

UNIVERSAL  
AMERICAN

A Healthy Collaboration<sup>SM</sup>

# Agent Agreement

## for State Regulated Insurance Plans



American Pioneer Life Insurance Company • Constitution Life Insurance Company • American Progressive Life & Health Insurance Company of New York • Marquette National Life Insurance Company.



# Agent Contracting Checklist

You are contracting, and appointing, with the respective company to market, solicit and sell state regulated insurance plans

**STATE APPOINTMENT FEES ARE REQUIRED, AS APPLICABLE**

## Step #1

Complete, sign and date the applicable Agent Application and Agreement.

## Step #2

Sign and date the attached Form W-9, unless commissions are to be paid to your Sales Manager.

## Step #3

Provide a copy of a voided check for the bank account into which you wish commissions to be directly deposited unless commissions are to be paid to your sales manager. Commissions will be paid via Direct Deposit and commission statements will be accessible online (no paper checks or statements are available).

## Step #4

Provide a copy of your current Health, Accident & Life insurance license for the applicable state(s). You cannot be contracted and appointed in a state unless you submit a current license. NOTE: North Carolina requires agents contracting for this program to provide a copy of the NC State specific Medicare Supplement/Long Term Care license in addition to their Health license.

## Step #5

Appointment fee(s) are required. Submit a check made out to "Universal American or UAM Agent Services Corp." for the applicable appointment fee(s) applicable per each state and company to which you are appointing.

## Step #6

Submit all the above items to your immediate manager for signature and assignment of commission schedule. Your Manager must sign and validate your Agent Application and Agreement.

**Your Manager must submit contracting documents.**

### Postal Address

Universal American  
Attn: Contracting Dept.  
P.O. Box 12746  
Pensacola, FL 32591

### Fax

Attn: Universal American Contracting Dept.  
(850) 432-3896

**Attention Managers:** After signing the agent's Agent Application and Agreement, mail or fax the documents to our Universal American Contracting Department. You are required to mail or fax: 1) the Agent Application and Agreement; 2) signature page of Form W-9; 3) copy of a voided check 4) state appointment fee(s) payable to "Universal American or UAM Agent Services Corp."; and, 5) copy of the agent's Accident, Health & Life license for each applicable state(s) in which your agent will market, solicit and sell.

**I. APPLICATION**

**Section 1: AGENT INFORMATION**

First Name \_\_\_\_\_ Middle Initial \_\_\_\_\_ Last Name \_\_\_\_\_  
 Res. Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Business Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Home Phone (\_\_\_\_) \_\_\_\_\_ Work Phone (\_\_\_\_) \_\_\_\_\_  
 E-mail Address \_\_\_\_\_ Social Security Number \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_  
 National Producer Number (NPN#): \_\_\_\_\_ Fax Number (\_\_\_\_) \_\_\_\_\_ Birth Date \_\_\_\_/\_\_\_\_/\_\_\_\_

1. Are you currently appointed with any of the following subsidiaries of Universal American Corp.? Each entity listed below is an "Affiliate Company." (Check all that apply.)
- |   |  |  |  |
|---|--|--|--|
| <input type="checkbox"/> American Pioneer               | <input type="checkbox"/> American Progressive    | <input type="checkbox"/> Constitution Life   | <input type="checkbox"/> Marquette National        |
| <input type="checkbox"/> Pennsylvania Life              | <input type="checkbox"/> Pyramid Life            | <input type="checkbox"/> Union Bankers       | <input type="checkbox"/> Select Care of Texas, LLC |
| <input type="checkbox"/> Select Care Health Plans, Inc. | <input type="checkbox"/> ABRI Health Plans, Inc. | <input type="checkbox"/> Global Health, Inc. |  |

a. If yes, provide your current Agent Number: \_\_\_\_\_  
 b. What other company(s) are you currently appointed with: \_\_\_\_\_

2. I am contracting as a(n):     Individual (Sole Proprietor)     Corporation     Partnership
- a. Please identify each ("Company") listed below that you wish to contract with to sell state regulated insurance plans (Check all that apply.)
- |  |   |
|--|---|
| <input type="checkbox"/> American Pioneer Life Insurance Company | <input type="checkbox"/> American Progressive Life & Health Insurance Company of New York |
| <input type="checkbox"/> Constitution Life Insurance Company     | <input type="checkbox"/> Marquette National Life Insurance Company                        |

b. I am requesting authorization to sell state regulated insurance plans for the Company(ies) in the state(s) of: \_\_\_\_\_  
***(Attach copies of your Accident, Health & Life license(s) for the applicable state(s) listed above.)***

