



CENTRAL HEALTH PLAN OF CALIFORNIA

BROKER AGREEMENT **FOR MEDICARE ADVANTAGE WITH PART-D**

THIS BROKER AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 20_____, by and between Central Health Plan of California, DBA Central Health Medicare Plan, a California corporation ("Plan"), and _____ ("Broker").

- A. Central Health Plan of California is authorized to operate Medicare Advantage Plans with Prescription Drug plans ("MA-PD") pursuant to the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (the "MMA") (Pub. L. 108-173).
- B. The Plan desires to promote MA-PD Plans to eligible Medicare beneficiaries who are interested in enrolling in MA-PD Plans.
- C. Broker is authorized to promote MA-PD Plans to eligible Medicare beneficiaries and arrange for the Plan's enrollment of interested and eligible Medicare beneficiaries in MA-PD Plans.
- D. Broker desires to furnish such services ("Broker Services") on the terms and conditions set forth in this agreement.

Now, therefore, in consideration of the promises herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I – DEFINITIONS

- 1.1 **Broker** is an independent contractor, certified and appointed by the Plan, free to exercise his or its own judgment as to the time and manner of performing services pursuant to an agreement between the Broker and the Plan.
- 1.2 **CMS** is the Centers for Medicare & Medicaid Services, agency within the U.S. Department of Health and Human Services that administers the Medicare and Medicaid Program.
- 1.3 **CMS Contract** is the contract entered into by CMS and the Plan pursuant to which the Plan offers MA-PD Plan in Los Angeles and San Bernardino service area.
- 1.4 **MA Organization** is an entity that has entered into a contract with CMS to operate an MA Plan.
- 1.5 **MA-PD Plan** is any Medicare Advantage Plan that may be operated by the Plan. The definition of an MA Plan includes an MA-PD Plan with prescription drug plans benefits and a Special Needs Plan for eligible beneficiaries with Medicare and Medi-Cal.
- 1.6 **Member** is an eligible Medicare beneficiary who has been enrolled by the Plan in an MA-PD Plan.

ARTICLE II - APPOINTMENT, DUTIES AND LIMITATIONS ON AUTHORITY

- 2.1 **Appointment.** Subject to the terms and conditions of this Agreement, the Plan hereby appoints Broker for all new business sales to solicit applications for MA-PD Plan. Broker hereby accepts such appointment.
- 2.2 **Duties of Broker.** Broker shall:



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- a. Be certified by Plan as having completed the training required by the Plan prior to promoting and marketing the MA-PD Plan;
- b. Solicit and procure applications from interested and eligible Medicare beneficiaries pursuant to applicable Plan forms and agreements, including, without limitation, the collection of information designated by the Plan and CMS to process enrollments and the transmission of enrollment information to the Plan in a manner specified by the Plan (for example, utilizing an Internet-based enrollment facility, via electronic file transmission, or via facsimile transmission) and in compliance with standards and requirements that may be established by the Plan;
- c. Maintain proper records and accounts of business covered by this Agreement, in such manner and form as may be required by the Plan, which records shall be the property of the Plan; make such records and accounts available to the Plan or its representatives during normal business hours with seven (7) business days prior notice; and turn such records over to the Plan immediately upon termination of this Agreement; provided that Broker may retain copies of such records for his files;
- d. Render services to prospective Members including all necessary support services for presentations to prospective Members as required by the Plan; generally endeavor to promote the interests of the Plan as contemplated by this Agreement; and conduct itself so as not to affect adversely the business or reputation of itself or the Plan;
- e. Inform all prospective Members if applicable, how premium payments for the MA-PD Plan are to be made, as prescribed by the Plan and consistent with CMS requirements, provided that such notice shall be given prior to or at the time application information is accepted from prospective Members, and further provided that Broker shall immediately remit to the Plan, for credit only against the proper account, any and all monies received by it on behalf of the Plan as full or partial payment of initial premiums, bills, accounts, charges and other items of any nature whatsoever, and until such monies are remitted, hold them in trust for the benefits of the Plan, in separate accounts, not co-mingled with Broker's other funds; it being specifically acknowledged and agreed by Broker is not authorized to negotiate any check made payable to the Plan;
- f. Timely pay to the Plan all monies which may be or become due to it by reason of advances or loans or overpayments to Broker or otherwise;
- g. Make available to the Plan all information, which comes into Broker's possession concerning the underwriting of any risk irrespective of whether such information bears favorably on such underwriting;
- h. Maintain and make available for inspection complete books and records of all transactions pertaining to this Agreement which may be required pursuant to the MMA, and CMS rules and regulations implementing the MMA (the "CMS Rules"), the applicable state insurance laws and regulations, or by any governmental entity or regulatory agency for a period of ten (10) years from the later of (1) the termination of this Agreement, or (2) the completion of any audit by the U.S. Department of Health and Human Services, the Controller General, or their designee;
- i. Maintain all appropriate licenses necessary to promote and market the MA-PD Plan under the laws of California where Broker actively markets the MA-PD Plan, and promptly notify the Plan of any disciplinary proceedings against it or against any of its principals, partners, shareholders, directors, officers, or employees relating to any license to any such person by a regulatory authority. Broker shall notify Plan immediately of any expiration, termination, suspension, or other action affecting any such licenses;



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- j. Follow and be governed by the terms and conditions of this Agreement and by the reasonable rules and regulations for the conduct of Plan business that the Plan has or shall put forth;
 - k. Use best efforts to keep Members enrolled in MA-PD Plan by providing prompt services to Members;
 - l. Promptly report to the Plan within 24 hours any complaints or inquiries of which it becomes aware (and the facts relevant thereto) to/from any governmental authority regarding Broker or the Plan; and
 - m. Comply with the performance requirements, which the Plan may establish from time to time; it being acknowledged and agreed by Broker that failure to comply with such performance requirements may result in termination of this Agreement.
- 2.3 **Limitations on Authority.** Notwithstanding any other provision in this Agreement, Broker has no authority to, nor shall it represent itself as having such authority to, nor shall it do, any of the following:
- a. Hold itself out as an employee, partner, joint venture or associate of the Plan;
 - b. Hold itself out as an Broker of the Plan in any manner, or for any purpose, except as specified in this Agreement;
 - c. Alter, modify, waive or change any of the terms, rates or conditions of any advertisements or other promotional literature, receipts, policies or contracts of the Plan in any respect;
 - d. Insert any advertising in respect to the Plan in any publication whatsoever, distribute any promotional literature or other information in any media, or use the logo/service marks of the Plan without prior written authority of the Plan;
 - e. Collect, or authorize any other person to collect, any premiums or payments on behalf of the Plan whatsoever, except the initial month's premium, if authorized by the Plan;
 - f. Bind the Plan on any application for the MA-PD Plan, it being expressly understood that all applications must be approved by CMS and the Plan;
 - g. Incur any indebtedness or liability, make, alter, or discharge contracts, waive or forfeit any of the Plan's rights, requirements or conditions under the MA-PD Plan, extend the time of payment of any premium, or waive payment in cash on behalf of the Plan;
 - h. Transfer or sell the business of the Broker created by this Agreement without the Plan's prior written consent which shall not be unreasonably withheld, it being acknowledged and agreed by Broker that such business belongs exclusively to the Plan; and
 - i. Deduct any payments due Broker from premiums or payments collected on behalf of the Plan.
 - j. Delegate or sub-contract any services, activity or other obligation required of it under this agreement to any other person, without the prior written consent of the Plan.
- 2.4 **Promoting MA-PD Plan in Compliance with Marketing Guidelines.** Notwithstanding any other provision in this Agreement, Broker agrees, on behalf of itself and its employees, and Brokers, to comply with:
- a. Plan's policies and procedures relating to promoting MA-PD Plan to eligible Medicare beneficiaries.



