



ADVANTAGE Health Solutions, Inc. AGENT AGREEMENT

This Agreement is entered into by and between **ADVANTAGE Health Solutions, Inc.** (ADVANTAGE) and _____ (Agent).

WHEREAS, ADVANTAGE is a health maintenance organization, which issues, administers and markets health benefit plans to employer groups; and

WHEREAS, AGENT is a duly licensed insurance agent or agency qualified to solicit enrollment of employer groups in Health Benefit Plans which includes the ADVANTAGE Networks; and

WHEREAS, ADVANTAGE desires to engage Agent to solicit enrollment of employer groups and Agent desires to provide these services to ADVANTAGE.

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth below, the parties agree as follows:

ARTICLE I DEFINITIONS

- 1.1 **Covered Person** means any person who is eligible to receive Covered Services and who is enrolled in a Health Benefit Plan or worker's compensation plan which includes one of the ADVANTAGE Networks.
- 1.2 **Covered Services** means the total health care services and supplies which a Covered Person is entitled to receive pursuant to the terms of a Health Benefit Plan.
- 1.3 **Group Service Agreement** means the agreement between ADVANTAGE and an employer group where ADVANTAGE arranges for the delivery of health services to eligible employees and dependents of the employer group in exchange for premiums.
- 1.4 **Health Benefit Plan** means group health coverage provided to employees of an employer group which is issued, administered, or marketed by ADVANTAGE under which a Covered Person may be entitled to health care coverage. These Health Benefits Plans are listed on Exhibit A, which is hereby incorporated by reference.
- 1.5 **ADVANTAGE Network(s)** means a network(s) of health care providers who are legally obligated under a valid contract with ADVANTAGE to provide Covered Services to Covered Persons.
- 1.6 **Selected Geographic Area** means the counties listed in Exhibit B, which is attached and made a part of this Agreement.

- 1.7 **Consumer** means an individual who seeks to obtain, obtains or has obtained an insurance product or services from ADVANTAGE that is to be used primarily for personal, family or household purpose, and about whom ADVANTAGE has nonpublic personal information, or that individual's legal representative.
- 1.8 **Nonpublic Personal Financial Information** means Personally identifiable financial information; and Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.
- 1.9 Nonpublic Personal Financial Information does not include:
- (A) Health information.
 - (B) Publicly available information, except as included on a list describe in B above.
 - (C) Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available.

ARTICLE II APPOINTMENT

- 2.1 ADVANTAGE hereby appoints Agent to solicit, obtain, and submit applications for health care coverage under the Health Benefit Plans and to promptly forward such applications to ADVANTAGE on behalf of the employer groups. As an authorized Agent of the Health Benefit Plans, Agent may refer to itself, during the term of this Agreement, as an authorized agent within the Selected Geographic Area.
- 2.2 ADVANTAGE reserves the right, during the term of this Agreement or thereafter, to solicit employer groups and to market health benefits plans which are the same as or similar to the Health Benefit Plans in the same Selected Geographic Area.
- 2.3 ADVANTAGE reserves the right to accept or reject any applications for health care coverage under a Health Benefit Plan submitted by the Agent to ADVANTAGE.
- 2.4 Agent may not privately label the Health Benefit Plans or any materials concerning the Health Benefit Plans under any other name or in any other form.

ARTICLE III ADVANTAGE'S RESPONSIBILITIES

ADVANTAGE, by entering into this Agreement, agrees that it will:

- 3.1 Provide Agent with the necessary informational materials including without limitation, employer group applications, employee applications, health statement forms, a current list of the participating providers in the ADVANTAGE Network(s) and other such materials as is necessary for Agent to solicit and maintain enrollment of employer groups. Such materials shall be provided to Agent as updated from time to time.
- 3.2 Educate and provide necessary informational materials to Agents regarding the ADVANTAGE Network(s).

- 3.3 Notify Agent in writing of any denial or acceptance of an employer group. If the employer group is accepted under a Health Benefit Plan issued, administered, or marketed by ADVANTAGE, a copy of the executed Group Service Agreement shall be forwarded to the Agent with the notification of acceptance.
- 3.4 Comply with all legal requirements related to its performance under this Agreement, and have and maintain in effect all permits, licenses, and governmental authorizations and approvals as necessary for its business operations.
- 3.5 Maintain coverage of professional liability and comprehensive general liability and other insurance as may be necessary to insure ADVANTAGE and its agents, servants, and employees, acting within the scope of their duties, against any claim or claims for damages arising by reason of personal injuries or death occasioned directly or indirectly in connection with the performance of nonperformance of any service provided under this Agreement by ADVANTAGE, its agents, servants, or employees.