- c. Commissions will be payable to me by (check only one):  
 Company or                       My Sales Manager
- d. Commissions will be payable to the contracted individual/entity:  
 Individual Social Security Number: \_\_\_\_\_  
 Corporation/Partnership Tax ID Number: \_\_\_\_\_

3. I hereby request, subject to final approval of the Company, advances of first year commissions as follows:  
 3-months     6-months     9-months     12-months    *I understand if no election is made, commissions will be paid as earned.*
4. I understand that all advances and commissions due to me will be deposited by the Company directly into my bank account. I understand that the company may discontinue commission advances at any time. I hereby authorize the Company to deposit all commissions due me to my bank account identified below:  
 Account Number: \_\_\_\_\_ Financial Institution Name: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_

***(Attach voided check in the space provided at the end of the Agreement.)***

**Section 2: BACKGROUND INFORMATION**

1. Have you ever been fined, suspended, placed on probation, paid administrative costs, entered into a consent order, been issued a restricted license or otherwise been disciplined, reprimanded or are you currently under investigation by any insurance regulatory authority, FINRA (formerly known as the NASD) or SEC?.....  Yes  No  
*If yes, please provide specific details regarding what regulatory agency, the date(s) of said action and current status.* \_\_\_\_\_  
 \_\_\_\_\_
2. Does any insurer, insured or other person or agency claim any commission chargeback or other indebtedness from you resulting from insurance transactions or business?.....  Yes  No  
*If yes, please identify the specific party(s) involved and the basis of the claim. Indicate if the claim is formerly being disputed.* \_\_\_\_\_  
 \_\_\_\_\_

3. Has any lawsuit or claim ever been made against you or an errors and omissions insurer arising out of your sales or practices or have you ever been refused declined for E&O coverage?.....  Yes  No  
*If yes, provide the date and the name and address of the court where the lawsuit was tried or the name of the E&O carrier involved.*\_\_\_\_\_

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4. Have you initiated foreclosure and/or declared any type of bankruptcy (personal or any business in which you had control or ownership interest) in the last seven (7) years or declared multiple bankruptcies?.....  Yes  No  
*If yes, please provide details and date(s) regarding the action along with the name and address of the court to which said action was initiated/declared.*\_\_\_\_\_

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5. Have you been charged with or pled guilty to, nolo contendere (no contest) to or been found guilty of any felony or misdemeanor or, are you now under indictment?.....  Yes  No  
*If yes, provide the date and offense as well as the name and address of the court where your case was processed.*\_\_\_\_\_

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6. Are you presently involved in any litigation or administrative proceeding or are there unsatisfied judgments or outstanding tax liens (state or federal) against you?.....  Yes  No  
*If yes, please provide dates and details. Be advised that Company protocol requires written documentation regarding the payment resolution or agreed upon repayment plan with confirmed payment history pertaining to judgments and tax liens.*\_\_\_\_\_

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7. Have you ever been listed as debarred, excluded or otherwise ineligible for participation in federal health care programs or been terminated for cause by any insurance company or financial services employer?.....  Yes  No  
*If yes, please provide dates and details.*\_\_\_\_\_

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8. Is your Drivers License currently suspended or revoked?.....  Yes  No
9. Do you maintain auto-insurance coverage that satisfies the minimum requirements for your state?.....  Yes  No

**(If you are unable to provide a full explanation to any “yes” answers in the space provided, please use a separate sheet, inclusive of dates and attach to this Application.)**

## II. AGREEMENT

I request approval to contract with the Company as an agent (“Agent”) to market and solicit sales of insurance plans regulated by the applicable Department of Insurance of the applicable State(s) on behalf of the Company.

The Company is requested to make application to the Department of Insurance of the applicable State(s) for the issuance of an appointment authorizing Agent to solicit applications for policies of insurance offered by the Company.

Upon the Company’s approval of this Agreement, by signature of a duly authorized officer of the Company below, this will become a binding contract between the Company and Agent and Agent shall be authorized by the Company to act on behalf of the Company in accordance with the terms and conditions set forth below. Agent agrees as follows:

1. Agent’s authority hereunder shall be limited to marketing, soliciting, and selling applications for policies of insurance offered by the Company; to collect the first premium of each such policy of insurance applied for and immediately deliver same to the Company; to deliver issued policies of insurance as directed by the Company, if the insured(s) is/are in good health and the first premium has been paid; and to do any act or perform any duty which is specifically authorized in writing and signed by an Officer of the Company.
2. Agent represents and warrants that all information provided on the Agent Application and Agreement hereto is true, accurate and complete.
3. Except as disclosed in the Agent Application and Agreement, Agent represents and warrants that Agent has neither been, nor will be, during the term of this Agreement: (i) listed as debarred, excluded or otherwise ineligible for participation in federal or state health care programs; or (ii) convicted of a felony or misdemeanor, excluding traffic violations. If at any time Agent becomes aware of any violation of this representation and warranty, Agent agrees to notify the Company in writing immediately.
4. Agent may solicit applications for insurance only in territories in which Agent and the Company are duly licensed and authorized to conduct business.
5. Agent’s relationship with the Company shall be that of independent contractor, and not that of employer and employee, partners or joint ventures or any other legal relationship other than independent contractors. Agent shall be free to exercise

independent judgment as to the time and manner in which Agent performs the services authorized to be performed under this Agreement, but the Company may from time to time prescribe rules and regulations with respect to the insurance business covered hereby, not interfering with such freedom of action of Agent, which rules and regulations Agent agrees to conform to and observe. If any training materials, sales aids or similar services are furnished to Agent by the Company, it is for the purpose of assisting Agent and not to control the activities of Agent. All such materials are the sole and exclusive property of the Company will be immediately returned to the Company by Agent upon request or termination of this Agreement.

6. Agent understands that in marketing, soliciting, and selling insurance policies, Agent is not permitted to, and will not:
  - a. Alter, modify, waive or change any of the terms, rates or conditions of the Company's receipts, policies or contracts, nor any advertisement, marketing materials, scripts (including, but not limited to, telephone scripts and other sales scripts) approved by the Company, in any respect;
  - b. Market, solicit, or sell for the Company in any state:
    - 1) Where Agent is not duly authorized by the Company; or
    - 2) Where Agent does not have the required licenses;
  - c. Collect or issue receipts for premiums other than the first premium;
  - d. Endorse or deposit checks payable to the Company;
  - e. Use any marketing material, including brochures; illustrations; examples; flip charts; handouts; scripts; radio, television and print ads; internet advertising; and any other material primarily intended to attract or appeal to prospective policyholders -- other than marketing material supplied by, or approved in writing by the Company for use in marketing, soliciting, and selling insurance offered by the Company;
  - f. Engage in telephone solicitation except in strict compliance with federal and state "do not call" regulations and other applicable federal and state laws. In addition, Agent will utilize only telephone scripts approved in writing by the Company prior to any telephone solicitation;
  - g. Perform any act for or on behalf of the Company other than as expressly authorized herein.
7. No oral promises or representations shall be binding nor shall this Agreement be modified except in writing, executed on behalf of the Company by a duly authorized Officer of the Company and accepted by Agent, either by Agent's signature, or by placing business with the Company following the effective date of such amendment. The failure of the Company to insist on compliance by Agent with any of the obligations imposed by this Agreement shall not affect any other obligations of Agent contained herein or constitute a waiver of the rights of the Company.
8. Agent shall keep and maintain, or arrange for the maintenance of, accurate, complete, and timely books, records and accounts of all transactions occurring as part of the furnishing of marketing and promotional services to the Company pursuant to this Agreement. Agent agrees that the Company or its designees have the right to inspect, evaluate, and audit any of Agent's books, records, accounts and all other information arising from this Agreement or involving transactions related to the Company, and therefore agrees to make same available to the Company and its representatives upon request by the Company. Further, Agent agrees that to the extent other information or documents are necessary to assist the Company in complying with its obligations under law, Agent shall retain, or arrange for the retention of, such information or documents and/or make same available to the Company upon request.
9. Agent shall permit the Company to monitor the performance of Agent on an on-going basis, in any manner that the Company reasonably deems appropriate for compliance with the Company's policies and procedures, and with its obligations to federal or state regulatory agencies. The rights reserved for the Company pursuant to this provision shall not relieve Agent of obligations under this Agreement.
10. Agent shall be responsible for complying with all applicable state and federal laws, rules and regulations, including but not limited to privacy and security requirements. Accordingly, Agent shall comply with all applicable provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") relating to the privacy and security of individually identifiable health information and all regulations adopted in connection therewith. Consistent with these obligations, Agent hereby agrees to comply with the terms and conditions set forth in the HIPAA Business Associate Contract Privacy Addendum.
11. Agent agrees to adhere to the highest standards of ethical market conduct. These standards include, but are not limited to:
  - a. Complying with all applicable laws and regulations that pertain to the marketing, solicitation and/or sale of insurance;
  - b. Rendering services to policyholders, applicants and beneficiaries as the Company may require, and promoting the best interests of the applicant or policyholder and the Company;
  - c. Conducting business honestly and fairly, and making reasonable efforts to determine the insurable needs and financial objectives of each client, including but not limited to conducting proper suitability analyses as required by the Company or applicable law;
  - d. Not using high pressure sales tactics;
  - e. Engaging in active and fair competition;
  - f. Not misrepresenting, directly or indirectly, any policy benefit, condition or limitation;
  - g. Clearly disclosing policy conditions and limitations to policyholders and prospective policyholders;
  - h. Learning and understanding all of the Company's products; and
  - i. Providing service to the Company's policyholders after the sale.

