

SelectHealth, Inc.

Medicare Advantage Agent Agreement

THIS AGREEMENT is made and entered as of the _____ day of _____, 20____, between **SelectHealth, Inc.**, a Utah nonprofit corporation with principal offices in Salt Lake City, Utah, plus **SelectHealth Benefit Assurance Company, Inc.**, a Utah corporation with its principal office in Salt Lake City, Utah, both of which are together herein referred to as “SelectHealth” and _____, (herein referred to as “Agent”), with principal offices in_____.

WITNESSETH

WHEREAS, SelectHealth is an insurer which administers a Medicare Advantage product (hereinafter “SelectHealth’s MA Plan”); and

WHEREAS, Agent, Producer or Broker (hereinafter referred to as “Agent”) is an insurance agent licensed to perform such services by the Utah, Idaho, and/or Nevada Department of Insurance; and

WHEREAS, Agent desires to provide such services for SelectHealth (on the SelectHealth MA Plan) to help establish a relationship between SelectHealth and various individuals in exchange for commissions and other compensation as set forth herein;

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

ARTICLE I APPOINTMENT

1.1 Appointment. SelectHealth hereby appoints Agent, who hereby accepts a nonexclusive, nontransferable right (without prior written approval of SelectHealth) to serve as a marketing Agent for SelectHealth, authorized (subject to the limitations in this Agreement) to solicit, negotiate, sell, and service contracts for SelectHealth’s MA Plan, provided that no such contract will take effect without prior CMS approval. This Appointment is expressly made subject to the terms, conditions, limitations, and restrictions of this Agreement. This Appointment will be limited to the geographical regions in which SelectHealth’s MA Plan is offered, but Agent does not have any exclusive rights with regard to SelectHealth’s MA Plan or services within such area. The only SelectHealth plan included under this Agreement is SelectHealth’s MA Plan(s).

In order to be continuously appointed, Agent must acquire and maintain a SelectHealth specified level of production within the first full calendar year of appointment. Production will be evaluated on an annual basis. In the event Agent does not meet SelectHealth’s production requirements, SelectHealth may terminate this Agreement pursuant to Section 4.1 below.

1.2 Letters of Record. Agent will become the agent of record for those enrollees who obtain coverage on SelectHealth’s MA Plan through the assistance of Agent as designated on the enrollment application. In the event that an enrollee expresses interest in updating or changing their agent of record, an agent may submit a new application for such enrollee(s) during the annual enrollment period. Such changes will take effect on the following January 1st and Agent will thereafter be eligible for renewal commissions for such enrollee(s). SelectHealth may initiate and will support change actions when an agent is involved with fraudulent activities or misrepresentations or is terminated by SelectHealth for cause, and SelectHealth will not pay an agent involved in these types of activities after such a change.

ARTICLE II
QUALIFICATIONS, DUTIES, RIGHTS, AND LIMITATIONS

2.1 Qualifications. To qualify as an Agent hereunder, Agent must have and at all times maintain a valid and current license (authorizing Agent to sell and service health care service contracts) issued by the Department(s) of Insurance of the state(s) in which Agent is operating and selling SelectHealth's MA Plan. Agent will not act as an Agent for SelectHealth at any time when Agent's license is terminated, lapsed, or suspended, regardless of the reason, and Agent agrees to immediately notify SelectHealth any time that Agent's license is terminated, lapsed, suspended, or otherwise not in effect. All persons required to be individually licensed to provide services through Agent's office pursuant to this Agreement must be appropriately licensed, and Agent agrees to require and to verify that each such person is appropriately licensed at all times and to terminate from acting under the authority of this Agreement any person not appropriately licensed.

Also, Agent understands and agrees that to qualify as an Agent hereunder, Agent must comply with and meet, on an annual basis, SelectHealth's training and testing requirements, which will include Medicare rules and regulations, SelectHealth's policies and procedures, and details specific to SelectHealth's MA Plan. To continue as an Agent for SelectHealth's MA Plan, Agent must receive a passing test score, as determined by SelectHealth. Furthermore, Agent must comply with SelectHealth's code of ethics.

2.2 Duties. To qualify for the commissions specified in Article III, Agent must continue as the agent of record for each enrollee.

A. Agent agrees to provide a high level of customer service and support.

B. Agent agrees to actively and in good faith promote SelectHealth's MA Plan(s) in regard to initial sales, customer support, and renewals. Agent will indemnify SelectHealth in full against any loss of money or of property, including any incurred costs and/or expenses which SelectHealth sustains through any fraudulent or dishonest act or culpable negligence on Agent's part or on the part of anyone working for Agent, including but not limited to any acts identified in 2.4 below.

C. Agent will at all times maintain the following insurance types and coverages:

- (1) Comprehensive general liability insurance: \$1,000,000 per claim, \$2,000,000 annual aggregate;
- (2) Privacy and data security breach insurance: \$1,000,000 per claim;
- (3) Errors and omissions insurance coverage: \$1,000,000 per claim; and
- (4) Workers' Compensation insurance: statutory limits.

Agent will provide evidence of such coverage to SelectHealth prior to selling

SelectHealth's MA Plan. All such coverage will be maintained in force after such dates as long as this Agreement is in effect and until the expiration of the statute of limitations applying to each insured event, and Agent's authority to act on behalf of SelectHealth will be automatically suspended any time such coverage is not in effect.

