



Agent Agreement

SEND CORRESPONDENCE TO:
EMAIL: marketing@thcma.com

This Agent Agreement is made as of the ____ day of _____, 20__ (the "Effective Date") between TOTAL HEALTH CARE, INC., a Michigan health maintenance organization ("THC"), TOTAL HEALTH CARE USA, INC., a Michigan health maintenance organization ("TOTAL USA"), and _____ with a principal place of business located at _____ ("Agent").

RECITALS

- A. THC and TOTAL HEALTH CARE USA (collectively, the "Companies") provide health coverage to individuals and employer groups ("Health Plan(s)").
- B. Agent is a licensed accident and health insurance Agent under Chapter 12 of the Michigan Insurance Code.
- C. Agent has been designated as the Agent of Record by certain employers groups or individuals purchasing Health Plans.
- D. Companies desire to engage Agent to market and sell Health Plans to individuals and groups (collectively, "Customer(s)") pursuant to the terms of this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. SERVICES TO THE COMPANIES

- 1.1. The Companies appoint Agent as its nonexclusive Agent to represent the Companies in the marketing and sale of Health Plans to Customers. In representing the Companies, Agent shall:
 - 1.1.1. Only utilize sales material authorized by the Companies;
 - 1.1.2. Adhere to all policies, rules, and regulations established by the Companies and communicated to the Agent from time to time;
 - 1.1.3. Make no misrepresentations concerning the Companies, the Health Plans, or any related matter; and
 - 1.1.4. Ensure that no Customer is enrolled in any Health Plan without the prior written approval of the Companies.
- 1.2. Agent only has the authority specified in this Agreement. In furtherance of the foregoing and not by limitation:
 - 1.2.1. Agent shall not have the authority to bind any of the Companies on any application for, or policy and/or certificate of, Health Plan coverage, or bind any of the Companies to any Agreement, contract, representation or promise.
 - 1.2.2. Agent shall not make any representations with respect to any product(s) or forms of Health Plan coverage. Agent shall not make any oral or written representations, alterations, modifications, or waiver of the terms or conditions applicable to Health Plan coverage.
 - 1.2.3. Agent shall not have the authority to quote rates or benefits other than those provided by the Companies.
 - 1.2.4. Agent shall not have the authority to extend the time of payment of premium, to waive or extend any obligation or condition on any Health Plan, or to incur any liability on behalf of the Companies.
 - 1.2.5. Agent shall not have the authority to collect premiums on behalf of the Companies; provided however, in the event Agent shall receive monies on behalf of the Companies, Agent shall hold such as trust funds (and Agent shall be a fiduciary for all such monies received) and such monies shall be immediately remitted to the Companies without deduction or set-off.
- 1.3. Agent agrees to use Agent's best efforts to promote mutually beneficial and ongoing relationships between the Companies and Customers and to maintain full cooperation by the Customers and their employees or members with the Companies.
- 1.4. Agent recognizes and will respect the rights and interests of other persons representing the Companies (including employees of the Companies and other Agents) and will refrain from raiding or otherwise diverting business from those persons. Agent shall not, without the Companies' specific written consent, seek to interpose itself as Agent of Record with any Customer that then has an existing contract or business relationship with the Companies.

- 1.5. All Health Plan rates established for quotes to Customers shall be considered confidential information to be shared only with prospective Customers for the purpose of engaging their business.
- 1.6. Agent shall transact its business in a manner consistent with all applicable laws and regulations, including, but not limited to, those relating to disclosure of commissions or other remuneration received by the Companies with respect to Agent's services under this Agreement. Agent shall cause his/her/its principal persons and employees to comply with applicable law.
- 1.7. Agent agrees to maintain Agent's State of Michigan accident and health insurance Agent's License ("Agent's License") during the term of this Agreement. Upon the request of the Companies, Agent will provide the Companies with a copy of Agent's License. Agent further agrees to notify Companies immediately if the Agent's License is suspended or modified or if its insurance is cancelled or modified.
- 1.8. Agent agrees to maintain and shall make available for inspection (for a period of five (5) years) full and complete books and records of all transactions pertaining to Customer applications submitted to the Companies and all activities of Agent under this Agreement which may be required pursuant to applicable laws or by any governmental entity or regulatory agency or authority.
- 1.9. All expenses incurred by Agent in its performance of its duties under this Agreement shall be borne exclusively by Agent and not by the Companies.

