

INDIVIDUAL BROKERAGE AGREEMENT

THIS AGREEMENT is made as of this _____ day of _____, 20____, between Physicians Health Plan of Northern Indiana, Inc. ("PHP"), a health maintenance organization, and _____ ("Broker").

WHEREAS, PHP is organized and operated as a health maintenance organization to arrange for the delivery of health care services to persons covered by PHP's underwritten group health, group dental and individual health contracts; and

WHEREAS, PHP is a "Covered Entity" or, in the alternative, an organized health care arrangement with the group health plan as those terms are used in the Health Insurance Portability and Accountability Act of 1996, the Standards for Privacy of Individually Identifiable Health Information and Security Standards for the Protection of Electronic Health Information, 45 C.F.R. Part 164, Subparts C and E; and the HITECH Act provisions of the American Recovery and Reinvestment Act of 2009, Public Law No. 111-005, Title XIII, Subpart D; and

WHEREAS, PHP is organized and operated as a not-for-profit corporation licensed in the State of Indiana; and

WHEREAS, Broker is a duly licensed insurance broker qualified to solicit enrollment of persons in PHP's underwritten health and dental contracts; and

WHEREAS, PHP and Broker desire to contract with each other to arrange for PHP's underwritten health and dental contracts and to address Broker's obligations as a "Business Associate" under the same laws identified above with respect to any Protected Health Information Broker creates or obtains from or on behalf of PHP in connection with Broker's services under this Agreement; and

NOW, THEREFORE, in consideration of the premises and mutual covenants of this Agreement, PHP and Broker agree as follows:

Section I

DEFINITIONS

For the purposes of this Agreement:

"Broker" means the properly licensed individual that is contracting with PHP under this Agreement.

"Broker of Record" means the Broker which an Enrolling Unit or individual health contract Subscriber designates in writing as eligible for Commissions for that particular Enrolling Unit or individual health contract.

"Calendar Year" means January 1 through December 31 of any given year.

"Commissions" means the payments due Broker by PHP for the services performed by Broker under this Agreement. Appendix A sets forth the commission schedule for Broker's soliciting enrollment in Underwritten Contracts and providing services to the Enrolling Units or individual health contract Subscribers holding Underwritten Contracts.

"Contract Year" means the twelve-month period starting on the effective date of the Underwritten Contract.

“Defined Service Area” means the geographic area in which Broker may solicit enrollment of Enrolling Units or individual health contract Subscribers under this Agreement which shall be limited to the counties in which PHP and Broker are licensed to operate.

“Enrolling Unit” means an employer group solicited under this Agreement which:

- 1) is located in the Defined Service Area;
- 2) has at least 2 employees eligible for group health or group dental benefits; and
- 3) is approved by PHP and accepted for enrollment under an Underwritten Contract.

“HITECH” or the **“HITECH Act”** means Subtitle D of Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law No. 111-005, known as The Health Information Technology for Economic and Clinical Health Act, including its implementing regulations.

“Individual” means the same as the term “individual” in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

“Limited Data Set” means the same as the term “limited data set” in 45 CFR § 164.514(e)(2).

“Minimum Necessary” means (1) use, disclosure or request of a Limited Data Set as defined herein to the extent practicable or, if needed by such entity, to the minimum necessary to accomplish the intended purpose of the use, disclosure or request. (2) On and after the effective date on which the Secretary of the Department of Health and Human Services (“HHS”) issues guidance as required by Section 13405 of HITECH on what constitutes “minimum necessary,” “Minimum Necessary” shall have the meaning or otherwise be determined as set forth in such guidance and the definition set forth in (1) hereof shall no longer apply.

“Privacy Incident” means any use or disclosure of Protected Health Information that is not permitted by this Agreement or that is in violation of the Privacy Rule and shall include a breach of Protected Health Information as the term “breach” is defined in 45 CFR § 164.402.

“Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

“Protected Health Information” means the same as the term “protected health information” in 45 CFR § 160.103, limited to the information created or received by Broker from or on behalf of PHP.

“Required By Law” means the same as the term “required by law” in 45 CFR § 164.103 when referring to the use or disclosure of Protected Health Information or obligations and requirements relating to Protected Health Information.

“Security Incident” means the same as the term “security incident” in 45 CFR § 164.304, including any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

“Security Rule” means the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subpart C.