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- b. Broker will read the applicable MA-PD Plan Training Manual and comply with all applicable policies therein.
 - c. Prior to marketing any MA-PD Plan and at least annually thereafter, Broker shall attend training sessions by the Plan relating to marketing MA-PD Plan.
 - d. Broker agrees not to make representations with respect to the nature or scope of the benefits of enrollment in the MA-PD Plan except in conformity with the written guidelines and marketing materials furnished by the Plan to Broker for that purpose. These marketing guidelines specifically include but are not limited to (i) the relevant portions of the Centers for Medicare and Medicaid Services (CMS) Rules on marketing of a Medicare Advantage Plan (previously referred to as Medicare + Choice) set forth at 42 CFR 422.80 (ii) the CMS Rules on marketing of a Medicare Part D Plan set forth at 42 CFR 423.50 (iii) the relevant portions of the Medicare Managed Care Manual (Chapter 3 – Marketing) which incorporates the “Must Use/Can’t Use/Can Use” guidelines, and (iv) such other written guidelines and marketing materials that may be issued by CMS and/or established by the Plan and furnished to Broker (collectively, the “Marketing Guidelines”).
 - e. By entering into this Agreement, 1) Broker is acknowledging it has received, read and understands the Marketing Guidelines, 2) Broker shall have no authority to, and will not make any oral or written alteration, modification, or waiver of any of the terms or conditions applicable to enrollment in the MA-PD Plan, 3) Broker shall agree to attend sales and training meetings as directed by Plan.
- 2.5 **Compliance with HIPAA Business Associate Requirements.** Broker agrees to comply with the HIPAA Business Associate requirements attached hereto and incorporated herein.
- 2.6 **Duties of the Plan.** The Plan shall provide to Broker the information necessary to prepare proposals for the MA-PD Plan, including rate and benefit schedules and Plan forms and agreements. The Plan shall furnish to Broker for distribution to eligible Medicare beneficiaries marketing material and promotional materials, advertisements, circulars, brochures or similar material concerning the MA-PD Plan.
- 2.7 **Enrollment and Disenrollment of Members.** The enrollment and disenrollment of Members with respect to MA-PD Plan is governed by CMS Rules. Nothing contained in this Agreement shall be construed to limit the enrollment or disenrollment of Members in accordance with CMS Rules.
- 2.8 **Plan’s Right to Modify MA-PD Plan.** Subject to CMS Rules, Plan may, in its discretion, discontinue or modify any of the MA-PD Plan.
- 2.9 **Relationships of Parties.**
- a. Broker is an independent contractor and nothing contained in this Agreement shall be construed to create an employer and employee relationship between the Plan and Broker. Broker shall be responsible for all taxes on compensation earned by it under this Agreement. Broker shall be responsible for providing any and all insurance coverage’s it is required to provide for itself, or for any of its employees, by law. Each party shall be solely responsible for and shall hold the other party harmless against any obligation for payment of wages, salaries, or other compensation (including all state, federal, and local taxes and mandatory employee benefits), and insurance and voluntary employment-related or other contractual or fringe benefits as may be due and payable by the party to or on behalf of such party’s employees and other contractors.



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- b. Except as specified in this Agreement, Broker is not, and shall not be deemed in any way, to be the Plan's Broker, and the Plan shall not be bound or liable for any actions taken or representations made beyond the scope or in violation of this Agreement.
- 2.10 **Indemnification.** Broker shall defend, indemnify and hold the Plan harmless from and against any and all injuries, claims, demands, liabilities, suits at law or in equity, or judgments of any nature whatsoever, which the Plan, its employees, representatives or third parties may sustain or incur by reason of any act, neglect or default of Broker in connection with the performance of this Agreement or the timely and accurate payment of commissions, fees, or other compensation to Broker by General Broker for sales of or enrollments in the MA- PD Plan.
- 2.11 **Litigation.** Broker shall not initiate litigation in any dispute between Broker and any prospective or existing Members, without prior written consent of the Plan, which consent may be withheld by the Plan for any or no reason. If any legal action is brought against either party hereto, or against both parties jointly, by reason of any alleged act, or failure of Broker in connection with its activities hereunder, the Plan may require Broker to defend such action, or at its sole option may defend therein and expend such sums as may be reasonable therefore including reasonable attorneys' fees, and Broker shall be chargeable therewith as well as with any amounts which may be recovered against the Plan by judgment, settlement, or otherwise, in any such action, which amount Broker shall pay to the Plan on demand.
- 2.12 **Rules and Regulations.** Broker shall conform to the rules and regulations of the Plan now or hereafter to become in force, which rules and regulations shall constitute a part of this Agreement.
- 2.13 **Receipt of Funds.** If applicable, any check or monies received by Broker for or on behalf of the Plan shall be received in a fiduciary capacity and shall be kept segregated from Broker's assets. Any such funds shall be deposited to a trust account in a state or federal bank authorized to do business in the state where the deposit is made and insured by an appropriate federal insuring agency no later than one (1) business day after receipt of such funds, and Broker shall transmit such funds to the Plan within five (5) business days. To the extent applicable laws and regulations provide for more stringent requirements relating to receipt, handling or transmission of funds, Broker shall comply with the more stringent requirements.
- 2.14 **Approval of Agreement.** Where required by applicable state insurance law, Plan shall file and obtain approval of this Agreement. Plan shall continue to accept business from GA during the approval process. In the event that a state insurance regulatory body with competent jurisdiction disapproves this Agreement, Plan will cease accepting business from GA and Plan and GA will enter into good faith negotiations to amend this Agreement as necessary to obtain approval from the respective insurance regulatory body.

ARTICLE III - COMPENSATION WHILE AGREEMENT IS IN EFFECT

- 3.1 **Compensation.** The Plan shall compensate Broker as describe in **Exhibit A**, for all activities conducted by Broker in connection with Member enrollment with the Plan.
- 3.2 **No Compensation by Plan.** Except as may be set forth in Exhibit A, Broker acknowledges and agrees that under no circumstances shall Broker have any claim against the Plan for any compensation or any other payment whatsoever in connection with Broker's activities with the marketing and promotion of MA-PD Plan.
- 3.3 **Plan's Right to Resolve Compensation Disputes.** In all cases where Broker's claim to compensate is disputed or is otherwise questionable, the Plan shall have the right, in its sole and



absolute discretion, to decide and settle the dispute. The decision of the Plan shall be final, binding, conclusive and non-appealable.

