

This AGENT AGREEMENT ("Agreement") is entered into between CHOICE Administrators® Insurance Services, Inc., a California corporation ("CHOICE Administrators") and _____ ("Agent"). CHOICE Administrators and Agent may hereinafter be referred to individually as "Party" and collectively as "the Parties."

In consideration of the mutual promises and representations contained herein and other good and valuable consideration, CHOICE Administrators and Agent agree as follows:

SECTION 1. INTRODUCTION

- 1.1 **Effective Date and Term:** This Agreement is effective _____ ("Effective Date") and will continue until terminated as provided herein.
- 1.2 **Agent's Authority:** CHOICE Administrators hereby authorizes Agent to market the products and services described in the Commission Schedule ("Exhibit 1") attached hereto and incorporated herein by reference ("Products") to employers who are sometimes referred to herein as "Groups".
- 1.3 **Not Exclusive.** This Agreement is not exclusive. Except as otherwise set forth herein, either party may contract at any time for similar services and obligations with others.
- 1.4 **Reserved Rights:** CHOICE Administrators in its discretion reserves the right to:
 - 1.4.1 Decline acceptance of any application;
 - 1.4.2 Establish a commission schedule for Products not presently offered by CHOICE Administrators.
 - 1.4.3 Discontinue or modify Products offered.
 - 1.4.4 Authorize Agent to market additional Products or decrease the Products that Agent is authorized to market upon 30 days' notice

SECTION 2. AGENT'S RESPONSIBILITIES

- 2.1 **Marketing:** Agent shall implement a focused marketing strategy based on approved materials supplied by CHOICE Administrators under which Agent will promote the sale of Products to Groups described in Exhibit 1. Agent shall represent Products in no less favorable manner than it markets similar offerings.
- 2.2 **Advertising.** Agent is prohibited from using any advertisement or written materials containing the name or logo of CHOICE Administrators, or any service mark thereof, or any variation thereof, without CHOICE Administrators' prior written consent.
- 2.3 **Service:** Agent shall provide prompt service to applicants and those purchasing the Products for which Agent is being paid commissions (as defined in Section 4 below) hereunder and otherwise provide such aid in the administration of the Products marketed hereunder as may fall within the scope of Agent's duties as an agent.
- 2.4 **Proposals:** Agent shall prepare proposals for Products offered by CHOICE Administrators using rates provided by CHOICE Administrators.
- 2.5 **Enrollment/Underwriting:**
 - 2.5.1 Agent shall prescreen all cases before they are sent to CHOICE Administrators to make sure all information necessary or pertinent to underwriting the case has been obtained.
 - 2.5.2 Agent shall receive master applications, enrollment cards, evidence of insurability, and collect initial monthly gross premiums.
 - 2.5.3 Agent shall ensure that each application is fully completed by the applicant.
 - 2.5.4 All funds received by Agent are to be on a check of the Group applying for coverage, with the payee being CHOICE Administrators. Agent agrees to immediately remit same to CHOICE Administrators with standard information requested by CHOICE Administrators. Monies received by Agent for or on behalf of CHOICE Administrators or health benefit plans offered by health care service providers or insurance carriers ("Plans") shall be received in a fiduciary capacity and segregated from all other funds. Agent is not authorized to negotiate any check payable to CHOICE Administrators or Plan.
- 2.6 **Compliance:** Agent shall comply with CHOICE Administrators' rules and regulations, the terms of this Agreement, and pertinent state and federal laws and regulations.
- 2.7 **Licensing:** Agent shall be duly licensed and authorized by the State(s) where it markets insurance products and is paid commissions covered by this Agreement. At the request of CHOICE Administrators, Agent shall provide a photocopy of Agent's insurance license. Agent is solely responsible for obtaining and maintaining its own licensure and all other required authorizations to market the Products, including paying any related fees. Agent agrees to notify CHOICE Administrators immediately upon the renewal, suspension, revocation or expiration of any such license and of any disciplinary proceedings against it or Agent's Independent Contractors (as defined herein) or employees relating to any license issued by an applicable regulatory authority. Agent represents and warrants that it has never suffered the loss, suspension or termination of any license issued by any governmental authority in connection with the sale of any type of insurance, prepaid health care, hospital or professional benefits agreement; that it has never been accused, charged, or convicted of a crime involving moral turpitude; and that Agent has never been excluded, barred or is not otherwise ineligible for participation in federal or state health care programs.
- 2.8 **Errors and Omissions Coverage:** At Agent's own expense, Agent shall maintain insurance coverage as is reasonably necessary in its sound business judgment to provide adequate coverage against losses and liabilities for its acts and omissions in performance of its responsibilities under the Agreement. Agent shall provide evidence of such coverage prior to signing this Agreement and thereafter at the request of CHOICE Administrators. Agent agrees to make all reasonable efforts consistent with advice of counsel and the requirements of Agent's liability insurance carrier to coordinate the defense of all claims in which CHOICE Administrators is named as a defendant or has a possibility of being so named.

