketing Organization, and
2. Use an appropriate disclaimer in any such use to ensure that there is no confusion as to your relationship with Marketing Organization.

## MEDICARE ADMINISTRATIVE SERVICES APPENDIX

The parties adopt this Medicare Administrative Services Appendix ("**Medicare Appendix**") to the Agreement to comply with the requirements of the Medicare regulations at 42 C.F.R. Parts 422 ("**Part C**") and 423 ("**Part D**"), to the extent that Agent performs Medicare administrative services on behalf a Medicare Advantage Plan or a Prescription Drug Plan ("**Plan**").

**Delegated Activities.** Plan delegates to Agent and Agent shall provide Medicare administrative services, as listed in the Agreement. Agent acknowledges and agrees that Plan may only delegate activities or functions to Agent in a manner consistent with the requirements set forth as applicable in 42 C.F.R. §§ 422.504(i)(4) and 423.505(i)(4); 42 C.F.R. §§ 422.504(i)(3)(ii), 423.505(i)(3)(ii). Agent agrees that (i) the performance of the Delegated Activities and responsibilities thereof shall be subject to monitoring on an ongoing basis by Insurance Company; and (ii) in the event that Insurance Company or CMS determine that Agent has not satisfactorily performed any Delegated Activity or responsibility thereof in accordance with the CMS Contract, applicable laws and regulations and CMS instructions, then Insurance Company shall have the right, at any time, to revoke the Delegated Activities by terminating the Agreement in whole or in part, and shall have the right to institute corrective action plans or seek other remedies or curative measures as contemplated by the Agreement. Agent shall not further delegate any activities or requirements without prior written consent of Insurance Company.

1. **Consistency with CMS Contract.** Agent shall perform the services in a manner that complies with and is consistent with Plan's contractual obligations relating to performance of Medicare administrative services. 42 C.F.R. §§ 422.504(i)(3)(iii), 423.505(i)(3)(iii).
2. **Accountability.** Agent acknowledges and agrees that the Plan is required to monitor the performance of Agent on an ongoing basis and that the Plan maintains ultimate responsibility for adhering to and otherwise fully complying with all terms and conditions of the CMS Contract. 42 C.F.R. §§ 422.504(i)(2), 422.504(i)(4)(iii), 423.505(i)(4)(iii), 423.505(i)(2).
3. **Laws, Regulations and CMS Requirements.** Agent represents and agrees that, throughout the term of the Agreement, Agent shall comply with the following Laws and requirements, in each case to the extent applicable to Agent's performance of the Services: (i) all applicable Medicare statutes and regulations and CMS guidance, instructions and requirements; (ii) HIPAA and the HITECH Act, to the extent provided in the HIPAA Addendum attached to the Agreement; (iii) all other applicable Federal Laws. 42 C.F.R. §§ 422.504(i)(4)(v), 423.505(i)(4)(iv).
  - a. **Fraud and Abuse.** Agent shall comply with Federal Laws designed to prevent fraud, waste, and abuse, including applicable provisions of federal criminal law, the False Claims Act (31 U.S.C. § 3729 et seq.), and the Anti-Kickback statute (42 U.S.C. § 1320a-7b(b)). 42 C.F.R. §§ 422.504(h)(1), 423.505(h)(1).
  - b. **Excluded Persons.** Agent represents as of the effective date of the Agreement that neither it, nor any of its employees, members of its board of directors, officers, or Medicare subcontractors have been excluded from participation in the Medicare program or any other Federal Health Care Program or criminally convicted or has a civil judgment entered against it for fraudulent activities.

Agent shall contractually require its Medicare subcontractors to ensure that their employees are not excluded from participation in the Medicare program or any other Federal Health Care Program.

Agent must check appropriate databases to determine whether any of its employees, members of its board of directors, or officers or Medicare subcontractors has been excluded from participation in the Medicare program or any other Federal Health Care Program. These databases must be checked during the Term not less than monthly. Agent shall also check appropriate databases prior to when any of its employee, members of its board of directors, or officers commence their employment, directorship or ownership of Agent. Databases include the General Services Administration's Excluded Parties List System and the OIG Exclusion List. Agent shall notify Plan immediately in writing if Agent determines that any of its employees, members of its board of



directors, or officers are suspended or excluded from the Medicare program or any other Federal Health Care Program or if criminally convicted or has a civil judgment entered against it for fraudulent activities.

