

BROKER AGREEMENT

This Agreement, effective as of the _____ day of _____, 20____, is made by and between Affiliated Physicians and Employers Master Trust (aka Members Health Plan NJ) (hereinafter collectively referred to as "TRUST"), a trust formed under the laws of the State of New Jersey and _____ (hereinafter referred to as "Broker") a person duly licensed to engage in business as an Insurance Producer by the State of New Jersey and having its principal office located at the following address:

Collectively, the Trust and the Broker are "the parties."

WHEREAS, the TRUST sponsors, among other things, self-funded employee benefit plans (collectively the "Plans") which provide for the payment of certain benefits to eligible employees of members who participate in the TRUST and, if applicable, their dependents and such other persons who may be eligible for coverage under the Plans; and

WHEREAS, Broker is a _____ [enter type of legal entity (e.g., corporation, partners Trust, limited liability company, limited liability partners Trust, etc. If Broker is an individual, omit reference to legal entity)] organized pursuant to the laws of the State of _____ and licensed as an Insurance Producer in New Jersey in good standing and, as such, is authorized to market and place coverage of self-funded employee benefit plans on behalf of entities like the TRUST; and

WHEREAS, the TRUST desires to engage the services of Broker for the purpose of marketing and selling the Plans and Broker desires to perform such functions;

NOW, THEREFORE, for and in consideration of the mutual promises herein contained and other good and valuable consideration, the parties hereto agree to the following provisions:

I. DEFINITIONS

The following terms shall have the meanings as set forth below:

- a. "HEALTH PLAN PARTICIPATION REQUEST/CONTRACT" (hereinafter referred to as "PARTICIPATION CONTRACT") means an agreement entered into by and between the TRUST and a Participating Group (as defined below), pursuant to which TRUST will provide self-funded health benefit plans to Employees, their dependents and such other persons who may be eligible for coverage under the Plans.
- b. "BROKER OF RECORD" is identified by a written statement signed by a Participating Employer advising the TRUST that a particular Broker shall act as the Participating Employer's representative.
- c. "COMMISSIONABLE BUSINESS" is business on which a commission is payable as to a Participating Group because it maintains coverage written by the Broker through the TRUST and the Broker continues as the Broker of Record for the Participating Group. Commissions are payable for New Business and/or Existing Business, but only so long as the Participating Group continues its participation in the TRUST.
- d. "EXISTING BUSINESS" is business attributable to a Participating Group for which the Broker has furnished the TRUST a Broker of Record Letter and which business renews with the Trust on or before October 1, 2015.

- e. "HEALTH CARE FEES" are amounts payable by Participating Groups to the TRUST's Plan Administrator for the Plans for coverage under the applicable Plan.
- f. "NEW BUSINESS" is business of a Participating Group that has never maintained coverage through the TRUST or that has not maintained coverage through the TRUST at any point during the twelve (12) months preceding the Participating Group's effective date with the TRUST. Broker of Record must be supplied with the Participating Group's initial Participation Contract in order for commissions to be payable as a New Business.
- g. "PARTICIPATING GROUP" Eligible employers who are Participants in the TRUST and who have elected coverage for their eligible employees under the TRUST by completing and agreeing to the provisions of the Participation Contract and having met all underwriting guidelines and eligibility requirements of the TRUST.
- h. "PLAN or PLANS" shall mean the self-funded employee health benefit plan or plans as evidenced by plan documents and summary plan descriptions offered by the TRUST and selected by Participating Groups for their employees or members and, if applicable, their dependents and such other persons who may be eligible for coverage under the Plans. The term "Plan" as used in this Agreement shall include any modification or amendment as of the implementation date agreed upon by the TRUST.
- i. "ADMINISTRATOR" shall mean the TRUST's Plan Administrator and TRUST Manager, Concord Management Resources ("CMR").
- j. "QUOTING/ENROLLMENT SYSTEM" means the system utilized by the TRUST to offer its Brokers, Groups and Employees a self-service tool for on-line quoting, enrollment, renewal and billing.

II. MARKETING/SOLICITATION

- a. The Trust appoints Broker with the power to solicit and submit applications for the issuance of TRUST Plans. Due to the complex nature of the self-insured Plans being offered, Broker must work with the TRUST's Administrator representatives who will assist Broker in soliciting, marketing, presenting and detailing the Plan(s) to potential employers. Broker shall submit completed applications on behalf of Participating Groups wishing to obtain coverage with the TRUST through Broker to a designated Administrator representative or through the Trust's Quoting/Enrollment System. Applications that are not complete will be returned to Broker to complete and no Participating Group will be enrolled until the completed application is received by the TRUST or TRUST's Administrator. Broker shall take all other steps reasonably required of Broker by such Participating Groups in connection with their coverage needs.
- b. Broker agrees to abide by TRUST's and TRUST Administrator's administrative guidelines (including administrative manuals, advertising, claims administration, anti-fraud procedures, healthcare fee collection and remittance, record retention, and modifications and updates to products and procedures or other bulletins, collectively "Administrative Guidelines") from the moment released by TRUST or TRUST Administrator.
- c. Each Party agrees to obtain all appropriate licenses and permits required to carry out its obligations under this Agreement. Broker acknowledges and agrees that it will perform all services hereunder in accordance with the highest ethical standards relating to broker services including, without limitation, being fully familiar with the Plans and related underwriting guidelines.
- d. Broker shall not make any representations with respect to TRUST's coverage except as may be contained in the written material prepared and furnished to Broker by TRUST and shall make no oral or written alteration, modification or waiver of any of the terms or conditions applicable to that coverage without TRUST's expressed prior written consent. Broker shall not make, alter or discharge contracts for the TRUST; extend the time for payment of Health Care Fees, contributions, assessments or other amounts owed to the TRUST; waive forfeitures; commit the TRUST to the

