

KS PLAN ADMINISTRATORS LLC
INDEPENDENT AGENT AGREEMENT

This Independent Agent Agreement (“Agreement”) is made and entered into by and between _____ as a Sales Agent as set forth on Exhibit 5 (collectively “Agent”) and KS PLAN ADMINISTRATORS LLC and its Affiliates as defined herein (collectively, “Plan”).

WHEREAS, Plan is licensed as a health maintenance organization or insurer in the State and has or is seeking a contract with the Centers for Medicare & Medicaid Services (“CMS”) to offer Medicare Advantage (“MA”) plans in the State; and

WHEREAS, Plan wishes to contract with Agent to provide marketing and sales services in connection with Plan’s MA plans directly and indirectly through Sales Agents (as hereinafter defined).

NOW, THEREFORE, in consideration of the premises and mutual promises herein stated, the parties hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Affiliate means an entity controlled by, controlling, or under common control with another entity including, but not limited to, through ownership of stock, joint venture, or membership interest. For purposes of this definition, “control” of an entity means direct or indirect ownership of a majority of the entity.

1.2 Administrative Services means the same as such term is defined in Section 3.1 (“Agent Obligations”).

1.3 Attachment(s) means the attachments to this Agreement, incorporated herein by reference, including all Exhibits and Schedules.

1.4 Benefit Plan means the agreement, certificate of coverage, policy forms or other documents, together with any riders that describes the services that Plan has agreed to provide to Plan Members, as may be amended, modified, replaced, or supplemented from time to time by Plan.

1.5 Laws means any applicable constitution, statute, code, ordinance, regulation, treaty, rule, court order or mandate, common law, policy, interpretation or guidance document enacted, published or promulgated by any federal, state or local governmental authority which has jurisdiction over the subject matter of this Agreement or the parties’ performance of their duties hereunder.

1.6 Marketing Services means the same as such term is defined in Section 3.1 (“Agent Obligations”).

1.7 Plan Member means a Medicare beneficiary that is eligible for and enrolled in the Plan.

1.8 Policies and Procedures means the Plan's rules, regulations, policies, procedures, requirements as well as all amendments, supplements, Plan communications, or bulletins thereto, as the same may be revised or replaced from time to time.

1.9 Sales Agent means a licensed individual contracted by the Plan to provide Services pursuant to the Agreement. Sales Agent information who have been approved by the Plan as of the Effective Date is set forth on Exhibit 5.

1.10 Services means the same as such term is defined in Section 3.1 ("Agent Obligations").

1.11 State is defined as the state of Texas.

ARTICLE 2 **PLAN OBLIGATIONS**

Plan agrees to perform all activities and responsibilities required to maintain its licenses and its agreements with CMS or State regulatory agency(ies). These activities and responsibilities include, but are not limited, to the following:

2.1 Payment. Plan agrees to pay Agent for Services in accordance with applicable Law, the terms of the Plan's Policies and Procedures, and the terms of this Agreement.

2.2 Insurance. Plan, at its sole cost and expense, will procure and maintain such policies of general liability and other insurance as may be required by Law.

2.3 Administration. Plan agrees to coordinate with Agent to perform the appropriate administrative, regulatory, and other functions necessary for the administration of this Agreement and Plan's obligations to Medicare beneficiaries pursuant to applicable Law.

2.4 Oversight. To the extent required by applicable Law or otherwise provided for in the Plan's Policies and Procedures, Plan agrees to provide oversight of Agent in its provision of the Services.

ARTICLE 3 **AGENT'S OBLIGATIONS**

3.1 Services. Agent shall provide Marketing Services and Administrative Services as set forth in this Agreement, Exhibit 1 ("Marketing Services") and any other exhibits or attachments hereto (collectively, the "Services").

a. Agent shall provide immediate written notice to Plan of termination of Agreement. Agent may not add Sales Agents to this Agreement.

b. Agent shall conduct the Services in accordance with all applicable Laws and Plan Policies and Procedures, as the same may be amended by the Plan from time to time. Agent shall conduct the Services in a manner that is consistent with industry standards.

c. In connection with the Services, Agent shall use only the Plan's designated marketing materials, including advertising materials and application forms ("Marketing Material") that have been provided to Agent and such Sales Agents by the Plan. Agent and shall return all Marketing Material's to the Plan immediately upon termination of the Agreement.

d. Agent shall maintain documentation of Marketing Services as required by Laws, including, without limitation, scope of appointment documentation as required by the CMS Medicare Marketing Guidelines.

e. Agent shall not engage in any activity that is prohibited by Laws, including, without limitation, screening Medicare beneficiaries based on health status, engaging in unsolicited contacts with Medicare beneficiaries, engaging in activities that mislead or confuse Medicare beneficiaries, marketing products through door-to-door solicitation, marketing in prohibited areas within health care settings, or giving gifts to potential enrollees unless such gifts are approved in advance by the Plan or provided to Agent by the Plan and are given in accordance with Laws, and as required by the CMS Medicare Marketing Guidelines.

3.2 Licensure and Eligibility of Agent. Agent represents, warrants, and covenants to the following:

a. Agent has and shall maintain any and all licenses, permits, certifications, authorizations or other similar permissions ("Licenses") required by Laws to perform the Services and any other activities described herein, including such Licenses required by the State and its government authorities, and such Licenses are in full force and effect and unrestricted.

b. Agent is excluded from participating in a Federal Health Care Program, as such term is defined in Laws, or presently debarred, suspended, proposed for debarment, or declared ineligible to participate in federal programs by a federal agency under 2 C.F.R. § 180.970 or any other Law.

3.3 Applications. Agent shall (i) promote the Plan to Medicare beneficiaries, and (ii) accept applications from interested Medicare beneficiaries for membership in a Benefit Plan using enrollment materials and mechanisms provided by or approved in writing by Plan. In doing so Agent shall clearly identify the types of Benefit Plan to be discussed before marketing to a Medicare beneficiary, and obtain, document or record, and retain the consent of a Medicare beneficiary as to the scope of any marketing appointment. Agent shall provide or arrange for the provision to the Plan of all completed, accurately and appropriately executed applications for enrollment no later than two (2) business days after execution of such applications by the applicable Medicare beneficiary or his/her authorized representative. Agent shall, and shall cooperate with the Plan in addressing any issues or questions relating to any application, including, but without limitation, the quality and legibility of the application, for enrollment in the Plan

submitted by Agent and abide by the Plan Policies and Procedures, and such other requirements set forth by the Plan as the same may be amended by the Plan from time to time. Agent shall not disparage Plan or any of its directors, officers, Agents, or employees or otherwise take any action which could reasonably be expected to adversely affect the reputation of Plan. This obligation not to disparage includes, without limitation, any such statements made through use of social media sites, such as Facebook or Twitter.

3.4 Agent Training. Agent will participate in any and all applicable training and testing in accordance with Laws and such other requirements as set forth by the Plan as the same may be amended by the Plan from time to time relating to Services rendered under this Agreement. Plan, or if applicable Agent, shall provide training and testing to each Sales Agent, and shall be responsible for otherwise preparing each Sales Agent to perform Marketing Services under this Agreement in compliance with the terms of this Agreement. Such training and testing shall include (i) those required under Laws, (ii) as determined by Plan or if applicable Agent to ensure Sales Agent compliance with Laws in connection with Marketing Services, (iii) comply with Plan Policies and Procedures as the same may be amended by Plan from time to time, and (iv) appropriate to ensure Sales Agents can effectively communicate features, benefits of the Benefit Plans. Agent acknowledges and agrees that its failure to comply with this section may result in termination of this Agreement.