“Subscriber” means a person enrolled for coverage under the Enrolling Unit’s Underwritten Contract or covered under an individual health contract. The term “Subscriber” does not include Enrolled Dependents.

“Underwritten Contracts” means the health or dental contracts approved by PHP to be marketed and issued to Enrolling Units or individual health contract Subscribers under this Agreement at premium rates established and approved by PHP and under which PHP accepts financial responsibility for providing the health and/or dental benefits in exchange for premium payments from an Enrolling Unit or individual health contract Subscriber.

Section II

AUTHORITY OF BROKER

- A. **Authority of Broker.** Broker is hereby appointed as PHP's broker, and Broker is authorized:
1. To solicit employer or other groups to purchase Underwritten Contracts under this Agreement.
 2. To solicit individuals to purchase individual Underwritten Contracts under this Agreement.
 3. To collect initial premium payments under Underwritten Contracts.
- B. **Duties of Broker.** In accepting this appointment, Broker has the authority and agrees:
1. To conduct all of its activities under this Agreement in compliance with applicable law.
 2. To have and maintain all necessary licenses to perform its obligations under this Agreement. Broker shall provide copies of such licenses to PHP at PHP's request.
 3. To hold in trust as property of PHP all premiums and other monies collected or received by the Broker on behalf of PHP. Broker shall remit all applications, premiums, or other monies immediately to PHP.
 4. To be responsible for and pay all expenses and fees that Broker incurs while carrying out the terms of this Agreement.
 5. To deliver to PHP evidence of any claims for benefits under the Underwritten Contracts immediately upon receipt.
 6. To complete initial and ongoing training with PHP to ensure compliance by Broker with PHP marketing, enrollment, and participation policies. Such training shall include, but not be limited to, open enrollment training, sales call training, routine evaluation of Broker's performance under this Agreement and such other training as may be required by PHP from time to time.
 7. To promptly notify PHP, in writing, of any pending litigation, threatened litigation, complaint or grievance, or any inquiry or investigation from any consumer, consumer representative, Enrolling Unit, individual health contract Subscriber, federal, state, or local governmental agency, or any industry or self regulatory organization, or any other source, regarding Underwritten Contracts or the conduct of Broker under this Agreement. Broker agrees to promptly furnish all written materials requested by PHP in connection with any such matter and to cooperate with PHP in its investigation and defense regarding any such matter.
- C. **Limitations on Authority.** The authority granted to the Broker under this Agreement shall be limited to the authority necessary for the Broker to perform its obligations under this Agreement. The Broker shall not have the authority to:
1. Adjust or settle any claim under any Underwritten Contract, or make any promise or representation to any person in connection with any claim under an Underwritten Contract.
 2. Incur any obligation, debt or liability on behalf of PHP or bind coverage under any Underwritten Contract;
 3. Waive any claims that PHP may have against a third party;
 4. Accept on behalf of PHP any fees or premiums for any Underwritten Contract other than the initial premium paid at the time the Broker solicits enrollment or participation; or
 5. Disclose any "NonPublic Personal Information," as defined in 760 Indiana Administrative Code 1-67 et seq., other than to carry out the purposes for which Broker collected the NonPublic Personal Information or for which PHP disclosed the NonPublic Personal Information under the Agreement. Notwithstanding the foregoing, the Broker may disclose such NonPublic Personal Information if so required under applicable law.