ARTICLE IV – TERMINATION

- 4.1 **Effective Date.** This term of this Agreement shall begin on the date first written above (the “Effective Date”) and shall continue until terminated in accordance with the Article Four hereof. Thereafter, this agreement shall continue in effect from year to year contingent upon annual completion of Marketing Training sessions provided by the Plan and Broker attestation, unless terminated pursuant to its terms.
- 4.2 **Termination Without Clause.** This Agreement may be terminated without cause by either Broker or the Plan upon ninety (90) days prior written notice, provided in accordance with the notice procedures set forth in this Agreement.
- 4.3 **Automatic Termination.** This Agreement will terminate automatically upon the occurrence of any of the following events:
- a. If the Broker is an individual, upon the death of the individual;
 - b. If the Broker is a partnership, upon the death of any partner or any change in the partners composing the partnership, or dissolution of the partnership for any reason;
 - c. If the Broker is a corporation, upon the dissolution of the corporation or disqualification of the corporation to do business under applicable state laws;
 - d. If the Broker has restriction, revocation or suspension of insurance license or registration by any Federal or state regulatory authority having jurisdiction over the parties;
 - e. The Broker's business is sold, transferred or merged and the Plan has not consented to such sale, transfer or merger or has not appointed the successor; or
 - f. The Broker becoming unable to pay debts as they mature, making an assignment for the benefit of creditors, or becoming the subject of a bankruptcy, insolvency, or similar proceedings.
- 4.4 **Termination With Cause.** The Plan may immediately terminate this Agreement for cause upon written notice to Broker upon the occurrence of any of the following events:
- a. The failure of Broker to comply with and in violation as determined by the Plan's Oversight Program and any Federal or State regulatory authority having jurisdiction over the parties, the rules and regulations of the Plan (including but not limited to the Marketing Guidelines), laws or regulations of the states in which the Broker is licensed to conduct business.
 - b. The failure of Broker to maintain the insurance coverage's set forth in this Agreement if the Broker is a State License Broker.
 - c. The failure of Broker to otherwise conforms to the terms and conditions of this Agreement to include but not limited to annual completion of Marketing Training provided by Plan.
 - d. Broker to otherwise conforms to the terms and conditions of this Agreement.
 - e. The conviction of Broker or any of its principals, shareholders, directors or officers of a felony crime or any other crime involving moral turpitude.



- f. If Broker or any principal, partner, shareholder, director or officer of Broker directly or indirectly contacts, communicates or meets with any Member for the purpose of replacing an MA-PD Plan operated or offered by the Plan with an MA-PD Plan operated or offered by an MA Organization or PDP Plan Sponsor that is not affiliated with the Plan.
 - g. Conduct by Broker which, is unethical, unprofessional, fraudulent, unlawful, or adverse to the interest, reputation or business of Plan provided that Broker is given notice of such violation and a seven (7) day opportunity to cure such violation.
 - h. CMS termination or non-renewal of Plan agreement.
- 4.5 **Broker's Obligations Following Termination of Agreement.** Following termination of this Agreement, Broker shall direct inquiries regarding the MA-PD Plans to the Plan. At the request of the Plan, Broker shall copy all requested records in its possession relating to MA-PD Plans applicants and Members and forward such copies to the Plan within seven (7) calendar days. The cost of copying such records shall be borne by Broker.

ARTICLE V - GENERAL PROVISIONS

- 5.1 **Proprietary and Confidential Information.** Broker agrees that all marketing and promotional materials, advertisements, circulars, brochures or similar material concerning the MA-PD Plan, rate and benefit schedules, contracts, records, files, manuals, forms, and other materials and information furnished by the Plan is and shall remain confidential and proprietary to the Plan. Broker agrees that Broker shall only use such proprietary and confidential information in connection with performance under this Agreement and only in the manner provided by this Agreement. Broker shall not use any of the Plan's proprietary and confidential information to directly or indirectly compete with the Plan, or to assist any competitor of the Plan to compete with the Plan, during the term of this Agreement or at any time thereafter. Upon expiration or termination of this Agreement, Broker shall immediately return all proprietary and confidential information.
- 5.2 **Assignment.** Neither this Agreement nor any of the duties or benefits of this Agreement shall be assigned or transferred either in whole or in part, without the prior written consent of the Plan.
- 5.3 **Entire Agreement: Modifications.** This Agreement, including all exhibits and attachments, constitutes the entire agreement between the parties with respect to the subject matter hereof. Any modification to the terms and conditions hereof must be made in writing and signed by the parties.
- 5.4 **Insurance.** Broker and/or Brokers shall maintain the following insurance coverage:
- a. Workers Compensation and Employer's Liability if the Broker is an employer of one or more employees, workers compensation and employers liability coverage with minimum limits of:
 - 1) Workers Compensation- Statutory as required by law.
 - 2) Employers Liability-

Bodily injury by accident:	\$1,000,000 each accident
Bodily injury by disease	\$1,000,000 each employee
Bodily injury by disease	\$1,000,000 policy limit
 - b. Broker's Errors and Omissions Insurance - not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) annual aggregate.



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If the Broker has a claims-made based policy (or policies) and such policy (or policies) are cancelled or not renewed, Broker agrees to exercise any option contained in said policy (or policies) to extend the reporting period to the maximum period permitted; provided, however, that Broker need not exercise such option if the superseding insurer will accept all prior claims.

None of the foregoing requirements as to the type and limits of insurance to be maintained by Broker are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Broker under this Agreement. Each of Broker insurance policies shall:

- 1) Be issued by companies that have an A.M. Best rating of not less than "A-", and are in a size category which is not lower than "VIII"
- 2) Be primary and noncontributory with any of the Plan's insurance
- 3) Name the Plan as an additional insured; (except workers compensation, employers liability and professional liability coverage's) and provide the Plan with 30 days prior written notice of cancellation, non-renewal or material change in the form or limits of coverage

Broker shall cause its insurance carriers; this Section requires brokers or Brokers to issue certificates of insurance to the Plan evidencing all insurance coverage. Broker further agrees to provide Plan upon execution of this Agreement and annually thereafter, copies of the certificate of insurance. Notwithstanding any other provisions of this Agreement, failure to provide the certificates of insurance shall be grounds for immediate termination of this Agreement.

- 5.5 **Waiver.** Failure of the Plan to enforce compliance with the terms and conditions of this Agreement shall not be construed as a waiver of the right to exercise the same time at any time.
- 5.6 **Notice.** Any and all notices required or permitted to be given hereunder shall be in writing and shall be sent by personal delivery, including (i) commercial messenger service overnight delivery, (ii) United States Postal Service certified or registered mail, return receipt requested, or (iii) facsimile transmission with electronic confirmation of successful transmission. Irrespective of the manner of delivery or transmission used, all such notices shall be properly addressed and directed to the party at its respective address or facsimile number set forth below.