ARTICLE IV AGENT'S RESPONSIBILITIES

Agent, by entering into this Agreement, agrees that it will:

- 4.1 Use its best efforts to solicit and maintain enrollment of employer groups under this Agreement.
- 4.2 Be authorized only to solicit enrollment of employer groups in accordance with this Agreement and may not alter or waive the terms or rates of any group contract or bind ADVANTAGE in any manner, such as by any promise or statement regarding contract terms or premium amounts.
- 4.3 Assist employer groups in completing applications and submit such applications to ADVANTAGE in accordance with ADVANTAGE policies and procedures.
- 4.4 Collect the first premium in accordance with ADVANTAGE's procedure on each group contract applied for and immediately pay the same over to ADVANTAGE. All checks shall be made payable to ADVANTAGE unless the Agent receives prior written authorization from ADVANTAGE. ADVANTAGE will collect any other premiums on any group contracts solicited by Agent, and Agent agrees not to collect any such premium payments.
- 4.5 Provide to ADVANTAGE, on a timely basis, all information and records necessary for the performance of ADVANTAGE's duties hereunder, including without limitation, information necessary for enrollment and eligibility information.
- 4.6 Perform all reasonable duties and services required by ADVANTAGE to service employer groups solicited by Agent and enrolled by ADVANTAGE, including without limitation the delivery and explanation of initial administrative forms, health statement forms and subsequent renewal forms.
- 4.7 Factually represent the Health Benefit Plan(s) and shall not make any oral or written alterations, modifications or waiver of any aspect of the applications, health statements, or other materials provided to Agent by ADVANTAGE relating to the Health Benefit Plan(s) without the prior written consent of ADVANTAGE.
- 4.8 Conduct business in an ethical manner so as to not adversely affect the business, good standing, and reputation of ADVANTAGE.

- 4.9 Promptly report to ADVANTAGE any and all potential or suspected problems associated with the solicitation or enrollment of employer groups.
- 4.10 Acknowledges that all books, accounts, and records of the Agent shall be subject to audit and inspection by ADVANTAGE or its duly authorized representative at all times, including a period of sixty (60) days after termination of this Agreement. ADVANTAGE may at any time make copies of or take extracts from such books, accounts, and records as may be deemed necessary.
- 4.11 Certify that Agent is duly licensed by the Indiana Department of Insurance to solicit and sell the Health Benefit Plan(s). If Agent is a corporate agency, Agent certifies that each employee or Agent who solicits and sells the Products is also duly licensed by the Indiana Department of Insurance and is listed on Exhibit C which is hereby incorporated by reference.
- 4.12 Comply with all applicable federal and state laws and regulations, including ensuring that the solicitation of the Health Benefit Plan(s) do not violate any insurance statutes in the state in which Agent sells the Health Benefit Plan(s). Agent shall maintain in good standing, at its own cost, any licenses, permits, authorizations, and approvals required by all applicable statutes and regulations and shall provide ADVANTAGE with copies of any such licenses upon request.
- 4.13 Maintain sufficient liability insurance to cover all claims arising out of acts, omissions, and/or misrepresentations by Agent and/or its employees.

ARTICLE V RIGHTS RESERVED TO ADVANTAGE

- 5.1 Agent acknowledges that ADVANTAGE has the exclusive right to accept or reject any employer group applications submitted for enrollment by Agent based on underwriting and enrollment policies established by ADVANTAGE, including without limitation, location and size of employer groups in accordance applicable state and federal laws and regulations.
- 5.2 ADVANTAGE reserves the right, at its sole discretion, to revise any Health Benefit Plans issued by ADVANTAGE or accept any changes to Health Benefit Plans administered or marketed by ADVANTAGE. If such changes occur, ADVANTAGE shall provide ninety (90) days written notice to Agent of any revisions which will materially affect Agent's obligations.