- payment of any claim; or otherwise bind the TRUST in any way not specifically authorized in writing by a duly authorized officer of the TRUST or TRUST's Administrator.
- e. Any and all marketing materials, including solicitation letters, brochures, magazine or news articles concerning the Plans prepared by Broker shall be approved in writing by TRUST before such materials are distributed. Unless otherwise agreed to by the Parties, the costs of preparation and distribution of such materials shall be borne by the Party preparing them.
 - f. Broker shall not employ or make use of any advertisement or material in which TRUST's name and/or corporate symbols are contained without the prior expressed written consent of TRUST. Upon termination of this Agreement, Broker shall cease to use TRUST's name, symbol, trademarks, service marks and/or any other proprietary designation in any of its activities and shall promptly return to TRUST all documents, materials, forms and items furnished in connection with this Agreement and the marketing and sale of the Plans, with the exception of records that must be maintained by Broker pursuant to applicable law or regulation.
 - g. Broker acknowledges and agrees that it has no authority to offer a Participation Contract to any employer without the prior approval of TRUST. Contracts may be approved only by TRUST or TRUST's Administrator, in its sole discretion.
 - h. Broker acknowledges and agrees that it has no authority to sign any agreement or contract (including Participation Contracts subject to this Agreement) on behalf of TRUST.
 - i. TRUST shall not be liable for any commissions, expenses, costs or damages resulting from its failure or refusal to accept a potential employer or issue a particular Participation Contract solicited by Broker, regardless of the reason or cause for such failure or refusal.
 - j. Broker agrees to maintain all documents, records and other information concerning its services under this Agreement for as long as required by applicable law, but in no event less than six (6) years, and to make such documents, records and information available to TRUST or TRUST's Administrator on request. This provision shall survive the termination of this Agreement.
 - k. Broker acknowledges and agrees that, in order to render or to continue to render services pursuant to this Agreement, Broker must comply with all of TRUST's requirements for Broker affiliation.
 - l. Broker agrees to provide TRUST, upon request, with any and all information relating to Broker's arrangement(s) with employers that are applying for or receiving coverage from TRUST pursuant to a Participation Contract.

I. ACCOUNT SUPPORT SERVICES

- a. Broker shall perform the administrative functions listed in this Article on behalf of TRUST.
 - i. **Administration.** Broker shall maintain all administrative and statistical records in respect of the Participation Contracts. In respect of New Business, Broker shall review all individual application information and verify that such information is complete. Broker shall forward such information to TRUST's enrollment and/or underwriting departments or through TRUST's QUOTING/ENROLLMENT SYSTEM. Such records shall indicate the status of each person, including employees, retirees and dependents. Such records shall include but not be limited to the following data elements:
 1. effective dates;
 2. termination dates;
 3. lapse dates;
 4. appropriate addresses of record;
 5. selection of health care provider, if applicable;
 6. enrollment change dates; and

7. existence and amount of any other health insurance covering the insured and any spouse and/or dependents.
- ii. **Account Support Services.** Subject to the provisions of this Agreement, Broker shall serve as a resource to members and Participating Groups and shall provide information and support to those members and Participating Groups concerning the Plans, including, but not limited to, the following:
 1. responding to inquiries from members and Participating Groups concerning benefits, whether such inquiries are made in person, by telephone or via correspondence;
 2. making presentations regarding the Plans, and providing such other information, as an individual or Group may require for marketing to or servicing the enrolled member or Group; and
 3. assisting in the collection of Health Care Fees from individuals and Groups, when requested to do so by TRUST. Notwithstanding the above, Broker agrees to record, date, time-stamp and forward all non-routine requests received from members or Participating Groups to TRUST.