If to Plan: Central Health Plan of California
1540 Bridgegate Drive
Diamond Bar, CA 91765
ATTN: Marketing

Facsimile: (626) 388-2379

If to Broker: To the Broker's address last known by the Plan.

Notices sent by either personal delivery or facsimile transmission shall be deemed given upon independent written verification of receipt. Notices sent via overnight delivery shall be deemed given on the next business day. All other notices sent by either registered or certified mail shall be deemed given three (3) business days from mailing.

- 5.7 **Compliance with Applicable Law: Severability.** In the event any provision of this Agreement conflicts with laws applicable hereto or under which this Agreement is construed, or if any provision of this Agreement shall be held illegal or unenforceable or partially illegal or unenforceable by a court or governmental authority with jurisdiction over the parties to this Agreement, then this Agreement shall be modified to conform with said laws or judicial determination and such provisions shall be construed and enforced only to such extent as it may be a legal and enforceable provision and all other provisions of this Agreement shall be given full effect separately there from and shall not be affected thereby.



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- 5.8 **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of California.
- 5.9 **Discretion.** Whenever in this Agreement some action, report or change must be taken or omitted by Broker if required or deemed necessary by the Plan, and whenever the Plan is given the option to require any act or omission by Broker, or to take or not take any action on its part, including the adoption and promulgation of rules and regulations, the Plan may act in its sole and absolute discretion, which shall be final and conclusive.
- 5.10 **Incorporation of Other Legal Requirements.** Any provisions now or hereafter required to be included in the Agreement by any Federal or State governmental authority with competent jurisdiction over the subject matter hereof including but not limited to CMS, shall be binding upon and enforceable against the Parties hereto and deemed incorporated herein, irrespective of whether or not such provisions are expressly set forth in this Agreement.
- 5.11 **Specific Regulatory Obligations of Medicare Participation.** Without limiting any other provision contained in this Agreement, Broker agrees to abide by and comply with the obligations imposed on it in this Section. As used in this Agreement, the term “Medicare Laws and Regulations” shall mean and include: (i) the MMA; (ii) the Social Security Act, as amended; (iii) Part C of Title XVIII of the Social Security Act and all rules and regulations related to Part C that are from time to time adopted by CMS; (iv) Part D of Title XVIII of the Social Security Act and all rules and regulations related to Part D that are from time to time adopted by CMS; (v) the HCFA Internet Security Policy; (vi) any laws and regulations enacted, adopted, promulgated, applied, followed or imposed by any governmental authority or court in respect of Medicare or any successor federal governmental program; and (vii) any and all administrative guidelines (including the Marketing Guidelines), bulletins, manuals, instructions, requirements, policies, standards, or directives from time to time adopted or issued by CMS or HHS relating to any of the foregoing, as any of the preceding Medicare Laws and Regulations from time to time may be amended, modified, revised or replaced, or interpreted by any governmental authority or court.
- a. **Compliance with Laws.** Broker shall ensure that Broker has obtained all licenses and permits required under applicable Medicare Laws and Regulations for Broker to perform their obligations as required pursuant to this Agreement. Broker agrees that, as between Broker and the Plan, Broker shall be responsible for determining and complying with all Medicare Laws and Regulations applicable to the performance of its obligations pursuant to this Agreement.
- b. **Business Integrity.** Broker agrees to be bound by the provisions set forth at 45 CFR part 76. In addition to the foregoing, Broker represents, warrants, and covenants that Broker has not been or will during any term hereof be (i) listed as debarred, excluded, or otherwise ineligible for participation in federal health care programs or (ii) convicted of a criminal felony. If at any time Broker becomes aware of any violation of this representation, warranty, and covenant, Broker agrees to notify the Plan in writing immediately. If Broker becomes debarred or ineligible or if Broker has not taken the actions required of it in the preceding sentence (if and when applicable), then the Plan may terminate this Agreement immediately upon written notice to Broker without liability to the Plan, or take such other corrective or remedial action as warranted under the circumstances.
- c. **Maintenance of Records; Audits.** Broker shall keep and maintain, in accordance with prudent business practices, accurate, complete, and timely books, records and accounts of all transactions occurring as part of the furnishing of marketing and promotional services to the Plan hereunder. Broker shall retain such books and records during the term of this Agreement and for a period of at least ten (10) years after the expiration or earlier termination of this Agreement in its entirety and for such longer period of time as required by any on-going audit or investigation of the Plan, Broker, or other person that is being conducted by a governmental



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authority. Broker shall permit the Secretary of Health and Human Services (HHS), CMS, the Controller General, the Plan or their designees to have the right to inspect, evaluate, and audit the facilities, offices, equipment, books, records, contracts, documents, papers, and accounts relating to Broker's performance of services pursuant to this Agreement. The right of HHS, CMS, the Controller General, the Plan and their designees to inspect, evaluate and audit any of the foregoing types of information shall exist during the term and for a period of ten (10) years after the expiration or earlier termination of this Agreement in its entirety and for such longer period of time as required to complete an on-going audit or investigation. The provisions of this section shall survive the expiration or earlier termination of this Agreement for any reason whatsoever.

- d. Suspension, Revocation or Termination of Agreement. Broker understands and agrees that, in the event Broker fails or is unable (for any reason whatsoever) to perform in a satisfactory manner any of the services set forth in this Agreement (including, but not limited to, performing reporting and disclosure requirements in a timely manner), then the Plan or CMS (as applicable) shall have the right to suspend, revoke or terminate this Agreement. Additionally, the Plan or CMS shall have the right to institute corrective action plans or seek other remedies or curative measures with respect to Broker's services and duties under this Agreement.
- e. Monitoring. Broker acknowledges and understands that the Plan is responsible to CMS for operation of the MA-PD Plan in accordance with Medicare Laws and Regulations and in accordance with any other administrative guidelines or requirements issued by CMS. In view of the foregoing, Broker shall permit the Plan to monitor the performance of Broker and shall ensure that the Plan shall be permitted to monitor the performance of Representatives on an on-going basis, in any manner that the Plan reasonably deems appropriate for compliance with the Plan's obligations to CMS. Plan from time to time will issue warning letter to Broker if any, for violating CMS and Plan Marketing Guidelines. Additionally, the Plan or CMS shall have the right to institute corrective action plans or seek other remedies or curative measures with respect to Broker's services and duties under this Agreement. The rights specifically reserved for the Plan under this Section shall not relieve Broker from its obligations under this Agreement or any Representative from its, his, or her obligations pursuant to this Agreement and any other agreement between Broker and the Plan.
- f. Compliance with the Plan's Obligations. Broker agrees that all services performed by Broker pursuant to this Agreement shall be consistent with and shall comply with the contractual obligations imposed upon the Plan under the CMS Contract. Broker agrees that Broker, at all times, shall furnish those marketing and promotional services required of them by this Agreement in a manner that permits the Plan to comply with the CMS Contract and all applicable Medicare Laws and Regulations.
- g. Federal Policies; Flow Down Provisions. Because Broker is furnishing marketing and promotional services with respect to MA-PD Plan which are the subject of a contract between the Plan and CMS, the following obligations are imposed upon Broker, with which Broker shall comply: Title VI of the Civil Rights Act of 1964, as amended (42 USC § 2000d *et seq.*); Sections 503 and 504 of the Rehabilitation Act of 1973, as amended (29 USC §§ 793 and 794); Title IX of the Education Amendments of 1972, as amended (20 USC § 1681 *et seq.*); Section 654 of the Omnibus Budget Reconciliation Act of 1981, as amended (41 USC § 9849); the Americans with Disabilities Act (42 USC § 12101 *et seq.*); the Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*); and the Vietnam Era Veterans Readjustment Assistant Act (38 USC § 4212); together with all applicable implementing regulations, rules guidelines and standards as from time to time are promulgated there under by applicable governmental authorities.
- h. Nondiscrimination. In performing services hereunder, Broker agree that the services it provides hereunder with respect to the MA-PD Plan shall be rendered without regard to health status,



