

**AGENT/BROKER COMMISSION AGREEMENT  
BETWEEN  
ALICIA WU  
AND  
VALLEY HEALTH PLAN**

This Broker Commission Agreement ("Agreement") is entered into, is effective as of December 1, 2016 ("Effective Date"), by and between the County of Santa Clara dba Valley Health Plan ("VHP") with its principal office located at 2480 N. First Street, Suite 200, San Jose, CA 95131 and **ALICIA WU**, ("Broker").

**RECITALS**

- A. VHP, a health maintenance organization, is licensed by the California Department of Managed Health Care ("DMHC") as a health care service plan under Sections 1340 et seq. of the California Health and Safety Code (the "Knox-Keene Act") and the rules and regulations promulgated thereunder ("Regulations"). VHP is not an insurance company and is not regulated by the California Department of Insurance ("DOI").
- B. Broker is duly and currently licensed with the DOI and is qualified to solicit enrollment of individuals/families in health benefit plans offered, issued, administered and/or marketed by or through VHP;
- C. Broker is a duly and currently certified Covered California agent and is qualified to enroll individuals/families in health benefit plans offered through the marketplace exchange;
- D. VHP desires to engage Broker to solicit applications and enrollment of individuals/families in health benefit plans offered, issued, administered and marketed by or through VHP, and Broker desires to provide these services to VHP; and
- E. Broker has experience and expertise in soliciting, negotiating and procuring health benefit plans of the types which are offered by VHP under the terms of this Agreement and VHP desires to use such experience and expertise of Broker on behalf of potential and future customers of VHP; and
- F. The geographic area within which Broker and VHP shall perform their duties under this Agreement shall be the Service Area approved by the DMHC from time to time for VHP ("Market Area"). (Service Area as of December 2013 is Santa Clara County.)

Now, therefore, in consideration of the mutual promises and covenants of the parties hereto, and for other good and valuable consideration, the parties hereto agree as follows:

**ARTICLE I: Incorporation of Recitals**

The recitals set forth in Paragraphs A through F above are hereby incorporated into this Agreement. The parties enter into this Agreement as a full statement of their respective responsibilities hereunder.

## **ARTICLE II: Duties and Responsibilities of Broker**

### **Section 2.1 Scope of Authority.**

Broker is authorized to solicit applications for VHP's Covered California and off-exchange plans of prepaid health care benefits and for other products issued, administered or marketed by or through VHP in the Market Area from prospective individuals/families, which meet the requirements periodically established by VHP. Broker agrees to use its best efforts to solicit such applications and the subsequent enrollment of prospective individuals/families under this Agreement.

### **Section 2.2 Limitation of Authority.**

Broker is authorized only to solicit enrollment of individual/families for VHP's Covered California and off-exchange individual/family of prepaid health care benefit plan designs products issued, administered or marketed by or through VHP in the Market Area. Broker cannot alter or waive the terms or rates established by VHP or bind VHP in any manner whatsoever, including but not limited to any promise or statement regarding terms or premium and dues amounts. Broker shall not receive funds on behalf of VHP except as expressly allowed herein below.

Only VHP and its designated representatives will collect premiums, dues and other costs payable by an enrollee for any products issued, administered or marketed by or through VHP in the Market Area which were solicited by Broker except as expressly provided herein below. Therefore, Broker will not "handle funds" within the meaning of Section 1300.76.2 of the Regulations.

### **Section 2.3 Application for Enrollment.**

Broker will assist in completing and submitting applications for enrollment in accordance with the requirements of Covered California and VHP's then current policies and procedures. Broker shall complete all eligibility verification and enrollment applications online through CalHEERS or via the paper application established by the Exchange. Broker shall use this single streamlined application to determine eligibility and to collect information necessary for enrollment, advance payments of the premium tax credit, and cost-sharing reductions. Broker shall not be included in any application submitted to the Exchange where Agent did not provide substantial assistance with the application either in-person or over the phone.

- a. To allow for the proper processing of Broker's compensation, Broker must ensure the completion the following sections of each consumer's application to the Exchange:
  - i. Name and license number of the Certified Insurance Agent; and
  - ii. Broker's personal identification number for electronic applications or Broker's signature and date of signature for paper applications.