- 2.9 **Products Materials:** All advertising, descriptive material, software, and rates supplied by CHOICE Administrators® shall remain the property of CHOICE Administrators, and Agent shall return or destroy such materials and all records, applications and property of CHOICE Administrators within ten (10) business days of termination of this Agreement or receipt of a written request from CHOICE Administrators, and Agent shall not retain any copies, in any form, of such materials other than those reasonably necessary to (i) continue to service an Employer that Agent is servicing or (ii) comply with applicable laws, rules or regulations. Agent acknowledges and agrees that it is prohibited from making any representation(s) regarding the nature or scope of application or eligibility requirements or of Program benefits except by use of written materials prepared and furnished by CHOICE Administrators or the Plan or a general agency appointed by CHOICE Administrators. Agent agrees not to engage in practices of solicitation that constitute steering of prospective subscribing groups to or away from the Programs to the exclusion of other group market health contracts because of the health status, claims experience, industry, occupation or geographical location of the small employer in violation of applicable state laws and regulations, including, but not limited to, California Health and Safety Code Section 1357.03. Agent grants CHOICE Administrators the right to request the disconnection of any line for any telephone number indicated in any advertisement, telephone directory, or other materials that either contains an unauthorized use of Intellectual Property, or otherwise fails to comply with CHOICE Administrators' rules and guidelines regarding advertising and written materials.
- 2.10 **Internet Linking.** Before linking to CHOICE Administrators' Internet site for any purpose, Agent shall follow up with CHOICE Administrators, and execute and deliver to CHOICE Administrators, the appropriate Internet linking agreement. Agent shall ensure that CHOICE Administrators Products are represented on Agent's Website in correlation with all Agent represented products.
- 2.11 **Records.** Agent shall maintain accurate complete records of all transactions pertaining to applications for the Products, all records required by governmental authorities, all records of or pertaining to Agent's and its agent's activities under or pursuant to this Agreement and all records relating in any way to this Agreement including all records relating to business produced under this Agreement. Agent shall retain all such records for a period of at least ten (10) years even if this Agreement terminates prior to that time. Within one business day of CHOICE Administrators' request, Agent shall make those records available for inspection and copying by CHOICE Administrators at a mutually convenient time and place during normal business hours and shall allow CHOICE Administrators to interview any of Agent's employees who might reasonably have information relating to those records at no cost to CHOICE Administrators. The party requesting the inspection and copying will bear the reasonable expense of the inspection and copying.
- 2.12 **Reporting.** If received by Agent, Agent shall immediately forward to CHOICE Administrators all written complaints from any government authority and all inquiries and attorney letters containing complaints or inquiries concerning Agent's, or its Independent Contractors' (as defined herein) performance under this Agreement, or the Products marketed by Agent or its Independent Contractors for CHOICE Administrators. Agent shall also immediately forward to CHOICE Administrators its response to any such complaints or inquiries and all information available concerning, relating to or arising from said complaints or inquiries which may assist CHOICE Administrators in responding to such complaints or inquiries. Agent shall notify CHOICE Administrators immediately of any expiration, termination, suspension or other government action affecting its or any of its Independent Contractor's licenses or authority to perform under or pursuant to this Agreement or any other agreement with CHOICE Administrators. By entering this Agreement, Agent represents that its license has not previously been subject to any suspension, termination or other disciplinary action by any governmental authority and that Agent has never been convicted of a felony or misdemeanor involving theft, misappropriation of monies or moral turpitude.
- 2.13 **Expenses.** Agent shall be solely responsible for all expenses incurred by Agent in performance of this Agreement. Agent is responsible for its license fees and taxes.
- 2.14 **Agent's Independent Contractors.** Agent may work with sub-agents or contractors ("Agent's Independent Contractors") to fulfill Agent's obligation(s) under this Agreement, but acknowledges and agrees that Agent's Independent Contractor will not be authorized to act, until approved by CHOICE Administrators, in writing, which approval may be withdrawn at the sole discretion of CHOICE Administrators. Agent agrees to be solely responsible and be jointly and severally liable for Agent's Independent Contractors under this Agreement, including their acts and omissions, and to manage all business matters related to them including but not limited to, their compensation, training, supplies, and correspondence. Agent agrees to ensure Agent's Independent Contractors' adherence to all applicable terms of this Agreement, including, but not limited to, requirements regarding errors and omissions coverage, licensure, knowledge of Programs, the programs offered by Participating Plans, solicitations and advertising.

SECTION 3. LIMITATIONS ON AGENT'S AUTHORITY

- 3.1 **Prohibited Acts:** Agent shall not have authority to:
- 3.1.1 Enter into a contract or incur debt, expense, or liability in the name of or on behalf of CHOICE Administrators or Plan(s).
 - 3.1.2 Make, alter or discharge contracts for Products or Plan(s) or waive forfeitures, grant permits, name special rates, or otherwise bind CHOICE Administrators or Plan(s) in any way.
 - 3.1.3 Issue a binding receipt for any contributions or premiums.
 - 3.1.4 Make endorsements on the Plan's Policies or Certificates of Coverage.
 - 3.1.5 Pay, allow or offer a rebate of premium.
 - 3.1.6 Appoint an agent for CHOICE Administrators without the prior written approval of CHOICE Administrators.
 - 3.1.7 Offer any incentives whatsoever to market Products other than those offered by CHOICE Administrators.

SECTION 4. COMMISSIONS

- 4.1 **Payment of Commissions to Agent:** In consideration for the services provided by Agent to CHOICE Administrators under this Agreement, CHOICE Administrators agrees to pay Agent first year and renewal commissions (collectively "Commissions") on premiums paid in full by a Group whose enrollment in Products was produced by Agent through a proposal and/or the transmission of an application indicating the application is made through Agent, initial premiums and other documents as called for herein all submitted to CHOICE Administrators through Agent. Commissions shall be calculated based solely on premiums accepted and received by CHOICE Administrators ("Paid Premiums"). Commission for all Products is described in Exhibit 1. Commissions will be paid on Groups in force at the end of the month accounting in accordance with the policies of CHOICE Administrators. Commissions for Paid Premiums received will be paid electronically (e.g. direct deposit or pay card) within thirty (30) business days. Agent is not entitled to reimbursement for expenses, nor is Agent entitled to any other compensation except as set forth in this Agreement. CHOICE Administrators shall have no obligation to pay commissions to Agent on Paid Premiums received after Agent's death.

