

LANDMARK HEALTHPLAN OF CALIFORNIA, INC.
BROKER COMMISSION AGREEMENT

THIS BROKER COMMISSION AGREEMENT (the "Agreement") is made and entered into this first (1st) day of _____ 20__, (the "Effective Date") by and between **Landmark Healthplan of California, Inc.** (the "Plan"), a general business corporation organized under the laws of the State of California, and _____ (the "Broker") (collectively the "Parties").

Recitals

WHEREAS, the Plan is a specialized health care service plan licensed under the Knox-Keene Health Care Service Plan Act of 1975, as amended, and the regulations promulgated thereunder by the California Department of Managed Health Care (the "Knox-Keene Act"); and

WHEREAS, Broker desires to assist Plan in securing and maintaining Group(s) as a Plan client(s).

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

A. Broker Obligations

1. Written Evidence of Appointment. Broker warrants that he or she is the certified Broker of Record for Group(s) and shall provide Plan with written evidence of such appointment as Group's(s') Broker of Record executed by an authorized official representative of Group(s).

2. Plan Information. Broker shall provide Plan with all Group information requested by Plan as a basis for Plan to make a decision regarding acceptance of Group(s) for initial coverage or the Group's(s') annual contract renewal.

3. Plan Availability. Broker shall inform Group(s) of Plan's availability and shall present Plan's information materials and full and fair disclosure documents to Group(s). Plan shall provide such materials to Broker as having been approved by the California Department of Managed Health Care pursuant to the Knox-Keene Health Care Service Plan Act of 1975, as amended.

4. Hold Harmless. Broker agrees to hold Plan harmless from any and all claims for damages which may be alleged against Plan as a result of any action or statement by the Broker or his/her agents in violation of the terms and provisions of this Agreement.

5. Best Efforts. Broker agrees to use his/her best efforts to secure and maintain Group(s) as a Plan client(s) in good standing.

6. Broker Licensure. Broker shall at all times be licensed by the California Department of Insurance as a Life and Disability Agent. Written proof of such licensure shall be made available to Plan upon reasonable request. Broker shall promptly notify Plan of any disciplinary proceeding, hearing or actions against Broker or Broker's principal persons or employees instituted by the California Insurance Commissioner or any other applicable regulatory body governing Broker's licensure or activities.

7. Insurance. Broker shall at all times maintain errors and omissions insurance in an amount

and type suitable by industry standards, for Broker and Broker's employees. Upon Plan's request, Broker shall provide Plan with written proof of such insurance within thirty (30) calendar days.

8. Uses and Disclosures of Protected Health Information. Broker shall comply with the requirements of the Health Insurance Portability and Accountability Act ("HIPAA") as set forth in **Exhibit B** attached hereto and incorporated herein by reference.

B. Limitations on Authority of Broker

1. Broker shall have no authority to execute, amend, alter, waive, or forfeit any of Plan's rights, requirements or conditions in any group subscriber agreement or contract for chiropractic and/or acupuncture services or benefits [Benefit Plan Contract(s)] provided or used by Plan's specialized health care service plan or to otherwise legally bind or obligate Plan, in any manner, to any third parties.

2. Broker shall have no authority to incur any expense or obligation or make any payment or assume any obligation or liability on behalf of Plan.

3. Broker shall have no authority to make binding representations regarding benefits or coverage provided under Plan's specialized health care service plan, except as specifically approved in advance by Plan through its marketing plan. Furthermore, Broker shall have no authority to alter or discharge any Benefit Plan Contract, extend the time of premium payment, waive or extend any provision or condition of a Benefit Plan Contract, or place any Benefit Plan Contract in force without the written consent of Plan.

4. Broker shall have no authority to enter into or renew Group Subscriber Agreements for Chiropractic and/or Acupuncture Services with Group(s), nor accept or reject any of Group's(s') eligibles for enrollment and coverage under Plan.

