



## **AGENT/AGENCY AGREEMENT INSTRUCTION CHECKLIST**

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**This package contains all the necessary forms and application to become appointed and authorized to sell Scott & White's products.** Please read the Producer Agreement carefully. Under this agreement, you will be agreeing to solicit business on behalf of Scott & White. Your agreement is not effective before the date specified by Scott & White, or until the agreement is authorized by Scott & White. In addition, you must provide your specific state's documents to Scott & White.

**The following documents apply to all states. Please check off each item prior to submitting to Scott & White:**

- A copy of your current agent and/or agency license
- A copy of non-resident license (if applicable)
- The Signature page of the Producer Agreement with your information and signature
- The completed Application for Appointment
- A copy of Errors & Omissions declaration page or certificate of insurance
- A completed W-9 form
- A \$20 check payable to the Texas Department of Insurance

Please submit all forms by mail to the following address:

**Mail:**

Scott & White Health Plan  
1206 West Campus Drive  
Temple, Texas 76502  
Attn: Tracy Mow



**Agent / Agency Information (please print):**

List the state(s) in which you are requesting appointment? *Please attach copies of licenses.*

Are you a resident of this state?  
 Yes  No

Please check appropriate item:  Partnership  Individual / Sole Proprietor  Corporation  Other (please identify)

Full Name of Agent or Agency. *Please note that name and Tax ID must correspond.*

Federal Employer Identification Number (Tax ID Number) OR Social Security Number that corresponds to legal name as provided.

**Business Mailing Address (Include Post Office Box if applicable):**

City:		State:	Zip Code:	
State of Incorporation (If Applicable):	Date of Incorporation (If Applicable):	Length of time at this location (if less than 5 years, please include on a separate sheet of paper a list of all locations):		
Date of Birth	Phone Number	Fax Number	E-mail Address	
Resident Mailing Address (If Applicable)		Resident County		
Resident City	Resident State	Resident Zip Code		
Beneficiary	Beneficiary Relationship	Resident Phone Number	Resident Fax Number	

**NOTE:** A minimum of \$500,000 specific and \$500,000 aggregate E&O coverage is required.

E&O coverage Amount of  Yes  No E&O coverage:

E&O carrier & policy #:

Copy of E&O declaration page or Certificate of Insurance included with application  Yes  No

**The following questions are applicable to the agent / agency / corporation / partnership and to each of the partners, members, directors, officers or agents individually. If the answer is "Yes" to any of these questions, provide complete details on a separate sheet of paper. To the best of your knowledge:**

A. Have you or any of the partners, directors, officers or agents within this corporation / partnership ever been fined, reprimanded, sanctioned or been the subject of a consent decree in any state for a violation of insurance laws, HMO regulations or other health care administrative regulations?

Yes  No

B. Have you or any of the partners, members, directors, officers or agents within this corporation / partnership ever been refused license to sell Insurance/HMO, or has a license to sell Insurance/HMO ever been suspended or revoked by any state?

Yes  No

C. Have you or any of the partners, members, directors, officers or agents within this corporation / partnership ever been convicted of a crime, whether felony or misdemeanor, other than a minor traffic violation?

Yes  No

D. Have you or any of the partners, members, directors, officers or agents within this corporation / partnership ever been employed by an Insurance / HMO company, or another organization providing for or assisting with

administration of employee benefits, where the employment contract was terminated or non-renewed because of allegations of wrongdoing?

Yes  No

E. Have you or any of the partners, members, directors, officers or agents within this corporation / partnership ever surrendered any insurance or HMO license, whether voluntary or involuntary?

Yes  No

F. Are you or any of the partners, members, directors, officers or agents within this corporation / partnership currently a named party in any lawsuit?

Yes  No

G. Have you or your company ever declared bankruptcy, had a lien placed against you or your company, been a judgment debtor or had any other problems with your or your company's credit history?

Yes  No



**If you answered Yes to any of the questions (A to G), please give details and the current status.  
(Attach any pertinent documentation.)**

I hereby certify that I have read and understand the items on this form and that my answers are true and complete to the best of my knowledge. I have been advised the Company may conduct investigations in connection with my request to represent the Company in the solicitation of SWHP and ICSW products as described in the Producer Agreement. I hereby consent to the company requesting and obtaining all information as discussed in this paragraph and for all such reports to be requested by and provided to the Company.

