

APPLICATION FOR APPOINTMENT

Agent/ Agency Information (please print):

Are you a resident of this state? Yes No
 Please check appropriate item: Partnership Individual Sole Proprietor
 Corporation Other (please identify)

National Producer Number (NPN): _____

Social Security Number: _____

Federal Employer Identification Number: _____

Full Name of Agent or Agency (Legal name must correspond with SSN or FEIN)

Business Mailing Address (Physical Address)

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

NOTE: A minimum of \$500,000 specific and \$500,000 aggregate E&O coverage is required.
 E&O coverage Amount of Yes No E&O carrier & policy#: _____ Copy of E&O declaration page or Certificate of Insurance included with application Yes No

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

- | | |
|---|--|
| <p>A. Have you or any of the partners, directors, officers or agents within this corporation / partnership ever been fined, reprimanded, sanctioned or been the subject of a consent decree in any state for a violation of insurance laws, HMO regulations or other administrative regulations?
<input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>B. Have you or any of the partners, members, directors, officers or agents within this corporation / partnership ever been refused license to sell Insurance/HMO, or has a license to sell Insurance/HMO ever been suspended or revoked by any state?
<input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>C. Have you or any of the partners, members, directors, officers or agents within this corporation / partnership ever been convicted of a crime, whether felony or misdemeanor, other than a minor traffic violation?
<input type="checkbox"/> Yes <input type="checkbox"/> No</p> | <p>D. Have you or any of the partners, members, directors, officers or agents within this corporation / partnership ever been employed by an Insurance / HMO company, or another organization providing for or assisting with administration of health care or other employee benefits, where the employment contract was terminated or non-renewed because of allegations of wrongdoing?
<input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>E. Have you or any of the partners, members, directors, officers or agents within this corporation / partnership ever surrendered any insurance or HMO license, whether voluntary or involuntary?
<input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>F. Are you or any of the partners, members, directors, officers or agents within this corporation / partnership currently a named party in any lawsuit?
<input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>G. Have you or your company ever declared bankruptcy, had a lien placed against you or your company, been a judgment debtor or had any other problems with your or your company's credit history?
<input type="checkbox"/> Yes <input type="checkbox"/> No</p> |
|---|--|

APPLICATION FOR APPOINTMENT continued

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

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

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

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

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

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

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

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

FMO Name

Print Name Title Date

Licensing Contact Name Licensing Contact Phone Number

FOR INTERNAL USE ONLY

Reviewed By:

SWHP Representative Name:

Telephone Number:

SWHP Number:

Region:

SCOTT AND WHITE HEALTH PLAN AGENT AGREEMENT

THIS AGENT AGREEMENT (“Agreement”), effective on the date specified in the signature portion of this Agreement (“Effective Date”), is made between Scott and White Health Plan, a Texas corporation, including SHA, L.L.C., Insurance Company of Scott and White, Scott & White Care Plans and Southwest Life & Health Insurance Company (“collectively referred to as SWHP”), and _____, the Agent, to describe the terms and conditions under which AGENT shall provide certain services for SWHP. For services rendered on or after the Effective Date, this Agreement supersedes and replaces any existing agreements between the parties relating to commission and other compensation arrangements for AGENT services.

WHEREAS, each SWHP company is a licensed and authorized health plan in the State of Texas offering individual and group products to its service area;

WHEREAS, AGENT is a duly licensed by the State of Texas to solicit and sell health insurance products and desires to sell and market SWHP’s products; and

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

SECTION 1 Definitions

- 1.1 Agent:** shall refer to an independent contractor that is a Texas licensed and certified health insurance agent and has completed all statutory and regulatory required compliance training in order to sell SWHP Benefit Plans.
- 1.2 Benefit Plan:** the products SWHP authorizes AGENT to market to Clients.
- 1.3 Business Day:** Monday through Friday, 8:00am to 5:00pm, Central Standard Time, with the exception of national holidays as recognized by federal law.
- 1.4 Client:** An individual or group, solicited by AGENT pursuant to this Agreement which meets all eligibility and underwriting criteria and is approved by SWHP for enrollment under a Benefit Plan.
- 1.5 Commission:** The payments due AGENT for the services performed by AGENT for a Client. Commission shall be paid as provided for in Section 4 and the Exhibit(s) attached hereto.
- 1.6 Premium:** The total annual or monthly charges required of and collected from Client for a Benefit Plan.
- 1.7 Existing Business:** A Client that already has, as of the Effective Date of this Agreement, comprehensive health coverage through SWHP.
- 1.8 New Business:** A Client that does not at the time of application have a Benefit Plan through SWHP.
- 1.9 Subscriber:** A contract holder, a policyholder or an eligible employee, as defined in the Benefit Plan, who is properly enrolled for coverage under the Benefit Plan. The Subscriber is the person (who is not a dependent) on whose behalf coverage under the Benefit Plan is provided.

SECTION 2 General Responsibilities of AGENT

- 2.1 Licensing:** Before AGENT provides any service under this Agreement, AGENT shall:
 - a. Provide to SWHP proof of a valid Texas license for AGENT to perform services under this Agreement;

- b. Comply with SWHP's appointment process and comply with continuing education requirements and other requirements necessary to maintain Texas licensure to perform services under this Agreement; and,
- c. Promptly provide a copy of AGENT's renewed Texas licenses. AGENT acknowledges that failure to maintain Texas licensure or promptly provide proof of licensure to SWHP shall constitute a material breach of this Agreement and shall be cause for immediate termination, which shall be effective upon written notice to AGENT as provided in Section 7.3 below.