12. Notwithstanding anything contained herein, if Agent receives compensation from his/her sales manager for performing the services reflected in this Agreement (as indicated in the Agent Application and Agreement), then the Company shall have no obligation to Agent for commissions, expense allowances, or any form of compensation whatsoever in connection with the services performed and expenses incurred by Agent in performing this Agreement.
13. If Agent is compensated by the Company (as opposed to his/her sales manager, as reflected in the associated Agent Application and Agreement), then during the term of, and subject to the provisions of this Agreement, Agent shall be entitled to the commission set forth on the Schedule of Commissions and Fees attached to this Agreement, less any commission payable to agents contracted under Agent with the Company. The Schedule of Commissions and Fees may be unilaterally modified by the Company upon 30 days written notice. Such changes will not be retroactive; changes will apply only to applications received on or after the effective date of change.
14. Service Fees, subject to the rules and regulations of the Company, may be payable to Agent, as long as this Agreement remains in effect and Agent provides required policy service. Service Fees are not commissions and are not vested. No Service Fees shall be payable on premiums received after the termination of this Agreement for any reason. The amount of the Service Fee will be as set forth in the Schedule of Commissions and Fees, in effect from time to time, on all business produced individually by Agent, or by agents contracted under Agent with the Company, provided that with respect to Service Fees on business produced by any agent contracted under Agent, Agent's Service Fee will be the difference between (1) the Service Fees shown on the Schedule in effect at the time of the sale and (2) the Service Fees as provided in the Schedule for all agents contracted under Agent who participated in the sale.
15. If Agent is compensated by the Company (as opposed to his/her sales manager, as reflected in the associated Agent Application and Agreement), then commissions advanced to Agent by the Company, if approved, are loans and are provided only when a policy is issued. The Company reserves the right to charge interest on all outstanding loans and such interest rates may be adjusted from time to time by the Company. Agent's manager and the Company reserve the right to adjust the commission advance period. All loans, together with unpaid and accrued interest thereon, are due and payable upon demand by the Company.
16. Should the Company for any reason refund any premium on which a commission has been paid, then Agent shall repay, on demand, any commissions received on that premium, or the Company may offset such amounts against any commissions or service fees due Agent on any other policies.
17. If at any time Agent is indebted to the Company or to an Affiliate Company, Agent authorizes and directs the Company to pay commissions due to Agent hereunder to the Company or to the Affiliate Company to which Agent owes such debt (whichever is applicable). Agent also hereby authorizes any Affiliate Company to pay any commissions to which Agent is entitled to the Company to satisfy any debt Agent owes the Company hereunder. All debts due the Company, including advances to Agent or any agent contracted under Agent with the Company, are payable upon demand and are not recoverable solely from commissions or other compensation.
18. Agent shall not, in any event (including, without limitation, nonpayment of any compensation provided for by this Agreement) bill, charge, seek compensation or remuneration or reimbursement from, hold responsible, or otherwise have any recourse against any applicant for insurance or policyholder (whether an actual or prospective enrollee) for any amounts otherwise payable by the Company.
19. The Company shall furnish to Agent monthly statements indicating all commissions and Service Fees earned and payments made to Agent. Agent shall notify the Company of any errors in the accounting statement within ninety 90 days after the closing date of the monthly accounting period. A failure to give such notification shall be considered a waiver of the right to object to such accounting.
20. The Company may cancel this Agreement and Agent's authority to represent the Company at any time, subject to 30 days written notice to Agent, unless the termination is "for cause" (as defined below), in which case the termination may be immediate upon notice to Agent. If terminated for cause: 1) no further commissions are payable and all unearned commissions, advances and other debts are immediately due and payable to the Company; 2) any agent contracted under Agent can be reassigned to another agent or direct to the Company; 3) any other Agreement or Contract with the Company or Affiliate Company may be terminated; and 4) all vested commissions and other compensation are forfeited to the Company.
21. If this Agreement is terminated by Agent or by the Company not "for cause", or should Agent die, or become totally disabled while this Agreement is in force, Agent, or in the case of Agent's death, Agent's surviving spouse, heirs or legal representatives shall, except as provided in this Agreement, receive all commissions that are due, or may become due, and have not yet been paid in accordance with the Commission Schedule attached hereto for as long as such commissions due exceed \$600 on an annualized basis. However, as stated above, if this Agreement is terminated "for cause", then no further commissions are payable to Agent, Agent's surviving spouse, heirs or legal representatives. If this Agreement is terminated not "for cause", and the Company later discovers that Agent has committed any act that would have been grounds for termination "for cause", or that Agent has breached any of the post-termination restrictions set forth above, the Company may convert the termination to a "for cause" termination and apply restrictions as noted in Section 21.