3.5 Non-Discrimination. Agent will not discriminate in the rendering of Services under this Agreement or discourage Medicare beneficiary from enrolling in a Benefit Plan on the basis of race, physical or mental ability, ethnicity, color, national origin, gender, sexual orientation, creed, age, religion, place of residence, educational background, economic or health status, handicap, English proficiency, type of Benefit Plan, source of payment, or any other protected class or status and agrees to observe, protect and promote the rights of Medicare beneficiaries.

3.6 Agent Insurance.

a. Agent will, at Agent's sole cost and expense, at all times during and after the term of this Agreement, provide and maintain such policies of general liability and professional liability insurance (including errors and omissions liability insurance) and other insurance, through a licensed carrier or a policy of self-insurance, as will be necessary to insure it and its employees, or any other person providing services hereunder on Agent's behalf, including, but not limited to each Sales Agent, against any claim(s) for damages arising by reason of personal injuries or death occasioned directly or indirectly in connection with the performance of any Service provided hereunder, the use of any property and facilities provided by Agent, and activities performed by Agent in connection with this Agreement. In the event that Agent provides this coverage through self-insurance, such self-insurance will be supported by a written self-insurance plan and trust documents, funded in accordance with prudent actuarial projections and holding appropriate levels of net excess coverage. All Agent insurance will conform to state regulatory requirements and be in an amount that is satisfactory to Plan. All Agent insurance will contain a clause requiring thirty (30) days' notice of cancellation or lapse in coverage and Agent will provide Plan with at least fifteen (15) days' notice of such cancellation or lapse in coverage. Upon Plan's request, Agent will furnish Plan with a certificate, or evidence, of such insurance.

b. Agent further warrants, represents, and covenants that all Sales Agents or any other person or entity who provides services under this Agreement, or any Attachment or amendment

hereto, will maintain such policies of general liability, malpractice, and any other insurance as will be necessary to insure themselves and their employees against any claims or suits for damages arising by reason of personal injuries or death occasioned directly or indirectly in connection with the performance of any services by or on behalf of said persons or Agent, or on or about the premises on which services are provided hereunder, and employer's liability and workers' compensation as required by Law. In addition, such insurance will contain a clause requiring thirty (30) days' notice of cancellation or lapse in coverage, and Agent will provide Plan with at least fifteen (15) days' notice of such cancellation or other lapse in coverage. Upon Plan's request, Agent will provide documentation of its compliance with this Section 3.15 (e.g., certificates of insurance).

3.7 Compliance With Laws. In performing this Agreement, Agent will comply with all applicable Laws and any requirements of an applicable government agency. Agent will cooperate with Plan with respect to Plan's compliance with Laws, government agency requirements, and the requirements of accrediting bodies. Agent shall report to Plan immediately any instances of suspected or actual non-compliance or fraud, waste and abuse associated with the Services including, without limitation, any instance (i) of any complaint or dispute involving a Member, Medicare beneficiary, Agent, Sales Agent, Plan or Plan affiliate; or (ii) any non-compliance or fraud, waste or abuse by any Sales Agent and any related decision by Agent to suspend or terminate a Sales Agent's performance under this Agreement. Agent shall (a) fully cooperate with Plan to resolve any such complaints, disputes, inquiries, investigations or actions including shall implement any corrective action, up to and including termination of Services under this Agreement, reasonably requested by Plan to resolve potential and future instances of non-compliance or fraud, waste and abuse; and (b) not knowingly take any action contrary to Plan's obligations under Laws, government agency requirements, or the requirements of accrediting bodies.

3.8 Agent Representations. Agent represents, warrants, and covenants, for itself, or for each Sales Agent, as applicable, that Agent or each Sales Agent:

- a. is duly licensed and qualified to provide Services in the State;
- b. provides Services in compliance with all applicable Laws and professional standards of care;
- c. has not been debarred, suspended or otherwise excluded from participation in the Medicare Program or any other federal health care program;
- d. shall maintain such licensure, compliance, and certification, throughout the term of this Agreement, where applicable;
- e. shall maintain liability insurance as set forth in this Agreement, and shall ensure that Agent notifies Plan in accordance with Section 3.6 of any material adverse modification of professional liability policy;
- f. has not been convicted of a criminal offense related to Sales Agent's involvement in any program under Titles XVIII, XIX, XX, or XXI of the Social Security Act and has not been terminated, suspended, barred, voluntarily withdrawn as part of a settlement agreement, or

otherwise excluded from any program under Titles XVIII, XIX, XX or XXI of the Social Security Act; and

g. shall maintain all required credentials and meet all continuing education requirements necessary to retain certification or eligibility (if any).

Agent will notify Plan promptly of any material changes to the foregoing representations with respect to any of the Sales Agents.

Agent further represents and warrants that it has the authority to execute this Agreement on behalf of each of Sales Agents, and that each Sales Agent has agreed in writing to be bound by the terms herein.

ARTICLE 4 **FINANCIAL CONSIDERATIONS**

4.1 **Compensation.** Except as specifically provided for in Exhibit 2 (“Compensation”), the Agent shall be solely responsible for compensating Agent’s employees and other contractors, including Sales Agents, for Marketing Services. Agent will accept the amounts listed in Exhibit 2 (“Compensation”) of this Agreement as payment in full for providing Services under this Agreement. Plan shall provide Agent with no less than thirty (30) days prior written notice of any changes to Exhibit 2 (“Compensation”).

4.2 **Recoupment and Offset.** Except as may otherwise be prohibited by applicable Law, Plan will have the right to recoup or offset any and all amounts owed to Plan as a result of overpayments made under this Agreement. Plan will provide Agent with prior written notice that the recoupment or offset will occur and the reason for such recoupment or offset. Agent agrees to repay such amounts within sixty (60) days of receiving notice from Plan. Plan may recoup or offset any such amounts if not paid within sixty (60) days.

ARTICLE 5 **HIPAA**

5.1 **HIPAA Compliance.** Each party represents and warrants to the other party that it will comply with the provisions of the Health Insurance Portability and Accountability Act (“HIPAA”) including the effective dates of regulations adopted to implement HIPAA and Health Information Technology for Economic and Clinical Health (“HITECH”) or other such amendments. Each of the parties represents and warrants to the other party in particular, with respect to all protected health information (as that term is defined in 45 C.F.R. § 160.103), under the HIPAA Privacy Regulations and that it will protect the privacy, integrity, security, confidentiality and availability of the protected health information disclosed to, used by, or exchanged by the parties by implementing appropriate privacy and security policies, procedures, and practices and physical and technological safeguards and security mechanisms, all as required by, and set forth more specifically in, the HIPAA Privacy Regulations and the HIPAA Security Regulations, codified at 45 C.F.R. Part 164. The parties agree that, upon the request of the other

party, it will provide written verification of compliance with all applicable Laws and confirm its full licensure and certification to the extent appropriate to its then current operations. Notwithstanding any other provisions of this Agreement to the contrary, either party may notify the other of any modifications it believes necessary to bring this Agreement into compliance with any new HIPAA regulations and/or HIPAA. Such modifications will be incorporated as an addendum to this Agreement. Additionally, Agent acknowledges that it is a Business Associate of the Plan and shall be bound by the Business Associate Agreement, set forth in Exhibit 4.

