

Agent Agreement

Sutter Health Plus

This Agent Agreement together with any attachments hereto (the "Agreement") is entered into this _____ day of _____, 20____ ("Effective Date") by and between Sutter Health Plan, a California, non-profit, public benefit organization, doing business as Sutter Health Plus ("SHP"), regulated by the California Department of Managed Health Care, and _____, ("Agent").

RECITALS

- A. SHP is licensed by the California Department of Managed Health Care (DMHC) as a health care service plan and, pursuant to such licensure, is authorized to offer DMHC-approved health care coverage products within its DMHC-approved service area.
- B. Agent is licensed by the State of California to promote, market, solicit and sell health care coverage products to individual and group subscribers, and to assist subscribers through the coverage application, underwriting and enrollment processes.
- C. SHP wishes to contract with Agent for the provision of marketing, solicitation and sales services, and Agent wishes to provide such services to SHP.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the parties do hereby agree as follows:

1. **Appointment of Agent.**

SHP appoints Agent to market, solicit and sell SHP health care coverage products as specified in this Agreement. This Agent appointment will become effective upon execution of this agreement by both parties, and shall be subject to all of the terms and conditions set forth herein.

2. **Agent Authority and Obligations (the " Services").**

- 2.1 Agent shall use its best efforts to solicit enrollment of prospective groups and individuals (as applicable) under this Agreement and assist such groups and individuals in completing and submitting applications for health care coverage products for sale to eligible groups or individuals. If at any time the Agent determines that the Agent is unable to market to a particular prospect and the Agent can provide specific and credible reasons for the same, the Agent will turn that prospect over to SHP for direct marketing.
- 2.2 Agent shall comply with all requirements of SHP governing the preparation, submission and processing of health care coverage applications and shall make available to SHP all information, whether favorable or unfavorable, which comes into the Agent's possession concerning the underwriting of any risk.
- 2.3 Agent shall take all reasonable and appropriate steps to obtain information, as deemed appropriate and pertinent by SHP. Agent certifies that it will comply with all the policies and procedures of SHP (including but not limited to SHP's underwriting guidelines) and with applicable federal, state or other laws and regulations governing the sale of SHP's health care coverage product(s) and the Agent's conduct concerning the same.
- 2.4 No monies shall be payable to the Agent, as set forth in Exhibit A, unless and until the Agent has made a timely and accurate submission of all paperwork, as required by SHP. The submission of all required paperwork must be made at least seven (7) business days prior to the effective date of the new business, renewal business, or change in plan, or at such other time as mutually agreed to by the parties. A complete submission may include, but not be limited to, complete and accurate employer submission documents, licenses, final rates approved by the group, including a binder check in the amount of the first month's premium, fully completed enrollment forms and any other information reasonably requested by SHP.
- 2.5 **Notifications.**
 - 2.5.1 Agent shall immediately notify SHP of receipt of any customer complaint or if it (or any of its principal persons or employees) is served with any paper or has knowledge of any legal or administrative action, investigation or proceeding against SHP.

2.5.2 Agent shall immediately notify SHP regarding commencement of any disciplinary proceedings against Agent or against any of its principal persons or employees including, but not limited to relating to any license issued to any such person by the California Insurance Commissioner.

2.6 Agent is authorized to market SHP health care coverage products to eligible purchasers as specified in the SHP product listing, as updated from time to time by SHP on written notice to Agent, without need for an amendment to this Agreement. For purposes of this Section, written notice by SHP shall include SHP's updating of its product listing available to Agent at SHP website www.sutterhealthplus.org, without the necessity of additional notice under Section 22. Agent shall affirmatively check the SHP website to confirm Agent is aware of any changes to the SHP product listing, and shall rely on the most recent update to such website in performing Services hereunder.

3. Limitations to Agent Authority.

3.1 The Agent is not authorized and is expressly forbidden to incur any indebtedness or liability, or to make, alter, or discharge contracts, or to waive forfeitures, name extra rates, extend the time of payment of any premium, or guarantee any actions on behalf of SHP. The Agent is further prohibited from obligating SHP without first obtaining written notification that SHP has accepted, conditionally or unconditionally, the submitted risk. Without limiting the forgoing, the Agent specifically is not authorized to make, alter or waive any of the terms, rates or conditions of any of SHP's forms, policies, contracts or advertising materials, to quote rates not approved by SHP, to extend the time of payment of any premium, to extend credit to customers, or to adjust or settle claims.