22. The Company may terminate this Agreement "for cause" if Agent:
  - a. Breaches this Agreement and/or if any of the representations or warranties made by Agent in the Agreement are deemed false when made or become false during the term of this Agreement;
  - b. Has Agent's insurance license, or any other required license, suspended or revoked in any state or otherwise violates any state or federal insurance law, rule or regulation;
  - c. Systematically replaces or attempts to replace by inducing any policyholder of the Company or an Affiliate Company to lapse, replace or otherwise terminate any policy issued by the Company or an Affiliate Company;
  - d. Discloses any list, file, card or record containing the name of any member of the Company or an Affiliate Company without the prior written consent of the Company or the applicable Affiliate Company;
  - e. Does not perform satisfactorily in accordance with this Agreement, as determined solely by the Company. Alternatively, the Company shall have the right to institute corrective action plans or seek other remedies or curative measures with respect to Agent's services and duties under this Agreement;
  - f. Fails to pay on demand any monies due the Company or an Affiliate Company or otherwise withholds funds due to the Company;
  - g. Becomes debarred, excluded or otherwise ineligible for participation in federal health care programs;
  - h. Engages in fraudulent activity;
  - i. Is convicted of a felony or misdemeanor, excluding traffic violations; or
  - j. Engages in any activity or omission that is detrimental to the business, operations or reputation of the Company or any Affiliate Company.
23. Whenever Agent, if secured by a Sales Manager pursuant to this Agreement, fails to be entitled to the renewal commissions to which he or she would have been otherwise entitled under this Agreement with the Company, all such renewal commissions shall, during the term of this Agreement, be paid to the Sales Manager provided the Sales Manager continues to service Agent's business in force with the Company and makes a diligent effort to conserve such business. A failure to comply with this provision will deny the Sales Manager the right to any such renewal commissions. Notwithstanding anything contained herein, Sales Manager shall not have the right to the renewal commissions in cases where Agent's total renewal commission is less than \$600 per year on an annualized basis.
24. In the event that any provision of this Agreement is deemed to be invalid or unenforceable, it is the intent of the parties that the remainder of this Agreement shall remain in full force and effect.
25. If at any time during the term of this Agreement there is a change in pertinent laws, regulations, or interpretations of such laws or regulations, the parties agree to renegotiate this Agreement to comply with such changes.
26. Agent shall not obligate the Company to, nor incur, any expense on Agent's behalf without prior authorization from an officer of the Company.
27. Except as provided in this Agreement, neither this Agreement nor any right hereunder shall be sold, transferred or assigned by Agent and, Agent shall not delegate to any other entity or person any duties and obligations hereunder. Upon written notice in a form acceptable to the Company, Agent shall have the right to sell, transfer or assign this Agreement to any entity or person that acquires all or substantially all of the agency for whom Agent works. The Company shall have the right to assign or delegate its rights, duties and obligations under this Agreement to any Affiliate Company or to any entity or person that acquires all or substantially all of the business of the Company.
28. This Agreement may be executed and delivered in counterparts, and delivered by facsimile transmission, and all such counterparts shall constitute one agreement, and all of such facsimile signatures shall be as binding as are original signatures delivered in person.
29. Agent hereby agrees to indemnify and hold the Company, its employees, officers and directors harmless from and against any and all liability, payment, loss, cost, expense (including reasonable attorneys' fees and costs), or penalty incurred by Company, its employees, officers or directors in connection with any claim, suit, or action asserted against such entity or person resulting from the failure to fulfill any obligation of this Agreement by Agent, its subagents or subcontractors.
30. Agent acknowledges that the Company has created valuable customer relationships and goodwill through considerable investments of time and expense. The Agent also acknowledges that the Company has developed trade secrets and other confidential information (including, but not limited to, customer lists and relationships, actuarial and underwriting information, strategic and business plans and computer programs, and other business information not known by the general public) that is valuable to the Company and is not generally known or available to persons not affiliated with the Company. Agent acknowledges that the Company has a legitimate interest in protecting these assets, and Agent agrees as follows:
  - a. Agent will comply with the Uniform Trade Secrets Act and all other applicable laws protecting trade secrets or other confidential information, for as long as such information remains confidential or a trade secret;
  - b. During the term of this Agreement and for a period of two years after this Agreement is terminated for any reason, Agent will not directly or indirectly disclose to any third party, or use any of the Company's confidential information;
  - c. Upon termination of this Agreement for any reason, Agent will immediately return to the Company all paper and electronic items containing any Company confidential and proprietary information;