ARTICLE 6 **REPORTING REQUIREMENTS**

6.1 **Written Notice.** In addition to any other notices required under this Agreement, Agent will give notice to Plan within two (2) business days of the occurrence of any event that could reasonably be expected to impair the ability of Agent to comply with the obligations of this Agreement, including any of the following: (a) an occurrence that causes any of the representations and warranties in this Agreement made by or on behalf of Agent, including, but not limited to the representations in Sections 3.2 and 3.8, to be inaccurate, (b) Agent or a Sales Agent fails to maintain insurance as required by Section 3.6 of this Agreement, (c) a Sales Agent's license, certification or accreditation expires or is suspended, revoked, conditioned or otherwise restricted, (d) a disciplinary action is initiated by the State or any government authority against Agent or any Sales Agent, (e) a grievance or legal action is filed by a Medicare beneficiary concerning Agent or a Sales Agent, (f) Agent or Sales Agent is under investigation for fraud or a felony, or (g) Agent or Sales Agent enters into a settlement related to any of the foregoing.

ARTICLE 7 **TERM AND TERMINATION**

7.1 **Term and Voluntary Termination.** Term of this Agreement will be for a period beginning on the Effective Date and thereafter will renew for successive periods of one year unless either Party provides notice of nonrenewal no later than ninety (90) days prior to the end of any applicable term.

7.2 **Termination for Cause.** Notwithstanding the provisions contained in Section 7.1 above, either party may terminate this Agreement in whole, or any separate Attachment individually, at any time for cause, including:

a. Upon thirty (30) days prior written notice in the event that the other party will be in material breach in the performance of any provision of this Agreement, an Attachment, or any other agreements referred to herein, and such breach has not been cured within sixty (60) days after the defaulting party received written notice stating the specific default, except if such default relates to imminent harm to patient health or fraud or malfeasance, in which case termination will be effective immediately upon written notice of default; or

b. Immediately, upon written notice, in the event that either party will apply for, or consent, to the appointment of a receiver, trustee, or liquidator of all, or of a substantial part, of its assets, file involuntary petition in bankruptcy, or admit in writing its inability to pay its debts as they become due, make a general assignment for the benefit of creditors, file petition or answer seeking reorganization or arrangement with creditors, or take advantage of any insolvency law or,

if an order, judgment or decree will be entered by a court of competent jurisdiction adjudicating such party bankrupt or insolvent, or approving a petition seeking reorganization of the party or appointment of a receiver, trustee, or liquidator of all or a substantial part of its assets; or

c. Immediately upon written notice to the other party if Plan or Agent, respectively, will lose, relinquish, or have materially affected its certificate of authority to operate as an insurer or its license to provide Services in the State.

7.3 Termination by Plan. Notwithstanding anything herein to the contrary, Plan may terminate this Agreement, or any individual Sales Agent, as follows:

a. Immediately if Plan believes that Agent is placing Medicare beneficiaries in imminent danger; or

b. Upon sixty (60) days written notice if Agent breaches any of the representations made in Section 3.8.

c. Plan reserves the right to exclude any Sales Agent of the Agent from participation of this Agreement or terminate Agreement with any Sales Agent of the Agent.

7.4 Termination without Cause. Either Party may terminate this Agreement without cause at any time following the provision of ninety (90) days' advance written notice to the other Party.

7.5 Survival of Obligations. The provisions and obligations contained in this Article VIII will survive the termination of this Agreement.

ARTICLE 8 **MISCELLANEOUS**

8.1 Headings. The headings of the various sections of this Agreement and Attachments are inserted merely for the purpose of convenience and do not, expressly or by implication, limit, define, or extend the specific terms of the section so designated.

8.2 Indemnification. Agent agrees to and hereby does indemnify, defend and hold harmless Plan, its Affiliates, representatives, employees, and Agents from any and all claims, judgments, costs, liabilities, damages and expenses whatsoever, including reasonable attorneys' fees, arising from any negligent acts or omissions by Agent or any Sales Agent. Plan agrees to and hereby does indemnify, defend and hold harmless Agent from any and all claims, judgments, costs, liabilities, damages and expenses whatsoever, including reasonable attorneys' fees, arising from any negligent acts or omissions in the provision by Plan of its obligations pursuant to this Agreement. This provision shall survive termination or expiration of this Agreement.

8.3 Governing Law. This Agreement will be governed by and construed and enforced in accordance with the Laws of Texas, except where federal Law applies, without regard to

principles of conflict of Laws. Each of the parties hereby agrees and consents to be subject to the exclusive jurisdiction and venue of the appropriate state or federal court in any suit, action, or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement.

8.4 Relationship of the Parties. The parties are independent contractors. This Agreement will not be deemed to create a partnership or joint venture, or an employment or agency relationship between the parties. Neither party has the right or authority to assume or create any obligation or responsibility on behalf of the other. Neither Party is liable for the acts of the other.

8.5 Conflicts between Certain Documents. If there is any conflict between this Agreement, or any Attachment hereto, the Attachment will control.

8.6 Assignment; Delegation of Duties. This Agreement will be binding upon, and inure to the benefit of, the parties hereto, their respective heirs, successors, and assigns, but may not be assigned by Agent without the prior written consent of Plan and any applicable governmental agencies. Plan may, in its sole discretion, assign this Agreement to any of its Affiliates without the consent of Agent. Agent will not subcontract or otherwise delegate its duties under this Agreement and/or an Attachment unless it obtains Plan's prior written consent. Plan may, in its sole discretion, delegate its duties under this Agreement and/or an Attachment without the consent of Agent.

8.7 Third-Party Beneficiary. Except as otherwise provided in this Agreement, this Agreement is not a third-party beneficiary contract and no provision of this Agreement is intended to create or may be construed to create any third-party beneficiary rights in any third-party, including any Medicare beneficiary.

8.8 Amendment. Except as expressly provided for herein, this Agreement and any of its Attachments may be amended at any time by mutual written agreement of both parties. This Agreement and any of its Attachments may also be amended by Plan furnishing Agent with written notice of any proposed amendments or modifications. Such amendments or modifications by Plan will be deemed accepted and incorporated into this Agreement unless Agent rejects the amendment or modification in writing within fifteen (15) days of having received notice of it from Plan.

8.9 Entire Contract. This Agreement, together with all Attachments, exhibits, amendments, appendices and/or addendums hereto and the Plan's Policies and Procedures, contains all the terms and conditions agreed upon by the parties hereto and supersedes all other agreements, oral or otherwise, of the parties hereto, regarding the subject matter of this Agreement.

8.10 Enforceability; No Waiver. The invalidity or unenforceability of any terms or provisions hereof will in no way affect the validity or enforceability of any other terms or provisions. The failure of Plan or Agent to object to or to take affirmative action with respect to any conduct of the other which is a breach of this Agreement will not be construed as a waiver of that breach or of any prior or future breaches of this Agreement.

8.11 Notices. Unless provided for otherwise in this Agreement, any notice required to be given pursuant to the terms and provisions hereof will be in writing or via e-mail, and if by

mail, will be sent by certified mail, return receipt requested, postage prepaid, or by recognized courier service, to the address set forth on the signature page or to such other address as either party may designate in writing. Any notice provided to Agent in accordance to the terms of this Section will be deemed the provision of notice to each individual Sales Agent as well.