### **Section 2.4 Acceptance for Enrollment.**

VHP and/or Covered California will have the right to accept or reject any prospective applicant submitted for enrollment by Broker based on the then current policies, procedures and requirements of Covered California. In no event shall any prospective Individual/Family be eligible to receive health benefits unless and until accepted for

enrollment by VHP with such effective date as determined by VHP/Covered California.

**Section 2.5. Servicing of Enrolled Individuals/Families.**

Broker will perform all reasonable duties and services required by VHP to service individuals solicited by Broker and enrolled in VHP. If requested by VHP, such duties and services may include delivery and explanation of initial administrative forms and subsequent renewal forms. VHP may make direct contact with Individuals and Subscriber's representative who are VHP members or prospective members to provide enrollment information, distribute literature, and discuss VHP rates, benefits and method of operations. Upon VHP's request, Broker will assist VHP in making arrangements for such presentations.

**Section 2.6 Marketing Materials.**

Broker will only use advertising and marketing materials approved by VHP when providing services under this Agreement. Broker will comply with all then current VHP policies and procedures regarding the use of all such materials as required by VHP. All records, literature, enrollment cards, marketing aids, and similar materials furnished to Broker by VHP are, and will remain, the property of VHP regardless whether such have been completed by an enrollee or prospective members. Broker will return to VHP all such materials upon VHP's request.

**ARTICLE III: Representations and Warranties of Broker**

**Section 3.1 Qualifications.**

Broker warrants that it is duly and currently licensed with the DOI and is qualified under such license to solicit enrollment of Individuals/Families in health benefit plans offered by VHP and/or Covered California or by insurers or other health care service plans associated with products issued, administered or marketed by or through VHP or Covered California in the Market Area. Broker shall maintain licensure and good standing under Insurance Code Section 1626 by the California Department of Insurance to transact in accident and health insurance. Broker shall comply with the certification standards set forth by Covered California in the California Code of Regulations, Title 10, and Article 6800 et seq. prior to assisting any person seeking eligibility and enrollment assistance.

**Section 3.2 Regulatory Compliance.**

Broker shall comply, and shall cause Broker's principal persons, employees, agents and independent contractors to comply, with all federal, state and local laws, regulations, and Covered California Agent Agreement requirements as they relate to Broker's responsibilities under this Agreement, including, without limitation, the provisions of the Knox-Keene Act, the Regulations and the regulations and rules of the DOI. Broker shall promptly notify VHP of the institution of any disciplinary proceedings against Broker or any of Broker's principal persons, employees, agents or independent contractors relating to any license issued by the DOI.

**Section 3.3 Records and Access to Records.**

Broker shall maintain complete records (i) of all transactions pertaining to applications submitted to and accepted by the Exchange, (ii) as may be required by the California Department of Insurance (DOI) or California Department of Managed Health Care (DMHC) or any other governmental entity. Any and all records described above shall be accessible

and available to representatives of the Exchange, the DMHC and DOI who may audit them from time to time while this Agreement is in effect or within five (5) year after termination thereof.

## **ARTICLE IV: Compensation**

### **Section 4.1 Payment of Commissions.**

In consideration of the services to be provided by Broker under this Agreement, VHP agrees to pay to Broker a commission as set forth on the commission schedule described in Section 4.2 herein based on the total amount of premiums and dues received by VHP for Individuals/Families which have been solicited by Broker and accepted by VHP for enrollment and effectuated. Commissions payable to the Broker shall be subject to the then current policies and procedures of VHP. Commissions shall not be paid on individual members' conversion policies.

### **Section 4.2 Calculation of Commission.**

VHP will pay a commission to Broker based on the then current commission schedule ("Commission Schedule"). The current Commission Schedule is attached hereto Exhibit "A" and is incorporated herein by this reference.

### **Section 4.3 Timing of Payments.**

Commissions payable to Broker under Section 4.1 will be paid to Broker monthly based on premiums and dues received by VHP for Individuals/Families solicited by Broker. Such amounts, if any, will be paid to Broker thirty (30) days after the end of the month in which the premiums and dues are received by VHP.

### **Section 4.4 Duration of Payments.**

During the term of this Agreement, commissions will continue to be paid to Broker, provided that:

(a) Broker complies with its obligations under this Agreement and (b) Broker continues to be recognized as the broker of record by the Individual/Family. If this Agreement is terminated for cause pursuant to Section 6.2, payment of all commissions will cease upon termination of this Agreement. If the Agreement is terminated without cause pursuant to Section 6.1 and the requirements set forth in Section 4.4 continue to be satisfied, VHP will continue to pay commissions to Broker pursuant to the terms of this Agreement.