2. COMMISSIONS

- 2.1. In consideration of Agent's services in marketing the Health Plans, THC or TOTAL USA, as the case may be, will pay Agent a Commission on a monthly basis (the "Commissions"). The Commissions shall be payable no later than 30 days after the end of the calendar month for which the Commissions are paid. The Commissions shall be payable only so long as this Agreement is in effect and Agent is designated by the Customer as the Agent of Record to receive the Commissions.

COMMISSION CHECKS PAYABLE TO: (check one)

Agent Name: _____ SS #: _____

Agency Name: _____ EIN #: _____

General Agency (GA) affiliation – Individual Sales only

Are you appointed with Priority Health?

IF YES:

Are you aligned/affiliated under a General Agency (GA) for Priority Health for individual sales?

IF YES:

Name of GA: _____

Address of GA: _____

Date of GA affiliation: _____

Please note that THC does not contract directly with General Agencies (GA). However, sales made by THC agents that are aligned under GAs with Priority Health will be honored under the respective Priority Health GA Agreement.

Individual plan termination assignment

For Individual THC Sales only

Collateral Assignment – commissions will continue to be paid to agent upon termination of agency relationship

Absolute Assignment – commissions will continue to be paid to the agency upon termination of agent/agency relationship

For Group plan termination assignment

For Group Commercial THC Sales only

I acknowledge that if I terminate my relationship with an agency, all future commissions will be paid to the agency or as the agency directs.

For Agents selling Total Health Care's Commercial Plans to Groups and/or Individuals, if Commissions are paid to an agency and Agent is no longer affiliated with that agency, all future Commissions will be paid to the agency or as the agency directs. If Agent and the agency disagree as to whom Commissions shall be paid, the Companies will pay the agency until or unless the Companies receive other instructions in the form of communication from the agency or in the form of a court order.

- 2.2. The Companies will establish a schedule of Commissions for the various Health Plans, a copy of which is attached to this Agreement as Exhibit A (the "Commission Schedule"). The Companies may modify the Commission Schedule from time to time upon thirty (30) days advance written notice. Any revised Commission Schedule shall be deemed to replace the Schedule attached as Exhibit A.
- 2.3. If any of the Companies pay Agent more than the amount due to Agent as Commissions, the Companies will offset such overpayment against Agent's next Commissions payment. If the Companies are unable to offset such overpayment, the Companies will send a notice of overpayment along with an invoice to Agent who will pay the balance owed to the Companies within 30 days of receiving a notice of overpayment. Agent shall promptly notify the Companies if Agent becomes aware of an overpayment. Overpayments may arise several ways, including, but not limited to, retroactive enrollment or disenrollment of members, termination of a group for failure to pay premium, or the Companies' payment of an incorrect amount of Commissions.
- 2.4. Agent shall notify Companies of any payment Agent believes is owing by Companies. Agent's notice to Companies must be in writing and received within ninety (90) days from the date of the Commission statement in question. Agent will forfeit any underpaid Commissions owing by Companies if Agent fails to timely notify Companies of a potential underpayment. Commissions adjustments will be given retroactive effect for up to twelve (12) months if needed.

3. TERM AND TERMINATION

- 3.1. **Term.** The initial term of this Agreement shall be for one year from the Effective Date. This Agreement shall automatically renew at the end of the initial term and continue in effect for successive one year terms thereafter until terminated in accordance with subsection 3.2.
- 3.2. **Termination.**
 - 3.2.1. **Termination by Mutual Agreement.** This Agreement may be terminated at any time upon written Agreement of the parties.
 - 3.2.2. **Termination For Cause.** This Agreement may be terminated for cause on the date specified in a written notice given by either party upon not less than 30 days prior written notice. For purposes of this Agreement, a termination shall be "for cause" if it is based upon any material breach by another party of any of this Agreement's terms.
 - 3.2.3. **Termination Without Cause.** This Agreement may be terminated by either party without cause upon 30 days prior written notice.
 - 3.2.4. **Immediate Termination.** The Companies may terminate this Agreement immediately at any time by notice to Agent in the event that Agent's License is revoked, suspended or restricted, or Agent otherwise becomes unqualified to market the Health Plans in the State of Michigan; or Agent has committed or attempted to commit fraud against the Companies or any Customer or has been dishonest about some important or material matter.
 - 3.2.5. **Return of Companies' Property.** Agent shall return within ten (10) business days of the termination of this Agreement all property belonging to Companies as described below in paragraph 4 (Proprietary Information).
 - 3.2.6. **Commissions upon Agreement Termination.** The Companies shall pay Agent Commissions which are earned prior to termination of this Agreement but which have not been paid. All other Commissions payable hereunder cease upon termination of this Agreement.

