

**AGENT  
INDEPENDENT BROKER AGREEMENT**

This Agent Independent Broker Agreement (“Agreement”) is entered into by and between HealthSun Health Plans, Inc., on behalf of itself and its subsidiaries and affiliates (collectively, “HealthSun”), and, \_\_\_\_\_ (“Agent”). This Agreement shall be effective as of \_\_\_\_\_ (“Effective Date”). HealthSun and Agent each may be referred to herein as a “Party” or collectively as the “Parties.”

**RECITALS**

**WHEREAS**, HealthSun has a contract with CMS to offer Medicare Advantage Plans to Medicare beneficiaries; and

**WHEREAS**, HealthSun seeks to engage Agent to provide certain marketing, sales and enrollment services in connection with HealthSun’s Medicare Advantage Plans; and

**WHEREAS**, Agent seeks to provide such marketing, sales and enrollment services, as well as such administrative services, to and on behalf of HealthSun;

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, acknowledged to be good and sufficient consideration, the Parties do hereby agree as follows:

**ARTICLE 1 – DEFINITIONS**

- 1.1 Definitions. Capitalized terms used herein shall have the meaning ascribed to them in this Article 1, the body of this Agreement and/or in the schedules, exhibits, attachments or other documents incorporated herein.
- 1.2 “Agent” shall mean an individual or group agent or broker employed by, or contracted by, either a Field Marketing Organization, Agency, group, or other entity (“FMO”), to provide Marketing Services described in this Agreement.
- 1.3 “CMS” shall mean the Centers for Medicare & Medicaid Services, the agency within the U.S. Department of Health and Human Services responsible for administering the Medicare Advantage and Part D Programs, as such terms are defined in Law.
- 1.4 “CMS Contract” shall mean the contract between CMS and HealthSun for purposes of HealthSun’s participation in the Medicare Advantage and Medicare Part D Programs.
- 1.5 “CMS Medicare Marketing Guidelines” shall mean the Medicare Marketing Guidelines released by CMS for the applicable Contract Year, as the same may be amended, supplemented, or superseded from time to time.
- 1.6 “Contract Year” shall mean the calendar year that is the subject of the contract between CMS and HealthSun for purposes of HealthSun’s participation in the Medicare Advantage and Medicare Part D Programs.
- 1.7 “Educational Event” shall have the same meaning as such term is defined and described in the CMS Medicare Marketing Guidelines.

- 1.8 “Field Marketing Organization” shall also be referred to as the “FMO” that shall mean the organization, General Agency, group or other entity that provides Marketing Services and administrative services as described in this Agreement.
- 1.9 “FMO/Broker Agent Binding Agreement” The Agreement that legally binds the Agent as a subcontractor through the Field Marketing Organization, General Agency, group or other entity to provide Marketing Services.
- 1.10 “Government Authority” shall mean the United States of America, the states, or any court, regulatory commission, arbitral tribunal, department, commission, board, bureau, agency (including, but not limited to, CMS and the Florida Office of Insurance Regulation), authority, administrative body, instrumentality or other body, whether federal, state, or local, having jurisdiction over HealthSun, Agent, or such other person as the context so requires.
- 1.11 “HealthSun Materials” shall mean Marketing Materials, owned by HealthSun and approved by CMS for use in connection with the marketing and sales of HealthSun Plans and the enrollment of Medicare beneficiaries in HealthSun Plans.
- 1.12 “HealthSun Member” shall mean a Medicare beneficiary that is eligible for and enrolled in a HealthSun Plan.
- 1.13 “HealthSun Plans” shall mean HealthSun’s Medicare Advantage Plans and Medicare Advantage-Prescription Drug Plans offered pursuant to HealthSun’s contract with CMS for the applicable Contract Year.
- 1.14 “Law” or “Laws” shall mean any and all applicable federal, state or local statute, law, ordinance, rule, regulation, administrative order, bulletin, guidance, instruction, or formal issuance of any Government Authority, as issued, adopted, amended, or superseded from time to time. Laws shall include, without limitation, the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, and the implementing regulations, including the Privacy Rule and Security Rule (collectively, “HIPAA”); Parts C and D of Title XVIII of the Social Security Act, as amended; the regulations governing the Medicare Advantage and Prescription Drug Benefit Programs, set forth at 42 C.F.R. Parts 422 and 423, as amended; all CMS guidance and instructions related to the Medicare Advantage and Medicare Prescription Drug Benefit Programs, including the CMS Medicare Marketing Guidelines; the contract between CMS and HealthSun for HealthSun’s participation in the Medicare Advantage and Medicare Part D Programs; the federal anti-kickback statute set forth at 42 U.S.C. § 1320a-7b(b); the federal False Claims Act set forth at 31 U.S.C. § 3729; Title VI of the Civil Rights Act of 1964, as amended at 42 U.S.C. § 2000d *et seq.*; Sections 503 and 504 of the Rehabilitation Act of 1973, as amended at 29 USC §§ 793 and 794; Title IX of the Education Amendments of 1972, as amended at 20 U.S.C. § 1681 *et seq.*; Section 654 of the Omnibus Budget Reconciliation Act of 1981, as amended at 41 U.S.C. § 9849; the Americans with Disabilities Act, at 42 U.S.C. § 12101 *et seq.*; the Age Discrimination Act of 1975, as amended at 42 U.S.C. § 6101 *et seq.*; 42 U.S.C. § 18116; the Vietnam Era Veterans Readjustment Assistant Act at 38 U.S.C. § 4212; and federal laws governing recipients of federal funds.

- 1.15 “Marketing Event” shall have the same meaning as such term is defined and described in the CMS Medicare Marketing Guidelines.
- 1.16 “Marketing Materials” shall have the same meaning as such term is defined and described in the CMS Medicare Marketing Guidelines.
- 1.17 “Marketing Services” shall have the same meaning as set forth in Section 2.3 (“Marketing Services”) and as further described in Exhibit A (“Marketing Services”) attached hereto and incorporated herein.
- 1.18 “Medicare Advantage Plan” or “MA Plan” shall mean a Medicare Advantage Plan sponsored by a Medicare Advantage Organization, as defined in Laws, including a Medicare Advantage-Prescription Drug Plan as defined in Laws.
- 1.19 “Services” shall have the same meaning as such term is defined in Section 2.1 (“Scope of Services”).

## **ARTICLE 2 – OBLIGATIONS OF AGENT**

### **2.1 Scope of Services.**

- 2.1.1 HealthSun hereby appoints Agent to market HealthSun Plans to Medicare beneficiaries pursuant to the terms and conditions of this Agreement and, if applicable, to the FMO’s Agreement to which the Agent is bound to as set forth in this Agreement, Exhibit D (“FMO/Broker Agent Binding Agreement”).
- 2.1.2 Agent shall provide Marketing Services to and on behalf of HealthSun as set forth in this Agreement, Exhibit A (“Marketing Services”) and Exhibit D (“FMO/Broker Agent Binding Agreement”), and any other exhibits or attachments hereto (collectively, the “Services”). The Services shall include those activities, functions and responsibilities necessary to perform any and all Marketing Services. If there are services, functions, responsibilities and tasks not addressed in this Agreement that are required by Laws for the proper performance and provision of the Services and which are an inherent part of, or a necessary sub-part included within the Services, then such services, functions, responsibilities and tasks shall be deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if specifically described in this Agreement unless HealthSun, after consulting with Agent, determines such services, functions, responsibilities, and tasks shall be performed by HealthSun.
- 2.1.3 Agent shall provide the Services and otherwise perform under this Agreement in compliance with all Laws (including, without limitation, the CMS Medicare Marketing Guidelines), and such other requirements as set forth by HealthSun and/or FMO as the same may be amended from time to time. Agent shall notify HealthSun immediately upon receipt of any nonroutine inquiry or investigation of Agent by a Government Authority that relates to HealthSun, the HealthSun Plans, or this Agreement.

## 2.2 Licensure and Eligibility of Agents.

### 2.2.1 Agent represents and warrants to the following:

- (i) Agent has and shall maintain any and all licenses, permits, certifications, authorizations or other similar permissions (“Licenses”) required by Laws to perform the Services and any other activities described herein, including such Licenses required by the State of Florida and its Government Authorities, and such Licenses are in full force and effect and unrestricted.
- (ii) Agent is not excluded from participating in a Federal Health Care Program, as such term is defined in Laws, or presently debarred, suspended, proposed for debarment, or declared ineligible to participate in federal programs by a federal agency under 2 C.F.R. § 180.970 or any other Law.
- (iii) Agent has completed any and all applicable training and testing in accordance with Laws, and such other requirements as set forth by HealthSun as the same may be amended by HealthSun from time to time.