### **Section 4.5 Error in Payment.**

Broker will reimburse VHP for any commissions erroneously paid to Broker for any reason, including but not limited to, payment resulting from clerical error or payment resulting from a premium or dues payment returned to the Individuals/Families by VHP. VHP may collect any payments owed by Broker to VHP by offsetting such amounts against commissions owed by VHP to Broker.

### **Section 4.6 Cancellation of Enrolled Individuals/Families.**

VHP or Covered California reserves the right to cancel the any enrolled Individuals/Families solicited by Broker.

**Section 4.7 Non-resident Tax Withholdings.**

Payments to all nonresidents may be subject to withholding. Non-resident payees performing services in California or receiving rent lease, or royalty payments from property (real or personal) located in California shall have seven percent of their total payments withheld for state income taxes. No withholding is required, however, if total payments to the payee are \$1,500 or less for the calendar year.

**ARTICLE V: Term**

The term of this Agreement will commence on the Effective Date and will continue for a period of one year and will automatically renew thereafter for up to four (4) additional consecutive one year terms unless terminated as provided herein or upon termination of VHP's agreement with Covered California.

**ARTICLE VI: Termination**

**Section 6.1 Termination Without Cause.**

This Agreement may be terminated by either party at any time, without cause, upon no less than thirty (30) days' prior written notice to the other party.

**Section 6.2 Termination With Cause.**

VHP may terminate this Agreement immediately upon written notice to Broker in the event that (a) Broker's insurance license in the State of California has been either suspended or terminated, (b) Broker is disciplined or sanctioned by any state or federal regulatory authority, or (c) Broker commits any act of fraud, misfeasance or malfeasance, as determined by VHP in its sole discretion; (d) Broker dies; or (e) Broker fails to remedy, after thirty (30) days' prior written notice from VHP, its failure to perform duties under this Agreement to the satisfaction of VHP.

**ARTICLE VII: Errors and Omissions Insurance**

Broker will maintain errors and omissions insurance coverage in amounts of at least One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) annual aggregate with an insurer with either a Standard and Poor's rating of AA or a Best's rating of AA. Broker will notify VHP in writing at least ten (10) days prior to any proposed cancellation, cancellation or material change in the insurance coverage of Broker's errors and omission in effect at the time of the execution of this Agreement. Upon request, Broker will provide VHP with reasonable evidence of Broker's compliance with the above-stated insurance requirement.

**ARTICLE VIII: Indemnification**

**Section 8.1 Broker To Indemnify.**

Broker agrees to indemnify, defend, and hold harmless the County, its Board of Supervisors, officers, directors, trustees, employees and agents (together "Employees and Agents") from any claim, liability, or loss, including reasonable attorneys' fees, arising out of or resulting from the willful, wrongful or negligent acts or omissions of the indemnifying party or any of its Employees and Agents in connection with this Agreement. Broker will notify the County in writing of any claim of injury or damage related to activities performed

pursuant to this Agreement. Broker will cooperate in the investigation and disposition of any claim arising out of the activities of the Agreement. The provisions of this section will survive the termination of this Agreement

**Section 8.2 Survival of Indemnification Duties.**

The foregoing indemnity and hold harmless obligations include and apply without limitation to injury or damage to Broker, Indemnities, third parties, or any or all of them and their respective property, officers, partners, employees, or agents. Neither termination of this Agreement nor completion of the acts to be performed under this Agreement shall release Broker from its obligations to indemnify as to any claim or cause of action asserted so long as the event upon which a claim or cause of action is predicated shall have occurred prior to the effective date of any such termination or completion.

**ARTICLE IX: Independent Contractor**

It is agreed that Broker has contracted with County as an independent contractor for the performance of professional services under this Agreement. It is understood that no relationship of employment, partnership, joint venture or agency is created or intended to be created by this Agreement. County will not pay and will have no responsibility to pay vacation pay, sick leave, retirement benefits, social security, workers' compensation, disability or unemployment insurance, or employee benefits of any kind to or for Broker.