- D. Agent agrees to act at all times with honesty and integrity, in accordance with guidelines that may be promulgated and modified by SelectHealth in the "SelectHealth MA Agent Newsletter" from time to time, and in all other respects according to law (including all fraud and abuse laws, the Federal Anti-Kickback Statute [42 U.S.C. §1320A-7b(b)], and all applicable Medicare laws, regulations, and rules).
- E. Agent agrees to successfully complete any training required by SelectHealth or by applicable law within the required time frame. Failure to do so may result in termination of this Agreement pursuant to Section 4.1.

2.3 Rights. Agent will have the right to use sales brochures, rate sheets, applications, certificates, and various other forms provided by SelectHealth. However, Agent will not alter the materials provided by SelectHealth in any way. Agent agrees to strictly abide by the confidentiality requirements set forth in this Agreement, and to not divulge any proprietary or confidential information about SelectHealth.

2.4 Limitations. As stated above, Agent's appointment as an authorized Agent is limited to the geographical region in which SelectHealth's MA Plan is offered, but Agent will not have any exclusive rights with regard to SelectHealth's MA Plan within such area. Agent will have no authority to make, alter, vary, or discharge contracts in the name of SelectHealth or to waive or modify any terms or conditions of the contracts proposed by SelectHealth, including but not limited to having no authority to modify or waive any eligibility or enrollment requirement or standard for any enrollee. Agent agrees to indemnify SelectHealth if, solely as the result of representations made by the Agent to the customer or other conduct forbidden by this paragraph, SelectHealth is required to provide any coverage or to pay any claim or claims that would not otherwise be covered.

2.5 Compliance with Title 18, United States Code, Sec.s 1033 and 1034. As an express condition of this Agreement and Agent's appointment as an agent for SelectHealth, Agent certifies and agrees that none of Agent's officers or employees has ever been convicted of a felony involving either dishonesty or a breach of trust, or any crime involving the business of insurance. Agent further certifies and agrees that Agent will, at the time of employment and periodically thereafter (not less often than annually), check all officers and employees to determine continued compliance with this paragraph. Agent agrees that any officer or employee who is found to have been convicted of any such crime will not be involved in any way in any activities of any kind for SelectHealth, whether described in this Agreement or not, unless they have first been expressly granted authority to do so by the Department and/or Commissioner of Insurance of the state in which Agent is operating and selling SelectHealth's MA Plan. Agent agrees to immediately notify SelectHealth if at any time any of Agent's officers or employees is ever charged with or convicted of such a crime. Agent understands that any violation of

this paragraph will constitute grounds for immediate cancellation of this Agreement by SelectHealth.

- 2.6 Governmental Reporting Requirements. Agent agrees that SelectHealth is authorized to report to any and all state and/or federal governmental entities, divisions, and/or departments information concerning the Agent that is required by any state or federal law, rule, or regulation.

ARTICLE III COMPENSATION

- 3.1 Commissions. Provided that Agent is in compliance with this Agreement, commissions will be paid by SelectHealth to Agent for sales of SelectHealth's MA Plan to enrollees. Commissions will only be paid in accordance with Medicare laws, rules, regulations, and CMS instructions. Payment of commissions will be made on or about the fifteenth (15th) of the month following the month in which SelectHealth receives the monthly premiums as set forth in Exhibit A, attached hereto and, by this reference, made a part of this Agreement. The methods of determining commissions payable hereunder are also set forth in Exhibit A. The schedule(s) of commissions will be reviewed annually and updated in accordance with applicable state and federal laws. Exhibit A may be amended by SelectHealth at any time upon at least thirty (30) days prior written notice to Agent.
- 3.2 SelectHealth MA Agent Newsletter - Policies and Procedures. Additional information on compensation and policies and procedures will be provided by SelectHealth to Agent from time to time in the publication, "SelectHealth MA Agent Newsletter." Agent will be bound by such information unless Agent objects to it within thirty (30) days after receiving the publication.

ARTICLE IV TERM AND TERMINATION

- 4.1 Termination of Agreement and Appointment. This Agreement and Appointment will be for an initial term of one (1) year, and will automatically renew from year to year unless terminated for any of the following:
- A. Upon thirty (30) days advance written notice by either party for any reason, with or without cause (the parties agree that it will not be a breach of the implied covenants of good faith/fair dealing for either party to terminate this Agreement either with or without cause);
 - B. Upon written notice, if either party fails to comply with the terms or conditions of this Agreement and fails to cure the same within thirty (30) days of receipt of written notice to cure, except for those things designated elsewhere as resulting in an immediate termination or suspension of this Agreement; or
 - C. Either party may terminate this Agreement immediately by giving the other party

written notice of such termination for any of the following events:

- (1) The adjudication of either party to be bankrupt or insolvent;
- (2) The filing by either party for bankruptcy or insolvency;
- (3) The filing by either party for reorganization or readjustment under any law relating to insolvency or bankruptcy;
- (4) The appointment of a receiver with respect to all or substantially all of the property of either party;
- (5) Any assignment by either party of its assets for the benefits of creditors;
- (6) The institution by either party of any proceedings for liquidation or the winding up of its business other than for purposes of reorganization, consolidation, or merger;
- (7) Agent's failure to obtain and/or maintain errors and omissions liability insurance in force in amounts acceptable to SelectHealth;
- (8) Agent's loss or non-renewal of state licensure to sell and service insurance and other service contracts, or the institution of proceedings by any insurance department or commissioner for the cancellation and/or revocation of such license;
- (9) Failure to complete Medicare certification and training or failure to comply with applicable Medicare laws, rules, regulations, or CMS instructions;
- (10) Death of agent or principal of agency; or
- (11) Employment of any person in violation of Section 2.1 of this Agreement.

