

INDEPENDENT PRODUCER’S AGREEMENT

**This Independent Producer’s Agreement (“Agreement”) is made this , 20**

**by and**

**between WMC Insurance Services (“General Agent”) and**

**(“Producer”).**

1. Appointment. General Agent hereby appoints Producer to solicit applications for Medicare Advantage and Prescription Drug Plans (Plans) as specified in this Agreement and subject to the terms and conditions herein. The Producer hereby accepts such appointment. The General Agent may appoint other producers on behalf of the General Agent without liability to the Producer. This Agreement is subject to approval by the Plans, as represented by General Agent for whom Producer will solicit applications.

2. General Agent’s Duty. General Agent’s duty is to pay a commission to the Producer upon procuring applications as specified in this Agreement. In the event the application of a prospect is accepted by the Plans and approved by Centers Medicare and Medicaid Services(CMS) for such coverage, General Agent shall pay Producer the compensation specified in this Agreement. General Agent shall not have an obligation or duty to provide client prospects to Producer.

3. Producer’s Duties. The Producer shall:

A. Prior to the solicitation of applications, successfully complete the certification and sales training course conducted by the Plans or its designee. Producer is also subject to periodic monitoring of their conduct and performance relating to the solicitation of the Plans’ products to ensure compliance with Federal and State HMO statutes, the Plans and General Agents standards.

B. Use best efforts to offer the Plans’ products, as represented by General Agent, to individuals within qualified groups or to individuals in a non-discriminating manner per CMS guidelines.

C. Follow all CMS and HIPPA guidelines regarding member contacts, providing WMC with each application Appointment Card completed by the member or verification of a taped appointment agreement.

D. Maintain proper records and accounts of business transacted under this appointment in such manner and form as required by the General Agent and industry practice. Producer shall retain such books and records for a period of at least ten (10) years.

E. Give prompt and courteous service to the Plans’ subscribers solicited by Producer and assist them in realizing the benefits provided by their policies or contracts and make every effort to keep such policies and contracts in force.

F. Promptly forward all applications, Scope of Appointments and transmittals to General Agent. Incomplete applications, Scope of Appointments, and transmittals will be either held by General Agent or returned to Producer until completed by Producer.

G. Conform to the rules and regulations of the Plans and the General Agent including any changes made from time-to-time. These rules and regulations shall constitute a part of this Agreement.

H. Possess whatever licenses and regulatory approval that is necessary to perform the duties listed herein prior to the performance of said duties.

M. Promptly produce whatever licenses and regulatory compliance as required to enable Producer to perform Producer’s duties under this Agreement and to act at all times within the scope of such licenses and regulations.

O. Complete, in a manner satisfactory to the General Agent and the Plans, any training program as may be made available from time to time.

P. Perform all services as listed above and such other services as the General Agent may require in accordance with the General Agent’s or the Plans’ rules and regulations.

4. Limitation on the Producer’s Authority. The Producer has no authority, nor shall Producer represent

Producer as having such authority, to do any of the following:

A. Hold Producer out as an employee, partner, joint venture, or associate of the General Agent.

B. Hold Producer as an agent of the Plans as represented by General Agent in any other manner or for any other purpose than as specifically prescribed in this Agreement.

C. Alter, modify, waive, or change any of the terms, rates, or conditions of any policies or contracts or advertisements or other promotional literature of the Plans as represented by the General Agent in any respect.

D. Distribute any Plan circular or promotional literature without the prior written authority of the Plans.

Nor shall the Producer write any letters or any publications concerning the Plans without first obtain the written approval of the Plans.

E. Collect or authorize any other person to collect any monies on behalf of the General Agent or the Plans, except initial premiums when applicable, and then only upon strict compliance with the terms and conditions of the receipts, policies, or contracts issued by the Plans as represented by General Agent and in accordance with the rules and regulations of same.

F. Bind the Plans as represented by the General Agent on any application for products covered under this agreement.

G. Make any misrepresentations or incomplete comparison for the purpose of inducing a policyholder of any company to convert, lapse, forfeit, or surrender such policyholders’ insurance therein.

