



Peek Performance, Inc.
4115 East North Street
Greenville SC 29615
864-228-2635 Office
800-539-1021 Fax
clayp@ppisales.info
www.peakperformanceinsurance.com

Community Health Alliance

Name: _____

Immediate Upline: _____

States Licensed to sell in: _____

Please attach all licenses, current E/O certificate, voided check, release letter and/or release letter of explanation (for bankruptcy, vector, SLED explanation etc.) and fax back to 800-539-1021.

- Products:** Health
 Life

Tennessee State Insurance License ID Number: _____

THE HEALTH INSURANCE MARKETPLACE (“THE MARKETPLACE”) BROKER/AGENT CERTIFICATE, FOR BROKERS SELLING ON THE MARKETPLACE.

Copy of the Marketplace Certificate must be attached for applicant to be considered, if Brokers plan to sell coverage on the Marketplace.

If applicant would like to provide or feels additional information is necessary, please attach to application.

Evidence of Errors and Omissions Insurance

Copy of Application, policy face page or evidence that coverage is in-force must be attached.

Producer Questions – If your answer is “Yes” to any of the questions below, please write details on a separate sheet and attach. Failure to disclose may result in a decline of your application.

1. Are you now being sued or have you ever been sued or had a judgment rendered against you? _____
2. Have you ever filed for bankruptcy or sought protection from your creditors? _____
3. Have you ever been charged, convicted, or pled guilty to a felony, misdemeanor or other crime involving investments, securities, insurance, real estate, or any type of financial instrument? _____
4. Have you ever been charged, convicted, or pled guilty to a felony, misdemeanor or other crime involving larceny, theft, abuse, violence, dishonesty, breach of trust or a violation of the Federal Crime Bill? _____
5. Has any federal or state regulatory agency ever:
 - a. Censored you, threatened to suspend or terminate, or suspended or terminated your license(s) to sell securities, insurance, annuities, real estate, or any other type of financial instrument? _____
 - b. Found you made false statement(s) or omissions or been dishonest, unfair, or unethical? _____
 - c. Found you have been involved in a violation of investment, real estate, or insurance related statutes or regulations? _____
 - d. Found that you were a cause in an investment, real estate, or insurance agency or business having its authorization to do business denied, suspended, or revoked or restricted? _____
6. Are you now or have you ever been prevented from engaging in any activities related to securities, insurance, annuities, real estate, or any other type of financial instrument? _____
7. Have you ever been discharged or permitted to resign because you were accused of violating investment, real estate, or insurance related statutes, regulations, or rules of industry standards of conduct? _____
8. In the last five years, have any agent or broker contracts that you held with investment, real estate, or insurance companies or agencies been canceled for cause? _____
9. In the last five years, has any policy or application for errors and omissions insurance on your behalf been declined, cancelled, or refused renewal? _____
10. Has any insurance company ever paid a claim on a bond taken out on your behalf? _____

Credit/Investigative Report Notice and Release

As part of the application procedure, Community Health Alliance ("CHA") may have a "consumer report" and/or an "investigative consumer report", as defined under the Fair Credit Reporting Act prepared. Reports may be obtained at any time after receipt of this authorization, throughout the term of the Community Health Alliance Products Agency Agreement (the "Agreement"), through either your affiliation with the above noted Agency, or your directly contracting under such Agreement as an independent broker/agent, as permitted by law. You have the right, upon written request made within a reasonable amount of time after receipt of this notice, to request disclosure of the nature and scope of any investigative consumer report.

The investigative report may consist of an investigative consumer report, criminal record report, insurance department inquiries, or interviews with third parties. Should a report have an adverse effect on my application, CHA, or its contracted agent conducting the report, will notify me in writing and identify the name and address of the reporting agency that provided the adverse information and a copy of the A Summary of Your Rights under the Fair Reporting Act..

I hereby authorize the conducting of all such inquiries and obtaining these investigative consumer reports. I authorize all persons, firms, and entities having information about me to release all information that is requested. I release from liability all persons, firms, or entities supplying such information, and I agree to hold CHA or its agents harmless from and indemnify them from any liability which may incur as a result of conducting any of the inquiries contemplated herein. CHA may provide to its affiliate companies all information it receives during its investigation. CHA may provide to its affiliate companies or third parties, including agencies that assume my debit balance, any financial, business, legal or tax information regarding me that is not part of the investigative report that it receives from third parties or its affiliate companies. I authorize CHA to provide information concerning any past-due debts owed CHA to the credit reporting services to which it subscribes. These authorizations shall remain in effect for the term of the Agency Agreement, after the date this authorization is signed.

I certify that I have reviewed this application/authorization and that my answers are true and correct. I acknowledge that this application/authorization will form a part of the Agreement with CHA. Further, I understand that if any information is incorrect or incomplete, it will be grounds, at the sole discretion CHA, for rejecting this application or for termination of the Agreement.

Under Penalties of Perjury, I certify that the Social Security Number, Taxpayer Identification Number, or both, indicated on this form is correct.

Signature

Date

Community Health Alliance Products Agency Agreement

This Community Health Alliance Products Agency Agreement (hereinafter referred to as the "Agreement") is made by and between Community Health Alliance ("CHA") with its principal office located at 445 S. Gay Street, Knoxville, TN, and the Agency listed on the signature page of this Agreement (hereinafter referred to as the "Agency").

1. Recitals

CHA is a licensed insurer in the State of Tennessee that provides, insures, arranges for, and administers health benefits and related services to individuals and small employers, as a Consumer Operated and Oriented Plan ("CO-OP") program member as defined in the federal Patient Protection and Affordable Care Act, as amended, and the Health Care and Education Reconciliation Act of 2010 (hereinafter referred to as the "ACA"). CHA desires to contract with and appoint the Agency to market, sell and distribute certain health insurance products and services of CHA in accordance with applicable state and federal laws.