The parties agree to promptly notify each other upon the occurrence of any of foregoing grounds for termination. The occurrence of either (7) or (8) or (9) or (10) or (11) above will cause the immediate, automatic suspension of Agent's appointment under this Agreement.

- 4.2 Obligations of the Parties Upon Termination. Upon termination of the appointment and this Agreement, neither party will have any further obligations except as otherwise provided herein and for compensation payable for business already in place; provided, however, that no compensation will be payable following termination if the Agent has engaged in dishonest or fraudulent activities in the sale of such business, when this Agreement has been terminated for cause, or when such compensation would be improper under applicable Medicare and/or insurance laws and regulations. Also, upon the death of the Agent, compensation will continue for a period not to exceed the lesser of

ninety (90) days from date of death or until an letter of record is presented on such business, or until an authorized letter of purchase, merger or other transfer of SelectHealth business to the surviving and appropriately licensed and appointed Agent is provided. In no event will any compensation be paid for more than six months following the termination of this Agreement, unless or until proof of purchase, merger or otherwise transfer of SelectHealth business to another properly licensed and appointed agent is provided.

- 4.3 Continuously and Properly Licensed. Commissions will be payable, in accordance with Medicare laws, rules, and regulations, only so long as Agent is (a) continuously and properly licensed and appointed, (b) in compliance with this Agreement, and (c) continuously recognized as the Agent of Record to receive said commissions. Agent may not transfer, assign or dispose of any interest he or she may have under this Agreement without prior written consent of SelectHealth.

ARTICLE V GENERAL TERMS

- 5.1 Applicable Law; Arbitration. This Agreement will be construed and interpreted in accordance with the laws of the State of Utah. Any and all disputes arising under this Agreement, if not resolved by informal means, will be submitted to binding arbitration pursuant to the Utah Arbitration Act, Section 78-31a-1 et seq. U.C.A. 1953, as amended. If any such arbitration action is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees and all of its costs and expenses related to the arbitration, and such amount will be awarded and judgment entered thereon in addition to any other relief which may be awarded.
- 5.2 Assignments. Agent has neither the power nor the right to assign or transfer this Agreement or Appointment or any right or commission or payment hereunder, or to delegate any duty under this Agreement, except as provided herein and only upon SelectHealth's advance written consent. Likewise, SelectHealth cannot assign this Agreement without Agent's prior written consent.
- 5.3 Calendar Days. Unless stated otherwise, all periods of days referred to in this Agreement will be measured in calendar days.
- 5.4 Confidentiality. The parties agree that they will not divulge, furnish, or make accessible to anyone any trade secrets, or confidential or proprietary information of the other party, identified as such in writing, without the advance, prior written consent of the other.
- 5.5 Exhibits. The following Exhibits are hereby incorporated into this Agreement by reference:
- A. Exhibit A entitled, "Computation of Agent Commissions"
 - B. Exhibit B entitled, "Use and Disclosure of Protected Information"

C. Exhibit C entitled, “Medicare Advantage Requirements”

5.6 Force Majeure. Either party will be excused for failures and delays in performance of its respective obligations under this Agreement caused by declared or undeclared war, riots or insurrections, laws and regulations, strikes or lockouts, floods, fires, explosions, or other catastrophes beyond the control and without the fault of such party. This provision will not, however, release such party from using its best efforts to avoid or remove such cause, and such party will continue performance hereunder with the utmost dispatch whenever such causes are removed. Upon claiming any such excuse or delay for nonperformance, such party will give prompt written notice thereof to the other party. None of the bases for termination specified above may be considered as an excuse for performance under this paragraph.

5.7 Indemnification.

- A. Agent will indemnify SelectHealth and hold SelectHealth (including its officers, directors, agents, and employees) harmless against any and all *liability* caused by Agent’s negligence, wrongful acts, omissions, or breach of any of its duties or obligations under this Agreement.
- B. SelectHealth will indemnify and hold Agent (including its officers, directors, agents, and employees) harmless against any and all *liability* caused by SelectHealth’s negligence, wrongful acts, omissions, or breach of any of its duties or obligations under this Agreement.
- C. The term *liability* as used in this Section 5 includes, but is not limited to, any of the following: (1) loss, claim for injury, claim for damage, judgment, settlement, fee, penalty, fine, and expense, including reasonable attorneys’ fees; and (2) expenses incurred for breach notification, credit monitoring, failure to mitigate, and mitigation activities stemming from the indemnifying party’s breach.
- D. The indemnified party agrees to (1) promptly notify the indemnifying party of any claim arising under this Agreement, (2) provide the indemnifying party with all necessary and appropriate information and assistance to defend or resolve the claim, and (3) allow the indemnifying party to control the defense, disposition, and resolution of the claim (but the indemnified party’s counsel may participate in the defense and settlement discussions). Notwithstanding the foregoing, neither party may resolve a claim without the other party’s written consent if the resolution includes any admission of fault of the other party, imposes or triggers any obligation binding the other party, or involves less than a full release and settlement of all claims against the other party.
- E. Even if Agent indemnifies SelectHealth for a *liability*, SelectHealth will control breach notification, including credit monitoring and all mitigation activities related to breach notification that it performs and considers appropriate to the claim.

