

**Brand New Day  
AGENT AGREEMENT**

This Agent Agreement ("Agreement") is effective as of \_\_\_\_\_ (the "Effective Date"), by and between Universal Care, Inc., a California corporation doing business as Brand New Day ("Brand New Day" or the "Company"), and \_\_\_\_\_, an individual ("Agent").

- A. Brand New Day is a Medicare Advantage Organization which operates various Medicare Advantage Plans identified below (the "Brand New Day Plans").
- B. Brand New Day desires to promote the Brand New Day Plans to eligible Medicare beneficiaries who reside in the Brand New Day service areas in California and who are interested in enrolling in a Brand New Day Plan.
- C. Agent is an individual licensed as a life and health agent by the California Department of Insurance.
- D. Agent desires to promote the Brand New Day Plans to eligible Medicare beneficiaries and arrange for the enrollment of such eligible Medicare beneficiaries into a Brand New Day Plan.

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement, the parties agree as follows:

1. Definitions

- A. **Brand New Day Plans** are the various Medicare Advantage Plans operated by Brand New Day.
- B. **CMS** is the Centers for Medicare and Medicaid Services.
- C. **CMS Contracts** are the contracts entered into by CMS and Brand New Day pursuant to which Brand New Day offers the Brand New Day Plans.
- D. **Marketing Guidelines** are CMS' Medicare Marketing Guidelines for Medicare Advantage Plans, Prescription Drug Plans and 1876 Cost Plans and any and all updates, revisions and additions thereto.
- E. **Medicare Laws and Regulations** are (i) the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 ("MMA"); (ii) the Medicare Improvements for Patients and Providers Act of 2008 ("MIPPA"); (iii) Part C and Part D of Title XVIII of the Social Security Act and all rules and regulations related thereto which are adopted by CMS, including those regulations set forth in 42 CFR Part 422 and 42 CFR Part 423; (iv) all administrative guidelines (including Marketing Guidelines), bulletins, manuals, instructions, requirements, policies, standards or directives from time to time adopted or issued by CMS or the Department of Health and Human Services ("HHS") relating to any of the foregoing; (v) the CMS Contracts, as renewed from year to year; and (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, 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.

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- F. **Member** is an eligible individual who has been enrolled by Brand New Day in one of the Brand New Day Plans.
2. **Obligations of Agent**
- A. **Authorization by Brand New Day**. Subject to the terms and conditions of this Agreement, Brand New Day hereby authorizes Agent to market and promote the Brand New Day Plans to eligible Medicare beneficiaries. Agent hereby accepts such authorization.
- B. **Promotion of Brand New Day Plans**. Consistent with the terms and conditions of this Agreement, the Marketing Guidelines and Medicare Laws and Regulations, Agent shall identify Medicare beneficiaries who are eligible for enrollment in one or more of the Brand New Day Plans and shall promote the Brand New Day Plans to such Medicare beneficiaries.
- i. **Comply with Brand New Day Policies and Procedures**. Agent agrees to comply with all policies and procedures of Brand New Day relating to promoting and marketing Brand New Day Plans to Medicare beneficiaries. Agent will read the Brand New Day Product Training Manual and comply with all of the applicable policies therein. Agent agrees to comply with all rules that Brand New Day may from time to time prescribe regarding the conduct of the business of Agent as contemplated by this Agreement.
- ii. **Comply with Marketing Guidelines and applicable Laws and Regulations**. Notwithstanding any other provision in this Agreement, Agent agrees to strictly comply with the Marketing Guidelines, Medicare Laws and Regulations, and all applicable federal and state laws, rules and regulations (including, but not limited to, anti-kickback statutes, false claims acts, fraud and abuse statutes and any other federal health care laws) relating to the marketing and promotion of the Brand New Day Plans. By entering into this Agreement, Agent is acknowledging that it has received, read and understands the Marketing Guidelines. Agent agrees to comply with all applicable guidance and policies contained in the Marketing Guidelines and any further guidance issued by CMS which applies to the performance of this Agreement. Without limiting the generality of the foregoing, Agent shall:
- 1) Only use materials describing the Brand New Day Plans which have been approved by CMS and furnished to Agent by Brand New Day. All pre-enrollment materials and other materials applicable to the Brand New Day Plans must include a CMS approval number.
  - 2) Make no representations with respect to the nature or scope of the benefits of enrollment in the Brand New Day Plans except in conformity with the Marketing Guidelines and the materials furnished by Brand New Day.
  - 3) Make all disclosures to Medicare beneficiaries in accordance with the Marketing Guidelines. If meeting with a Medicare beneficiary, Agent shall follow the Marketing Guidelines and Brand New Day's procedures for documenting the Medicare beneficiary's agreement to the meeting before the meeting takes place. Such documentation shall clearly identify that Agent will be discussing the Brand New Day Plans, and shall include the following disclosure in writing: "The person that is discussing plan options with you is contracted with Brand New Day Health Plan. The person is compensated based upon your enrollment in a Brand New Day Plan."