ARTICLE VI COMPENSATION AND REIMBURSEMENT

- 6.1 ADVANTAGE agrees to pay Agent a Commission on the premiums of employer groups solicited by Agent who has been accepted by ADVANTAGE in accordance with the Agent Commission Schedule attached as Exhibit D, which is hereby incorporated by reference. Commissions are not payable on individual conversion policies. ADVANTAGE may revise the Agent Commission Schedule upon thirty (30) days written notice to Agent.
- 6.2 Commissions shall be paid to Agent on a monthly basis based on premiums received by ADVANTAGE on executed group contracts that were solicited by Agent. Agent shall be paid no later than the fifteenth (15th) of the month following the month in which the premium was received. For commissions on group contracts on which one or more month's premiums are paid in advance, commissions shall accrue only when such premiums otherwise would have become due.

- 6.3 ADVANTAGE reserves the right to offset commissions paid to Agent in the event ADVANTAGE deems it appropriate to cancel or reject any group contract or when ADVANTAGE deems it appropriate to cancel employer group application and refund any premium paid from which the Agent was paid a commission.
- 6.4 ADVANTAGE reserves the right to cancel any enrolled employer group solicited by Agent. Upon cancellation of any group by ADVANTAGE for nonpayment of premium, Agent will not be entitled to the payment of any commission by ADVANTAGE for past due premium collected by ADVANTAGE after the date of cancellation.
- 6.5 No commission will be due or payable after termination of this Agreement in the event Agent perpetrates any fraud or deceit related to this Agreement, misapplies the funds of an employer group, individual applicant, or ADVANTAGE, withholds any funds, group contracts, receipts, supplies, or materials belonging to ADVANTAGE after ADVANTAGE has made reasonable requests for their return, or failed to report truthfully and accurately all relevant medical or other information known to Agent with respect to an employer group application.
- 6.6 Agent acknowledges that there shall be no additional compensation or reimbursement to the Agent for expenses incurred in performing the duties and obligation under this Agreement.

ARTICLE VII CONFIDENTIALITY

- 7.1 Except as required by law and for the purposes of carrying out this Agreement, ADVANTAGE and Agent agree to keep confidential any information regarding the other's business activities which is not otherwise available to the general public, without the prior written consent of the other party.
- 7.2 All information and materials provided by ADVANTAGE to Agent remain proprietary to ADVANTAGE, including but not limited to contracts, reimbursement rates, and methodology, ADVANTAGE administrative manual(s), and any other operations manuals. Agent shall not disclose any of such information or materials or use them except as may be required to perform Agent's obligations hereunder.
- 7.3 This Article shall survive termination of this Agreement.
- 7.4 Pursuant to provisions of 760 IAC 1-67 of the Indiana Administrative Code, Agents may not disclose or use nonpublic personal financial information other than to carry out the purposes for which ADVANTAGE disclosed the nonpublic personal financial information to Agent.

ARTICLE VIII TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

- 8.1 ADVANTAGE gives Agent a nonexclusive, personal, and nontransferable right and license to use the marks in connection with and solely for the purpose of soliciting and performing specified administrative functions under this Agreement. In addition, ADVANTAGE grants the nonexclusive right to reproduce, distribute, and display the copyrighted documents supplied to Agent by ADVANTAGE related to the Health Benefit Plan, in connection with the sales and performance of specified functions for the administration of the Health Benefit Plan(s). In reproducing said documents, Agent shall reproduce the documents in their entirety with the copyright notice and marks, if any, thereon and without deletions, additions, or alterations to said

documents. Agent agrees to use the marks and copyrighted materials in accordance with the specifications, directions, and processes furnished to Agent by ADVANTAGE from time to time.

- 8.2 Agent acknowledges ADVANTAGE'S exclusive right, title, and interest in and to the marks and copyrighted materials and shall not at any time do or cause to be done any act or thing contesting or in any way impairing or intending to impair any mark or copyrighted material. Agent shall not in any manner represent that it has any ownership of the marks or copyrighted materials or registrations thereof. Agent acknowledges that use of the mark shall not create in Agent's favor any right, title, or interest in or to the mark, but all uses of the marks by Agent shall inure to the benefit of ADVANTAGE.
- 8.3 Agent agrees that in the event of a breach of this Agreement, ADVANTAGE, in addition to all other remedies available to it, shall be entitled to injunctive relief against any such breach as well as other such relief as any court with jurisdiction may deem just and proper.
- 8.4 Agent agrees to cooperate with ADVANTAGE in protecting and defending ADVANTAGE'S marks and copyrights. In the event that any claim or problem arises with respect to the protection of these valuable rights, Agent shall promptly advise ADVANTAGE in writing of the nature and extent of that claim or problem. ADVANTAGE has no obligation to take any action after being so advised, but ADVANTAGE, if it so desires, may commence or prosecute any claim or suit in its own name or in the name of Agent or join Agent as a party thereto. Agent agrees to assist ADVANTAGE in any enforcement of any rights of ADVANTAGE in its marks or copyrights. ADVANTAGE shall have the sole right to determine whether any action will be taken on account of infringement or limitation of its marks or copyrights.
- 8.5 Upon termination of this Agreement in any manner provided for herein, Agent shall cease and desist to use the marks and the copyrighted materials and Agent shall at no time adopt or use, without ADVANTAGE'S prior written consent, any work or mark which is similar to, or likely to be confused with ADVANTAGE'S mark. The obligations of this sections shall survive termination of this Agreement.