I understand that a routine inquiry may be made as a requirement for state appointment. If applicable, the Company may obtain reports from a consumer reporting agency, an investigation report or inquiries from a State Insurance Department. Any information that the Company obtains about me will be treated as confidential.

FAIR CREDIT REPORTING ACT - As part of its regular procedures, the Company may obtain an investigative consumer report. It may deal with character, reputation, personal traits and lifestyle. It may involve personal interviews with friends, neighbors and associates.

I understand I have the right to make, within a reasonable amount of time, a written request for details on the name and address of the agency making the report. I further understand that, depending on the state law, subjects of an investigative consumer report may have the right to: 1) request that they be interviewed in connection with the making of the report; and 2) receive a copy of the report, upon request. My signature below constitutes my agreement and authorization to the above.

In signing this application I certify that I have not been convicted of any criminal felony involving dishonesty or breach of trust or been convicted of an offense under section 1033 of the Violent Crime and Law Enforcement Act of 1994. I further agree to immediately inform Scott & White Health Plan of any conviction of the types described in the preceding sentence.

I understand that if any of the information I provided is found to be incorrect or incomplete, it may be grounds for non-appointment or my immediate termination at the discretion of the Company.

**Applicant's Signature**  
*(Agent or Agency Officer if applying for Agency Appointment)*

Print Name Title Date

Licensing Contact Name Licensing Contact Phone Number

**FOR INTERNAL USE ONLY**

Submitted By:

SWHP Representative Name: Telephone Number:

SWHP Number: Region:



**SCOTT AND WHITE HEALTH PLAN  
INSURANCE COMPANY OF SCOTT AND WHITE  
AGENT CONTRACT**

**THIS AGREEMENT**, effective on the date specified at the signature portion of this Agreement ("Effective Date") is made between Scott and White Health Plan (SWHP) and Insurance Company of Scott and White (ICSW), a Texas corporation, hereinafter collectively referred to as "Scott and White", and hereinafter referred to as "Agent", to describe the terms and conditions under which Agent shall provide certain services for Scott and White. For services rendered on or after the Effective Date, this Agreement supersedes and replaces any existing agreements between the parties, except where otherwise noted, relating to commissions and other compensation arrangements for Agent services.

**WHEREAS**, SWHP holds a valid Certificate of Authority granted by the Texas Department of Insurance to operate a basic service HMO within it's service area in Central Texas, illustrated by Attachment D, and provides products in the Large and Small Employer HMO markets; and

**WHEREAS**, ICSW is a wholly owned corporation of SWHP that is licensed as a Health Insurance Company by the Texas Department of Insurance in the entire State of Texas, and provides Large and Small Employer Major Medical products and Individual indemnity and income products; and

**WHEREAS**, Agent is duly licensed by the State of Texas to solicit and sell HMO and health insurance products and desires to sell and market Scott and White's products to new clients;

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual promises and undertakings herein and intending to be legally bound hereby, the parties agree as follows:

**SECTION 1  
Definitions**

- 11**     **Benefit Plan:** Benefit Plans are the products identified in Attachment B that Scott and White authorizes Agent to market to Clients.
- 12**     **Business Day:** Monday through Friday, 8:00am to 5:00pm, Central Standard Time, with the exception of national holidays as recognized by federal law.
- 13**     **Client:** An employer group, employer coalition, employer cooperative or other unit solicited by Agent pursuant to this Agreement which meets all eligibility and underwriting criteria and is approved by Scott and White for enrollment under a Benefit Plan.
- 14**     **Commissions:** The payments due Agent for the services performed by Agent for a Client. The Agent's Commissions shall be paid as provided for in Section 4 and Attachment A.
- 15**     **Contract Premium Charges:** The total annual or monthly premium charges required of and collected from Clients for all Benefit Plan products.
- 16**     **Contract Month and Contract Year:** The calendar month or year as determined from the effective date of the Client under a Benefit Plan.
- 17**     **Existing Business:** A Client that already had, as of the effective date of this contract, comprehensive health coverage through Scott and White.

- 18 New Business:** A Client that does not at the time of application have, or has not anytime within the previous 12 months prior to application had, comprehensive health coverage through Scott and White.
- 19 Payor:** Entity authorized by Scott and White that has the financial responsibility for payment of certain services provided by Agent under the terms of this Agreement.
- 1.10 Subscriber:** An eligible employee, as defined in the Benefit Plan, who is properly enrolled for coverage under the Benefit Plan. The Subscriber is the person (who is not a dependent) on whose behalf coverage under the Benefit Plan is provided.