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- 4) Make no unsolicited contacts with Medicare beneficiaries. Unsolicited contacts include, but are not limited to, the following: outbound telephone calls, e-mails, door to door solicitation, or approaching Medicare beneficiaries in public or common areas.
  - 5) Not provide meals to Medicare beneficiaries who are prospective Members.
  - 6) Notify Brand New Day in advance of any community events at which Agent will engage in any promotion and marketing of the Brand New Day Plans.
  - 7) Not promote or market any non-health related product to any Medicare beneficiary or Member in connection with the promotion and marketing of the Brand New Day Plans.
  - 8) Notify Brand New Day in advance of any promotion or marketing of the Brand New Day Plans in a health care setting (*that is*, provider offices or other areas where health care is delivered to individuals) by Agent, and limit such promotion or marketing to the common areas of the health care setting.
  - 9) Not charge any fee to any Medicare beneficiary or Member for any of the services provided under this Agreement.
  - 10) Not offer or give a gift or payment of any kind to a Medicare beneficiary or Member as an inducement to enroll or remain enrolled in a Brand New Day Plan; provided however that gifts of nominal value permitted by the Medicare Laws and Regulations and approved by Brand New Day are allowable.
  - 11) Not discriminate against any Medicare beneficiary or Member based upon his or her health status, except as permitted by applicable Medicare Laws and Regulations.
- iii. **Training and Testing.** Prior to promoting or marketing any Brand New Day Plans and on an annual basis thereafter, Agent shall satisfactorily complete all training and testing specified by Brand New Day relating to marketing of the Brand New Day Plans.
- iv. **Secret Shopping.** Agent shall cooperate with Brand New Day to accomplish CMS required secret shopping activities. Such activities could take the form of a "ride-along," a brief written or an oral "quiz" based on the CMS approved Brand New Day marketing materials, or Medicare Marketing Guidelines.
- v. **Sales Allegation Responses.** Agent shall respond to requests by Brand New Day for information related to an allegation by a beneficiary regarding an enrollment or marketing activity. Their statement would be to support the compliance, completeness, and accuracy of the enrollment presentation or marketing event which they conducted.
- vi. **Medicare Beneficiaries with Appointments Scheduled by Brand New Day.** Agent shall not promote or market the Brand New Day Plans to any Medicare beneficiaries who have appointments scheduled with one of Brand New Day's employed marketing representatives.

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- C. Enrollment Applications. Under direction from Brand New Day, Agent will assist eligible Medicare beneficiaries who are interested in enrollment in a Brand New Day Plan with completion of the Brand New Day Plan enrollment application, as follows:
- i. Agent may either:
    - 1) Assist the Medicare beneficiary in completing the Brand New Day enrollment applications and forms, and immediately submit the completed enrollment applications and forms to Brand New Day in accordance with Brand New Day's procedures, or
    - 2) Refer the Medicare beneficiary to Brand New Day for assistance with completion of the Brand New Day enrollment.
  - ii. Should Agent assist Medicare beneficiaries in completing the Brand New Day enrollment applications and forms, Agent shall ensure that all information on the applications and forms is completely filled in by the Medicare beneficiary or by Agent in the Medicare beneficiary's presence or by the Medicare beneficiary's legal representative or in his or her presence.
  - iii. Agent shall submit all applications within 48 hours of the beneficiary (ies)' signature date. Applications may be submitted in person to the Enrollment Department at the company headquarters, or may be faxed to the Brand New Day Enrollment Department. CMS requires applications to be in the possession of CMS (electronic transmission) by the 5<sup>th</sup> day after the enrollee's signature date.
  - iv. FMO or Agent may maintain a copy of the Brand New Day enrollment applications and forms. This is confidential information which must be protected per HIPAA guidelines.
- D. Communications with Members. As requested by Brand New Day, Agent shall assist Brand New Day with communications with Members.
- E. Licensure. Agent agrees to maintain any and all insurance producer licenses required by Brand New Day and/or applicable laws and regulations to promote and market the Brand New Day Plans. Agent shall provide Brand New Day with evidence of any or all such licenses upon request. In addition, Agent shall promptly notify Brand New Day of the institution of any disciplinary proceedings against Agent relating to such licenses, and shall fully cooperate with Brand New Day with respect to any inquiry by CMS or other regulatory authority relating to such proceedings.
- F. No Subcontractors. Agent shall not enter into any subcontracts for the performance of Agent's duties and obligations under this Agreement.
- G. Indemnification. Agent shall be solely responsible for and hereby agrees to defend, indemnify and hold harmless Brand New Day and any and all of Brand New Day's directors, officers, affiliates, agents, contractors, and employees, from and against any and all claims, demands, lawsuits, causes of action, liability, losses, damages (of every kind and nature) costs, expenses (including, without limitation, reasonable attorney, expert and accountant fees) arising out of or related to (i) any negligent or otherwise wrongful act or omission of

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Agent, or of any partner, director, officer, shareholder, employee or agent of Agent in connection with this Agreement, including any breach of this Agreement.