2.2.2 Agent is prohibited from the performance of any Marketing Services pursuant to this Agreement if the Agent (i) does not possess all Licenses required by Laws to perform such Marketing Services, (ii) is not appointed by HealthSun as applicable, and (iii) has not completed the training and testing required by Law for marketing Medicare Advantage Plans to Medicare beneficiaries, and (iv) has not successfully completed any other of the onboarding requirements applicable under HealthSun policies and procedures, and such other requirements set forth by HealthSun as the same may be amended by HealthSun from time to time.

2.2.3 Agent shall provide notice to HealthSun immediately, in accordance with the provisions of Section 6.14 (“Notice”) hereto, of any instance in which any representation and/or warranty set forth in this Section 2.2 is no longer valid.

## 2.3 Marketing Services.

2.3.1 Agent shall provide the Marketing Services to and on behalf of HealthSun in accordance with Exhibit A (“Marketing Services”).

2.3.2 Agent shall conduct the Marketing Services in accordance with all applicable HealthSun policies and procedures, as the same may be amended by HealthSun from time to time. Agent shall conduct the Marketing Services in a manner that is consistent with industry standards.

2.3.3 In connection with the Marketing Services, Agent shall use only those HealthSun Materials that have been provided to such Agent by HealthSun or FMO.

2.3.4 Agent shall maintain documentation of Marketing Services as required by Laws, including, without limitation, scope of appointment documentation as required by the CMS Medicare Marketing Guidelines. Such documentation shall be considered “Records,” as defined in Section 2.9 (“Books and Records; Audit”).

- 2.3.5 Agent shall not engage in any activity that is prohibited by Laws, including, without limitation, screening Medicare beneficiaries based on health status, engaging in unsolicited contacts with Medicare beneficiaries, marketing products through doorto-door solicitation, marketing in prohibited areas within health care settings, or giving gifts to potential enrollees unless such gifts are approved in advance by HealthSun or provided to Agent by HealthSun and are given in accordance with Laws, and as required by the CMS Medicare Marketing Guidelines.
- 2.4 Territory. Agent shall provide the Marketing Services in the following counties: (i) Broward County, Florida; (ii) Miami-Dade County, Florida (collectively, the “Territory”). The Territory is non-exclusive for both HealthSun and Agent. HealthSun may reduce the number of counties in the Territory upon prior written notice to Agent in the event that HealthSun ceases to offer HealthSun Plans in one or more counties of the Territory. HealthSun makes no representation or warranties that it will, and is under no obligation to, continue to offer HealthSun Plans in some or all counties in the Territory.
- 2.5 Applications. Agent shall provide or arrange for the provision to HealthSun of all completed applications for enrollment no later than two (2) business days after execution of such applications by the applicable Medicare beneficiary or his/her authorized representative. Agent shall cooperate with HealthSun in addressing any issues or questions relating to any application, including, but without limitation, the quality and legibility of the application, for enrollment in a HealthSun Plan submitted by Agent, and abide by HealthSun policies and procedures, and such other requirements set forth by HealthSun as the same may be amended by HealthSun from time to time.
- 2.6 Reserved.
- 2.7 Limitation on Authority. Agent shall not have any powers other than those set forth in this Agreement. Without limiting the foregoing, Agent acknowledges and agrees that Agent shall not undertake any of the following:
- 2.7.1 Change or waive any provision of an insurance policy or application for insurance without the express prior written consent of HealthSun.
  - 2.7.2 Make any representations regarding HealthSun Plans except those which HealthSun has included in the HealthSun Materials.
  - 2.7.3 Use any HealthSun Materials without the prior written consent of HealthSun or FMO.
  - 2.7.4 Alter or modify any HealthSun Materials.
  - 2.7.5 Quote a premium or any other payment term in connection with the HealthSun Plans, other than such rates or payment terms which are offered by HealthSun.
  - 2.7.6 Collect any monies from any Medicare beneficiary, including, without limitation, premium obligations or referral fees.

2.7.7 Bind HealthSun without express written authorization of HealthSun or as pursuant to this Agreement.

## 2.8 Compliance Program.

2.8.1 Agent agrees to cooperate with HealthSun and FMO in connection with their compliance programs and activities, including but not limited to, upon request of HealthSun or FMO, reading and complying with compliance policies and codes of conduct, completing applicable compliance training, and cooperating fully in any inquiry or investigation of potential fraud, waste or abuse.

2.8.2 Agent shall report to HealthSun within one (1) business day of any instances of potential non-compliance or fraud, waste and abuse associated with the Services including, without limitation, any instance of non-compliance or fraud, waste or abuse by the Agent and any related decision by FMO (if applicable) to suspend or terminate the Agent's performance under this Agreement. -Agent shall cooperate with any corrective action reasonably requested by HealthSun to resolve potential and future instances of non-compliance or fraud, waste and abuse.

2.8.3 Agent acknowledges and agrees that HealthSun shall have sole discretion as to whether and what instances of potential non-compliance or fraud relating to this Agreement, the Services, and HealthSun Plans, if any, shall be reported to a Government Authority.

## 2.9 Books and Records; Audit.

2.9.1 Agent shall maintain, as applicable, operational, financial and administrative records, medical and prescription records, contracts, books, files and other documentation relating to Agent's performance under the Agreement (collectively, "Records"). At minimum, such Records shall be sufficient to enable HealthSun (i) to evaluate Agent's performance, (ii) to enforce HealthSun's rights under the Agreement and in accordance with Laws, and (iii) to support HealthSun's calculation of medical loss ratio ("MLR"), as defined in Laws, for the HealthSun Plans.

2.9.2 Agent shall provide HealthSun, the U.S. Department of Health and Human Services ("HHS"), the Comptroller General of the United States ("Comptroller General")

and/or their authorized designees with direct access to all Records, personnel, physical premises, computers and other electronic systems, facilities and equipment to inspect, evaluate, collect, and audit Agent's performance under this Agreement.

2.9.3 This provision shall survive termination of the Agreement for the longer of (i) ten (10) years from termination of the CMS Contract, or, in the case of Records relating to HealthSun's calculation of MLR, ten (10) years from the date HealthSun filed its MLR report for the applicable Contract Year; (ii) completion of any audit; or (iii) such other timeframe as provided or required by Law, HHS, or the Comptroller General.

- 2.9.4 Agent agrees that all data and information that Agent submits to HealthSun under this Agreement shall be complete, accurate and truthful to Agent's best knowledge, information and belief. Upon HealthSun's request, Agent shall certify that all data submitted by Agent under this Agreement is complete, accurate, and truthful.
- 2.10 Subcontracting. The Parties agree that Agent may not subcontract with any person for performance of any of the Services to be provided pursuant to this Agreement, in whole or in part, without the prior written consent of HealthSun.
- 2.11 Insurance.
- 2.11.1 Agent shall obtain Errors and Omissions (E and O) insurance coverage in an amount that is no less than two hundred fifty thousand dollars (\$250,000) per occurrence and seven hundred fifty thousand (\$750,000) in the aggregate prior to such Agent providing Marketing Services pursuant to this Agreement.
- 2.11.2 Agent shall provide certificates of coverage to HealthSun.
- 2.11.3 Agent shall notify HealthSun immediately upon the loss, termination, or imposition of any limitation on Agent's insurance coverage.
- 2.12 Agent shall hold HealthSun Members harmless for any amounts payable by HealthSun or Agent, as applicable, for Services under this Agreement.
- 2.13 Agent has contracted to perform Marketing Services under one Field Marketing Organization ("FMO") that holds an active Agreement with HealthSun. If applicable, the Agent shall agree to comply with all of the provisions, terms and conditions of the Agreement between the FMO and HealthSun by the amendment set forth at Exhibit D ("FMO/Broker Agent Binding Agreement"). HealthSun is obligated to review the FMO Agreement with Agent upon request.