**ARTICLE X: Confidentiality and Proprietary Information**

**Section 10.1 Maintaining Confidentiality.**

Broker, its solicitors, agents, employees, and independent contractors shall keep in strictest confidence information relating to this Agreement and all other information, which may be acquired in connection with or as a result of this Agreement. During the term of this Agreement and at any time thereafter, without the prior written consent of VHP, Broker, its solicitors, agents, employees, and independent contractors shall not publish, communicate, divulge, disclose or use any of such information which has been provided by VHP or has been acquired in connection with or as a result of this Agreement or which from the surrounding circumstances or in good conscience ought to be treated by Broker as confidential.

**Section 10.2 Scope of Agreement.**

Notwithstanding anything to the contrary stated in Section 10.1 above, Broker expressly agrees that Broker, its employees, independent contractors and agents shall not use any information provided to Broker by VHP except as necessary and reasonably appropriate for Broker's performance of its duties under this Agreement.

**Section 10.3 Termination or Expiration.**

Upon termination or expiration of this Agreement, Broker, its employees, solicitors, agents and independent contractors shall deliver to VHP all records, data, and other information and other Documents provided by VHP and all copies thereof in whatever form whatsoever to VHP, or at VHP's option, provide satisfactory evidence that all such records, data, other information and other Documents have been destroyed. All materials provided by VHP under this Agreement shall be the sole property of VHP.

## **ARTICLE XI: Nondiscrimination**

Contractor shall comply with all applicable Federal, State, and local laws and regulations including Santa Clara County's policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. Contractor shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Contractor discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

## **ARTICLE XII: Standard County Terms**

### **Section 12.1 Conflicts of Interest.**

Contractor shall comply, and require its subcontractors to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so constitutes a material breach of this Agreement and is grounds for immediate termination of this Agreement by the County.

In accepting this Agreement, Contractor covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. Contractor further covenants that, in the performance of this Agreement, it will not employ any contractor or person having such an interest. Contractor, including but not limited to contractor's employees and subcontractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

### **Section 12.2 Assignment Of Clayton Act, Cartwright Act Claims.**

Contractor assigns to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Contractor for sale to the County pursuant to this Agreement.

**Section 12.3 Budget Contingency.**

This Agreement is contingent upon the appropriation of sufficient funding by the County for the services covered by this Agreement. If funding is reduced or deleted by the County for the services covered by this Agreement, the County has the option to either terminate this Agreement with no liability occurring to the County or to offer an amendment to this Agreement indicating the reduced amount.

**Section 12.4 County No-Smoking Policy.**

Contractor and its employees, agents and subcontractors, shall comply with the County's No-Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.

**Section 12.5 Contracting Principles.**

All entities that contract with the County to provide services where the contract value is \$100,000 or more per budget unit per fiscal year and/or as otherwise directed by the Board, shall be fiscally responsible entities and shall treat their employees fairly. To ensure compliance with these contracting principles, all contractors shall: (1) comply with all applicable federal, state and local rules, regulations and laws; (2) maintain financial records, and make those records available upon request; (3) provide to the County copies of any financial audits that have been completed during the term of the contract; (4) upon the County's request, provide the County reasonable access, through representatives of the Contractor, to facilities, financial and employee records that are related to the purpose of the contract, except where prohibited by federal or state laws, regulations or rules.

**Section 12.6 Third Party Beneficiaries.**

This agreement does not, and is not intended to; confer any rights or remedies upon any person or entity other than the parties.

**Section 12.7 County Data.**

"County Data" shall mean data and information received by Contractor from County. As between Contractor and County, all County Data shall remain the property of the County. Contractor shall not acquire any ownership interest in the County Data. Contractor shall not, without County's written permission consent, use or disclose the County Data other than in the performance of its obligations under this Agreement. Contractor shall be responsible for establishing and maintaining an information security program that is designed to ensure the security and confidentiality of County Data, protect against any anticipated threats or hazards to the security or integrity of County Data, protect against unauthorized access to or use of County Data that could result in substantial harm or inconvenience to County or any end users; and ensure the proper disposal of County data upon termination of this Agreement. Contractor shall take appropriate action to address any incident of unauthorized access to County Data, including addressing and/or remedying the issue that resulted in such unauthorized access, notifying County as soon as possible of any incident of unauthorized access to County Data, or any other breach in Contractor's security that materially affects County or end users; and be responsible for ensuring compliance by its officers, employees, agents, and subcontractors with the confidentiality provisions hereof. Should confidential and/or legally protected County Data be divulged to unauthorized third



parties, Contractor shall comply with all applicable federal and state laws and regulations, including but not limited to California Civil Code Sections 1798.29 and 1798.82 at Contractor's sole expense (if applicable). Contractor shall not charge the County for any expenses associated with Contractor's compliance with the obligations set forth in this section.