3.2 Furthermore, the Agent is also not authorized and is expressly forbidden, unless otherwise agreed in writing, to collect any money due or to become due SHP, except the initial first premium collected by or through the Agent obtained during policy delivery, or during the collection of receipts sent to the Agent by SHP (and Agent is not authorized to deduct compensation, commissions, services fees or allowances from Plan Funds, as defined below, that Agent collects). Agent shall not waive premium or extend the time for payment of premium. Any money due or to become due SHP from customers as premiums or otherwise are funds of SHP ("Plan Funds").

3.2.1 All Plan Funds collected by Agent for SHP shall at all times be segregated from the assets of the Agent, and shall be promptly, and in any event no later than the business day following receipt by Agent, deposited to a trust account in a state or federal bank authorized to do business in California and insured by an appropriate federal insuring agency. All funds received by the Agent for the account of SHP shall be transmitted to SHP, or to a person designated by SHP herein, within two (2) business days after such funds are received by Agent.

3.3 Agent is expressly forbidden to pay or allow, or to offer to pay or allow, any rebate of premium in any manner whatsoever, whether directly or indirectly. Agent agrees not to make any representation as to SHP's coverage and policies except as may be contained in the written materials furnished to Agent by SHP, nor make any oral or written alteration, modification or waiver of any of the terms or conditions applicable to that coverage and policy without the express prior written consent of SHP.

3.4 Agent shall not have underwriting or price-setting authority and shall not bind coverage under the health care coverage product(s) without SHP's express prior written approval.

3.5 In addition, the Agent is not authorized to use the name, trademarks or logo of SHP in any way or manner not specifically authorized in writing by SHP.

3.6 The Agent has no authority to institute legal or administrative proceedings in SHP's name or institute such proceedings in connection with the transaction of SHP's business unless an authorized officer of SHP provides written approval for such actions to the Agent.

4. Rights Reserved to SHP.

4.1 SHP specifically reserves the right, without approval of the Agent:

4.1.1 To discontinue or withdraw from sale any health care service plan and/or health care coverage product in California;

4.1.2 To modify, change, or amend any certificate, contract or premium rate;

4.1.3 To determine all terms, conditions and limitations of any certificate or contract and modify or change the terms under which any health care coverage product may be sold; and

4.1.4 To modify, institute or delete any SHP procedure.

5. Independent Contractor Relationship.

The parties agree that Agent is an independent contractor, and not an employee, agent, or partner of, or joint venturer with, SHP or any of its affiliates. Nothing contained in this Agreement shall be construed to create an employer and employee relationship between SHP and the Agent. Agent will not hold itself out as an employee, partner, joint venture or officer of SHP; nor as an agent of SHP in any other manner, or for any other purpose, except as specifically provided in this Agreement. SHP shall thus not exercise control over the methods by which Agent performs its obligations under this Agreement. Notwithstanding the foregoing, SHP shall retain all oversight and administrative responsibility for the Services rendered by Agent under this Agreement, including without limitation, reporting, auditing and training, to the extent required to comply with the Knox-Keene Health Care Service Plan Act of 1975 (as amended) (the "Knox-Keene Act") and Title 28 of the California Code of Regulations.

6. Territory and Licensure.

- 6.1 Agent is authorized to do business, under the conditions of this Agreement, within the SHP service area, as further described in Section 6.2 of this Agreement. Agent represents and warrants that it is licensed to solicit health insurance applications in these territories and that it will maintain licenses, in good standing, during the term of this Agreement, at Agent's own expense. This Agreement does not assign exclusive territorial rights to the Agent.
- 6.2 Agent shall not market, solicit or sell any SHP health care coverage product outside of the SHP service area approved by the DMHC. SHP may update the SHP service area from time to time to reflect additional DMHC service area approvals by providing written notice to Agent without need for an amendment to this Agreement. For purposes of this Section, written notice by SHP shall include SHP's updating of its service area listing available to Agent at the SHP website www.sutterhealthplus.org, without the necessity of additional notice under Section 22. Agent shall affirmatively check the SHP website to confirm Agent is aware of any changes to the SHP service area listing, and shall rely on the most recent update to such website in performing Services hereunder.
- 6.3 For purposes of this Agreement (including its exhibits), an SHP "health care coverage product" shall mean only a product described in the product listing available to Agent in accordance with Section 2.7 of this Agreement.
- 6.4 Agent represents that it is now actively engaged in the insurance business, and that Agent is familiar with the regulatory requirements applicable to its business. Agent shall take no action contrary to any regulatory requirement that might directly or indirectly subject SHP to adverse regulatory action or expense.
- 6.5 Agent shall be responsible for securing and keeping in effect any required licenses as described in Section
- 6.6 6.1 above. This shall include complying with any applicable continuing education requirements.
- 6.7 Agent shall forward copies of all required licenses to SHP prior to appointment.

