



## **GOLD PRODUCER AGREEMENT FOR APPLIED GENERAL AGENCY, INC. PRODUCTS**

This Gold Producer Agreement for Applied General Agency, Inc. Products (“**Agreement**”) is entered into by and between **Applied General Agency, Inc., a California corporation (“AGA”)**, and \_\_\_\_\_ (“**PRODUCER**”). AGA and PRODUCER may be referred to in this Agreement as the “**parties**” or separately as a “**party**.”

### **RECITALS**

WHEREAS, PRODUCER desires to benefit from AGA’s substantial investment in computer, internet and productivity systems; and

WHEREAS, AGA desires to assist PRODUCER in efforts to market the range of Products available through AGA; and

WHEREAS, PRODUCER, while operating as an independent contractor, with the ability to work as much or as little as it chooses, and to determine which of the many Products are available, if any, and to offer to any specific prospect that desires to utilize technology offered by AGA:

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants and agreements contained herein, the parties agree as follows:

### **1. CONTRACT DOCUMENTS**

This Agreement consists of this Agreement and **Exhibit “A”** (Commission Schedule), **Exhibit “B”** (Communications Consent Form), and **Exhibit “C”** (HIPAA Business Associate Agreement), which Exhibits are hereby incorporated herein by this reference. By agreeing to this Agreement, PRODUCER agrees to the terms contained in this Agreement and the above-mentioned Exhibits.

### **2. DEFINITIONS**

2.1 **Carrier**. Shall be defined as a health care service plan, insurer, or other entity offering health benefits of any type, life insurance, annuities, critical illness, or disability policies, to individuals or groups through AGA (“**Carrier**”).

2.2 **Assignment**. Shall be defined as any sale or transfer of ownership interest in or with respect to PRODUCER.

2.3 **Product(s)**. Shall be defined as any type of health, life, annuity or ancillary benefit, including, but not limited to, Medicare Advantage, Medicare Supplement coverage, PDP coverage, senior care coverage, individual or group, comprehensive or limited, health care coverage, life, long-term care, critical illness, final expense, or the like, offered by Carrier through AGA and available to PRODUCER to offer to Leads generated by AGA.

2.4 **Agent/Broker of Record (“BOR”)**. The person or entity considered by Carrier to be entitled to such commissions as may come due on a particular piece of business.

2.5 **Prospects**. Individuals and groups to whom Products are offered.

2.6 **Premium**. The payments due Carrier for coverage under any Product.

### **3. RESPONSIBILITIES OF PRODUCER**

3.1 **General.** PRODUCER shall use its best efforts to market the Products offered through AGA. In order to induce AGA to continue its investment in computer, internet, and productivity systems for PRODUCER, PRODUCER agrees that during the term of this Agreement, it will solicit sales on behalf of AGA only, for any of the Products that AGA provides and that PRODUCER will not solicit on behalf of any other Carrier, general agency or other entity, for those Products. In the event PRODUCER sells any type of product, other than a Product offered by AGA, to a Lead, PRODUCER agrees to report such sale to AGA.

3.2 **Designation of BOR.** PRODUCER shall be the designated BOR on all business produced. For any business that is written under AGA's writing number, commissions will be paid in accordance with Section 7 below, but will remain the property of PRODUCER.

3.3 **PRODUCER Licensing.** PRODUCER shall maintain any and all licenses or authorizations necessary to transact business with Carrier in the State of California or any state in which business will be solicited and written. PRODUCER shall provide a copy of its applicable licenses to AGA upon request. PRODUCER agrees to promptly notify AGA of any correspondence from, inquiry, proceeding, expiration, termination, suspension or any other action, by the Department of Insurance ("**DOI**") or any other governmental agency directed to PRODUCER or any of its employees, agents, sub-agents, or independent contractors. PRODUCER also agrees to immediately notify AGA in writing upon receiving notice of any misdemeanor or felony charges or any actions including, but not limited to, convictions by any governmental authority for commission of any act involving fraud, dishonesty, breach of trust, theft, misappropriation of money or breach of any fiduciary duty.

3.4 **Errors and Omissions Insurance.** PRODUCER shall carry Errors and Omissions Insurance ("**E&O**") in the minimum amount of \$1 Million/\$2 Million, or Carrier specified minimum, whichever is greater. AGA is not responsible to provide E&O to PRODUCER. Failure to maintain the appropriate E&O will result in commissions either being held or forfeited.

3.5 **Marketing Materials.** PRODUCER shall utilize only approved current Carrier literature and material as provided by Carrier, unless other material has been agreed to in writing by Carrier. PRODUCER shall not (a) make any representations with respect to Carrier's Products except as may be explicitly set forth in materials prepared and provided PRODUCER by Carrier; (b) make any oral or written amendments, alterations, modifications or waivers of any of the terms or conditions applicable to any of Carrier's Products; or (c) bind or attempt to bind Carrier in any way, except as expressly stated herein. All records, literature, enrollment cards, marketing aids, and similar materials furnished to PRODUCER by Carrier or AGA are, and will remain, the property of AGA or Carrier, regardless of whether such materials have been completed by an individual, group or prospective members. PRODUCER will return to AGA or Carrier all such materials upon AGA's or Carrier's request. PRODUCER shall not broadcast, publish or distribute any advertisements or other material relating to AGA or Carrier, not originating from AGA nor Carrier, nor use the name, trademark, or logo of Carrier or affiliated companies, without prior written approval by Carrier.

3.6 **New Applications.** PRODUCER shall submit all new applications and any related materials necessary to make an application submission complete within one (1) business day of their completion or according to Carrier submission requirements to AGA, which AGA will then submit to Carrier. All computer-generated information shall be submitted to Carrier directly by AGA. For computer submitted information, PRODUCER agrees that it will not complete application information for any client.

3.7 **Acceptance of Applications.** PRODUCER agrees that Carrier maintains the sole right to decide whether or not to approve coverage applied for by any particular individual or group. PRODUCER agrees to clearly inform applicants for any Product that coverage is not effective until receipt and approval of such person's or group's application by Carrier.

3.8 **Compliance with Carrier Policy.** PRODUCER shall comply with Carrier policy, rules and regulations which shall include, but not be limited to, contracting, licensing, E&O requirements, quotes, underwriting criteria, benefit presentation, application completion and submissions, as well as any other policies Carrier may adopt.

3.9 **Records Maintenance and Inspection.** PRODUCER shall maintain such books and records and submit such information to AGA, Carrier, the Department of Managed Health Care (“**DMHC**”), DOI, or any other governmental agency, as may be required by AGA, Carrier, or the agency, and as may be necessary for compliance with the applicable provisions of state and federal laws and regulations promulgated thereunder. Such books and records shall be maintained in accordance with all applicable legal requirements for records retention and the general standards applicable to such books or records and such obligation shall not terminate upon termination of this Agreement. At this time, PRODUCER must maintain the records for a minimum of ten (10) years and AGA must maintain the records for a minimum of ten (10) years. In the event that this time frame is increased by law, this Section shall also conform to the law, without an amendment of this Agreement. PRODUCER shall also make such books and records available for inspection, examination or copying by AGA, Carrier and any governmental agency, at all reasonable times, upon demand after reasonable notice, and shall comply with any requirement that records of certain types removed from the State of California without the written consent of a governmental agency.

3.10 **Receipt of Premium Payments.** Carrier shall be responsible for billing and collection for all Products. PRODUCER shall not collect any Premium, except in instances where Carrier has directed in writing that the initial Premium be collected, along with the application for coverage, in which case, PRODUCER shall be entitled to accept, along with a completed application, payment in the form of a check only, made payable to Carrier.