Section III

SOLICITATION OF ENROLLING UNITS AND INDIVIDUAL HEALTH CONTRACT SUBSCRIBERS

- A. **Solicitation of Enrolling Units and Individual Health Contract Subscribers.** Broker shall use its best efforts to solicit enrollment of prospective Enrolling Units and individual health contract Subscribers.
- B. **Proposals.** Broker shall submit to prospective Enrolling Units and to prospective individual health contract Subscribers proposal letters in a form and upon such terms as are approved in advance by PHP. No term of such proposal, including premium amounts, may be altered except upon the prior written approval of PHP.
- C. **Application for Enrollment or Participation.** Broker shall accurately and completely record information required by PHP for enrollment or participation under an Underwritten Contract, and shall comply with applicable policies and procedures as established by PHP from time to time. PHP may also adjust the minimum Enrolling Unit size it will accept for enrollment. Any such adjustment shall be communicated to Broker on a timely basis.
- D. **Acceptance for Enrollment.** PHP shall have the right to accept or reject any prospective Enrolling Unit or prospective individual health contract Subscriber submitted by Broker for enrollment. In no event shall any prospective Enrolling Unit or prospective individual health contract Subscriber be eligible to receive services under an Underwritten Contract, unless and until accepted by PHP with such effective date as determined by PHP.
- E. **Servicing of Enrolling Units and Individual Health Contract Subscribers.** Broker shall be responsible for the delivery and explanation of initial administrative forms, such as billing and enrollment materials, and any subsequent renewal forms, as approved in advance by PHP. Broker may be required by PHP to deliver the Underwritten Contract to Enrolling Units or to the individual health contract Subscriber. Broker shall cooperate in obtaining the required signature of the Enrolling Unit or individual health contract Subscriber and return signed forms to PHP. Broker is also responsible for each renewal presentation to Enrolling Units, as approved in advance by PHP.
- F. **Compensation for Services Rendered.**
1. For Enrolling Units and individual health contract Subscribers solicited by Broker and approved for enrollment by PHP during the term of this Agreement, Broker shall be compensated pursuant to the commission schedule in Appendix A, as amended from time to time by PHP.
 2. Broker shall be compensated for an Enrolling Unit's first Contract Year and for subsequent Contract Years through termination of this Agreement or of the Enrolling Unit.
 3. Broker shall be compensated for an individual health contract Subscriber's first Contract Year and for subsequent Contract Years through termination of this Agreement or of the individual health contract.
 4. In the event of a Contract Year change, PHP may adjust compensation from that set forth in Appendix A such that Broker receives compensation equivalent to amount Broker would have received had such change in Contract Year not taken place.
 5. Broker shall be compensated only if the Broker continues to be recognized by the Enrolling Unit or individual health contract Subscriber as the Broker of Record. In the event that an Enrolling Unit or individual health contract Subscriber replaces the Broker of Record, the newly appointed Broker of Record is entitled to Commissions as set forth in Appendix A at the point in scale of the commission schedule in force when the replacement occurred. If a Broker of Record is designated for an Enrolling Unit or individual health contract Subscriber and previously there was no Broker of Record, the newly appointed Broker of Record will not be entitled to Commissions until the Enrolling Unit's next renewal or the individual health contract Subscriber's next renewal provided Commissions were factored into such renewal.
 6. For an Enrolling Unit to be included as an Enrolling Unit for purposes of compensation under this Agreement, the Enrolling Unit must pay its premiums on a timely basis.

7. For an individual health contract to be included as an individual health contract for the purposes of compensation under this Agreement, the individual health contract Subscriber must pay premiums on a timely basis.
8. Commissions will be paid on total premium received. Commissions will be paid without regard to Retroactive Premium Agreements, Contract Charge Refund Agreements or any like agreements.
9. No amounts shall be payable hereunder in excess of any maximum allowed by applicable law.
10. PHP shall make an appropriate adjustment to compensation upon discovery of a clerical error. This includes PHP's right to collect reimbursement from Broker for any overpayment. However, no such adjustment shall be made beyond fifteen (15) months after the date PHP was notified of such clerical error. Broker shall reimburse PHP for collection agency and legal fees, if any, incurred by PHP to obtain reimbursement.

- G. **Marketing Materials.** Broker shall obtain from PHP, upon request by Broker, such marketing and enrollment materials as are necessary for solicitation of enrollment under this Agreement by Broker.
- H. **Use of Information.** Broker shall not use any marketing materials or other information regarding PHP for the competitive advantage of any health and dental benefits competitor of PHP. All such materials provided to Broker shall be immediately returned to PHP upon termination of this Agreement.
- I. **Records.** Broker shall maintain records related to the enrollment of Enrolling Units and to the enrollment of individual health contract Subscribers under this Agreement, and, PHP shall, upon reasonable notice and demand, have access during regular business hours to any such records maintained by Broker. Such records shall be maintained during the term of this Agreement and for at least two (2) years after termination of this Agreement.