II. COMPENSATION

- a. Broker shall receive a monthly commission on all Commissionable Business written by TRUST through Broker as specified in the Commission Schedule attached to and incorporated by reference in this Agreement as Schedule A. Schedule A may be amended at TRUST's sole discretion at any time and from time to time but any such amendment will have no effect on commissions already earned by Broker. What constitutes Commissionable Business is defined in Article I - Definitions.
- b. No commissions shall be payable with relation to a Participating Group, unless this Agreement is in effect, the Participating Group maintains coverage placed by Broker with TRUST, and Broker continues as the Broker of Record for the Participating Group. Notice to TRUST given by a Participating Group that it has terminated its Broker of Record arrangement with Broker will be effective on the billing cycle date of the later of the requested month of termination or the month following the date of receipt of the notification by TRUST but will have no effect as to commissions already earned.
- c. Commissions shall not be payable unless and until the Health Care Fees to which they apply are received by TRUST, and Broker has complied with the terms of this Agreement, as it may be amended from time to time. Commission payments on behalf of a Participating Group will automatically end if the Participating Group terminates its coverage with TRUST. Commissions payable on behalf of a Participating Group under this Agreement shall be paid so long as this Agreement is in effect and the Participating Group has coverage with TRUST through Broker and Broker continues to service the Participating Group as its Broker of Record.
- d. TRUST shall have the right to discontinue selling or alter the health benefits coverage provided to a Participating Group in accordance with the terms of their Participation Contract. If TRUST terminates, rescinds, or otherwise cancels a Participation Contract with a Participating Group, and is thereby obligated to refund Health Care Fees paid in respect of that Participation Contract, Broker shall repay to TRUST, immediately upon demand, the amount of all commissions and fees that it has received pro rata according to the ratio of returned Health Care Fees to total Health Care Fees for the Participation Contract. If Broker does not repay such commissions immediately upon demand, TRUST shall have the right to:
 - i. offset the amount to be refunded against any future commission payments due under this Agreement; and

- ii. terminate this Agreement, effective immediately upon such contract termination, rescission or cancellation. TRUST shall also have the right to pursue any and all rights and remedies it may have at law or equity.
- e. Commissions due to Broker under this Agreement and the applicable Broker of Record Letter shall be paid to Broker on behalf of the Participating Group only after receipt of the Participating Group's monthly Health Care Fees.
- f. No commissions shall be payable under this Agreement on any Health Care Fees waived under the terms of any contract and no commissions shall be payable on any interest charges.
- g. TRUST reserves the right to amend or discontinue commissions, at TRUST's sole discretion, upon written notice to Broker.
- h. TRUST requires that Broker provide complete disclosure to Broker's clients about how Broker is compensated for Broker's services. TRUST encourages Broker and their clients to discuss what Compensations or other compensation may be paid in connection with the purchase of products or services so that employers can make an informed buying decision.
- i. Brokers have the responsibility to disclose all compensation arrangements to their clients. Disclosure is not the responsibility of the TRUST. It is expected that a Broker will adhere to any disclosure guidelines and requirements established by all applicable federal and state regulatory agencies.

III. REPORTS AND AUDITS

- a. TRUST agrees to remit to Broker a commission statement, if commissions are due and payable, on a monthly basis summarizing the Health Care Fees paid by Participating Group(s) attributable to the business placed by Broker for TRUST and the commissions paid thereon. The commission statement shall be deemed accurate unless Broker objects thereto in writing within thirty (30) days of receipt of the statement. TRUST reserves the right at any time to waive the requirement of Broker's thirty (30) day notice of objection. Any waiver shall not be construed as a modification of this requirement, with regards to any past or future failure on Broker's part to so object.
- b. If no commission statement is received due to no payments being made to Broker, but Broker believes there are commissions due, Broker shall have ninety (90) days to notify TRUST of objection, otherwise, commissions will not be deemed due and payable to Broker.
- c. Broker shall keep, in a reasonable manner, complete records and accounts of all business pertaining to coverage placed by Broker under this Agreement.
- d. TRUST shall have the right to audit and copy all relevant books and records of Broker at any time. Broker shall reimburse TRUST for the expenses of any audit conducted as a result of Broker's misconduct, fraud or intentional misrepresentation of TRUST and/or the Plans.
- e. Broker and its employees and affiliates shall make available to TRUST immediately upon request and permit TRUST to copy all relevant files and business records maintained by Broker in respect of this Agreement, the Plans, and all brokerage activities undertaken pursuant to this Agreement.

IV. LICENSES; TAXES; INSURANCE

- a. Broker shall maintain all legally required New Jersey State broker license(s) in good standing during the entire term of this Agreement. Broker shall notify TRUST immediately of any termination, suspension or expiration of any license necessary to permit Broker to engage in the marketing and sale of accident and health insurance policies, in the State of New Jersey.
- b. Broker warrants that it currently has, or shall immediately obtain, any and all licenses required by the State of New Jersey or local laws or regulations to engage in the marketing and sale of accident and health insurance policies, and will pay all license, income, self-employment, unemployment and

any and all other taxes, fees and levies upon its respective business as required by applicable law. Broker shall and hereby does indemnify, hold, and save harmless TRUST from all liability attaching to TRUST as a result of Broker's failure or refusal to comply with this Section.

- c. Broker warrants that it has in place now, and will maintain during the term of this Agreement, insurance coverage for Errors and Omissions Liability in an amount not less than one million dollars (\$1,000,000) for any one wrongful act/occurrence. If Broker collects premium on behalf of TRUST, Broker also warrants that it has in place now and will maintain during the term of this Agreement, a Fidelity Bond covering all operations, employees and subcontractors servicing any Business which falls within the parameters of this Agreement, in an amount not less than five hundred thousand dollars (\$500,000) per occurrence. Broker shall ensure that its errors and omissions insurance does not have an exclusion for Multiple Employer Welfare Arrangements (MEWAs). Broker shall provide evidence to TRUST that such coverage is in force prior to the execution hereof, and from time to time upon TRUST's request. Broker shall notify TRUST immediately if such insurance is or will be reduced, modified, canceled or terminated.