7. Compliance.

- 7.1 Agent will perform its obligations under this Agreement in strict compliance with all applicable state, federal and local laws, including but not limited to the requirements of the California Knox-Keene Act and Title 28 California Code of Regulations as applicable to solicitors. Agent acknowledges and agrees that SHP has authority to oversee and monitor the Services rendered by Agent under this Agreement, including without limitation, reporting, auditing and training, as required to comply with the Knox-Keene Act and Title 28 of the California Code of Regulations.
- 7.2 Agent agrees to participate in SHP's licensing and appointment process, which requires Agent to provide the following: a legible copy of the Agent's current California Life and Health Agent License, a W9 form and proof of Errors and Omissions (E&O) insurance coverage.
- 7.3 Agent agrees to comply with its own policies regarding conflicts of interest. Agent further acknowledges that SHP maintains and enforces a Conflict of Interest Policy. Agent will use reasonable efforts to act in a manner that does not encourage, facilitate or cause the violation of the SHP Conflict of Interest Policy by individuals who are subject to that Policy. Agent represents and warrants that Agent, as well as any Agent personnel (if any) involved in the negotiation, implementation and performance of this Agreement have no knowledge of any circumstances constituting a conflict of interest with respect to Agent's transaction of business with SHP. Without limiting the forgoing, Agent represents and warrants that Agent is not bound by any regulatory, contractual or other restriction or negative covenant which in any way would prohibit or otherwise affect Agent's engagement hereunder or the performance of any of Agent's obligations under this Agreement.

Agent agrees to notify SHP within thirty (30) days of any such Agent personnel learning of any circumstances constituting a conflict of interest hereunder.
- 7.4 Agent certifies that it is not currently named as an excluded entity or individual on the "List of Excluded Individuals/Entities" of the U.S. Department of Health and Human Services Office of the Inspector General ("OIG List"), or listed on the U.S.

General Services Administration's List of Parties Excluded from Federal Procurement and Nonprocurement Program, and Agent is not aware of any pending or threatened exclusion or debarment action against Agent. Agent further certifies that Agent has not been: (i) convicted of or pleaded nolo contendere to a crime, or having been held to have committed any act involving dishonesty, fraud or deceit in a judicial or administrative proceeding to which Agent was a party, or (ii) named in an Order of the Director of the DMHC pursuant to Section 1386(c) or section 1388(d) of the Knox-Keene Act. Agent agrees to notify SHP immediately following Agent learning that this certification is no longer accurate, and this Agreement shall terminate without the need for written notice in the event Agent becomes so excluded or debarred during its term.