- However, CHOICE Administrators® may, in its discretion, and if permitted by applicable law, pay to Agent's heirs or estate, commissions that would have been due pursuant to this Agreement on Paid Premiums received after Agent's death.
- 4.2 **Conditions of Payment.** Agent acknowledges that Groups may transfer at any time from one agent to another and that any Group may change agents and or designate a new agent-of-record by notifying CHOICE Administrators in writing. Payment of Commissions to Agent is contingent upon the following:
- 4.2.1 CHOICE Administrators retains the Group;
 - 4.2.2 Agent reasonably services all Groups as determined by CHOICE Administrators in its sole discretion;
 - 4.2.3 Agent complies with the rules, practices, guidelines and procedures of CHOICE Administrators and all applicable laws, rules and regulations;
 - 4.2.4 Agent maintains all licenses, authorizations, and appointments required to perform its obligations under this Agreement;
 - 4.2.5 Agent continues to service the Group for whom Commission is being paid; and
 - 4.2.6 Agent remains the designated broker or agent-of-record for the Group for whom Commission is being paid.
- 4.3 **Lien on Commissions and Right of Offset:** If Agent receives any compensation to which it is not entitled under this Agreement, it shall be a debt of Agent payable to CHOICE Administrators on demand. CHOICE Administrators shall have a first lien against any Commissions due to Agent under this Agreement for any unearned Commissions paid to Agent under this Agreement and any other debt of Agent to CHOICE Administrators. At any time, CHOICE Administrators may offset any debt of Agent to CHOICE Administrators under this or any other agreement against any monies due Agent.
- 4.4 **Accounting.** CHOICE Administrators shall furnish Agent with monthly statements indicating all Commissions earned and payments made to Agent. Agent shall notify CHOICE Administrators in writing of any alleged errors in the accounting statement within sixty (60) days after the closing date of the statement. Failure to give such notification within that time shall be a waiver of the right to object to such accounting, and the accounting shall be deemed accepted by Agent as true and correct. The Agent's account on CHOICE Administrators' books shall be competent evidence of the contents thereof for all purposes.
- 4.5 **Refund of Paid Premiums:** If CHOICE Administrators or Plan(s) directly or indirectly refunds part or all of a policy premium, Agent shall repay to CHOICE Administrators all Commissions paid to Agent based on the refunded portion of the Paid Premiums.
- 4.6 **Modification of Commissions:** CHOICE Administrators may modify the schedule of Commissions to be paid to Agent at any time. The new schedule of Commissions shall be effective thirty (30) days after written notice to Agent. Such notice may be given by publishing on CHOICE Administrators' website, or by written communication, including email, facsimile, and U.S. mail.
- 4.7 **Broker or Agent-of-Record:** Any group may change brokers or agents and designate a new broker or agent-of-record by notifying CHOICE Administrators in writing. The change will take place the first of the following month after written notice is received. Notice of the impending change will be sent immediately to the current broker or agent-of-record upon receipt of the written request from any group of CHOICE Administrators.

SECTION 5. TERMINATION

- 5.1 **Termination:**
- 5.1.1 **No Cause:** This Agreement may be terminated by either Party without a showing of cause by providing thirty (30) days' prior written notice to the other Party.
 - 5.1.2 **For Cause for Failure to Meet Obligations:** If either CHOICE Administrators or Agent defaults in the performance of any duties or obligations under this Agreement and does not cure such breach within thirty (30) days after written notice of such breach from the non-defaulting Party, the non-defaulting Party may terminate this Agreement immediately upon written notice of the termination to the other Party.
 - 5.1.3 **Immediate Termination For Cause:**
 - 5.1.3.1 **Termination By Either Party.** Either Party may terminate this Agreement immediately, by providing written notice to the other, due to the other Party's (i) insolvency; (ii) bankruptcy; (iii) general assignment for the benefit of creditors; (iv) suffering or permitting the appointment of a receiver for its business or assets; (v) misrepresentation, gross negligence, fraud or embezzlement by the other party, its officers, agents or employees; (vi) failure to maintain required licenses or to comply with applicable State or Federal licensing requirements; or (vii) failure to comply with applicable state or federal laws or regulations;
 - 5.1.3.2 **Termination by CHOICE Administrators.** CHOICE Administrators may terminate this Agreement immediately by providing written notice to Agent if Agent (i) assigns any of its rights or obligations hereunder without the prior written consent of CHOICE Administrators; (ii) transfers more than 51% of assets to another party or otherwise undergoes a change in ownership without the prior written consent of CHOICE Administrators, which consent shall not be unreasonably withheld; (iii) offers an incentive to market the Products other than incentives offered by CHOICE Administrators; or (iv) Agent markets any other multiple carrier employee Product similar to CHOICE Administrators, excluding Covered California for Small Business ("CCSB").
- 5.2 **Commissions After Termination**
- 5.2.1 **Commissions After Termination** If this Agreement terminates other than pursuant to Section 5.1.3.1 (v) – (vii), inclusive, or 5.1.3.2(i) of this Agreement, then Agent shall continue to be paid Commissions under this Agreement for business produced by or through Agent prior to the termination of this Agreement so long the conditions of payment set forth in Sec. 4.2 are met.
 - 5.2.2 **No Further Commissions After Termination.** If this Agreement terminates pursuant to Section 5.1.3.1 (v) – (vii), inclusive, or 5.1.3.2 (i), then from and after the date of termination of this Agreement, Agent shall have no further right to any Commissions on business produced by or through Agent pursuant to this Agreement.