H. Producer shall not commence arbitration between itself and General Agent, agent or representative of the Plans, or applicant to or member of the Plans upon any matter relating to the business of General Agent or the Plans without providing ten (10) days prior when written notice thereof to General Agent and to the Plans.

I. Violate any of the State or Federal laws and regulations under which the producer is appointed to act on behalf of the General Agent.

5. Relationship Between Producer and General Agent. The Producer is acting as an independent contractor only, and not as an employee, partner, joint venture, or associate of the General Agent. The Producer may exercise his own judgment as to the time and manner of performance of his services except that the Producer shall conform to the General Agent’s and the Plans’ rules and regulations concerning solicitation. The Producer shall pay all expenses including licensing fee and bonding fees in connection with services as a producer and has no authority to incur any indebtedness on behalf of the General Agent.

6. Licensing. The Producer hereby covenants, represents, and agrees that it is licensed to act as a transactor on behalf of the General Agent as required by the state in which the Producer is licensed to do business as a resident agent, broker, or solicitor.

7. Compensation. General Agent agrees to pay and Producer agrees to accept compensation provided in the attached Schedule “A” subject to the terms and conditions set forth in Schedule “A” and the following terms:

A. The schedule of commissions may be changed at any time with respect to business written thereafter upon written notice from the General Agent to the Producer.

B. The Producer shall have no claim for commissions on any business unless the Producer actually solicited and procured the application and Producer’s name appears thereon. In the event that the General Agent’s Agreement with the Plan is assigned to a successor General Agent, then upon written consent of the Plan the successor General Agent shall be substituted for and in place of the General Agent under this Agreement and shall assume all liability for payment of the commissions hereunder. Such assumption shall release the General Agent herein from any and all liability therefore. It is agreed that the Producer shall in no event have any claims against the Plans as represented by the General Agent for commissions under this Agreement.

C. The Producer shall not be entitled to any commission upon any application rejected by the Plan or CMS. General Agent reserves the right to recapture enrollment commissions from the producer if there is a rejection by the Plan, or CMS within 90(ninety) days after the effective date and any prorated chargeback of commissions beyond 90 days as determined by the Plans and CMS.

D. It is the intent of this Agreement that the Plans as represented by the General Agent shall pay commissions directly to the General Agent. General Agent is not obligated to pay commissions to the Producer except as specified in this Agreement.

E. The Producer must be qualified (properly licensed by the state, authorized by the Plans, and so on) to receive commissions hereunder.

F. The General Agent shall pay any commission accruing under this Agreement the first week of the month following receipt of commission payment from the Plans.

9. Termination and the Right to Commissions Thereafter. Either party upon at least thirty (30) days written notice may terminate this Agreement without case. If the Producer is an individual, this Agreement shall terminate upon his death or total disability. “Total Disability” shall mean complete and permanent disability as determined by the General Agent in its sole discretion. If this Agreement is terminated without case or by reason of death or total disability, the Producer shall be entitled to commissions only in accordance with Schedule “A” attached and incorporated by reference herein. Cancellation shall become effective upon the mailing of the written notice of cancellation to the other party at the address provided at Article 19 of this

Agreement. The General Agent may terminate this Agreement for cause at any time without prior notice if the Producer shall:

A. Violate any provision of this Agreement;

B. Fail to conform to the rules and regulations of the General Agent, CMS, and the Plans; C. Lose his or her license to transact business hereunder;

D. Fail to comply with the State or Federal laws or administrative regulations governing Medicare

Advantage and Prescription Drug Plan products;

E. Induce or attempt to induce any other producer or employee of General Agent to leave General

Agent’s service;

F. Cease soliciting or writing business on behalf of General Agent;

G. Improperly induces or attempts to induce any policyholder of Medicare Advantage or carriers represented by General Agent to discontinue premium payments on his or her policy or to change coverage;

H. Commit any fraud under this Agreement.

If the General Agent terminates this Agreement for cause, no further commission shall be payable to the Producer after such termination except commissions which have accrued and were payable prior to such termination less any outstanding indebtedness to the General Agent.