- 7.5 Subject to Section 12 of this Agreement (Advertisements and Collateral), Agent will provide Services under this Agreement such that the net product of such Services, including, but not limited to: Web-based internet information and applications, information, documentation and support, are usable by a person with a disability in accordance with Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181, et seq., and/or Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 701, et seq., and Section 1194.22 (a) – (p) of the Electronic and Information Technology Accessibility Standards, 36 C.F.R. Part 1194 (implementing Rehabilitation Act Section 508 (29 U.S.C. § 794d)).
- 7.6 Agent shall not engage in any marketing, solicitation or sales of SHP health care coverage products directed to persons with limited English proficiency (LEP) unless all such activities are conducted in the LEP individual's preferred language, including but not limited to discussions, explanations, responses to questions and the presentation of vital documents (subject to Section 12 of this Agreement (Advertisements and Collateral)), including but not limited to coverage application forms, benefit summary matrices and key provisions of evidences of coverage, as defined by Section 1367.04 of the California Knox-Keene Act and section 1300.67.04 of Title 28 California Code of Regulations. Specifically, Agent acknowledges that SHP is subject to the Knox-Keene Act requirements regarding the provision of interpreter services and written translations of vital documents, and Agent agrees that if Agent is unable to provide LEP persons with language assistance services as required by the Knox Keene Act, then Agent shall refer all such persons to the SHP sales department.
- 7.7 Agent agrees to attend and complete training for SHP's health care coverage products as dictated by SHP or required by DMHC. Failure to meet requirements as set forth by SHP may result in termination of this agreement. Agent represents and warrants that Agent shall only undertake to provide services hereunder if Agent has sufficient knowledge of SHP's organization, procedures, plan contracts, and the provisions of the California Knox-Keene Act, Insurance Code, and applicable rules thereunder to do so lawfully.
- 7.8 Agent shall not hold himself or herself out as representing, constituting, or otherwise providing services on behalf of the California Health Benefit Exchange ("Exchange") unless he or she has a valid agreement with the Exchange to engage in those activities.
- 7.9 All SHP contracted Agents are responsible for preventing, detecting and reporting suspected fraud, waste and abuse. If a contracted Agent detects any suspicious activity, he or she is required to notify the SHP Compliance Officer. The person reporting fraud may make himself/herself known by reporting the suspected fraud in person, or may report the suspected fraud anonymously via voicemail to the toll free hot-line or by U.S. Mail. All SHP contracted Agents shall immediately notify the SHP Compliance Officer of any customer complaint or if they are served with any paper or has knowledge of any legal or administrative action, investigation or proceeding against SHP.

8. Commissions.

- 8.1 Commissions, net of any charges such as for advances, return commissions or debts due SHP, shown on the monthly accounting, shall be paid as set forth in Exhibit A. Such commissions shall constitute full compensation for services performed under this Agreement. SHP may revise Exhibit A as deemed necessary with 45 days notice. All new and renewal commissions will be paid in accordance with the commission schedule in effect at the time the commission is due.
- 8.2 Commission payments will be made on new and renewal business in accordance with Exhibit A. New business is defined as an account which has not purchased a health care service plan from SHP, during the six (6) months prior to the effective date of the new health care service plan. All business that is not new business is renewal business.
- 8.3 Commissions will be paid monthly, but commissions will only be paid on premium payments or charges actually received and applied by SHP in the prior month. The SHP policies, procedures and commission schedules in effect at the time a commission payment is due shall apply. To receive commission payment pursuant to this Agreement, the Agent must hold a valid insurance license in the state of California during the entire term of this Agreement.
- 8.4 Should SHP, in its sole discretion, for any reason refund or credit to the customer any premium, the Agent will promptly, on demand, refund to SHP all compensation paid to the Agent for such premium. Compensation adjustments shall be made on decreases in premium for which first year compensation has previously been paid. The Agent grants a paramount and prior lien upon its account and upon any compensation due hereunder to secure the repayment of any net negative amount of the Agent's account or any other amounts owed by the Agent to SHP under this Agreement. SHP is authorized, at any time

either before or after the termination of this Agreement, to deduct from any compensation due from SHP to the Agent the entire amount of any funds owed by the Agent to SHP. Any compensation paid to the Agent for premiums later refunded or credited to the customer, or any overpayment of compensation shall be a debt due SHP from the Agent.

8.5 Agent shall be responsible for all taxes on compensation earned under this Agreement. Agent shall be responsible for providing all insurance or other coverages that it is required by law to provide for itself, or for any of its employees or contractors.

9. Lapsed Plan.

If any health care coverage contract lapses for a period exceeding three (3) months and is not subsequently reinstated, there shall be no further obligation upon SHP to pay commissions hereunder for such health care coverage contract unless said program is reinstated through the direct efforts of the Agent, as determined by SHP.

10. Gifts or Payment to Third Parties.

Agent shall not offer to pay or otherwise distribute any bonus or gratuity to potential subscribers or group customers for the purpose of inducing enrollment or to existing subscribers or group customers for the purpose of inducing the continuation of enrollment.