4. PROPRIETARY INFORMATION

- 4.1. Agent acknowledges that the Companies have developed certain symbols, trademarks, service marks, data, processes, plans, procedures, and information which are Proprietary Information and trade secrets of the Companies (the "Proprietary Information"). At all times, both during Agent's performance of services pursuant to this Agreement and after the termination of this Agreement, Agent agrees not to use or permit the use of the Proprietary Information, except as expressly contemplated by this Agreement, without the prior written consent of the Companies. Agent shall cease or cause the cessation of any and all usage of the Proprietary Information and shall return any Proprietary Information, including all sales materials for the Health Plans, to the Companies immediately upon the termination of this Agreement. In addition to the foregoing, in the event this Agreement is terminated due to the Agent's malfeasance, breach of fiduciary duty or trust, or a violation of the Michigan Health Benefit Agent Act, Agent shall not be entitled to use or otherwise retain any records that identify the names of the Customers and the renewal and expiration dates of the Customers' Health Plans.

5. CONFIDENTIAL MEMBER INFORMATION

- 5.1. The Companies and Agent acknowledge and agree that personal and medical information of the Companies' members ("Protected Health Information") is entitled to protection from disclosure beyond the requirements for Proprietary Information. The parties, therefore, agree that the obligations to protect the confidentiality of Protected Health Information shall remain in effect in perpetuity. Agent may release Protected Health Information only as permitted by the Business Associate Agreement addendum attached to this Agreement as Exhibit B.

6. DISCLAIMER OF INTEREST

- 6.1. Agent covenants and agrees that any contracts between the Companies and the Customers are the exclusive property of the Companies and that Agent has no property or other interest whatsoever in such contracts.

7. INSURANCE AND INDEMNIFICATION

- 7.1. Agent shall obtain, and maintain in effect during the term of this Agreement, errors and omissions liability insurance (with a carrier and in an amount acceptable to the Companies) covering Agent while rendering services under this Agreement. Upon the Companies' request, Agent will furnish a certificate of insurance evidencing such coverage. The errors and omissions insurance will have minimum amounts of five hundred thousand (\$500,000) dollars per occurrence/one million, five hundred thousand (\$1,500,000) dollars in the aggregate.
- 7.2. Agent shall defend, indemnify, and hold the Companies harmless from and against any and all claims, lawsuits, demands, liabilities, taxes (including taxes on compensation), charges, judgments, settlements, costs, penalties, and expenses of whatever kind or nature the Companies may sustain or incur at any time and arising in any manner out of an act, error, or omission by Agent.

8. MISCELLANEOUS

- 8.1. This Agreement and all other documents expressly made a part of this Agreement shall constitute the entire Agreement between the parties concerning the provision of Agent's services on behalf of the Companies, and any other Agreements between the parties are hereby terminated and of no further force or effect. In furtherance of the foregoing and not by limitation, this Agreement shall govern the terms under which the Companies shall pay Commissions to Agent on and after the Effective Date of this Agreement even if the Agent marketed or sold the Customer's Health Plan coverage prior to the Effective Date of this Agreement. Each party acknowledges that no representation, inducement, promise, or Agreement has been made, orally or otherwise, by another party, unless such representation, inducement, promise, or Agreement is embodied in this Agreement, expressly or by incorporation.
- 8.2. Either party may amend this Agreement upon written notice to the other if amendment is necessary in order to comply with applicable law. The Companies may amend this Agreement upon 30 days prior written notice to Agent, unless Agent objects in writing within 15 days of the date the Companies sent the notice of amendment. If the Companies receive such

a timely objection, the Companies and Agent will make a good faith effort to resolve the objection. If the objection cannot be resolved to the mutual satisfaction of the parties, either party may terminate the Agreement upon 30 days written notice to the other party.