**GUARANTEE BY OFFICERS OR PARTNERS**

If the Agent is a corporation or partnership, each of the undersigned, in consideration of the company executing this Agreement, represents to the Company that the principal stockholders or partners of the Agency, with the percentages of interest in the total ownership of the Agency, are as follows, and does hereby personally and severally guarantee the performance of all terms, liability and responsibility for any default in such terms, conditions, covenant, and/or amendments.

X \_\_\_\_\_  
Signature Print Name Title % Interest

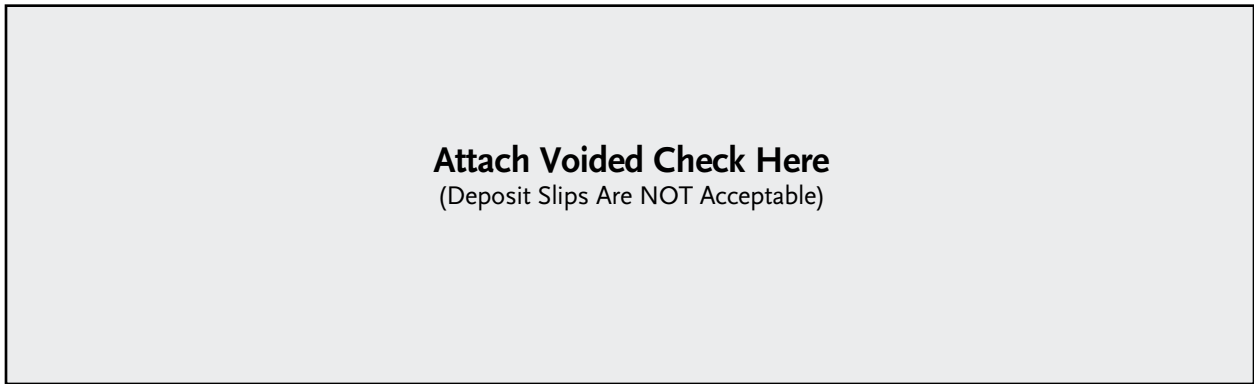
X \_\_\_\_\_  
Signature Print Name Title % Interest

X \_\_\_\_\_  
Signature Print Name Title % Interest

**SIGNATURE OF THE COMPANY**

By signing this Agreement, the Company hereby authorizes the Agent to act on behalf of the Company in accordance with the terms and conditions of this Agreement.

X \_\_\_\_\_  
Signature Print Name Date



**I. GENERAL PROVISIONS**

**Section 1. Effect.** The terms and provisions of this Addendum are incorporated in and shall supersede any conflicting or inconsistent terms and provisions of the Agreement to which this Addendum is attached, including all exhibits or other attachments thereto and all documents incorporated therein by reference (this "Agreement"), effective as the effective date of the agent's contract into the company. Any ambiguity in this Addendum shall be resolved to permit the Company to comply with the HIPAA Privacy Standards.

**Section 2. Amendment.** Agent and the Company agree to amend this Addendum to the extent necessary to allow either Agent or the Company to comply with the Privacy Standards (45 C.F.R. Parts 160 and 164), the Standards for Electronic Transactions (45 C.F.R. Parts 160 and 162) and the Security Standards (45 C.F.R. Part 142) (collectively, the "Standards") promulgated or to be promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and other applicable federal or state regulations or statutes. Agent and the Company will fully comply with all applicable Standards and other applicable federal or state regulations or statutes and will amend this Addendum to incorporate any material required by the Standards, such regulations or statutes.

**Section 3. Definitions.** Capitalized terms used herein without definition shall have the respective meanings assigned to such terms in Part IV of this Addendum.