V. PRIVACY, SECURITY AND HIPAA REQUIREMENTS

- a. Broker shall maintain the privacy and security of all health and financial information pertaining to participating members in accordance with applicable federal, state and local laws and regulations and in accordance with the terms of Appendix A of this Agreement. Broker further acknowledges and agrees that Broker serves as a "business associate" of the Trust pursuant to 45 C.F.R. Parts 160 and 164 (the "HIPAA Regulations") and that Broker shall satisfy all terms and conditions set forth in Appendix A of this Agreement.

VI. TERM and TERMINATION

- a. Except with respect to Section VII (b) below, the term of this Agreement shall be one year. This Agreement shall automatically renew for successive one year terms unless: (i) either Party provides written notice of its intention not to renew at least thirty (30) days prior to the expiration of the then-existing term; or (ii) the Agreement is terminated in accordance with the provisions set forth below.
- b. This Agreement may be terminated:
 - i. by either Party, at any time, without cause, upon thirty (30) days written notice;
 - ii. by either Party upon thirty (30) days written notice in the event that the other Party has failed to comply with any material term, condition or obligation of this Agreement, and such Party subsequently has failed to undertake substantial efforts to remedy the default within fifteen (15) days after the non-defaulting Party shall have given written notice thereof to the non-performing Party, or within such other longer period of time as in the opinion of the non-defaulting Party shall be reasonable under the circumstances;
 - iii. immediately upon determination by a court of law or administrative body having jurisdiction over the Parties that the performance of obligations or the exercise of rights hereunder is illegal, or violates any law or regulation which may be enacted subsequent to the date hereof or any interpretation of any existing law or regulation, or violates any existing agreement with a third party or any rule or guideline promulgated pursuant to such agreement, and such disability renders the performance of the Agreement impossible. No right to terminate this Agreement shall arise under this subsection unless and until the Party desiring such termination shall make all reasonable efforts to cure the illegality or violation in question and to suggest reasonable and appropriate amendments or modifications to this Agreement

- so as to permit performance hereunder without effecting the illegality or violation in question;
- iv. by either Party, immediately upon written notice, if the other Party is unable to pay its debts, files or has filed against it a petition in bankruptcy, commences or has commenced against it any other insolvency proceedings which are not dismissed within forty-five (45) days or seeks reorganization or an arrangement with creditors;
 - v. by TRUST immediately upon notice that Broker's license is suspended, terminated or expired or that there has been a material change in Broker's errors and omissions insurance coverage as set forth in Section V;
 - vi. by TRUST if Broker is not a corporation or partnership, on the date of Broker's death;
 - vii. by TRUST automatically if the Broker misappropriated funds from any Participating Employer or TRUST;
 - viii. by TRUST automatically if the Broker interfered with the collection of any Health Care Fees;
 - ix. by TRUST automatically if the Broker engaged in fraudulent acts; and
 - x. by TRUST automatically if the Broker's appointment with the TRUST is cancelled.
- c. No waiver of any breach of any provision of this Agreement shall be deemed a waiver of any subsequent breach of the same type or a breach of any other provision of this Agreement.
 - d. Termination of this Agreement shall in no way affect the terms and conditions of any Participation Contracts issued during the term of this Agreement, nor shall it affect the rights of the Parties under this Agreement.
 - e. Termination shall not be effective as to Participation Contracts issued prior to the termination date.
 - f. Upon termination of this Agreement, Broker shall: a) if feasible, return or destroy all Protected Health Information as defined in Appendix A received from, or created or received by Broker on behalf of, the Trust that Broker still maintains in any form, and Broker shall retain no copies of such information; or b) if Broker and the TRUST reasonably determine that such return or destruction is not feasible, extend the protections of Appendix A to such information and limit further uses and disclosures to those purposes that make the return or destruction of the Protected Health Information infeasible.
 - g. Neither Party shall be liable to the other by reason of the expiration or termination of this Agreement or its non-renewal, provided, however, that the termination of this Agreement for any reason shall not terminate any rights, obligations or liabilities which either Party may accrue prior to such termination which, under the terms of this Agreement, continue after such termination.
 - h. The provisions and obligations of Articles IV, VIII and IX shall survive termination of this Agreement.
 - i. In the event of a termination pursuant to this Section, no subsequent Compensation payment shall be made to Broker. After the effective date of termination of this Agreement, all of the rights and obligations of the parties hereto, including but not limited to the collection of Healthcare fees, the accounting of Health Care Fees and Compensations, and settling of all balances, shall remain in full force and effect until all liabilities of the parties under this Agreement are finally discharged.