3.11 **Compliance with Applicable Laws.** The solicitation and sale of the Products by PRODUCER are subject to various laws. PRODUCER shall comply with all requirements of applicable law and regulations including, but not limited to, the California Knox-Keene Health Care Service Plan Act, the California Insurance Code, and the federal Health Insurance Portability and Accountability Act (“**HIPAA**”). PRODUCER shall execute AGA’s standard HIPAA agreement, and such amendments as may be made from time to time, and shall abide by all the terms contained therein. PRODUCER represents that PRODUCER is, or shall also become, familiar with and shall comply with any applicable state and federal laws and regulations which govern its activities under this Agreement.

3.12 **Expenses.** PRODUCER shall bear its own expenses in performing its duties under this Agreement.

3.13 **Employees or Agents of PRODUCER.** Prior to performing any duties under this Agreement, PRODUCER’s employees or agents shall agree in writing to be bound by the terms and conditions of this Agreement that are applicable to PRODUCER. Further, PRODUCER agrees that any agreement with an independent agent shall include this Agreement as an exhibit thereto.

3.14 **Initial Contracting with AGA.** PRODUCER acknowledges that AGA has not induced, coerced, or encouraged any behavior by PRODUCER which may be a violation of PRODUCER’s existing contracts, if any. Further, PRODUCER agrees to indemnify, defend, and hold harmless AGA for any conduct by PRODUCER which may be a violation of any of PRODUCER’s existing contracts. PRODUCER further agrees not to have any dual contracts with Carrier or insurers without prior written approval from AGA. In the event that PRODUCER breaches this Section, PRODUCER agrees to indemnify AGA for the business that was placed through the alternate contract. PRODUCER also agrees to indemnify AGA for any and all back charges incurred from disenrollments.

3.15 **Policies and Procedures.** PRODUCER agrees to abide by AGA policies and procedures concerning business practices, including any Lead program, solicitations, and submissions.

3.16 **AGA Proprietary Information.** During the term of this Agreement, and for a period of two (2) years immediately following the termination of the relationship between the parties, PRODUCER shall not, directly or indirectly, do any of the following:

(a) PRODUCER agrees not to disclose or use any of the proprietary information of AGA or AGA’s affiliates, whether that information is committed to memory or is embodied in writing, or any other physical form, except in the pursuit of business activities and interest of AGA or AGA’s affiliates, without securing the prior written consent of AGA. “**Proprietary Information**” of AGA or AGA’s affiliates shall include, but not be limited to, all confidential information relating to all Leads, customer lists, names, addresses, phone numbers, policy information, formulas, compilations of information, records, and any other information pertaining to the business of AGA that is not PRODUCER’s work product.

(b) PRODUCER further agrees not to remove from the premises of AGA or AGA's affiliates, any document containing or reflecting any proprietary information of AGA or AGA's affiliates, except in the pursuit of the business of AGA or AGA's affiliates.

(c) Upon termination of the relationship or agreement of the parties, PRODUCER shall immediately return within three (3) business days all such documents and information, and PRODUCER recognizes the respective exclusive property that said information and property is that of AGA only.

3.17 **Medicare Regulations.** PRODUCER agrees to abide by all regulations of the Center for Medicare and Medicaid Services ("**CMS**") and the Medicare Improvement for Patients and Providers Act of 2008 ("**MIPPA**").

(a) Upon receipt of a pre-set appointment for a Medicare Supplement, PRODUCER agrees that the ONLY product that will be shown will be the Medicare Supplement, within the Scope of Appointment. At no time will Medicare Advantage or Prescription Drug Plans be presented in such appointments unless the beneficiary requests information specific to Medicare Advantage or Prescription Drug Plans and PRODUCER has a signed Scope of Appointment form forty-eight (48) hours prior to such information being discussed.

PRODUCER acknowledges and agrees that PRODUCER understands and will comply with all compliance regulations in reference to presenting Medicare Advantage and Prescription Drug Plans from CMS and MIPPA prior to accepting any Medicare Supplement Appointment from AGA.

(b) At no time is PRODUCER to perform an unsolicited contact of a Medicare Beneficiary. These include (a) no door-to-door solicitation; (b) no hanging leaflets on doors; (c) no approaching beneficiaries in common areas; and (d) no telephone or electronic solicitation, including no leaving messages on voice mail, no texting and no emailing.

3.18 **Electronic Tools.** When utilizing electronic tools for enrollments, under no circumstance shall PRODUCER e-sign any application or portion of any application for any client or applicant at any time. Failure to abide by this condition shall result in immediate termination of this Agreement, as well as any civil or criminal penalties which may occur.

#### **4. LIMITS OF AUTHORITY OF PRODUCER**

4.1 **General Statement.** PRODUCER's authorization is expressly limited to:

(a) Solicitation of such Products as are made available through AGA, using only current materials approved and provided by Carrier, and making only such representations as are expressly made in such materials;

(b) Assist Prospects in the completion of application materials and promptly transmit application materials to AGA; and

(c) In those limited circumstances where a Carrier has directed in writing that an initial deposit Premium be collected with an application, to accept a deposit Premium in the form of a check only, made payable to Carrier, and to promptly transmit such payment to AGA along with the other application materials.

The remaining provisions of this Section 4 are examples, but not an exhaustive list, of specific actions which are not permitted.

4.2 **Specific Examples Where PRODUCER Has No Authority.** PRODUCER shall have no authority to:

(a) Execute, modify, alter, amend, change or discharge any of AGA's or Carrier's rights, requirements, conditions, or otherwise legally bind or obligate either AGA or Carrier;

(b) Make any promises or representations to any applicant, insured, beneficiary or payer, other than those which are contained in Carrier's sales materials;

(c) Approve any coverage or make any underwriting decision;

- Carrier;
- (d) Incur any expense, indebtedness or liability or make any payment on behalf of AGA or Carrier;
  - (e) Set or extend the time for payment of any Premium;
  - (f) Withhold any money or property of AGA or Carrier;
  - (g) Withhold any money or property of an applicant, covered person, beneficiary, payer or authorized recipient;
  - (h) Accept any payment, in any form, directly from a Prospect or a covered person or group, except, where required by Carrier, an initial Premium with application in the form of a check made payable to Carrier;
  - (i) Endorse or cash checks made payable to a Carrier;
  - (j) Start, maintain, or prosecute any legal proceeding in the name of AGA or Carrier, or on either AGA's or Carrier's behalf, directly or indirectly;
  - (k) Exercise any authority that is not expressly granted in this Agreement; or
  - (l) Set or extend the time for any enrollment period.

## **5. RESPONSIBILITIES OF AGA**

5.1 **Unique Marketing Opportunity with Technology Tools.** AGA shall provide to PRODUCER a unique marketing opportunity by having multiple Carriers available, along with computer, internet and technology tools.

5.2 **Products and Services.** AGA shall:

- (a) Make best efforts to make available to PRODUCER a sufficient variety of Products sufficient to enhance PRODUCER's opportunities to turn each Prospect into a buyer;
- (b) Train or arrange for training and refresher training, as needed, for PRODUCER for new and continuing Products;
- (c) Provide current marketing materials to PRODUCER and promptly advise PRODUCER of any new materials or withdrawals of materials from use; and
- (d) Promptly review and submit to Carrier applications secured by PRODUCER and delivered to AGA.

5.3 **Compensation.** AGA shall pay commissions pursuant to the terms and conditions of Section 7 below.

5.4 **Lead Programs.** AGA offers multiple lead programs that help PRODUCERS build or grow their book of business. Each lead program has specific requirements in order for PRODUCER to qualify. These will vary on the specific type of lead program PRODUCER chooses to participate in.

(a) **Direct Mail and Lead Purchasing Co-op:**

1. (i) If PRODUCER purchases direct mail or leads through one of AGA's recommended vendors, PRODUCER will be responsible to pay only 50% of the total cost up front; or (ii) if PRODUCER purchases direct mail or leads through an outside vendor on their own, PRODUCER will pay the total amount owed and submit their receipt and proof of payment to AGA for a 50% reimbursement (by check) of the total PRODUCER paid.