SECTION 6. GENERAL PROVISIONS

- 6.1 **Entire Agreement:** This Agreement embodies the entire understanding between Agent and CHOICE Administrators regarding the subject matter hereof and supersedes all prior and contemporaneous oral or written agreements relating to the same subject matter.
- 6.2 **Severability:** The provisions of this Agreement shall be severable and the invalidity or unenforceability of any provision(s) hereof shall not affect the validity or enforceability of the remaining provisions.
- 6.3 **Headings:** The headings contained in this Agreement are for convenience only and will not affect in any way the meaning or interpretation of this Agreement.

- 6.4 **Waiver/Modification/Amendment:** Except as set forth in Section 4.6 regarding Modification of Commissions, no waiver, modification or amendment of this Agreement shall be valid or binding unless the same is in writing and duly executed by the Parties.
- 6.5 **Assignment:** Agent may not assign, transfer, or dispose of any interest Agent may have under this Agreement without the prior written approval of CHOICE Administrators®.
- 6.6 **Confidential Information:** Agent and CHOICE Administrators each acknowledge that in performance of this Agreement, each Party has and will continue to disclose to the other, their respective proprietary and confidential information (Confidential Information), including, but not limited to, client lists. Agent and CHOICE Administrators agree that during the term of this Agreement and at all times thereafter, each party shall: (i) keep such Confidential Information of the other Party in strict confidence; (ii) not disclose Confidential Information of the other Party to any third parties or to any of its employees not having a legitimate need to know such information; and (iii) not use Confidential Information of the other Party for any purpose not directly related to and necessary for the performance of its obligations under this Agreement (unless required to do so by a court of competent jurisdiction or a regulatory body having authority to require such disclosure); and (iv) return all Confidential Information and all copies thereof to the other Party within ten (10) business days of the termination of this Agreement or the other Party's demand whichever occurs first. In the alternative, a Party may request that the Confidential Information be destroyed. The Party destroying the information must certify in writing to its destruction within ten (10) business days of the request for destruction. The term Confidential Information, as used herein, does not include information which: (i) becomes generally available to the public other than as a result of a disclosure by a Party hereto, its representatives, or its agents; (ii) was available to the receiving Party on a non-confidential basis prior to its disclosure hereunder by a Party or its agents; (iii) becomes available on a non-confidential basis from a third-party source provided that such third party source is not bound by a confidentiality agreement with the other Party hereto; or (iv) is independently developed by the receiving Party without the use of, or reference to, the disclosing Party's Confidential Information.
- 6.7 **Use of Name.** The Parties hereto each reserve to itself the right to, and the control over the use of its names, symbols, trademarks and service marks, currently existing or hereafter established, and neither Party shall use the other's names, symbols, trademarks or service marks in any way without the prior written consent of the other Party.
- 6.8 **Notices:** Unless otherwise set forth herein, all notices between Agent and CHOICE Administrators provided for herein shall be sent by confirmed facsimile; by guaranteed overnight mail, with tracking capability; or by postage prepaid first class United States mail, with tracking capability addressed to the other party at their respective addresses as set forth below.

If to CHOICE Administrators:

CHOICE Administrators Insurance Services, Inc.
Attention: Adam Roye
Senior Vice President and Executive Director of Strategy and Programs
721 South Parker, Suite 200
Orange, CA 92868
FAX: 714-908-3531

With Copy to the Legal Department at the same address

If to Agent:

FAX

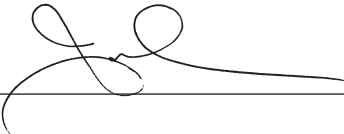
Notices shall be deemed provided when sent except as otherwise set forth in this Agreement. Either party may change the address to which it is to be notified by notice to the other in the manner set forth in this section.

- 6.9 **Interpretations:** Agent and CHOICE Administrators agree that this Agreement's terms will be construed fairly and not in favor of or against a Party, regardless of which Party drafted the Agreement's terms.
- 6.10 **Governing Law/Venue:** This Agreement is and shall be subject to and governed by and construed and enforced pursuant to the laws of the State of California without regard for conflicts of law principles. The Parties agree to exclusive jurisdiction in Orange County, California.
- 6.11 **Heirs/Assigns:** This Agreement shall bind and inure to the benefit of the Parties, the Parties' respective heirs, executors, administrators, assigns, successors-in-interest, officers, directors, and shareholders.
- 6.12 **No Third Party Beneficiaries:** Nothing express or implied in this Agreement is intended to confer upon any person other than Agent and CHOICE Administrators, their respective successors or assigns, any rights, remedies or obligations whatsoever.
- 6.13 **Force Majeure:** Agent and CHOICE Administrators will not be deemed in default of this Agreement, nor held responsible for, any cessation, interruption or delay in the performance of its obligations to provide such services hereunder due to causes beyond its reasonable control, including, but not limited to, natural disaster, act of God, labor controversy, civil disturbance, disruption of the public markets, terrorism, war or armed conflict, or the inability to obtain sufficient materials or services required in the conduct of its business from vendors or other parties, including Internet access, or any change in or the adoption of any law, judgment or decree.
- 6.14 **Indemnification:** Agent shall defend, indemnify, and hold harmless CHOICE Administrators, its affiliates, officers, directors, shareholders and employees against any claim, cause of action, injury, suit, demand, expense, including reasonable attorneys' fees and costs caused by, resulting from, arising from or in connection with any breach of this Agreement or act or omission by Agent, its officers, or representatives or Agent's Independent Contractors.
- 6.15 **Right to Tender or Undertake Defense:** If CHOICE Administrators is named a party in any judicial, administrative or other proceeding arising out of or in connection with this Agreement or in a matter where Agent is obligated to indemnify CHOICE Administrators under this or any other agreement, then CHOICE Administrators has the option at any time to either (1) tender its defense to Agent, in which Agent shall provide qualified attorneys, consultants, and other appropriate professionals to represent CHOICE Administrators' interest at Agent's expense, or (2) undertake its own defense, choosing the attorneys, consultants, and other appropriate professionals to represents its interests, in which case Agent shall be responsible for and shall pay reasonable fees and expenses of such attorneys, consultants, and other appropriate professionals. If CHOICE Administrators elects option (2) herein