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race, religion, color, creed, national origin, ancestry, religion, physical handicap, medical condition (including HIV status), mental status, age (except as provided by law), marital status, sex, sexual orientation, or gender identity of any individual. Broker agrees that Broker shall comply with the provisions of all Medicare Laws and Regulations relating to equal and fair employment.

- i. Equal Opportunity Employer. The Plan is an equal opportunity employer. As such, the provisions of Executive Order 11246, as amended (Equal Opportunity/Affirmative Action), 38 USC § 4212, as amended, (Vietnam Era Veterans Readjustment Act), and Section 503 of the Rehabilitation Act of 1973, as amended (Handicapped Regulations), together with the implementing regulations (found at 41CFR §§ 60-1, & 60-2, 41 CFR § 60-250, and 41 CFR § 60-741, respectively), and rules, guidelines and standards as from time to time are promulgated there under by applicable governmental authorities, are incorporated by reference into this Agreement, and Broker agrees to abide by the following provisions that, as a contractor of the Plan, are applicable to Broker.
 - j. Data Protection. Broker shall comply with all applicable Medicare Laws and Regulations, the Plan policies and procedures, and administrative guidelines issued by CMS pertaining to the confidentiality, privacy, data security, accuracy, and/or transmission of personal, health, enrollment, financial, and consumer information and/or medical records (including prescription records) of Members.
 - k. Member Hold Harmless. Broker shall not, in any event (including, without limitation, non-payment of any compensation hereunder, bankruptcy or insolvency of an Affiliate or breach of this Agreement), bill, charge, collect a deposit from, seek compensation or remuneration or reimbursement from, hold responsible, or otherwise have any recourse against any actual or prospective Member for any amounts otherwise payable by an Affiliate to Broker pursuant to this Agreement or otherwise.
- 5.12 Binding Arbitration. Any claim, controversy dispute or disagreement of whatsoever nature between the parties hereto shall be resolved by binding arbitration by a single arbitrator in accordance with the Comprehensive Rules of Judicial Arbitration and Mediation Services ("JAMS"), and administration of the arbitration shall be performed by JAMS or such other arbitration service as the parties may agree in writing. The parties will endeavor to mutually agree to the appointment of the arbitrator, but if such agreement cannot be reached within thirty (30) days following the date demand for arbitration is made, the arbitrator appointment procedures in the Comprehensive Rules will be utilized. Arbitration hearings shall be held in Los Angeles County, California or at such other location as the parties may agree in writing. Civil discovery may be taken in such arbitration as provided by California law and civil procedure. The arbitrator selected shall have the power to control the timing, scope and manner of the taking of discovery and shall further have the same powers to enforce the parties' respective duties concerning discovery as would a Superior Court of California including, but not limited to, the imposition of sanctions. The arbitrator shall have the power to grant all remedies provided by California law. The parties shall divide equally the expenses of JAMS and the arbitrator, but the arbitrator may assess all such costs and expenses to the non-prevailing party in the arbitrator's award. The arbitrator shall prepare in writing an award that includes the legal and factual reasons for the decisions. The arbitrator shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected pursuant to California law. The Federal Arbitration Act, 9 USC § 1-16, shall apply to arbitration. The requirement of binding arbitration shall not preclude a party from seeking a temporary restraining order or preliminary or other injunctive relief from a court with jurisdiction; however, any and all other claims or causes of action including, but not limited to, those seeking monetary damages, shall be subject to binding arbitration as provided herein.



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IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date and year above first written.

“Plan”

“Broker”

Central Health Plan of California, DBA,
Central Health Medicare Plan

(Signature)

(Signature)

(Print Name)

(Print Name)



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EXHIBIT A

Broker Commission Schedule

A. Definitions

1. Initial year, first year, or renewal year is defined as a calendar year, from January 1 through December 31.
2. Initial Commission and Year One Compensation is defined as commission paid for enrolled beneficiaries **identified by CMS** as newly entitled or enrolled from Original Medicare.
3. Renewal Year Compensation and Renewal Year Commission is defined as commission paid for each year of the five year renewal cycle. In 2009, all Broker-assisted enrollments qualify for year 1 of the 5 year renewal cycle.
4. Like plan type transfers is defined as beneficiary movement between Medicare Advantage Organizations (MA to MA-PD and MA-PD to MA-PD) and qualify for Renewal Year Compensation only.

B. Compensation

For each Member enrolled by Broker in a MA-PD Plan:

1. Commission Schedule:

Compensation shall be made according to the six-year commission cycle defined as one initial year and five subsequent renewal years from the Member effective date per table below:

Year One Compensation	Renewal Year Compensation				
Year One "Initial"	Year Two "Renewal"	Year Three "Renewal"	Year Four "Renewal"	Year Five "Renewal"	Year Six "Renewal"
\$517	\$259	\$259	\$259	\$259	\$259

- a. CMS shall identify the enrollment type of each Member enrolled in the Plan as eligible under Year One Compensation either when Member enrolls under the Initial Coverage Election Period (ICEP) or from Fee-For-Service (FFS) under Original Medicare. Broker is eligible for the full six-year commission cycle for these enrollments.
 - b. Broker is eligible for **ONLY** the renewal years of the six-year commission cycle (five years maximum, years two through six) for Members not identified by CMS as newly eligible.
- ##### 2. Initial Commission:



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- a. ICEP and FFS enrollments shall initially be compensated **at the renewal rate of** until confirmation from CMS, at which time the difference between the renewal rate and the Year One Compensation shall be paid to Broker.
 - b. Year One Compensation is earned in months four (4) through twelve (12) as long as the Member is enrolled in a MA-PD Plan. If Member disenrolled prior to month four (4), no compensation is earned. If Member disenrolled after month three (3), compensation shall be paid on a pro-rated basis for the months in which the Member was enrolled.
3. Renewal Year Commission:
- a. Beneficiary enrollments from other like plan types qualify for **Renewal Year Compensation**. Eligible like plan type transfers include MA plans to MA-PD plans, and MA-PD plans to MA-PD plans.
4. Compensation Time Frame:
- a. Initial Commission shall be paid in a lump sum at the renewal rate within fifteen (15) days of the Member effective date. Difference between Initial Commission and Renewal Commission shall be paid within fifteen (15) days of CMS notification to Plan. Initial Commission is subject to rapid disenrollment and pro-rated chargebacks as detailed in Section F of this Exhibit A.
 - b. Renewal Year Commission shall be paid in a lump sum within fifteen (15) days of the first month of each renewal year. Renewal Year Commission is subject to pro-rated chargeback as detailed in Section D of this Exhibit A.
- C. Changes in Compensation. This Agreement and Exhibit A are subject to change at anytime if CMS issues new marketing and/or compensation guidelines. The Plan may, at any time, increase or decrease the compensation upon thirty (30) calendar days written notice furnished to the Broker. Unless expressly stated otherwise, any change in compensation shall apply only to Broker on or after the effective date specified in the written notice and shall not affect payments made prior to nor be calculated or applied towards events or circumstances preceding the effective date specified in the written notice.
- D. Payment of Compensation. All compensation due to Broker under this Agreement shall be based on the successful enrollment of Members as determined by CMS and the Plan. Any compensation to Broker shall not be deemed or construed as confirmation of successful enrollment of Members as determined by CMS and the Plan.
1. Deductions for Non-Enrollment. If the Plan, in its sole discretion, elects to pay any compensation to Broker prior to successful enrollment of Members as determined by CMS and the Plan, or if Plan has paid for any successful enrollment that is subsequently reversed, cancelled, nullified, rescinded or is otherwise deemed null, invalid, or disqualified, Broker shall promptly refund monies paid to Broker as compensation for specified events. In its sole discretion, Plan may require Broker to refund specified compensation within fifteen (15) calendar days of written notice furnished to the Broker, or the Plan may deduct such compensation from amounts otherwise owed by the Plan to Broker.
 2. Deductions for Rapid Disenrollment. If a Member disenrolls or otherwise loses coverage under the Plan within **three (3) consecutive calendar months** beginning with the enrollment effective date, and the Plan has paid any compensation to Broker for such Member, Broker shall refund 100% of the monies paid to Broker as compensation for



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specified Member. In its sole discretion, Plan may require Broker to refund specified compensation within fifteen (15) calendar days of written notice furnished to the Broker, or the Plan may deduct such compensation from amounts otherwise owed by the Plan to Broker.

3. Deductions for Member Mid-Year Termination, Moving out of Service Area and Disenrollment. Broker acknowledges and agrees that all payments to Broker upon enrollment of Members into Plan from one CMS Contract year to the next CMS Contract year shall be deemed an advance of compensation to Broker ("Annual Advance"). Broker shall refund that portion of the Annual Advance for such CMS Contract year, which has been made to Broker for any Member who disenrolls from the Plan ("Disenrolled Members") before the end of such CMS Contract year. The portion of the Annual Advance to be refunded to Plan by Broker shall equal:
 - (i) The number of months the member is not enrolled with the Plan for the CMS Contract year divided by twelve (12) months; multiplied by
 - (ii) The Annual Advance made to Broker for the Disenrolled Members. Broker shall refund the Plan within fifteen (15) calendar days upon written notice from the Plan. In the event Broker failed to refund to the Plan such compensation within fifteen (15) calendar days, the Plan may deduct such compensation from amounts otherwise owed by the Plan to Broker.
4. Deductions for Member if CMS Disqualified Enrollment. Broker acknowledges and agrees to refund the Plan within fifteen (15) calendar days of being notified in writing by the Plan, in the event CMS disqualifies the member enrollment in a later date up to including one (1) year upon enrolling the member.

E. Compensation Following Termination of Agreement: Vesting.

1. In the event this Agreement is terminated, Plan shall cease paying to Broker any compensation under this Agreement and no further payment shall be due. This cessation of payment is not a settlement, and the Plan expressly reserves all rights and remedies.
2. The obligation of the Plan to pay compensation shall cease in the event that GA engages in inappropriate moves of beneficiaries from plan-to-plan by using criteria other than the beneficiaries' health care needs and preferences.



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EXHIBIT B

HIPAA BUSINESS ASSOCIATE AGREEMENT

Recitals

A. WHEREAS, the purpose of this Agreement is to comply with the Standards for Privacy of Individually Identifiable Health Information and the Security Standards (collectively, the "HIPAA Regulations") at 45 C.F.R. Parts 160, 162 and 164 under the *Health Insurance Portability and Accountability Act of 1996* ("HIPAA"), and the HITECH Amendment to HIPAA;

B. WHEREAS, the U.S. Department of Health and Human Services has promulgated the Security Standards for the Protection of Electronic Protected Health Information, which are codified at 45 CFR Part 160 and 45 CFR Part 164, subparts "A" and "C" (the "HIPAA Security Rule") and which require that Plan incorporate mandatory provisions into its written agreements with all organizations which perform any function or activity involving the creation, receipt, maintenance, or transmission of Electronic Protected Health Information on behalf of Plan;

C. WHEREAS, the parties hereto have a prior agreement dated _____ (the "Service Agreement") under which Business Associate regularly uses and/or discloses Protected Health Information and Electronic Protected Health Information in its performance of services for Plan; and

D. WHEREAS, this Agreement sets forth the terms and conditions pursuant to which Protected Health Information that is provided by Plan to Business Associate, or created or received by Business Associate from or on behalf of Plan, will be handled during the term of the Service Agreement and after its termination.

NOW, THEREFORE, for and in consideration of the recitals above and the mutual covenants and conditions contained herein, Business Associate and Plan agree as follows:

Agreement

1. Definitions.

1.1 "Breach" means the acquisition, access, use, or disclosure of protected health information in a manner not permitted by the HIPAA Privacy and/or Security Rules which compromises the security or privacy of the protected health information. There are three exceptions to the definition of "breach":

a. Unintentional acquisition, access, or use of protected health information by a workforce member or person acting under the authority of a covered entity or a business associate, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the HIPAA Privacy/Security rule.

b. Inadvertent disclosure by a person who is authorized to access protected health information at a covered entity or business associate to another person authorized to access protected health information at the same covered entity or business associate, or organized health care arrangement in which the covered entity participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy and/or Security Rules.

c. Unauthorized disclosure of protected health information where a covered entity or business associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

1.2 "Electronic Health Record" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.



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1.3 “Electronic Protected Health Information” shall have the meaning ascribed at 45 CFR §160.103.

1.4 “HITECH Amendment” means the changes to HIPAA made by the Health Information Technology for Economic and Clinical Health Act.

1.5 “Protected Health Information” has the same meaning as the term “protected health information” in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

1.6 “Security Incident” shall have the meaning ascribed at 45 CFR § 164.304 which at the time of this Agreement means the attempted or successful unauthorized access, use disclosure, modification, or destruction of information or interference with system operations in an information system.