### **ARTICLE XIII: Miscellaneous**

#### **Section 13.1 Notice.**

Any notice or payment permitted or required by this Agreement will be considered made on the date when personally delivered in writing or when mailed by certified mail, postage prepaid, to the other party at the address set forth below or to such other person or address as either party may designate in writing:

**To Broker:** ALICIA WU  
33 Del Prado Dr  
Campbell CA 95008

**To VHP:** Valley Health Plan  
2480 N. First St., Suite 200  
San Jose, CA 95131  
Attn: Contracts Manager

#### **Section 13.2 Entire Agreement: Amendment; Modification.**

This Agreement contains the entire understanding of the parties. Any amendment or modification of this Agreement shall be in writing and signed by each party. Notwithstanding the preceding sentence, VHP reserves the right to unilaterally modify the Commission Schedule. Neither party to this Agreement has made any representation nor warranty relating to the Agreement or the subject matter of this Agreement except those specifically contained in writing in this Agreement.

#### **Section 13.3 Waiver.**

The waiver by VHP or Broker of a breach of this Agreement will not operate as a waiver of any subsequent breach. No delay in acting with regard to any breach of this Agreement will be construed to be a waiver of the breach.

#### **Section 13.4 Assignment.**

This Agreement will not be assigned by either party without the prior written consent of the other.

#### **Section 13.5 Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Proper venue for legal action regarding this Agreement shall be in Santa Clara County.

#### **Section 13.6 Covered California Requirements.**

Broker shall comply with the Covered California requirements included in Exhibit B.

### **Section 13.7 Counterparts.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

### **Section 13.8 Construction.**

Headings contained in this Agreement are for convenience only and shall not be used in the interpretation of this Agreement.

### **Section 13.9 Wage Theft Prevention**

- (a) **Compliance with Wage and Hour Laws:** Broker, and any subcontractor it employs to complete work under this Agreement, must comply with all applicable federal, state, and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local Minimum Wage Ordinance or Living Wage Ordinance.
- (b) **Final Judgments, Decisions, and Orders:** For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted. Relevant investigatory government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, a local enforcement agency, or any other government entity tasked with the investigation and enforcement of wage and hour laws.
- (c) **Prior Judgments against Broker and/or its Subcontractors:** BY SIGNING THIS AGREEMENT, CONTRACTOR AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS, OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING—IN THE FIVE YEARS PRIOR TO EXECUTING THIS AMENDMENT—THAT CONTRACTOR OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH—OR HAS REACHED AGREEMENT WITH THE COUNTY REGARDING THE MANNER IN WHICH IT WILL SATISFY—ANY SUCH JUDGMENTS, DECISIONS, OR ORDERS.
- (d) **Judgments During Term of Contract:** If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision, or order finding that Contractor or any subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or Contractor learns of such a judgment, decision, or order that was not previously disclosed, Contractor must inform the Office of the County Executive—Office of Countywide Contracting Management (OCCM), no more than 15 days after the judgment, decision, or order becomes final or of learning of the final judgment, decision, or order. Contractor and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the Office of the County Executive—OCCM with documentary evidence of compliance with the final judgment, decision, or order within 5 days of satisfying the final judgment, decision, or order. The County reserves the right to require Contractor to enter into an agreement with the County regarding the manner in which any such final judgment, decision, or order will be satisfied.

- (e) **County's Right to Withhold Payment:** Where Contractor or any subcontractor it employs to perform work under this Agreement has been found in violation of any applicable wage and hour law by a final judgment, decision, or order of a court or government agency, the County reserves the right to withhold payment to Contractor until such judgment, decision, or order has been satisfied in full.
- (f) **Material Breach:** Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for termination of this Agreement and/or any other remedies available under this Agreement and/or law.
- (g) **Notice to County Related to Wage Theft Prevention:** Notice provided to the Office of the County Executive as required under this Section shall be addressed to: Office of the County Executive—OCCM; 70 West Hedding Street; East Wing, 11th Floor; San José, CA 95110. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

This section intentionally left blank


**Section 13.10 Electronic Signature.**

Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the County.

**Signatures**

IN WITNESS WHEREOF, Broker and VHP have executed this Agreement, as of the Effective Date.