The Agency desires to contract with and be appointed by CHA to market, sell and distribute CHA's health insurance products and services in accordance with applicable state and federal laws and the terms of this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants of the parties, the sufficiency of which is hereby acknowledged, the parties have agreed as follows:

2. Definitions

Defined terms, which are capitalized in this Agreement, shall have the following meanings:

- A. "Addendum" is incorporated into this Agreement by reference, and sets forth additional terms and conditions of the Agreement.
- B. "Agency Account" is an account of an individual, small employer or employee of a small employer, whose Contract with CHA is currently in force and was placed through the Agency.
- C. "Application" is the document completed by a Member for the issuance of a Contract from CHA.
- D. "Business" shall be classified as either:
 - 1. "New Business" which are Contracts with a Member that has not previously been covered by CHA; or whose coverage with CHA has lapsed, been canceled, or expired for a period of thirty (30) days or more; or
 - 2. "Renewal Business" which is not New Business.

- E. "Commission" is the compensation paid to the Agency in accordance with the terms of the applicable Exhibit.
- F. "Contract" is the agreement between CHA and the Member.
- G. "Coverage" is the Contract and other documents that describe the covered benefits that CHA has agreed to provide to Members.
- H. "Exhibit" is incorporated into this Agreement by reference, and sets forth the terms and conditions upon which the Agency will be compensated for placing Business with CHA, and otherwise amends the Agreement.
- I. "Laws" are applicable State or Federal statutes, regulations and other requirements.
- J. "Member" is an individual, small employer or employee of a small employer, as defined under the ACA, who are enrolled for Coverage under a Contract.
- K. "Officer" is a person so designated by CHA's Board of Directors.
- L. "Premiums" are the periodic payments required to keep a Contract in force.
- M. "Producing Agent" is a licensed agent or broker contracted with CHA, or a licensed agent or broker who is employed by or contracts with the Agency.

3. Agency Duties and Performance Obligations

- A. Appointment. The Agency represents that the information contained in each Producing Agent's Producer Request for Appointment, which is incorporated into this Agreement by Addendum, is and shall remain true and accurate throughout the term of this Agreement. The Agency shall promptly notify CHA of any: (1) material changes in the information set forth in a Producing Agent's Producer Request for Appointment; (2) inquiries or disciplinary actions initiated against a Producing Agent by regulatory agencies; (3) cancellation, material modification or non-renewal of the Agency's or a Producing Agent's liability insurance coverage or fidelity bonds; or (4) other matters which adversely affect the Agency's or Producing Agent's ability to perform his/her duties pursuant to this Agreement.

If CHA elects to contract with the Agency, it will appoint those Producing Agents who are appropriately licensed to place Coverage with CHA pursuant to applicable Laws. The Agency warrants that its Producing Agent(s) will comply with all applicable Laws, including but not limited to, the ACA and all training and certifications required pursuant to the ACA, and any and all state and federal privacy and do-not-call laws, when representing CHA pursuant to this Agreement, and that its representation of CHA will not conflict with its obligations to, or interfere with the rights of, any third parties. Producing Agents shall be bound by the terms of this Agreement when representing CHA and, if there is any conflict between the terms of this Agreement and any agreement between the Agency and a Producing Agent, this Agreement shall be controlling.

- B. Solicitation of Eligible Individuals. The Agency shall exercise its best efforts to identify and solicit eligible individuals, as defined under the ACA, to apply for Coverage from CHA during the term of this Agreement.
- C. Solicitation Materials. The Agency shall not use the name, service marks or symbols or otherwise make reference to CHA, without the express written consent of an Officer of CHA. The Agency shall not use the name, service marks or symbols or otherwise make reference to CHA on any Agency Website without the express written consent of an Officer of CHA.
- D. Modification and use of Materials. Solicitation materials or proposals provided by CHA shall not be amended or altered by the Agency, shall only be used in connection with the Agency's activities on behalf of CHA pursuant to this Agreement, shall remain the property of CHA, and shall promptly be accounted for or returned to CHA upon request or upon the termination of this Agreement.
- E. Enrolling for Coverage. The Agency will complete the eligibility verification and assist eligible individuals with enrolling in a CHA plan both on and off the Health Insurance Marketplace ("the Marketplace"), and, where applicable, will assist individuals with applying for premium subsidies (advance tax credits) and cost-sharing reductions, as set forth under the ACA. If Agency maintains their own website for enrolling individuals and chooses not to enroll directly on the Marketplace, Agency agrees to comply with all requirements set forth under the ACA for maintaining such website, in addition to all other state and federal Laws.
- F. Service Responsibilities. The Agency shall cooperate with representatives of CHA, upon reasonable request, to assist with the offering of coverage and provision of ongoing support services to Agency Accounts.
- G. Limitation of Authority. The Agency shall have no authority to bind CHA to provide coverage, alter CHA's established Premiums, or modify the terms, conditions, limitations or exclusions of CHA's Coverage, without the prior express written consent of an Officer of CHA. This Agreement shall not grant the Agency an exclusive or preferential right to represent CHA, or solicit individuals in a geographical area or to solicit any specified individual or category of individuals, except as otherwise specifically provided in this Agreement or an Addendum.

4. CHA Duties and Performance Obligations

- A. CHA Products. CHA shall provide the Agency with the available CHA product offerings. CHA shall provide fulfillment, billing, claims processing, adjudication and customer service.
- B. Website Support. In the event the Agency elects to promote CHA offerings via the Internet, CHA shall provide the Agency with the reasonably necessary resources to allow the Agency to post CHA offerings on the Agency's website. These resources and materials shall not be amended or altered by the Agency, shall only be used in connection with the Agency's activities on behalf of CHA pursuant to this Agreement, shall remain the property of CHA, and shall promptly be accounted for or returned to CHA upon request or upon the termination of this Agreement.
- C. Rights Reserved By CHA. CHA specifically reserves the right, without the approval of

the Agency:

1. To cease doing business, or discontinue or withdraw from sale of any CHA product anywhere in the state of Tennessee.
2. To modify, change, or amend any certificate, contract or premium rate issued in conjunction with any of its products.
3. To determine all terms, conditions or limitations of any certificate or contract issued in conjunction with any of its products and to modify or change the terms under which any product may be sold, except as otherwise provided in this Agreement.