2. Permitted Uses and Disclosures of Protected Health Information.

Pursuant to the Service Agreement, Business Associate provides services for Plan that involve the use and disclosure of Protected Health Information. The term “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Plan. Except as otherwise specified herein, Business Associate may use or disclose Protected Health Information necessary to perform its obligations under the Services Agreement, provided that such use or disclosure would not violate the HIPAA Regulations if done by Plan. All other uses not authorized by this Agreement are prohibited. Additionally, Business Associate may disclose Protected Health Information for the purposes authorized by this Agreement only (i) to its employees, subcontractors, and agents, in accordance with Section 3.1(e) hereof, (ii) as directed by Plan, or (iii) as otherwise permitted by the terms of this Agreement.

3. Responsibilities of the Parties.

3.1 Responsibilities of Business Associate. With regard to its use and/or disclosure of Protected Health Information, Business Associate hereby agrees to:

(a) Not use or further disclose Protected Health Information other than as permitted or required by this Agreement or as otherwise required by law.

(b) Use appropriate safeguards to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.

(c) Implement and comply with (and ensure that its subcontractors implement and comply with) the standards set forth at 45 CFR Sections 164.308(administrative safeguards), 164.310 (physical safeguards), 164.312(technical safeguards), and 164.316 (policies and procedures), to reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the HIPAA Security Rule.

(d) Establish and implement procedures for mitigating, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information that violated the requirements of this Agreement.

(e) Report to the designated privacy officer of Plan, in writing, any use and/or disclosure of the Protected Health Information that is not permitted or required by this Agreement of which Business Associate becomes aware within three (3) calendar days of Business Associate’s discovery of such unauthorized use and/or disclosure.

(f) Require all of its employees, representatives, and agents, including subcontractors, that receive or use or have access to Protected Health Information under this Agreement to agree in writing to adhere to the same restrictions and conditions on the use and/or disclosure of Protected Health Information that apply herein, including the obligation to return or destroy the Protected Health Information as provided under Section 5.3 hereof. Implement and maintain sanctions against any agent or subcontractor that violates such restrictions and conditions and mitigate the effects of any such violation.

(g) Provide access, within ten (10) calendar days of receipt by Business Associate of a request by Plan, to Protected Health Information in a Designated Record Set, to Plan or, as directed by Plan, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524 (the term “Designated



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Record Set” shall have the same meaning as the term “designated record set” in 45 C.F.R. § 164.501; the term “Individual” shall mean the person who is the subject of Protected Health Information).

(h) Make any amendment(s) to Protected Health Information in a Designated Record Set that Plan directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Plan or an Individual, within ten (10) calendar days of receipt by Business Associate of such request. If any Individual requests an amendment to Protected Health Information directly from Business Associate or its agent or subcontractor, Business Associate must notify Plan in writing within five (5) calendar days of receipt of the request. Any denial of amendment of Protected Health Information maintained by Business Associate or its agent or subcontractor shall be the responsibility of Plan.

(i) Make available all records, books, agreements, and policies and procedures relating to the use and/or disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Plan available to Plan, or at the request of Plan to the Secretary of the U.S. Department of Health and Human Services (“HHS”), in a time and manner designated by Plan or the Secretary, for purposes of the Secretary determining Plan's compliance with the HIPAA Regulations, subject to attorney-client and other applicable legal privileges.

(j) Within ten (10) calendar days of receiving a written request from Plan, make available to Plan during normal business hours at Business Associate's offices all records, books, agreements, and policies and procedures relating to the use and/or disclosure of Protected Health Information for purposes of enabling Plan to determine Business Associate's compliance with the terms of this Agreement.

(k) Document such disclosures of Protected Health Information and information related to such disclosures as would be required for Plan 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, or effective as of January 1, 2011 or such later effective date prescribed by regulations issued by the U.S. Department of Health and Human Services, an accounting of disclosures of Protected Health Insurance from an Electronic Health Record in accordance with the HITECH Amendment. Business Associate shall retain such documentation during the term of this Agreement and for a period of six (6) years following its termination. Business Associate shall not disclose Protected Health Information unless directed in writing by Plan or as expressly permitted under this Agreement of the Services Agreement.

(l) Within ten (10) calendar days of receiving a written request from Plan, provide to Plan such information as is requested by Plan to permit Plan to respond to a request by an Individual for an accounting of disclosures of the Individual's Protected Health Information in accordance with 45 C.F.R. §164.528, or effective as of January 1, 2011 or such later effective date prescribed by regulations issued by the U.S. Department of Health and Human Services, an accounting of disclosures of Protected Health Insurance from an Electronic Health Record in accordance with the HITECH Amendment.

(m) Ensure that any agent, Group Provider or subcontractor to whom Business Associate provides Electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect such Electronic Protected Health Information; provided however, that Business Associate shall not assign, delegate, or subcontract any obligation of Business Associate owed by Plan in violation of this Agreement.

(n) Report to Plan any Security Incident, which Business Associate becomes aware.

(o) Authorize termination of the Service Agreement by Plan if Plan determines that Business Associate has violated a material term of this Agreement.

(p) Business Associate understands that pursuant to the HITECH Amendment, it is subject to the HIPAA Privacy and Security Rules in a similar manner as the rules apply to Covered Entity. As a result, Business Associate agrees to take all actions necessary to comply with the HIPAA Privacy and Security Rules for business associates as revised by the HITECH Amendment. Business Associates agrees to the following in connection with the breach notification requirements of the HITECH Amendment:

1.1 If Business Associate discovers a breach of unsecured PHI, as those terms are defined by 45 CFR 164.202, Business Associate shall notify Plan without unreasonable delay and within 10 calendar days after discovery. For this purpose, discovery means the first day on which the breach is known to Business Associate or by exercising reasonable diligence would have been known to Business Associate. Business Associate shall be deemed to have knowledge of a breach if the breach is



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known or by exercising reasonable diligence would have been known to any person, other than the person committing the breach, who is an employee, officer, subcontractor or other agent of Business Associate. The notification must include identification of each individual whose unsecured PHI has been or it has reasonably believed to have been breached and any other available information in Business Associate's possession which the Plan is required to include in the individual notice contemplated by 45 CFR 164.404.

1.2 Notwithstanding the immediately preceding paragraph, Business Associate shall assume the individual notice obligation specified in 45 CFR 164.404 on behalf of Plan where a breach of unsecured PHI was committed by Business Associate or its employee, officer, subcontractor or other agent of Business Associate or is within the unique knowledge of Business Associate as opposed to Plan. In such case, Business Associate will prepare the notice and shall provide it to Covered Entity for review and approval at least five calendar days before it is required to be sent to the affected individual(s). Plan shall promptly review the notice and shall not unreasonably withhold its approval.