- H. **Insurance**. Agent shall maintain Errors and Omissions Coverage in an amount not less than One Million Dollars per incident and One Million Dollars (\$1,000,000.00) in the aggregate providing for indemnification of the Company due to any loss arising as the result of any actual or implied negligence on the part of Agent, or its principals, partners, shareholders, officers, directors, employees in performing Agent's duties under this Agreement. Agent shall cause the issuer of said coverage to deliver to the Company evidence of the existence of such policy upon request. Further, Agent shall require issuer of said coverage to provide written notice to the Company prior to the lapse of said policy.
  - I. **Confidential Information**. Agent acknowledges that, during the performance of this Agreement, Agent will have access to or be furnished with confidential or proprietary information or trade secrets of Brand New Day, including, but not limited to, any personal, contact, or rate information concerning Brand New Day Plans, information about internal methods and systems, practices, policies and procedures, operations, costs and expenses, and eligibility and enrollment procedures (collectively, "Brand New Day Confidential Information"). Agent acknowledges and agrees that all Brand New Day Confidential Information shall be and remain the sole and exclusive property of Brand New Day. Agent, on behalf of itself and any employees, shall hold all of the Brand New Day Confidential Information in the strictest of confidence and shall not disclose, publish, use or exploit any Brand New Day Confidential Information, except with the prior written permission of Brand New Day or solely in furtherance of performing services under this Agreement. Agent shall not use any of the Brand New Day Confidential Information to directly or indirectly compete with Brand New Day, or to assist any competitor of Brand New Day to compete with Brand New Day, during the term of this Agreement or at any time thereafter. Upon expiration or termination of this Agreement, Agent shall immediately return all Brand New Day Confidential Information.
  - J. **Confidential Agreement**. Agent acknowledges and agrees that this Agreement (including all Exhibits and Attachments to this Agreement) is confidential and shall not be disclosed by Agent without the prior written consent of Brand New Day. Agent acknowledges and agrees that disclosure of this Agreement without the prior written consent of Brand New Day shall be grounds for termination of this Agreement by Brand New Day.
  - K. **HIPAA Business Associate Requirements**. Agent agrees to comply with the HIPAA Business Associate requirements attached hereto as Exhibit B and incorporated herein.
  - L. **Regulatory Addendum**. Agent agrees to comply with the Medicare Regulatory requirements attached hereto as Exhibit C and incorporated herein.
3. **Limitations on Authority of Agent**. Notwithstanding any other provisions of this Agreement, Agent has no authority to, nor shall Agent represent itself as having such authority to, nor shall it do, any of the following:
- A. Make any statements or representations regarding the Brand New Day Plans except those specifically permitted or required by Brand New Day under this Agreement.

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- B. Publish, or authorize publication of, or otherwise disseminate marketing materials, advertisements, announcements, press releases, circulars or similar material concerning the Brand New Day Plans in the name of, or on behalf of, Brand New Day, without the prior written consent of Brand New Day. Agent understands that all advertising related to the Brand New Day Plans, must be approved by Brand New Day and CMS.
  - C. Make use of any advertisement or any other material in which the name or logo of Brand New Day, or any service mark of Brand New Day (including, without limitation, "Brand New Day"), is used without Brand New Day's prior written consent in its sole discretion. For example, Agent may not refer to Brand New Day in Agent's advertisements or yellow page insertion without express prior written authorization from Brand New Day. Agent further acknowledges that Brand New Day has developed certain symbols, trademarks, service marks, data, processes, plans, procedures and information which are proprietary information and trade secrets (the "Proprietary Information") of Brand New Day or its affiliates. Agent further agrees to maintain the confidentiality of any Proprietary Information of Brand New Day and agrees not to use or permit the use of the Proprietary Information, except as contemplated by this Agreement, without the prior written consent of Brand New Day in its sole discretion. Agent shall cease or cause the cessation of any and all usage of the Proprietary Information and shall return all copies thereof to Brand New Day immediately upon termination of this Agreement.
  - D. Incur any expense or obligation on behalf of Brand New Day,
  - E. Make any payment or assume any liability on behalf of Brand New Day.
  - F. Collect or attempt to collect any payments or premiums tendered by or on behalf of Medicare beneficiaries or enrollees of the Brand New Day Plans. The Medicare beneficiary shall send any and all premium checks directly to Brand New Day.
  - G. Transfer or sell the business of Agent created by this Agreement without Brand New Day's prior written consent which shall not be unreasonably withheld, it being acknowledged that such business belongs exclusively to Brand New Day.
4. **Commissions.** Brand New Day shall compensate Agent for the promotion and marketing of the Brand New Day Plans in accordance with the provisions of this Section 4 and the Agent Commission Schedule attached as Exhibit A to this Agreement and incorporated herein. All compensation paid to agent appointed through General Agency/FMO shall be paid directly to the appointed General Agency/FMO for distribution to downstream agent in accordance with CMS guidelines. Brand New Day may, at any time, increase or decrease the compensation payable as specified on the Agent Commission Schedule by furnishing written notice to Agent. The written notice will specify the effective date of increase or decrease in compensation, shall be binding upon Agent, and shall not require the consent of Agent.
- A. Brand New Day shall continue to pay commissions to General Agent on behalf of Agent only for as long as:
    - i. All applicable payments for each Member (i.e., payments from CMS and payments from the Member) are received by Brand New Day (the "Health Plan Payments"); and