- 8.3. Failure by the Companies to insist upon compliance with any provision of this Agreement at any time or under any set of circumstances shall not operate to waive or modify the provision or in any manner render it unenforceable as to any other time. No waiver of any terms or conditions of this Agreement shall be valid or of any force or effect unless contained in a written memorandum specifically expressing such waiver and signed by a person duly authorized by the Companies to consent to such waiver.
- 8.4. This Agreement will be governed by, and construed in accordance with, the internal laws of the State of Michigan (without reference to any principles of conflicts of laws).
- 8.5. Captions used in this Agreement are for the convenience of the parties only and are not intended to be used in the interpretation of this Agreement.
- 8.6. Any paragraph, sentence, phrase, or other provision of this Agreement that is in conflict with any applicable statute or other law or regulation will be considered, if possible, to be modified or altered to conform to that statute, law, or regulation and, if not possible, to be omitted. The invalidity of any portion of this Agreement will not affect the remaining provisions of this Agreement.
- 8.7. The obligations of each party to this Agreement shall inure solely to the benefit of the other party, and no person or entity shall be a third party beneficiary of this Agreement.
- 8.8. Any notice or other communication to be given pursuant to this Agreement shall be in writing and shall be deemed to have been received by the party to whom it is addressed three business days after it is delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, and addressed as follows or to such other address as the receiving party has given notice pursuant to this Section.

If to the Companies:

Total Health Care
3011 W. Grand Blvd.
Suite 1600
Detroit, MI 48202

If to Agent:

Any notices required under this Agreement shall be sent to the address given by Agent on the signature page unless a written change of address notification is received from Agent.

- 8.9. Either party may assign this Agreement, to the extent permitted by law, with the prior written consent of the other party. Unless otherwise agreed, any such assignor shall remain liable for all assigned obligations in the event of any failure of performance by the assignee. All of the terms, provisions, and obligations of this Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective heirs, representatives, successors, and assigns.
- 8.10. None of the provisions of this Agreement are intended to create, nor shall be deemed or construed to create, any relationship between the Companies and Agent other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. Except as this Agreement provides otherwise, none of the parties, or any of their respective employees or agents, shall be construed to be the Agent, partner, co-venturer, employee, or representative of the other.
- 8.11. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

AGENT ACCEPTS AGREEMENT*

I have read and agree to the agent agreement terms listed above and to the terms listed in the Business Associate Agreement (Addendum B).

AGENT ELECTRONIC SIGNATURE*

Enter your first and last name

TOTAL HEALTH CARE, INC.

TOTAL HEALTH CARE USA, INC.

Signature

Signature

Print Name: _____

Print Name: _____

Dated: _____

Its: _____

Social Security Number: _____

Dated: _____

NPN: _____

Agent Name: _____

Company Name: _____

Address: _____

Phone #: _____

Fax #: _____

Email: _____

*Required



Commission Schedule (Exhibit A)

SMALL GROUPS — 2–50 Employees:

CONTRACTS	NEW BUSINESS	RENEWAL BUSINESS
2 – 4	2.5%	2.5%
5 – 9	4.5%	4.0%
10 – 24	5.0%	4.5%
25 – 50	5.5%	5.0%

- Rates are effective beginning August 1, 2016
- Groups are considered NEW if they have not had THC coverage for at least 12 months
- THC reserves the right to change any and all compensation scales

LARGE GROUPS — 51+ Employees:

First \$100,000 of premium	5%
Next \$500,000 of premium	4%
Next \$400,000 of premium	3%
Thereafter all commissions paid	2%

INDIVIDUAL MARKET — Effective September 1, 2020:

New contracts first year – Open Enrollment and Special Enrollment Periods	5%
Renewing contracts with an effective date of September 1, 2020 or later	4%

- The 5% new contract commission applies to new contracts only. We will accept a contract as new if they have not been covered with Total Health Care or Priority Health Individual Coverage for the last 12 months.
- To the extent the Agent sells our health coverage to individuals on the Michigan Health Insurance Marketplace, Agent agrees to abide by Total Health Care's Qualified Health Plan Program Integrity Rules for Delegated and Downstream Entities requirements found in Exhibit C in the Agent Agreement.