Section IV

PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION

- A. **Permitted Uses and Disclosures of Protected Health Information.** Broker agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law. This Agreement does not authorize Broker to use or disclose Protected Health Information in a manner that would violate the requirements of the Privacy Rule, Security Rule, HITECH Act or the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- B. **Functions and Activities on PHP's Behalf.** Broker is permitted to use and disclose the Minimum Necessary Protected Health Information it creates or receives for or from PHP as is necessary to perform functions, activities or services for or on behalf of PHP as specified in the Agreement.
- C. **Broker's Use of Protected Health Information.** Broker may use the Minimum Necessary Protected Health Information it creates or receives for or from PHP as necessary for Broker's proper management and administration or as Required By Law.
- D. **Broker's Disclosure of Protected Health Information.** Broker may disclose the Minimum Necessary Protected Health Information as necessary for Broker's proper management and administration, provided that:
1. the disclosure is Required By Law; or
 2. Broker enters into a written contract with any person or organization to which Broker will disclose such Protected Health Information that the person or organization will:
 - a. hold such Protected Health Information in confidence and use or further disclose it only for the purpose for which Broker disclosed it to the person or organization or as Required By Law;
 - b. agree to comply with the same privacy and security obligations and restrictions that apply to Broker with respect to such Protected Health Information as set forth in this Agreement or otherwise Required By Law; and
 - c. immediately notify Broker (who will in turn immediately notify PHP) of any instance of which the

person or organization becomes aware of or suspects a Privacy Incident or Security Incident. Broker shall require the person or organization to make such report to Broker no later than twenty-four (24) hours after becoming aware of or otherwise suspecting such a Privacy or Security Incident.

- E. **Compliance with State Law.** Broker will comply with applicable State law not preempted pursuant to the Privacy or Security Rules.
- F. **Information Safeguards.** Broker will develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards, in compliance with the requirements of the HITECH Act, the Privacy Rule and Security Rule, including but not limited to the requirements of 45 CFR §§ 164.308, 164.310 and 164.312 which shall apply to Broker in the same manner that such sections apply to PHP. Broker shall also implement, and maintain in written form, reasonable and appropriate policies and procedures to comply with the standards, implementation specifications or other requirements of the Security Rule, in accordance with 45 CFR § 164.316, and the administrative requirements of the Privacy Rule, in accordance with 45 CFR § 164.530(i), which shall apply to Broker in the same manner that such sections apply to PHP. The safeguards used by Broker shall protect against unauthorized access, alteration, deletion or transmission of Protected Health Information, and prevent use or disclosure of Protected Health Information other than as provided by this Agreement. Broker shall also ensure that Protected Health Information is rendered unusable, unreadable, or indecipherable to unauthorized individuals as specified in the guidance issued by HHS, as required by Section 13402(h) of HITECH. The safeguards used by Broker shall be designed to preserve the integrity and confidentiality of, and to prevent intentional or unintentional, non-permitted or violating use or disclosure of, Protected Health Information. Broker will document and keep these safeguards current.
- G. **Subcontractors and Agents.** Broker shall require any of its subcontractors and agents to which Broker is permitted by this Agreement to disclose any of the Protected Health Information Broker creates or receives for or from PHP to enter into a written contract that such subcontractor or agent will comply with the same restrictions, conditions and obligations imposed upon Broker under this Agreement or as otherwise Required By Law with respect to such Protected Health Information, including but not limited to the this Section IV and Section VII.C. of this Agreement.
- H. **Compliance with the Privacy Rule, Security Rule, and HITECH.** Broker will comply, and require its subcontractors and agents to comply, in all respects with the applicable requirements of the Privacy Rule, Security Rule and HITECH, including all implementing regulations. Broker shall comply with each and every obligation imposed upon business associates under HITECH, and each of those obligations is hereby incorporated into this Agreement as required by HITECH.
- I. **Access.** Broker will, upon receipt of notice from PHP, permit PHP or, at PHP's direction, the Individual access to obtain copies of any Protected Health Information about an Individual that Broker created or received for or from PHP and that is in Broker's custody or control, in order to allow PHP to meet its Individual access obligations set out in 45 CFR § 164.524.
- J. **Amendment.** Broker will, upon receipt of notice from PHP, promptly amend or permit PHP access to amend any portion of the Protected Health Information which Broker created or received for or from PHP so that PHP may meet its amendment obligations under 45 Code of Federal Regulations § 164.526.
- K. **Disclosure Accounting.** So that PHP may meet its disclosure accounting obligations under 45 CFR § 164.528 and Section 13405 of HITECH:
 - 1. **Disclosure Tracking.** Broker shall document information concerning each disclosure of Protected Health Information that Broker makes to PHP or a third party. Broker shall document (i) the disclosure date, (ii) the name and (if known) address of the person or entity to whom Broker made the disclosure, (iii) a brief description of the Protected Health Information disclosed, and (iv) a brief statement of the purpose of the disclosure (items i-iv, collectively, the "Disclosure Information"). For repetitive disclosures Broker makes to the same person or entity (including PHP) for a single purpose, Broker may provide (a) the Disclosure Information for the first of these repetitive disclosures, (b) the frequency, periodicity or