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- ii. Agent is continuously and properly licensed, appointed to sell in the state (where applicable), annually trained and tested as required by this Agreement; and
  - iii. Agent is named as the broker of record for the Member; and
  - iv. Agent continues to provide satisfactory service to the Member as reasonably determined by Brand New Day; and
- B. All commissions due to Agent under this Agreement shall be based upon the enrollment of Members in a Brand New Day Plan, as determined by CMS and receipt of the Health Plan Payments by Brand New Day. If Brand New Day, in its sole discretion, elects to pay commissions to Agent prior to receiving CMS confirmation of enrollment of the Member and receipt of the Health Plan Payments, and CMS does not, in fact, enroll the individual or make the Health Plan Payment, Agent shall promptly refund such commission paid to Agent and attributable to such individual. Brand New Day may deduct such commission from amounts otherwise owed by Brand New Day to Agent.
- C. Brand New Day will be obligated to pay commissions only on applications that are processed by CMS and that have been effective, and remain effective, for ninety (90) days (or three (3) calendar months for those months in which there are thirty-one days). That is, commissions for the first year of enrollment shall be earned for month 4 through month 12.
- D. If at any time, Brand New Day is required to return any Health Plan Payments, Agent agrees to refund to Brand New Day any commissions received from Brand New Day that are attributable to such returned Health Plan Payments. Agent understands that CMS may disenroll a Member from a Brand New Day Plan retroactively up to ninety (90) days (or three (3) calendar months for those months in which there are thirty-one (31) days). Therefore, Agent will not rely on the retention of commissions until ninety (90) days (or three (3) calendar months, for those months in which there are thirty-one (31) days)) have elapsed from the date of receipt of those commissions.
- E. If a Member disenrolls voluntarily or involuntarily from a Brand New Day Plan after the first ninety (90) days (or three (3) calendar months for those months in which there are thirty-one days) and before the end of the first twelve (12) calendar months, the Initial Payment specified in the Commission Schedule for such Member will be prorated to reflect the actual number of months the Member was enrolled in the Brand New Day Plan, and Agent agrees to refund to Brand New Day the difference between the Initial Payment for the Member and the prorated Initial Payment for the Member. Therefore, Agent will not rely on the retention of the Initial Payment until the end of the first twelve (12) calendar months.
- F. If Brand New Day is entitled to a refund of commissions from Agent, then in lieu of collecting the refund, Brand New Day may offset the amount of any refunds to which Brand New Day is entitled against future payments to Agent.
- G. No multiple payments will be made to Agent for Medicare beneficiaries who disenroll from and re-enroll in any Brand New Day Plans.
- H. No compensation will be paid to Agent for enrollment applications submitted by Agent to Brand New Day if an enrollment application for the Medicare beneficiary had already been

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submitted by one of Brand New Day's employed or other contracted marketing representatives. In such case, the application with the earlier signature date shall control.

- I. Notwithstanding any other provision of this Agreement, Brand New Day may modify payments under this Agreement at any time to comply with Medicare Laws and Regulations or other federal or state laws, regulations or administrative rules relating to payments to insurance agents.
- J. Agent agrees to accept payment as provided herein as payment in full for providing Agents' services and obligations under this Agreement. Agent acknowledges and agrees that Medicare beneficiaries and Members shall not be responsible for any payment for Agents' services. Under no circumstances, including non-payment or insolvency of Brand New Day, shall Agent seek compensation or remuneration or reimbursement from, or have any recourse against, any Member, any Medicare beneficiary or any person (other than Brand New Day) acting on behalf of any such Member or Medicare beneficiary, nor shall Agent attempt to do any of the foregoing as compensation for Agents' services hereunder or otherwise. Agent agrees that these provisions and the obligations of Agent as provided in this Agreement shall survive termination and shall be construed to be for the benefit of Members and Medicare beneficiaries. This section supersedes any oral or written contrary agreement now existing or hereafter entered between Agent and any Member, any Medicare beneficiary or person acting on behalf of Brand New Day.
5. **Brand New Day's Rights.** Consistent with Medicare Laws and Regulations and the CMS Contracts, Brand New Day reserves the right to: (a) Make all decisions regarding enrollment of Members in the Brand New Day Plans; (b) modify or discontinue any Brand New Day Plans; (c) establish rates charged to Members; (d) revise benefits under the Brand New Day Plans; and (e) withdraw any Brand New Day Plan offering through broker distribution.
6. **Relationship of the Parties.** Agent is an independent contractor for all purposes and is not an employee or agent of Brand New Day for any purpose. Subject to the limitations on authority of Agent set forth in this Agreement, Agent reserves full control of Agent's activities with the right to exercise independent judgment as to time, place and manner of carrying out the provisions of this Agreement. It is mutually agreed that Agent is not required to devote all of Agent's working time to Brand New Day.
7. **Term and Termination**
  - A. **Term.** Unless sooner terminated by either party as provided in this Section 7, the initial term of this Agreement shall be one (1) year commencing on the Effective Date of this Agreement. Thereafter, the Agreement shall automatically renew for successive one (1) years terms on each anniversary of the Effective Date of the Agreement, unless sooner terminated by either party as provided in this Section 7.
  - B. **Termination without Cause.** This Agreement may be terminated without cause by either Agent or Brand New Day upon thirty (30) days prior written notice or such minimum number of days as required by applicable law, which notice shall be provided in accordance with the notice procedures set forth in this Agreement.
  - C. **Automatic Termination.** This Agreement will terminate automatically upon the occurrence of any of the following events:

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- i. If Agent is an individual, upon the death of the individual.
  - ii. If Agent 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.
  - iii. If Agent is a corporation, upon the dissolution of the corporation or disqualification of the corporation to do business under applicable state laws.
  - iv. The loss, restriction, revocation or suspension of Agent's insurance license, certification or registration by any federal or state regulatory authority having jurisdiction over the parties.
  - v. Agent's business is sold, transferred or merged and Brand New Day has not consented to such sale, transfer or merger or has not appointed the successor.
  - vi. Agent 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.
- D. **Termination with Cause.** Brand New Day may immediately terminate this Agreement for cause upon written notice to Agent upon the occurrence of any of the following events (and notify applicable state and/or Federal regulatory authorities of the same):
- i. The failure of Agent to comply with (i) the policies, procedures, rules and regulations of Brand New Day, (ii) the Marketing Guidelines, (iii) the Medicare Laws and Regulations or (iv) the laws or regulations of the states in which Agent is licensed to conduct business or any Federal or state regulatory authority having jurisdiction over the parties;
  - ii. The failure of the Agent to complete required training within the timeframes set by Medicare or by Brand New Day policies, procedures, rules and regulations.
  - iii. The failure of Agent to maintain the insurance coverage set forth in this Agreement;
  - iv. The failure of Agent to otherwise conform to the terms and conditions of this Agreement;
  - v. The conviction of Agent or any of its principals, shareholders, directors or officers of a felony crime or any other crime involving moral turpitude;
  - vi. If Agent or any principal, partner, shareholder, director or officer of Agent directly or indirectly and systematically contacts, communicates or meets with Members for the purpose of replacing a Brand New Day Plan with a Medicare Advantage Plan or other product offered by a Medicare Advantage Organization or other entity that is not affiliated with Brand New Day; or
  - vii. The exclusion of Agent from participation in Medicare, Medicaid or any federal health care program.

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- E. **Suspension and Corrective Action of Agent.** In the event that Brand New Day becomes aware of allegations, through Member complaints or otherwise, that Agent may have engaged in conduct in violation of this Agreement, Brand New Day may suspend Agent's authority under this Agreement pending Brand New Day's final outcome of an investigation of such allegations. During the time such suspension is in effect, Agent may not market or promote the Brand New Day Plans; provided, however, that Brand New Day shall continue to pay compensation in accordance with the terms and conditions of this Agreement on Agent's existing business submitted prior to the date of the suspension. The Company reserves the right to initiate corrective action against Agent where the Company has determined Agent has engaged in any conduct in violation of this Agreement.
- F. **Obligations of Brand New Day and Agent Upon Termination of Agreement.** Upon termination of this Agreement:
- i. Agent shall immediately cease all activities under this Agreement and shall direct all inquiries regarding Brand New Day or the Brand New Day Plans to Brand New Day.
  - ii. Agent shall copy all records requested by Brand New Day relating to Brand New Day, Members, and Medicare beneficiaries who have completed enrollment applications for a Brand New Day Plan in Agent's possession and forward such copies to Brand New Day.
  - iii. In the event this Agreement is (a) terminated without cause by Agent, (b) automatically terminated under Section 7.c, above, or (c) terminated with cause by Brand New Day under Section 7.d, above, Brand New Day shall cease paying commissions to Agent and no further payment shall be due. This termination of payment shall be independent of any other rights that Brand New Day may have as a result of the breach of this Agreement.
  - iv. In the event this Agreement is terminated without cause by Brand New Day, Brand New Day shall continue to pay the Year 1 through Year 6 commissions specified in the Commission Schedule set forth in Exhibit A to this Agreement for (a) all Members who are enrolled in a Brand New Day Plan as of the effective date of termination for whom Agent is named as the producer of record and (b) all Medicare beneficiaries for whom Brand New Day has received a completed application as of the effective date of termination, are subsequently enrolled in a Brand New Day Plan, and for whom Agent is named as the producer of record, provided that all terms and conditions for payment of commissions to Agent under this Agreement continue to be met.

8. **Miscellaneous Provisions.**

- A. **Effectiveness of Agreement.** This Agreement shall become effective when and only when it has been executed by Agent and Brand New Day.
- B. **Amendments.** No additions, amendments, modifications or waivers of any of the provisions of this Agreement shall be valid unless in writing and signed by Brand New Day. Brand New Day may amend this Agreement by providing written notice of the amendment and its effective date to Agent thirty (30) or more days before the proposed effective date of such

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amendment. The amendment will automatically become effective without Agent's written agreement unless Agent notifies Brand New Day that Agent is terminating this Agreement before the effective date of the amendment. In addition, Brand New Day may amend, modify or supplement this Agreement with written notice to Agent in order to maintain compliance with Medicare Laws and Regulations and any applicable state, federal or local statutes or regulations. The written notice shall specify the effective date of the amendment, modification or supplement to this Agreement. Such amendment shall be binding upon Agent and shall not require the consent of Agent.