"Broker"

  
\_\_\_\_\_  
Signature Date  
ALICIA WU

"County of Santa Clara"

  
\_\_\_\_\_  
Signature Date  
Bruce Butler  
Chief Executive Officer  
Valley Health Plan

TAX ID # 553690021

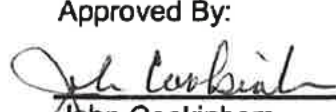
License Number: 0C01985

Expiration Date: 6/30 2017

Approved By:

  
\_\_\_\_\_  
Signature Date  
Paul A. Antigua  
Chief Financial Officer  
Valley Health Plan

Approved By:

  
\_\_\_\_\_  
Signature Date  
John Cookinham  
Chief Financial Officer  
Santa Clara Valley Health & Hospital System

Approved as to form and legality:

  
\_\_\_\_\_  
Signature Date  
Jennifer S. Sprinkles  
Deputy County Counsel

Approved By:

  
\_\_\_\_\_  
Signature Date  
René Santiago  
Deputy County Executive  
Santa Clara Valley Health & Hospital System

**Exhibits incorporated into this Agreement**

- Exhibit A1 Broker/Agent Compensation
- Exhibit B Covered California Requirements
- Exhibit C Insurance Requirements

**EXHIBIT A1 - BROKER/AGENT COMPENSATION  
VALLEY HEALTH PLAN COMPENSATION/COMMISSION SCHEDULE  
INDIVIDUAL AND FAMILY MEDICAL PLANS/POLICIES**

**FOR MEMBERS EFFECTUATED AND RENEWED COVERAGE  
BETWEEN JANUARY 1, 2017 – DECEMBER 31, 2017**

DESCRIPTION	BASIS FOR COMPENSATION		RATE
	*Total Members	New Enrollment	Renewal
Individual Market	1 – 100+	\$100.00	\$50.00

**FOR MEMBERS EFFECTUATED AND RENEWED COVERAGE  
BEGINNING JANUARY 1, 2016 AND AFTER**

DESCRIPTION	BASIS FOR COMPENSATION		RATE
	*Total Members	New Enrollment	Renewal
Individual Market	100+	\$400.00	\$150.00
	25 – 99	\$350.00	\$150.00
	5 – 24	\$250.00	\$150.00
	1 – 4	\$100.00	\$50.00

\*Total Members shall be calculated by the total number of newly enrolled and effectuated members and any renewed members. In the event a member terminates mid-year, it is VHP's policy to not take back or retain already paid compensation. In the event a member has a qualifying event and a new individual VHP plan policy is issued within the same payment year for a member previously enrolled in VHP within the same year; Broker/Agent will not be compensated for member Per Member Per Year (PMPY).

## EXHIBIT B – COVERED CALIFORNIA REQUIREMENTS

Broker shall comply with the following terms required by VHP's contract with Covered California:

### 1. Compliance

- a. **Compliance Coordination.** Broker shall coordinate and cooperate with VHP to the extent necessary to promote compliance by VHP and Broker with the applicable terms of VHP's contract with Covered California.
- b. **Compliance with All Laws.** Broker shall comply with all applicable federal, state, and local laws, regulations, executive orders, ordinances and guidance, including without limitation, the Affordable Care Act and the California Affordable Care Act; the Americans with Disabilities Act, the Anti-Kickback Statute, the Public Contracts Anti-Kickback Act, the Stark Law, and the Knox-Keene Health Care Service Plan Act of 1975, as applicable.

2. **Independent Contractors.** The parties acknowledge and agree that, as required by 45 C.F.R. § 155.200(e), in carrying out its responsibilities, Covered California is not operating on behalf of VHP or Broker. In the performance of this Agreement, VHP and Broker shall at all times be acting and performing as independent contractors, and nothing in the Broker Agreement shall be construed or deemed to create a relationship of employer and employee or partner or joint venture or principal and agent between or among VHP and Broker.

3. **Disclosure of Financial Information.** Broker agrees that VHP may disclose information relating to contracted rates between VHP and Broker that is treated as confidential information by the DMHC pursuant to Health and Safety Code § 1385.07(b). Broker shall cooperate with VHP in providing Covered California with financial information relating to Broker that is (i) provided by Broker or VHP to the DMHC or other regulatory bodies, and (ii) reasonable and customary financial information that is prepared by Broker, including, supporting information relating to Covered California Members as required by Covered California. Possible requests may include (but not be limited to), annual audited financial statements, and annual profit and loss statements.