## **SECTION 2**

### **General Responsibilities of Agent**

- 21 Licensing:**
- a. Before any services are provided under this Agreement, Agent shall provide to Scott and White proof of valid Texas license for Agent to perform services under this Agreement.
  - b. Agent shall comply with Scott and White's appointment process and comply with continuing education requirements and other requirements necessary to maintain Texas licensure to perform services under this Agreement.
  - c. Agent shall promptly provide a copy of Agent's renewed Texas licenses. Agent acknowledges that failure to maintain Texas licensure or promptly provide proof of licensure to Scott and White shall constitute a breach of this Agreement and shall be cause for immediate termination.
- 22 Limitation on Authority:** Agent shall not:
- a. bind coverage;
  - b. accept any applicant;
  - c. misrepresent or omit important facts in any application;
  - d. modify or waive any Benefit Plan or any terms regarding enrollment, coverage or benefits;
  - e. distribute any advertising, circulars or promotional literature except such materials provided to Agent by Scott and White;
  - f. represent that Agent have authority on behalf of Scott and White or Payer;
  - g. have any authority except as explicitly provided in this Agreement.
- 23 Prohibited Actions:** Agent shall in no way misrepresent Scott and White or its products or services. Agent is specifically prohibited from:
- a. altering any proposal;
  - b. approving evidence of insurability or improperly binding or committing Scott and White on any risk;
  - c. reinstating any terminated or non-renewed Group Product.

A list of Scott and White's Benefit Plans Agent is authorized to sell is shown on Attachment B.

- 24 Training:** Agent shall complete Scott and White's initial training within sixty (60) days of signing this Agreement as well as participate in ongoing training to assure Agent's compliance with Scott and White's marketing and enrollment policies and procedures. Such training shall include, but is not limited to:
- a. open enrollment training;
  - b. sales call training;
  - c. routine evaluation of Agent's performance under this Agreement;
  - d. other training as may be required by Scott and White from time to time.

In order to remain an appointed agent of Scott and White, Agent is expected to attend scheduled agent training workshops and receive an annual certification from Scott and White.

**2.5 Solicitation:**

- a. Agent shall solicit enrollment of Clients.
- b. Agent shall submit to prospective Clients proposal information or documents in a form and upon such terms as are approved in advance by Scott and White.
- c. No term of such proposal, including premium amounts, may be altered except upon the prior written approval of Scott and White.
- d. Agent shall accurately and completely record information required by Scott and White for enrollment of Clients under a Benefit Plan and submit such information to Scott and White.
- e. Agent shall acquire all additional quote information, as requested by the Scott and White's Sales and Account Representatives.
- f. Agent shall work through their assigned Sales Representative to obtain a small group premium proposal.
- g. Agent shall present the proposal to the prospect/client.

**26 Acceptance for Enrollment:**

- a. Scott and White shall have the sole right to accept or reject any prospective Client submitted for enrollment by Agent based on underwriting and enrollment policies established by Scott and White.
- b. In no event shall any prospective Client be eligible to receive health services under a Benefit Plan unless, and until, accepted by Scott and White with such effective date as determined by Scott and White.
- c. Agent will review applications, enrollment forms, applications for contracts and similar or related documents solicited by Agent and promptly forward completed documents and initial premium payment to Scott and White within two (2) Business Days of completion.

**2.7 Servicing of Clients:**

- a. Agent shall deliver and explain to Clients, the initial administrative forms, such as billing and enrollment materials and subsequent renewal forms. This function may be performed in conjunction with Scott and White's Account Representative.
- b. Agent shall provide on-going services to existing customers to possibly include conducting enrollment meetings, handling routine inquiries and conducting renewal presentations as approved in advance by Scott and White.
- c. The Agent shall also, by acceptance of this Agreement, use their best efforts to maintain the relationship between Scott and White and the Client, and to maintain full cooperation by the Client and their group of employees with Scott and White.
- d. Agent has no property or other interest whatsoever in any contract between Scott and White and Client.
- e. Agent is not authorized to receive any Scott and White funds except the initial premiums for Scott and White Products, and Agent is not authorized to deduct commissions or any other amounts from any initial premiums Agent may collect. Any funds that Agent does receive for or on behalf of Scott and White shall be received and held by Agent in a fiduciary capacity, shall be separately accounted for, shall not be commingled by Agent with personal funds of Agent or other business accounts managed or owned by Agent, and shall be remitted to Scott and White promptly but in no event later than five (5) calendar days from the date of receipt.
- f. Agent agrees to furnish Scott and White with all information necessary to enable Scott and White to comply with its obligation under this Agreement and state, federal and HIPAA law, including, but not limited to, information regarding Agent relationship with Client.