11. Records and Audit.

Agent must maintain adequate books and records in accordance with applicable law and standards within the health care insurance industry. SHP may audit Agent's records. Agent agrees to permit SHP to inspect and audit all information and records related to services Agent performs for SHP under this Agreement. SHP must give Agent 15 business days' notice and conduct the inspection and audit during regular business hours. In addition, all records, books and papers of Agent shall be open to inspection during normal business hours by the director of DMHC. Without limitation of the forgoing, Agent shall maintain, for a period of not less than five (5) years (or longer as may be required by applicable law, the books of account and other records related to the services performed by Agent hereunder. All such records, books, and papers of Agent shall be located in California. The most recent two (2) years of all such records shall be maintained by Agent in an easily accessible place at the offices of Agent. After such books and records have been preserved for two (2) years by Agent, they may be warehoused or stored, or microfilmed, subject to their availability to SHP and/or the Director of DMHC within not more than five (5) days after request therefore.

12. Advertisements and Collateral.

Agent acknowledges that any and all advertisements to be used in the marketing of SHP health care coverage products shall not be used without the express prior written consent of SHP. In the event that Agent intends to use any advertisement in the marketing of SHP health care coverage products in any medium (including without limitation print, audio or audio/visual), Agent shall provide complete copy of the proposed advertisement to SHP for review a minimum of ninety (90) days prior to the proposed use of such advertisement. Notwithstanding the forgoing, failure of SHP to approve any proposed advertisement within such ninety (90) day review period, shall not be deemed consent by SHP to the use of such advertisement. Any advertisement that SHP provides to Agent, or with respect to which SHP consents in writing to use by Agent, shall only be used by Agent only in the unaltered form and format in which such advertisement was approved for use. Agent shall not alter, modify, waive or change any of the terms, rates or conditions of any advertisements or other promotional collateral, receipts, policies or contracts of SHP in any respect.

13. Assignment and Delegation.

Neither party may, directly or indirectly, in whole or in part, either by operation of law or otherwise, assign or transfer this Agreement or delegate any of its obligations under this Agreement without the other party's written consent. Any attempted assignment, transfer or delegation without such prior written consent will be void and unenforceable.

14. Indemnification.

14.1 Each party (the "Indemnifying Party") shall be solely financially responsible for, and shall defend, indemnify and hold harmless the other party, its Affiliates and their respective owners, subsidiaries, directors, officers, employees, representatives, authorized agents, successors, successors-in-interest and assigns (collectively, the "Indemnified Party") from and against any and all Liabilities made by a third party (including reasonable attorney's fees) against an Indemnified Party arising or resulting from, or to the extent attributable to, any of the following: (i) any breach or material inaccuracy in the certifications, representations or warranties furnished by the Indemnifying Party in this Agreement; (ii) any material failure or inability of the Indemnifying Party (or of its personnel or contractors, agents, representatives, Affiliates or subcontractors, but not including Agent with respect to SHP) to perform or abide by any of the covenants, certifications, obligations, duties or responsibilities imposed upon the Indemnifying Party under this Agreement; (iii) any negligence or willful misconduct (including fraud) of the Indemnifying Party or its personnel or contractors occurring during or in connection with this Agreement or applicable laws and regulations; (iv) the violation by the Indemnifying Party of any laws,

regulations or licensure requirements applicable to its business or its performance under this Agreement. The Indemnifying Party agrees to promptly pay and fully satisfy any and all Losses, Judgments or Expenses incurred or sustained by the Indemnified Party as a result of any Liabilities of the types described in the foregoing clauses of this Section 14.1. In no event shall either party be liable in indemnification hereunder to the extent that such indemnification obligation results from the negligence of the Indemnified Party (including its personnel and subcontractors), or performance or nonperformance of the Indemnified Party's obligations under this Agreement, or the actions or omissions of the Indemnified Party's personnel or contractors in connection with the Indemnified Party's performance of this Agreement.

14.2 Procedure for Handling Third Party Liabilities. Each party shall provide prompt written notice to the other party upon learning of any occurrence or event that may result in an obligation of the other party under Section 14.1, provided that the omission by a party to give notice of a claim as provided in this Section 14.2 shall not relieve the other party of its obligations under Section 14.1 except to the extent that (i) the omission results in a failure of actual notice to the other party and (ii) the other party suffers damages as a result of the failure to give notice of the claim.

14.3 Definitions. For purposes of this Section 14, the following terms shall have the following meanings:

14.3.1 "Liabilities" shall mean and refer to any and all claims, legal or equitable causes of action, suits, litigation, proceedings (including a regulatory or administrative proceedings), grievances, complaints, demands, charges, investigations, audits, arbitrations, mediation or other process for settling disputes or disagreements, including, without limitation, any of the foregoing processes or procedures in which injunctive or equitable relief is sought (collectively, "Liabilities").