VII. INDEMNIFICATION

- a. Broker shall indemnify, defend and hold TRUST and its directors, officers, employees, agents, independent contractors, insurers, attorneys and successor, predecessor and affiliated companies harmless from and against any and all claims, suits, demands, liabilities, costs, damages and expenses whatsoever, including attorneys' fees, arising from or related in any way to: (i) any and all services rendered hereunder by Broker, its employees, agents, or independent contractors, or any omission with respect to such services; (ii) any unauthorized warranties made by Broker, its employees, agents, or independent contractors with respect to Plans, whether expressed or implied; (iii) any

breach by Broker, its employees, agents, or independent contractors of their agreements, obligations, representations and warranties hereunder; and (iv) any violation by Broker, its employees, agents, or independent contractors of federal, state or local laws or regulations or other requirements.

VIII. CONFIDENTIALITY; PROPRIETARY INFORMATION

- a. In performing its obligations pursuant to this Agreement, each Party may have access to and receive certain non-public information about the other and its affiliates including, but not limited to, Plan marketing philosophy, telemarketing design and service, Plan advantages and disadvantages, financial, demographic and actuarial information, Underwriting Manual guidelines, internal policies concerning enrollment, billing and other information and/or proprietary materials that are considered confidential or proprietary to the disclosing Party. This section is not intended to grant the Parties the right to use or have access to such confidential information, but rather to restrict the use which the Parties may make of any such information to which they have access. However, the Parties hereby acknowledge that Broker does not have proprietary rights in the identity of any Group or individual proposed for coverage by TRUST, except the right to Commissions, if any, in accordance with this Agreement.
- b. Except as otherwise provided in this Agreement, each Party hereto shall maintain the confidentiality of all such confidential and/or proprietary information, and shall not disclose such information to any third party, except as may be required by law or court order, and shall not use such information for any reason other than the fulfillment of its obligations hereunder, for the term of this Agreement and thereafter.
- c. Each Party shall retain all rights to its confidential and/or proprietary information.
- d. Each Party recognizes that any breach or violation of this section may result in irreparable harm to the non-breaching party, and each Party agrees that, in addition to any and all other remedies available, the non-breaching party shall be entitled to an injunction restraining the breaching party and any related person(s) from violating this section.

IX. NOTICES

Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent via telecopy, overnight courier or certified mail, return receipt requested, to the Parties at their designated addresses. Notice shall be effective: (i) in the case of telecopy, when sent; (ii) in the case of overnight courier service, on the next business day after the notice is sent; and (iii) in the case of certified mail, three (3) days after the letter is deposited, postage prepaid, in a United States post office depository.

X. ARBITRATION

If an irreconcilable difference of opinion arises concerning the interpretation of this Agreement, such differences shall be submitted to arbitration before The American Arbitration Association before a single arbitrator. The Arbitrator shall be a disinterested active or retired executive or official of a health insurance company.

The arbitration proceeding shall take place in Somerset, New Jersey. Each party shall present its case to the arbitrator within sixty (60) days following the date of his/her appointment. The decision of the arbitrator shall be final and binding upon both parties. Each party shall equally bear with the other party the expense

of the arbitration proceeding. Any decision rendered by the arbitrator shall be final, binding, and non-appealable to any court in any jurisdiction.

XI. MISCELLANEOUS

- a. Broker shall comply with all applicable federal, state and local laws and regulations and TRUST's rules and regulations in performing its obligations hereunder.
- b. No waiver by either party to enforce any of the provisions of this Agreement shall be effective unless made in writing and signed by a duly authorized officer and shall be effective only as to the specifically stated waiver.
- c. Nothing in this Agreement shall be construed as limiting or restricting TRUST's right to decline to accept any entity as a Participating Group or to cancel, terminate or modify any contract with a Participating Group.
- d. All printed materials, applications, sales literature and other written material which TRUST may furnish to Broker and which Broker may furnish to its employees shall remain the property of TRUST, subject at all times to its control, and Broker shall return all such materials to TRUST immediately upon request.
- e. During the term of this Agreement and at all times thereafter Broker shall not, directly or indirectly, disclose to any person or entity any confidential information which it has obtained by reason of its association with TRUST about the business of the TRUST or about the TRUST's members or about groups covered by the TRUST, nor shall Broker use such information in any way that may adversely affect TRUST.
- f. Broker hereby represents, warrants and covenants to TRUST as follows:
 - i. There is no restriction or limitation, by reason of any law, regulation, contract, agreement or otherwise, upon Broker's right or ability to enter into this Agreement or to fulfill its obligations hereunder;
 - ii. Broker is in compliance with and will continue to comply with all applicable statutory and regulatory requirements, including but without limitation, licenses, certificates and permits required by the State of New Jersey. Broker hereby assumes responsibility for any failure to comply with these requirements, including payment of fines. Broker shall immediately notify TRUST of any loss or suspension of its license. Broker shall immediately notify TRUST of any criminal, civil or administrative action involving Broker; and
 - iii. Broker has never suffered any loss, suspension or termination of any license issued by a federal, state or local governmental authority in connection with the sale of any type of accident and health insurance; and Broker has never suffered suspension or termination of the right to represent an insurance company for cause other than normal expiration of an agreement.
- g. **Governing Law**