- 28 Marketing Materials:** Upon request, Agent may obtain from Scott and White such marketing and enrollment materials as are necessary for solicitation of Clients. Agent shall not use any marketing materials or other information regarding Scott and White or Payer to the competitive advantage of any

competitor of Scott and White or Payer. Agent shall not distribute any materials that have not been furnished or approved by Scott and White including, but not limited to:

- a. Letterhead, business cards, and written materials containing Scott and White's name or logo;
- b. Descriptive literature and sales aids of all kinds, including but not limited to: circulars, leaflets, booklets, illustrations, software, and form letters;
- c. Printed and published material, audio-visual materials, and or descriptive language used in direct mail, newspapers, magazines, radio and television scripts, prepared sales talks or presentations, billboards, telephone directory listings, websites and similar displays.

Agent shall return all such materials to Scott and White immediately upon termination of this Agreement.

## **29 Books and Records:**

- a. Agent shall maintain adequate books and records in accordance with the industry standard and applicable law.
- b. Scott and White, during regular business hours, and upon reasonable notice or demand shall have access to and the right to audit all information and records related to services rendered by Agent pursuant to this Agreement.
- c. Unless a longer time period is required by applicable law, Scott and White shall have access during the term of this Agreement and for five (5) years following its termination.

## **SECTION 3 Responsibilities of Agent under HIPAA**

Agent agrees to comply with the requirements of the attached HIPAA Business Associate Agreement.

## **SECTION 4 Payment**

- 41 Payment to Agent:** For services performed under this Agreement, Payor shall pay Agent according to Attachment A, Commission Schedule. For New Business, Agent shall be compensated for products issued to a Client which has identified the Agent as the Agent of Record. For Renewal Business initially generated as New Business by Agent, Agent shall be compensated according to Attachment A, Commission Schedule. For Existing Business, Agent shall not be compensated. Any compensation payable to Agent for duties other than those set forth in Section 2 shall be made pursuant to a separate agreement. Scott and White shall not pay additional compensation or recoup payments more than fifteen (15) months from when a payment dispute arises. Split commissions are not paid by Scott and White.
- 42 Retroactive transactions:** To the extent that retroactive terminations and adds are made by a group, such retroactive transactions will be reflected in the premiums statements submitted to and paid by the group, and will therefore be reflected in the commission paid pursuant Attachment A, Commission Schedule. In the event that retroactive transactions are made after a group has terminated coverage with Scott and White, Agent agrees to reimburse Scott and White any overpayment of commissions, and Scott and White agrees to pay Agent any underpayment of commissions, paid to Agent due to the retroactive transactions.
- 43 Taxes:** Payor shall take no deduction for federal income tax, social security or other regulatory taxes. Agent shall be solely responsible for any taxes of any type, including social security taxes, workers' compensation taxes or costs, unemployment compensation taxes or costs or any other similar taxes, costs or charges or any other taxes or charges related to Agent's receipt of compensation and performance of services under this Agreement. Agent shall indemnify and hold Scott and White and Payer harmless from any such taxes or charges. This Section shall survive any termination of this Agreement.

## **SECTION 5 Agent of Record**

- 51 Designation of Agent of Record:** An Agent of Record is the Agent designated by a Client to serve as its insurance agent and that Scott and White may compensate under the terms of this Agreement. Unless otherwise stipulated by the Client, Agent shall be considered the Agent of Record for all Clients enrolled by Agent.
- 52 Change of Agent of Record:** The Client may change its Agent of Record at any time for any reason in accordance with applicable law and the following provision are not intended to limit this right in anyway.
- 53 Written request from Client:** In its sole discretion, Scott and White will recognize a request to change an Agent of Record only if it is in writing and is signed by an individual authorized to bind the Client, and not from Agent or any other person. If a Client asks Scott and White to change its Agent of Record, Scott and White will determine the effective date of the change in its sole discretion.
- 54 Termination Events:** Upon termination of Agent under Paragraph 7.3 of this Agreement, Scott and White will no longer recognize Agent as any Client's Agent of Record.