- then, Agent shall be afforded a reasonable opportunity to participate in the defense and attend the legal proceedings at its own expense; however, CHOICE Administrators® shall have sole control of the defense.
- 6.16 **Right to Control Resolution:** Notwithstanding that CHOICE Administrators may have tendered its defense to Agent, neither Party shall settle, compromise, or resolve any claims, causes of action, liabilities, or damages against CHOICE Administrators without the consent of the other Party which consent shall not be unreasonably withheld. Any such resolution will not relieve Agent of its obligation to indemnify CHOICE Administrators.
- 6.17 **Independent Contractor:** Agent and CHOICE Administrators are independent contractors with respect to each other and nothing in this Agreement will be deemed to create an employee/employer relationship; a partnership; or joint venture between them. It is agreed that Agent is an independent contractor and is therefore responsible for its own workers compensation, unemployment compensation, insurance, social security, withholding tax, and all other expenses and benefits customarily paid or provided by an employer including sick leave or vacation. No employee rights or benefits will inure to Agent or Agent's Independent Contractors under this Agreement.
- 6.18 **Survival:** In the event of termination of this Agreement, the terms of Sections 1.1- 1.3, inclusive; 2.2; 2.3; 2.6- 2.9, inclusive; 2.11- 2.14, inclusive; 3.1; 4; 5.2; and 6 and the attached Exhibits shall survive and continue in full force and effect.
- 6.19 **Attorney's fees/Costs:** If any action or proceeding is brought for enforcement of this Agreement or for a declaration of rights and duties hereunder or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing Party shall be entitled to recover reasonable attorney's fees, awarded as part of a final judgment or settlement by a court of competent jurisdiction, and other costs incurred in that action or proceeding in addition to any other relief to which the Parties may be entitled.
- 6.20 **Business Associate Agreement.** Agent shall execute and deliver to CHOICE Administrators the Business Associate Agreement ("Exhibit 2") attached hereto at the time it executes this Agreement.

Agent and CHOICE Administrators have caused this Agreement to be executed in their names by their undersigned officers, the same being duly authorized to do so.

CHOICE Administrators Insurance Services, Inc.
("CHOICE Administrators"):



 Signature

By: John M. Word III
 Title: President

Agent:

 Signature

 Print Name

 Title

Social Security #

--	--	--	--	--	--	--	--	--	--

STAFF USE ONLY

Broker #

Agency #

Exhibit 1 – Commission Schedule

CHOICE Administrators® agrees to pay Agent commissions in accordance with the terms of the Agreement and the schedule listed below:

A. CaliforniaChoice®

% of Monthly Paid Premium					
Group Size	Medical	Dental	Chiro	Life	Vision
1-100 Employees	5.00%	12.00%	6.50%	12.00%	12.00%

B. ChoiceBuilder®

% of Monthly Paid Premium				
Group Size	Dental	Chiro	Life	Vision
2-500 Employees	10.00%	10.00%	10.00%	10.00%

Exhibit 2 – Business Associate Agreement

This Broker Business Associate Agreement (“**Agreement**”), effective _____, is entered into by and between CHOICE Administrators® Insurance Services, Inc. on behalf of itself, its affiliates, assigns and transferees (collectively, the “**Company**”) and the entity identified on the signatory page (“**Broker**”). (Company and Broker are collectively referred to hereinafter as the “**Parties**”). This Agreement is intended for the express purpose of complying with the privacy requirements of the California Insurance Information and Privacy Protection Act (CIC 791 *et seq.*, “**IIPPA**”), the Gramm-Leach-Bliley Act (15 U.S.C. §§ 1501 *et seq.*, the “**GLBA**”), the regulations adopted by the California Department of Insurance to implement IIPPA and the GLBA (10 C.C.R. §§2689.1 *et seq.*, the “**IIPPA Privacy Regulations**”), the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”), the regulations adopted by the U.S. Department of Health and Human Services to implement HIPAA (45 CFR Parts 160-64, the “**HIPAA Privacy Regulations**” collectively referred to hereinafter as the “**Privacy Rule**”) and certain breach notification requirements established under regulations promulgated by the U.S. Department of Health and Human Services that implement certain provisions of the Health Information Technology for Economic and Clinical Health Act (“**HITECH Act**”), part of the American Recovery and Reinvestment Act of 2009 (**ARRA**) and any other applicable related regulation or requirement, to ensure the integrity and confidentiality of individually identifiable personal and health information that Broker may collect, create for, or receive from the Company. Additional terms and conditions in accordance with local privacy ordinances shall be set forth in an Addendum attached hereto. The term “Privacy Rule” also includes local privacy ordinances.

WHEREAS, Company is a Business Associate to various health plans that are Covered Entities; and

WHEREAS, as a Business Associate, Company is obligated to safeguard the privacy and security of Protected Health Information received by or created for or on behalf of such Covered Entities; and

WHEREAS, Company has engaged Broker to perform certain functions for and on behalf of Company and/or such a Covered Entity pursuant to which Broker shall receive certain Protected Health Information of such a Covered Entity; and

WHEREAS, Company desires to secure Broker’s assurances that it will safeguard the privacy and security of such Protected Health Information and take other actions in order to assist Company in meeting its obligations to such Covered Entities and as a Business Associate under HIPAA.