number of these repetitive disclosures, and (c) the date of the last of these repetitive disclosures. Broker shall promptly make all information necessary for PHP to meet its accounting obligations under 45 CFR § 164.528 available to PHP. Broker shall provide PHP with the aforementioned information within five (5) business days of receiving PHP's request for such information or provide the information directly to the Individual within five (5) business days if PHP so elects.

2. **Disclosure Tracking Time Periods.** Broker must have available for PHP the disclosure information required by Section IV.K.1. for the six (6) years preceding PHP's request for the disclosure information.

L. **Inspection of Books and Records.** Broker will make its internal practices, books, and records, including policies and procedures relating to its use and disclosure of the Protected Health Information it creates or receives for or from PHP, available to the Secretary of the U.S. Department of Health and Human Services ("HHS") as required by HHS so that HHS may determine compliance with the Privacy Rule or Security Rule.

M. **Restriction Requests; Confidential Communications.** Broker will comply with all agreements that PHP makes or otherwise enters into that either (i) restrict use or disclosure of PHI pursuant to 45 CFR § 164.22(a) or Section 13405(a) of HITECH or (ii) require confidential communication about PHI pursuant to 45 CFR § 164.22(b). PHP will notify Broker in writing of the restriction or confidential communication obligations that Broker must follow and furnish Broker a copy of the agreement. PHP will promptly notify Broker in writing of the termination of any such restriction agreement or confidential communication requirement and, with respect to termination of any such restriction agreement, instruct Broker whether any of PHP's PHI will remain subject to the terms of the restriction agreement.

N. **Reporting a Breach of Privacy or Security.** Broker shall immediately report to PHP any Privacy Incident, Security Incident or suspected Privacy or Security Incident. Broker shall make such report to PHP no later than forty-eight (48) hours after Broker becomes aware of or otherwise suspects such non-permitted or violating use or disclosure. Broker will cooperate promptly with PHP as is reasonably required to comply with applicable law, including, without limitation, Section 13402 of HITECH and 45 CFR Parts 160 and 164, Subpart D. Broker's report will at least:

1. describe what happened and the nature of the Privacy Incident or Security Incident, including the date of the Incident and date of discovery;
2. identify each Individual whose Protected Health Information has been or is reasonably believed to have been the subject of the Privacy Incident or Security Incident and for each person, identify the Protected Health Information used, disclosed and/or accessed;
3. identify who made the non-permitted use or disclosure and who may have received the impacted Protected Health Information;
4. describe what corrective action Broker is taking to prevent a further Privacy Incident or Security Incident;
5. describe what Broker is doing to investigate the Privacy Incident or Security Incident and to mitigate harm to individuals;
6. identify the steps individuals should take to protect themselves from potential harm;
7. identify the contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address; and
8. provide such other information, including a written report containing the information required by subsections 1. through 7. hereof, as PHP may request.

O. **Mitigation.** Broker will mitigate, to the extent practicable, any harmful effect that is known to Broker of a Privacy or Security Incident.

P. **Damages/Injunctive Relief.** The parties agree that any breach of this Agreement relating to or otherwise involving Protected Health Information, a Privacy Incident or Security Incident by Broker, its employees, agents, officers, members, directors, and/or shareholders, will result in significant financial harm to PHP. The parties agree that PHP shall be entitled to all available and immediate legal and equitable remedies, as well as costs and attorneys fees relative to enforcement.