## **SECTION 6 Insurance and Indemnification**

- 6.1 Insurance:** Agent shall maintain general liability, professional liability and errors and omissions insurance policies or bonds in amounts and in forms standard and adequate for Agent's business but not less than \$500,000 per occurrence. Agent shall provide proof of such insurance every two (2) years and shall immediately give written notice to Scott and White in the event of any termination, cancellation or material change in such insurance. Written notice shall be sent to Scott and White's Licensing Department at the address shown in the signature portion of this Agreement.
- 6.2 Indemnification:** Agent indemnifies and holds Scott and White, its directors, officers and subscribers harmless from any claims, liability, judgments, damages or costs, including reasonable attorneys' fees, asserted or awarded against or incurred by Scott and White, its directors, officers and subscribers as a result of any act, error or omission of Agent or other personnel of Agent.

## **SECTION 7 Term and Termination**

- 71 Term:** This Agreement shall commence on the Effective Date and shall continue for two (2) years unless terminated pursuant to this Section.
- 72 Termination without Cause:** This Agreement may be terminated without cause by either party to this Agreement upon thirty (30) days prior written notice to the other party. However, termination of this Agreement shall be subject to the following provisions:
- a) In the event this Agreement is terminated by Scott and White or Agent without cause, Payor shall pay Commissions until Agent is no longer Agent of Record with the Client or at such time Client is no longer enrolled with the Scott and White, until the Client's next renewal.
  - b) As described in Section 10.9.
- 73 Termination with Cause:** This Agreement may be terminated with cause by either party to this agreement immediately with written notice provided to the other party. However, immediate termination of this Agreement shall be limited to the following conditions and subject to the following provisions:
- a) Scott and White shall consider "material breach" under the terms of this Agreement to be actions that include, but are not limited to: unprofessional conduct; failure to give Scott and White at least thirty (30) days notice prior to moving Client's business to a competitor of Scott and White's; disparaging or derogatory comments about Scott and White made by Agent to Scott and White's customers, potential

customers, Clients, Subscribers, Providers, Payers, other Agents, or to any individual with a business interest in Scott and White, and may immediately terminate this Agreement on such grounds. In addition, Agent, acting as a Business Associate, acknowledges that its failure to cure any violation of HIPAA regulations of this Agreement shall also be considered a material breach of this Agreement and that Scott and White may therefore immediately terminate this Agreement and any other contract between Scott and White and Agent.

- b) In the event this Agreement is terminated by Scott and White with cause, no Commissions shall be payable to the Agent following the date of such termination. For the purposes of this Agreement, "with cause" shall mean any material breach in the terms of this Agreement.
- c) In the event Agent is no longer duly licensed pursuant to applicable law, Scott and White shall immediately terminate this Agreement, and this shall be deemed termination "with cause." In addition, if Agent is suspended or disciplined by any state or federal regulatory authority or is reprimanded in any way in connection with performance of his or her duties as a Agent, Scott and White reserves the right, in its sole discretion, to immediately terminate this Agreement. Such termination shall be deemed termination "with cause" under the terms of this Agreement. No Commissions shall be payable to Agent following the date of such termination.

## **SECTION 8**

### **Reservation of Rights by Scott and White**

- 8.1** Scott and White specifically reserve the right to:
- a) Discontinue or withdraw from sale any product, certificate, contract, marketing materials, or special marketing concept in any jurisdiction.
  - b) Modify, change, or amend any certificate, policy, contract or premium rate.
  - c) Review Agent's accounting records.
  - d) Cease doing business in any market segment in any jurisdiction.
  - e) Modify its business practices or operations in any other manner deemed appropriate by Scott and White.

## **SECTION 9**

### **Resolution of Disputes**

- 9.1** **Good Fair Negotiation Required:** Scott and White and Agent agree to work together in good faith to resolve any disputes arising under this Agreement. If after at least ninety (90) days following the date one party sent written notice of the dispute to the other party the dispute is not resolved, any party may pursue resolution of the dispute by other means.