5. Books and Records

- A. **Maintenance.** The Agency shall maintain complete and accurate business records concerning its activities pursuant to this Agreement, in accordance with its customary business practices. CHA shall have the right to review and copy records directly related to the Agency's activities pursuant to this Agreement, at its expense upon reasonable advance notice, at the Agency's offices, during its normal business hours. This section shall survive the termination of this Agreement.
- B. **Record Ownership.** In the event this Agreement is terminated, the Agency's records shall remain the property of the Agency and left in the Agency's undisputed possession. In the event this Agreement is terminated, then CHA may continue to service CHA customers directly.
- C. **Purchasers.** Individuals, small employers or employees who purchase a CHA offering from an Agency are neither the property of CHA nor the property of the Agency. If an individual, small employer or employee purchases a CHA offering, the Agency will be considered to be the agent of such purchaser for that particular transaction, and the purchaser shall be a policyholder of CHA. This Agreement shall not prohibit either the Agency or CHA from soliciting said purchaser for other products. The fact that the Agency may have offerings from other carriers shall not be considered to be "solicitation" by the Agency.

6. Commission Payments

- A. **Commissions.** CHA shall bill and collect all Premiums other than the initial Premium, from an Agency Account. The Agency shall not, under any circumstances, bill, charge, or collect Premiums, other than the initial Premium, or any other charges from Members, unless expressly authorized in writing to do so by an Officer of CHA. Commissions shall not be due or payable pursuant to this Agreement, until CHA has received and accepted the Premium payment from a Member pursuant to the Contract. Commissions payable by CHA shall be subject to adjustment in accordance with subsection C, below.
- B. **Payment of Commissions.** Commissions payable pursuant to this Agreement shall be calculated in accordance with the applicable Exhibit, which may be revised annually. Agency will receive notice of the next calendar year's Commission schedule on or before November 1st, with an effective date of February 1st. Any February 1st Commission changes will be implemented at group or individual policy renewal, unless the Agency terminates this Agreement in accordance with Section 9.(B.)(3.). Commissions will be

paid within forty-five (45) days after CHA accepts payment of the Premium from a Member. CHA shall not be obligated to pay a Commission that would violate applicable state or federal laws. CHA shall pay Commissions to the Agency, in accordance with the terms of this Agreement, provided:

1. the Contract remains in effect and the Agency Account pays required premiums pursuant to that Contract; and
 2. an Agency Account continues to designate the Agency as its agent of record; and
 3. such payments are not prohibited by applicable laws.
- C. Adjustment of Commissions. CHA shall adjust Commission payments to Agency as follows:
1. CHA shall adjust the Commissions payable to the Agency to reflect any retroactive adjustment of the Premium paid by Agency Accounts in accordance with the terms of their Contracts.
 2. CHA may deduct the amount of any refund of Premiums or other indebtedness owed by the Agency to CHA pursuant to this Agreement from future Commissions payable to the Agency, as a first lien against such payments to the Agency.
 3. CHA reserves the right to require the Agency to repay the amount of any indebtedness, upon reasonable notice, as an alternative to offsetting the outstanding indebtedness against future Commission payments to the Agency.
 4. CHA may modify the Commission structure with a replacement Commission Exhibit, upon providing the Agency sixty (60) days advance written notice of the modification.
- D. Suspension of Commission Payment. CHA may, in its sole discretion, suspend commission payments if:
1. The Agency's or a Producing Agent's license, certification under the ACA, liability insurance coverage, or fidelity bonds are cancelled, materially altered, or not renewed.

7. Marketing, Advertising and Publicity

- A. In General. CHA and the Agency shall mutually agree on any CHA offerings portfolio which the Agency markets.
- B. Announcements or Press Releases. Except as may be required by law, neither party hereto shall, without the prior consent of the other, which consent shall not be unreasonably withheld or delayed, make any public announcement or issue any press release with respect to this Agreement. Prior to making any public disclosures required by applicable law, the disclosing party shall consult with the other to the extent feasible, as to the content and timing of such public announcement or press release.

C. Website Linking. CHA maintains a website with the current URL of www.chatn.org (this website or any successor website referred to as the "CHA Website") on which CHA offers information relating to CHA's health care products. If Agency desires to create a hyperlink to CHA's Website for use on any of Agency's websites, Agency agrees to comply by the following terms:

a. Linking obligations. Agency shall prominently display the hyperlink on each main introductory page of the Agency's website to the CHA Website with information provided by CHA.

b. Rights Granted by CHA.

- 1. License.** CHA grants to Agency a nonexclusive, nontransferable (without right to sublicense), license to link to the CHA Website in accordance with the specifications set forth in this Agreement. Agency shall link to the CHA Website only through the Agency's website, and shall not link to the CHA Website through any other URL or mirrored site without the prior written consent of CHA. In addition, Agency shall not (a) display or use the link in a manner that causes the CHA Website or any portion of its content to display within a frame, be associated with any advertising or sponsorship not part of the CHA Website, or otherwise incorporate CHA Website content into a third party website; (b) display or use an online link to any other information file contained in the CHA Website; (c) alter, block, or otherwise prevent display of any content of the CHA Website; (d) link to the CHA Website if, to a reasonable person, Agency's website may be obscene, defamatory, harassing, grossly offensive, or malicious; and/or (e) display or use the link in any manner that construes CHA to be a part of or endorse Agency or Agency's products or services, including, but not limited to, display of the CHA link in a font language larger than other brands on the Agency's website.
- 2. Trade Marks.** CHA grants to Agency a nonexclusive nontransferable (without right to sublicense) license to use, during the term of this Agreement, CHA's name, logo and certain other trademarks, trade names and service marks of CHA (the "CHA Licensed Marks"), solely for purposes of linking the Agency website to the CHA Website. Agency agrees that the CHA Licensed Marks are and will remain the sole property of CHA and agrees not to contest the ownership of the Marks for its own use. CHA reserves all rights to control the use of the CHA Licensed Marks, and Agency shall not use, change, or modify the CHA Licensed Marks in any manner without prior written authorization from CHA. Agency shall (1) cause the appropriate designation "TM" or the registration symbol "®" to be placed adjacent to the CHA Licensed Marks in connection with each use or display thereof and to indicate such additional information as CHA shall reasonably specify from time to time concerning the use of the CHA Licensed Marks, and (2) comply with all applicable laws pertaining to trademarks in force.
- 3. Reservation of Rights.** Except as expressly granted in this Agreement, Agency shall have no other rights of any kind in the CHA Licensed Marks, the CHA Website or the services therein. Under no circumstances will anything in this Agreement be construed as granting, by implication, estoppel or otherwise, a license to any of CHA's intellectual property or proprietary technology other than the use of the CHA's Website and CHA's Licensed Marks in accordance with the terms of this Agreement. Agency acknowledges that the CHA Website is the sole property of CHA, and this