- C. **Assignment**. No assignment of this Agreement by Agent shall be considered valid unless such assignment is agreed to in writing by Brand New Day. Brand New Day may assign this Agreement upon notice to Agent. This Agreement shall be binding upon the administrators, executors, successors and assignees of the parties hereto.
- D. **Waiver**. Failure of Brand New Day to enforce compliance with the terms and conditions of this Agreement shall not be construed as a waiver of its rights to exercise the same at any time.
- E. **Notice**. Any and all notices required or permitted to be given hereunder shall be in writing and may be sent by (i) personal delivery, (ii) commercial messenger service overnight delivery, (iii) United States Postal Service or (iv) 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 with postage or delivery charges prepaid (if any) to the party at its respective address or facsimile number set forth herein or to such other address which any party may designate in writing in accordance with the provisions of this Section 8.e.

If to Agent:

Agent's last known address as shown on Brand New Day's records.

If to Brand New Day:

Brand New Day  
5455 Garden Grove Blvd.  
5<sup>th</sup> Floor  
Westminster, CA 92683  
Attn: President

- F. **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 provision 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 therewith and shall not be affected thereby.

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- G. Governing Law. This Agreement shall be governed by the laws of the United States of America and the State of California but otherwise without regard to conflict of law principles.
- H. 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
- I. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, and all of which together shall constitute but one and the same instrument
- J. Non-Exclusivity. This is not an exclusive arrangement. Brand New Day shall not have the exclusive right to the services of Agent and Agent shall have the right to market any other Medicare product under any name in association with any other party. Similarly, Brand New Day shall be free to retain the services of any other brokers or agents to market the Brand New Day Plans and nothing in this Agreement shall be construed to limit the right of Brand New Day to market the Brand New Day Plans using the services of any other brokers or agents. Nothing in this Agreement shall preclude Brand New Day from using its own employees to market Brand New Day health plans or any other product offered by Brand New Day.

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**EXHIBIT A**

**AGENT COMMISSION SCHEDULE  
Effective January 1, 2016**

***Note: All compensation paid to agent appointed through General Agency/FMO shall be paid directly to the appointed General Agency/FMO for distribution to downstream agent in accordance with CMS guidelines.***

Brand New Day will compensate Agent as follows for Agents' promotion and marketing of the Brand New Day Plans. Brand New Day will compensate Agent for each Medicare beneficiary who is validly enrolled in a Brand New Day Plan (hereinafter, a "Member") and for whom Agent is named as producer of record.

The payment of compensation to Agent is subject to the provisions of Section 4 of this Agent Agreement and Medicare Laws and Regulations.

**I. Payment**

| Product             | Initial Payment | Renewal Years |        |        |        |        |
|---------------------|-----------------|---------------|--------|--------|--------|--------|
|                     | Year 1          | Year 2        | Year 3 | Year 4 | Year 5 | Year 6 |
| Brand New Day Plans | \$553           | \$277         | \$277  | \$277  | \$277  | \$277  |

**A. Initial Payment**

Brand New Day shall pay Agent a one-time initial payment of five hundred thirty six dollars (**\$ 553.00**), the "Initial Payment" for each individual who is validly enrolled in a Brand New Day Plan within forty five (45) days following the payment to Brand New Day by CMS for said individual(s). Note: If CMS determination of "initial" versus "renewal" payment is not received or identified at the time of enrollment, Brand New Day may elect to pay renewal payment amount initially. Upon receiving confirmation of "Initial" payment eligibility, Brand New Day shall pay the difference between the renewal amount and the initial amount within forty five (45) days following confirmation from CMS.

**B. Monthly Payments During Second Year through Sixth Year of Enrollment**

Beginning with the first January following the effective date of enrollment and continuing through December of the sixth year of the CMS compensation cycle, Brand New Day shall pay Agent the following monthly payments:

For each individual who remains validly enrolled in a Brand New Day Plan per CMS generated Monthly Membership Reports (MMRs), Brand New Day shall pay Agent twenty-three dollars and eight cents (**\$23.08**) each month (**\$23.08 PMPM**).

If an Individual is enrolled in a different Brand New Day Plan at any time during the second year through sixth year of the CMS compensation cycle, Agent shall thereafter receive the monthly payment specified for the Brand New Day Plan into which the Member is enrolled.

Brand New Day shall make the monthly payments on or before the last day of the month for which they are due.

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**EXHIBIT B**

**HIPAA BUSINESS ASSOCIATE AGREEMENT**

**1. Defined Terms.**

“Agreement” shall mean this Agreement.

“Business Associate” shall mean Agent.

“Designated Record Set” shall mean a group of records maintained by Business Associate for the Company that either (i) constitutes medical and billing records about the Company’s Members or (ii) constitutes enrollment, payment, claims adjudication, or case or medical management record systems about the Company’s Members, or (iii) are used to make decisions about the Company’s Members.