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of New Jersey. Any litigation related to this Agreement shall be filed and occur exclusively in the state or federal courts in New Jersey and no other venue.
- h. **Assignment**
 - i. TRUST reserves the right to assign, delegate, subcontract, or otherwise transfer its rights, obligations and/or interests under this Agreement to any parent, subsidiary or affiliate of TRUST or to any company which is the successor to all or substantially all of the business of TRUST, without the consent of the other party.

ii. This Agreement shall not be assignable by Broker without TRUST's prior written consent.

i. Waiver of Breach

No failure to exercise, and no delay in exercising, on the part of TRUST, any right, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided for herein are cumulative and not exclusive of any rights or remedies provided by law.

j. Entire Agreement; Modification, Waiver

This Agreement and the Schedule annexed hereto embody the entire agreement and understanding between and among the Parties hereto and supersede all prior agreements and understandings relating to the subject matter of this Agreement. This Agreement and any provision hereof may be amended, changed, waived, discharged or terminated only by TRUST, pursuant to written notice to Broker ("Notice of Amendment"). Such amendments, changes or other modification will be full force and effect on the date specified in the Notice of Amendment.

k. Severable Provisions

Should any provision of this Agreement be found by a court of competent jurisdiction to be unlawful, remaining portions of this Agreement shall continue to have full force and effect upon both parties. This Agreement and the Schedule annexed hereto embody the entire agreement and understanding between and among the Parties hereto and supersede all prior agreements and understandings relating to the subject matter of this Agreement. This Agreement and any provision hereof may be amended, changed, waived, discharged or terminated only by TRUST, pursuant to written notice to Broker ("Notice of Amendment"). Such amendments, changes or other modification will be full force and effect on the date specified in the Notice of Amendment.

l. Relationship as Independent Contractors

It is understood and agreed that neither Party shall have any authority to make any representation, warranty or binding commitment on behalf of the other Party. TRUST and Broker are independent contractors contracting with each other for the purpose of effecting the provisions of the Agreement. Neither the relationship of the Parties nor their performance of any obligations under this Agreement shall render the Parties partners or joint venturers.

m. Receipt of Claims and Complaints

Broker agrees to immediately forward to TRUST all claims, complaints or demands of any kind or nature received by Broker in respect of TRUST's business or any Participation Contract, including but without limitation, all consumer complaints, regulatory inquiries and legal processes concerning or against TRUST that is served upon or received by Broker.

n. Expirations

Expirations shall be the sole and exclusive property of TRUST. Upon the occurrence of any event that permits immediate termination of this Agreement, TRUST may take immediate possession of all records relating to the Expirations and Broker shall, upon TRUST's request, immediately gather such records together at Broker's principal place of business and allow TRUST access to take possession of those records. TRUST may service those Expirations directly or dispose of them in any commercially reasonable manner. TRUST may collect Health Care Fees directly from any Participating Group who has not made payment to Broker.

o. Headings

The headings of sections contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Each party represents and warrants that each of the officers executing this Agreement is duly authorized to do so and is acting within the scope of his or her authority.

Binding Agreement to the above stated provisions:

Broker: _____

Affiliated Physicians and Employers Master Trust
Print Name

Agency: _____

Signature: _____

Signature: _____

Title: _____

Date: _____

Title: _____

Address: _____

Date: _____

Tax ID Number or Social Security Number

Health License Number

APPENDIX A

PRIVACY & SECURITY OF TRUST MEMBER HEALTH & FINANCIAL INFORMATION

I. Definitions

The following definitions shall apply to this Appendix A:

- a. "Protected Health Information" shall mean Individually Identifiable Health Information (as defined below) that is transmitted or maintained in any form or medium. However, it does not include Individually Identifiable Health Information in education records covered by the Family Educational Right and Privacy Act, as amended (20 U.S.C. § 1232g), records described at 20 U.S.C. § 1232g(a)(4)(B)(iv), and employment records held by a HIPAA covered entity in its role as an employer.
- b. "Individually Identifiable Health Information" shall mean health information, including demographic information collected from an individual, that:
 - (a) is created or received by a health care provider, health plan (including TRUST), administrator, employer or health care clearinghouse; and
 - (b) relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual or the past, present or future payment for the provision of health care to an individual and that: (1) identifies the individual or (2) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- c. "Financial Information" shall mean personally identifiable financial information and any list description or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information other than publicly available information. For purposes of this definition, "personally identifiable financial information" means any information other than Protected Health Information:
 - (a) a consumer provides to TRUST or TRUST's Administrator, or to Broker on behalf of TRUST, to obtain a self-funded plan or insurance product or service from TRUST;
 - (b) about a consumer resulting from a transaction involving a self-funded plan or insurance product or service between TRUST, or Broker on behalf of TRUST, and a consumer; or
 - (c) TRUST or TRUST's Administrator, or Broker on behalf of TRUST, otherwise obtains about a consumer in connection with providing a self-funded plan or insurance product or service to that consumer.
- d. "Required by Law" shall mean a mandate contained in law that compels the use or disclosure of Protected Health Information and that is enforceable in a court of law. It includes, but is not limited to: court orders and court ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

II. Permitted Uses and Disclosures of Protected Health Information

Broker may use or disclose Protected Health Information received or created by Broker pursuant to this Agreement solely for the following purposes:

- a. Broker may use or disclose Protected Health Information as necessary to carry out its responsibilities and duties under this Agreement.