1.3 Further, where a breach involves more than 500 individuals and was committed by the Business Associate or its employee, officer, subcontractor or other agent or is within the unique knowledge of Business Associate as opposed to Plan. Business Associate shall provide notice to the media pursuant to 45 CFR 164.406. Again, Business Associate will prepare the notice and shall provide it to Plan for review and approval at least five calendar days before it is required to be sent to the media. Plan shall promptly review the notice and shall not unreasonably withhold its approval.

1.4 Business Associate shall maintain a log of breaches of unsecured PHI with respect to Plan and shall submit the log to Plan within 30 calendar days following the end of each calendar year so that the Plan may report breaches to the Secretary in accordance with 45 CFR 164.408. This requirement shall take effect with respect to breaches occurring on or after September 23, 2009.

(q) Business Associate acknowledges that, effective the later of the Effective Date of this Agreement or February 17, 2010, it shall be liable under the civil and criminal enforcement penalty provisions as set forth at 42 U.S.C. 1320d-5 and 1320d-6, as amended from time to time, for failure to comply with the use and disclosure requirements of this Agreement, or failure to comply with the with safeguard, policies and procedures requirements and any guidance issued by the Secretary from time to time with such requirements.

3.2 Responsibilities of Plan. With regard to the use and/or disclosure of Protected Health Information by Business Associate, Plan hereby agrees to:

(a) Provide Business Associate with a copy of the notice of privacy practices (the "Notice") that Plan provides to Individuals pursuant to 45 C.F.R. § 164.520, as well as any changes in Notice;

(b) Inform Business Associate of any changes in, or revocation of, the consent or authorization provided to Plan by an Individual to use Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures; and

(c) Notify Business Associate, in writing and in a timely manner, of any restriction to the use and/or disclosure of Protected Health Information that Plan agreed to as provided for in 45 C.F.R. § 164.522.

4. Mutual Representation and Warranty.

Each party hereto represents and warrants to the other party hereto that all of its employees, agents, representatives and members of its work force, whose services may be used to fulfill obligations under this Agreement, are or shall be appropriately informed of the terms of this Agreement and are under legal obligation to fully comply with all provisions of this Agreement.



5. Term and Termination.

5.1 Term. This Agreement shall become effective on the Effective Date, and shall terminate when all of the Protected Health Information provided by Plan to Business Associate, or created or received by Business Associate on behalf of Plan, is destroyed or returned to Plan, or, if it is infeasible to return or destroy the Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section 5.

5.2 Termination. As provided for under 45 C.F.R. § 164.504(e)(2)(iii), Plan may immediately terminate this Agreement and any related agreement if it determines that Business Associate has breached a material term of this Agreement. Alternatively, Plan may choose to: (i) provide Business Associate with fifteen (15) calendar days written notice of the existence of an alleged material breach; and (ii) afford Business Associate an opportunity to cure such alleged material breach within the fifteen (15) day period upon mutually agreeable terms. Failure to cure in the manner set forth in this Section 5.2 is grounds for the immediate termination by Plan of this Agreement. Business Associate's obligation to comply with Section 3.1(p) of this Agreement shall be subject to the "notice-and-cure" period described above. If termination is not feasible, Plan shall report the breach to the Secretary of HHS. This Agreement will automatically terminate without any further action of the parties upon the termination or expiration of the Service Agreement.

5.3 Effect of Termination.

(a) Except as provided in paragraph (b) of this Section 5.3, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Plan, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies or back-up tapes of the Protected Health Information.

(b) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Plan written notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties hereto that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information, which shall be for a period of six years.

(c) In the event that it is infeasible for Business Associate to obtain from a subcontractor or agent any Protected Health Information in the possession of the subcontractor or agent, Business Associate shall provide to Plan written notification of the conditions of such infeasibility and require the subcontractor or agent to agree to extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures by the subcontractor or agent of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as the subcontractor or agent maintains such Protected Health Information.

(d) The respective rights and obligations of Business Associate and Plan under Sections 5.3, 6, 7.2, 7.3, and 7.4 shall survive the termination of this Agreement indefinitely.

6. Indemnification.

The parties hereto agree to indemnify, defend and hold harmless each other and each other's respective employees, directors, officers, subcontractors, agents or other members of its workforce (each of the foregoing hereinafter referred to as "indemnified party") against all actual and direct losses suffered by the indemnified party and all liability to third parties arising from or in connection with any breach of this Agreement or of any warranty hereunder or from any negligence or wrongful acts or omissions, including failure to perform its obligations under the HIPAA Regulations, by the indemnifying party or its employees, directors, officers, subcontractors, agents or other members of its workforce. Accordingly, on demand, the indemnifying party shall reimburse any indemnified party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any indemnified party by reason of any suit, claim, action, proceeding or demand by any third party which results from the indemnifying party's breach hereunder.



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The obligation of the parties hereto to indemnify any indemnified party shall survive the expiration or termination of this Agreement for any reason.

7. **Miscellaneous**

7.1 **Notices.** Any notices required or permitted to be given hereunder by any party to the other shall be in writing and shall be deemed delivered upon personal delivery; twenty-four (24) hours following deposit with a courier for overnight delivery; or seventy-two (72) hours following deposit in the U.S. Mail, registered or certified mail, postage prepaid, return-receipt requested, addressed to the parties at the following addresses or to such other addresses as the parties may specify in writing:

If to Plan: Central Health Plan of California, Inc.
1540 Bridgegate Drive
Diamond Bar, CA 91765
Attention: Chief Executive Officer

If to Business Associate: Last Known Address

7.2 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

7.3 **Venue.** In the event of any litigation under this Agreement, the parties agree that the venue for such litigation shall be the County of Los Angeles in the State of California.

7.4 **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor anything herein shall confer, upon any person other than the parties hereto any rights, remedies, obligations, or liabilities whatsoever.

7.5 **Regulation References.** A reference in this Agreement to a section in the HIPAA Regulations means the section as in effect or as amended, and for which compliance is required.

7.6 **Amendment.** The parties agree to take such action to amend this Amendment from time-to-time as is necessary for Health Plan to comply with the requirements of HIPAA and the HIPAA Regulations

7.7 **Enforcement.** In the event that either party hereto shall be required to enforce the terms of this Agreement, whether with or without arbitration, each party shall be financially responsible for their own costs associated with such action or procedure.

7.8 **Entire Agreement; Modification.** This Agreement shall constitute the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the parties hereto relating to such subject matter.

7.9 **Severability.** In the event any provision of this Agreement is held to be unenforceable or void for any reason, the remainder of the Agreement shall be unaffected and shall remain in full force and effect in accordance with its terms, unless such unenforceability or voidness defeats an essential business term hereof.

7.10 **Waivers.** A waiver by either party of a breach or failure to perform hereunder shall not constitute a waiver of any subsequent breach or failure.

7.11 **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Plan to comply with the HIPAA Regulations.

7.12 **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same agreement.

7.13 **Survival.** The respective rights and obligations of Business Associate under Section 5.3 of this Agreement shall survive the termination of this Agreement.

7.14 **Successors.** This Agreement is binding on each party's legal successors.