14.3.2 "Expenses" shall mean and refer to any and all costs, expenses and fees, including costs of settlement, attorneys' fees, accounting fees, and expert costs and fees incurred in connection with Liabilities which are the subject of indemnification or reimbursement under this Agreement or Losses or Judgments arising from such Claims.

14.3.3 "Judgments" shall mean and refer to any judgments, writs, orders, injunctions or other orders for equitable relief, awards or decrees of or by any court, judge, justice or magistrate, including any bankruptcy court or judge and any order of or by any Governmental Authority.

14.3.4 "Losses" shall mean and refer to any losses, damages of any kind or nature, assessments, fines, penalties, deficiencies, interest, payments, expenses, costs, debts, obligations, liabilities, liens or Judgments which are sustained, incurred or accrued.

15. Assets.

Agent represents and warrants that Agent shall all times during the Term maintain a tangible net worth at least equal to twenty (20) percent of Agent's aggregate indebtedness or \$10,000, whichever is greater, and shall maintain liquid net assets of at least \$5,000 in excess of Agent's current liabilities.

16. Insurance.

16.1 Errors and Omissions. Agent represents and warrants that Agent shall maintain, in good standing, errors and omissions insurance coverage with a specific limit of liability of at least one million dollars (\$1,000,000) and an aggregate limit of liability of at least one million dollars (\$1,000,000) during the entire term of this Agreement. The Agent is further required to provide SHP, at its request, with a copy of such errors and omissions insurance policy. The Agent must notify SHP if the errors and omissions coverage is terminated, canceled or lapsed.

16.2 Other Insurance. Agent represents and warrants that Agent shall maintain, in good standing, all other insurance, including but not limited to commercial liability and worker's compensation insurance as required by State or Federal Requirements.

17. Termination without Cause.

17.1 Either party to this Agreement on sixty (60) days' written notice to the other may terminate this Agreement by mail to the last known address.

17.2 If this Agreement is terminated by either party without cause, Agent, or Agent's estate, if applicable, shall continue to receive compensation on eligible premium as if the terms of Section 8, above, remained in-force during the first 12 months this Agreement is in-force.

18. Termination for Cause.

18.1 Without restricting the right of SHP to terminate the Agreement on sixty (60) days' written notice, SHP may immediately terminate this Agreement for cause upon written notice to the Agent, at its last known address, for the following reasons:

- 18.2 If Agent breaches a term of this Agreement, SHP may terminate this Agreement immediately by notifying Agent in writing of the effective date of termination. The effective date of termination pursuant to this Section may be the date of the breach, or any later date that SHP specifies in the notice of termination;
- 18.3 If Agent does not have, or fails to maintain, a license required to perform services or receive compensation under this Agreement (including if Agent's license is revoked by a licensing or regulatory agency). It shall be considered a material breach of this Agreement by Agent and this Agreement shall be terminated effective as of the date that Agent first lost, or failed to maintain, the license without regard to when SHP learns of the loss of, or failure to maintain, the license or when SHP notifies Agent that this Agreement has been terminated. SHP may recover any compensation paid to Agent after Agent loses or fails to maintain any such license;
- 18.4 If Agent fails to comply with the policies and procedures of SHP or the laws of any regulatory authority having jurisdiction over the parties;
- 18.5 If a licensing or regulatory agency subjects Agent to any disciplinary sanction (for example, a reprimand or temporary suspension of Agent's license), SHP may terminate the Agreement by providing written notice to Agent effective upon receipt of the notice, or any later date that SHP specifies in the notice. No compensation will be payable to Agent for services rendered during any period in which Agent's license is temporarily suspended. SHP may recover any compensation paid to Agent during any period in which Agent's license is temporarily suspended;
- 18.6 Upon Agent's dissolution, receivership, insolvency or bankruptcy;
- 18.7 Upon disclosure by Agent of the compensation schedule to any outside parties, unless otherwise required to do so, by law;
- 18.8 Failure of Agent to maintain insurance requirements as set forth in Section 16 of this Agreement; and
- 18.9 If Agent engages in, or knowingly assists another to commit, fraudulent or dishonest activity in connection with the solicitation, enrollment or renewal of any customer, whether a customer of SHP or not, this Agreement shall terminate effective as of the date on which Agent engaged in or assisted with such activity without regard to when SHP learns of the fraudulent or dishonest activity or when SHP notifies Agent that this Agreement has been terminated. SHP may recover any compensation paid to Agent after Agent engaged in, or knowingly assisted another to commit, the fraudulent or dishonest act without regard to when Agent actually earned such compensation.