“Health Care Operations” shall mean any of the following activities of the Company to the extent that such activities are related to (i) conducting quality assessment and improvement activities; (ii) reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, health plan performance, conducting training programs, accreditation, certification, licensing, or credentialing activities; (iii) underwriting, premium rating, and related activities; and ceding, securing or placing a contract for reinsurance; (iv) conducting or arranging for medical review, legal services, and auditing functions; (v) business planning and development; and (vi) business management and general administrative activity, including customer service, provision of data analyses for The Company’s policyholders, members, plan sponsors, and other customers, and resolution of internal grievances.

“HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996, as it may be amended.

“HIPAA Regulations” shall mean the rules and regulations adopted by the U.S. Department of Health and Human Services pursuant to HIPAA, including without limitation (i) the Standards for Privacy of Individually Identifiable Health Information set forth at 45 C.F.R. Parts 160 and 164 and (ii) the Security Standards set forth at 45 C.F.R. Parts 160 and 164, as such regulations may be amended.

“Company Members” shall mean (i) enrollees of a Company health plan, (ii) holders or beneficiaries of an insurance policy underwritten by the Company, or (iii) enrollees of a self-funded health plan administered by the Company.

“Payment” shall mean activities undertaken by the Company, or any other entity on behalf of the Company, to determine or fulfill the Company’s responsibility for coverage and provision of benefits, including without limitation (i) determinations of eligibility or coverage (including coordination of benefits or the determination of cost sharing amounts), and adjudication or subrogation of health benefits claims, (ii) risk adjusting amounts due based on enrollee health status and demographic characteristics, (iii) billing, claims management, collection activities, obtaining payment reinsurance payments, and related health care data processing, (iv) review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges, (v) utilization review activities (including pre-certification and preauthorization of services, concurrent and retrospective review of charges), and (vi) disclosure to consumer reporting agencies of information relating to collection of premiums or reimbursement.

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"Protected Health Information" means information which (i) 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 (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

"Treatment" shall mean the provision, coordination, or management of health care and related services.

2. **Scope of Use of Protected Health Information.** Business Associate shall not use or disclose Protected Health Information for any purpose other than:

- (i) As permitted or required by the Agreement;
- (ii) As required or allowed under HIPAA or the HIPAA Regulations;
- (iii) As otherwise required by law.

In no event shall Business Associate use or disclose Protected Health Information in a manner that violates or would violate HIPAA or any of the HIPAA Regulations if such activity were engaged in by the Company.

3. **Safeguards for the Protection of Protected Health Information.** Business Associate shall use reasonable efforts to implement and maintain such operational and technological safeguards as are necessary to ensure that Protected Health Information disclosed between and among the Company and Business Associate is not used or disclosed by Business Associate, or by any subcontractors, affiliates, or business associates of Business Associate, except as provided in this Agreement.

4. **Reporting of Unauthorized Uses or Disclosures.** Business Associate shall promptly report to the Company any use or disclosure of Protected Health Information of which Business Associate becomes aware that is not provided for or permitted in the Agreement, HIPAA, or the HIPAA Regulations.

Business Associate shall permit the Company to investigate any such report in accordance with the provisions of Section 9 of this Agreement.

5. **Use of Subcontractors.** To the extent that Business Associate uses one or more subcontractors or agents to perform its obligations under this Agreement, and such subcontractors or agents receive or have access to Protected Health Information, Business Associate shall cause each such subcontractor to sign an agreement with Business Associate containing substantially the same provisions and conditions related to the protection and confidentiality of Protected Health Information as those that apply to Business Associate under this Agreement. In addition, each such contract shall identify the Company as an intended third party beneficiary with rights of enforcement from such subcontractors or agents in the event of any violations thereof.

6. **Authorized Access to Protected Health Information.** To the extent that Business Associate maintains Protected Health Information in a Designated Record Set, Business Associate shall provide access, at the request of the Company, and in the time and manner designated by the Company, to Protected Health Information contained in a Designated Record Set, to the Company (or to an Individual as directed by the Company), in order to meet the requirements imposed by 45 CFR § 164.524.

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7. **Amendment of Protected Health Information.** To the extent that Business Associate maintains Protected Health Information in a Designated Record Set, Business Associate shall make any amendment(s) to Protected Health Information in a Designated Record Set that the Company directs or agrees to pursuant to 45 CFR § 164.526, and in the time and manner designated by the Company.

8. **Accounting of Disclosures of Protected Health Information.** Business Associate shall keep records of all disclosures of Protected Health Information made by Business Associate (the "Disclosure Accounting") on an ongoing basis for a period of at least six (6) years, except for disclosures:

- (i) To carry out Treatment, Payment, or Health Care Operations, as provided in 45 CFR § 164.502;
- (ii) To individuals of Protected Health Information about them as provided in 45 CFR § 164.502;
- (iii) That occurred prior to April 14, 2003.

At a minimum, the Disclosure Accounting shall contain:

- (i) The date of the disclosure;
- (ii) The name of the entity or person to whom or which the Protected Health Information was provided 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 the disclosure that reasonably informs the individual of the basis for the disclosure or, in lieu of such statement, a copy of the individual's written authorization or request for disclosure pursuant to the HIPAA Regulations.

Business Associate shall provide the Disclosure Accounting to the Company (or to an Individual, if so directed by the Company) within sixty (60) days of receiving a written request thereof from the Company.