### **ARTICLE 3 – OBLIGATIONS OF HEALTHSUN**

- 3.1 HealthSun Oversight. The Parties acknowledge and agree that HealthSun shall oversee, and ultimately remain responsible and accountable to CMS, for those functions and responsibilities required of HealthSun pursuant to Laws, including HealthSun's contract with CMS. Accordingly, HealthSun shall have final approval over performance of the Services and shall provide ongoing monitoring and oversight of all aspects of Agent's performance of its obligations under the Agreement.
- 3.2 Appointment. HealthSun shall appoint Agent to provide the Marketing Services as described herein upon receiving from Agent and/or if applicable FMO the documentation regarding Agent's: (i) licensure; (ii) completion of training and testing requirements, as required by Laws; and (iii) such other requirements as set forth by HealthSun. Nothing in this Section 3.2 shall be interpreted as obligating HealthSun to appoint Agent, and the Parties acknowledge and agree that HealthSun reserves the right, in its sole discretion, to determine whether or not HealthSun shall appoint and maintain Agent to provide Marketing Services to and on behalf of HealthSun. HealthSun may, in its sole discretion, revoke an appointment of Agent.

3.3 HealthSun Materials.

3.3.1 HealthSun shall develop and provide to Agent and/or if applicable FMO all Marketing Materials for Agent to use in connection with the Marketing Services.

3.3.2 HealthSun shall be solely responsible for the submission of all Marketing Materials to CMS for review and approval. This shall include the submission to CMS for review and approval of any Marketing Materials created by Agent and/or if applicable FMO for use in connection with the Services.

3.3.3 HealthSun and/or FMO shall provide to Agent within ten (10) calendar days of the Agent's appointment by HealthSun, an initial set of HealthSun Materials.

3.4 Training. HealthSun shall develop materials for use in the training of Agent, and shall provide such materials to Agent and/or if applicable FMO for use in connection with Marketing Services that Agent will provide in accordance with Section 2.3 ("Marketing Services") and Exhibit A ("Marketing Services") hereto.

3.5 Applications for Enrollment. HealthSun shall be responsible for processing all applications for enrollment received by Agent and/or if applicable FMO and provided to HealthSun. HealthSun shall have the sole discretion to accept or reject applications for enrollment in HealthSun Plans submitted by Agent and/or if applicable FMO.

3.6 Monitoring by HealthSun; Corrective Action.

3.6.1 HealthSun shall conduct oversight and monitoring activities of Agent, including without limitation, secret shopper activities and reviewing recorded calls. HealthSun shall have the right to ride along with Agent during performance of Marketing Services hereunder to monitor Agent's performance. Oversight and monitoring activities are subject to HealthSun policies and procedures, and such other requirements set forth by HealthSun as the same may be amended by HealthSun from time to time.

3.6.2 HealthSun reserves the right to require Agent to implement any corrective action reasonably requested by HealthSun to address any issue of non-compliance or

fraud, waste or abuse by Agent or otherwise relating to this Agreement, including, without limitation, suspension of ~~an~~ Agent from performance under this Agreement.

3.7 Reporting. Agent acknowledges and agrees that HealthSun shall have certain reporting obligations to Government Authorities pertaining to Agent, and compensation paid under this Agreement, among other data and information. HealthSun shall report the termination of any Agent to Government Authorities, as applicable, and shall report the reasons for such termination if such reporting is required by applicable Government Authorities.



## ARTICLE 4 – COMPENSATION

- 4.1 Compensation for Marketing Services. HealthSun and FMO have entered into an agreement pursuant to which FMO has agreed to accept legal responsibility for all payment of commissions to Agent in accordance with the requirements and compensation schedule set forth at Exhibit C (“Compensation – Marketing Services”) attached hereto and incorporated herein, as it may be updated by HealthSun on an annual or more frequent basis, in HealthSun’s sole discretion. Agent agrees that FMO shall be solely responsible for compensating Agents for Marketing Services, in accordance with the agreement between Agent and FMO and all Laws. Agent shall accept such compensation as payment in full for the Marketing Services and Agent shall hold HealthSun harmless for any monies due to any Agent for Services rendered under this Agreement. Notwithstanding the foregoing, Agent may receive the actual commission payments directly from HealthSun, pursuant to the agreement between HealthSun and FMO. Agent shall raise any questions, errors, disputes, and other issues relating to the payment or amount of compensation for Marketing Services solely with FMO and not with HealthSun. Notwithstanding any other provision of this Agreement, Agent shall notify FMO as soon as possible and in no event more than thirty (30) calendar days after identifying any overpayment for Marketing Services.
- 4.2 Expenses. Agent shall be solely responsible for payment of any costs and other expenses incurred relating to performance under this Agreement, unless otherwise approved prior by HealthSun or FMO in accordance with requirements set forth by HealthSun or FMO.

## ARTICLE 5 – TERM AND TERMINATION

- 5.1 Term.
- 5.1.1 This Agreement shall be effective on the Effective Date and shall remain in full force and effect through **December 31, 2019** (the “Term”) if the Agreement is not terminated earlier pursuant to Section 5.2 (“Termination”) hereto. Notwithstanding the foregoing, the Parties agree that this Agreement is conditioned upon the effectiveness of HealthSun’s contract with CMS and shall terminate automatically upon termination of HealthSun’s CMS contract for any reason. HealthSun shall, to the extent practical and feasible, undertake commercially reasonable efforts to advise Agent or FMO in advance of the termination of the contract between HealthSun and CMS.
- 5.1.2 The Agreement shall renew for successive one year terms running from **January 1 through December 31** each year unless either Party notifies the other of its intent not to renew at least ninety (90) calendar days prior to the end of the then-current Term.
- 5.2 Termination.
- 5.2.1 The Agreement may be terminated by the mutual written consent of the Parties.
- 5.2.2 Either Party may terminate the Agreement by providing thirty (30) days’ prior written notice to the other Party of the other Party’s material breach of this Agreement, including breach of any representation or warranty of such other Party contained

herein; provided, however, that the non-breaching Party shall not be permitted to terminate the Agreement if the breaching Party cures such breach to the reasonable satisfaction of the non-breaching Party within thirty (30) calendar days after receipt from the non-breaching Party of notice of its intent to terminate due to such breach.

5.2.3 Either Party may terminate this Agreement immediately upon the filing by or against the other Party of any action under the Federal Bankruptcy Act, or any other law or act regarding insolvency, reorganization, arrangement, or extension for the relief of debtors, including the assignment of assets for the benefit of creditors, and the appointment of receiver or trustee for transfer or sale of a material portion of the other Party's assets.

5.2.4 HealthSun may terminate this Agreement effective immediately upon HealthSun's written notice to Agent in the event that Agent is no longer able to provide services hereunder as a result of:

- (i) The suspension, revocation, or imposition of restrictions on Agent's and/or if applicable FMO's License(s) by any Government Authority;
- (ii) Any of the representations and warranties set forth in Section 2.2 ("Licensure and Eligibility of Agents") being no longer accurate;
- (iii) Termination of that certain Business Associate Agreement between the Parties attached hereto as Exhibit E ("Business Associate Agreement"); or
- (iv) Termination of HealthSun's agreement with FMO.

5.2.5 HealthSun may terminate this Agreement upon HealthSun's written notice to Agent in the event of a change of control of Agent, in accordance with Section 6.10 ("Successors and Assigns; Assignment; Change of Control") of this Agreement. Such termination shall be effective on the date specified by HealthSun in such notice.

5.3 Revocation. The Parties acknowledge and agree that in instances where CMS or HealthSun determine that Agent or if applicable FMO has not performed the activity or reporting obligation satisfactorily, HealthSun, in lieu of terminating this Agreement pursuant to Section 5.2 ("Termination") may revoke, in whole or in part, Agent's performance of one or more of the activities and/or reporting requirements delegated by HealthSun to Agent under this Agreement or HealthSun may specify other remedies.

5.4 Termination of Agent. HealthSun, in its sole discretion, may terminate the provision of Services under this Agreement by Agent for any reason upon written notice to Agent.

5.5 Notice of Termination. Any notice of non-renewal or termination specified in this Agreement shall be delivered in accordance with Section 6.14 ("Notice") of this Agreement.

5.6 Continuing Obligations. The Parties acknowledge and agree that they each may have continuing obligations following termination of the Agreement. The Parties agree to work

together in good faith to ensure the orderly transition of information following termination of this Agreement.