A. Definitions

“**Affiliate**” or “**Affiliated**” means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person.

“**Breach**” (with respect to Unsecured Health Information) shall have the meaning set forth in 45 C.F.R. § 164.402, as amended from time to time, and currently means the acquisition, access, use or disclosure of protected health information in a manner not permitted under the Privacy or Security Standards and which compromises the security or privacy of the Health Information.

“**Business Associate**” means an individual or entity that performs a function or activity on behalf of, or provides a service to a Covered Entity (as defined herein), that involves the collection, creation, use or disclosure of Personal and Health Information.

“**Covered Entity**” means a health plan, health care clearinghouse or a health care provider who transmits any health information in electronic form in connection with a transaction covered under the HIPAA Privacy Regulations.

“**De-Identify**” or “**De-Identification**” means Health Information that does not identify an individual and with respect to which there is no reasonable basis to believe that such information can be used to identify an individual.

“**Designated Record Set**” means a group of records maintained by or for a Covered Entity comprising the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a Covered Entity or Business Associate of the Covered Entity or used, in whole or in part, by or for the Covered Entity to make decisions about individuals. For purposes of this Section, the term “record” includes any item, collection, or grouping of information that contains Personal and Health Information and is maintained, collected, used, or disseminated by or for a Covered Entity or the Company.

“**Electronic Health Information**” means Health Information that is transmitted or maintained in electronic media.

“**Electronic Media**” means: (i) Electronic storage media including memory devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or (ii) Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being exchanged did not exist in electronic form before the transmission.

“**Health Information**” means “Protected Health Information” as this term is defined under the HIPAA Privacy Regulations, and includes any information in possession of or derived from a physician or other provider of health care or a health care service plan regarding an individual’s medical history, mental or physical condition or treatment as well as information related to the past, present or future payment for the provision of healthcare.

“**Limited Data Set**” means Health Information that excludes the following direct identifiers of the individuals or of relatives, employers or household members of the individual: (i) names; (ii) postal address information, other than town or city, State and zip code; (iii) telephone numbers; (iv) fax numbers; (v) electronic mail addresses; (vi) social security numbers; (vii) medical record numbers; (viii) health plan beneficiary numbers; (ix) account numbers; (x) certificate/license numbers; (xi) vehicle identifiers and

serial numbers, including license plate numbers; (xii) device identifiers and serial numbers; (xiii) Web Universal Resource Locators (URLs); (xiv) Internet Protocol (IP) address numbers; (xv) biometric identifiers, including finger and voice prints; and (xvi) full face photographic images and any comparable images.

“Personal and Health Information” means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual’s character, habits, avocations, finances, occupation, general reputation, credit, health or any other personal characteristics. Individually identifiable information includes the individual’s name, address, electronic mail address, telephone number, social security number and other information, alone or in combination with other publicly available information, which reveals the individual’s identity. Personal information includes the individual’s nonpublic personal financial information.

“Security Incident” means an attempted or successful unauthorized access, use or disclosure, modification, or destruction of information or interference with the system operations in an information system.

“Security Standards” shall mean the Security Standards for the Protection of Electronic Health Information, 45 CFR Part 160 and Part 164, Subparts A and C.

“Unsecured Health Information” shall mean unsecured PHI as set forth in 45 CFR § 164.402, as amended from time to time, and currently means Health Information that has not been rendered unusable, unreadable or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services.

B. Privacy of Personal and Health Information.

1. **Permitted Uses and Disclosures.** Broker is permitted or required to use or disclose Health Information or Personal and Health Information it collects, creates for or receives from the Company only as follows:
 - a) **Functions and Activities on the Company’s Behalf.** Broker is permitted to use and disclose the minimum necessary Health Information or Personal and Health Information it collects, creates for or receives from the Company in order to provide services to the Company, any Covered Entity for which the Company and/or Broker are Business Associates, or another Business Associate of such a Covered Entity.
 - b) **Broker’s Operations.** Broker may use and disclose the minimum necessary Health Information or Personal and Health Information it collects, creates for or receives from the Company as necessary in order to perform Broker’s proper management and administration, or to carry out Broker’s legal responsibilities. If Broker discloses such Health Information or Personal and Health Information to an agent, a subcontractor or other third party, then Broker shall obtain reasonable assurances from the agent, subcontractor or other third party to which Broker discloses such Health Information or Personal and Health Information that agent, subcontractor or other third party shall: (i) hold such Health Information or Personal and Health Information in confidence and use or further disclose it only for the purposes for which Broker disclosed it to the agent, subcontractor or other third party or as required by law; and (ii) notify Broker (who shall in turn promptly notify the Company) of any instances of which the agent, subcontractor or other third party becomes aware that the confidentiality of such Health Information or Personal and Health Information was breached.
2. **Prohibition on Unauthorized Use or Disclosure.** Broker shall neither use nor disclose Health Information or Personal and Health Information it collects, creates for or receives from the Company, except as permitted or required by this Agreement, or as permitted or required by law.
3. **De-Identification of Information/Creation of Limited Data Set.** Broker shall not De-Identify Health Information it creates or receives for or from the Company, and shall not use or disclose such de-identified information, unless such de-identification is expressly permitted under the terms and conditions of this Agreement for services to be provided by Broker to the Company related to the Company’s activities for purposes of “treatment,” “payment” or “health care operations,” as those terms are defined under the HIPAA Privacy Regulations. Broker further agrees that it will not create a Limited Data Set using Health Information it creates or receives for or from the 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 this Agreement; and (ii) such creation, use or disclosure is for services provided by Broker that relate to the Company’s activities for purposes of “payment” or “health care operations,” as those terms are defined under the HIPAA Privacy Regulations.
4. **Information Safeguards.** Broker shall develop, implement, maintain and use appropriate administrative, technical and physical safeguards, in compliance with applicable state and federal laws, to preserve the confidentiality of and to prevent unauthorized disclosures of Health Information or Personal and Health Information collected, created or received for or from the Company. Broker shall document and keep such safeguards current and, upon the Company’s reasonable request, shall provide the Company with a copy of policies and procedures related to such safeguards.
5. **Use of Subcontractors, Agents and Downstream Entities.** Broker shall require each of its agents, downstream entities and subcontractors that creates, receives, maintains, or transmits PHI on behalf of Broker to execute a written agreement obligating the agent, downstream entity or subcontractor to comply with all the terms of this Agreement with respect to such PHI. Broker agrees to make a list of such agents, downstream entities and subcontractors available to Company upon request.