Unless specifically stated otherwise, if Agent is terminated for cause, no compensation will be due the Agent subsequent to the effective date of termination.

19. Waiver.

Failure of SHP to enforce compliance with the terms and conditions of this Agreement shall not be construed as a waiver of the right to exercise the same at any time.

20. Ownership of Proprietary Rights.

Agent agrees that SHP shall be the owner of all proprietary rights in and to any documentation, records, text and other works of authorship, data, databases, information, know-how, conceptions, discoveries, inventions, designs, symbols, names, procedures, methods, processes, improvements, products, prototypes, samples, trade secrets and other property and materials, tangible or intangible, whether or not patentable or registrable under copyright, patent or similar laws, within the foregoing: (i) furnished to Agent, or to which Agent is given access by SHP in connection with the performance of this Agreement; and/or (ii) conceived, reduced to practice, or otherwise created, authored, developed or generated in connection with performance of this Agreement by Agent either solely or jointly with SHP (collectively, the "Intellectual Property"). Agent shall not have any interest in such Intellectual Property. Accordingly, Agent hereby assigns to SHP all of Agent's right, title and interest in and to the Intellectual Property. Agent further acknowledges its obligation to assist SHP or its designee, at SHP's (or designee's) expense, in every proper way to secure SHP's, or its designee's, rights in the Intellectual Property and any copyrights, patents, trademarks, moral rights or other intellectual property rights relating thereto. This obligation includes maintaining and preserving accurate and complete records of all pertinent information and data with respect thereto ("Records"), disclosing to

SHP or its designee all Intellectual Property and Records, and executing all applications, specifications, oaths, assignments, recordations and instruments necessary to obtain, maintain and transfer such rights to SHP or its designee (or, if not transferable, to waive such rights). The parties further agree that nothing in this paragraph or in this Agreement shall limit SHP sole and exclusive intellectual property rights in and to its own data provided to Agent during the course of this Agreement.

21. Confidentiality.

- 21.1 Each party shall hold the following "Confidential Information" in strict confidence and not disclose the same to any other person or entity except as provided herein: each other's proprietary and confidential records and information, including but not limited to all information, pricing and terms relating to or contained in this Agreement; the content of all negotiations

and other discussions regarding contract terms, conditions and pricing; all service and product data, trade secrets, financial data, pricing, business plans and any other information or technology received from the other party in implementing this Agreement; the confidential information of vendors and other third parties disclosed to the receiving party as part of the provision of Services under this Agreement; all personally identifiable information of a party's employees, agents, patients and customers; and all information derived from the foregoing.

21.2 Notwithstanding the above:

- 21.2.1 A party may disclose Confidential Information as required by law, provided that such disclosing party provides reasonable prior notice to the other party to enable such other party to attempt to prevent or limit the disclosure and the disclosing party assists the other party upon request in seeking relief from or limiting the disclosure.
- 21.2.2 SHP may disclose contract terms, conditions and pricing terms, as well as other Confidential Information, including vendor and other third party confidential information, to those parties and/or consultants not already mentioned above that SHP has or will contract with or retain in the course of managing its business, provided those parties/consultants agree in writing that they shall not use or divulge such Confidential Information to any third party except as necessary for the discharge of their obligations to SHP or as required by law.
- 21.2.3 SHP may disclose contract terms, conditions and pricing terms, as well as other Confidential Information to state and federal agencies, including but not limited to the DMHC, that have regulatory authority for licensing and compliance oversight of SHP operations.
- 21.2.4 A party may disclose Confidential Information with the prior written consent of the other party.

22. Notice.

Unless otherwise set forth explicitly herein, any notice required or permitted under this Agreement shall be given in writing, to the other party, by hand, via nationally recognized overnight delivery service, or via Certified Mail, Return Receipt Requested, postage prepaid, addressed as follows:

If to SHP: Sutter Health Plan
Attn: VP of Sales
2700 Gateway Oaks Drive Suite 1200
Sacramento, CA 95833

If to Agent: Agent Name:
Contact Name:
Address:
City: State: ZIP:
Email:
Phone:

23. Severability.

In the event that any term or condition of this Agreement is determined to be invalid or unenforceable by a Court of competent jurisdiction, such term or condition shall be severed from this Agreement and the remaining terms and conditions shall be given their full force and effect.