**II. OBLIGATIONS OF AGENT**

**Section 1. Use and Disclosure of Protected Health Information.** Agent may use and disclose Protected Health Information only as required to satisfy its obligations under this Agreement, as permitted herein, or as required by law, but shall not otherwise use or disclose any Protected Health Information. Agent shall not, and shall ensure that its directors, officers, employees, contractors and agents do not, use or disclose Protected Health Information in any manner that would constitute a violation of the Privacy Standards if done by the Company, except that Agent may use Protected Health Information if necessary (i) for the proper management and administration of Agent, (ii) to carry out the legal responsibilities of Agent or (iii) to provide Data Aggregation services relating to the health care operations of the Company. Agent hereby acknowledges that, as between Agent and the Company, all Protected Health Information shall be and remain solely the property of the Company, including any and all forms thereof developed by Agent in the course of fulfilling its obligations pursuant to this Agreement. Agent further represents that, to the extent Agent requests the Company to disclose Protected Health Information to Agent, such request is only for the minimum Protected Health Information necessary for the accomplishment of Agent's purpose.

**Section 2. Safeguards Against Misuse of Information.** Agent agrees that it will use all appropriate safeguards to prevent the use or disclosure of Protected Health Information other than pursuant to the terms and conditions of this Addendum.

**Section 3. Agent's Duty to Mitigate.** Agent agrees to mitigate to the extent practicable any harmful effect that is known to Agent of a use or disclosure of Protected Health Information by Agent in violation of this Addendum.

**Section 4. Reporting of Violations.** Agent shall, within thirty (30) days of becoming aware of any use or disclosure of Protected Health Information not provided for by this Addendum by Agent or any of its officers, directors, employees, contractors or agents, report such use or disclosure to the Company.

**Section 5. Agreements by Third Parties.** Agent shall enter into and maintain an agreement with each agent and subcontractor that has or will have access to Protected Health Information under which the agent or subcontractor is legally bound by the same restrictions with respect to Protected Health Information that apply to Agent pursuant to this Addendum.

**Section 6. Access to Information.** Within ten (10) days of a request by the Company for access to Protected Health Information about an individual contained in a Designated Record Set, Agent shall make available to the Company such Protected Health Information. In the event any individual requests access to his or her Protected Health Information directly from Agent, Agent shall within two (2) days forward such request to the Company. Any denials of access to the Protected Health Information requested shall be the responsibility of the Company.

**Section 7. Availability of Protected Health Information for Amendment.** Within thirty (30) days of receipt of a request from the Company for the amendment of an individual's Protected Health Information or a record regarding an individual contained in a Designated Record Set, Agent shall provide such information to the Company for amendment and incorporate any such amendments in the Protected Health Information as required by 45 C.F.R. §164.526. Any denials of requested amendments shall be the responsibility of the Company.

**Section 8. Documentation of Disclosures.** Agent agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required of the Company to respond to a request by an individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. §164.528.

**Section 9. Accounting of Disclosures.** Within thirty (30) days of receipt of notice from the Company that it has received a request for an accounting of disclosures of Protected Health Information, other than disclosures excepted under 45 C.F.R. §164.528(a), Agent shall provide to the Company the information in Agent's possession that is required for the Company to make the accounting required by 45 C.F.R. §164.528(b) and (c). At a minimum, Agent shall provide the Company with the following information for each disclosure: (i) the date of the disclosure, (ii) the name of the entity or person who received the Protected Health Information and, if known, the address of such entity or person, (iii) a brief description of the Protected Health Information disclosed, and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event an individual's request for an accounting is delivered directly to Agent, Agent shall within two (2) days forward such request to the Company. Agent hereby agrees to implement an appropriate recordkeeping process to enable it to comply with the requirements of this section.

**Section 10. Availability of Books and Records.** Agent hereby agrees to make its internal practices, books and records including policies and procedures relating to the use and disclosure of Protected Health Information available to the Secretary for purposes of determining the Company's compliance with the Privacy Standards.

**Section 11. Indemnification.** Agent hereby agrees to indemnify and hold the Company, its employees, officers and directors harmless from and against any and all liability, payment, loss, cost, expense (including reasonable attorneys' fees and costs), or penalty incurred by the Company, its employees, officers or directors in connection with any claim, suit, or action asserted against such entity or person resulting from the failure to fulfill any obligation of this Addendum by Agent, its agents or subcontractors.

**Section 12. Insurance.** The Company strongly encourages each Agent to obtain and maintain during the term of this Agreement liability insurance covering claims based on a violation of the Standards or any applicable state law or regulation concerning the privacy of health information and claims based on its obligations pursuant to Section 9 of Part II of this Addendum in an amount not less than an amount sufficient to indemnify the company in the event of a breach. Such insurance should be in the form of occurrence based coverage and should name the Company as an additional named insured.