5.7 Effect of Termination.

5.7.1 Upon termination of this Agreement, the rights of each party hereunder shall terminate, provided that such termination shall not release either Party with respect to any rights or obligations that arose prior to termination or that, by their terms, survive the termination of this Agreement.

5.7.2 The Parties agree that HealthSun, and not the Agent shall notify all affected HealthSun Members of the termination of this Agreement.

**ARTICLE 6 — MISCELLANEOUS**

6.1 Independent Contractor. The Parties understand and agree that Agent is an independent contractor of HealthSun and Agent is not an employee, partner or joint venturer of HealthSun. Nothing in this Agreement is intended to create, nor shall be deemed or construed to create, any relationship between HealthSun and Agent other than that of independent entities contracting for performance of the obligations set forth herein.

6.2 HIPAA. In providing or arranging for the provision of the Services, the Parties shall require Agent to comply with HIPAA and other Laws governing privacy, confidentiality, security, and accuracy of HealthSun Member information, including 42 C.F.R. § 422.118. Agent acknowledges that it is a “Business Associate” (as such term is defined under HIPAA) of HealthSun and shall be bound by the Business Associate Agreement, set forth at Exhibit E (“Business Associate Agreement”).

6.3 Indemnification; Hold Harmless; Limitation of Liability. Each Party (the “Indemnitor”) shall hold each other Party and its officers, directors, employees, agents, contractors and affiliates (collectively, the “Indemnitees”) harmless from, and indemnify one another against any and all claims and losses, including without limitation, judgments, awards, settlements, fines, penalties, sanctions, and costs, including legal costs (collectively, “Losses”), incurred by the Indemnitees to the extent such Losses are the result of the Indemnitor’s material breach of this Agreement or the negligence, recklessness, or willful misconduct of the Indemnitor or its officers, directors, employees, agents, contractors, or affiliates in connection with the Indemnitor’s performance under this Agreement. In no event shall either Party be liable to the other Party, whether in contract, tort (including negligence), warranty, or otherwise, for any consequential, incidental, indirect, exemplary, special, or punitive damages that in any way arise out of or relate to this Agreement, whether or not such damages were foreseeable and whether or not the Party was advised of the possibility of such damages; provided, however, that such limitations on liability shall not apply to Losses resulting from any claim brought by or on behalf of a Government Authority.

6.4 Governing Law; Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by the laws of the State of Florida (excepting any conflict of laws or provisions which would serve to defeat application of Florida substantive law). Each of the Parties to this Agreement hereby irrevocably and unconditionally:

6.4.1 Consents to submit to the exclusive jurisdiction of the courts of Miami-Dade County, Florida for any proceeding arising in connection with this Agreement and each such Party agrees not to commence any such proceeding except in such courts;

6.4.2 Waives any objection to the laying of venue of any such proceeding in the courts of Miami-Dade County, Florida. If for any reason venue is not accepted in MiamiDade County, the Parties irrevocably consent as provided in this Section 6.4 to the exclusive jurisdiction of the courts of Broward County, Florida; and

6.4.3 KNOWINGLY AND AFTER CONSULTATION WITH COUNSEL, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, WAIVES ALL RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING WITH RESPECT TO THIS AGREEMENT OR ANY MATTER RELATED IN ANY WAY THERETO.

6.5 Dispute Resolution. Except for those matters subject to emergent or injunctive relief, in the event that any dispute relating to this Agreement arises between HealthSun and Agent, either Party may by written notice call a meeting at the HealthSun offices in Miami, Florida regarding such dispute, to be attended by at least two (2) senior executive officers of each Party who shall attempt in good faith to resolve the dispute. If the dispute cannot be resolved through such executive negotiations within thirty (30) business days after the date of the initial notice, each Party shall retain all rights to bring an action regarding such matter in accordance with Law.

## 6.6 Confidentiality.

6.6.1 Confidential Information. Each Party acknowledges that it may acquire or be exposed to certain information of the other Party that as a result of this Agreement will constitute information of a proprietary or confidential nature, including, without limitation information regarding: (a) the other Party's services, methods of operation, systems, programs, inventions, techniques, suppliers, customers and prospective customers, members, beneficiaries, contractors, cost and pricing data, financial and operational information, trade secrets, business strategies, know-how, processes, plans, reports, designs and any other information of or relating to the

other Party's business information or concerning the other Party's business affairs or property; and (b) in the case of HealthSun: (i) any of the foregoing relating to HealthSun's affiliates, (ii) any information and materials relating to third party vendors that have provided any part of HealthSun's and/or any of its affiliates' information or communications infrastructure, and (iii) HealthSun Data, as defined herein; and (c) without limiting the generality of the foregoing, any materials marked as "confidential," "proprietary," or with a similar designation (collectively, "Confidential Information").

6.6.2 Protection of Confidential Information. The Party receiving Confidential Information (the "Receiving Party") of the other Party (the "Disclosing Party") covenants and agrees that it shall: (a) maintain the Confidential Information of the Disclosing Party in strict confidence; (b) not, directly or indirectly, divulge, reveal, report, publish, transfer, or disclose, or permit to be divulged, revealed, reported, published, transferred, or disclosed, for any purpose whatsoever, any of the Confidential

Information of the Disclosing Party; (c) use at least the same degree of care to maintain the secrecy of the Disclosing Party's Confidential Information as the Receiving Party uses in maintaining the secrecy of its own Confidential Information; and (d) use the Confidential Information of the Disclosing Party solely for the purpose of carrying out its obligations under this Agreement or exercising its rights under this Agreement, and will not otherwise use such Confidential Information for its own account or for the account of others. The Receiving Party may disclose Confidential Information in the event that the Receiving Party becomes legally compelled to disclose such information pursuant to law, regulation, or an order of a court or other Government Authority; provided, however, that the Receiving Party must give the Disclosing Party advance written notice to enable the Disclosing Party to seek a protective order or otherwise attempt to prevent such disclosure, and thereafter may disclose only the minimum Confidential Information required to be disclosed in order to comply, whether or not a protective order or other similar order is obtained.

6.6.3 Disclosure to Representatives. Notwithstanding the foregoing, each Party shall be permitted to disclose Confidential Information of the Disclosing Party to its affiliates, directors, officers, employees and contractors (collectively, "Representatives"), but only to the extent that such Representatives need to have access to the Confidential Information for the purpose of fulfilling the Receiving Party's respective rights or duties contemplated by this Agreement, are informed by the Receiving Party of the confidential nature of the Confidential Information, and are similarly bound to hold the Confidential Information in confidence.

6.6.4 Exceptions. "Confidential Information" shall not include information that: (a) was publicly available at the time of disclosure or later becomes available other than through an act or omission of the Receiving Party; (b) was, prior to disclosure or generation hereunder, lawfully in its possession and was known to the Receiving Party (other than through previous engagement by or work for the Disclosing Party) without restriction to its use; (c) can be demonstrated to have been independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information; or (d) was subsequently disclosed to the Receiving Party by a third party who did not receive such Confidential Information directly or indirectly from the Disclosing Party or any of its affiliates and which was entitled to and did disclose the same to the Receiving Party without restriction. Confidential Information shall not be deemed to be in the public domain or generally known or available to the public merely because any part of said information is embodied in general disclosures or because individual features, components or combinations thereof are now or become known to the public. Confidential Information shall not include Protected Health Information as defined in Laws.

6.6.5 Confidentiality of Agreement. The Parties further agree that the existence and contents of this Agreement and all exhibits and schedules attached hereto, and the nature and status of the transactions described herein and therein, are confidential. Without the prior written consent of the other Party, neither Party will disclose to any other person the existence or contents of this Agreement. The provisions of this paragraph shall not apply to: (a) any disclosure to a party's Representatives,

financial advisers and legal advisers; (b) any disclosure which such Party makes to any Government Authority pursuant to that Party's obligations of disclosure to such Government Authority, including, without limitation, any disclosure of the Agreement by HealthSun to CMS; (c) any disclosure required by or necessary or appropriate in connection with legal proceedings; or (d) any disclosure which, in the written opinion of counsel to the Party seeking to make the disclosure, is required by Law.