10. Breach After Termination. The General Agent shall have the right to terminate all future payments of any sort under this Agreement in the event that the Producer or anyone acting on behalf of the Producer commits any of the following acts. This provision shall survive the termination of the other terms and provisions of this Agreement. This provision applies in the event the Producer does any of the following after this Agreement is terminated:

A. Improperly induces or attempts to induce any Plan’ subscribers as represented by the General Agent to cancel their policy.

B. Induces or attempts to induce after termination of this Agreement any employee of the General Agent to leave its service or to cease soliciting or writing business for the General Agent or to reduce the volume of such business written.

11. No Waiver. The forbearance or neglect of the General Agent to insist upon strict compliance by the Producer with any of the provisions of this Agreement, whether continuing or not, shall not be construed as a waiver of any of the General Agent’s rights or privileges herein. No waiver of any right or privilege of the General Agent arising from any default or failure of performance by the provider shall affect the General Agent’s rights or privileges in the event of a further default or failure of performance.

12. Discretion. Whenever in this Agreement some action, report, or change must be taken or omitted by the Producer if required or deemed necessary by the General Agent, and whenever the General Agent is given the option to require any act or omission by the Producer, or to take or not to take any action on the Producer’s part (including the adoption and promulgation of rules and regulations), the General Agent may act in its sole absolute discretion which shall be final and conclusive.

13. Assignment. Neither this agreement nor any of the commissions, reimbursements or benefits under this Agreement may be pledged, assigned, or transferred by Producer either in whole or in part or in any manner without the prior written consent of the General Agent.

14. Entire Agreement. This Agreement constitutes the entire agreement between the parties. Any prior representations, statements, or agreements between the parties are merged in this Agreement. Any representation, warranty, promise, or condition not expressly incorporated shall not be binding upon either party to this Agreement.

15. Amendment. Only a written instrument duly executed by the parties may amend this Agreement, which expresses by its terms and intention to modify this Agreement.

16. Governing Law. This Agreement and its interpretation and enforcement shall be governed and controlled by the laws of the State of California.

17. Agreement to Arbitrate Controversy. It is agreed that any controversy between General Agent and the Producer arising out of or in any way related to this Agreement shall be submitted to arbitration conducted under the provisions of the Commercial Arbitration Rules of the American Arbitration Association. Arbitration must be commenced by service upon the other party of a written demand for arbitration or a written notice of intention to arbitrate electing the arbitration tribunal. In the event the Producer does not make such election within five (5) days of such demand or notice, then the Producer authorizes the General Agent to do so on the Producer’s behalf. Judgement upon any award rendered by the arbitrator shall be final and may be entered in any court having jurisdiction thereof. Arbitration shall be conducted in the County of Orange County.

18. Attorney’s Fees. If legal action including arbitration is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys’ fees and costs in addition to any other relief to which the prevailing party may be entitled. The arbitrator(s) shall determine the prevailing party and the amounts to be reimbursed. Judgement upon any award rendered by the arbitrators shall include such legal expenses.

19. Notice. All notices required or permitted to be given under this Agreement shall be in writing and shall be given as follows:

A. If given by the General Agent: WMC Insurance Services

9279 Research Drive

Irvine, CA 92618

B. If given by the Producer:

Personal delivery, regular mail, fax, or overnight services such as Federal Express may make notices and communications. If notice is personally delivered or faxed during normal business hours, such notice shall be deemed to have been given on the date it is personally delivered or faxed. Otherwise, it shall be deemed given as of the next business day. If mailed, notice shall be deemed given on the date of deposit in the United States Mail with proper postage affixed, or the day of receipt as evidenced by mail sent return receipt requested. If sent by overnight mail services, such as Federal Express, notice shall be deemed given the next business day after it is sent by way of such service. Each party shall promptly notify the other party in writing of any changes of address or fax numbers.

20. Timely performance. Time is of the essence with respect to any act set forth in this Agreement.

21. Best Efforts. This Agreement is made between honorable persons experienced in the solicitation and sale of insurance and health plan products. All parties pledge their best efforts to honor both the technical requirements and the intent of this Agreement and agree that any disputes which may arise shall be resolved in consideration of the purpose of this Agreement as well as the technical language and shall take into account the custom and practice of the industry with respect to such matters.