2. In order for PRODUCER to participate in the Direct Mail and Lead Purchasing Co-op program, PRODUCER must have the following requirements to qualify: PRODUCER must (i) have ALL contracts in their given market aligned under AGA, (ii) be AGA approved for the Direct Mail and/or Lead Purchasing Co-op, (iii) have the dollar amount pre-approved, and (iv) report any sales that are not put through AGA.

(b) **AGA Generated Leads:** AGA generated leads may include the following lead programs below purchased by AGA:

- Battle Leads
- Hot Transfers
- Internet Leads
- Pre-Set In home
- AGA Sponsored Events
- Centers of Influence

1. If a lead that is provided by AGA is turned into a sale, a one-time \$50 lead charge will be deducted from PRODUCER's commission. This charge is ONLY applied for every sale and does not apply for leads that were provided and did not qualify or did not turn into a sale. The exception is if this lead is new to Medicare. If the lead that results in a sale is new to Medicare and is paid as a new to Medicare beneficiary from the Carrier, then an additional \$50 lead charge will apply.

2. In order for PRODUCER to participate in the AGA Generated Lead program, the following items are required: PRODUCER must (i) have ALL contracts in their given market aligned under AGA, (ii) have ALL certifications completed for the Carriers within the market they wish to sell, (iii) be AGA approved for the AGA Generated Lead program, and (iv) report any sales that are not put through AGA.

3. From time to time certain new lead programs may be added by AGA. Note: there is no guaranty that all the lead programs listed above will be available at all times. Please view the agent portal for the most current information regarding the lead programs.

(c) **Exclusive Carrier Leads:** From time to time, AGA contracted Carriers will support AGA PRODUCERs by providing them with exclusive leads.

1. To qualify to for any Exclusive Carrier Lead programs, PRODUCER must have the contract and certifications completed with the specific Carrier providing the leads.

2. PRODUCER must enroll the lead prospects into the specific Carrier from which PRODUCER received the lead (i.e., if Carrier X provides PRODUCER a lead, PRODUCER must write the prospect on a Carrier X product).

**Exception** – if a different Carrier will provide the prospect a significant difference in benefits according to that prospect's needs, PRODUCER may write the prospect on that specific Carrier BUT PRODUCER must report to AGA with their disposition.

*If PRODUCER has a high number of enrollments that are written to a different Carrier, other than the Carrier providing the leads, PRODUCER may be removed from the Carrier lead program.*

## **6. MATTERS WHICH THE PARTIES ACKNOWLEDGE ARE THE RESPONSIBILITIES AND RIGHTS OF CARRIER**

6.1 **Carrier Control of Covered Persons and Groups.** The parties agree that Carrier shall have full control of and discretion as to the collection, adjustment or compromise of the Premium for any or all covered persons and groups. The parties further agree that AGA shall not be liable to PRODUCER for any loss of commissions, including chargebacks, or for any other claim arising out of any adjustment or compromise, with respect to any covered persons or groups, sold by PRODUCER, or out of any failure to collect Premiums from any covered person or group. If Carrier, for any reason, refunds any Premium, rescinds or otherwise terminates, currently, prospectively, or retroactively, the coverage for any covered person or group on which PRODUCER

would otherwise be entitled to commissions under this Agreement, PRODUCER shall lose all rights to commissions on said Premium, and shall pay to AGA, upon demand, any amounts previously received by PRODUCER as commissions on Premium returned to any covered person or group by Carrier.

6.2 **Receipt of Premium Payments.** Carrier shall be responsible for all billing and shall receive Premiums directly from covered persons and groups. With the exception of checks made payable to Carrier for initial Premium conveyed with an application, where required by Carrier, PRODUCER will not accept any funds, in any form, for the account of Carrier.

6.3 **Cancellation of Enrolled Individual or Group.** Carrier has the sole decision-making authority with respect to cancellation or rescission of any coverage and Carrier's decision is final and binding on PRODUCER, as well as on AGA.

6.4 **Products Made Available and Other Decisions by Carrier.** Carrier has the sole right to determine which of its approved overall offerings will be made available through AGA and, therefore, be available for marketing by PRODUCER. Carrier also has the sole right to determine benefits, interpret covered benefits, set premium amounts, set and adjust commissions, enforce underwriting criteria, waive or change terms or conditions regarding applications, eligibility, or enrollment. Carrier has the sole authority to accept or decline applications.

6.5 **Contracting and Licensing Decisions by Carrier.** Carrier has the sole right to determine the contracting, licensing, and E&O criteria. Carrier also has the sole right to determine which PRODUCERS are in good standing and the criteria for such. It is Carrier's sole responsibility to determine if PRODUCER is in good standing. In the event that Carrier terminates the contract with AGA, AGA shall notify PRODUCER by mail or email of the termination and the effective date thereof.

## **7. COMPENSATION TO PRODUCER**

7.1 **Payment of Commissions.** PRODUCER, as an independent contractor, receives no salary or employee benefits. PRODUCER's sole source of compensation shall be commissions and production bonuses (if any) paid on business produced while this Agreement is in effect and PRODUCER is abiding by its terms. Subject to the terms and conditions of this Agreement, AGA agrees to pay PRODUCER a commission, as set forth in the current Commission Schedule, based on the total amount of monthly commissions received by AGA from Carrier on business produced by PRODUCER. PRODUCER shall look solely to AGA for payment of commissions and shall not seek to obtain any commissions or reimbursement directly from Carrier. The only exception to this clause is in the case where Carrier pays PRODUCER directly. Likewise, PRODUCER is not authorized to and shall not seek any payment of compensation directly from any covered person or group.

7.2 **Calculation of Commission.** AGA will pay a commission to PRODUCER based on the then current Commission Schedule on commissions received from Carrier. AGA will have the right to change the Commission Schedule on the lesser of (a) thirty (30) days' prior written notice, or (b) the period of notice to AGA from Carrier, less two (2) business days (to allow AGA time to convey notice to PRODUCER). The current Commission Schedule may be downloaded from the Website, or can be obtained from your Territory Manager at AGA.

7.3 **Timing of Payments.** Commissions payable to PRODUCER will be paid monthly based on commissions received by AGA on business produced by PRODUCER. Such amounts, if any, will be paid to PRODUCER no later than thirty (30) days after the end of the month in which the commission payments are received by AGA. AGA shall be responsible to pay PRODUCER only when it receives payment from Carrier or others paying it the compensation which it shares with PRODUCER. If such payments are not received, AGA has no obligation to pay PRODUCER from its own funds. AGA will promptly notify PRODUCER should any such event occur. Any other payment conditions will be published on the current Commission Schedule.

7.4 **Bonuses.** To the extent that AGA or Carrier offers a bonus, Carrier has the sole discretion concerning all determinations of the number of applications accepted for any specific effective date. In the event of non-payment by Carrier, for any reason whatsoever, those applications will not be counted towards the bonus totals. Reasons that the bonus totals may be different than those calculated by PRODUCER include, but are not limited to, change in effective dates, rejection of application based on Carrier or CMS rejection of the application, rejection of the application based on Carrier rejection of the application, withdrawal by the applicant, rejection of the

payment of commissions by Carrier, based upon contractual or other reasons, such as “already a member”, etc. No bonuses are due or payable to PRODUCER until there has been both payment by Carrier and confirmation by Carrier that all criteria required for earning the bonus have been met.