### 4. Nondiscrimination.

- a. In accordance with the Affordable Care Act § 1557 (42 U.S.C. 18116), Broker shall require as well as its agents and employees to refrain from causing an individual to be excluded from participation in, or to be denied the benefits of, or to be subjected to discrimination under, any health program or activity offered through Covered California on grounds prohibited under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), § 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or any other applicable state and federal laws.

- b. Broker shall as well as its agents, employees and sub-contractors refrain from unlawful discrimination or harassment or from allowing harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS)), mental disability, medical condition (including health impairments related to or associated with a diagnosis of cancer for which a person has been rehabilitated or cured), age (40 or over), marital status, genetic information, sexual orientation, gender identity or use of family and medical care leave. PPG shall and shall require its sub-subcontractors as well as their agents and employees to evaluate and treat employees and applicants for employment in a manner that is free from such discrimination and harassment. Broker shall and shall require its sub-subcontractors as well as their agents and employees to comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900, et seq.) and the applicable regulations promulgated thereunder (2 CCR 7285.0, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in CCR Chapter 5 of Division 4 of Title 2, including, 2, CCR Section 8103, et seq., are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Broker shall give written notice of its obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

#### **5. Conflict of Interest; Integrity.**

- a. Broker shall be free from any conflicts of interest with respect to Covered Services provided under this Agreement. Broker represents that Broker and its personnel do not currently have, and will not have throughout the term of the Agreement, any direct or interest, which may present a conflict in any manner with the performance of Covered Services required under this Agreement. Broker also represents that it is not aware of any conflicts of interest of any sub-subcontractors or any basis for potential violations of Broker with respect to laws, rules and regulations that govern referrals required for the provision of certain Covered Services to Covered California Members, including, federal and state anti-kickback and anti-self-referral laws, rules and regulations. Broker shall immediately (i) identify any conflict of interest that is identified during the term of the Agreement and (ii) take any necessary action to assure that any activities are not properly influenced by a conflict of interest.
- b. Broker shall comply with any and all applicable policies adopted by Covered California regarding conflicts of interest and ethical standards.

#### **6. Customer Service**

Broker shall meet all State requirements for language assistance services that are applicable to VHP's Commercial HMO line of business.

## **7. Other Laws.**

Broker shall comply with applicable laws, rules and regulations, including the following:

- a.** Americans with Disabilities Act. Broker shall comply with the Americans With Disabilities Act (ADA) of 1990, (42 U.S.C. 12101, et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA, unless specifically exempted.
- b.** Drug-Free Workplace. Broker shall comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350, et seq.).
- c.** Child Support Compliance Act. Broker shall fully comply with all applicable State and Federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code.
- d.** Domestic Partners. Broker shall fully comply with Public Contract Code Section 10295.3 with regard to benefits for domestic partners.
- e.** Environmental. Broker shall comply with environmental laws, rules and Regulations applicable to its operations, including, those relating to certifies compliance with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste.
- f.** Other Laws. Broker shall comply with any and all other State and Federal laws, rules and regulations applicable to this Agreement and Broker's provision of Services under this Agreement.



**EXHIBIT C  
INSURANCE REQUIREMENTS  
FOR AGENT/BROKER COMMISSION AGREEMENT**

**Indemnity**

The Contractor shall indemnify, defend, and hold harmless the County of Santa Clara dba Valley Health Plan (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or subcontractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement.

**Insurance**

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

**A. Evidence of Coverage**

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

**B. Qualifying Insurers**

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

### **C. Notice of Cancellation**

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

### **D. Insurance Required**

#### **1. Professional Errors and Omissions Liability Insurance:**

- a. Such errors and omissions insurance shall expressly covers for claims and losses with respect to premises liability and personal or advertising injury (such as libel or slander, invasion of privacy, copyright/trademark infringement).
- b. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per occurrence/aggregate.
- c. If coverage contains a deductible or self-retention, it shall not be greater than fifty thousand dollars (\$50,000) per occurrence/event.
- d. Coverage as required herein shall be maintained for a minimum of two years following termination or completion of this Agreement.

#### **2. Claims Made Coverage**

If coverage is written on a claims made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the Contractor's start of work (including subsequent policies purchased as renewals or replacements).
- b. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

### **E. Special Provisions**

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.