5.8 Modification of the Agreement. This Agreement contains the entire understanding of the parties with respect to the subject matter contained herein. Except in the circumstances expressly stated in this Agreement, any cancellation, modification, or waiver of rights under this Agreement will be effective only if made in writing, signed by the party against whom enforcement is sought. No waiver of any particular breach or failure of performance of this Agreement will be construed as a waiver of any other rights under this Agreement or of any other similar breaches or failures of performance. No delay in acting with regard to any breach will be construed as a waiver of the breach.

5.9 Notices.

A. Any notices to SelectHealth will be sufficiently given if sent by registered or certified mail, postage prepaid, addressed or delivered as follows:

Janica Blackhurst
SelectHealth, Inc.
P.O. Box 30192
Salt Lake City, Utah 84130-0192

B. Any notices to Agent will be sufficiently given if sent by email or mail, postage prepaid, addressed or delivered at the current address for Agent on file with SelectHealth.

C. A party may change its address in writing to the other party. Any such notice will be deemed to have been given, if mailed by first class U.S. mail to the last known address as provided herein, on the fifth (5th) day after the date on which the notice is mailed.

5.10 Section Headings. The headings of Articles and Sections herein are used for convenience and ease of reference and will not limit the scope or content of the Articles or Sections.

5.11 Severability. In the event that any provision of this Agreement will become or be unenforceable, invalid, void or voidable, the same will be limited, construed or, if necessary, eliminated to the extent necessary to remove such defect and the remaining provisions will continue to bind the parties as though the unenforceable, invalid, void or voidable part were not a part of the Agreement.

5.12 State and Federal Laws. The parties recognize that this Agreement at all times is subject to applicable state, local and federal laws. The parties further recognize that this Agreement will be subject to amendments in such laws and regulations as are applicable. Any provisions of law that invalidate, or otherwise are inconsistent with, the terms of this Agreement or that would cause one or both of the parties to be in violation of law, will be deemed to have superseded the terms of this Agreement; provided, however, that the parties will exercise their best efforts to accommodate the terms and the intent of this Agreement to the greatest extent possible consistent with the requirements of law.

5.13 Medicare Advantage Requirements. Agent and SelectHealth agree to be bound by the

Medicare Advantage Requirements attached hereto as Exhibit C.

- 5.14 Medicare Advantage Training. Agent agrees to complete and abide by any training and/or obligations required by SelectHealth of its agents, including any training or requirements needed to access or use any SelectHealth programs to administer SelectHealth's MA Plan.
- 5.15 Successors in Interest. Subject to the foregoing provision on assignability, this Agreement will inure to the benefit and be binding upon the parties, their successors, trustees, assigns, receivers, and legal representatives, and will not inure to the benefit of any other third person, firm, or corporation.
- 5.16 Superseding Effect. This Agreement supersedes all oral or written agreements, if any, between the parties and constitutes the entire agreement between the parties with respect to the matters contained herein.
- 5.17 Taxes and Duties. The commissions as specified herein are exclusive of any taxes, duties or other tariffs imposed by any governmental agencies upon Agent. Agent is liable for any and all such taxes, duties, or tariffs, including, but not limited to, state and local sales, use, and property taxes, exclusive of taxes based upon SelectHealth's income, if any.

ARTICLE VI CONFIDENTIALITY AND SECURITY OF ENROLLEE DATA

- 6.1 Definitions. For purposes of this Agreement, the following terms have the following meanings:

“Applicable Laws” means the laws that govern the creation, use, disclosure, access, and maintenance (collectively, “Use”) of PHI. Those laws include, but are not limited to, HIPAA, GLB, and the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act (HITECH) and the accompanying regulations.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and regulations promulgated thereunder by the U.S. Department of Health and Human Services.

“GLB” means the Gramm-Leach-Bliley Act of 1999 (15 U.S.C.6801 through 6820) and Utah Administrative Code R590-206, Privacy of Consumer Financial and Health Information Rule.

“Protected Health Information” or “PHI” means Protected Health Information described in Exhibit B of this Agreement that SelectHealth discloses to Agent or that Agent creates or receives on behalf of SelectHealth.

Terms capitalized in this Article VI and Exhibit B have the meanings set forth in the

Applicable Laws and this Agreement.