8.12 Dispute Resolution. Plan has established a dispute resolution mechanism to process and resolve disputes related to claims and certain other issues (“Dispute Resolution Process”). Disputes must be submitted first through Plan’s Dispute Resolution Process. If a dispute is not resolved through the Dispute Resolution Process, and for any other dispute, concern, disagreement, or issue not covered by such process (collectively “Disputes”) the dispute resolution process will be as follows:

a. Meet and Confer. For all disputes not resolved through Plan’s Dispute Resolution Process, the parties will meet and confer in good faith within thirty (30) calendar days following a request by either party for a meet and confer over the Dispute. The meet and confer process shall continue as long as it remains productive, or until either party determines that further meeting and conferring is unproductive. Neither party will cease or diminish its performance under this Agreement pending dispute resolution. If the parties are unable to resolve their Disputes through the dispute resolution process and following the meet and confer, then the Dispute shall be finally resolved through binding arbitration.

b. Arbitration. Any controversy, dispute or claim not resolved by the meet and confer procedure set forth in Section 8.1(a) above will be resolved by binding arbitration conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”) at the request of either party. Such arbitration shall occur in Harris County, Texas. The arbitrator shall apply state substantive Law and federal substantive Law where state Law is preempted. The Federal Arbitration Act, 9 U.S.C. § 1-16, shall apply. Nothing herein shall prohibit a party from seeking equitable relief in a court of Law while arbitration is pending hereunder. The parties shall share equally the cost of the arbitration, including but not limited to the arbitrator’s fee and any related administrative fees and charges. The parties shall each bear their respective attorneys’ fees and costs incurred in the arbitration. Any arbitration must be initiated within two years from the initial request for meet and confer. The arbitrators will have no right to award any punitive or exemplary damages or to vary or ignore the terms of this Agreement and will be bound by controlling Law. No Dispute shall be arbitrated more than four (4) years after the controversy or claim arose. Failure to initiate arbitration on any Dispute within two (2) years of a request for meet and confer, and four years from when the controversy or claim arose shall be deemed waived. Agent acknowledges that this arbitration agreement precludes Agent from participating in a class action or class arbitration filed by any other Agent or any other plaintiff claiming to represent Agent or Agent’s interest. Agent agrees to opt-out of any class action or class arbitration filed against Plan that raises claims covered by this agreement to arbitrate, including, but not limited to, class actions or class arbitrations that are currently pending.

8.13 Publicity. Except as may be required by law, neither party shall make any public announcement or filing with respect to the Services provided for herein without the prior written consent of the other party.

8.14 Proprietary Information. Agent acknowledges that the Plan has developed certain symbols, trademarks, service marks, data, processes, plans, procedures and information which are

proprietary information and trade secrets of the Plan (“Proprietary Information”). At all times, both during Agent’s performance of Services, 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 Plan. Upon termination of the Agreement, Agent shall cease the use of the Proprietary Information and shall return any Proprietary Information, including Plan’s Marketing Material.

8.15 Non-Exclusivity. This Agreement is not exclusive, and does not preclude either party from contracting with any other person or entity for any purpose.

8.16 Confidentiality. All parties will hold the information contained in this Agreement as confidential and shall not disclose the information contained in this Agreement to any third-party, except as necessary to carry out the terms hereof or as required by Law or as may be necessary for Plan to administer the terms of the Agreement.

8.17 Regulatory Attachments. Agent agrees to be bound by and to comply with the provisions of the Regulatory Attachments attached hereto as Exhibit 3, including, but not limited to, the Medicare Advantage Attachment and the applicable State Regulatory Attachment.

8.18 Force Majeure. Neither party will be liable or deemed to be in default for any delay or failure to perform any act under this Agreement resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquake, flood, terrorism, bioterrorism, strikes or other work stoppages by either party’s employees, or any other similar cause beyond the reasonable control of such party.

8.19 Information. All information maintained or generated by other party in fulfilling of its obligations under this Agreement, including healthcare information, will be kept confidential in accordance with and to the extent required by applicable Laws, including but not limited to HIPAA, as applicable.

8.20 Authority. The parties whose signatures are set forth below represent and warrant that they are duly empowered to execute this Agreement.

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THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION THAT MAY BE ENFORCED BY THE PARTIES

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the last date that this Agreement is executed either by Plan or by Agent (the "Effective Date").

KS Plan Administrators, LLC

Agent:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Notice Address:

Notice Address:

11511 Shadow Creek Parkway
Pearland, TX 77584

Attachments to Agreement

1. Exhibit 1 - Marketing Services
2. Exhibit 2 - Compensation Exhibit
3. Exhibit 3 - Regulatory Attachment
4. Exhibit 4 - Business Associate Agreement
5. Exhibit 5 - Agent Information Form

EXHIBIT 1 - MARKETING SERVICES

Agent shall provide for the provision of marketing activities in Plan's service area to Medicare beneficiaries, including, but not limited to, the following:

- 1) Providing support to the Plan in development of educational events;
- 2) Providing support at Plan marketing events;
- 3) Scheduling and completing one-on-one appointments with Medicare beneficiaries;
- 4) Meeting with walk-in appointments and completing appointments with Medicare beneficiaries to discuss the Benefit Plans;
- 5) Providing sales and marketing support for Medicare beneficiaries interested in learning more about the Benefit Plans;
- 6) Enrolling Medicare beneficiaries into the Plan upon their request; and
- 7) Assisting in retention efforts of current Plan Members.

EXHIBIT 2 - COMPENSATION

A. Sales Agent Commission

1. As compensation for the Marketing Services provided by Sales Agents, Sales Agents shall earn a commission payment (“Commission”) for each Qualified Enrollment. Sales Agents shall only receive Commission on Qualified Enrollments which have been validated by Plan and approved and confirmed by CMS. All independently contracted Sales Agents will be paid directly by Plan.

2. The amount of the applicable Sales Agent Commission shall be determined in accordance with Laws, including CMS Medicare Marketing Guidelines and CMS statements regarding the fair market value (“FMV”) maximum reimbursement amount for commission payments for the applicable Contract Year.

Sales Agent Compensation - Contract Year 2022

Compensation Type	Compensation Rate
Initial Year Per Enrollment	Current Year CMS FMV - Max
Replacement Year Per Enrollment	Current Year CMS FMV – Max
Following the Initial Year Compensation	Current Year CMS FMV - Max

Initial Year Enrollment Compensation

As defined by CMS, full compensation shall be paid under the following two scenarios:

- 1) Medicare beneficiary’s first year of enrollment in any Plan.
- 2) Medicare beneficiary enrollment from an employer group plan to a non-employer group plan.

As defined by CMS, prorated compensation shall be paid under the following two scenarios:

- 1) Medicare beneficiary changes plans during their initial enrollment year
- 2) Medicare beneficiary makes an “unlike plan change”.

Renewal Year Enrollment Compensation

As defined by CMS, prorated compensation shall be paid under the following three scenarios:

- 1) Any year following the Initial Year compensation.
- 2) Medicare beneficiary enrolls in a new “like plan” as within the same Parent Organization or between two different Parent Organizations.
- 3) Medicare beneficiary enrollment from a Medicare-Medicaid Plan.

Following the Initial Year Compensation

Renewal commission shall be paid for as long as the Medicare beneficiary remains continuously enrolled in Plan and Agent is still participating and appointed under this Agreement.

Charge-Backs

As defined by CMS, Charge-backs will apply to both the Administrative Fee as well as the Sales Agent Commission. The Charge-backs of previously paid commission will result for enrollments that are not approved by CMS as a Qualified Enrollment.

Rapid Disenrollments. Members enrolled who voluntarily or involuntarily disenroll within the first 3 effective months of the plan year are considered rapid disenrollments and will result in charge-backs of all previously paid commissions.

For disenrollments that occur after the first 3 effective months of the plan year, plan will recover a pro-rated amount for all commissions that the member is no longer enrolled.

EXHIBIT 3 – MEDICARE ADVANTAGE REGULATIONS

Medicare Advantage Attachment

This Attachment supplements and is incorporated by reference into the terms and conditions of the applicable Participation Agreement between KS PLAN ADMINISTRATORS LLC and its

Affiliates (collectively, “Plan”) and General Agency (“Agent”). Capitalized terms not otherwise defined herein will have the meanings ascribed to them in the Agreement. Except as provided herein, all other provisions of the Agreement not inconsistent herein will remain in full force and effect. This Attachment will supersede and replace any inconsistent provisions in the Agreement, to ensure compliance with required CMS provisions, and continue concurrently with the term of such Agreement. Agent agrees to require each Sales Agent to be bound by the terms of this Attachment.