9. **Right to Audit.** Business Associate shall make its practices, books and records related to Protected Health Information available to Secretary of the Department of Health and Human Services and to the Company for the purpose of determining Business Associate's compliance with this Agreement and the HIPAA Regulations. In the event it is determined that Business Associate is in violation of HIPAA, any of the HIPAA Regulations, or this Addendum, Business Associate shall promptly remedy any such violation and shall certify the same in writing to the Company.

10. **Future Confidentiality of Protected Health Information.** Upon the expiration or earlier termination of this Agreement for any reason, Business Associate shall return to the Company, or, at the Company's discretion, delete, and purge and destroy, all Protected Health Information in any form, recorded on any medium, or stored in any storage system. The Company may, in its discretion, determine that the return or destruction of the Protected Health Information is infeasible, in which event Business Associate shall extend the confidentiality protections of this Agreement to the Protected Health Information and shall limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible. Unless the Company has determined in writing that return or destruction of the Protected Health Information is infeasible, a senior officer of Business Associate shall certify in writing to the Company, within thirty (30) days after the termination or earlier expiration of the Agreement, that all Protected Health Information has been returned or destroyed (as the case may be) and that Business Associate no longer retains any such Protected Health Information in any form. Business Associate shall remain bound by the confidentiality provisions of this Agreement

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even after expiration or termination of the Agreement until such time as all Protected Health Information has been returned or otherwise destroyed as provided in this Section 10.

11. **Termination in the Event of Material Breach.** Notwithstanding any other contrary provision(s) contained in this Agreement, the Company may terminate this Agreement upon thirty (30) days' advance written notice in the event that Business Associate materially violates any provision of this Agreement relating to the confidentiality of Protected Health Information, unless such breach shall have been cured within such thirty (30) day period.

12. **Indemnification.** Business Associate shall defend, indemnify and hold the Company 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 Company, its employees, representatives or third parties may sustain or incur by reason of any act, neglect or default of Business Associate in connection with the performance of this Agreement.

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**EXHIBIT C**

**MEDICARE REGULATORY ADDENDUM**

1. Agent agrees to comply with all applicable Medicare laws, regulations, and CMS instructions as specified at 42 CFR 422.504(i)(4)(v).
2. Agent agrees to comply with all State & Federal requirements for accuracy & confidentiality of enrollee records, including the requirements established by Brand New Day as set forth in this Agreement and specified at 42 CFR 422.118 and 422.504(a)(13).
3. Agent agrees to grant HHS, the Comptroller General, or their designees the right to inspect information related to the Agreement for up to 10 years from the final date of the Agreement period and in certain instances described in the Medicare Laws and Regulations, periods in excess of 10 years, as specified at 42 CFR 422.504(e)(2); 422.504(e)(3); 422.504(e)(4); 422.504(i)(2)(ii).
4. Agent acknowledges, as outlined herein, that Brand New Day has the right to revoke this Agreement if Agent and/or downstream entity does not perform the services satisfactorily and if reporting and disclosure requirements are not timely, as specified at 42 CFR 422.504(i)(4)(ii).
5. Agent agrees that any and all services performed will be consistent with and comply with Brand New Day's contractual obligations with CMS, as specified at 42 CFR 422.504(i)(1) and 422.504(i)(3)(iii).
6. Agent acknowledges and agrees that if Brand New Day delegates selection of downstream entities and associated written arrangements, Brand New Day retains the right to approve, suspend or terminate any such arrangement as specified at 42 CFR 422.504(i)(5).
7. Agent acknowledges that the responsibilities performed and services provided under this Agreement will be monitored by Brand New Day on an ongoing basis and that Brand New Day is ultimately responsible to CMS for the performance of all services., as specified at 42 CFR 422.504(i)(1) & (4).
8. Agent acknowledges that in the event responsibilities under this Agreement are delegated to downstream entities, contracts must contain provisions specifying said delegation requirements, as specified at 42 CFR 422.504(i)(3)(iii), 422.504(i)(4) and. 42 CFR 422.504(i)(5).
9. Agent acknowledges that Brand New Day receives payments in whole or in part from federal funds, and Agent is subject to certain laws that are applicable to individuals and entities receiving federal funds.

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10. Brand New Day may amend this Addendum to comply with the requirements of state and federal regulatory authorities, and shall give written notice to Agent of such amendment and its effective date. Unless such regulatory authorities direct otherwise, the signature of Agent will not be required.
11. Except as expressly modified by the terms of this Addendum, all of the terms and conditions set forth in the Agreement shall remain in full force and effect.
12. In the event that the terms or conditions of the Agreement and this Addendum are in conflict, the terms of this Addendum shall control.

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**By signing this agreement, I agree that I have read and understand this agreement.**

**Brand New Day**

**Agent (all information must be filled in)**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Jeffrey V. Davis

Printed Name: \_\_\_\_\_

Title: COO

Phone Number: \_\_\_\_\_

Date: \_\_\_\_\_

TIN or SSN: \_\_\_\_\_

License Number: \_\_\_\_\_

License Expiration: \_\_\_\_\_

Date: \_\_\_\_\_

E-mail: \_\_\_\_\_

FMO Name: \_\_\_\_\_