C. Personal and Health Information Access, Amendment and Disclosures.

1. **Access.** Broker shall, upon the Company's reasonable request permit, within ten (10) business days of receipt of request, an individual (or the individual's personal representative) to inspect and obtain copies of any Health Information or Personal and Health Information about the individual which Broker collected, created or received for or from the Company and that is in Broker's custody or control.
2. **Amendment.** Broker shall, upon receipt of notice from the Company, promptly amend or permit the Company access to amend any portion of an individual's Health Information or Personal and Health Information which Broker collected, created or received for or from the Company and that is in Broker's custody or control.
3. **Disclosures.** Broker shall document each disclosure it makes of an individual's Health Information or Personal and Health Information to a third party. Moreover, for purposes of this Section, "disclosure" includes: 1) any legal disclosure; 2) any illegal, inadvertent, wrongful, or negligent disclosure; and 3) any instance in which access was provided to an unauthorized third party to an individual's Health Information or Personal and Health Information. For the purposes of this Agreement, "legal disclosure" includes, but is not limited, any disclosures to law enforcement or other governmental authority pursuant to law and in response to a facially valid administrative or judicial order, such as a search warrant or subpoena.
4. **Disclosure Reporting.**
 - a) **Legal.** Broker agrees that, as required by 45 CFR §164.528, it shall forward to the Company a report of such disclosures in a timely manner, but not later than thirty (30) days from the date of disclosure; however, this requirement shall not apply if Broker has not made any such disclosures. Such report shall include the applicable individual's name, the person to whom the Health Information or Personal and Health Information was disclosed, what was disclosed, why the information was disclosed, and the date of such disclosure.
 - b) **Illegal, Inadvertent or Wrongful Disclosure.** Broker shall report to the Company any use or disclosure of Health Information or Personal and Health Information not permitted by this Agreement or that would be in violation of the Privacy Rule if made by Company. Business Associate shall make the report to the Company not more than twenty-four (24) hours after Broker learns of such non-permitted use or disclosure. Broker shall report such disclosure in accordance with Section D of this Agreement.
 - c) **Termination of Agreement.** Upon termination of this Agreement, Broker shall provide to the Company one final report of any and all disclosures made of all individuals' Health Information or Personal and Health Information.
5. **Inspection of Books and Records.** Broker shall make its internal practices, books and records, relating to its use and disclosure of the Personal and Health Information it collects, creates or receives for or from the Company, available to the U.S. Department of Health and Human Services or to the California Insurance Commission to determine the Company's compliance, as a Business Associate, with the provisions of the HIPAA Privacy Regulations or the HIPAA Privacy Regulations, whichever is applicable.
6. **Designated Record Set.** Broker agrees that all Health Information or Personal and Health Information received by or created for the Company shall be included in an individual's Designated Record Set. Broker shall maintain such Designated Record Set with respect to services provided to an individual under this Agreement, and shall allow such individual to access the Designated Record Set as provided in the HIPAA Privacy Regulations.

D. Breach.

1. **Generally.** In furtherance of Broker's obligation under Sections C.3. and C.4 above, Broker Business Associate shall, within twenty-four (24) hours of becoming aware of a Breach of Unsecured PHI or any other disclosure of protected health information in violation of this Agreement by Broker Business Associate, its officers, directors, employees, contractors or agents or by a third party to which Broker Business Associate disclosed protected health information pursuant to Broker Business Associate Agreement, report any such Breach or disclosure to the Company. Such notification shall include, to the extent possible, the identification of each individual whose protected health information has been, or is reasonably believed by Broker Business Associate to have been, accessed, acquired, used, or disclosed during the Breach. In addition, Broker Business Associate shall provide Company with the following information, to the extent available at the time initial notice to Company is provided, or promptly thereafter as such information becomes available:
 - A brief description of what happened, including the date of the breach or wrongful disclosure and the date of discovery;
 - A description of the type of protected health information that was involved (e.g., name, Social Security Number, procedure, diagnosis, treatment, etc.);
 - The steps that Broker Business Associate recommends that the individual should take to protect himself or herself;
 - A brief description of the steps that Broker Business Associate is taking to investigate, mitigate harm, and protect against future similar breaches. Any such other information, including a written report, as the Company may reasonably request.
2. **Termination of Agreement.** This Agreement shall terminate automatically in the event that Broker ceases performing services for or on behalf of Company or in the event that Broker otherwise ceases to be a Business Associate of either the Company or a Covered Entity with respect to whom the Company is a Business Associate. The Company may

also, in addition to other available remedies, terminate this Agreement if Business Associate has materially breached any provision(s) of this Agreement and has failed to cure or take any actions to cure such material breach within five (5) business days of the Company informing Broker of such material breach. The Company shall exercise this right to terminate by providing Broker written notice of termination, which termination shall include the reason for the termination. Any such termination shall be effective immediately (following any applicable cure period) or at such other date specified in the Company's notice of termination.