Agreement only grants Agency a limited right to link to the CHA Website under the terms and conditions of this Agreement. Agency further acknowledges that use of the CHA Licensed Marks or the CHA Website contrary to the terms of this Agreement shall cause irreparable harm to CHA for which monetary damages are an inadequate remedy. Agency consents to the jurisdiction of any court of equity in which CHA seeks an injunction restraining such breach or threatened breach and to see specific performance of any provision of this Agreement.

c. Obligation of Agency.

1. Technical Obligations. Agency agrees to provide any graphics, text, or technical services necessary to set-up and maintain the appropriate links to the Agency website for the term of this Agreement and in accordance with the specifications set forth in this Agreement.

2. Disclosure. Agency shall comply with all regulations and policies set forth by CHA, as amended and revised from time to time, as such regulations and policies relate to linking to the CHA Website, including but not limited to disclosure regulations as they relate to CHA and CHA Licensed Marks and the brand of CHA ("Brand"). Agency shall provide Disclosure Statements (as defined below) written within immediate proximity of any link to the CHA Website. For purposes of this Agreement, "Disclosure Statement" shall include the following statement, which shall be located in immediate proximity to the appropriate link or Licensed Mark: "Community Health Alliance serves the businesses and residents of the State of Tennessee".

3. Privacy Policy. Agency agrees to maintain an appropriate privacy policy that accurately details the privacy practices of their organization. CHA reserves the right to review Agencies privacy policy to ensure compliance with the Business Associate Addendum prior to granting approval for linking to www.chatn.org.

d. Representations of Agency. Agency represents and warrants that the Agency's website contains no obscene, defamatory, harassing, offensive or malicious material, and Agency further represents that the Agency has no knowledge of any plan to implement any such material into the Agency's website.

e. Termination. Agency may cancel the Website Linking portion of this Agreement at any time on sixty (60) days written notice. Agency may terminate the Website Linking portion of this Agreement without sixty (60) days written notice if CHA fails to cure a default of a material obligation related to Website Linking within thirty (30) days of receiving written notice specifying such default. CHA may terminate the Website Linking portion of this Agreement at any time and for any reason without prior notice. Upon termination of Website Linking portion of this Agreement for any reason, all rights and licenses granted under this Agreement shall terminate, and Agency shall immediately cease use of licensed marks and immediately remove any links to the website.

f. Limitation of Warranties. CHA shall have no obligation to verify the current or continued accuracy of any information provided by Agency or to verify the accuracy of any hyperlink and is not responsible for any errors contained in any hyperlink. The hyperlinks or any information provided in the CHA Website regarding the hyperlinks are provided "AS IS"

WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. Some jurisdictions do not allow the exclusion of implied warranties so the above exclusion may not apply to Agency. UNDER NO CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, SHALL CHA BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA OR PROFIT, ARISING OUT OF THE USE, OR THE INABILITY TO USE, THE MATERIALS OR LINKS ON THE CHA WEBSITE, EVEN IF CHA OR A CHA AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Some states do not allow the exclusion or the limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to Agency.

g. Indemnification. Each party hereto agrees to indemnify, defend, and hold harmless the other and its directors, officers, employees, agents, parent, subsidiaries, successors, and assigns from and against any and all liabilities, claims, suits, actions, demands, settlements, losses, judgments, costs, damages and expenses (including reasonable attorneys' fees) arising out of or resulting from, in whole or part, the performance of the party pursuant to the Website Linking portion of this Agreement or any negligent acts, errors or omissions of the party, its employees, agents or contractors and its affiliated companies and their employees, agents or contractors in performing under the Website linking portion of this Agreement.

D. Payment Card Industry Data Security Standards. If the Agency accepts or maintains account information, the Agency acknowledges that they are responsible for securing cardholder data pursuant to the Payment Card Industry Data Security Standards. "Account Information" and "Cardholder Data" refer to any information contained on a credit or debit card containing a logo owned by MasterCard, Visa, American Express, or Discover. CHA may, in its sole discretion, conduct an audit of Agency, within normal business hours and upon forty-eight (48) hours' notice, to verify Agency's compliance with this provision.

8. Confidentiality, Proprietary Information, and Technology

A. Nondisclosure. The Agency acknowledges that CHA may furnish information identified as trade secret, proprietary or confidential information ("Confidential Information") to it during the term of this Agreement. The Agency agrees that it shall not disclose such Confidential Information to third parties without the written consent of an Officer of CHA. The Agency agrees to promptly return all originals and copies of such Confidential Information to CHA upon request or upon the termination of this Agreement. Both parties recognize that certain technologies, innovations, and processes may be considered as proprietary trade secrets and agree to make no disclosures of these technologies, innovations or processes except as required by applicable Laws, regulations, or pursuant to a court order.

B. Exceptions. It is understood and agreed between the parties that Confidential Information does not include or encompass information which is generally available to the public other than as a result of breach of this Agreement, nor does it include either of the following: information disclosed pursuant to a court or governmental agency order; or information required to be disclosed pursuant to applicable Laws.