## **SECTION 10**

### **Miscellaneous**

- 10.1** **Agreement as Confidential:** Scott and White and Agent shall treat this Agreement as confidential and shall not disclose its terms to any third party; except that Scott and White may disclose certain terms to Payors, and may file the form of this Agreement with any federal or state regulatory entity as may be required by applicable law.
- 10.2** **Relationship of the Parties:** The sole relationship between Scott and White and Agent is that of independent contractors and nothing in this Agreement or otherwise shall be deemed or construed to create any other relationship, including one of employment, joint venture or Agent.
- 10.3** **Compliance with State, Federal and HIPAA Regulations:** Agent acknowledges that Scott and White, and/or its affiliates, may be government contractors. The information to which Agent may have access to pursuant to this Agreement may contain confidential protected health information (PHI). Accordingly, Agent agrees to comply with all applicable state, federal and HIPAA regulations.

- 104 Amendment:** Except as otherwise provided in an Attachment, Scott and White may amend this Agreement upon at least thirty (30) days prior written notice to Agent. Any amendment to the Attachments shall apply to Clients that are effective or renewed under a Benefit Plan on or after the effective date of such amendment.
- 105 Assignment:** Scott and White may assign all or any of its rights and responsibilities under this Agreement to any entity controlling, controlled by, or under common control with Scott and White. Agent acknowledges that persons and entities under contract with Scott and White may perform certain administrative services under this Agreement. Agent may not assign any of its rights, responsibilities or Commissions payable under this Agreement to any person or entity without the prior written consent of Scott and White.
- 106 Entire Agreement:** This Agreement, including all Attachments hereto, contains the entire understanding of the parties.
- 10.7 Data Rights:** Agent acknowledges that it has no ownership rights in Confidential Information, PHI or any other data provided to it by Scott and White pursuant to the terms of this Agreement or any Obligations to Scott and White.
- 108 Ownership Interest:** The references to each party shall be deemed to include any parent, subsidiary or affiliate (1) in which the party has an equity or other ownership interest, (2) in which such party is a member, or (3) which controls, is controlled by or is under common control with such party.
- 109 Amending Attachments:** The attachments to this Agreement may be amended from time to time by Scott and White. If the parties do not agree to the terms of the amended attachments, this Agreement may be terminated upon sixty (60) days prior written notice to the other party subject to the provisions of Section 7.2.

THE EFFECTIVE DATE OF THIS AGREEMENT IS \_\_\_\_\_.

Scott and White Health Plan  
 Insurance Company of Scott and White  
 Address: 2401 S. 31<sup>st</sup> St.  
 Temple, TX 76508

Agent: \_\_\_\_\_

Agent address: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Tax ID # \_\_\_\_\_

**SCOTT & WHITE HEALTH PLAN  
HIPAA COMPLIANCE AGREEMENT:  
BUSINESS ASSOCIATE**

**THIS AGREEMENT** is made the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, to go into effect on the date the contract is executed by Covered Entity, (“**EFFECTIVE DATE**”), by and between \_\_\_\_\_, a \_\_\_\_\_ corporation (“**BUSINESS ASSOCIATE**”) and Scott & White Health Plan, a Texas non-profit corporation, (known in this agreement as the “**COVERED ENTITY**”).

The purpose of this Agreement is to satisfy the obligations of the Covered Entity under the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations issued by the U.S. Department of Health and Human Services (45 C.F.R. Parts 160-64), as may be modified or amended from time to time (“**HIPAA**”) to ensure the integrity and confidentiality of “Protected Health Information.” In consideration of the recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Business Associate and Covered Entity agree as follows:

**1. Applicability of Terms; Conflicts**

This Agreement applies to all present and future contracts and relationships between Business Associate and Covered Entity, written or unwritten, formal or informal, in which Covered Entity provides any Protected Health Information to Business Associate in any form whatsoever. As of the Effective Date, this Agreement automatically amends all existing agreements between Business Associate and Covered Entity involving the use or disclosure of Protected Health Information. This Agreement shall automatically be incorporated in all subsequent agreements between Business Associate and Covered Entity involving the use or disclosure of Protected Health Information whether or not specifically referenced therein. In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of any other agreement between Business Associate and Covered Entity, the provisions of this Agreement shall control unless Covered Entity specifically agrees to the contrary in writing.