5. Broker shall have the authority to collect Plan premiums or prepayments by or on behalf of enrollees or prospective enrollees of Plan only when prior written consent of Plan is obtained. In the event that Broker receives payment or any funds on behalf of Plan ("Plan Funds") for any reason whatsoever, Broker shall, in compliance with California law, including, without limitation, the requirements of California Code of Regulations Section 1300.67.12, immediately remit all Plan Funds to Plan. Broker shall, at all times, keep any such Plan Funds segregated from the Broker's assets and deposit Plan Funds to a trust account in a state or federal bank authorized to do business in the State of California and insured by an appropriate federal insuring agency no later than one business day after Broker receives Plan Funds. Broker shall transmit Plan Funds to Plan, including any compensation payable to Broker by Plan, within five (5) business days after Broker receives Plan Funds. Upon written notice to Broker, any failure by Broker to remit to Plan said Plan Funds, as provided herein or to comply with any of the provisions hereof shall effect an immediate termination of this Agreement. Broker's failure to remit Plan Funds under this Agreement may result in Broker's forfeiture of commission and retention by Plan of otherwise payable Broker commissions hereunder as Plan's liquidated damages.

C. Plan Obligations

1. Plan shall provide Broker with all written material prepared under the requirement of "full and fair disclosure" pertaining to the solicitation of membership in or sale of prepaid services or benefits offered by the Plan.

2. Upon execution of a Group Subscriber Agreement by and between the Plan and Group, wherein execution is attributable to the efforts of Broker pursuant to this Agreement, Broker shall be entitled to a commission as specified in **Exhibit A** attached hereto and incorporated herein by reference. Such commission schedule shall remain in full force and effect until such time Plan's "Broker Commission Policy" changes. Plan and Broker understand and agree that all commission payments are conditioned upon Broker's continued status as Broker of Record for Group. Commission payments shall cease immediately as of the time Broker shall no longer be Broker of Record for Group.

3. In the event a Group terminates its relationship with Broker, such change shall be reflected in the commission payment on the first (1st) of the month following receipt of notification of termination from Group.

4. Broker's commission payments, as set forth in **Exhibit A**, shall be paid by Plan on a quarterly basis within forty-five (45) calendar days following the close of the quarter. Such commission payments shall be paid to:

Contact Name:

Company Name:

Checks Payable To:

Payee's Tax Identification Number:

5. Broker's commissions shall be computed based upon payments paid to, received and accepted by Plan during the term of the Group Subscriber Agreement between Group(s) and Plan.

6. Plan shall comply with the requirements of HIPAA as set forth in **Exhibit B** attached hereto and incorporated herein by reference.

7. Hold Harmless. Plan agrees to hold Broker harmless from any and all claims for damages which may be alleged against Broker as a result of any action or statement by the Plan or his/her agents in violation of the terms and provisions of this Agreement.

D. Limitations Upon Plan's Obligation to Pay Commissions

Plan's obligation to pay commissions to Broker under this Agreement shall be subject to the following limitations:

1. Plan shall not be obligated to pay Broker any commissions for services performed if the payment of such commissions would violate applicable statutory provisions, regulations, or rulings which prohibit the payment of commissions under certain circumstances.

2. Broker shall not be entitled to commission on any individual coverage issued as a result of conversion of coverage under the Group Subscriber Agreement for Services between Group(s) and Plan.

3. Any Broker indebtedness to Plan which arises at any time shall constitute a first lien upon any commissions due to Broker hereunder. Plan, at its sole discretion, shall have the right to offset from any compensation due Broker those sums which are owing by Broker to Plan.

4. All commissions previously paid by Plan for the account of Broker or his predecessor with respect to any Group Subscriber Agreement for Services for a period as to which a commission would otherwise be payable under this Agreement shall be deducted from such amounts otherwise payable by Plan hereunder. Only the net amount remaining shall be paid to Broker.