Business Associate Agreement (Exhibit B)

SEND CORRESPONDENCE TO:
EMAIL: marketing@thcmi.com
FAX: (313) 871-2860

This Business Associate Agreement is made part of the Agent Agreement by and between Total Health Care, Inc., and Total Health Care USA, Inc. (collectively, "Total") and Agent ("Business Associate").

SECTION 1. DEFINITIONS

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Standards, Security Standards, or HITECH (as defined below). For purposes of this Agreement:

Specific Definitions:

Administrative Safeguards. "Administrative Safeguards" shall mean administrative actions, policies, and procedures to manage the selection, development implementation, and maintenance of security measures to protect Electronic Protected Health Information and to manage the conduct of the Business Associate's workforce in relation to the protection of that information, as described in the Security Standards.

Business Associate. "Business Associate" shall mean Agent.

Covered Entity. "Covered Entity" shall mean Total.

Electronic Health Record. "Electronic Health Record" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

Electronic Protected Health Information. "Electronic Protected Health Information" means Individually Identifiable Health Information that is transmitted by, or maintained by, electronic media, including in an Internet (wide-open), Extranet (using Internet technology to link a business with information only accessible to collaborating parties), leased lines, dial-up lines, private networks, and those transmissions that are physically removed from one location to another using magnetic tape, disk, or compact disk media.

HITECH. "HITECH" means Subtitle D of the Health Information Technology for Economic and Clinical Health Act, which is part of the American Recovery and Reinvestment Act of 2009 (42 U.S.C. §§17921-53), and any implementing regulations and guidance with respect thereto.

HIPAA. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, as amended from time to time.

HIPAA Transaction. "HIPAA Transaction" shall mean Transactions as defined in 45 C.F.R. § 160.103 of the Transaction Standards.

Individual. "Individual" shall have the same meaning as the term "Individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

Individually Identifiable Health Information. "Individually Identifiable Health Information" shall mean information that is a subset of Health Information, including demographic information collected from an individual, and

- (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) identifies the individual, or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Information System. "Information System" shall mean an interconnected set of information resources under the same direct management control that shares common functionality. A system normally includes hardware, software, information, data, applications, communications, and people.

Physical Safeguards. "Physical Safeguards" shall mean physical measures, policies, and procedures to protect Electronic Information Systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion, as described in the Security Standards.

Privacy Standards. “Privacy Standards” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. parts 160 and 164, as amended from time to time.

Protected Health Information. “Protected Health Information” means Individually Identifiable Health Information that is (i) transmitted by electronic media; (ii) maintained in any medium constituting electronic media; or (iii) transmitted or maintained in any other form or medium. “Protected Health Information” includes Electronic Protected Health Information. “Protected Health Information” shall not include education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. § 1232g, or records described in 20 U.S.C. § 1232g(a)(4)(B)(iv).

Required By Law. “Required By Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.

Secretary. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his/her designee, or such other federal agency authorized to publish regulations or guidance with respect to the subject matter herein.

Security Incident. “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an Information System, as described in the Security Standards.

Security Standards. “Security Standards” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. § parts 160, 162, and 164, as amended from time to time.

Technical Safeguards. “Technical Safeguards” shall mean the technology and the policy and procedures for its use that protect Electronic Protected Health Information and control access to it, as described in the Security Standards.

Transaction Standards. “Transaction Standards” means the standards and implementing regulations described in C.F.R. Part 162, as amended from time to time.

SECTION 2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- (a) Business Associate shall not use or disclose Protected Health Information, and shall ensure that its directors, officers, employees, contractors, and agents do not use or disclose Protected Health Information, other than as permitted or required by the Agent Agreement, this Agreement, or as Required By Law.

Business Associate acknowledges that he/she has direct obligations under HITECH to comply with the Security Standards, including 45 C.F.R. §§ 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), & 164.316 (implementing policies and procedures to comply with the Security Standards).

Each party hereto is responsible for determining its own compliance with HIPAA, the Privacy Standards and Security Standards, as amended by HITECH and otherwise, and any guidance issued in connection with the foregoing.

Business Associate agrees to indemnify and hold Covered Entity harmless from any and all liability, damages, costs (including reasonable attorneys’ fees), and expenses arising out of any claims, demands, awards, settlements, fines, or judgments relating to Business Associate’s access, acquisition, use, or disclosure of Protected Health Information, including Electronic Protected Health Information, contrary to the provisions of this Agreement, HIPAA, and the Privacy and Security Standards, as amended by HITECH and otherwise.

- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for by the Agent Agreement or this Agreement. Business Associate agrees to implement Administrative, Physical, and Technical Safeguards as described in the Security Standards that reasonably and appropriately protect the security, confidentiality, integrity, and availability of any Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- (c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of the Agent Agreement or this Agreement.
- (d) Business Associate agrees to report to Covered Entity within 5 business days of any impermissible use, disclosure, access, or acquisition of Protected Health Information not provided for by the Agent Agreement or this Agreement of which it becomes aware or reasonably believes occurred (“Breach”) (including any Security Incident with respect to Electronic Protected Health Information).

In furtherance of the foregoing, in the event Business Associate discovers a Breach of Protected Health Information, Business Associate agrees:

- (1) To provide the Covered Entity with relevant information, including without limitation, a brief description of the incident, the date of the incident, the Individuals potentially affected, the date of discovery, the type of Protected Health Information involved, any recommendations that should be made to Individuals for their protection, a description of how the Business Associate is and proposes to mitigate any harm to Individuals, a description of how Business Associate is and will prevent future incidents, and any other information reasonably requested by the Covered Entity so that it may comply with its obligations under HITECH.
 - (2) To cooperate and coordinate with the Covered Entity to further investigate any Breach incident, to assist in making notifications to Individuals as necessary, to mitigate any harm resulting or that may reasonably result from a Breach incident, and to take any other actions that Covered Entity deems reasonably necessary to comply with HITECH.
 - (3) To the extent that a Breach of Protected Health Information is caused by Business Associate or one of its Agents or subcontractors, Business Associate shall reimburse Covered Entity for any costs that the Covered Entity incurs to comply with HITECH, including costs associated with making necessary notifications or mitigation resulting from such Breach. These costs may include, without limitation, mailing costs, personnel costs, credit monitoring costs, attorneys' fees, and other related costs and expenses.
- (e) Business Associate agrees to ensure that any Agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information (including implementing Administrative, Physical and Technical Safeguards with respect to Electronic Protected Health Information).
- (f) Business Associate agrees to provide access, at the reasonable request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information or to an Individual's Electronic Health Record, if applicable, held by Business Associate to the Covered Entity or, as directed by Covered Entity to an Individual (or to a recipient designated by such Individual), to the extent necessary in order to meet the requirements under 45 C.F.R. § 164.524 and/or HITECH. If Business Associate receives any requests directly from Individuals for access to Protected Health Information or Electronic Health Records, Business Associate shall forward such requests in a timely manner to the Covered Entity.
- (g) Business Associate agrees to make any amendment(s) to Protected Health Information held by Business Associate that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Covered Entity, and in the time and manner designated by Covered Entity.
- (h) Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity, for purposes of the Secretary determining Covered Entity's compliance with HIPAA, the Privacy Standard and Security Standard, as amended by HITECH or otherwise, and any guidance issued with respect to the foregoing.
- (i) Business Associate agrees to document disclosures of Protected Health Information and/or Electronic Health Records, and information related to such disclosures, and to make such documentation and information available to Covered Entity, as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information and/or Electronic Health Records in accordance with 45 C.F.R. § 164.528 and HITECH.

Covered Entity and Business Associate agree that pursuant to HITECH, all disclosures of Electronic Health Records for purposes of treatment, payment activities, and health care operations must be documented for purposes of providing Individuals with an accounting of such disclosures.

- (j) Business Associate represents and warrants that, to the extent it is transmitting any of the HIPAA Transactions for Covered Entity, the format and structure of such transmissions shall be in compliance with the Transaction Standards. Business Associate agrees to ensure that any agent, including a subcontractor, which is transmitting any of the HIPAA Transactions for Covered Entity shall do so in compliance with this paragraph.

SECTION 3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform his/her duties, functions, activities, or services for, or on behalf of, the Covered Entity as specified in the Agent Agreement and this Agreement. Any use or disclosure of Protected Health Information shall comply with the terms and conditions of this Agreement, HIPAA, the Privacy Standard and Security Standard, as amended by HITECH or otherwise, and any guidance issued with respect to the foregoing.