Section V

TERMS AND CONDITIONS GOVERNING RELATIONSHIP BETWEEN PARTIES

- A. **Independent Contractors.** Broker shall remain at all times an independent contractor and not an employee of PHP. None of the provisions of this Agreement are intended to create, nor shall be deemed or construed to create, any other relationship between the parties. No agent or employee of PHP or Broker shall be construed or deemed to be an agent or employee of the other party.
- B. **Indemnification and Hold Harmless by Broker.** Broker shall defend, hold harmless and indemnify PHP against any and all claims, liabilities, damages or judgments, including reasonable attorneys' fees, asserted against, imposed upon and/or incurred by PHP that arise out of Broker's breach of the terms of this Agreement or the negligent, reckless or intentional acts, omissions, misrepresentations or non-permitted or violating use or disclosure of Protected Health Information by Broker or other persons within Broker's control or supervision, or the Broker's breach of the terms of this Agreement. Notwithstanding the foregoing, PHP shall not be indemnified for claims, liabilities, damages or judgments caused by its own gross or intentional misconduct. This provision shall survive termination of the Agreement.
- C. **Indemnification and Hold Harmless by PHP.** PHP shall defend, hold harmless and indemnify Broker against any and all claims, liabilities, damages or judgments, including reasonable attorneys' fees, asserted against, imposed upon and/or incurred by Broker that arise out of the negligent, reckless or intentional acts, omissions or misrepresentations by PHP, or PHP's breach of the terms of this Agreement. Notwithstanding the foregoing, Broker shall not be indemnified for claims, liabilities, damages or judgments caused by its own gross or intentional misconduct. This provision shall survive termination of the Agreement.
- D. **Liability Insurance.** Broker shall procure and maintain, on behalf of Broker, errors and omissions and/or professional liability insurance coverage satisfactory to PHP. Upon request by PHP, Broker shall provide evidence of such insurance coverage. Broker shall notify PHP in writing within thirty (30) days of any material changes in the errors and omissions and/or professional liability coverage of Broker.

Section VI

RESOLUTION OF DISPUTES

- A. **Disputes.** For the purposes of this section, "Dispute" means any dispute or claim between PHP and Broker arising out of or related to the interpretation or application of this Agreement or breach thereof.
- B. **Negotiation and Arbitration of Disputes.** Resolution of any Dispute shall be subject to good faith negotiation between the parties. The complaining party shall notify the other party in writing of such Dispute and the parties shall attempt to resolve the Dispute within ninety (90) days of the date of such notice, or within such time as is mutually agreed upon by the parties in writing. In the event the Dispute is not resolved within such time period, it shall be submitted to arbitration in writing by the originating party within fifteen (15) days of the termination of the negotiations as provided above pursuant to the Commercial Arbitration Rules of the American Arbitration Association, except that the arbitrator(s) shall be required to issue written findings of fact and conclusions of law in conjunction with any award and the conclusions of law may be reviewed de novo if the award is challenged in a subsequent judicial proceeding. This provision shall survive termination of this Agreement. Any arbitration shall be held in Fort Wayne, Indiana.