- 6.2 Applicable Law. Agent will comply with all Applicable Laws.
- 6.3 Access. Agent will limit access to PHI to the minimum necessary to perform the purposes described in Exhibit B and will not Use PHI outside the United States. Agent is prohibited from de-identifying or aggregating PHI unless specifically permitted in Exhibit B.
- 6.4 Use. Agent may only Use PHI for those purposes described in Exhibit B of this Agreement and to carry out Agent's legal responsibilities ("Permitted Uses"). Any other use must be approved by SelectHealth in writing and in advance of the use. This Agreement prohibits any Use of PHI beyond the Permitted Uses (collectively "Prohibited Uses").
- 6.5 Safeguards. Agent will use all appropriate administrative, physical, and technical safeguards to prevent any Prohibited Use and any Security Incident. Appropriate safeguards include measures reasonably calculated to prevent Prohibited Uses and Security Incidents, such as, at a minimum, restricted area-access, locked areas, and password-protected computer access.
- 6.6 Subcontractors. Agent will enter into a written contract with each agent and subcontractor receiving PHI under this Agreement and will keep a copy of each contract for six (6) years after the contractual relationship between Agent and that agent or subcontractor ends. Each contract will bind the agent or subcontractor to do the following:
- A. To agree to the same terms that apply to Agent's use and disclose of PHI under this Agreement;
 - B. To report to Agent as soon as possible, but no later than within five (5) days, after it knows of a Prohibited Use or Security Incident (the report must include at least the same information that Agent is required to provide to SelectHealth under Section 6.8 of this Agreement);
 - C. To mitigate, to the extent practicable and as soon as possible, any harmful effect from a Prohibited Use or Security Incident that is known to Agent; and
 - D. To implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the PHI and to prevent Security Incidents.
- Agent will maintain, for at least six (6) years after the relationship terminates, a list of all disclosures to agents or subcontractors as provided in Section 6.7 of this Agreement. Upon request, Agent will provide SelectHealth a list of Agent's subcontractors and agents that perform any services under this Agreement.
- 6.7 Accounting of Disclosures. Agent will keep a record of all Disclosures of PHI as required by Section 45 C.F.R. 164.528, as amended. Agent will provide a Disclosure Accounting

to SelectHealth within 15 days of receiving a request from SelectHealth.

6.8 Reporting and Mitigating.

- A. Reporting Duties. Agent will report to SelectHealth as soon as possible, but no later than five (5) days, after Agent knows of a Prohibited Use or a Security Incident. For reporting purposes under this Section 6.8, Agent does not need to report as a Security Incident any unsuccessful attempt to gain access to the PHI. Examples of unsuccessful attempts to gain access to the PHI include, but are not limited to, pings, and other broadcast attacks on Agent's firewall, port scans, log-on attempts, denials of service, and any combination of the above. This reporting duty does not relieve Agent in any degree of its duty to safeguard the PHI and to prevent any Prohibited Use and any Security Incident.
- B. Content of Report. The report of a Prohibited Use or Security Incident will include at least the following information:
- (1) The date of the Prohibited Use or Security Incident;
 - (2) If PHI was disclosed or accessed, the name, address, and phone number of each entity and person who disclosed, accessed, or received the PHI;
 - (3) If a Security Incident occurred, details about who may have caused the Security Incident and how it occurred;
 - (4) A description of the PHI accessed, used, or disclosed;
 - (5) A brief statement of the circumstances of the Security Incident or of the circumstances and the purposes of the Prohibited Use; and
 - (6) The corrective action Agent took or will take to prevent a continuing or similar Prohibited Use or Security Incident.
- C. Mitigating. Agent will mitigate to the extent practicable and as soon as possible, any harmful effect known to Agent of a Prohibited Use or Security Incident. Agent will preserve forensic evidence relating to a Prohibited Use and to a Security Incident.
- D. Investigation. Agent will cooperate with SelectHealth in any investigation of a Prohibited Use or Security Incident.

6.9 Books and Records.

- A. Audit. SelectHealth has the right to review all of Agent's records relating to Agent's compliance with this Agreement. SelectHealth may exercise that right at least once each year. Additionally, from time to time, SelectHealth may request an attestation of Agent's compliance with this Agreement and Applicable Laws. If SelectHealth

requests that attestation, Agent will provide it within fifteen (15) days of SelectHealth's request. SelectHealth will provide the form of the attestation described above. Under this Article VI, the term *records* includes, but is not limited to, all documentation, policies, agreements, logs, procedures, and internal audits relating to this Agreement. SelectHealth will give Agent at least five (5) business days' advance notice of a review and will conduct the review at Agent's place of business during normal business hours.

- B. Government Access. Agent will make available to the Secretary of the Department of Health and Human Services all records requested by the Secretary or the Secretary's designee. Neither Agent nor SelectHealth waives any attorney-client, accountant-client, or other legal privilege or confidentiality as a result of this Section 6.9.B.

6.10 Requests to Access or Amend PHI.

- A. Requests to Access or Amend. If the services under this Agreement require Agent to maintain a Designated Record Set, Agent might receive a request from a person to inspect, copy, or amend PHI. If that happens, Agent will not release PHI to that person, or amend the PHI as requested, but will forward that request in writing to SelectHealth within five (5) days of receiving it. SelectHealth will determine how to respond to each request.
- B. SelectHealth Requests. Within five (5) business days of SelectHealth's request for PHI, Agent will provide the requested PHI to SelectHealth.

6.11 Termination.

- A. If SelectHealth determines that Agent has violated any provision of this Article 6, SelectHealth may (1) immediately terminate this Agreement or any services associated with this Agreement, or (2) give Agent a period of up to thirty (30) days to cure the violation, which is a breach. SelectHealth will notify Agent in either event.
- B. Upon termination, Agent will return or destroy all PHI and will not retain, nor allow any of its agents or subcontractors to retain any PHI in any form (including de-identified or aggregated data derived from the PHI). Further, Agent will certify in writing to SelectHealth that Agent (including its agents and subcontractors) has returned or destroyed all PHI. But, if SelectHealth agrees that the return or destruction of PHI is infeasible and determines that Agent's plan to safeguard the confidentiality and security of the PHI is acceptable, SelectHealth may permit Agent to retain the PHI for the specific and limited purpose that makes return or destruction of the PHI infeasible.
- C. Agent's duty to destroy PHI, as stated in Section 6.11.B, above, includes, but is not limited to, the following obligations: (1) destroying all copies of PHI including back-up tapes and other electronic back-up medium, and (2) destroying all electronic PHI in any form by "clearing" [which requires making a minimum of three (3) passes],

“purging,” or “physically destroying,” that PHI in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-88 or in another manner approved in advance by SelectHealth.