To the extent practicable, Business Associate shall use a Limited Data Set (as defined in the Privacy Standards) with respect to Protected Health Information of the Covered Entity. If not practicable, Business Associate shall use the least amount of Protected Health Information necessary to achieve the intended purpose, and shall document why such amount of Protected Health Information is necessary. Business Associate shall comply with any guidance issued by the Secretary regarding the minimal necessary use and disclosure of Protected Health Information.

Business Associate shall not sell, nor directly or indirectly receive remuneration for the use and disclosure of, Protected Health Information, except as otherwise authorized by the applicable Individual(s) or otherwise permitted by HITECH upon notice to and approval by the Covered Entity.

SECTION 4. OBLIGATIONS OF COVERED ENTITY

- (a) Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity in accordance with 45 C.F.R. § 164.520, as well as any changes to such notice, to the extent that such limitation(s) may affect Business Associate's use or disclosure of Protected Health Information.
- (b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information agreed to by Covered Entity in accordance with 45 C.F.R. § 164.522 or is required to make under HITECH, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

SECTION 5. PERMISSIBLE REQUESTS BY COVERED ENTITY

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Standard or the Security Standard, as amended by HITECH or otherwise, if done by Covered Entity; provided however, Business Associate may use Protected Health Information for data aggregation in accordance with the Privacy Standard, Business Associate may use Protected Health Information for management and administrative activities of Business Associate or to carry out his/her legal responsibilities, and Business Associate may disclose Protected Health Information for management and administrative activities of Business Associate or to carry out his/her legal responsibilities if such disclosures are Required By Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.

SECTION 6. TERM AND TERMINATION

- (a) **Term.** The Term of this Agreement shall be effective as of the date of the Agent Agreement (the "Effective Date") and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- (b) **Termination for Cause.** Upon Covered Entity's knowledge of a Breach of a material term of this Agreement by Business Associate, Covered Entity shall either:

- (1) Provide an opportunity for Business Associate to cure the Breach or end the violation, and terminate this Agreement if Business Associate does not cure the Breach or end the violation within the time specified by Covered Entity; Covered Entity's option to allow cure of the Breach shall not be construed as a waiver of any other rights Covered Entity has in the Agreement or by operation of law or in equity.
- (2) Immediately terminate this Agreement if Business Associate has Breached a material term of this Agreement and cure is not possible; or
- (3) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(c) **Effect of Termination.**

- (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return to Covered Entity or at Covered Entity's direction destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity unless said information has been de-identified and is no longer Protected Health Information. Business Associate shall notify Covered Entity of the actions it will take with respect to Protected Health Information within thirty (30) days of termination of this Agreement. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- (2) In the event that Covered Entity and Business Associate determine that returning or destroying the Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information even after termination of the Agreement.

SECTION 7. MISCELLANEOUS

- (a) **Regulatory References.** A reference in this Agreement to a section in the Privacy Standard or Security Standard means the section as in effect or as amended.
- (b) **Amendment.** The parties hereto agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of the Privacy Standard, the Security Standard, HIPAA, each as amended by HITECH and otherwise, and any guidance issued with respect to the foregoing.
- (c) **Survival.** The respective rights and obligations of Business Associate under Section 6 of this Agreement shall survive the termination of this Agreement.
- (d) **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit Covered Entity and Business Associate to comply with the requirements of HIPAA, the Privacy Standard and Security Standard, as amended by HITECH and otherwise, and any guidance issued with respect to the foregoing.
- (e) **Entire Agreement.** This Agreement constitutes the entire Agreement of the parties with respect to the subject matter herein, and shall supersede any other Agreement, oral or written, with respect to the subject matter herein.
- (f) **No Benefit to Others.** The representations, covenants, and agreements contained in this Agreement are for the sole benefit of the parties hereto, and they shall not be construed as conferring, and are not intended to confer, any rights on any other persons.
- (g) **Severability.** In the event that any provision of this Agreement is determined to be invalid or unenforceable, the remaining terms and conditions of this Agreement shall be unaffected and shall remain in full force and effect, and any such determination of invalidity or unenforceability shall not affect the validity or enforceability of any other provision of this Agreement.



Qualified Health Plan Program Integrity Rules for Delegated and Downstream Entities (“Exhibit C”)

These Qualified Health Plan Program Integrity Rules for Delegated and Downstream Entities are part of the Agent Agreement by and between Total Health Care, Inc., and Total Health Care USA, Inc. (collectively, “Total”) and Agent (“Business Associate”).