C. Use. The Agency shall only utilize Confidential Information as necessary or appropriate to perform its duties pursuant to this Agreement. The Agency shall not otherwise utilize such

Confidential Information for its benefit or the benefit of any third party. The Agency may disclose Confidential Information to its Producing Agents, employees and other representatives (its "Representatives") as necessary to permit the Agency to perform its duties pursuant to this Agreement, but only after informing those Representatives of their obligation to maintain the confidentiality of such Confidential Information. The Agency shall be responsible if its Representatives breach this section of the Agreement.

- D. Disclosure to Third Parties. The Agency may disclose Confidential Information to third parties only with CHA's written consent or if compelled to do so by a subpoena, court order or other legally binding order, but only after providing CHA with notice of an opportunity to challenge such efforts to compel disclosure of that Confidential Information. This non-disclosure obligation shall not be applicable to any Confidential Information that is or becomes publicly available other than as a result of the Agency's breach of this non-disclosure obligation.
- E. Damages. Agency acknowledges that any actual or threatened violation of this section may cause irreparable damages to CHA that are inadequately compensable by damages or other legal remedies. In the event of any such breach or threatened breach of this section, CHA may seek and obtain injunctive relief, specific performance, or any other equitable remedies available to it.
- F. Joint Technologies. Each party may elect, by a separate Attachment, to license technologies, innovations, or processes for use by the other. Technologies, innovations, or processes developed by either party during the course of this Agreement for use in the sale of products offered through this Agreement shall be considered as joint property of the parties and may not be disclosed to or licensed for use by any third party without the express written consent of both CHA and the Agency.
- G. Health Insurance Portability and Accountability Act ("HIPAA"). Agency agrees to comply with applicable provisions of the Health Insurance Portability and Accountability Act ("HIPAA"), including the HIPAA privacy regulation, 45 CFR 160-164 and the Business Associate Addendum of this Agreement (the "Business Associate Addendum"). The Business Associate Addendum shall supersede this subsection if it is determined that there is a conflict between the Business Associate Addendum and any provision of this Agreement. The Business Associate Addendum shall survive the termination of this Agreement.
- H. Survival. This section shall survive the termination of this Agreement.

9. Suspension and Termination of Agreement

- A. Suspension. The Agency's or Producing Agent's appointment with CHA may be suspended until final review and resolution of any allegations, if CHA becomes aware of allegations, from Members, their representatives or any other source CHA deems credible, such as regulatory authorities, that Agency is engaged or has been engaged in conduct in violation of this Agreement. During the period of suspension, Agency is prohibited from marketing any CHA products. However, CHA shall continue to pay

Commissions in accordance with this Agreement for existing contracts in effect prior to the date of suspension. In the event that CHA determines, after its investigation of the allegations of misconduct that Agency's actions do not warrant termination, CHA will reinstate Agency subject to a six month probationary period. At the end of the probationary period, Agency's actions will be reviewed and, if found to be in full compliance with the Agreement, probation will be lifted and no further action will be taken.

B. This Agreement may be terminated:

1. immediately upon written notice if either party loses any license or certification which is required to perform its duties pursuant to this Agreement or an Addendum, or becomes insolvent, or is charged with an act of moral turpitude;

2. upon thirty (30) days advance written notice if either party otherwise breaches this Agreement and does not cure that breach within thirty (30) days of being notified of such alleged breach by the non-breaching party; or

3. without cause upon sixty (60) days advance written notice to the other party.

C. Upon the termination of this Agreement, the Commissions payable to the Agency shall be limited to the Commissions payable on Premiums that:

1. have been paid;

2. are owed prior to termination and subsequently paid to CHA; or

3. are paid for Coverage provided to an Agency Account that continues to designate the Agency as its agent of record after the termination date of this Agreement.

If this Agreement is terminated pursuant to section B(1) above, any obligation by CHA to provide future compensation under the terms of this Agreement is void.

D. The parties agree to cooperate in good faith to promptly resolve any outstanding administrative or payment issues following the termination of this Agreement.

E. The parties acknowledge that they each have a valuable interest in their relationship with Agency Accounts and Members. CHA reserves the right to solicit Agency Accounts and Members to continue coverage after termination of this Agreement.

F. This Agreement may also be terminated at any time immediately upon the following:

1. If while the Agency is conducting business on CHA's behalf, either party fails to comply with the Laws or regulations governing the insurance business in Tennessee or the ACA.

2. If the Agency makes false or misleading statements about CHA or CHA products;

3. If the Agency fails to remit CHA funds to CHA or subjects CHA to any liability (except for that incurred by CHA under a properly issued policy or contract) or commits any fraud hereunder. Termination pursuant to subsection F. voids any obligation by CHA to provide future compensation under the terms of this Agreement.

10. Independent Contractor Relationship

- A. No Employer-Employee Relationship.** The Agency and its Representatives are independent contractors of CHA. This Agreement shall not be construed to create an employer-employee or joint venture relationship among those parties.
- B. Insurance Coverage.** The Agency shall obtain and maintain all insurance coverages, including but not limited to errors and omissions, workers' compensation and comprehensive general liability coverages, in amounts that are reasonably acceptable to CHA, and that are necessary or appropriate to insure the Agency against liability or to comply with applicable Laws. The Agency agrees to submit evidence of such coverages to CHA upon request. The Agency shall also be responsible for paying all wages, benefits, license fees and taxes for itself and its Representatives related to the provision of services to CHA pursuant to this Agreement.
- C. No Liability for Acts of Other Party.** Neither party shall have imputed, constructive or vicarious liability for any loss or expense, including attorneys' fees, incurred in the settlement or satisfaction of any claim, action or judgment proximately resulting from any action or failure to act by the other party, its directors, officers, employees, agents or contractors. The responsible party shall indemnify and hold the other party harmless against any and all vicarious losses or expenses related to such claims, actions or judgments; provided the indemnifying party has received timely notice of and been given the opportunity to defend against such actions.
- D. This section shall survive the termination of this Agreement.**

11. Miscellaneous

- A. Binding Nature of Agreement.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.
- B. Entire Agreement.** This Agreement represents the entire agreement between the parties related to its subject matter. All prior agreements, negotiations, understandings, conversations, and communications, if any, that relate to the sale of products by the Agency on behalf of CHA are merged into this Agreement and shall be of no force and effect other than as expressly set forth in this Agreement.
- C. Severability.** The provisions of this Agreement are severable. If any provision or part of this Agreement is held by any court or other official body of competent jurisdiction to be invalid or unenforceable for any reason, the remaining provisions or parts hereof shall continue to be given effect and shall bind the parties hereto unless the unenforceability or illegality has the consequences of substantially altering the respective rights and obligations of the parties.
- D. No Waiver.** No waiver of any provision of this Agreement shall be deemed to be or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by

the party making the waiver. The failure of any party to object to any act, omission or breach by the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of any rights or remedies hereunder or otherwise provided at law or in equity.