6.6.6 Return of Confidential Information. Upon expiration or termination of this Agreement or otherwise upon the request of the Disclosing Party, the Receiving Party shall return to the Disclosing Party all Confidential Information of the Disclosing Party (including any copies thereof) in its possession or control, and shall destroy all materials, notes or other documents, whether in written form or electronic form (e.g., information on hard drives or email), that include, refer to, describe, summarize or analyze any part of the Disclosing Party's Confidential Information, which may have been produced or created by or on behalf of the Disclosing Party, without retaining any copies or derivations therefrom or in relation thereto, and the Receiving Party shall furnish the Disclosing Party with a written affidavit certifying that, through reasonable care and to the best of its knowledge, all Confidential Information provided to it under this Agreement has been returned or otherwise destroyed.

6.6.7 Non-Solicitation. During the term of this Agreement, Agent shall not, directly or indirectly, contact, communicate or meet with any HealthSun Member for the purpose of replacing the HealthSun Member's existing HealthSun Plan with a HealthSun Plan offered or operated by an entity not affiliated with HealthSun. This provision does not apply, however, when a HealthSun Member initiates the contact, communication or meeting with Agent for the purpose of seeking replacement coverage for a HealthSun Plan from an entity that is not affiliated with HealthSun. Following termination of this Agreement for any reason, Agent shall direct all inquiries regarding the HealthSun Plans to HealthSun. For a period of twelve (12)

months after the termination of this Agreement, Agent shall not divert or attempt to divert from any HealthSun Plans or any HealthSun business whatsoever by encouraging, either directly or indirectly, any HealthSun Member to terminate enrollment in a HealthSun Plan or otherwise discontinue the HealthSun Member's relationship with HealthSun. Agent shall not, during the term of this Agreement and for a period of twelve (12) months after the termination of this Agreement, hire, offer to hire, or in any manner persuade or attempt to persuade, either in the Agent's own capacity or as the agent for another, or otherwise, any of the officers, employees, brokers or vendors of HealthSun, or any of their affiliates or subsidiaries, to discontinue their relationship with HealthSun.

6.6.8 Remedies. The Parties acknowledge that: (a) the restrictions contained in this Section 6.6 are reasonable and necessary to protect the legitimate business interests of the Disclosing Party; (b) remedies at law may be inadequate, and any violation of these restrictions may cause irreparable damages within a short period of time; and (c)

the Disclosing Party shall be entitled to seek injunctive relief as a result of any violation hereunder, in addition to any other rights or remedies it may have.

## 6.7 Personal Information Protection.

6.7.1 In addition to the obligations set forth in the Business Associate Agreement at Exhibit E, Agent shall implement and maintain reasonable security procedures and practices that:

- (i) Are appropriate to the nature of any Personal Information disclosed to Agent by HealthSun including, but not limited to, patient or health plan member data; and
- (ii) Are reasonably designed to help protect the Personal Information from unauthorized access, use, modification, disclosure, or destruction.

6.7.2 For purposes of this Section 6.7:

- (i) “Personal Information” means an individual’s first name or first initial and last name in combination with any one or more of the following data elements: Social Security number; driver’s license number; financial account number, including a credit card number or debit card number, that in combination with any required security code, access code, or password, would permit access to an individual’s financial account, or an Individual Taxpayer Identification Number.
- (ii) “Breach of the Security of a System” means the unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of Personal Information.

6.7.3 In the event of the occurrence of any situation or happening that could potentially result in the Breach of the Security of a System, or any other loss of Personal Information or the loss or inappropriate disclosure of individually identifiable health information (individually or collectively an “Event”):

- (i) Agent shall give notice to HealthSun of such Event immediately upon the discovery of the Event providing as much information as Agent knows at that time (that is, not waiting until Agent conducts a full investigation);
- (ii) Agent and HealthSun shall cooperate in a timely and good faith manner in an investigation of the possible Event;
- (iii) Agent and HealthSun shall cooperate in a timely and good faith manner in any remedial efforts deemed necessary by HealthSun if it is determined that an Event did occur or is reasonably likely to have occurred; and
- (iv) Agent shall pay all costs of any notifications, credit monitoring and similar mitigation services, and claims associated with any such Event that is attributable to the acts or omissions of Agent. Agent agrees that HealthSun shall have sole discretion in determining when such notifications, credit

monitoring and similar mitigation services are legally required or otherwise appropriate, and to oversee any such notification, credit monitoring and similar mitigation services.

- 6.8 Ownership of Data. As used in this Agreement, “HealthSun Data” means any and all information and data created, acquired, processed, stored, or distributed by Agent in the performance of the Services hereunder. Agent acknowledges and agrees that HealthSun is and shall remain the sole and exclusive owner of all right, title and interest in and to all HealthSun Data. Agent shall have no rights whatsoever in or to any of the HealthSun Data in any form (including in aggregated or de-identified form), except as expressly provided in this Section 6.8. Agent may access, process and use the HealthSun Data solely to, and only to the extent required to, provide the Services to HealthSun in accordance with this Agreement, or as directed by HealthSun in writing. Agent may not modify the HealthSun Data, merge it with other data, commercially exploit it or engage in any other practice or activity that may in any manner adversely affect the integrity, security or confidentiality of the HealthSun Data.
- 6.9 Publicity; Marketing. Except as required by Law, neither Party will issue any announcement, press release, or other public statement regarding the discussions, negotiations, or arrangements contemplated by this Agreement without the prior written consent of the other Party. Neither Party shall use the name of the other Party in any advertising, promotion, or sales or any other materials without the prior written consent of the other Party. Agent agrees that no public or private announcements, media releases, press conferences, advertising or similar publicity in any form relating to HealthSun’s name, image, or logo (or any variation or combination of such name, image, or logo), as well as the name or image of any HealthSun employee or patient shall be made without the prior written consent of HealthSun, which consent may be withheld in HealthSun’s discretion.
- 6.10 Successors and Assigns; Assignment; Change of Control.
- 6.10.1 Neither this Agreement nor the rights or obligations of Agent hereunder are assignable, in whole or in part, by operation of Law or otherwise, by Agent without the prior written consent of HealthSun. Any attempted assignment in contravention hereof shall be void. This Agreement shall be binding upon and inure solely to the benefit of the Parties, their successors and permitted assigns, and nothing herein is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever.
- 6.10.2 Agent shall provide written notice to HealthSun at least ninety (90) calendar days prior to Agent experiencing a Change of Control Event. HealthSun shall have the right to terminate this Agreement upon notice of such Change of Control Event in accordance with Section 5.2 (“Termination”) hereto. For purposes of this Agreement the term “Change of Control Event” shall mean any transaction in which Agent issues, sells, pledges, hypothecates or otherwise transfers over thirty-three percent (33%) of the outstanding equity of Agent (or Agent’s parent) or grants any rights, powers or options to acquire such equity, or permits any of the foregoing to occur by operation of law, or enters into any agreement to do any of



the foregoing, or merges Agent into any other entity or merges any other entity into Agent.

- 6.11 Entire Agreement; Amendments; No Waiver. This Agreement, including all of the exhibits and attachments hereto, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, oral or written, between the Parties with respect to the subject matter hereof. In the event of a conflict between this Agreement and any of the exhibits hereto, this Agreement shall govern. Except where one Party may amend a provision by its terms, no provision of this Agreement may be amended, revoked or waived except by a writing signed and delivered in accordance with Section 6.14 (“Notice”) of this Agreement by each Party hereto; provided, however that HealthSun may unilaterally amend this Agreement to comply with Laws and shall give written notice to Agent of such amendment and its effective date. No failure or delay on the part of either Party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be deemed a waiver of any other right hereunder.
- 6.12 Severability. The invalidity or unenforceability of any covenant, agreement, term or condition of this Agreement or the application thereof to any person or circumstance shall not affect the validity, enforceability, or applicability of any other provision in this Agreement.
- 6.13 Force Majeure. Notwithstanding any other provision in this Agreement, if either Party is delayed in or prevented from performing its obligations under this Agreement, in whole or in part, due to an act of God, fire, flood, storm, explosion, epidemic, civil disorder, strike, lockout or other labor trouble, material shortages of utilities, facilities, labor, materials or equipment, delay in transportation, breakdown or accident, any order, demand or requirement of any military authority, riot, war, or other cause beyond the reasonable control of the non-performing Party (“Force Majeure Event”), then upon notice to the other Party, such Party’s obligations hereunder shall be excused so long as and to the extent that such cause(s) prevent or delay performance. Notwithstanding the above, if a Force Majeure Event results in Agent being unable to perform during any period any or all of its obligations in accordance with the terms hereof, HealthSun shall: have the right to terminate this Agreement if the Force Majeure Event has not fully abated within one hundred and twenty (120) days. Both Parties shall use their best efforts to minimize delays that occur due to a Force Majeure Event. Notwithstanding the above, Agent shall in no event be excused from those obligations not directly affected by a Force Majeure Event (including disaster recovery services), and if the Force Majeure Event is caused by Agent’s failure to comply with any of its obligations under this Agreement or by Agent’s negligence or omission, there shall be no relief from any of its obligations under this Agreement.
- 6.14 Notice. All notices and other communications pertaining to this Agreement shall be in writing and shall be deemed duly to have been given if personally delivered to the other Party, sent by facsimile or if sent by the United States Postal Service certified mail, return receipt requested, postage prepaid, or by Federal Express, United Parcel Service or other nationally recognized overnight carriers. All notices or communications between HealthSun and Agent pertaining to this Agreement shall be addressed as follows:

If to HealthSun:  
  
Attn: Sergio Rumie  
HealthSun Health Plans  
3250 Mary Street  
Suite 400  
Coconut Grove, Florida 33133

If to AGENT:  
  
**NAME:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy not constituting notice to:  
  
Attn: Robert M. Kline  
McDermott Will & Emery LLP  
333 Avenue of the Americas  
Suite 4500  
Miami, Florida 33131

With a copy not constituting notice to:  
  
**NAME:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Failure by either Party to provide courtesy notice at the address above negates the effectiveness of the entire notice.

- 6.15 Counterparts. This Agreement may be executed in one or more counterparts, and by the Parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.
- 6.16 Construction; Headings. The Parties acknowledge that each Party has reviewed this Agreement and that consequently any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party is not applicable in the interpretation of this Agreement or any amendments or exhibits thereto. The headings hereto are for convenience only and shall not be used in any way to construe the terms of this Agreement.
- 6.17 Survival. Any provision of this Agreement that requires or reasonably contemplates the performance or existence of obligations by either Party after termination of this Agreement shall survive such termination, regardless of the reason for termination, which shall include, but not be limited to, Article 4 (“Compensation”), Sections 2.9 (“Books and Records; Audit”), 3.7 (“Reporting”), 5.6 (“Continuing Obligations”), 5.7 (“Effect of Termination”), 6.3 (“Indemnification; Hold Harmless; Limitation of Liability”), 6.4 (“Governing Law; Jurisdiction; Waiver of Jury Trial”), 6.5 (“Dispute Resolution”), 6.6 (“Confidentiality”), 6.8 (“Ownership of Data”), 6.14 (“Notice”), 6.16 (“Construction”), 6.17 (“Headings”), 6.20 (“Third Party Beneficiaries”), and Exhibit C (“Compensation – Marketing Services”), D (“FMO/Broker Agent Binding Agreement”), E (“Business Associate Agreement”).
- 6.18 Off-shoring. Agent shall not, itself or through another person, undertake any functions, activities, or services in connection with this Agreement that involves transmission or storage of HealthSun member data outside of the United States of America or any territory thereof.
- 6.19 Third Party Beneficiaries. This Agreement has been entered into solely for the benefit of HealthSun and Agent and no other persons, including Agents and Medicare beneficiaries, are intended to be or are third-party beneficiaries of or under this Agreement. Nothing in

this Agreement shall be construed to create any legal, equitable, or beneficial interest in any third party or to vest in any third party any interest as to enforcement or performance.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;**

**SIGNATURES TO FOLLOW]**

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed in their names and on their behalf by and through their duly authorized officers on the dates set forth below their signatures.

**HEALTHSUN HEALTH PLANS, INC.**

**AGENT**

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

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

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

## **EXHIBIT A**

### **MARKETING SERVICES**

Agent and/or if applicable FMO shall provide or arrange for the provision of marketing activities in the Territory to Medicare beneficiaries regarding HealthSun Plans, including, without limitation, the following:

- Participating in Educational Events;
- Participating in marketing events to market HealthSun Plans;
- Scheduling and completing one-on-one appointments with Medicare beneficiaries to discuss HealthSun Plans;
- Receiving walk-in appointments and completing such appointments with Medicare beneficiaries to discuss HealthSun Plans;
- Pursuing “leads” for Medicare beneficiaries interested in learning more about HealthSun Plans; and
- Enrolling Medicare beneficiaries into HealthSun Plans upon their request.
- Retention of Membership, that includes, but without limitation, all general customer services requested by Member.

**EXHIBIT B  
RESERVED**

**EXHIBIT C**  
**CY 2019 COMPENSATION SCHEDULE – MARKETING SERVICES**

1. As compensation for the Marketing Services provided by Agent, Agents shall earn a commission payment for each eligible Medicare beneficiary for whom an application was submitted to HealthSun by either Agent or FMO and who is enrolled by the Agent in a HealthSun Plan for a Contract Year (“Commission”), as deemed effective and paid by CMS with a membership effective date of **January 1 - December 1 2019**. Agents shall only receive compensation on qualified enrollments. Qualified is defined as an enrollment for which an enrollment application has been (i) reviewed and validated by HealthSun; and (ii) approved and confirmed by CMS.

- a. The amount of the applicable Commission shall be determined in accordance with Laws, including CMS Medicare Marketing Guidelines and CMS statements regarding the fair market value “cut off points” for commission payments for the applicable Contract Year.
- b. For enrollments for **Contract Year 2019**, the amount of each Commission shall be determined as follows:

<b>Compensation Type</b>	<b>Compensation Rate</b>
Initial Year Enrollment	\$482
Renewal Year Enrollment	\$241
Following the Initial Year Compensation	\$20.08 per month

- c. For enrollments for each subsequent Contract Year for which this Agreement is in effect, the amount of each Commission shall be determined by HealthSun and shall comply with Laws. HealthSun shall unilaterally amend this Exhibit C to specify the amount of each Commission for each such Contract Year.

Initial Year Enrollment Compensation

Agent shall receive the full compensation under the following two scenarios: 1) beneficiary’s first year of enrollment in any Medicare plan; or 2) beneficiary enrollment from an employer group plan.

Agent shall receive the pro-rated compensation amount under the following two scenarios: 1) beneficiary enrollment from an “unlike plan”; or 2) beneficiary enrollment from any plan only during their initial enrollment year.

Renewal Year Enrollment Compensation

Agent shall receive the pro-rated compensation amount under the following three scenarios: 1) following the initial year compensation; 2) beneficiary enrollment from a “like plan”; or 3) beneficiary enrollment from an MMP.

Following the Initial Year Compensation

Subject to the provisions of this Agreement, Agent shall receive Renewal Commission for as long as the applicable Medicare Enrollee remains continuously enrolled in a HealthSun Plan.

- d. Compensation Schedule: Subject to any recoupment of commission, as referenced in item 6 of Exhibit C, the Chart below explains the amount of the pro-rated compensation that Agent will receive depending on the effective enrollment month and the compensation type whether initial year or renewal year.

<b>Effective Date</b>	<b>Enrollment Months</b>	<b>Initial Year</b>	<b>Renewal Year</b>
01/01/2019	12	\$482.00	\$241.00
02/01/2019	11	\$441.83	\$220.92
03/01/2019	10	\$401.67	\$200.83
04/01/2019	9	\$361.50	\$180.75
05/01/2019	8	\$321.33	\$160.67
06/01/2019	7	\$281.17	\$140.58
07/01/2019	6	\$241.00	\$120.50
08/01/2019	5	\$200.83	\$100.42
09/01/2019	4	\$160.67	\$80.33
10/01/2019	3	\$120.50	\$60.25
11/01/2019	2	\$80.33	\$40.17
12/01/2019	1	\$40.17	\$20.08

2. Renewal Compensation shall cease at such time that the Medicare beneficiary is no longer enrolled in a HealthSun Plan or upon the occurrence of any other event terminating commission payments as specified in this Agreement.
3. Payment of Renewal Compensation is contingent on FMO providing HealthSun and HealthSun Plan members, while they remain enrolled in a HealthSun Plan, certain services, including but not limited to:
  - a. Training, testing, monitoring, and supervision of all brokers within FMO's hierarchy.
  - b. Thorough review of each beneficiary enrollment application for completeness, accuracy and legibility prior to timely submittal to HealthSun.
  - c. Submission of 98% of beneficiary enrollment applications within 48 hours of beneficiary enrollment request.
  - d. Providing periodic reports (such as seminar and statistical reports) as reasonably requested by HealthSun.
4. Upon termination of this Agreement by mutual consent of the Parties in accordance with Section 5.2.1 ("Termination"), upon non-renewal of this Agreement in accordance with Section 5.1 ("Term") hereto, or upon termination of the agreement between HealthSun and FMO by mutual consent or non-renewal of such agreement, Agent shall continue to receive, in accordance with this Agreement, Commissions earned by Agent prior to any such termination of the Agreement.