- b. Broker may use or disclose Protected Health Information for its proper management and administration or to fulfill any present or future legal responsibilities of Broker; provided, however, that if Broker discloses Protected Health Information to a third party under this Paragraph 2(B), Broker shall:
 - (i) in advance of the disclosure, notify the TRUST's Privacy Office in writing of the disclosure and supply to TRUST or TRUST's Administrator such information as may be requested by the TRUST's Privacy Office to enable TRUST to account for the disclosure in accordance with 45 C.F.R. § 164.528;
 - (ii) obtain reasonable assurances from the person to whom the Protected Health Information is disclosed that it will be held confidentially and used or further disclosed only as Required by Law or for the purpose for which it was disclosed; and
 - (iii) obligate such person to notify Broker of any instances of which it is aware in which the confidentiality of the Protected Health Information has been breached.
- c. Broker may use or disclose Protected Health Information as Required By Law provided that Broker, in advance of the disclosure, notifies the TRUST's Privacy Office in writing of the disclosure and supplies to TRUST such information as may be requested by the TRUST's Privacy Office to enable the TRUST to account for the disclosure in accordance with 45 C.F.R. § 164.528. Disclosures "Required by Law," include, but are not limited to, disclosures pursuant to: court orders and court ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits. Broker agrees that it will comply with all applicable state and federal laws regarding the use and disclosure of Protected Health Information to the extent that such laws are not pre-empted by the HIPAA Regulations when using or disclosing Protected Health Information pursuant to this Agreement. Broker shall not use Protected Health Information received or created by Broker pursuant to this Agreement for data aggregation services. Data aggregation services means the combining of Protected Health Information by Broker with the protected health information received by Selling Agent in its capacity as a business associate of another HIPAA covered entity, to permit data analyses that relate to the health care operations of TRUST and the other entity. Broker shall also not de-identify Protected Health Information received or created by Broker pursuant to this Agreement or use such de-identified Protected Health Information for any purpose.

III. Disclosure to Agents

- a. In the event that Broker discloses to any agent, including a subcontractor, Protected Health Information received from, or created or received by Broker on behalf of the Trust Broker shall obligate each such agent to agree to the same restrictions and conditions regarding the use and disclosure of Protected Health Information as are applicable to Broker under this Appendix.

IV. Safeguards

Broker shall use appropriate administrative, technical and physical safeguards, consistent with the size and complexity of Broker's operations, to prevent the use or disclosure of Protected Health Information in any manner inconsistent with the terms of this Appendix A. Broker shall maintain a written security program describing such safeguards, a copy of which shall be available to TRUST or TRUST's Administrator upon request.

V. Reporting of Improper Disclosures

Broker shall report to TRUST or TRUST's Administrator any unauthorized or improper use or disclosure of Protected Health Information within one (1) business day of the date on which Broker becomes aware of such use or disclosure. Broker shall report such uses or disclosures to TRUST or TRUST's Administrator by telephone and in writing to: TRUST Privacy Office. In the event that the telephone notice is received by TRUST or TRUST's Administrator through an automated recording device, the notice must include the name and telephone number of the appropriate contact person of the Broker and the reason for the call. Broker shall mitigate, to the extent practicable, any harmful effect that is known to Broker of a use or disclosure of Protected Health Information by Broker in violation of this Appendix.

VI. Access to Protected Health Information by TRUST.

- a. Within ten (10) days of a request by TRUST or TRUST's Administrator, Broker shall provide to TRUST or TRUST's Administrator all Protected Health Information in Broker's possession necessary for TRUST or TRUST's Administrator to provide TRUST's members or their representatives with access to or copies thereof in accordance with 45 C.F.R. § 164.524.
- b. In advance of any disclosure of Protected Health Information that is not for a purpose necessary to carry out Broker's responsibilities and duties under this Agreement, Broker shall notify the TRUST Privacy Office in writing of the disclosure and supply to TRUST or TRUST's Administrator such information as may be requested by the TRUST Privacy Office regarding the disclosure to enable TRUST or TRUST's Administrator to maintain an accounting of disclosures in accordance with 45 C.F.R. § 164.528. In addition, within ten (10) days of any request by TRUST or TRUST's Administrator, Broker shall provide to TRUST or TRUST's Administrator all information and records in Broker's possession necessary for TRUST or TRUST's Administrator to provide TRUST members or their representatives with an accounting of disclosures thereof in accordance with 45 C.F.R. § 164.528.
- c. Within ten (10) days of a request by TRUST or TRUST's Administrator, Broker shall provide to TRUST or TRUST's Administrator all Protected Health Information in Broker's possession necessary for TRUST or TRUST's Administrator to respond to a request by a TRUST member to amend such Protected Health Information in accordance with 45 C.F.R. §164.526. At TRUST or TRUST Administrator's direction, Broker shall incorporate any amendments to a TRUST member's Protected Health Information made by TRUST into the copies of such information maintained by Broker.