- D. SelectHealth’s remedies under this Section are cumulative, and the exercise of any particular remedy does not preclude the exercise of any other remedy. Additionally, SelectHealth may exercise the remedies in this Section notwithstanding any other provision of this Agreement and without limiting its rights and remedies available in this Agreement and under applicable law.
- 6.12 SelectHealth’s Right to Injunctive Relief. Agent understands and agrees that SelectHealth has a fiduciary responsibility to protect the confidentiality of information about its members. If Agent should disclose any information contrary to the terms of this Agreement, SelectHealth’s damages would be substantial, but difficult to prove (e.g., loss of trust in SelectHealth among its members). Consequently, SelectHealth shall be entitled to obtain injunctive and other mandatory judicial relief against Agent to restrain and prevent any threatened, likely or possible use or disclosure in any manner contrary to the terms of this Agreement of any PHI. Agent understands and agrees that other remedies would be inadequate, due to SelectHealth’s fiduciary responsibility to protect the confidentiality of its members’ information. This remedy is in addition to any other legal or equitable remedies to which SelectHealth may be entitled.
- 6.13 Ownership of Information. SelectHealth owns and retains ownership of all information, including but not limited to PHI, that it discloses to Agent under this Agreement. Agent acquires no title or right under this Agreement to any information, including but not limited to any de-identified or aggregated PHI.
- 6.14 Legally Required Disclosure. Agent will preserve forensic evidence relating to each Prohibited Use and to each Security Incident. Also, Agent will notify SelectHealth in writing at least fifteen (15) days before providing the PHI to any third party under a judicial or governmental request, and will cooperate with SelectHealth, as SelectHealth reasonably requests, in seeking a protective order or limiting the effect of that disclosure.
- 6.15 Amendment of this Agreement. Agent understands and agrees that SelectHealth may need to amend this Agreement from time to time in order to ensure SelectHealth’s compliance with Applicable Law, including HIPAA and GLB. Agent agrees to allow SelectHealth to amend this Agreement in order to comply with HIPAA and GLB by providing Agent a written copy of such amendment thirty (30) days prior to the effective date of the amendment. If Agent disagrees with any such amendment, Agent must notify SelectHealth in writing within thirty (30) days of receipt of SelectHealth’s amendment. If Agent and SelectHealth cannot agree on an amendment within thirty (30) days thereafter, either party may terminate this Agreement on written notice to the other.

6.16 Survival. This Section 6 shall survive termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which is effective as of the _____ day of _____, 20 ____.

SELECTHEALTH: By: _____
Janica Blackhurst, Director of Broker Relations

AGENT: By: _____
Signature

Typed or printed name: _____

EXHIBIT A
COMPUTATION OF AGENT COMMISSIONS - 2018

1. The parties understand and agree that all payment of commissions will only be made in accordance with Medicare laws, rules, regulations, and CMS instructions.
2. SelectHealth will compensate Agent for each enrollee for which Agent is the agent of record as follows:

Initial Year with SelectHealth

New to SelectHealth Advantage and unlike plan (i.e., PDP to MAPD) changes

Electronic Enrollments (Submitted through SelectHealth’s Broker Portal): For enrollees that are new to SelectHealth Advantage with no previous Medicare Advantage (indicated by “NONE” on CMS’s Agent Broker Compensation Report)	\$454.92 lump sum payment the month coverage begins
Paper Enrollments: For enrollees that are new to SelectHealth Advantage with no previous Medicare Advantage (indicated by “NONE” on CMS’s Agent Broker Compensation Report)	\$226.92 lump sum payment plus \$19.00 per month beginning the month coverage begins
All Other Initial Enrollments: For enrollees that are new to SelectHealth Advantage with Unlike coverage (indicated by PDP or cost plan on CMS’s Agent Broker Compensation Report)	\$226.92 lump sum payment plus \$19.00 per month beginning the month coverage begins

Renewal Year Coming to SelectHealth

MAPD/MA (i.e. Plan to Plan) to SelectHealth coming from another MA/MAPD Plan during a renewal year

For enrollees that are new to SelectHealth Advantage that are coming from another MA/MAPD Plan (indicated by “MA” or “MAPD” on CMS’s Agent Broker Compensation Report)	\$19.00 per month beginning the month the coverage begins
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Renewal Year Staying with SelectHealth