**2. Definitions**

- (a) **Individual** shall have the same meaning as the term “individual” in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- (b) **Privacy Rule** shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- (c) **Protected Health Information** or **PHI** shall have the same meaning as the term “protected health information” in 45 CFR 160.103, limited to

the information created or received by Business Associate from or on behalf of Covered Entity.

- (d) **Required By Law** shall have the same meaning as the term “required by law” in 45 CFR 164.103.
- (e) **Secretary** shall mean the Secretary of the Department of Health and Human Services or his designee.
- (f) **Standard Transactions** is defined in 45 CFR Part 162.
- (g) **Transaction Standard Rule** shall mean the Standards for Electronic Transactions set forth in 45 CFR parts 160 and 162.
- (h) **Catch-all definition.** Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Privacy, Security, and Transaction Codes regulations, when final, and as may be amended.

### 3 Obligations and Activities of Business Associate

- (a) Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or as Required By Law.
- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- (d) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information of which it becomes aware.
- (e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- (f) Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524.
- (g) Business Associate agrees to make any amendment(s) to Protected Health Information 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, and in the time and manner designated by Covered Entity.
- (h) Business Associate agrees to make internal practices, books, and records, including its policies and procedures and Protected Health

Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

- (i) Business Associate agrees to document such disclosures of Protected Health Information 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 Protected Health Information in accordance with 45 CFR 164.528.
- (j) Business Associate agrees to provide to Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with Section (i) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- (k) Business Associate agrees to comply with all Federal and State laws and regulations that apply to Protected Health Information and will not willfully act or willfully fail to act in any way that would cause Covered Entity's non-compliance with such laws.

**4. Permitted Uses and Disclosures by Business Associate General Use and Disclosure Provisions.**

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services identified in any underlying contracts and relationships referenced in Paragraph One of this Agreement for or on behalf of Covered Entity, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

**5. Specific Use and Disclosure Provisions.**

- (a) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (b) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information 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.

- (c) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
- (d) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities consistent with 45 CFR 164.502(j)(i).

**6 Obligations of Covered Entity Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions.**

- (a) Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- (b) Covered Entity shall notify Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures of PHI.
- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, if such changes affect Business Associate's permitted or required uses and disclosures.

**7. Permissible Requests by Covered Entity.**

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except to the extent that Business Associate is engaged in data aggregation or management and administrative activities of Business Associate.

**8 HIPAA Security Requirements.**

- (a) Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on Covered Entity's behalf.
- (b) Business Associate shall ensure that any agent, including a subcontractor to whom it provides such Protected Health Information,

agrees to implement reasonable and appropriate safeguards to protect it.

- (c) Business Associate shall report to Covered Entity any HIPAA security incident of which it becomes aware;

9. **Term and Termination.**

- (a) Term. The Term of this Agreement shall begin upon the Effective Date and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- (b) Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity, at its discretion may immediately terminate any agreement between the parties involving the use of Protected Health Information (except those provisions that survive termination) or it may provide an opportunity for Business Associate to cure the breach or end the violation, within a time specified by the Covered Entity.
- (c) If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.
- (d) **Effect of Termination.**
  - i. Except as provided in paragraph (ii) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
  - ii. In the event that Business Associate determines that returning or destroying the Protected Health Information 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 Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

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**and “Trading Partner” Provisions.**

- (a) Confidentiality. All Protected Health Information which Business Associate receives from, accesses through, or creates for Covered Entity shall be kept confidential and shall not be used or disclosed by Business Associate for any purpose other than as specifically permitted under this Agreement. Business Associate shall require its employees, subcontractors and agents to maintain the confidentiality of Protected Health Information.
- (b) Information Safeguards. Business Associate will develop, implement, maintain and use appropriate administrative, technical and physical safeguards, in compliance with HIPAA, to preserve the integrity and confidentiality of and to prevent non-permitted or violating use or disclosure of Protected Health Information which is transmitted electronically. Business Associate will document and keep these safeguards current in accordance with industry standards, including standards established by federal agencies.

**11. Indemnification.**

- (a) Business Associate shall be responsible for any breach of this Agreement by its agents, representatives, or employees, and shall defend, indemnify, and hold Covered Entity harmless from all damages, costs, expenses and fees (including attorneys’ fees) resulting from such breach.
- (b) Covered Entity shall be responsible for any breach of this Agreement by its agents, representatives, or employees, and shall defend, indemnify, and hold Business Associate harmless from all damages, costs, expenses and fees (including attorneys’ fees) resulting from such breach.