E. General Provisions

1. Plan and Broker shall each maintain at their principal offices for the duration of this Agreement, and for five (5) years thereafter, such adequate books and records related to this Agreement as necessary for the proper administration of the Plan; and as may be required for compliance with the requirements of the Knox-Keene Act and any other applicable law.

2. Whether or not provided herein, this Agreement and performance hereunder is subject to the requirements of the Knox-Keene Health Care Service Plan Act of 1975, as amended, and regulations promulgated thereunder by the California Department of Managed Health Care and all provisions required or which may be required thereby to be in this Agreement shall be binding upon the parties to this Agreement. Further, all provisions now or hereafter required to be in this Agreement by any other State law or regulation or by Federal law or regulation shall be deemed part of this Agreement regardless of whether specifically included.

3. This Agreement, including all exhibits, constitutes the entire understanding between the parties hereto, and no changes, amendments or alterations shall be deemed effective unless agreed to in writing by both parties.

4. This Agreement, intending to secure the services of Broker, shall not be assigned, sublet or transferred by Broker without the prior written consent of Plan.

5. In the event a dispute arises with respect to the performance or interpretation of any of the terms of this Agreement, all matters in controversy shall be submitted to binding arbitration under the auspices, commercial rules and regulations of the American Arbitration Association. Plan and Broker shall be bound by the decision of the arbitrator(s) and accept any decision rendered in arbitration as a final determination of the matter in dispute. Plan and Broker hereby agree to divide the costs of arbitration equally. The discovery procedures set forth in the California Code of Civil Procedure, Section 1283.05, are hereby incorporated into and made applicable to any arbitration proceeding hereunder.

6. Any dishonesty, fraud, misrepresentation or failure to comply with the terms, obligations and requirements of this Agreement shall constitute cause for immediate cancellation of this Agreement and cessation of all commissions payable to Broker by Plan.

7. This Agreement may be terminated by either party without cause at any time after this Agreement has been in effect for at least twelve (12) months by providing written notice to the other party at least ninety (90) calendar days in advance of such termination. Upon such termination, the rights of

each party hereunder shall terminate, provided however, that such action shall not release Plan or Broker of any obligations imposed with respect to: (i) current Group maintenance as a Plan client in good standing by Broker; (ii) commission amounts owing and payable to Broker by Plan; or (iii) Protected Health Information as described in **Exhibit B**, Section 1 (c-e).

8. Under no circumstances shall Broker be deemed the agent, representative, official or employee of Plan. The relationship between Plan and Broker shall be that of independent contractors.

9. The invalidity or unenforceability of any terms of provisions hereof shall in no way affect the validity or enforceability of any other term or provision herein.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date. A properly executed copy of this Agreement delivered by facsimile shall be as valid as an original.

BROKER

**LANDMARK HEALTHPLAN
OF CALIFORNIA, INC.**

PO Box 130028
Sacramento, California 95853

(800) 298-4875

By:_____

Signature

Printed Name:_____

Title:_____

By:_____

George Vieth
Chief Executive Officer

EXHIBIT A

BROKER'S COMPENSATION

This **Exhibit A** sets forth the commissions which are payable by Plan to Broker in accordance with the Agreement.

1. This Exhibit A is effective for all commission calculations based on cash receipts in the quarter that commences April 1, 2003, and forward.
2. Subject to all other terms of the Agreement, on all accepted and enrolled groups, for up to \$1,000,000 in cash receipts in a calendar quarter, Broker shall be paid a flat 10% commission. Commission payments shall be paid in arrears within 45 days following the end of the quarter. Commission on cash receipts in excess of \$1,000,000 in a quarter shall be at a commission rate to be negotiated between the Plan and Broker.