7.5 **Limitations Upon Obligation to Pay Commissions.** PRODUCER acknowledges and agrees that AGA shall not be obligated to pay PRODUCER any commissions for services performed hereunder or otherwise if (i) the payment of such commissions would violate applicable statutory provisions, regulations, or rulings which prohibit the payment of commissions under certain circumstances, (ii) this Agreement has been terminated in accordance with Section 11.4 below, (iii) AGA has not received commissions from Carrier, (iv) PRODUCER is not in “good standing” with Carrier, according to Carrier notification, or (v) PRODUCER has failed to maintain a current license and E&O. In addition, should there be chargebacks due to rescissions or cancellations by Carrier, or otherwise, the amounts of such chargebacks shall be a legitimate and proper deduction from commissions to PRODUCER which would otherwise be due.

7.6 **Treatment of Monies Due.** Any indebtedness owing by PRODUCER to AGA, which arises at any time, shall constitute a first lien upon any commissions due or to become due to PRODUCER hereunder. AGA, at its sole discretion, shall have the right to offset from any commissions due to PRODUCER those sums which are owing by PRODUCER to AGA. AGA may collect any payments owed by PRODUCER to AGA by offsetting such amounts against commissions owed by AGA to PRODUCER. These commissions can be from any commissions owed, not just from the commissions due from Carrier in which the charge-back is occurring. PRODUCER will reimburse AGA for any commissions erroneously paid to PRODUCER for any reason including, but not limited to, payment resulting from clerical error or charge-backs. AGA shall be further entitled, at its option, to also seek recovery of monies due, by other means, including suit, in which case PRODUCER shall become obligated for costs of collection including, but not limited to, attorney’s fees.

7.7 **Adequate Compensation; No Rebates.** PRODUCER acknowledges and agrees that the commissions set forth are adequate and appropriate for the services rendered under this Agreement and is accepted by PRODUCER in full and complete satisfaction and discharge of any and all monetary and nonmonetary obligations owed PRODUCER by AGA or any officer, director, shareholder, or affiliate of AGA. PRODUCER further acknowledges and agrees that it will not rebate or otherwise share all or any portion of the commissions it receives from AGA or Carrier. Failure to abide by this Section is grounds for immediate termination of this Agreement.

7.8 **Duration of Payments.** During the term of this Agreement, commissions will continue to be paid on business produced by PRODUCER, provided that: (a) PRODUCER complies with its obligations under this Agreement, (b) AGA continues to receive commission from which it can pay PRODUCER, (c) PRODUCER maintains any and all necessary licenses and E&O, and (d) PRODUCER maintains the status of “good standing” with Carrier. In the event termination of this Agreement is pursuant to Section 11.2 or Section 11.3 below, PRODUCER must still abide by the surviving terms of this Agreement to continue to receive renewal commissions. If this Agreement is terminated by AGA for cause in accordance with Section 11.4 below, PRODUCER’s right to continued receipt of commissions on business produced by PRODUCER will immediately cease, except that the calculation of commission for that portion of the calendar month during which termination becomes effective will be made. However, payment, if any, due to PRODUCER will be placed on hold for a period equal to the maximum chargeback period for Carrier in order to apply any outstanding charge backs or indebtedness that may occur.

7.9 **Suspension of Payments.** PRODUCER shall forward license and/or E&O renewal information to AGA prior to the expiration date. Failure to forward the license and/or E&O renewal information with respect to any required license or E&O prior to the expiration shall result in the suspension of commissions, effective as of the commission cycle immediately following the expiration date. Failure to cure the suspension within sixty (60) days after the expiration of the license or E&O will result in the forfeiture of commissions, retroactive to the earliest expiration date, and the automatic termination of this Agreement, since PRODUCER cannot perform its marketing duties without the required licensing and E&O. In the event that there is a gap in the licensure or E&O, no commissions, nor renewal commissions, will be paid during that gap.

7.10 **Dispute of Payments.** PRODUCER may dispute commissions received or earned within sixty (60) days of AGA mailing the statements and checks. Beyond sixty (60) days, the commissions shall not be subject to dispute.



7.11 **Renewal Commissions.** Renewal commissions shall be paid according to Exhibit "A" and Sections 7.8 and 7.9 above, as long as the member remains enrolled and payment is received by Carrier.

## **8. INDEMNIFICATION**

8.1 **Indemnification of AGA.** PRODUCER shall indemnify and hold AGA free and harmless from and against any and all demands, debts, liens, losses, liabilities, damages, expenses, costs, claims, judgments, obligations, actions or causes of action, attorney's fees and expenses actually incurred, whether or not litigation is commenced, for or in connection with injury or damage arising, made, incurred, or suffered, directly or indirectly from negligent or willful acts, errors and omissions by PRODUCER in connection with its performance of any duties under this Agreement. AGA shall be obligated to give PRODUCER prompt written notice of any claim for indemnification. AGA shall control its defense in any matter as to which it claims indemnity from PRODUCER but shall keep PRODUCER reasonably informed of the progress of the matter and shall respond to reasonable requests from PRODUCER for information during the progression of the matter.

8.2 **Indemnification of PRODUCER.** AGA shall indemnify and hold PRODUCER free and harmless from and against any and all demands, debts, liens, losses, liabilities, damages, expenses, costs, claims, judgments, obligations, actions or causes of action, attorney's fees and expenses actually incurred, whether or not litigation is commenced, for or in connection with injury or damage arising, made, incurred, or suffered, directly or indirectly from negligent or willful acts, errors and omissions by AGA in connection with its performance of any duties under this Agreement. AGA shall pay any costs, expenses, attorney's fees and any settlement award against PRODUCER as specified in this Section only if PRODUCER gives AGA written notice of the claim and permits AGA to control the defense or settlement of the claim and provides, if requested, reasonable assistance in the defense of the claim.

8.3 **Survival of Indemnification Duties.** Neither termination of this Agreement nor completion of the acts to be performed under this Agreement shall release any party from its obligations to indemnify as to any claim or cause of action asserted so long as the event upon which a claim or cause of action is predicated, shall have occurred prior to the effective date of any such termination or completion.

## **9. CONFIDENTIALITY**

9.1 **Maintaining Confidentiality.** PRODUCER shall keep in strictest confidence information relating to this Agreement and all other information which may be acquired in connection with or as a result of this Agreement. During the term of this Agreement, and at any time thereafter, PRODUCER shall not, without the prior written consent of AGA, publish, communicate, divulge, disclose or use any of such information which has been provided by AGA or has been acquired in connection with or as a result of this Agreement or which, from the surrounding circumstances or in good conscience, ought to be treated by PRODUCER as confidential. PRODUCER agrees that such proprietary and confidential information shall only be used by PRODUCER in connection with the performance of this Agreement and only in the manner provided by this Agreement. PRODUCER shall not use any of AGA's proprietary and confidential information to directly or indirectly compete with AGA during or after the term of this Agreement or for any other purpose except as authorized under this Agreement.

9.2 **Scope of Agreement.** Notwithstanding anything to the contrary stated in Section 9.1 above, PRODUCER expressly agrees that PRODUCER shall not use any information provided to PRODUCER by AGA except as necessary and reasonably appropriate for PRODUCER's performance of its duties under this Agreement.

9.3 **Termination or Expiration.** Upon termination or expiration of this Agreement, PRODUCER shall deliver to AGA all records, data, advertising materials, application materials, and other information and documents, provided by Carrier or by AGA, and all copies thereof, in whatever form whatsoever, to AGA, or at AGA's option, provide satisfactory evidence that all such records, data, other information and other documents have been destroyed. All materials provided by AGA or Carrier shall, under this Agreement and as between AGA and PRODUCER, be the sole property of AGA.

9.4 **Survival of Confidentiality Clause.** Neither termination of this Agreement nor completion of the acts to be performed under this Agreement shall terminate the terms of this Section 9.