5. In the event that this Agreement or the agreement between HealthSun and FMO is terminated by HealthSun in accordance with Section 5.2.2, 5.2.3, 5.2.4, or 5.2.5 of either Agreement, Agent forfeits any and all Commissions due but not yet payable and Agent shall not receive any such Commissions. In the event that HealthSun terminates an Agent pursuant to Section 5.4 (“Termination of Agent”) of the Agreement, Agent forfeits any and all Commissions due but not yet payable for HealthSun Members for whom an application was submitted by such Agent for enrollment.
6. Commission payments hereunder shall be subject to all Laws, including without limitation Section 120 of the CMS Medicare Marketing Guidelines and the provisions therein regarding recoupment of commissions and CMS fair market value limitations on commission payments, as the same may be amended, superseded, or otherwise modified from time to time.
7. Agent acknowledges and agrees that FMO shall be solely responsible for compensation to Agent in connection with that respective provision of Services under this Agreement, including, without limitation, payment of commissions or other monies for HealthSun Members for whom an application was submitted by such Agent for enrollment.

Agent, by executing this Compensation Schedule certifies that Agent currently satisfies all of the requirements to be an Agent/Broker as set forth in the Agreement.

Agent hereby acknowledges the Compensation Schedule set forth for Enrollments effective in **Contract Year 2019** and all terms described under Exhibit C of the Independent Broker Agreement.



**EXHIBIT D**

**FMO/BROKER AGENT BINDING AGREEMENT**

\_\_\_\_\_ (“**Agent**”), hereby agrees to be bound by all of the provisions of the Field Marketing Organization (FMO) Independent Broker Agreement dated as of **10/1/2017** by and between **Plan Advisors** (“**FMO**”) and HealthSun Health Plans, Inc. (“**HealthSun**”) as it has been and may be amended, supplemented or otherwise modified from time to time, the “**Agreement**”. Unless otherwise indicated all capitalized terms used but not defined shall have the meaning given to such terms in the Agreement.

In connection with the foregoing, all references to "Agent(s)" or “Broker(s)” in the Agreement shall include Agent. Agent, by executing this Binding Agreement, hereby acknowledges that Agent has read the terms and conditions of the Agreement and agrees to, and shall, be bound, and abide, by all terms, conditions, covenants and obligations applicable to Broker and Agents under the Agreement as of the date set forth below.

Agent, by executing this Binding Agreement also certifies that Agent currently satisfies all of the requirements to be an Agent/Broker as set forth in the Agreement and affirms that Agent will immediately notify FMO and/or HealthSun in the event that Agent no longer satisfies all of the requirements to be an Agent/Broker, or if the representations and warranties set forth in the Agreement that are applicable to Agent are no longer true.

Agent hereby acknowledges that HealthSun shall have the right, in its sole discretion, to remove Agent from providing services under the Agreement if Agent fails to continue to meet the requirements to be an Agent/Broker or if the representations and warranties set forth in the Agreement that are applicable to Agent are no longer true. Agent acknowledges that in the event of such removal, HealthSun will provide written notice of the termination of the Agreement with respect to Agent to both FMO and Agent and that the effect of such termination on any Compensation payable to Agent shall be as described in the Agreement

**AGENT**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Agent License Number:

\_\_\_\_\_

Issuing State:

\_\_\_\_\_

FMO Name: **Plan Advisors**

Address: **5846 South Flamingo Road Suite 196, Fort Lauderdale, FL 33330**

## EXHIBIT E

### BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) is entered into this \_\_\_ day of \_\_, 20\_\_ (“**Effective Date**”), by and between \_\_\_\_\_ (“**Business Associate**”), and HealthSun Health Plans, Inc. and its subsidiaries (“**Covered Entity**”) (collectively, the “**Parties**”).

#### RECITALS

**WHEREAS**, Covered Entity is required to comply with the administrative simplification section of the Health Insurance Portability and Accountability Act of 1996 (the “Act”) and its implementing regulations, including the Standards for Privacy of Individually Identifiable Health Information (the “Privacy Rule”) and the Security Standards for the Protection of Electronic PHI (the “Security Rule”), amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”) and its implementing regulations, and as they may be further amended from time to time (collectively, “HIPAA”);

**WHEREAS**, Business Associate provides professional services for Covered Entity pursuant to an Independent Broker Agent Agreement between the parties (collectively, the “Master Agreement”);

**WHEREAS**, Business Associate, in the course of providing services to Covered Entity, may have access to certain Protected Health Information (“PHI”) and may be deemed a business associate for certain purposes under HIPAA;

**WHEREAS**, the Parties contemplate that Business Associate may obtain PHI, with Covered Entity’s knowledge and consent, from certain other business associates of Covered Entity that may possess such PHI; and

**WHEREAS**, Business Associate and Covered Entity are entering into this BAA to set forth Business Associate’s obligations with respect to its handling of the PHI, whether such PHI was obtained from another business associate of Covered Entity or directly from Covered Entity; **NOW, THEREFORE**, for mutual consideration, the sufficiency and delivery of which is acknowledged by the Parties, and upon the premises and covenants set forth herein, the Parties agree as follows:

**1. Definitions.** Unless otherwise defined herein, capitalized terms used in this BAA shall have the meanings ascribed to them in HIPAA or the Master Agreement between Covered Entity and Business Associate, as applicable.

**2. Obligations and Activities of Business Associate.** To the extent that Business Associate is provided with or creates any PHI on behalf of Covered Entity and is acting as a business associate of Covered Entity, Business Associate agrees to comply with the provisions of HIPAA applicable to business associates, and in doing so, represents and warrants as follows:

**(a) Use or Disclosure.** Business Associate agrees to not use or disclose PHI other than as set forth in this BAA, the Master Agreement, or as required by law.

**(b) Specific Use of Disclosure.** Except as otherwise limited by this BAA, Business Associate may:

(i) use or disclose PHI to perform data aggregation and other services required under the Master Agreement to assist Covered Entity in its operations, as long as such use or disclosure would not violate HIPAA if done by Covered Entity, or HIPAA permits such use or disclosure by a business associate;

(ii) use or disclose PHI for the proper management and administration of Business Associate or to carry out Business Associate's legal responsibilities, provided that with respect to disclosure of PHI, such disclosure is required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached; and

(iii) de-identify PHI and maintain such de-identified PHI indefinitely, notwithstanding Section 4 of this Agreement, provided that all identifiers are destroyed or returned in accordance with the Privacy Rule.

(c) **Minimum Necessary.** Business Associate agrees to take reasonable efforts to limit requests for, or uses and disclosures of, PHI to the extent practical, a limited data set, otherwise to the minimum necessary to accomplish the intended request, use, or disclosure.

(d) **Safeguards.** Business Associate shall establish appropriate safeguards, consistent with HIPAA, that are reasonable and necessary to prevent any use or disclosure of PHI not expressly authorized by this BAA.

(i) To the extent that Business Associate creates, receives, maintains, or transmits Electronic PHI, Business Associate agrees to establish administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity, as required by the Privacy Rule and Security Rule.

(ii) The safeguards established by Business Associate shall include securing PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity in accordance with the standards set forth in HITECH Act §13402(h) and any guidance issued thereunder.

(iii) Business Associate agrees to provide Covered Entity with such written documentation concerning safeguards as Covered Entity may reasonably request from time to time.

(e) **Brokers, Agents and Subcontractors.** Business Associate agrees to obtain written assurances that any brokers, agents, including subcontractors, to whom it provides PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI, including the requirement that it agree to implement reasonable and appropriate safeguards to protect Electronic PHI that is disclosed to it by Business Associate.