EXHIBIT B

HIPAA REQUIREMENTS

This **Exhibit B** including the provisions of Attachment 1 and Attachment 2 attached hereto and incorporated herein by reference (the “HIPAA Agreement”) addresses certain requirements that are now or will become applicable to the Parties pursuant to regulations adopted under the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). Therefore, the Parties agree as follows:

1. HIPAA Privacy and Security Rules

(a) *General.* Broker acknowledges that it serves as a Business Associate of the Plan as defined under C.F.R. 45 § 160.103. Accordingly, Broker shall comply with the provisions set forth in Attachment 1 with respect to any Protected Health Information handled by Broker on behalf of the Plan. Plan shall cooperate with the Broker in the performance of Broker’s obligations set forth in Attachment 1. Such cooperation shall include the responsibilities set forth in Attachment 2. Notwithstanding any other term or provision of the Agreement, the Plan acknowledges and agrees that any failure by the Plan to cooperate with the Broker and/or to perform the responsibilities set forth in Attachment 2 shall excuse any associated delay or nonperformance by the Broker of any obligations set forth in this HIPAA Agreement.

(b) *Uses and Disclosures of Protected Health Information.* Broker may Use and Disclose Protected Health Information received from, or created or received by Broker on behalf of the Plan, only as necessary to perform its obligations under the Agreement, provided that such Use or Disclosure would not violate the requirements of the HIPAA Privacy and Security Rules if done by the Plan. Except as otherwise limited in this HIPAA Agreement, Broker may Use such Protected Health Information if necessary: (i) for the proper management and administration of Broker; and/or (ii) to carry out the legal responsibilities of Broker. Broker may Disclose such Protected Health Information for the purposes described in subsection (i) of this subsection (b), provided that the Disclosure is Required By Law, or Broker obtains reasonable assurances from the person to whom the Protected Health Information is Disclosed that it will remain confidential and be Used or further Disclosed only as Required By Law or for the purpose for which it was Disclosed to the person, and the person agrees to notify Broker of any instances of which it is aware in which the confidentiality of the Protected Health Information has been breached. Broker may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with Section 164.502(j)(1) of the Privacy Rule.

(c) *Term and Termination.* Notwithstanding any other term or provision of the Agreement, Broker’s and Plan’s obligations under this HIPAA Agreement shall terminate when all of the Protected Health Information provided by the Plan to the Broker, or created or received by the Broker on behalf of the Plan, is destroyed or returned to the Plan, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions of this HIPAA Agreement.

(d) *Material Breach.* If Plan should learn of a material breach of the terms of this

HIPAA Agreement by Broker, the Plan shall either:

- (i) Provide an opportunity for Broker to cure the breach or end the violation, terminating the Agreement if Broker does not cure the breach or end the violation within the time specified by the Plan;
- (ii) Immediately terminate the Agreement if Broker has breached a material term of this HIPAA Agreement and cure is not possible; or
- (iii) If neither termination nor cure is feasible, Plan shall report the violation to the Secretary.

(e) *Effect of Termination.* Upon termination of the Agreement for any reason, Broker shall return or destroy all Protected Health Information received from the Plan, or created or received by Broker on behalf of the Plan. This provision shall apply as well to Protected Health Information that is in the possession of subcontractors or agents of the Broker. Broker shall retain no copies of the Protected Health Information.

In the event that Broker determines that returning or destroying the Protected Health Information is infeasible, Broker shall provide to Plan notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Broker shall extend the protections of this HIPAA Agreement to such Protected Health Information and limit further Uses and Disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Broker or subcontractors or agents of Broker maintain such Protected Health Information.

(f) *Defined Terms.* Capitalized terms used in this HIPAA Agreement but not defined herein shall have the meanings ascribed to them in the Privacy Rule.

2. *Effect of HIPAA Agreement.* If there are any conflicts between the terms of the Agreement and the terms of this HIPAA Agreement, the terms of this HIPAA Agreement shall control. All non-conflicting terms of the Agreement shall survive and continue in full force and effect.