NOW, THEREFORE, the parties agree as follows:

1. **Definitions:**

a. **Centers for Medicare & Medicaid Services (“CMS”):** the agency within the Department of Health and Human Services that administers the Medicare program.

b. **Final Contract Period:** the final term of the contract between CMS and the Medicare Advantage Organization.

c. **Medicare Advantage (“MA”):** an alternative to the traditional Medicare program in which private plans run by health insurance companies provide health care benefits that eligible beneficiaries would otherwise receive directly from the Medicare program.

2. **Agent agrees as follows:**

a. **Books and Records.** Agent will maintain complete and accurate operational, financial and administrative records, contracts, books, files, data and other documentation related to the Services provided to Medicare beneficiaries and other services and activities conducted under this Agreement (“Records”). Agent will ensure that such Records are kept in accordance with Laws, applicable government agency requirements, applicable accrediting organization requirements, and generally accepted accounting principles (as applicable) and prudent record keeping practices and are sufficient to enable Plan to enforce its rights under this Agreement, including this section, and to determine Agent and its employees are performing or have performed Agent’s obligations in accordance with this Agreement, Laws and applicable government agency requirements. Without limiting the foregoing, HHS, the Comptroller General, Plan, or their designees have the right to audit, evaluate, collect and inspect any pertinent information for any particular contract period, including, but not limited to, any books, contracts, computer or other electronic systems (including documentation of the Agent related to CMS’ contract with Plan or the terms of the Agreement, through ten (10) years from the final date of the final contract period of the contract entered into between CMS and the Plan or from the date of completion of any audit, whichever is later. Agent will make its premises, facilities and equipment available to the government for these activities. [42 C.F.R. §§ 422.504(i)(2)(i) and (iv)]

b. **Privacy.** Agent will comply with all CMS and Plan confidentiality and enrollee record accuracy requirements, including: (1) abiding by all federal and state laws

regarding confidentiality and disclosure of medical records or other health and enrollment information, (2) ensuring that medical information is released only in accordance with applicable federal or state law or pursuant to court orders or subpoenas, (3) maintaining the records and information in an accurate and timely manner, and (4) ensuring timely access by enrollees to the records and information that pertain to them. [42 C.F.R. §§ 422.504(a)(13) and 422.118]

c. Covered Person Protection and Hold Harmless. Agent agrees that in no event, including but not limited to (1) non-payment by Plan of any amounts that are Plan's legal obligation, (2) insolvency of Plan, or (3) Plan's breach of the Agreement, will Agent bill, charge, collect a deposit from, seek compensation, remuneration, or reimbursement from, or have any recourse against any Covered Person or person acting on behalf of the Covered Person for Covered Services provided pursuant to the Agreement. [42 C.F.R. §§422.504(g) and (i) and MMCM ch. 11 §§100.3 and 100.4]

d. Services. Agent agrees the services it provides to Covered Persons will be consistent with and comply with the Plan's contractual obligations to CMS under its contract with CMS. [42 C.F.R. §422.504(i)(3)(iii)]

e. Compliance with Medicare and Other Laws. Agent and any Agent Affiliate, contractor or subcontractor will comply with all applicable laws, including Medicare laws, the Medicare Marketing Guidelines, regulations and CMS instructions. [42 C.F.R. § 422.504(i)(4)(v)]

f. Eligibility. Agent agrees to immediately notify Plan in the event Agent or any Agent Affiliate is or becomes excluded from participation in any federal or state health care program under Section 1128 or 1128A of the Social Security Act. Agent also will not employ or contract for the provision of any services, with any individual or entity that has been excluded from participation in any federal or state health care program under Section 1128 or 1128A of the Social Security Act. [42 C.F.R. §422.752(a)(8) and MMCM ch. 11 §100.4]

g. Plan Policies and Procedures. Notwithstanding anything to the contrary, Agent agrees to comply with Plan policies and procedures. [MMCM ch. 11, §100.4]

h. Subcontracts. If Agent has any arrangements, in accordance with the terms of the Agreement, with affiliates, subsidiaries or any other subcontractors, directly or through another person or entity, to perform any of the services Agent is obligated to perform under the Agreement that are the subject of this Attachment, Agent will ensure that all such arrangements are in writing, duly executed and include all the terms contained in this Attachment. Agent will provide proof of such to Plan upon request. Agent further agrees to promptly amend its agreements with subcontractors, in the manner requested by Plan, to meet any additional CMS requirements that may apply to the services.

i. Offshoring. Unless previously authorized by Plan in writing, all services provided pursuant to the Agreement that are subject to this Attachment must be performed within the United States, the District of Columbia, or the United States territories.

j. Federal Fund Obligations. Agent understands and agrees that payments received by Plan from CMS pursuant to the Plan's contract with CMS are federal funds. As a result, Agent, by entering into this Agreement and the terms of this Attachment, is subject to laws applicable to individuals/entities receiving federal funds, including, but not limited to, Title VI of the Civil Rights Act of 1964 as implemented by regulations at 45 C.F.R. part 84, the Age Discrimination Act of 1975 as implemented by regulations at 45 C.F.R. part 91, the Rehabilitation Act of 1973, and the Americans with Disabilities Act.

k. Plan Accountability; Delegated Activities. Agent acknowledges and agrees that Plan oversees and is accountable to CMS for any functions and responsibilities described in Plan's contract with CMS and applicable Medicare Advantage regulations, including those that Plan has delegated to Agent. If Plan has delegated any of Plan's functions and responsibilities under its contract with CMS to Agent pursuant to the Agreement, the following will apply in addition to the other provisions of this Attachment:

i. Agent will perform those delegated activities specified in the Agreement, if any, and will comply with any reporting responsibilities as set forth in the Agreement.

ii. Plan will have the right to monitor, inspect, evaluate and audit Agent and Agent's and each Sales Agent's Records. In connection with any monitoring, inspection, evaluation or audit, Agent will provide Plan with access to all Records, personnel, physical facilities, equipment and other information necessary for Plan, an applicable government agency or its auditors to conduct the audit. Within three (3) business days of Plan's written request for Records or Records, or such shorter time period required for Plan to comply with requests of government agencies, Agent will compile and prepare all such Records and furnish them to Plan in a format reasonably requested by Plan.

iii. Agent will cooperate in reasonably requested on-site inspections of its facilities by Plan, authorized government officials, and accreditation bodies. Such inspections by Plan will be performed in accordance with the Agent's policies and procedures and will not interfere with the daily operations of the Agent. In preparation for any such on-site inspection, Agent will compile within seven (7) calendar days of a request any and all documents, data, and other information as may be requested by Plan or government officials and Agent will make available sufficient work space for Plan or any authorized government official and accreditation body as well as access to all reasonably necessary personnel during an on-site inspection.

l. Compliance Program and Anti-Fraud Initiatives. Agent will (and will cause its subcontractors to) institute, operate and maintain an effective compliance program to detect, correct and prevent the incidence of non-compliance with CMS requirements and the incidence of fraud, waste and abuse ("FWA") relating to the provision of services to Covered Persons. Such compliance program will be appropriate to Agent's or subcontractor's organization and operations. Agent will also comply with the terms of Plan's FWA policies and procedures as set forth in the Plan's policies and procedures. [42 C.F.R. §422.503(b)(vii)(C)]

3. The Plan Agrees as Follows:

Regulatory Amendment. Plan may unilaterally amend this Attachment to comply with applicable laws and regulations and the requirements of applicable regulatory authorities, including, but not limited to CMS. Plan will provide written or electronic notice to Agent of such amendment and its effective date. Unless such laws, regulations or regulatory authorities direct otherwise, the signature of Agent will not be required in order for the amendment to take effect.