- a) **Obligations upon Termination.** Upon termination, cancellation, expiration or other conclusion of this Agreement or any other agreements for any reason, Broker shall comply with applicable Privacy Rule requirements regarding the return or destruction of Health Information or Personal and Health Information.
- b) **Continuing Privacy Obligation.** Broker's obligation to protect the privacy of the Health Information or Personal and Health Information shall be continuous and survive termination, cancellation, expiration or other conclusion of this Agreement.

E. Security of Electronic Protected Health Information.

To the extent that Broker receives, uses, creates, maintains and/or discloses any Electronic Health Information ("E-PHI") in the course of providing services for or on behalf of Company, Broker additionally agrees: (i) to implement and maintain appropriate safeguards to prevent the Use or Disclosure of PHI in any manner other than as permitted by this Agreement, and to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any Electronic PHI that it creates, accesses, receives, maintains or transmits on behalf of Company; and (ii) to notify the Company if the Broker becomes aware of a Security Incident involving the Company's E-PHI, and Broker shall provide in any notice under item (ii) above the remedial or other actions undertaken to correct the Security Incident.

F. General Provisions

1. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement and supersedes and replaces any and all prior agreements.
2. **Severability.** In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.
3. **Headings.** The headings of paragraphs contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
4. **Waiver.** No waiver, modification or amendment of this Agreement shall be valid or binding unless the same is in writing and duly executed by both Broker and Company. If any provision of this Agreement conflicts with any of the provisions of the Privacy Rule and other applicable law, the said Privacy Rule or applicable law, to the extent of such conflict, shall control. The Company's failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct nor trade practice between the Parties shall act to modify any provision of this Agreement.
5. **Assignment.** Broker may not assign its respective rights and obligations under this Agreement without the prior written consent of the Company.
6. **Notices.** All notices and notifications under this Agreement shall be sent in writing to the representatives of the Company and Broker identified below, signed by the party providing the notice or notification. For any notification required by or provided pursuant to this Agreement, notice should be sent as follows:

If to Company:

CHOICE Administrators® Insurance Services, Inc.
Attn: Legal Department
721 S. Parker, Suite 200
Orange, CA 92868

With Copy to: Sr. VP and Executive Director, Strategy and Programs

If to Broker

-
7. **Interpretation.** The Parties agree that any ambiguity in this Agreement will be resolved in favor of an interpretation that protects the Health Information or Personal and Health Information and facilitates Broker's and the Company's compliance with applicable terms and requirements of the Privacy Rule.
 8. **Governing Law.** The laws of the United States and the State of California shall govern the interpretation, validity, performance and enforcement of this Agreement. Jurisdiction and venue for any action under this Agreement shall be in the Superior Court for the County of Orange County in the State of California.

9. **Rights of Third Parties.** This Agreement is between the Company and Broker and shall not be construed, interpreted, or deemed to confer any rights whatsoever to any third party or parties.
10. **Indemnification.** Broker shall defend, indemnify and hold harmless the Company, and the Company's officers, directors, employees and agents from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any non-permitted use or disclosure of Health Information or Personal and Health Information or other breach of this Agreement by Broker or any Business Associate subcontractor, employee, agent, representative, person or entity and shall remain individually and vicariously liable for the foregoing.
11. **Independent Relationship.** None of the provisions of this Agreement 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 Agreement.
12. **Conflicts.** In the event that Broker has entered into one or more contracts with the Company other than this Agreement, the terms and conditions of this Agreement shall prevail if this Agreement conflicts with any provision of any other of the Company's contracts.
13. **Survival.** In the event of termination of this Agreement, the terms of Sections A; C4-6; D; E; and F shall survive and continue in full force and effect.
14. **Injunctive Relief.** In the event that Broker breaches any term of this Agreement, Broker agrees that the Company has a right to obtain injunctive relief to prevent further disclosure of such Health Information or Personal and Health Information. In addition to injunctive relief, the Company may also pursue any other available remedy under applicable law or equity.
15. **Assistance in Litigation or Administrative Proceedings.** Broker shall make itself, and any subcontractors, employees or agents assisting Broker in the performance of its obligations under this Agreement, available to the Company, at no cost to the Company, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Company, its directors, officers or employees based upon a claimed violation of any of the provisions of the Privacy Rule or other laws relating to security and privacy, except where Broker or its subcontractor, employee or agent is a named adverse party.
16. **Expenses.** Unless otherwise stated in this Agreement, each party shall bear its own costs and expenses related to compliance with the above provisions.
17. **Disclaimer:** Company makes no representation that by following or depending upon any of the information contained herein that Broker will meet any legal, statutory, or regulatory obligations. Under no circumstances shall such information be a substitute for any professional legal, business, financial, and/or tax advice. Thus, Broker agrees to consult an applicable professional for such advice. Under no circumstances will Company be liable for any of Broker's acts or omissions that are as a result of Broker's reliance or use of the information contained herein.

IN WITNESS WHEREOF, the Company and Broker execute this Agreement in multiple originals to be effective as of the day and year written above:

CHOICE Administrators® Insurance Services, Inc.
("CHOICE Administrators"):

Adam Roye

Signature

By: Adam Roye
 Title: Sr. Vice President and Executive Director,
 Strategy and Programs

Broker:

Signature

Print Name

Title

Social Security #

--	--	--	--	--	--	--	--	--

STAFF USE ONLY

Broker #

--

Agency #

--