## **10. TRADE SECRETS**

10.1 **Protection of Trade Secrets by PRODUCER.** PRODUCER will treat as trade secrets any and all information concerning customers of AGA or its business, products, techniques, methods, systems, price-books, rating tools, plans or policies including, but not necessarily limited to, the identity of all brokers and PRODUCERS (including PRODUCERS to whom AGA supplies Leads, as it does to PRODUCER) placing business through AGA, all business placed through AGA, all business quoted by AGA and the results of any such quoting; and PRODUCER will not, during the term of this Agreement or at any time thereafter, disclose such information, in whole or in part, to any person, firm or corporation, for any reason or purpose whatsoever, or use such information in any way or in any capacity, other than as a PRODUCER for AGA in furtherance of AGA's interests. Upon termination of this Agreement, or sooner if requested by AGA, PRODUCER will immediately deliver to AGA, without making or retaining copies thereof, any and all literature, documents, data, information, order forms, memoranda, correspondence, customer and prospective customer lists (obtained from AGA), customer orders, records, cards or notes acquired, compiled or coming into PRODUCER's knowledge, possession, custody or control in connection with its activities as a PRODUCER for AGA, as well as all machines, parts, equipment, rating tools, software and other materials received by PRODUCER from AGA or from any of its customers, agents/PRODUCERS or suppliers in connection with such activities.

10.2 **Protection of Trade Secrets by AGA.** AGA will treat as trade secrets any and all information concerning customers of PRODUCER or its business, Products, techniques, methods, systems, price-books, rating tools, plans or policies including, but not necessarily limited to, the identity of all brokers and producers (including producers to whom PRODUCER supplies Leads, as it does to PRODUCER) placing business through PRODUCER, all business placed through PRODUCER, all business quoted by PRODUCER and the results of any such quoting; and AGA will not, during the term of this Agreement, or at any time thereafter, disclose such information, in whole or in part, to any person, firm or corporation for any reason or purpose whatsoever, or use such information in any way or in any capacity other than as a producer for PRODUCER in furtherance of PRODUCER's interests. Upon termination of this Agreement, or sooner if requested by PRODUCER, AGA will immediately deliver to PRODUCER, without making or retaining copies thereof, any and all literature, documents (excluding applications which must be maintained to satisfy CMS requirements), data, information, order forms, memoranda, correspondence, customer and prospective customer lists (obtained from PRODUCER), customer orders, records, cards or notes acquired, compiled or coming into AGA'S knowledge, possession, custody or control in connection with its activities as a producer for PRODUCER, as well as all machines, parts, equipment, rating tools, software and other materials received by AGA from PRODUCER or from any of its customers, agents/producers or suppliers in connection with such activities.

## **11. TERM AND TERMINATION**

11.1 **Basic Term.** This Agreement shall be effective upon the date it is executed by AGA and shall continue in full force and effect until termination, pursuant to the conditions below:

11.2 **Termination Without Cause.** At any time during the term of this Agreement, either party may terminate this Agreement without cause upon giving thirty (30) calendar days' prior written notice of termination to the other. The termination shall be effective on the date specified in the notice, subject to the minimum thirty (30) day requirement. In the event that PRODUCER chooses to terminate this Agreement and gives the minimum notice, all remaining commissions to be paid shall be subject to a period equal to the maximum chargeback period for Carrier day hold, to be able to reconcile any back charges for commissions earned, or back charges against commission advances. In the event that there are back charges in the amount greater than the remaining commissions, PRODUCER agrees to immediately repay the amounts owing.

11.3 **Termination With Cause.** The following items are subject to termination in the event that PRODUCER does not cure the breach within thirty (30) days of notification. Failure to cure the breach shall result in immediate termination with cause pursuant to Section 11.4 below. Termination shall occur as of a specified date upon written notice for any of the following:

- (a) Upon the temporary expiration of PRODUCER's E&O; or
- (b) Upon the temporary loss of PRODUCER's license to sell insurance or any other required license.

11.4 **Immediate Termination With Cause.** Notwithstanding any other provision of this Agreement, AGA may terminate this Agreement immediately, or as of a specified date, upon written notice for any of the following:

- (a) A material breach of this Agreement by PRODUCER, which shall include, but not be limited to, misfeasance or malfeasance, loss of a required license, completing an application and e-signing that application for a potential client without the potential client's consent, being listed on OIG/SAM;
- (b) Upon PRODUCER's violation of any federal or state statute, law or regulation;
- (c) Upon the permanent loss of PRODUCER's license to sell insurance or any other required license; or
- (d) Failure to cure breach pursuant to Section 11.3 above.

11.5 **Effect of Termination.** If this Agreement is terminated pursuant to Section 11.4 above, no further commissions shall be due or owing to PRODUCER after the effective date of termination of this Agreement. If this Agreement is terminated pursuant to Section 11.2 or Section 11.3 above, renewal commissions shall continue to be paid according to Section 7.8 above. In the event that PRODUCER has an outstanding debt to AGA, AGA will issue a release when the debt is repaid in full, or when the new FMO accepts responsibility for the outstanding debt. If there is no outstanding debt, AGA will issue a release when requested. Termination of this Agreement shall not terminate any debt or back charges that PRODUCER owes to AGA.

## **12. PRODUCER IS AN INDEPENDENT CONTRACTOR**

12.1 **Independent Contractor.** In performance of the work, duties and obligations under this Agreement, it is mutually agreed that PRODUCER is at all times acting as an independent contractor practicing its profession and is not considered an agent or employee of AGA for any purpose. Nothing in this Agreement shall be construed to establish a relationship of servant, employee, partnership, association, or joint venture between the parties. AGA shall not be responsible to PRODUCER, or anyone associated with PRODUCER, or to any governing body, for any payroll-related taxes or any other employment related liability in connection with the performance of services by PRODUCER, or anyone associated with PRODUCER. It is expressly understood that PRODUCER will be responsible for all legally required tax withholding for itself and its employees, solicitors and agents. PRODUCER acknowledges that it is free to exercise its own judgment as to the way it performs its day-to-day business activities, the number of Leads accepted, when and from where it follows up on those Leads, and when it chooses to make appointments to meet prospects. PRODUCER further acknowledges that it is responsible for all aspects of the way that it conducts its business including, but not limited to, business decisions and setting of hours. PRODUCER further acknowledges that PRODUCER reserves full control of its activities with the right to exercise independent judgment as to the time, place, or manner of carrying out the provisions of this Agreement. PRODUCER warrants that if it has clerical and other employees to assist it, it will comply with all federal, state and local laws including, but not limited to, wage and hour laws and employment discrimination laws. It is expressly understood that none of PRODUCER or its employees, if any, are employees of AGA for any purpose, including, but not limited to, employee welfare and pension benefits, fringe benefits of employment, workers' compensation, disability insurance or compensation for services. PRODUCER shall bear its own expenses in performing its duties under this Agreement.

## **13. GENERAL TERMS**

13.1 **Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the successors of PRODUCER, but shall not be assignable by PRODUCER, except with the prior written permission of AGA, which may be withheld at AGA's sole discretion.

13.2 **Federal and State Law and Regulation.** This Agreement is subject to all applicable state and federal laws and regulations. All provisions required by such laws and regulations to be in this Agreement shall bind the parties to this Agreement whether or not provided herein.

13.3 **Governing Law.** This Agreement shall be governed and construed according to the laws of the State of California.

13.4 **Severability.** If any part of this Agreement is held by a court of competent jurisdiction of California or federal law to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect.

13.5 **Headings and Captions.** The subject headings and captions of this Agreement are included for purposes of convenience only and shall not affect the construction of interpretation of any of the provisions of this Agreement.

13.6 **Verbiage Usage.** In this Agreement, the words “shall” and “will” are used in the mandatory sense. Unless the context otherwise clearly requires, any one gender includes all others, the singular includes the plural, and the plural includes the singular.