EXHIBIT 4 - BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this “BAA”) is entered into by and between KS PLAN ADMINISTRATORS LLC. (“Covered Entity”) and Agent (“Business Associate”) and will be effective as of the date fully executed by all parties (“Effective Date”).

WHEREAS, reference is made to that certain agreement between Covered Entity and Business Associate (the “Services Agreement”), under which Business Associate performs certain activities or functions on behalf of Covered Entity which may involve Business Associate creating, receiving, maintaining or transmitting Protected Health Information (“PHI”), as hereinafter defined.

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and security of PHI that may be created, received, maintained or transmitted by Business Associate pursuant to the Services Agreement with applicable provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and regulations promulgated thereunder by the United States Department of Health and Human Services (“HHS”), including those added pursuant to the American Recovery and Reinvestment Act of 2009, Title XIII – Health Information Technology for Economic and Clinical Health (“HITECH”), and other applicable laws as any of such may be modified or amended from time to time (collectively referred to herein as “HIPAA”).

WHEREAS, the purpose of this BAA is to satisfy certain standards and requirements of the Privacy Rule, 45 C.F.R. Parts 160 and 164, subparts A and E, and the Security Rule, 45 C.F.R. Parts 160 and 164, subparts A and C, as the same may be modified or amended from time to time.

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this BAA, the parties agree as follows:

SECTION 1: DEFINITIONS

Terms used, but not otherwise defined, in this BAA shall have the same meaning as those terms in the Privacy Rule and the Security Rule. In the event of a conflict between the definitions in this BAA and the definitions in HIPAA, the definitions in HIPAA shall control.

- a. Breach has the meaning set forth at 45 C.F.R. § 164.402.
- b. Data Aggregation means, with respect to PHI created or received by Business Associate in its capacity as a business associate of Covered Entity, the combining of such PHI by Business Associate with the PHI received by Business Associate in its capacity as a business associate of another covered entity to permit data analyses that relate to the health care operations of the respective covered entities.
- c. Designated Record Set has the meaning set forth at 45 C.F.R. § 164.501.
- d. Disclose or Disclosure means the release, transfer, provision of access to, or divulging in any other manner of PHI to parties outside Business Associate’s organization.
- e. Electronic Protected Health Information (“e-PHI”) is a subset of Protected Health Information and means Protected Health Information that is transmitted by or maintained in any electronic media.

- f. Individual means the person who is the subject of PHI and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- g. Protected Health Information ("PHI") includes e-PHI and means any information, subject to the exceptions set forth in 45 C.F.R. § 160.103, whether oral recorded in any form or medium that:
 - i. 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;
 - ii. identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual; and,
 - iii. is limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- h. Required by Law has the meaning set forth at 45 C.F.R. § 164.103.
- i. Secretary means the Secretary of HHS or any other officer or employee of HHS to whom the authority involved has been delegated.
- j. Security Incident means the attempted or successful unauthorized access, Disclosure, modification, or destruction of information or interference with system operations in an information system.
- k. Unsecured Protected Health Information ("Unsecured PHI") is PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance by HHS under Pub. L. 111-5, § 13402(h)(2).
- l. Use means the sharing, employment, application, utilization, examination, or analysis of PHI within Business Associate's organization.

SECTION 2: OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a. Nondisclosure. Business Associate shall not Use or Disclose Covered Entity's PHI otherwise than as specifically permitted or required by this BAA or as Required by Law. Provided, however, Business Associate may use and disclose PHI as necessary for the proper management and administration of Business Associate, or to carry out its legal responsibilities. Business Associate shall in such cases:
 - 1. provide information to members of its workforce using or disclosing PHI regarding the confidentiality requirements under HIPAA and this Agreement;
 - 2. obtain reasonable assurances from the person or entity to whom the PHI is disclosed that: (i) the PHI will be held confidential and further used and disclosed only as Required by Law or for the purpose for which it was disclosed to the person or entity; and (ii) the person or entity will notify Business Associate of any instances of which it is aware in which confidentiality of the PHI has been Breached;
 - 3. agree to notify the Privacy Officer of Covered Entity of any instances of which it is aware in which the PHI is used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted

by HIPAA.

- b. Safeguards. Business Associate will comply with the Security Rule with respect to PHI and will develop, document, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI that Business Associate creates, receives, maintains, or transmits on Covered Entity's behalf as required by the Security Rule. Business Associate shall use its best efforts to implement and maintain technologies and methodologies that render PHI unusable, unreadable, or indecipherable to unauthorized individuals as specified by the Secretary in the guidance issued by HHS under Pub. L. 111-5, § 13402(h)(2).
- c. Minimum Necessary. To the extent required by HIPAA, Business Associate shall limit its Use, Disclosure, or request of PHI to a limited data set or, if needed, to the minimum necessary to accomplish the intended Use, Disclosure, or request, respectively. Effective on the date the Secretary issues guidance on what constitutes "minimum necessary" for purposes of HIPAA, Business Associate shall limit its Use, Disclosure or request of PHI to only the minimum necessary as set forth in such guidance.
- a. Withdrawal of Authorization. If the use or disclosure of PHI in this Agreement is based upon an Individual's specific authorization for the use or disclosure of his or her PHI, and the Individual revokes such authorization, the effective date of such authorization has expired, or such authorization is found to be defective in any manner that renders it invalid, Business Associate shall, if it has notice of such revocation, expiration, or invalidity, cease the use and disclosure of the Individual's PHI except to the extent it has relied on such use or disclosure, or if an exception under the HIPAA Rules expressly applies.
- d. Mitigation. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of this BAA. Business Associate shall exercise reasonable diligence to discover any Breach of PHI and shall bear the cost of any required notifications and corrective actions (e.g. credit monitoring services). The Business Associate will provide the Covered Entity with any reasonable information known by Business Associate that the Covered Entity needs for the required notifications under the Breach Notification Rule. Further, Business Associate shall provide and pay for required notifications to Individuals, HHS and/or the media, as requested by the Covered Entity as a result of such Breach.
- e. Business Associate's Subcontractors. Business Associate shall ensure that subcontractors, to whom it provides PHI created by or received from Covered Entity or created by Business Associate on behalf of Covered Entity, agree to the same or greater restrictions and conditions that apply to Business Associate through this BAA with respect to such PHI. Business Associate shall impose appropriate sanctions against any such subcontractor that violates any requirements, restrictions or conditions that apply to Business Associate through this BAA. If Business Associate's reasonable steps to cure such breach or violation are unsuccessful, Business Associate shall terminate the contract or arrangement with such subcontractor, if feasible.
- f. Access to and Amendment of PHI. Business Associate shall, to the extent Covered Entity determines that any PHI maintained by Business Associate or its Agents or subcontractors constitutes a Designated Record Set: (a) make the PHI specified by Covered Entity available

to Covered Entity, or as directed by Covered Entity, to the Individual(s) identified by Covered Entity as being entitled to access and copy that PHI; and (b) make any amendments to PHI that are requested by Covered Entity to comply with 45 C.F.R. § 164.526. Business Associate shall provide such access and make such amendments within the time and in the manner specified by Covered Entity, including making PHI available in an electronic format to the Individual(s) identified by Covered Entity as being entitled to obtain access to that PHI in an electronic format, as necessary for Covered Entity to comply with 45 C.F.R. § 164.524. If Business Associate receives a request for access or amendment to PHI directly from an Individual, Business Associate shall notify Covered Entity upon receipt of such request. Any information provided hereunder shall be provided in the form or format requested if it is readily producible in such form or format; or in summary, if the Individual has agreed in advance to accept the information in summary form. A reasonable, cost-based fee for copying health information may be charged to Individuals.