22. Effect of Any Ambiguity. The parties jointly prepared this Agreement. Each party had the assistance, or the opportunity to have the assistance, of legal counsel. The parties and their counsel, if any, have attempted to draft a clear and unambiguous document; in the event they have been unsuccessful, any ambiguity is to be resolved without resort to the presumption that either party drafted any particular section and that any ambiguities in that specific section should thus be construed against that party.

23. Authority to Act. The undersigned each represent and warrant that each has respectively taken all actions and has obtained all authorizations, consents, and approvals necessary to execute this Agreement.

24. Counterparts. This Agreement may be executed in two or more counterparts each of which shall be deemed a duplicate original but all of, which together constitute one and the same counterpart when all parties have affixed signatures.

25. Severability. If any provision of this Agreement is held, determined, or adjudicated to be invalid, unenforceable, or void for any reason, such provision shall be severed from the remaining provisions of this Agreement and shall not affect the validity and enforceability of the remaining provisions.

26. Terms Are Covenants and Conditions. The terms of this Agreement are contractual and are not mere recitals.

27. Successors. This Agreement shall be binding upon and for the benefit of the parties and their respective heirs, executors, administrators, successors, devisees, and assignees.

28. Headings. The headings or captions of this Agreement shall have no effect on its interpretation.

DATE:

[PRODUCER]

WMC INSURANCE SERVICES, INC

DATE:

By:

Its:

2020 SCHEDULE “A” TO INDEPENDENT PRODUCER’S AGREEMENT

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Health Plan** | **New to MAPD Plan** | **Renewal** | **Like Plan Switch** | **Like Plan Switch Renewal** |
| **Aetna** | **636** | **318** | **318** | **318** |
| **Alignment** | **636** | **318** | **318** | **318** |
| **Anthem/CareMore** | **636** | **318** | **318** | **318** |
| **Blue Shield** | **636** | **318** | **318** | **318** |
| **Brand New Day** | **636** | **318** | **318** | **318** |
| **Care1st** | **636** | **318** | **318** | **318** |
| **EasyChoice** | **636** | **318** | **318** | **318** |
| **Humana** | **636** | **318** | **318** | **318** |
| **Scan** | **636** | **318** | **318** | **318** |
| **United Healthcare** | **636** | **318** | **318** | **318** |
| **Health Net** | **636** | **318** | **318** | **318** |
| **Clever Care** | **636** | **318** | **318** | **318** |

WMC INSURANCE SERVICES, INC. (“General Agent”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Producer”) agree to the following schedule:

Payments will be made according to the regular payment schedule for employees of the General Agent.

I. ADJUSTMENTS and OFFSETS: General Agent shall have the right to retroactively recover any Producer commissions paid under this Schedule A as chargeback by the Plans and CMS. General Agent shall have the right to offset any Producer commission adjustments from subsequent compensation payments

II. BROKER of RECORD: Some Plans mandate that the Producer uses WMC’s EIN number as the writing number. In that case, with the Plan, WMC will show as the Broker of Record for payment of commissions. WMC acknowledges the Producer is the Broker of Record and if the Producer wishes direct payment from the Plan then WMC will facilitate Producer’s request for a Broker of Record transfer of their block business to the Producer’s tax id.

III. OTHER: It is the intent of this Schedule A and the Independent Producer’s Agreement of which this schedule is a part that the Plans shall pay the entire commission due to General Agent. At which time payment is made to General Agent, General Agent shall be responsible for payment of Producer’s share the first week of the month following payment by the Plans. Renewal payments continue to the General Agent that the payment was originated through and General Agent shall be responsible for payment of the Producer’s share.

IV. Commission Changes and Bonus Payments: General Agent will change commission rates based on directives by the Plans. Notification will be at the time the Plans announce any commission rate changes, either increases or decreases. Enrollments booked at the published rates of the Plans will be paid to the brokers. Any carrier bonus programs will be paid to the brokers as published by the Plan.

Agreed to and executed on , 20 at Irvine, California.

Producer General Agent