VII. Access by HHS

Broker shall make its internal practices, books and records relating to the use and disclosure of Protected Health Information received from TRUST or TRUST's Administrator, or created or received by Broker on behalf of TRUST or TRUST's Administrator, or to the United States Department of Health and Human Services in accordance with the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder.

VIII. Financial Information

- a. Broker acknowledges and agrees that it is required by law to comply with all applicable requirements of New Jersey State Insurance Regulation, including but not limited to providing notice and opportunity to "opt out" to the consumer or customer, with respect to Broker's use and disclosure of Financial Information. For purposes of this Paragraph 8, a "consumer" is an individual who seeks to obtain, obtains or has obtained a self-funded plan or insurance product, self-funded health plan

or service, directly or through a legal representative, from TRUST (or through Broker on behalf of TRUST), and a “customer” is a consumer with a continuing relationship.

- b. Notwithstanding Paragraph 8(A) of this Appendix A, Broker shall not be subject to the notice and/or “opt out” requirements of Regulation 169 if Broker discloses Financial Information regarding consumers and customers only to TRUST or TRUST’s affiliates or TRUST’s Administrator provided that the disclosure is within the scope of its agency relationship with TRUST and complies with TRUST’s prevailing privacy notice provisions relating to financial information. For purposes of this paragraph, the parties acknowledge that TRUST complies with, and provides the notices required by the State of New Jersey with respect to its customers and consumers.

IX. Security Standards

- a. Broker agrees to comply with the requirements of 45 C.F.R. Parts 160 and 164 pertaining to the standards for the security of electronic Protected Health Information. Broker shall:
 - (a) implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of TRUST;
 - (b) ensure that any agent, including a subcontractor, to whom it provides electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect such electronic Protected Health Information;
 - (c) promptly report to TRUST or TRUST’s Administrator any security incident involving electronic Protected Health Information of which it becomes aware; and
 - (d) comply with any other requirements that the Secretary of Health and Human Services may require from time to time with respect to electronic Protected Health Information by the issuance of additional guidance or regulations pursuant to HIPAA.

X. Electronic Data Interchange

Broker shall satisfy all applicable provisions of the HIPAA standards for electronic transactions and code sets, also known as the Electronic Data Interchange (EDI) Standards, codified at 45 C.F.R. Part 162. Broker further agrees to ensure that any agent, including a subcontractor, that conducts standard transactions, as such term is defined at 45 C.F.R. § 162.103, on its behalf will comply with the EDI standards.

XI. Termination

If TRUST reasonably determines that Broker has breached a material term of this Appendix A, including, without limitation, any provision governing the use and disclosure of Protected Health Information, TRUST may immediately terminate this Agreement. In the alternative, TRUST at its option may provide Broker with written notice specifying the nature of the breach and allow Broker the opportunity to cure the breach. If Broker fails to cure such breach within thirty (30) days of TRUST 's written notice, TRUST may immediately terminate this Agreement.

XII. Return of Protected Health Information Upon Termination

- a. Upon termination of this Agreement, Broker shall:
 - (a) if feasible, return or destroy all Protected Health Information received from, or created or received by Broker on behalf of Trust that Broker still maintains in any form, and Broker shall retain no copies of such information; or
 - (b) if Broker and Trust reasonably determine that such return or destruction is not feasible, extend the protections of this Appendix A to such information and limit further uses and disclosures to those purposes that make the return or destruction of the Protected Health Information infeasible.

XIII. Construction

This Appendix is intended to reflect the applicable requirements of HIPAA Regulations. In the event of any inconsistency between the definitions and terms of this Appendix other than the definition of “Financial Information” in Paragraph 8, and the definitions and mandatory provisions of the HIPAA Regulations, as amended, the HIPAA Regulations shall control.. In the event that TRUST believes in good faith that any provision of this Appendix fails to comply with the then-current requirements of the HIPAA Regulations, TRUST shall have the right to amend the terms of this Appendix as necessary and appropriate to bring it into compliance.

SCHEDULE A

Amended Commission Schedule
Effective January 1, 2019

MEDICAL/PRESCRIPTION/DENTAL

Number of Participating Enrolled Employees ⁽¹⁾	Benefit Plan(s)	Broker Commission
1-2	All Plans	<u>2.5%</u> of Monthly Health Care Fees for Commissionable Business Paid in Full
3-24	All Plans	<u>4.5%</u> of Monthly Health Care Fees for Commissionable Business Paid in Full
25+	All Plans	<u>5%</u> of Monthly Health Care Fees for Commissionable Business Paid in Full

Commissions listed above are payable as follows and in accordance with the Terms and Conditions of this Agreement in whole:

- **Payable for All Business (New and Renewal) as of January 1, 2019.**
- Monthly Commissions may change based on the actual billed Participating enrollment on a month to month basis.
- No commissions are payable to a Broker until the applicable Health Care Fees for a Participating Group are received in full by the Trust or Plan Administrator.
- Payment will be made by the 15th of the month following receipt of payment in full by Participating Group.
- Broker has sixty (60) days to object in writing to the accuracy of the payment.

⁽¹⁾ Number of Enrolled Participating Employees shall be the number of the Participating Group's full-time employees based on final census captured for groups monthly invoice.