EXHIBIT B

ATTACHMENT 1

BUSINESS ASSOCIATE REQUIREMENTS UNDER HIPAA

1. Broker agrees to not Use or Disclose Protected Health Information other than as permitted or required by the Agreement (including the HIPAA Agreement) or as Required By Law.
2. Broker acknowledges that he or she shall request from Landmark and so disclose to his or her affiliates, subsidiaries, agents, and subcontractors or other third parties, only the minimum Protected Health Information necessary to perform or fulfill a specific function required or permitted under the Agreement (including the HIPAA Agreement).
3. Broker agrees to use appropriate safeguards to prevent Use or Disclosure of Protected Health Information other than as provided for in the Agreement (including the HIPAA Agreement).
4. Broker agrees to mitigate, to the extent practicable, any harmful effect that is known to Broker of a Use of Disclosure of Protected Health Information by Broker in violation of the requirements of the HIPAA Agreement.
5. Broker agrees to report to Plan any Use or Disclosure of Protected Health Information not provided for by the Agreement (including the HIPAA Agreement) of which it becomes aware.
6. Broker agrees to ensure that any agents, including subcontractors, to whom Broker provides Protected Health Information received from, or created or received by Broker on behalf of Plan agree to the same restrictions and conditions that apply through the Agreement (including the HIPAA Agreement) to Broker with respect to such Protected Health Information.
7. Broker agrees to provide access, at the request of the Plan, and in the time and manner designated by the Plan, to Protected Health Information in a Designated Record Set, to the Plan or, as directed by the Plan, to an Individual in order to meet the requirements under Section 164.524 of the Privacy Rule.
8. Broker agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Plan directs or agrees to pursuant to Section 164.526 of the Privacy Rule, at the request of the Plan or an Individual, and in the time and manner designated by the Plan.
9. Broker agrees to make internal practices, books, and records, including policies and

procedures and Protected Health Information, relating to the Use and Disclosure of Protected Health Information received from, or created or received by Broker on behalf of the Plan, available to the Plan, or to the Secretary, in a time and manner designated by the Plan or the Secretary, for purposes of the Secretary determining the Plan's compliance with the Privacy Rule.

10. Broker agrees to document such Disclosures of Protected Health Information and information related to such Disclosures as would be required for Plan to respond to a request by an Individual for an accounting of Disclosures of Protected Health Information in accordance with Section 164.528 of the Privacy Rule.
11. Broker agrees to provide to Plan or an Individual, in time and manner designated by the Plan, information collected in accordance with Section 9 of this Attachment A, to permit Plan to respond to a request by an Individual for an accounting of Disclosures of Protected Health Information in accordance with Section 164.528 of the Privacy Rule.
12. Broker agrees to make policies, procedures, and documentation relating to the safeguarding of Electronic Protected Health Information available to Landmark, or at the request of Landmark to the Secretary, in a time and manner designated by Landmark or the Secretary, for purposes of the Secretary determining Landmark's compliance with the Security Rule.
13. With respect to Electronic Protected Health Information, Broker shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Landmark, as required by 45 C.F.R. Part 164, Subpart C.
14. With respect to Electronic Protected Health Information, Broker shall ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information, agrees to implement reasonable and appropriate safeguards to protect it.
15. Broker shall report to Landmark any Security Incident of which it becomes aware.
16. If Broker conducts any Standard Transactions on behalf of Landmark, Broker shall comply with the applicable requirements of 45 C.F.R. Parts 160-162.

On February 17, 2009, as part of the American Recovery and Reinvestment Act of 2009, Congress enacted the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act") as set forth in Title XIII of Public Law 111-5. The HITECH Act made numerous changes to the administrative simplification provisions of HIPAA that govern the use and disclosure of Protected Health Information ("PHI"). Landmark is providing a summary of these changes to clarify its understanding of your expanded obligations under the provisions of the HITECH Act. Failure to comply with any of the standards or requirements that apply under the HITECH Act could subject business associates to civil or criminal liability under federal law.

Compliance with § 164.504(e). Pursuant to § 13404 of the HITECH Act [to be codified at 42 U.S.C. 17934], business associates are required to comply with each applicable requirement of § 164.504(e) of Title 45, Code of Federal Regulations in connection with the use and disclosure of PHI that the business associate obtains or creates under the Business Associate Agreement.