SECTION 1. DEFINITIONS

For purposes of this Exhibit C, the following definitions apply:

“**Delegated Entity**” means any party, including an agent or broker that enters into an agreement with a QHP Issuer to provide administrative services or health care services to qualified individuals and their dependents.

“**Downstream Entity**” means any party that enters into an agreement with a Delegated Entity or with another downstream entity for purposes of providing administrative or health care services related to the agreement between a Delegated Entity and Total Health Care, Inc., and Total Health Care USA, Inc. (collectively, “Total”).

“**Exchange**” means a governmental agency or non-profit entity that meets the applicable standards of 45 CFR 155 subpart D and makes QHPs available to individuals and employers. This term includes both state and Federally-Facilitated Exchanges.

“**Qualified Health Plan**” or “**QHP**” means a health plan of an insurance company, or insurance organization (including an HMO) that has in effect a certification that it meets the standards described in subpart C of part 156 issued or recognized by each Exchange through which a plan is offered in accordance with the process described in subpart K of part 155. Total is a QHP Issuer.

SECTION 2. OBLIGATIONS AND ACTIVITIES OF AGENT

To the extent Agent provides services under this Agreement to Plans regarded as QHP products, Agent is a Delegated Entity, and Agent hereby agrees as follows:

- (a) In the course of performing the duties and obligations set forth in the Agreement to Plans that are QHP products (collectively referred to as “Services”), Agent may contract with other entities that constitute Downstream Entities to assist in performing its Services;
- (b) Agent shall comply with all applicable laws and regulations, including but not limited to the provisions of 45 CFR Parts 155 and 156, to the extent relevant, in performing its Services;
- (c) Agent shall grant access to its books, contracts, computers, or other electronic systems (including medical records and documentation), relating to Agent’s compliance with applicable provisions under 45 CFR Parts 155 and 156 in connection with its Services, to Total and the U.S. Department of Health and Human Services (“HHS”) and its Office of Inspector General (or their designees), for the duration of the period in which the Agreement is effective, and for a minimum of ten (10) years from the date the Agreement terminates;
- (d) Agent shall include in its contract with any Downstream Entities, and require such Downstream Entities to include in their contracts with other Downstream Entities, language that is the same or substantially similar to that contained in this Exhibit C and which expressly requires each downstream entity to: (i) comply with all applicable laws and regulations, including but not limited to the provisions of 45 CFR Parts 155 and 156, to the extent relevant, in performing or assisting in the performance of Duties; and (ii) grant access to its books, contracts, computers, or other electronic systems (including medical records and documentation), relating to such downstream entity’s compliance with applicable provisions under 45 CFR Parts 155 and 156, in connection with Services, to Total and HHS and its Office of Inspector General (or their designees), for the duration of the period in which the Agreement is effective, and for a minimum of ten (10) years from the date the Agreement terminates;
- (e) Upon request, Agent shall furnish Total with a copy of the pertinent contract language (including amendments thereto) between Agent and any Downstream Entities, and among two or more Downstream Entities, as applicable, to demonstrate compliance with subsection (d). Such contract language (including amendments thereto) shall be furnished to Total as soon as practicable following its adoption;

- (f) In the event that Total or HHS determines that Agent, or any Downstream Entity with whom Agent contracts as described in subsection (a), has not satisfactorily performed the Services, Total shall have the right to revoke such Services and immediately terminate the Agreement or give the Defaulting Party thirty (30) days within which to cure the default (in which case the Agreement shall terminate if the default is not cured to Total satisfaction); and
- (g) The provisions of this Exhibit C shall in no way be interpreted as an assumption by Total of legal liability for the actions of Agent or any Downstream Entities, including but not limited to malpractice liability.
- (h) Agent may solicit Exchange QHP Plans only if Agent has completed the applicable required Exchange training and registration and has provided Total with a copy of a certificate proving the registration either prior to, or at the time of enrollment submission. If Agent fails to obtain or maintain the required registration, Agent will immediately discontinue soliciting and Services of QHP Plans. Agent will not be paid commissions at any time after Agent failed to obtain or maintain the required registration.
- (i) If there is an inconsistency between the provisions of this Exhibit C and the Agreement, this Exhibit C will prevail to the extent that it relates to the subject matter hereof.