**(f) Reporting.** Within five (5) business days of discovery by Business Associate, Business Associate agrees to notify Covered Entity in writing of any use or disclosure of, or Security Incident involving, PHI, including any Breach of Unsecured PHI, not provided for by this BAA or the Master Agreement, of which Business Associate may become aware.

**(i)** In the notice provided to Covered Entity by Business Associate regarding unauthorized uses and/or disclosures of PHI, Business Associate shall describe the remedial or proposed mitigation efforts required under Section 2(g) of this BAA.

**(ii)** Specifically with respect to reporting a Breach of Unsecured PHI, Business Associate agrees to include the identity of the individual(s) whose Unsecured PHI was Breached in the written notice provided to Covered Entity, and any additional information required by HIPAA.

**(ii)** Business Associate agrees to cooperate with Covered Entity upon report of any such Breach so that Covered Entity may provide the individual(s) affected by such Breach with proper notice as required by HIPAA.

**(g) Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate resulting from a use or disclosure of PHI by Business Associate in violation of the requirements of this BAA or the Master Agreement.

**(h) Audits and Inspections.** Business Associate agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI available to the Secretary, in a time and manner mutually agreed to by the Parties or designated by the Secretary, for purposes of the Secretary determining the Covered Entity's compliance with HIPAA.

**(i) Accounting.** Business Associate agrees to document and report to Covered Entity, within fourteen (14) days, Business Associate's disclosures of PHI so Covered Entity can comply with its accounting of disclosure obligations in accordance with 45 C.F.R. §164.528 and any subsequent regulations issued thereunder.

**(j) Designated Record Set.** While the Parties do not intend for Business Associate to maintain any PHI in a designated record set, to the extent that Business Associate does maintain any PHI in a designated record set, Business Associate agrees to make available to Covered Entity PHI within fourteen (14) days:

**(i)** for Covered Entity to comply with its access obligations in accordance with 45 C.F.R. §164.524 and any subsequent regulations issued thereunder; and

**(ii)** for amendment upon Covered Entity's request and incorporate any amendments to PHI as may be required for Covered Entity comply with its amendment obligations in accordance with 45 C.F.R. §164.526 and any subsequent guidance.

**3. Obligations of Covered Entity.**

(a) Covered Entity agrees to notify Business Associate of any limitation(s) in Covered Entity's notice of privacy practices in accordance with 45 C.F.R. §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

(b) Covered Entity agrees to notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

(c) Covered Entity agrees to notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(d) Covered Entity agrees to limit its use, disclosure, and requests of PHI under this BAA to a limited data set or, if needed by Covered Entity, to the minimum necessary PHI to accomplish the intended purpose of such use, disclosure, or request.

#### **4. Term and Termination.**

(a) **Term.** This BAA shall become effective upon the Effective Date and, unless otherwise terminated as provided herein, shall have a term that shall run concurrently with that of the last expiration date or termination of the Master Agreement.

(b) **Termination Upon Breach.** Without limiting the termination rights of the Parties pursuant to the Master Agreement, upon either Party's knowledge of a material breach by the other Party to this BAA, the breaching Party shall notify the non-breaching Party of such breach and the breaching party shall have thirty (30) days from the date of notification to the non-breaching party to cure such breach. In the event that such breach is not cured, or cure is infeasible, the non-breaching party shall have the right to immediately terminate this BAA and those portions of the Master Agreement that involve the disclosure to Business Associate of PHI, or, if nonseverable, the Master Agreement.

(c) **Termination by Either Party.** Either Party may terminate this BAA upon provision of thirty (30) days' prior written notice.

(d) **Effect of Termination.**

(i) To the extent feasible, upon termination of this BAA or the Master Agreement for any reason, Business Associate agrees, and shall cause any subcontractors, brokers, or agents to return or destroy and retain no copies of all PHI received from, or created or received by Business Associate on behalf of, Covered Entity. Business Associate agrees to complete such return or destruction as promptly as possible and verify in writing within thirty (30) days of the termination of this BAA to Covered Entity that such return or destruction has been completed.

(ii) If not feasible, Business Associate agrees to provide Covered Entity notification of the conditions that make return or destruction of PHI not feasible. Upon notice to Covered Entity that return or destruction of PHI is not feasible, Business Associate agrees to extend the protections of this BAA to such PHI for as long as Business Associate maintains such PHI.

(iii) Without limiting the foregoing, Business Associate may retain copies of PHI in its workpapers related to the services provided in the Master Agreement to meet its professional obligations.

**5. Miscellaneous.**

(a) **Regulatory References.** A reference in this BAA to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.

(b) **Amendment.** The Parties acknowledge that the provisions of this BAA are designed to comply with HIPAA and agree to take such action as is necessary to amend this BAA from time to time as is necessary for the Parties to comply with the requirements of HIPAA. Regardless of the execution of a formal amendment of this BAA, the BAA shall be deemed amended to permit the Covered Entity and Business Associate to comply with HIPAA.

(c) **Method of Providing Notice.** Any notice required to be given pursuant to the terms and provisions of this BAA shall be in writing and may be either personally delivered or sent by registered or certified mail in the United States Postal Service, Return Receipt Requested, postage prepaid, addressed to each Party at the addresses listed in the Master Agreement currently in effect between Covered Entity and Business Associate. Any such notice shall be deemed to have been given if mailed as provided herein, as of the date mailed.

(d) **Parties Bound.** This BAA shall inure to the benefit of and be binding upon the Parties hereto and their respective legal representatives, successors, and assigns. Neither Party may assign or subcontract the rights or obligations under this BAA without the express written consent of the other Party.

(e) **No Waiver.** No provision of this BAA or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

(f) **Effect on Master Agreement.** This BAA together with the Master Agreement constitutes the complete agreement between the Parties and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this BAA and the terms of the Master Agreement, the terms of this BAA shall control unless the terms of such Master Agreement are stricter, as determined by Covered Entity, with respect to PHI and comply with HIPAA, or the Parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this BAA shall be binding on either party. No obligation on either party to enter into any transaction is to be implied from the execution or delivery of this BAA.

(g) **Interpretation.** Any ambiguity in this BAA shall be resolved to permit the parties to comply with HIPAA and any subsequent guidance.

(h) **No Third Party Rights.** The terms of this BAA are not intended nor should they be construed to grant any rights, remedies, obligations, or liabilities whatsoever to

parties other than Business Associate and Covered Entity and their respective successors or assigns.

(i) **Applicable Law.** This BAA shall be governed under the laws of the State of Florida, without regard to choice of law principles.

(j) **Judicial and Administrative Proceedings.** In the event that Business Associate receives a subpoena, court or administrative order, or other discovery request or mandate for release of PHI, Business Associate agrees to collaborate with Covered Entity with respect to Business Associate's response to such request. Business Associate shall notify Covered Entity within two (2) days of receipt of such request or mandate.

(k) **Transmitting Electronic PHI.** Electronic PHI transmitted or otherwise transferred from between Covered Entity and Business Associate must be encrypted by a process that renders the Electronic PHI unusable, unreadable, or indecipherable to unauthorized individuals within the meaning of HITECH Act § 13402 and any implementing guidance including, but not limited to, 45 C.F.R. § 164.402.

(l) **Indemnification.** Business Associate shall reimburse, indemnify, and hold harmless Covered Entity for all costs, expenses (including reasonable attorney's fees), damages, and other losses resulting from any breach of this BAA or unauthorized use or disclosure of, Security Incident affecting, or Breach of PHI maintained by Business Associate or Business Associate's broker, agent or subcontractor, including, without limitation: fines or settlement amounts owed to a state or federal government agency; the cost of any notifications to individuals, government agencies, or other third parties; the cost of credit monitoring, identity theft protection, and other remediation steps for affected individuals; or the cost of other mitigation steps taken by Covered Entity to comply with HIPAA or state law. Any limitations of liability in this BAA or the Master Agreement shall not apply to this Section 5(l). This Section 5(l) shall survive the expiration or earlier termination of this BAA.

**IN WITNESS WHEREOF**, the Parties hereto have executed this BAA to be effective on the date set forth above.

**Covered Entity**

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

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

Title: \_\_\_\_\_

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

**Business Associate**

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

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

Title: \_\_\_\_\_

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