- g. Documentation of Disclosures. Business Associate shall document such Disclosures of PHI and information related to such Disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- h. Accounting of Disclosures. Business Associate shall provide to Covered Entity or, at the request of Covered Entity directly to an Individual, in the time and manner designated by Covered Entity, but in no event longer than fifteen (15) calendar days after Business Associate's receipt of a request from Covered Entity, information collected in accordance with Section 2(g) of this BAA, to permit Covered Entity to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- i. Internal Practices. Business Associate shall make its internal practices, books, and records relating to the Use and Disclosure of PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity available to Covered Entity or the Secretary, in a time and manner designated by Covered Entity or the Secretary, for the purposes of Covered Entity or the Secretary determining Business Associate's compliance with HIPAA. Business Associate shall immediately notify Covered Entity of any such requests by the Secretary and, upon Covered Entity's request, provide Covered Entity any copies of documents Business Associate provided to the Secretary.
- j. Compliance with Law. To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligation(s).
- b. Electronic Transactions and Code Sets. To the extent applicable under the Services Agreement Business Associate is required to comply with the HIPAA Standards for Electronic Transactions, 45 C.F.R. Parts 160 and 162 (HIPAA Electronic Transaction Law) as amended from time to time. The HIPAA Electronic Transaction Law requires Parties to conduct certain transactions as "standard transactions" using defined medical data code sets. Business Associate agrees that it will require its subcontractors, vendors and independent contractors to comply with HIPAA Electronic Transaction Law as applicable. Business Associate agrees that it will not:
 - 1. change the definition, data condition or use of a data element or segment in a

standard;

2. add any data elements or segments to the maximum defined data set;
3. use any code or data elements that are either marked “not used” or not included in the standard’s implementation specification(s); or
4. change the meaning or intent of the standard’s implementation specification(s).

SECTION 3: PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- a. Permitted Uses and Disclosures. Except as otherwise limited or explicitly prohibited in this BAA, Business Associate may Use or Disclose PHI to perform functions, activities or services for, or on behalf of Covered Entity only as specified in the Services Agreement or as otherwise directed in writing by Covered Entity, provided such Use or Disclosure would not violate the Privacy Rule if done by Covered Entity.
- b. Use for Management and Administration. Except as otherwise limited in this BAA, Business Associate may Use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- c. Disclosure for Management and Administration. Except as otherwise limited in this BAA, Business Associate may Disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that:
 - i. Disclosures are Required by Law; or
 - ii. Business Associate obtains reasonable assurances from the person to whom the information is Disclosed that it will remain confidential and will be Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person, and
 - iii. The person notifies Business Associate of any instances of which it is aware in which the confidentiality of the Unsecured PHI has been potentially breached.
- d. Data Aggregation. To the extent expressly permitted in the Services Agreement or otherwise approved in writing by Covered Entity, Business Associate may use PHI to provide Data Aggregation services to Covered Entity relating to the health care operations of Covered Entity.
- e. No De-Identification. Business Associate is not permitted to Use PHI to create de-identified information except as approved in writing by Covered Entity.
- f. Other Business Associates of Covered Entity. Business Associate may Disclose PHI to other business associates of Covered Entity to the extent requested by Covered Entity in writing or as otherwise necessary to perform functions, activities or services for, or on behalf of, Covered Entity as specified in the Services Agreement.

SECTION 4: BREACH NOTIFICATION

- a. Business Associate agrees to notify Covered Entity of any actual or suspected Use or Disclosure of PHI by Business Associate not permitted by this BAA, any Security Incident, any Breach of Unsecured PHI, and any restriction or limitation of any kind whereby Business Associate is unable to access, Use, or Disclose PHI as permitted or required hereunder (e.g., ransomware) within three (3) business days of discovery. With regard to Unsuccessful Security Incidents, the parties agree that this Section 4 satisfies any notices necessary by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted Unsuccessful Security Incidents (as defined below) for which no additional notice to Covered Entity shall be required; provided, however, Business Associate shall maintain logs of such Unsuccessful Security Incidents and make such logs available to Covered Entity upon written request. For purposes of this BAA, "Unsuccessful Security Incidents" include activity such as pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, and any combination of the above, so long as no such incident results in unauthorized access, acquisition, Use or Disclosure.
- b. Business Associate shall provide the following information to Covered Entity within three (3) days business of discovery of a Breach, unless the parties mutually agree to extend such three (3) business day deadline:
 - i. the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired, Used or Disclosed during such Breach;
 - ii. a brief description of what happened, including the date of the Breach and discovery of the Breach;
 - iii. a description of the type of Unsecured PHI that was involved in the Breach;
 - iv. a description of the investigation into the Breach, mitigation of harm to the Individuals and protection against further Breaches;
 - v. the results of any and all investigations performed by Business Associate related to the Breach; and
 - vi. any other details requested by Covered Entity deemed necessary to complete an assessment related to the potential compromise of PHI.
- c. Business Associate shall assist Covered Entity, as requested, to provide notification to affected Individuals whose Unsecured PHI has been Breached, as well as the Secretary and the media, as required by HIPAA or other applicable law.
- d. Business Associate agrees to pay actual costs for notification and any associated mitigation incurred by Covered Entity, including but not limited to, costs associated with providing notice, printing, mailing, credit monitoring, identity theft protection, call center services, etc., if Covered Entity determines in its sole discretion that a Breach by Business Associate is significant enough to warrant such measures. Business Associate shall also reimburse Covered Entity for all reasonable costs, expenses, damages, and other losses resulting from any Unauthorized Use or Disclosure, Security Incident, or Breach involving PHI maintained by Business Associate or its subcontractors. The obligations of this paragraph shall survive the expiration or earlier termination of this BAA.

- e. Business Associate agrees to establish procedures to investigate a Breach, mitigate losses, and protect against future Breaches, and to provide a description of these procedures and the specific findings of the investigation to Covered Entity in the time and manner reasonably requested by Covered Entity.

SECTION 5: OBLIGATIONS OF COVERED ENTITY

- a. Notice of Privacy Practices. Upon request, Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. § 164.520, as well as any changes to such notice.
- b. Changes in Permission. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by any Individual to Use or Disclose PHI, to the extent that such change affects Business Associate's Use or Disclosure of PHI.

SECTION 6: INDEMNIFICATION, LITIGATION, AND AUDITS

- a. Indemnification. Business Associate will defend, indemnify and hold harmless Covered Entity from and against any all claims, damages, liabilities, losses, and expenses (including reasonable attorneys' fees) resulting from or arising out of or in any way connected with Business Associate's performance or lack of performance, under this BAA. Business Associate will cooperate with Covered Entity in the settlement and/or defense of such claim, at Business Associate's cost and expense.
- b. Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself, and any subcontractors, employees, or Agents assisting Business Associate in the performance of its obligations under the Services Agreement, available to Covered Entity, at no cost to Covered Entity, to testify in any claim commenced against Covered Entity, its directors, officers, or employees based upon claimed violation by Business Associate or its Agents or subcontractors of HIPAA, except where Business Associate or its subcontractor, employee, or Agent is a named adverse party.
- c. Audit, Inspection, and Enforcement. From time to time upon reasonable notice, Covered Entity or its third-party designee may inspect the relevant facilities, systems, books, and records of Business Associate to monitor compliance with this BAA. Business Associate shall promptly remedy any violation of any term of this BAA and shall certify the same to Covered Entity in writing. The fact that Covered Entity has the right to inspect, inspects, or fails to inspect Business Associate's facilities, systems, and procedures, does not relieve Business Associate of its responsibility to comply with this BAA, regardless of whether Covered Entity detects or fails to detect a violation by Business Associate, nor does it constitute Covered Entity's acceptance of such practices or waiver of Covered Entity's rights under this BAA.