ARTICLE IX TERM AND TERMINATION

- 9.1 Either party may terminate this Agreement by giving thirty (30) days prior written notice of termination to the other party.
- 9.2 ADVANTAGE may discontinue the issuance or marketing of Health Benefit Plan or withdraw Agent's authorization to solicit employer groups or market the Health Benefit Plans without affecting this Agreement upon ninety (90) days prior written notice to of its intent.
- 9.3 If either party fails to comply with or perform when due any term or condition of this Agreement, the other party shall notify the defaulting party of its default in writing, and the defaulting party shall have twenty (20) days to cure the default. If the default is not cured within twenty (20) days, the non-defaulting party may declare, in writing and without further notice, that this Agreement is terminated.

ARTICLE X GENERAL PROVISIONS

- 10.1 **Arbitration.** Any disputes, claims, or counterclaims arising or relating to this Agreement shall be subject to and shall be finally and exclusively resolved by binding arbitration under the rules of conciliation and arbitration of the American Arbitration Association then in effect and will comply with the Uniform Arbitration Act as adopted in Indiana, except as herein specifically stated, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. Each party shall appoint an arbitrator, and the two arbitrators thus selected shall designate a third. If either party fails to appoint its arbitrator within thirty (30) days after receipt of notice of the appointment by the other party of its arbitrator, or if the arbitrators selected by the parties fail to appoint the third within thirty (30) days after both have been appointed, then the American Arbitration Association shall have the power, on the request of either party, to make the appointments which have not been made as contemplated above. The costs of arbitration shall be borne equally by the parties. The arbitration shall take place in the State of Indiana, Marion County. The parties hereby submit to the in personam jurisdiction of the Circuit Court of Marion County, Indiana for the purpose of confirming any such award and entering judgment.
- 10.2 **Assignment.** This Agreement shall be binding upon and inure to the benefit of the respective legal successors of the parties. Neither this agreement nor any rights or obligations hereunder may be assigned, delegated, or transferred in whole or in part, without the prior written consent of the other party, except that ADVANTAGE retains the right to assign this Agreement in whole or in part, to an affiliated company.
- 10.3 **Bankruptcy and Insolvency.** In the event that either party should become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or its assets or should avail itself of, or become subject to, any proceedings under the Federal Bankruptcy Act or any other statute of any state relating to the insolvency or the protection of rights of creditors, then, at the option of the other party, this Agreement shall terminate immediately.
- 10.4 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will constitute one and the same agreement.
- 10.5 **Entire Agreement.** This instrument contains the entire agreement of the parties and supersedes all prior oral or written agreements or understandings between them with respect to the matters provided for herein.
- 10.6 **Ethical and Religious Directives.** Agent acknowledges that ADVANTAGE is an institution operated in accordance with *The Ethical and Religious Directives* for Catholic Health Care Services as approved by the National Conference of Catholic bishops. Notwithstanding any provision of the Agreement to the contrary, ADVANTAGE shall not be required to provide, and no provision of this Agreement shall be construed to require ADVANTAGE to provide services that inconsistent with the medical ethics or precepts of the Catholic Church.
- 10.7 **Force Majeure.** Neither party shall be deemed to be in violation of this Agreement if such party is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control, including without limitation, acts of God, or any public enemy, elements, floods, or strikes, or statutory or other laws, regulations or rules or orders of the Federal or any State and local government or any agency thereof.
- 10.8 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of Indiana.