For enrollees remaining with SelectHealth from year to year	\$19.00 per month beginning on the month coverage begins
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3. The commissions described herein apply to SelectHealth’s MA Plan enrollments beginning January 1, 2018.
4. Agent must be in compliance with the terms of the Agreement to receive both initial year and renewal year commission payments.
5. The parties agree and understand that CMS regulates commissions.
6. Agent agrees and understands that all commissions are paid at the renewal rate unless CMS notifies SelectHealth that the enrollee is an initial “new” enrollee. Initial year payment rates are paid on new enrollees to SelectHealth’s MA Plan as well as enrollments into SelectHealth’s MA Plan from a different plan type.
7. Payments will begin on the month following the month in which the enrollee’s plan becomes effective and CMS confirms the status of the enrollee. Payment for any given month will be made approximately on or before the fifteenth (15th) day of the following month.
8. Renewal year commission payments will be made pursuant to the Agent Agreement and will be paid as long as the member remains active on the plan.
9. As described above, Agent understands that SelectHealth will pay a lump sum, up-front commission for applications that are submitted electronically for enrollees that are new to SelectHealth Advantage with no previous Medicare Advantage (indicated by “NONE” on CMS’s Agent Broker Compensation Report).
10. SelectHealth and Agent acknowledge and agree that SelectHealth is required to recover, and Agent will refund, any payments made to Agent for enrollees who disenroll from SelectHealth’s MA Plan within the first three (3) months of enrollment and any other time an enrollee is not enrolled in SelectHealth’s MA Plan. However, SelectHealth will not recover, and Agent is not required to refund, any payments made to Agent when an enrollee disenrolls within the first three (3) months due to the following circumstances: (1) disenrollment from Medicare Part D due to other creditable coverage (as defined under applicable law) or due to institutionalization (as defined under applicable law); (2) the enrollee gains/drops employer/union sponsored coverage; (3) the enrollee drops coverage due to a CMS sanction against the SelectHealth MA Plan or termination of SelectHealth’s contract with CMS; (4) during the Medigap trial period; (5) to coordinate with the Part D enrollment periods; (6) to coordinate with an SPAP; (7) the enrollee becomes dually eligible for both Medicare and Medicaid; (8) the enrollee qualifies for another plan based on special needs; (9) the enrollee becomes LIS eligible; (10) the enrollee qualifies for another plan based on a chronic condition; (11) the enrollee moves into or out of an institution; (12) due to an auto or

facilitated enrollment; (13) the enrollee is involuntarily disenrolled due to death, moving out of the service area, non-payment of premium, loss of entitlement, retroactive notice of Medicare entitlement, contract violation, or SelectHealth's MA Plan nonrenewal or termination; or (14) when the enrollee moves to a plan with a five-star rating.

11. Agent agrees that it will not charge any enrollee a marketing fee outside of the approved premium.

EXHIBIT B

USE AND DISCLOSURE OF PROTECTED INFORMATION

This Exhibit sets forth the permitted uses and disclosures of PHI by Agent pursuant to *Article VI - Confidentiality and Security of Enrollee Data* - of the Agent Agreement. This Exhibit may be amended from time to time as provided for in Section 6.15 of the Agreement.

1. Definitions.

“Claims Experience Information” includes the following information on individual claims: the diagnosis code(s) on the claim, the total amount paid on the claim, a description of the prognosis of the individual who received the services billed for on the claim (e.g. whether the individual is likely to require additional services for the diagnosis for which the claim was submitted), and the Group ID (which can indicate the individual’s place of employment, whether or not the individual is on COBRA, whether the individual is a salaried or hourly employee, and the individual’s plan type). This information does not include any identifiable information listed in Title 45 of Code of Federal Regulations, Section 164.514(b)(2)(i) (e.g. member number, subscriber number, claim number, enrollee name, enrollee address, enrollee phone number, and enrollee birth date) other than an individual’s location of employment. The claim attributes, as well as the range of individual claims that SelectHealth will disclose to Agent will be determined at the discretion of SelectHealth.

“Plan Sponsor” is defined as defined at Section 3(16)(B) of ERISA, 29 U.S.C. 1002(16)(B). Generally, this is an employer or employee organization (e.g. union).

“Identifiable Information” is information that identifies an individual or with respect to which there is a reasonable basis to believe the information can be used to identify an individual.

“Enrollment Information” is information requested on an enrollment form produced by SelectHealth or a plan sponsor.

“Underwriting Information” is information requested on a SelectHealth underwriting risk assessment questionnaire, Claims Experience Information from another health insurer, or other information about the health status of an individual.

“Protected Health Information” or “PHI” includes Protected Health Information (as defined by HIPAA) that SelectHealth discloses to Agent or that Agent creates or receives on behalf of SelectHealth and includes Claims Experience Information, Enrollment Information, Underwriting Information, and any other Identifiable Information maintained by SelectHealth that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium.

2. PHI that SelectHealth will disclose to Agent. SelectHealth will disclose to Agent, Claims

Experience Information and Enrollment Information for groups produced by the Agent, if information is available and at the discretion of SelectHealth. SelectHealth will disclose other PHI (e.g. status of individual claims, appeals and grievance related information, etc.) to Agent in SelectHealth's sole discretion and only to the extent necessary for Agent to assist the member to whom the PHI pertains.

3. PHI that Agent may collect for SelectHealth. Agent may collect Enrollment Information and Underwriting Information for SelectHealth. Agent may not collect any other Identifiable Information on behalf of SelectHealth.
4. Disclosures of PHI by Agent. Agent may:
 - A. If applicable, disclose Claims Experience Information to the Plan Sponsor of the group health plan that incurred the claims for the purposes of allowing the Plan Sponsor to (1) shop for replacement coverage and get meaningful bids from prospective issuers, and (2) to decide whether or not to change the benefits under a group health plan or whether or not to terminate a group health plan.
 - B. Disclose Enrollment Information to the Plan Sponsor, if applicable, and SelectHealth for enrollment related functions.
 - C. Disclose Underwriting Information only to SelectHealth for underwriting purposes.
5. Maintenance and Use PHI by Agent. Agent may maintain copies of PHI and use this information in order to verify that it accurately transmitted the information. Agent may also use and disclose enrollment information to SelectHealth and the Plan Sponsor, if applicable, in order to address questions related to the enrollment process.