13.7 **Amendments, Waiver.** This Agreement shall be amended, modified, revised or supplemented only by a dated written instrument executed by AGA and PRODUCER. No waiver of any provision of this Agreement shall be effective unless evidenced by a dated, written instrument executed by the party against whom enforcement is sought. No waiver of any provision hereof shall be construed as a further or continuing waiver of such provision or of any other provision hereof.

13.8 **Sections Surviving Termination of Agreement.** In addition to those provision that by their terms survive expiration or termination of this Agreement, the following Sections shall survive expiration or termination of this Agreement, regardless of the cause giving rise thereto: Section 1 in its entirety; Sections 3.1, 3.2, 3.3, 3.4, 3.8, 3.9, 3.11, 3.12, 3.15, 3.16, 3.17; Section 4 in its entirety; Section 6 in its entirety; Section 7 in its entirety; Section 8 in its entirety; Section 9 in its entirety; Section 10 in its entirety; Section 11 in its entirety; Section 12 in its entirety; Sections 13.2, 13.3, 13.8 and 13.9; and Exhibits “A”, “B”, and “C”.

13.9 **Entire Agreement.** This Agreement and Exhibits “A”, “B”, and “C” constitute the entire agreement between the parties relating to the subject matter contained in it and supersede all prior and contemporaneous agreements between the parties. No modification or waiver of this Agreement shall be binding unless executed in writing by the parties.

13.10 **Notices.** All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered to the party to whom notice is to be given either (a) by personal delivery (notice shall be deemed given on the date of delivery), (b) by Federal Express or other next day delivery service (notice shall be deemed given on the date of actual receipt), (c) by first-class mail, postage prepaid certified or registered return receipt requested (notice shall be deemed given on the date of actual delivery) or (d) by facsimile, cablegram, telegram, or email with confirmation of transmission (notice shall be deemed given on the date of the document confirming transmission).

AGA will give notice to the address and contact information given below, unless updated subsequent to this Agreement. Either party may change its address as indicated above by giving written notice of such change to the other party in the manner specified in this Section.

	<b>If to AGA:</b>	<b>If to PRODUCER:</b>
<b>Name:</b>	Applied General Agency, Inc.	_____
<b>Contact Name:</b>	Joan Kulifay	_____
<b>Title:</b>	Contracts Administrator	_____
<b>Physical Address:</b>	1040 N Tustin Avenue	_____
<b>Physical City, State, Zip:</b>	Anaheim, CA 92807	_____
<b>Telephone:</b>	(800) 498-6880	_____
<b>Fax:</b>	(714) 630-2721	_____

Either party may change its address as indicated above by giving written notice of such change to the other party in the manner specified in this Section.

The parties, by their properly authorized signatories, have caused this Agreement to be made effective as of the date this Agreement was executed.

**EXHIBIT "A"**

**COMMISSION SCHEDULE**

The attached Commission Schedule is currently in effect and can be found on the Website.

The Commission Schedule changes in accordance to CMS regulations.

## **EXHIBIT "B"**

### **COMMUNICATIONS CONSENT FORM**

Federal regulations require AGA to obtain PRODUCER's permission in order to continue letting PRODUCER know about AGA's Products and services it values most.

PRODUCER understands and agrees that by agreeing to this Agreement, that PRODUCER hereby consents to receive communications sent by or on behalf of AGA via regular mail, e-mail, telephone, fax, text messages, or the like. PRODUCER further understands that in accordance with AGA's privacy statement, AGA will not share PRODUCER's fax nor e-mail address with other organizations. PRODUCER further understands that this consent may be revoked by contacting AGA in writing and allowing AGA thirty (30) days to change the status.

## EXHIBIT "C"

### HIPAA BUSINESS ASSOCIATE AGREEMENT

In order to disclose certain information to Business Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("**PHI**") (defined below), Company and Business Associate mutually agree to modify Agreement to incorporate the terms of this Addendum to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**") and its implementing privacy regulations at 45 C.F.R. Parts 160-164 ("**HIPAA Privacy Rule**").

#### **Purpose:**

Company and Business Associate, have entered into one or more agreements under which Business Associate provides certain services and/or products to or on behalf of Company. In performing these agreements, Business Associate has and/or may receive individually identifiable information arising out of or related to the business activities of Company, which information is the type of information subject to Laws and the requirements of Sections II and/or III of this Agreement. To assure compliance with all applicable Laws, Company agrees to allow Business Associate to receive, retain and re-disclose, as applicable, such information and Business Associate agrees to receive, retain, re-disclose and protect such information, under the terms of this Agreement.

#### **A. Privacy of Protected Health Information.**

1. **Permitted Uses and Disclosures.** Business Associate agrees to use or disclose Protected Health Information ("**PHI**"), as that term is defined in Section D.1. of this Addendum, that it creates for or receives from Company only as follows:

(a) **Functions and Activities On Company's Behalf.** Business Associate is permitted to use and disclose PHI it creates or receives for or from Company only for the purposes described in Appendix A to this Addendum, if executed.

(b) **Business Associate's Operations.** Business Associate is permitted by this Addendum to use PHI it creates or receives for or from Company: (i) if such use is essential for Business Associate's proper management and administration; and (ii) as necessary to carry out Business Associate's legal responsibilities. Business Associate is permitted to disclose PHI it creates or receives for or from Company for the purposes identified in this Section only if the following conditions are met:

(i) The disclosure is required by law; or

(ii) The disclosure is essential to Business Associate's proper management and administration, and Business Associate obtains reasonable assurances in writing from any person or organization to which Business Associate will disclose such PHI that the person or organization will:

a. Hold such PHI as confidential and use or further disclose it only for the purpose for which Business Associate disclosed it to the person or organization or as required by law; and

b. **Notify** Business Associate (who will in turn promptly notify Company) of any instance of which the person or organization becomes aware in which the confidentiality of such PHI was breached. Business Associate shall promptly notify Company upon making any disclosure set forth in this Section A.1(b).

c. **Minimum Necessary Standard.** In performing the functions and activities on Company's behalf as set forth above, Business Associate agrees to use, disclose or request



only the minimum necessary PHI to accomplish the purpose of the use, disclosure or request. Business Associate must have in place policies and procedures that limit the PHI disclosed to meet this minimum necessary standard.

**2. Prohibition on Unauthorized Use or Disclosure.** Business Associate will neither use nor disclose PHI it creates or receives for or from Company or from another business associate of Company, except as permitted or required by the Agreement and this Addendum, or as required by law, or following receipt of prior written approval from Company.

**3. De-Identification of Information/Creation of Limited Data Set.** Business Associate agrees neither to de-identify PHI it creates or receives for or from Company or from another business associate of Company, nor use or disclose such de-identified PHI, unless such de-identification is expressly permitted under the terms and conditions of the Agreement for services to be provided by Business Associate to Company related to Company's activities for purposes of "treatment", "payment" or "health care operations", as those terms are defined under the HIPAA Privacy Rule. De-identification of PHI, other than as expressly permitted under the terms and conditions of the Agreement for Business Associate to perform services for Company, is not a permitted use of PHI under this Addendum. Business Associate further agrees that it will not create a "limited data set" as defined by the HIPAA Privacy Rule using PHI it creates or receives, or receives from another business associate of Company, nor use or disclose such limited data set unless: (i) such creation, use or disclosure is expressly permitted under the terms and conditions of the Agreement; and (ii) such creation, use or disclosure is for services provided by Business Associate that relate to Company's activities for purposes of "payment" or "health care operations," as those terms are defined under the HIPAA Privacy Rule.