24. Governing Law.

This Agreement and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California.

25. Mandatory Binding Arbitration.

- 25.1 Any controversy, dispute or claim arising out of the interpretation, performance or breach of this Agreement shall be resolved by binding arbitration at the request of either party, in accordance with the Commercial Rules of the American Arbitration Association. Such arbitration shall occur in the County of Sacramento, California, unless the parties mutually agree to have such proceeding in some other locale. The arbitrators shall apply California substantive law and federal substantive law where state law is preempted. The provisions of California law concerning the right to discovery and the use of depositions in arbitration are incorporated herein by reference and made applicable to this Agreement. Under no circumstance do the arbitrators have the right to impose punitive damages.
- 25.2 Agent shall not initiate litigation in any dispute between Agent and any applicant or subscriber, without the prior written consent of SHP.

26. Compliance with Health Insurance Portability and Accountability Act of 1996 (HIPAA).

As an entity contracted with SHP to market health care coverage products, Agent is designated as a business associate of SHP and agrees to comply with the following privacy provisions: Use of Protected Health Information. Agent shall not use or disclose Protected Health Information (as defined more specifically at 45 C.F.R. § 160.103) for any purpose other than (i) the purposes contemplated by the Agreement (ii) as required or allowed under the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder at 45 C.F.R. Parts 160 through 164 (collectively, "HIPAA"); or (iii) as otherwise required by law. In no event may Agent use or disclose Protected Health Information in a manner that violates or would violate HIPAA if such activity were engaged in by SHP. Agent further agrees to execute the SHP standard Business Associate Agreement as part of SHP's Agent orientation certification and training procedures, which shall be completed before Agent engages in any marketing, solicitation or sales activities on behalf of SHP.

27. Entire Agreement.

This Agreement, including the Recitals and Exhibits, which are specifically incorporated herein, constitutes the entire agreement between the parties. This Agreement may be modified only in writing signed and dated by each party's management level representative who has actual signature authority to legally bind the party on whose behalf the signature is made.

By their signatures below, each of the following represent that they have the authority to execute this Agreement and to bind the party on whose behalf their execution is made.

IN WITNESS WHEREOF, The parties have accepted and agreed to this Agreement as of the Effective Date executed by SHP.

Agent

Sutter Health Plan

.....
Signature



.....
Agent Name

**Robert Carnaroli
Vice President of Sales**

.....
Date

.....
License #

.....
Expires on

Exhibit A

Compensation Schedule for Agents Receiving Commission Compensation

The compensation for sales of these SHP health care coverage products will be effective June 1, 2020 and commission to Agent will be paid after this date as follows:

Agent Commission		
Health Care Coverage Product	New Business	Renewal
Individual	3% of paid monthly premium	3% of paid monthly premium
Small Group (1 - 50)	6.5% of paid monthly premium	6.5% of paid monthly premium
Small Group (51 - 100)	5% of paid monthly premium	5% of paid monthly premium
Large Group (101+)	To be negotiated based on paid monthly premium	

Calculation of Commission Payments

1. No compensation shall be payable to Agent with respect to: (i) for group business, any subscriber that does not live, work or reside in the SHP service area (as described in Section 6.2), or (ii) for individual business, any individual that does not live or reside in the SHP service area (each as reasonably determined by SHP). In no event shall compensation be paid hereunder with respect to any business that does not conform to SHP's underwriting guidelines.
2. "Paid Monthly Premium" means: Premium paid on billed amount based on individual or group coverage. Commission calculation based on the amount remitted by the individual, or the group on behalf of its subscribers.

Timing of Commission Payments

1. Commissions will be paid to Agent on a monthly basis, postmarked within 10 business days following the end of the month for which the individual (IFP) or group coverage is effective and for which premium has been received.
2. Commission rates will be paid to Agent as long as the IFP or group coverage remains in force.

Incentive Payments

SHP, in its sole discretion, may offer incentive payments from time to time. Such incentive payments, when offered, will be subject to all terms and conditions of this Agreement. Notwithstanding the foregoing, incentive payments will be subject to the specific payment terms and conditions set forth in the applicable incentive payment announcement issued by Sutter Health Plus.