2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractor's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.
3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.
4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

**Acknowledgement of Insurance Requirements**

I, **ALICIA WU**, on behalf of **ALICIA WU**, have read and understand the terms and conditions of the Insurance Requirements under this Agreement. I understand that all Insurance certificates **MUST** be in effect, prior to the services rendered. I understand that if I am **NOT** compliant with these insurance requirements, I will not be compensated for services rendered until insurance certification is obtained that meets the requirements set forth in this agreement. In addition, if I fail to obtain the required insurance certification prior to the Effective Date of this agreement, this agreement may be terminated.

  
\_\_\_\_\_  
Signature

12/8/16  
\_\_\_\_\_  
Date



This SECOND Amendment may be executed by the parties in any number of separate counter parts, each of which shall be deemed an original and all of which, taken together shall be deemed to constitute one and the same instrument.

INTENDING TO BE BOUND HEREBY, the parties have caused their authorized representatives to execute this SECOND Amendment as set forth below:

**“Broker”**

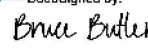
DocuSigned by:  
  
 R5B785C3F5FF40F  
 \_\_\_\_\_ 12/6/2017  
 Signature Date  
**ALICIA WU**

TAX ID # 553690021

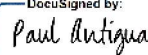
License Number: 0C01985

Expiration Date: 6/30/2017

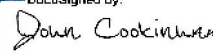
**“County of Santa Clara”**

DocuSigned by:  
  
 179CA5L2B0L9482...  
 \_\_\_\_\_ 1/11/2018  
 Bruce Butler Date  
 Chief Executive Officer  
 Valley Health Plan

**Approved By:**

DocuSigned by:  
  
 3B0CLB7834C0840A...  
 \_\_\_\_\_ 1/17/2018  
 Paul A. Antigua Date  
 Chief Financial Officer  
 Valley Health Plan

**Approved By:**

DocuSigned by:  
  
 C26C007E205C43A...  
 \_\_\_\_\_ 1/10/2018  
 John Cookinham Date  
 Chief Financial Officer  
 Santa Clara Valley Health & Hospital System

**Approved as to form and legality:**

DocuSigned by:  
  
 EBD1532743764D4...  
 \_\_\_\_\_ 1/10/2018  
 Jennifer S. Sprinkles Date  
 Deputy County Counsel

**Approved By:**

DocuSigned by:  
  
 A868A3D7L218400...  
 \_\_\_\_\_ 1/18/2018  
 René G. Santiago Date  
 Deputy County Executive  
 Santa Clara Valley Health & Hospital System

**Exhibits incorporated into this Agreement**

Exhibit A-2 Fee Schedule

**EXHIBIT A-2 - BROKER/AGENT COMPENSATION  
VALLEY HEALTH PLAN COMPENSATION/COMMISSION SCHEDULE  
INDIVIDUAL AND FAMILY MEDICAL PLANS/POLICIES**

**FOR MEMBERS EFFECTUATED AND RENEWED COVERAGE  
BEGINNING JANUARY 1, 2016 – DECEMBER 31, 2017**

**DESCRIPTION      BASIS FOR COMPENSATION      RATE**

Individual Market

*Total Members	New Enrollment	Renewal
100+	\$400.00	\$150.00
25 – 99	\$350.00	\$150.00
5 – 24	\$250.00	\$150.00
1 – 4	\$100.00	\$50.00

\*Total Members shall be calculated by the total number of newly enrolled and effectuated members and any renewed members. In the event a member terminates mid-year, it is VHP's policy to not take back or retain already paid compensation. In the event a member has a qualifying event and a new individual VHP plan policy is issued within the same payment year for a member previously enrolled in VHP within the same year; Broker/Agent will not be compensated for member Per Member Per Year (PMPY).

**FOR MEMBERS EFFECTUATED AND RENEWED COVERAGE  
BEGINNING JANUARY 1, 2018 AND AFTER**

VHP will pay the broker first year, renewal, and bonus compensation in accordance with the applicable commission/bonus schedules posted on [www.valleyhealthplan.org/sites/b/Pages/broker-home.aspx](http://www.valleyhealthplan.org/sites/b/Pages/broker-home.aspx). The posted commission schedules will be subject to change, any adjustments to the schedule will be issued in writing and delivered in accordance with the Notice section of the agreement.