Section VII

TERM AND TERMINATION

- A. **Term.** The term of this Agreement shall commence on the date first specified above and shall continue in effect through the remainder of the Calendar Year and for each Calendar Year thereafter until such time as this Agreement is terminated by either party as provided for in Section VII. B. hereof.
- B. **Termination.** Either party may terminate this Agreement, without cause, upon sixty (60) days prior written notice to the other party. PHP may terminate this Agreement, with cause, immediately upon written notice to Broker. Termination of this Agreement shall be subject to the following provisions:
1. In the event this Agreement is terminated by PHP or Broker without cause, PHP shall pay Broker Commissions as provided in Appendix A, as applicable, until Broker is no longer Broker of Record with the Enrolling Unit or with the individual health contract Subscriber.
 2. In the event this Agreement is terminated by PHP, with cause, no Broker Commissions shall be payable to Broker by PHP following the date of such termination. For the purposes of this Agreement “with cause” shall result if:
 - a. Broker defaults under any material term of this Agreement (not including a breach of a material term involving Broker's obligations and restrictions relating to Protected Health Information which shall be governed by Section VII.B.2.f. below) and fails to cure such default within forty-five (45) days after receipt of written notice from PHP specifying the precise nature of such default;
 - b. Broker commits a fraudulent, dishonest, or illegal act adversely affecting PHP, an Enrolling Unit, or an individual health contract Subscriber;
 - c. Broker withholds or misappropriates funds of PHP, a prospective Enrolling Unit, a prospective individual health contract Subscriber, an Enrolling Unit or an individual health contract Subscriber;
 - d. Broker fails to remain duly licensed pursuant to applicable law; or
 - e. Broker is suspended or disciplined by any state or federal regulatory authority, or is reprimanded in any way in connection with performance of its duties as a broker.
 - f. Broker has breached a material term of this Agreement concerning Broker's obligations, restrictions and requirements relating to Protected Health Information and, in PHP's sole discretion, cure is not possible or Broker failed to cure the breach within the time permitted by PHP to cure such breach.
 3. This Agreement terminates automatically and immediately, with no further compensation to Broker, in the event:
 - a. Any license or registration that Broker is required to maintain under the terms of this Agreement is cancelled or not renewed; or
 - b. Broker is dissolved or terminated.
- C. **Obligations upon Termination.**
1. **Return or Destruction.** Upon termination of the Agreement for any reason, Broker will, if feasible, return to PHP or destroy all Protected Health Information, in whatever form or medium (including in any electronic medium under Broker's custody or control), that Broker created or received for or from PHP, including all copies of and any data or compilations derived from and allowing identification of any Individual. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Broker. Broker will complete such return or destruction as promptly as possible, but not later than 30 days after the effective date of the termination, cancellation, expiration or other conclusion of the Agreement.
 2. **Return or Destruction Infeasible.** Broker will identify any Protected Health Information that Broker created or received for or from PHP that cannot feasibly be returned to PHP or destroyed, and will limit its further use or disclosure of that Protected Health Information to those purposes that make return or destruction of that Protected Health Information infeasible, for so long as Broker maintains such Protected Health Information.
 3. **Certification.** Following any termination of the Agreement and within 30 days of its receipt of a written demand therefore from PHP, Broker will certify in writing to PHP that such return or destruction has been

completed, will deliver to PHP the identification of any Protected Health Information for which return or destruction is infeasible, and for that Protected Health Information, will certify that it will only use or disclose such Protected Health Information for those purposes that make return or destruction infeasible, for so long as Broker maintains such Protected Health Information.

4. **Continuing Privacy and Security Obligation.** Broker's obligation to maintain the confidentiality, privacy, and security of any Protected Health Information it created or received for or from PHP will be continuous and, with respect to any such Protected Health Information it retains following such event, will survive termination, cancellation, expiration, or other conclusion of the Agreement.

Section VIII

MISCELLANEOUS PROVISIONS

- A. **Notice.** Any notice required or permitted to be given by either party under this Agreement shall be sufficient if it is in writing and hand delivered (including delivery by courier) or sent by US Mail, First Class, as follows:

1. If to PHP:

James A. Brunner
Vice President and CFO
PHYSICIANS HEALTH PLAN
8101 West Jefferson Boulevard
Fort Wayne, IN 46804-4163
Phone: 260-432-6690

2. If to the Broker:

Name: _____

Firm: _____

Address: _____

Bus. Phone: _____

- B. **Entire Agreement.** This Agreement, including all appendices, constitutes the entire agreement between the parties, superseding all prior agreements, understanding and representations. No alteration of this Agreement or waiver of its provision shall be valid unless approved in writing in advance by PHP.
- C. **Amendment.** Any amendment to this Agreement proposed by PHP at least sixty (60) days prior to the effective date of such amendment, or any amendment to any Appendix of this Agreement proposed by PHP at least thirty (30) days prior to the effective date of such amendment, shall be deemed adopted unless this Agreement is earlier terminated as provided for in Section VII.B. Any amendment to Appendix A shall apply to an Underwritten Contract effective or renewed on or after the effective date of such amendment. No oral representations or promises shall be binding on either party. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for PHP to comply with the requirements of the Privacy Rule, the Security Rule, the HITECH Act and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- D. **Interpretation.** Any ambiguity in the terms of this Agreement shall be resolved to permit PHP to comply with the Privacy Rule, Security Rule and HITECH Act.
- E. **No Third-Party Beneficiary.** The provisions and covenants set forth in this Agreement are expressly entered into only by and between Broker and PHP and are intended only for their benefit. Neither Broker nor PHP intends to create or establish any third-party beneficiary status or ri
- F. **Assignment.** PHP shall have the right to assign any or all of its rights and responsibilities under this Agreement to any entity that controls, is controlled or managed by, or is under common control with PHP as appropriate. Broker shall not have the right to assign any or all of its rights and responsibilities under this Agreement.
- G. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana.