- 10.9 **Indemnification of ADVANTAGE.** Agent shall indemnify and hold harmless ADVANTAGE and its agents, representatives, insurers, successors, and assigns from and against any and all expenses, costs (including attorney's fees), causes of action, liability, loss and/or damages suffered or incurred by them or any of them, including extraordinary expenses incurred by ADVANTAGE not contemplated by this Agreement, resulting from or arising out of (a) any dishonest, fraudulent, criminal, or grossly negligent acts, or any other acts prohibited by ERISA, which are committed by Agent, or any of Agent's employees, (b) any act or omission of ADVANTAGE performed with reasonable care at the Agent's express written request, or (c) out of any action taken by Agent. ADVANTAGE agrees to notify promptly of any lawsuit against it to which this provision may apply.
- 10.10 **Independent Contractors.** For purposes of this Agreement, ADVANTAGE and Agent are and will act at all times as independent contractors. None of the provisions of this Agreement are intended to create, nor shall be deemed or construed to create any relationship other than that of independent entities contracting with each other for the purposes of effecting this Agreement. None of the provisions of this Agreement shall establish or be deemed or construed to establish any partnership, agency, employment agreement, or joint venture between the parties.
- 10.11 **Intent of the Parties.** It is the intent of the parties that this Agreement is to be effective only in regards to their rights and obligations with respect to each other: it is expressly not the intent of the parties to create any independent rights in any third party or to make any third party a third party beneficiary of this Agreement.
- 10.12 **Modifications.** Any modifications to this Agreement will be valid only if made in writing and signed by both parties.
- 10.13 **Notice.** Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing and shall be sent postage prepaid by certified or registered mail, return receipt requested, to the parties at the addresses set forth on the signature page. Such address may be changed from time to time by written notice to the other party.
- 10.14 **Severability.** The invalidity or unenforceability of any term or provision herein shall in no way affect the validity or enforceability of any other term or provision. The parties agree that any provision of this Agreement which is in violation of any federal, state, or local statute or other law, regulation, or rule shall be null and void.
- 10.15 **Waiver.** Neither the waiver by either of the parties of a breach nor a default of any of the provisions of this Agreement, nor the failure of either of the parties, on one or more occasion, to enforce any of the provisions of the Agreements, shall thereafter be construed as a waiver of any subsequent breach or default of any of the provisions of the Agreement.

The Effective Date of this Agreement is: _____
(to be completed by ADVANTAGE)

Each party to this Agreement warrants that it has full power and authority to enter into this Agreement and person signing this Agreement on behalf of either party warrants that he/she has been duly authorized and empowered to enter into this Agreement.

**ADVANTAGE Health Solutions, Inc.
9490 Priority Way W. Dr.
Indianapolis, Indiana 46240**

Agency: _____
Agent: _____
Address: _____

By: _____
(Signature)

Vicki Perry

(Printed Name)

President & CEO

(Title)

(Date)

By: _____
(Agent's Signature)

(Agent's Printed Name)

(Agent's Title)

(Date)

EXHIBIT A
to the
AGENT AGREEMENT
by and between

ADVANTAGE HEALTH SOLUTIONS, INC. AND _____

Health Benefit Plans

All Health Benefit Plans and other products as specified that are offered for solicitation by ADVANTAGE.

EXHIBIT B
to the
AGENT AGREEMENT
by and between

ADVANTAGE HEALTH SOLUTIONS, INC. AND _____

Selected Geographic Area

The Selected Geographic Counties where ADVANTAGE Health Solutions has its service areas.

EXHIBIT C
to the
AGENT AGREEMENT
by and between

ADVANTAGE HEALTH SOLUTIONS, INC. AND _____

Employees

EXHIBIT D
to the
AGENT AGREEMENT
by and between

ADVANTAGE HEALTH SOLUTIONS, INC. AND _____

Agent Commission Schedule

With respect to policies for employer groups solicited by Agent after the Effective Date of this Agent Agreement and accepted by ADVANTAGE, ADVANTAGE shall pay monthly commissions to Agent pursuant to the following commission schedule, based upon premium received to date in each 12-month period running from initial effective date or renewal date of the policy, as applicable:

| First Year and Subsequent Years | |
|--|-------------------|
| Premium Received in First Year | Commission |
| Up to \$24,999 | 9.0% |
| Next \$25,000 | 4.0% |
| Next \$50,000 | 3.75% |
| Next \$100,000 | 1.25% |
| Next \$200,000 | 0.5% |
| Next \$400,000 | 0.25% |
| \$800,000 & over | 0.125% |