- E. Governing Law.** This Agreement shall be governed by and construed in accordance with applicable Tennessee and Federal Laws.
- F. Execution in Counterparts.** This Agreement may be executed by the parties hereto signing the same instrument, or by each party hereto signing a separate counterpart, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The parties agree that documents executed by facsimile shall be acceptable in this transaction, and the signatures thereof shall have the same force and effect as original signatures.
- G. Amendments.** This Agreement may only be amended with the prior written consent of the parties.
- H. Captions.** The captions appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such paragraph(s).
- I. Construction.** This Agreement shall be constructed without regard to the party that drafted it. Any ambiguity shall not be interpreted against either party but shall, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.
- J. Assignment.** The Agency shall not assign its rights or delegate its obligations pursuant to this Agreement to a third party without the prior written consent of CHA, which shall not be unreasonably withheld.
- K. Notices.** Any notice required pursuant to the terms of this Agreement shall either be hand delivered or given in writing, sent by certified or overnight mail, return receipt requested, to the address listed on the signature page of this Agreement or such other address as a party may designate, in writing, during the term of this Agreement.
- L. Other Acceptable Forms of this Document.** The following shall have the same legal effect as an original: facsimile copy, imaged copy, scanned copy, and/or an electronic version.
- M. Signature.** A scanned, imaged, electronic, photocopy or stamp of the signatures hereunder shall have the same force and effect as an originally executed signature.
- N. Disputes.** Any dispute related to this Agreement, which the parties are unable to resolve through informal discussion within thirty (30) days after the initiation of that dispute, shall be resolved through binding arbitration or some other mutually acceptable dispute resolution procedure (e.g., mediation). Such arbitration or mediation shall be conducted in accordance with and subject to the Arbitration Rules of the American Health Lawyers Association (AHLA) then in effect. The parties will select a single arbitrator from a panel of arbitrators proposed by the AHLA. In the event the parties cannot agree on the arbitrator, then the arbitrator shall be appointed by the AHLA. The arbitration shall be

conducted in Knoxville, Tennessee, or such other location as mutually agreed upon by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement intending to be bound on and after the ____ day of _____, _____

Community Health Alliance:

By: _____

Title: _____

Address/Telephone:

Agency:

By: _____

Title: _____

Tax I.D. #: _____

Address/Telephone:

Commissions Payment Addendum to the Community Health Alliance Products Agreement

This Commissions Payment Addendum ("the Addendum") is entered into by and between the Agency, Producing Agent and/or both, and Community Health Alliance, with its principal office located at 445 S. Gay Street, Knoxville, TN. For Commissions to be payable to the Agency/Producing Agent, all information requested below must be completed.

PLEASE SELECT HOW AGENCY/PRODUCING AGENT WOULD LIKE COMMISSIONS TO BE PAID:

Commissions paid to Agency (must include Tax ID # below)

Commissions paid to Producing Agent (must include SSN#, Tax ID # or both, if applicable below)

Please complete the following information:

Name: **Peek Performance, Inc.**

Tax ID#/SSN#: **56-2218208**

Agency Name (if applicable): _____

Producing Agent Name: _____

Agency/Producing Agent Address (whichever is applicable):

4115 East North Street, Ste. 202

Greenville, SC 29615

Agency Telephone # **864-228-2635**

Producing Agent Contact # _____

Fax # _____

Email _____

Signature

Date

Business Associate Addendum to the Community Health Alliance Products Agency Agreement

This Business Associate Addendum (“Addendum”) is entered into by and between _____, (“Business Associate”), and **Community Health Alliance** (“Covered Entity”) and shall apply to Business Associate only in its capacity as a Business Associate under the Privacy and Security Rules and the HITECH Act, as more specifically set forth below.

Reasons for Addendum

Whereas, this Addendum is entered into and made a part of the Community Health Alliance Products Agency Agreement (the “Agreement”) between the parties;

Whereas, this Addendum is entered into as of the Commencement Date of the Agreement;

Whereas, as part of its provision of service to Covered Entity under the Agreement, Business Associate may obtain and possess certain “Protected Health Information” (as defined below) from Covered Entity;

Whereas, the parties are committed to complying with the Department of Health and Human Services (“DHHS”) regulations, Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Part 160, Part 162 and Part 164, Subparts A, C, E (the “Privacy and Security Rules”), under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and Standards for Breach Notification for Unsecured Protected Health Information, 45 CFR Part 164, Subpart D, under the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), as incorporated in Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009; and

Whereas, as a result of the Privacy and Security Rules and the HITECH Act, the parties wish to amend the Agreement to comply with the Privacy and Security Rules and the HITECH Act.

NOW THEREFORE, in consideration of the mutual promises contained herein and as a condition of the continuation of the Agreement, the parties agree to the following:

1. Definitions

- (a) Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the Privacy and Security Rules and the HITECH Act.
- (b) “**Individual**” shall have the same meaning as the term “individual” in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- (c) “**Protected Health Information**” or “**PHI**” shall have the same meaning as the term “protected health information” in 45 CFR 160.103, shall include, but shall not be limited to, “**Electronic Protected Health Information**” or “**Electronic PHI**”, as defined below, and shall be limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- (d) “**Electronic Protected Health Information**” or “**Electronic PHI**” shall mean PHI that is transmitted by or maintained in electronic media, as the term “electronic protected health information” is defined in 45 CFR 160.103.
- (e) “**Required By Law**” shall have the same meaning as the term “required by law” in 45 CFR 164.103.
- (f) “**Secretary**” shall mean the Secretary of the Department of Health and Human Services or his designee.
- (g) “**Security Incident**” shall mean the attempted or unsuccessful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information

system, as defined in 45 CFR 164.304.