**4. Information Safeguards.** Business Associate will develop, document, implement, maintain and use appropriate administrative, technical and physical safeguards to preserve the integrity and confidentiality of and to prevent non-permitted use or disclosure of PHI created or received for or from Company. These safeguards must be appropriate to the size and complexity of Business Associate's operations and the nature and scope of its activities. Business Associate agrees that these safeguards will meet any applicable requirements set forth by the U.S. Department of Health and Human Services including (as of the effective date or as of the compliance date, whichever is applicable) any requirements set forth in the final HIPAA security regulations. Upon Company's request, Business Associate will provide Company with access to and copies of documentation regarding such safeguards. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate resulting from a use or disclosure of PHI by Business Associate in violation of the requirements of this Addendum. With respect to Electronic Protected Health Information, Business Associate shall implement administrative, physical, and technical safeguards that 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 45 C.F.R. Part 164, Subpart C.

**5. Sub-Contractors, Agents or Other Representatives.** Business Associate will require any of its subcontractors, agents other representatives to which Business Associate is permitted by this Addendum (or is otherwise given Company's prior written approval) to disclose any of the PHI Business Associate creates or receives for or from Company, to provide reasonable assurances in writing that subcontractor or agent will comply with the same restrictions and conditions that apply to the Business Associate under the terms and conditions of this Addendum with respect to such PHI. Business Associate shall notify Company of any subcontractors, agents or other representatives to which PHI is disclosed promptly upon such disclosures. Business Associate shall supply a copy of subcontractor or agent's written contract to Company upon request. Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation.

**B. Protected Health Information Access, Amendment and Disclosure Accounting.**

1. **Access.** Business Associate will promptly upon Company's request make available to Company or, at Company's direction, to the individual (or the individual's personal representative) for inspection and obtaining copies any PHI about the individual which Business Associate created or received for or from Company and that is in Business Associate's custody or control, so that Company may meet its access obligations under 45 Code of Federal Regulations § 164.524.

2. **Amendment.** Business Associate will promptly upon Company's request amend or permit Company access to amend any portion of the PHI which Business Associate created or received for or from Company, and incorporate any amendments to such PHI, so that Company may meet its amendment obligations under 45 Code of Federal Regulations § 164.526.

3. **Disclosure Accounting.** So that Company may meet its disclosure accounting obligations under 45 Code of Federal Regulations § 164.528.

(a) **Disclosure Tracking.** Starting April 14, 2003, Business Associate will record for each disclosure, not excepted from disclosure accounting under Addendum Section B.3(c) below, that Business Associate makes to Company or a third party of PHI that Business Associate creates or receives for or from Company, (i) the disclosure date, (ii) the name and (if known) address of the person or entity to whom Business Associate made the disclosure, (iii) a brief description of the PHI disclosed, and (iv) a brief statement of the purpose of the disclosure (items i-iv, collectively, the "***disclosure information***"). For repetitive disclosures Business Associate makes to the same person or entity (including Company) for a single purpose, Business Associate may provide (A) the disclosure information for the first of these repetitive disclosures, (B) the frequency, periodicity or number of these repetitive disclosures and (C) the date of the last of these repetitive disclosures. Business Associate will make this disclosure information available to Company promptly upon Company's request.

(b) **Disclosure Reporting.** On a monthly basis, for all disclosures required to be tracked pursuant to the above paragraph, Business Associate shall report to Company all information required by the above paragraph, so that Company may meet its obligations under the HIPAA Privacy Rule.

(c) **Exceptions from Disclosure Tracking.** Business Associate need not record disclosure information or otherwise account for disclosures of PHI that this Addendum or Company in writing permits or requires (i) for the purpose of Company's treatment activities, payment activities, or health care operations, (ii) to the individual who is the subject of the PHI disclosed, or to that individual's personal representative; (iii) to persons involved in that individual's health care or payment for health care; (iv) for notification for disaster relief purposes, (v) for national security or intelligence purposes, (vi) to law enforcement officials or correctional institutions regarding inmates; (vii) pursuant to an authorization; (viii) for disclosures of certain PHI made as part of a limited data set; (ix) for certain incidental disclosures that may occur where reasonable safeguards have been implemented; and (x) for disclosures prior to April 14, 2003.

(d) **Disclosure Tracking Time Periods.** Business Associate must have available for Company the disclosure information required by Addendum Section B.3(a) for the six (6) years preceding Company's request for the disclosure information (except Business Associate need have no disclosure information for disclosures occurring before April 14, 2003).

4. **Inspection of Books and Records.** Business Associate will make its internal practices, books, and records, relating to its use and disclosure of the PHI it creates or receives for or from Company, available to Company and to the U.S. Department of Health and Human Services to determine Company's compliance with 45 Code of Federal Regulations Part 164. Business Associate shall provide to Company a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary.

**C. Breach of Privacy Obligations.**

**1. Reporting.** Business Associate will report to Company any use or disclosure of PHI that is neither permitted by this Addendum nor given prior written approval by Company. Business Associate will make the report to Company's Chief Privacy Official, within seven days after Business Associate learns of such non-permitted use or disclosure. Business Associate's report will at least:

- (a) Identify the nature of the non-permitted use or disclosure;
- (b) Identify the PHI used or disclosed;
- (c) Identify who made the non-permitted use or received the non-permitted disclosure;
- (d) Identify what corrective action Business Associate took or will take to prevent further non-permitted uses or disclosures;
- (e) Identify what Business Associate did or will do to mitigate any deleterious effect of the non-permitted use or disclosure; and
- (f) Provide such other information, including a written report, as Company may reasonably request.

**2. Termination of Agreement.**

(a) Right to Terminate for Breach. Company shall have the right to terminate this Agreement and Business Associate's performance of services or products to or on behalf of Company under any other agreement(s) between Business Associate and Company immediately if Company, in its sole discretion, determines that Business Associate has breached any of the confidentiality provisions of this Agreement or any other agreement(s) under which Business Associate provides services and/or products to or on behalf of Company. Company may exercise this right by providing Business Associate with written notice of termination, stating the breach of this Agreement or any other agreement(s) under which Business Associate provides services and/or products to or on behalf of Company. Alternatively, and in the sole discretion of the Company, the Company may choose to provide the Business Associate with written notice of the existence of the breach and provide Business Associate with thirty (30) calendar days to cure such breach upon mutually agreeable terms. In the event that mutually agreeable terms cannot be reached within this thirty (30) day period, Business Associate shall cure such breach to the satisfaction of the Company within an additional fifteen (15) days. Failure by Business Associate to cure said breach in the manner set forth above shall be grounds for immediate termination of this Agreement and any other agreement(s) between Business Associate and Company. If termination is not feasible, Company has the right to report the problem to the Secretary of the U.S. Department of Health and Human Services.

(b) Obligations upon Termination.

(i) Return or Destruction. Upon termination, cancellation, expiration or other conclusion of Agreement, Business Associate will if feasible return to Company or, with consent of Company, destroy all PHI and, in whatever form or medium (including in any electronic medium under Business Associate's custody or control), that Business Associate created or received for or from Company, including all copies of and any data or compilations derived from and allowing identification of any individual who is a subject of the PHI. Business Associate will complete such return or destruction as promptly as possible, but not later than 30 days after the effective date of the termination, cancellation, expiration or other conclusion of Agreement. Business Associate will identify any PHI that Business Associate created or received for or from Company that cannot feasibly be returned to Company or destroyed, and will limit its further use or disclosure of that PHI to those purposes that make return or

destruction of that PHI infeasible. Within such thirty (30) days, Business Associate will certify under oath in writing to Company that such return or destruction has been completed, will deliver to Company the identification of any PHI for which return or destruction is infeasible and, for that PHI, will certify that it will only use or disclose such PHI for those purposes that make return or destruction infeasible.

(ii) Continuing Privacy Obligation. Business Associate's obligation to protect the privacy of the PHI it created or received for or from Company will be continuous and survive termination, cancellation, expiration or other conclusion of Agreement.