Application of Requirements. Pursuant to § 13404 of the HITECH Act [to be codified at 42 U.S.C. 17934], all additional provisions of Subtitle D of the HITECH Act relating to privacy that are applicable to covered entities (e.g., Landmark or its client health plans) are also directly applicable to business associates.

Application of Standards. Pursuant to § 13401 of the HITECH Act [to be codified at 42 U.S.C. 17931], §§ 164.308 (Administrative safeguards), 164.310 (Physical safeguards), 164.312 (Technical safeguards), and 164.316 (Policies and procedures and documentation requirements) of Title 45, Code of Federal Regulations apply to business associates in the same manner that such sections apply to covered entities. The additional requirements of the HITECH Act that relate to security and that are also made applicable with respect to covered entities are also applicable to business associates.

Material Breach. Pursuant to § 13404 of the HITECH Act [to be codified at 42 U.S.C. 17934], and in accordance with § 164.504(e)(1)(ii) of the Privacy Rule, if a party to the Business Associate Agreement knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of the other party's obligation under the contract, the non-breaching party will take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the contract or arrangement, if feasible or, if termination is not feasible, report the problem to the Secretary of the Department of Health and Human Services.

Breach Notification. Pursuant to § 13402 of the HITECH Act [to be codified at 42 U.S.C. 17932], in the event that a business associate discovers a "Breach" within the meaning of § 13400 of the HITECH Act [to be codified at 42 U.S.C. 17921], with respect to any PHI that is the subject of the Business Associate Agreement, the business associate must notify Landmark of the occurrence of such Breach, as follows:

- A Breach is "discovered" by a business associate as of the first day on which such Breach is known to such associate (including any person, other than the individual committing the Breach, that is an employee, officer, or other agent of such entity or associate, respectively) or should reasonably have been known to such associate (or person) to have occurred.
- Notice of the Breach must include the identification of each individual whose unsecured PHI has been, or is reasonably believed by the business associate to have been, accessed, acquired, or disclosed during such Breach.
- Timely notice of the Breach must be made without unreasonable delay but in no case later than 60 calendar days after discovery of the Breach. Business associate may be required to justify any delay in reporting once a Breach has been discovered.

No Remuneration. Pursuant to § 13405(d) of the HITECH Act [to be codified at 42 U.S.C. § 17935(d)], a business associate shall not directly or indirectly receive remuneration in exchange for any PHI of an individual unless the covered entity has obtained from the individual, in accordance with 45 C.F.R. 164.508, a valid authorization that includes a specification of whether the PHI can be further exchanged for remuneration by the business associate.

Audits. Pursuant to § 13411 of the HITECH Act [to be codified at 42. U.S.C. § 17940], business associates may be subject to periodic audits by the Secretary to ensure that any business associates that are subject to the requirements of the HITECH Act and subparts C and E of Part 164 of Title 45, Code of Federal Regulations, as such provisions are in effect as of the date of enactment of the HITECH Act, comply with such requirements.

EXHIBIT B

ATTACHMENT 2

PLAN RESPONSIBILITIES UNDER HIPAA

1. Plan shall notify Broker of any change in, or revocation of, any permission or authorization by an Individual to Use or Disclose Protected Health Information, as provided for in Section 164.508 of the Privacy Rule, to the extent that such change may affect Broker's Use or Disclosure of Protected Health Information.
2. Plan shall notify Broker of any restriction to the Use or Disclosure of Protected Health Information that Plan has agreed to in accordance with Section 164.522 of the Privacy Rule, to the extent that such restriction may affect Broker's Use or Disclosure of Protected Health Information.
3. Plan shall notify Broker of any amendment to the Protected Health Information of an Individual that Plan has agreed to in accordance with Section 164.526 of the Privacy Rule, to the extent that such amendment may affect Broker's Use or Disclosure of Protected Health Information.
4. Plan shall not request Broker to Use or Disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Plan.