**12. Miscellaneous.**

- (a) Regulatory References. A reference in this Agreement to a section in the HIPAA Privacy Rule, Security Rule, or Transaction Standard Rule means the section as in effect or as amended, and for which compliance is required.
- (b) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time to allow Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191. Except as provided in Section (e) below, this Agreement may not be amended, altered or modified except by written agreement signed by Business Associate and Covered Entity. No provision of this

Agreement may be waived except by an agreement in writing signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision.

- i. Covered Entity acknowledges and agrees that for any agreement or contract, including but not limited to this Agreement, that only the President of Scott & White may make and bind Scott & White to a modification or amendment of an agreement, currently existing or created in the future.

**13. Survival.**

The respective rights and obligations of Business Associate under Section on "Effect of Termination" of this Agreement shall survive the termination of this Agreement.

**14. Interpretation.**

Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with HIPAA and its applicable implementing regulations.

**15. Termination or Amendment as a Result of Government Regulation.**

Covered Entity shall have the right to terminate or unilaterally amend this the Agreement, without liability, to comply with any legal order issued or proposed to be issued by a federal or state department, agency, commission, or court, or to comply with any provision of law, reimbursement, or accreditation that: (i) would invalidate or that is inconsistent with the provisions of this Agreement; (ii) would jeopardize Covered Entity's tax-exempt status; (iii) would cause a Party to be in violation of the law; (iv) would jeopardize Covered Entity's licensure, accreditation, tax-exempt status, or participation in a federal health care benefit program; or (v) would breach or be inconsistent with any tax-exempt bond requirement. If Covered Entity deems it necessary to amend this Agreement as provided in this Section and the amendment is unacceptable to Business Associate, then Business Associate may choose to terminate the Agreement.

**16. Notices.**

All notices pursuant to this Agreement must be given in writing and shall be effective when received if hand-delivered or upon dispatch if sent by reputable overnight delivery service, or by U.S. Mail, postage prepaid, certified, return receipt requested and addressed as follows:

To Covered Entity:

Attention: Frank Anderson, Privacy Officer

2401 S. 31<sup>st</sup> Street  
Temple, Texas 76508

**To Business Associate:**

Name:  
Attention:  
Address:  
City, State, Zip  
Code: Phone:  
Fax:

**17. Severability.**

In the event that any provision of this Agreement violates any applicable statute, ordinance or rule of law in any jurisdiction that governs this Agreement, such provision shall be ineffective to the extent of such violation without invalidating any other provision of this Agreement.

**18. Jurisdiction and Venue.**

This Agreement is governed by the laws of the State of Texas and the federal government. Venue shall be in Bell County, Texas.

By: \_\_\_\_\_  
Allan Einboden  
Chief Executive Officer  
Scott & White Health Plan

By: \_\_\_\_\_  
Business Associate(Signature)  
\_\_\_\_\_  
Print Name

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT A**

**COMMISSION SCHEDULE**

1. Group commissions to authorized Agents will be paid monthly based upon **paid** premiums.
2. Group commission amounts will be based upon the following table:

**Group Size (by # of Employees) Commission Percentage**

2-50	5.5%
51-99	5.0%
100-3000	4%
3001+	To be negotiated

Individual commissions to authorized Agents will be paid monthly based upon **paid** premiums.

Individual policy	12% Year 1
	7% Year 2

By: \_\_\_\_\_

Allan Einboden  
Chief Executive Officer  
Scott & White Health Plan

By: \_\_\_\_\_

Business Associate (Signature)

\_\_\_\_\_  
Print Name

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT B**  
**BENEFIT PLANS**

As referenced in Attachment A, the following is a list of Benefit Plans offered by Plans that Agent is authorized to sell:

- All fully insured individual HMO products
- All Large and Small Group fully insured commercial HMO products, including Point of Service Rider
- All fully insured ICSW major medical products
- All fully insured Consumer Directed products
- Individual ICSW Income and Indemnity products
- Self-Funded TPA product

Any authorization to add to the number or type of products Agent is authorized to sell may be made only by Plans' Associate Executive Director Marketing or Executive Director. Such change must be made in writing on the form attached hereto as Attachment B.