(iii) Other Obligations and Rights. Business Associate's other obligations and rights and Company's obligations and rights upon termination, cancellation, expiration or other conclusion of Agreement are those set forth in the Agreement.

**3. Injunctive Relief.** In the event of a breach of any material term of this Addendum, Business Associate agrees that Company has a right to obtain injunctive relief to prevent further disclosure of PHI. In addition to injunctive relief, Company also can pursue any other remedy provided by law or equity.

#### **D. General Provisions.**

**1. Definitions.** The capitalized term "**Protected Health information**" or "**PHI**" has the meaning set forth in 45 Code of Federal Regulations Section 164.501, as amended from time to time. Generally, this term means individually identifiable health information including, without limitation, all information, data and materials including, without limitation, demographic, medical and financial information, that 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 that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. This definition shall include any demographic information concerning members and participants in, and applicants for, Company's health benefit plans.

All other terms used in this Addendum shall have the meanings set forth in the applicable definitions under the HIPAA Privacy Rule.

**2. Amendment.** Upon the effective date of any final regulation or amendment to final regulations promulgated by the U.S. Department of Health and Human Services with respect to PHI including, but not limited to, the HIPAA privacy and security regulations, this Addendum and the Agreement of which it is part will automatically be amended so that the obligations they impose on Business Associate remain in compliance with these regulations.

In addition, to the extent that new state or federal law requires changes to Business Associate's obligations under this Addendum, this Addendum shall automatically be amended to include such additional obligations, upon notice by Company to Business Associate of such obligations. Business Associate's continued performance of services under the Agreement shall be deemed acceptance of these additional obligations.

Except for the foregoing automatic amendment provision, this Addendum may be amended only in writing and signed by both parties.

**3. Assignment.** Business Associate may not assign its respective rights and obligations under this Addendum without the prior written consent of Company.

**4. Severability.** In the event that any provision of this Addendum is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Addendum will remain in full force and effect.

5. **Waiver.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation on any other occasion.

6. **Independent Relationship.** None of the provisions of this Addendum are intended to create, nor will they be deemed to create any relationship between the parties other than that of independent parties contracting with each other as independent contractors solely for the purposes of effecting the provisions of this Addendum and the Agreement.

7. **Rights of Third Parties.** This Addendum is between Company and Business Associate and shall not be construed, interpreted, or deemed to confer any rights whatsoever to any third party or parties.

8. **Headings.** The headings of sections contained in this Addendum are for reference purposes only shall not affect in any way the meaning or interpretation of this Addendum.

9. **Indemnification.** Business Associate hereby agrees to indemnify and hold harmless Company and any Company affiliate, officer, director, employee, subcontractor, agent, or other members of its workforce, from and against any claim, cause of action, liability, damage, cost or expense arising out of or in connection with any non-permitted use or disclosure of PHI or other breach of this Addendum by Business Associate or any subcontractor, agent, person or entity using or disclosing PHI obtained from or on behalf of Business Associate.

10. **Interpretation.** The parties agree that any ambiguity in this Addendum will be resolved in favor of a meaning that protects PHI and facilitates Business Associate's and Company's compliance with applicable terms of the HIPAA Privacy Rule.

11. **Audit and Review of Policies and Procedures.** Business Associate agrees to provide, upon Company's request, access to and copies of any policies and procedures developed or utilized by Business Associate regarding the protection of PHI. Business Associate agrees to provide, upon Company's request, access to Business Associate's internal practices, books, and records, as they relate to Business Associate's services, duties and obligations set forth in the Agreement and/or the Addendum, for purposes of Company's review of such internal practices, books, and records.

12. **Subpoenas.** Business Associate agrees to provide notice to Company of any subpoena or other legal process seeking PHI received from or created on behalf of Company, or otherwise relating to Business Associate's services, duties and obligations under the Agreement and/or the Addendum. Such notice shall be provided within forty-eight (48) hours of Business Associate's receipt of such subpoena or legal process.

13. **More Restrictive Confidentiality Terms.** Company and Business Associate agree that if any provisions of the Agreement that relate to the use or disclosure of PHI are more restrictive than the provisions of this Addendum, meaning that the terms provide greater privacy protections for the PHI at issue, then the provisions of the more restrictive document shall control. The provisions of the Addendum are intended to establish the minimum requirements regarding Business Associate's use and disclosure of PHI.

14. **Notices.** All notices and notifications under this Addendum shall be sent in writing to the representatives of Company and Business Associate identified below, signed by the party providing the notice or notification.

15. **Data Ownership.** Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI obtained from or created on behalf of Company.

**16. Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to Company, at no cost to Company, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Company, its directors, officers or employees based upon a claimed violation of HIPAA, the Privacy Rule or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is a named adverse party.

**17. Expenses.** Unless otherwise stated in this Addendum or the Agreement, each party shall bear its own costs and expenses related to compliance with the above provisions.

**18. State Law.** Where the mandatory terms of the HIPAA Privacy Rule or this Addendum conflict with obligations imposed under *state law* (as defined in the Privacy Rule) relating to the privacy of individually identifiable health information and state law is *more stringent* (as defined in the Privacy Rule) than this Addendum or the Privacy Rule, Business Associate shall follow the state law with regard to the proper uses and disclosures of PHI. However, prior to taking any action in furtherance of a state law that Business Associate has interpreted is contrary to and more stringent than this Addendum or the Privacy Rule, Business Associate shall notify Company in writing of its interpretation. If Company disagrees with the Business Associate's interpretation and believes either that Business Associate is able to comply with state law and this Addendum (and the Privacy Rule), or that the Privacy Rule (and not state law) controls the use and disclosure of protected health information, then Company's interpretation shall prevail with respect to the creation, receipt, use or disclosure of PHI in connection with the services provided by Business Associate to Company under the Agreement.

**19. Notice.** For any notice or notification required by or provided pursuant to this Agreement, notice or notification should be sent to last known address of the parties.

**20. Data Aggregation Services.** If data aggregation services are to be provided by Business Associate to Company under the terms and conditions of the Agreement, then this Addendum permits Business Associate to use and disclose PHI for purposes of such data aggregation services. For purposes of this Addendum, "data aggregation" shall have the meaning set forth in the applicable definition under the HIPAA Privacy Rule. Currently, the term "data aggregation" is defined under the HIPAA Privacy Rule to mean, with respect to PHI created or received by a business associate (Business Associate) in its capacity as the business associate of a covered entity (Company), the combining of such PHI by the business associate with the PHI received by the business associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

- 21. The disclosures** for which Business Associate must provide an accounting:
- (a) Disclosures to the U.S. Department of Health and Human Services;
  - (b) Disclosures for public health activities and purposes (e.g., to report disease, child abuse, or neglect);
  - (c) Disclosures for health oversight activities (e.g., in connection with audits; civil, administrative, or criminal investigations or proceeding; licensure; or government benefit programs);
  - (d) Disclosures for judicial and administrative proceedings (e.g., with respect to court or administrative orders, subpoenas; discovery requests);
  - (e) Disclosures for law enforcement purposes (e.g., to report evidence of a crime committed on Business Associate's AGA's premises);
  - (f) Disclosures about deceased persons;

- (g) Disclosures for cadaveric organ, eye, or tissue donation;
- (h) Disclosures for research purposes;
- (i) Disclosures to avert a serious threat to health or safety;
- (j) Disclosures for certain specialized government functions (e.g., in connection with military commands);
- (k) and Disclosures for workers' compensation.

IN WITNESS WHEREOF, Company and Business Associate execute this Addendum in multiple originals to be effective as of the day and year written on the executed contract.

The parties, by their properly authorized signatories, have caused this Agreement to be made effective as of the date first shown on the contract signature page of the Gold Producer Agreement 5.6 d.

#### **APPENDIX A**

This PHI shall only be used for the purposes necessary to comply with the rules, regulations and terms of this Agreement.