EXHIBIT C
MEDICARE ADVANTAGE REQUIREMENTS

Agent and SelectHealth agree to be bound by the following:

1. Regulatory Requirements. Agent agrees to comply with all applicable Medicare laws, regulations, and Centers for Medicare and Medicaid Services (“CMS”) instructions.
2. Audit. Notwithstanding anything to the contrary contained in the Agreement, the Department of Health and Human Services (“HHS”), the Comptroller General, or their designees have the right to audit, evaluate, collect, and inspect any pertinent information including books, contracts, computer or other electronic systems, including medical records and documentation related to SelectHealth’s contract with CMS. The foregoing right to inspect, evaluate, collect, and audit any pertinent information exists for ten (10) years from (1) the final date of SelectHealth’s contract period with CMS, or (2) from the date of completion of any audit, whichever is later. Also, the foregoing right is applicable to Agent as well as any other first tier, downstream, or related entity. Agent shall make available to SelectHealth, government agencies, and their designees its premises, physical facilities, and equipment to accommodate periodic auditing as described in this paragraph. In addition, if this the Agreement is determined to be subject to the provisions of Section 952 P.L. 96-499, which governs access to books and records of subcontractors of services to Medicare hospitals where the cost or value of such services under the contract exceeds \$10,000 over a twelve (12) month period, then Agent agrees to permit representatives of the Secretary of the Department of Health and Human Services and of the Comptroller General, in accordance with criteria and procedures contained in applicable federal regulations, to have access to its books, documents, and records as necessary to verify the cost of services provided under the Agreement. Agent will immediately notify SelectHealth if Agent receives a request for access to books, documents, and/or records from any of the parties named in this section.
3. Confidentiality and Privacy. Agent will safeguard enrollees’ privacy and confidentiality and ensure the accuracy of enrollees’ health records. In addition to any privacy related provisions contained within the Agreement, Agent agrees to abide by all Federal and State laws regarding confidentiality and disclosure of medical records, or other health and enrollment information. Agent further agrees to safeguard the privacy of any information that identifies a particular enrollee and have procedures that specify: (1) for what purposes the information will be used within the Agent organization, and (2) to whom and for what purposes it will disclose the information outside the Agent’s organization. Also, Agent will ensure that medical information is released only in accordance with applicable Federal or State law or pursuant to court orders or subpoenas, maintain records and information in an accurate and timely manner, and ensure timely access by enrollees to the records and information that pertain to them.
4. Enrollee Liability. Agent will not hold enrollees liable for the payment of any fees that are the legal obligation of SelectHealth. In no event, including, but not limited to, non-

payment by SelectHealth, SelectHealth's insolvency or breach of the Agreement, shall Agent bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against an enrollee, or person other than SelectHealth acting on an enrollee's behalf.

5. CMS Contractual Obligations. Agent and SelectHealth agree that the services and obligations provided under the Agreement are consistent and comply with SelectHealth's contractual obligations with CMS. Also, SelectHealth and Agent agree that any services or other activity performed by a first tier, downstream, or related entity in accordance with a contract or written agreement are and will be consistent and comply with SelectHealth's contractual obligations with CMS.

6. Delegated Responsibilities. The parties acknowledge that SelectHealth maintains ultimate responsibility for adhering to and otherwise fully complying with all terms and conditions of its contract with CMS, and that SelectHealth is ultimately accountable for any activity or responsibility under its contract with CMS that is delegated. The parties acknowledge and agree that SelectHealth has only delegated to Agent those activities and responsibilities under its contract with CMS that have been specifically identified and delegated in the Agreement, or a separate delegation agreement ("Delegated Activities"). Agent and any downstream and related entities or transferees shall perform all Delegated Activities in a manner consistent with applicable federal laws and regulations, SelectHealth's contract with CMS, CMS instructions and any delegation agreement entered into with SelectHealth. All Delegated Activities shall be monitored and audited by SelectHealth on an ongoing basis. SelectHealth and Agent acknowledge that SelectHealth is ultimately accountable for any Delegated Activities and shall have the right to revoke any Delegated Activities or take corrective action against Agent in the event Agent and any downstream and related entities or transferees are not satisfactorily performing their obligations related to the Delegated Activities or Agent is failing to submit regular or required reports to SelectHealth on the Delegated Activities in accordance with the terms of the Agreement, applicable federal laws, rules and regulations, CMS instructions, SelectHealth's contract with CMS or the delegation agreement. SelectHealth may immediately terminate any delegation agreement upon Agent failing to satisfactorily perform its obligations.

7. Federal Funds. Agent acknowledges that it is receiving federal funds from SelectHealth and is subject to laws and regulations applicable to individuals/entities receiving federal funds.

SelectHealth:

Agent:

Signature

By: Janica Blackhurst

Title: Director of Agent Relations

Date: _____

Signature

By: _____

Title: _____

Date: _____