- (h) **“Breach”** shall have the same meaning as “breach” under 45 CFR 164.402.
- (i) **“Unsecured Protected Health Information”** or **“Unsecured PHI”** shall have the same meaning as “unsecured Protected Health Information” or “unsecured PHI” under 45 CFR 164.402.
- (j) **“Discovery”** shall refer to the first day on which a Breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to the Business Associate, as described under 45 CFR 164.410(2).

2. Obligations and Activities of Business Associate

- (a) Business Associate agrees to not use or further disclose PHI other than as permitted or required by the Agreement, this Addendum or as Required By Law.
- (b) Business Associate agrees to use appropriate safeguards and commercially reasonable efforts to prevent use or disclosure of the PHI other than as provided for by this Addendum.
- (c) Business Associate agrees to promptly mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Addendum.
- (d) Business Associate agrees to notify Covered Entity without unreasonable delay, and in no event later than 60 calendar days following the Discovery of any Breach, use, or disclosure of Unsecured PHI not provided for by this Addendum of which Business Associate becomes aware, including, but not limited to, any Security Incident relating to Electronic PHI. The notification shall include, to the extent possible, 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 the Breach, as well as any other information required by 45 CFR 164.404(c), including, but not limited to, a brief description of what happened, the types of Unsecured PHI involved, and steps Individuals should take to protect themselves.
- (e) Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- (f) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Addendum to Business Associate with respect to such information, including, but not limited to, ensuring that any agent, including a subcontractor, to whom it provides Electronic PHI agrees to implement the safeguards described in Section 2(e) of this Addendum, to protect such Electronic PHI.
- (g) Business Associate agrees to provide during normal business hours and upon ten (10) days prior written notice from Covered Entity, access to PHI in a Designated Record Set, to Covered Entity in order to meet the requirements under 45 CFR 164.524, and where applicable, in accordance with the HITECH Act.
- (h) Business Associate agrees to provide access, at the written request of an Individual, to that Individual’s PHI in a Designated Record Set, in order to meet the requirements under 45 CFR 164.524. Business Associate’s response to an Individual’s request for access shall be timely if the requested PHI is maintained or accessible to Business Associate on-site, and Business Associate grants or denies the request in writing within 30 days of the earlier of either Business Associate’s or Covered Entity’s receipt of the request. However, if the requested information is not maintained or accessible to Business Associate on-site, Business Associate will grant or deny the request in writing within 60 days after the earlier of either Business Associate’s or Covered Entity’s receipt of the request. If Business Associate is unable to process an Individual’s request within the respective 30-day or 60-day periods, Business Associate may be granted

one additional extension for up to 30 days, provided that Business Associate provides the Individual with a written statement of the reasons for the delay and the date on which Business Associate will grant or deny the request. Each request made by an Individual for such access shall be subject to a charge for both the copies of the information and staff time to copy the information, plus postage for mailing the requested information. Business Associate will inform the Individual of such fee in advance and provide the Individual with the opportunity to withdraw or modify the request for an accounting.

- (i) Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual. Business Associate's response to an Individual's request for amendment shall be timely if Business Associate grants or denies the request in writing within 60 days after the earlier of either Business Associate's or Covered Entity's receipt of the request. If Business Associate is unable to process an Individual's request within the 60-day period, Business Associate may extend the period for responding to a request up to an additional 30 days, provided that Business Associate provides the Individual with a written statement of the reasons for the delay and the date on which Business Associate will grant or deny the request for amendment.
- (j) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available during normal business hours and upon ten (10) days prior written notice, to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy and Security Rules.
- (k) Business Associate agrees to 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 CFR 164.528, and where so required by the HITECH Act and/or any accompanying regulations..
- (l) Business Associate agrees to provide to Covered Entity or an Individual, information collected in accordance with Section 2(k) of this Addendum, to permit either Business Associate or Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528, and where so required by the HITECH Act and/or any accompanying regulations. Business Associate may require Covered Entity's or an Individual's request for an accounting of disclosures to be in writing. Business Associate must act on the Individual's request for an accounting no later than 60 days after the earlier of either Business Associate's or Covered Entity's receipt of such request. Business Associate may have one additional extension for up to 30 days if it provides the Individual with a written statement of the reason for the delay and the date by which the accounting will be provided. The first accounting requested in any 12-month period will be provided free of charge, but each subsequent request made within that same period will be charged a cost-based fee for completing the requested accounting. Business Associate will inform the Individual of such fee in advance and provide the Individual with the opportunity to withdraw or modify the request for a subsequent accounting.

Notwithstanding any other requirement under this Subparagraph (l), Business Associate shall not be required to provide an accounting of any disclosure made: (i) to carry out Treatment, Payment and Health Care Operations, as those terms are defined in 45 CFR 164.501, except where such accounting is required by the HITECH Act, and as of the effective dates of this provision of the HITECH Act; (ii) to an Individual or authorized by the Individual; (iii) incident to a use or disclosure otherwise permitted or required by the Privacy and Security Rules; (iv) to persons involved in the Individual's care or for other notification purposes provided for in 45 CFR 164.510 of the Privacy and Security Rules; (v) for national security or intelligence purposes; (vi) to correctional institutions or law enforcement officials; (vii) as part of a limited data set in accordance with 45 CFR 164.514(e) of the Privacy and Security Rules; or (viii) made prior to April 14, 2003 or the effective date of the Privacy and Security Rules, if later.

- (m) In all cases, Business Associate shall only use or disclose the "Minimum Necessary" amount of PHI required for it to perform under the Agreement or this Addendum. "Minimum Necessary" shall have the

meaning set forth for such term in the Privacy and Security Rules. To the extent Covered Entity determines that Business Associate is disclosing more than is the Minimum Necessary, Covered Entity shall notify Business Associate in writing of such determination.