- H. **Waiver.** If a party to this Agreement waives any provision of this Agreement, the waiver shall apply only to that provision, and not to any other provision(s) of this Agreement. No waiver shall be effective unless it is in writing and signed by a duly authorized officer of the party.
- I. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or unenforceability of any other provision.
- J. **Prior Business Associate Agreement.** This Agreement shall replace and supersede any prior business associate agreement between the parties, including amendments thereto, in effect between the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date and year first written.

PHP: Physicians Health Plan of Northern Indiana, Inc. _____ By: _____ Title: _____ Date: _____	Broker: _____ By: _____ Title: _____ Social Security ID # _____ Date: _____
---	---

Physicians Health Plan of Northern Indiana, Inc.
 8101 West Jefferson Boulevard
 Fort Wayne, Indiana 46804-4163
 (260) 432-6690 or (800) 982-6257, Fax: (260) 436-6347
 email: sales@phpni.com

Appendix A

Commission Schedules for Underwritten Contracts

Section I

Unless otherwise set forth in this Appendix, capitalized terms shall have the same definitions and meaning as set forth in the Brokerage Agreement, as amended from time to time, which are hereby incorporated by reference. In the event of a conflict, this Appendix shall control and supersede the terms of the Brokerage Agreement.

Definitions for the purpose of this Appendix:

“First Year Commission” means the Commissions due Broker for the first Contract Year of enrollment of the Enrolling Unit or individual health contract Subscriber by Broker under this Agreement.

“Premier Broker” means a Broker whose book of business with PHP, as of the last day of the preceding Calendar Year, is at least:

- 1000 health Subscribers; or
- 500 health Subscribers and sales during the preceding 12 months of at least 150 new health Subscribers.

“Renewal Commissions” means the Broker Commissions due Broker for the second and subsequent Contract Years of enrollment of the Enrolling Unit or individual health contract Subscriber by Broker under this Agreement.

Section II

BROKER COMMISSION LEVELS AND PAYMENTS

A. UNDERWRITTEN CONTRACT COMMISSION SCHEDULE

- 1) ***First Year and Renewal Standard Commission Schedule*** for an Enrolling Unit with 99 or fewer Subscribers:

<u>Number of Subscribers</u>	<u>Per Subscriber Per Month</u>
First 2-50 Subscribers	\$28
Next 51-99 Subscribers	\$22
Additional Subscribers	\$16

For an Enrolling Unit with 100 or more Subscribers, PHP reserves the right to offer to the Broker a single case commission agreement, which shall be an amendment to Appendix A. Any such single case agreement shall not establish precedent for any other Enrolling Unit.

- 2) ***First Year Commission and Renewal Commission*** for individual health Underwritten Contracts for each Contract Year is based on the premium collected from the individual health contract Subscriber as follows:

First Contract Year	14%
Second and subsequent Contract Years	4%

In no event shall commissions be earned or payable on underwriting surcharges, renewal rate increases, application fees, billing fees, processing fees, late fees, reinstatement fees, or other fees charged by PHP from time to time.

3) ***First Year Commission*** and ***Renewal Commission*** for Dental is:
\$3.50 per Subscriber per month.

- B. UNDERWRITTEN CONTRACT COMMISSION SCHEDULE FOR PREMIER BROKER. The First Year Commission and Renewal Commission Schedule as indicated in Section II A. 1), 2) and 3) of this Appendix is multiplied by a factor of 1.08.
- C. TIMING OF PAYMENT OF BROKER COMMISSIONS. First Year and Renewal Commissions payable are calculated on a monthly or quarterly basis based on the premium amounts due and collected for an Enrolling Unit or individual health contract Subscriber. PHP will make payments to Broker not less than sixty (60) days from the end of such month or quarter.