Agent shall notify Marketing Organization immediately in writing if Agent determines that any of its employees, temporary employees, volunteers, consultants and members of its board of directors, officers or Medicare subcontractors are suspended or excluded from the Medicare program or any other Federal Health Care Program. Agent agrees that it is subject to 45 C.F.R. Part 73b and shall require its employees, members of its board of directors, or officers to agree that they are subject to 45 C.F.R. Part 73b. 42 C.F.R. §§ 422.752(a)(8), 423.752(a)(6). Agent shall comply with all applicable provisions of Insurance Company's Corporate Compliance Program and Standards of Business Conduct.

- c. **Compliance with Carrier's Obligations, Policies and Procedures.** Agent agrees to comply with the applicable Carrier's policies and procedures applicable to its Products, to the extent applicable to the Services Agent is providing under the Agreement.
4. **Confidentiality and Accuracy of Records.** Agent agrees to abide by all Federal and state laws regarding confidentiality and disclosure and shall treat all enrollees' health and enrollment information, including any medical records or mental health records as confidential in accordance with the provisions of the Agreement, and comply with all applicable Laws regarding the confidentiality and disclosure of such health and enrollment information. Agent shall maintain such health and enrollment information in an accurate and timely manner and ensure timely access to such records and information by enrollees, all as set forth in the Agreement. 42 C.F.R. §§ 422.118, 422.504(a)(13), 423.136, 423.505(b)(14).
5. **Inspection and Audit.** Agent shall permit CMS, HHS, the Comptroller General, or their designees, to inspect, evaluate, and audit any of Agent's books, contracts, medical records, patient care documentation, documents, papers, and other records pertaining to any services provided under the Agreement. This right to inspect, evaluate, and audit shall extend ten (10) years from the expiration or termination of the Agreement or completion of final audit, whichever is later, unless otherwise required by applicable Law - 42 CFR §§ 422.504(i)(2)(i), 422.504(e)(2), 423.505(i)(2)(i), 423.505(e)(2). Agent shall permit the Plan to monitor and audit Agent's policies, procedures and systems at reasonable times under reasonable circumstances to ensure compliance with all applicable Medicare laws, regulations and CMS instructions. Agent acknowledges that Plan is required to undertake appropriate corrective actions in response to potential deficiencies, noncompliance, or FWA-42CFR§§422.503(b)(4)(vi)(G), 423.504(b)(4)(vi)(G). If Agent is subject to a corrective plan of action ("CAP"), Agent shall comply with the CAP as set forth in the Agreement. Agent will complete the Plan's Medicare Advantage (Part C and/or Part D) Compliance Attestation for Downstream Entities on an annual basis, if required.
6. **Contracts with Downstream Entities.** The following provisions also apply to Agent's delivery of the services:
  - a. Agent shall contractually obligate any providers, contractors and subcontractors Agent utilizes in the delivery of the services to comply with all applicable laws, for which Agent has a compliance obligation under this Medicare Appendix. 42 C.F.R. §§ 422.504(i)(4)(v), 423.505(i)(4)(iv).
  - b. Agent shall not hold enrollees liable for any amounts that are the legal obligation of the Plan. 42 C.F.R. §§ 422.504(i)(3)(i), 423.505(i)(3)(i).
  - c. Agent shall contractually obligate any providers, contractors, and subcontractors Agent utilizes in the delivery of the services to comply with the same conditions and restrictions that are applicable to Agent under this Medicare Appendix. 42 C.F.R. §§ 422.504(i)(3)(iii), 423.505(i)(3)(iii).

- d. Agent shall not subcontract for Part C and/or Part D activities outside the jurisdiction of the United States (“**offshore subcontractor**”), without Plan’s prior written approval. In the event that Agent intends to contract for any Medicare Part C and/or Part D activities with an offshore subcontractor that relates to Member PHI, Agent must obtain the prior written approval of the Plan. Failure to do so may result in the immediate termination of the Agreement.
- 7. **Termination of Agreement for Breach.** Agent acknowledges and agrees that a breach of this Medicare Appendix shall be considered a breach of the Agreement. For purposes of the Medicare Appendix, a determination by CMS or Plan that Agent has not satisfactorily performed its delegated obligations under the Agreement constitutes a breach. 42 C.F.R. §§ 422.504(i)(4)(ii), 423.505(i)(4)(ii).
- 8. **Additional Contract Terms Required by CMS.** This Medicare Appendix shall automatically amend to include terms and conditions necessary to address additional contract terms required by CMS. 42 C.F.R. §§ 422.504(j), 423.505(j).