**Section 13. Notice of Request for Data.** Agent agrees to notify the Company within five (5) business days of Agent's receipt of any request, subpoena, or judicial or administrative order to disclose Protected Health Information. To the extent that the Company decides to assume responsibility for challenging the validity of such request, subpoena or order, Agent agrees to cooperate fully with the Company in such challenge.

**Section 14. Injunction.** Agent hereby agrees that the Company will suffer irreparable damage upon Agent's breach of its obligations under this Addendum and that such damages shall be difficult to quantify. Agent hereby agrees that the Company may file, and Agent will not contest, an action for an injunction to enforce the terms of this Addendum against Agent, in addition to any other remedy the Company may have.

### III. TERMINATION OF AGREEMENT WITH AGENT

**Section 1. Termination Upon Breach of Provisions Applicable to Protected Health Information.** Any other provision of this Agreement notwithstanding, this Agreement may be terminated by the Company upon five (5) business days prior written notice to Agent in the event that Agent materially breaches any obligation of this Addendum and fails to cure the breach within such five (5) day period; provided, however, that in the event that termination of this Agreement is not feasible, in the Company's sole discretion, Agent hereby acknowledges that the Company shall have the right to report the breach to the Secretary.

**Section 2. Return or Destruction of Protected Health Information upon Termination.** Upon termination of this Agreement, Agent shall either return to the Company or destroy all Protected Health Information which Agent then maintains in any form. Agent shall not retain any copies of the Protected Health Information. Notwithstanding the foregoing, to the extent that the Company agrees that it is not feasible for Agent to return or destroy any Protected Health Information, the provisions of this Addendum shall survive termination of this Agreement and Agent shall limit any further uses and disclosures of such Protected Health Information to the purpose or purposes which make the return or destruction of such Protected Health Information infeasible.

**Section 3. The Company's Right of Cure.** The Company shall have the right to cure, at the expense of Agent, any breach of Agent's obligations under this Addendum. The Company shall give Agent notice of its election to cure any such breach and Agent shall cooperate fully in the efforts by the Company to cure Agent's breach. Agent shall pay for such services of the Company within thirty (30) days of receipt of the Company's request for payment.

**Section 4. Transition Assistance.** Following the termination of this Agreement for any reason, Agent agrees to provide transition services for the benefit of the Company, including the continued provision of its services required under this Agreement until notified by the Company that another provider of services is able to take over the provision of such services and the transfer of the Protected Health Information and other data held by Agent related to its services under this Agreement has been completed.

### IV. DEFINITIONS FOR USE IN THIS ADDENDUM

**"Data Aggregation"** shall mean the combining of Protected Health Information by Agent with the Individually Identifiable Health Information created or received by Agent in its capacity as a business associate of another covered entity, to permit data Analysis that relate to the healthcare operations of the Company and the other covered entity.

**"Designated Record Set"** shall mean the enrollment, payment, claims adjudication, and cost or medical management record systems maintained by or for the Company, or any other group of records maintained by or for the Company and used, in whole or in part, by or for the Company to make decisions about individuals. As used herein the term "record" means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for the Company.

**"Individually Identifiable Health Information"** shall mean information that is a subset of health information, including demographic information collected from an individual, and (i) is created or received by a health care provider, health plan, health care clearinghouse (as those terms are defined in the Privacy Standards), or employer; and (ii) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (a) identifies the individual, or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

**"Privacy Standards"** shall mean the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164.

**"Protected Health Information"** shall mean Individually Identifiable Health Information transmitted or maintained in any form or medium that Agent creates or receives from or on behalf of the Company in the course of fulfilling its obligations under this Agreement. "Protected Health Information" shall not include (i) education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. §1232g, and (ii) records described in 20 U.S.C. §1232g(a)(4)(B)(iv).

**"Secretary"** shall mean the Secretary of the United States Department of Health and Human Services.

Except as specifically amended hereby, the Agreement shall remain in full force and effect.

## Request for Taxpayer Identification Number and Certification

**Give form to the  
 requester. Do not  
 send to the IRS.**

<b>Print or type See Specific Instructions on page 2.</b>	Name (as shown on your income tax return)	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other ▶ .....	
	<input type="checkbox"/> Exempt from backup withholding	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
City, state, and ZIP code		
List account number(s) here (optional)		

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

<b>Social security number</b>								
		+		+				
<b>or</b>								
<b>Employer identification number</b>								
		+						

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
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