- (n) Business Associate agrees to comply with all other applicable requirements of the Privacy and Security Rules as such rules apply to Business Associate.
- (o) Business Associate shall develop and implement policies and procedures that meet the Security Standards documentation requirements as required by the HITECH Act.

3. Permitted Uses and Disclosures by Business Associate

- (a) Except as otherwise limited in this Addendum, Business Associate may use or disclose PHI to perform functions, activities, or services (including, but not limited to, assisting eligible individuals in the enrollment of Covered Entities health care products, assisting eligible individuals in applying for premium tax credit and cost sharing reductions, to address payment and health care operations issues which may arise for, or on behalf of, Covered Entity as specified in the Agreement or this Addendum, provided that such use or disclosure would not violate the Privacy and Security Rules or the HITECH Act if done by Covered Entity.
- (b) Except as otherwise limited in this Addendum, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (c) Except as otherwise limited in this Addendum, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (d) Except as otherwise limited in this Addendum, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
- (e) Except as otherwise limited in this Addendum, Business Associate may de-identify any and all PHI, provided that the de-identification conforms to the requirements of 45 CFR 164.514(b) of the Privacy and Security Rules, and further provided that Covered Entity maintains the documentation required by 45 CFR 164.514(b) of the Privacy and Security Rules, which may be in the form of a written assurance from Business Associate.
- (f) Except as otherwise limited in this Addendum, Business Associate may report violations of law to federal and state authorities consistent with 45 CFR 164.502(j)(1).
- (g) Except as otherwise limited in this Addendum, Business Associate may use PHI to create a limited data set or may disclose PHI in a limited data set, consistent with the requirements of 45 CFR 164.514(e).

4. Obligations of Covered Entity

- (a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to such notice.
- (b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that

Covered Entity has agreed to in accordance with 45 CFR 164.522.

- (d) Covered Entity shall provide Business Associate with the policies and procedures the Covered Entity implements in accordance with 45 CFR 164.530 and will provide updates to Business Associate of any changes to such policies and procedures, to the extent such policy or change may affect Business Associate's use or disclosure of PHI.
- (e) Covered Entity shall notify Business Associate of the designation of a Privacy Official and any changes of such designation, as well as the names of those persons who are to be given access to PHI to be disclosed to Covered Entity or on behalf of Covered Entity.
- (f) Pursuant to Section 2(j) of this Addendum, Business Associate shall allow Covered Entity to conduct a reasonable inspection of the internal practices, books, and records relating to the use and disclosure of PHI for the purpose of determining whether Business Associate has complied with this Addendum; provided, however, that (i) Business Associate and Covered Entity shall mutually agree in advance on the scope, timing and location of such an inspection, (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection, and (iii) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate.
- (g) When notified of a Breach, use, or disclosure of Unsecured PHI not provided for by this Addendum by Business Associate, Covered Entity agrees to notify the affected Individual, the Secretary and/or the media as required by 45 CFR 164.404, 164.406, and 164.408.

5. Term and Termination

- (a) Term. This Addendum shall terminate on the date the Agreement terminates.
- (b) Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate of this Addendum or a violation of the Privacy and Security Rules, Covered Entity shall provide Business Associate written notice and a thirty (30) day period for Business Associate to cure the breach or end the violation, and if Business Associate does not cure the breach or end the violation within such thirty (30) day period, Covered Entity may terminate this Addendum upon written notice. Covered Entity may immediately terminate this Addendum upon written notice if Business Associate has breached a material term of this Addendum and cure is not possible.
- (c) Effect of Termination.
 - (1) Except as provided in sub-paragraph (c) (2) of this Section, upon termination of this Addendum, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall also apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
 - (2) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Addendum 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.

6. Miscellaneous

- (a) Regulatory References. A reference in this Addendum to a section in the Privacy and Security Rules or the

HITECH Act means the section as in effect or as amended, and for which compliance is required.

- (b) Amendment. The Parties agree to enter into good faith negotiations as are necessary to amend this Addendum from time to time for the parties to comply with the requirements of the Privacy and Security Rules, HIPAA, and the HITECH Act.
- (c) Survival. The respective rights and obligations of the parties under this Addendum shall survive the termination of this Addendum.
- (d) Interpretation. Any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with the Privacy and Security Rules and the HITECH Act.
- (e) Business Associate Indemnification. Business Associate, its respective directors, officers, subcontractors, agents or employees (together, the "Business Associate Indemnitors"), agree to indemnify, defend and hold harmless Covered Entity and its directors, officers, subcontractors, agents or employees (together, the "Covered Entity's Indemnitees"), against any and all claims, demands, losses, costs, expenses, obligations, liabilities, actions, suits, damages and deficiencies (including, without limitation, all costs and reasonable attorneys' fees) that arise out of or are proximately caused by Business Associate's Indemnitors' negligent or intentionally wrongful acts or omissions in failing to perform its obligations as a Business Associate under the Privacy and Security Rules and/or the HITECH Act.
- (f) Covered Entity. Covered Entity, its directors, officers, subcontractors, agents or employees (together, the "Covered Entity Indemnitors"), agree to indemnify, defend and hold harmless Business Associate, its respective directors, officers, subcontractors, agents or employees (together, the "Business Associate Indemnitees"), against any and all claims, demands, losses, costs, expenses, obligations, liabilities, actions, suits, damages and deficiencies (including, without limitation, all costs and reasonable attorneys' fees) that arise out of or are proximately caused by Covered Entity Indemnitors' breach of this Addendum, negligence or intentionally wrongful acts or omissions, in failing to perform its obligations as a Covered Entity under the Privacy and Security Rules and/or the HITECH Act.
- (g) No Third-Party Beneficiaries. Nothing in this Addendum either express or implied is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.
- (h) Validity of Agreement. Except as expressly set forth herein, all remaining provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed by their respective officers duly authorized to do so.

Business Associate

Covered Entity

COMMUNITY HEALTH ALLIANCE

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____