SECTION 7: TERM AND TERMINATION

- a. Term. The Term of this BAA shall commence upon the Effective Date and shall terminate when all of the PHI 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 PHI, protections are extended to such PHI, in accordance with the termination provisions in this Section 7.
- b. Termination for Cause. In addition to and notwithstanding any termination provision set forth

in the Services Agreement, upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity may either:

- i. provide an opportunity for Business Associate to cure the breach or end the violation and if Business Associate does not cure or end the violation within the time specified by Covered Entity, Covered Entity may elect to terminate this BAA and the Services Agreement, in whole or in part, as determined by Covered Entity; or
 - ii. immediately terminate this BAA and the Services Agreement if Business Associate has breached a material term of this BAA and cure is not possible.
- c. Effects of Termination. Except as provided in Section 7(d), upon termination of this BAA or the Services Agreement, for any reason, Business Associate shall return all such PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, or alternatively, certify in writing to Covered Entity that Business Associate has destroyed all such PHI in a manner specified by HHS guidance and acceptable to Covered Entity. This provision also applies to PHI that is in the possession of subcontractors or Agents of Business Associate. Business Associate shall retain no copies of the PHI.
- d. Return or Destruction of PHI Not Feasible. In the event that Business Associate believes that returning or destroying PHI is not feasible, Business Associate shall notify Covered Entity in writing of the condition that makes return or destruction infeasible. If Covered Entity agrees that return or destruction of the PHI is infeasible, as determined in its sole discretion, Business Associate shall extend the protections of this BAA to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate agrees that its obligation with regard to notifying Covered Entity of any potential breach will also extend indefinitely beyond the term of this BAA.

SECTION 8: NOTICE

All notices required or permitted under this Agreement will be in writing, and delivered by confirmed facsimile transmission, by courier or overnight delivery service, or by certified mail, and in each instance will be deemed given upon receipt. All notices will be sent to the addresses set forth below or to such other address as may be specified by either party to the other in accordance with this Section 8.

If to Covered Entity: 11511 Shadow Creek Parkway
Pearland, TX 77584

With a Copy to:

If to Business Associate: Any notice to Business Associate shall be sent to the address listed in to the address set forth on Exhibit 5 of the Agreement or to such other address as either party may designate in writing.

SECTION 9: MISCELLANEOUS

- a. Insurance. Business Associate shall procure and maintain during the term of this BAA liability insurance in amounts as will be necessary to insure Business Associate against any and all claims arising out of its performance of its duties and obligations under this BAA, including without limitation, its obligations under Section 4 (Breach Notification). Business Associate shall notify Covered Entity immediately in the event of a lapse, cancellation, or material modification of such coverage.
- b. Ownership. Covered Entity shall retain all ownership rights to the PHI that Business Associate creates, receives, maintains, or transmits, in order to perform functions, activities or services on behalf of Covered Entity and any information derived from such PHI.
- a. Equitable Remedies. Because the Business Associate will have access to PHI from Covered Entity, Covered Entity will have the right to enforce this Agreement and any of its provisions by injunction, specific performance or other equitable relief, without having to post a bond or other consideration, in addition to all other remedies that Covered Entity may have for a breach of this Agreement.
- c. No Third-Party Beneficiaries. There are no third-party beneficiaries to this BAA.
- d. No Offshore Work. In performing the functions, activities, or services for, or on behalf of, Covered Entity, Business Associate shall not, and shall not permit any of its subcontractors, to transmit or make available any PHI to any entity or individual outside the United States without the prior written consent of Covered Entity.
- e. Regulatory References. A reference in this BAA to a section in the Privacy Rule or the Security Rule means the section as in effect or as amended, and for which compliance is required.
- f. Amendment. The parties agree to take such action as is necessary to amend this BAA from time to time for Covered Entity to comply with the requirements of HIPAA.
- g. Survival. The rights and obligations of Business Associate under Sections 4 (Breach Notification), 6 (Indemnification, Litigation, and Audits), and 7 (Term and Termination) of this BAA shall survive the termination of this BAA.
- h. Interpretation. This BAA shall be interpreted as broadly as necessary to implement and comply with HIPAA, and applicable state and/or federal laws. The parties agree that ambiguity in this BAA shall be resolved in favor of a meaning that permits the parties' compliance with HIPAA, and applicable state and/or federal law, and to the extent applicable, the laws of the State of Texas, excluding its body of law controlling conflict of laws.
- i. Entire Agreement; Effect on Services Agreement. This BAA embodies the entire understanding of the parties in relation to the subject matter hereof and supersedes any prior or contemporaneous agreements, whether written or oral, between the parties in relation to the subject matter hereof. Except as specifically required to implement the purposes of this BAA, all terms of the Services Agreement shall remain in full force and effect. To the extent that any provision of this BAA specifically conflicts with the terms of the Services Agreement, the provisions of this BAA shall govern.
- b. Severability. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

- c. Waiver. The waiver of any breach of any provision of this Agreement will not constitute a waiver of the same or any subsequent breach of the same or other provisions hereof.
- j. Counterparts. This BAA may be executed in one or more counterparts, and such counterparts may be exchanged by electronic or facsimile transmission, each of which will be deemed an original, but all of which together constitute one and the same instrument.
- k. Independent Contractors. For purposes of this BAA, Covered Entity and Business Associate are and will act at all times as independent contractors. None of the provisions of this BAA 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 purpose of effecting this BAA. None of the provisions of this BAA shall establish or be deemed or construed to establish any partnership, agency, employment agreement or joint venture between the parties.

IN WITNESS WHEREOF, the parties have caused this BAA to be duly executed and effective as of the Effective Date first written above.

KS Plan Administrators, LLC

Agent

Print Name

Signature

Title

Date

Print Name

Signature

Title

Date

EXHIBIT 5 - Agent INFORMATION SHEET

Tell Us About the Agent

Are you contracting as a company? (yes/no): _____

Business Charter/Legal Name: _____

_____ D/B/A Name: _____ Business

Classification:

Sole Proprietor	C Corporation
S Corporation	Partnership
Limited Liability	LLC Class Code
Trust / Estate	Exempt Payee

Your Title: _____

FEIN: _____

_____ Business/Agency NPN: _____

Business Phone: _____ Mobile Phone: _____

_____ **Business Address:**

Address 1. _____

Address 2. _____

City: _____ County: _____

_____ State: _____ Zip Code: _____

_____ Languages you intend to use when conducting KS PLAN

ADMINISTRATORS LLC marketing activities (mark all that apply):

English	Spanish
Chinese	Creole
Korean	Russian

	Other (Specify)
--	-----------------

Tell Us About Your Hierarchy

Your immediate up-line: _____

_____ Up-line Company Name:

_____ Up-line PID (NPN and/or

TIN): _____

Management Staff and Employed Sales Agents

Please list all Agent senior management staff and employed Sales Agents that are employed or contracted by Agent to provide administrative support to Sales Agents.

Management Staff

	SSN	NPN	First Name	Last Name	Phone Number	Email
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						