2.2 Limitation on Authority: AGENT shall not:

- a. Bind coverage;
- b. Accept any applicant;
- c. Misrepresent or omit important facts in any application;
- d. Modify or waive any Benefit Plan or any terms regarding enrollment, coverage or benefits;
- e. Distribute any advertising, circulars or promotional literature except such materials provided to AGENT by SWHP;
- f. Represent that AGENT has authority on behalf of SWHP; or
- g. Have any authority except as explicitly provided in this Agreement.

2.3 Prohibited Actions: AGENT shall in no way misrepresent SWHP or its Benefit Plans or services. AGENT is specifically prohibited from:

- a. Altering any proposal;
- b. Approving evidence of insurability or improperly binding or committing SWHP on any risk;
- c. Reinstating any terminated or non-renewed evidence of coverage, certificate of coverage of policy; or
- d. Using any advertising or other material related to SWHP or its Benefit Plans without prior approval by SWHP.

2.4 Training: AGENT shall complete SWHP's initial training within sixty (60) days of the Effective Date of this Agreement as well as participate in ongoing training to assure AGENT's compliance with SWHP marketing and enrollment policies and procedures. Such training shall include, but is not limited to, the following:

- a. Open enrollment training;
- b. Sales call training;
- c. Routine evaluation of AGENT's performance under this Agreement; and
- d. Other training as may be required by SWHP from time to time.

In order to remain an appointed AGENT of SWHP, AGENT shall attend scheduled AGENT training workshops or the equivalent online training and receive an annual certification from SWHP.

2.5 Solicitation: AGENT shall:

- a. Solicit enrollment of Clients;
- b. Submit to prospective Clients proposal information or documents in a form and upon such terms as approved in advance by SWHP;
- c. Not alter a proposal term, including Premium amounts, except upon the prior written approval of SWHP;
- d. Accurately and completely record information required by SWHP for enrollment of Clients under a Benefit Plan and timely submit such information to SWHP;
- e. Acquire all additional quote information, as requested by SWHP;
- f. Work through its SWHP-assigned sales representative to obtain Premium rate proposals; and
- g. Promptly present the proposal to a prospect/Client.

2.6 Acceptance for Enrollment:

- a. SWHP shall have the sole right to accept or reject any prospective Client submitted for enrollment by AGENT based on underwriting and enrollment policies established by SWHP.
- b. In no event shall any prospective Client be eligible to receive health services under a Benefit Plan unless, and until, accepted by SWHP with such effective date as determined by SWHP.

- c. AGENT will submit applications, enrollment forms, and similar or related documents solicited by AGENT, as well as initial Premium payments, to SWHP within two (2) Business Days of completion.

2.7 Servicing of Clients:

- a. AGENT shall deliver and explain to Clients, the initial administrative forms, such as billing and enrollment materials and subsequent renewal forms;
- b. AGENT may perform this function in conjunction with its SWHP-assigned sales representative;
- c. AGENT shall provide on-going services to existing Clients, as requested by SWHP, including but not limited to conducting enrollment meetings, handling routine inquiries and conducting renewal presentations as approved in advance by SWHP;
- d. AGENT shall also, by acceptance of this Agreement, use their best efforts to maintain the relationship between SWHP and the Client, and to maintain full cooperation by the Client and their employees, if applicable, with SWHP;
- e. AGENT has no property or other interest whatsoever in any contract between SWHP and Client, except as stated in this Agreement;
- f. AGENT is not authorized to receive any SWHP funds except the initial Premiums for SWHP Benefit Plans, and AGENT is not authorized to deduct Commissions or any other amounts from any initial Premiums AGENT may collect. Any funds received by AGENT for or on behalf of SWHP shall be received and held by AGENT in a fiduciary capacity, shall be separately accounted for, shall not be commingled by AGENT with personal funds of AGENT or other business accounts managed or owned by AGENT, and shall be remitted to SWHP promptly but in no event later than five (5) calendar days from the date of receipt; and
- g. AGENT agrees to furnish SWHP with all information necessary to enable SWHP to comply with its obligations under this Agreement and state, federal and HIPAA law, including, but not limited to, information regarding AGENT's relationship with Client.

2.8 Confidentiality:

- a. AGENT acknowledges that in connection with this Agreement and the services provided by AGENT under this Agreement, SWHP will provide, and AGENT will acquire and make use of, certain confidential information of SWHP which may include, but is not limited to, proprietary, business, financial and other information related to SWHP that is not generally known to the public and that gives SWHP an opportunity to obtain an advantage over competitors who do not know or use it (“Confidential Information”);
- b. AGENT shall not use such Confidential Information except in connection with the performance of services pursuant to this Agreement, or divulge the Confidential Information to any third party, unless SWHP consents in writing to such use or divulgence or such disclosure is required by law;
- c. In the event AGENT receives a request or demand from a third party for the disclosure of Confidential Information, AGENT shall promptly (within two (2) business days after receipt of such request or demand) provide written notice to SWHP of such request or demand, including a copy of any written request or demand;
- d. Upon expiration or termination of this Agreement, AGENT shall not take or retain, without prior written authorization from SWHP, any Confidential Information or copies thereof in any form or medium of any kind. Without limiting other possible remedies for the breach of this covenant, the parties agree that injunctive or other equitable relief shall be available to enforce this covenant, such relief to be without the necessity of posting a bond, cash or otherwise;
- e. To comply with the applicable federal and state laws and regulations governing the confidentiality of all patient/member health care information, the parties agree to the terms and conditions of Section 3 below and Exhibit C: Business Associate Agreement attached hereto and incorporated herein by reference; and
- f. AGENT shall return all such Confidential Information to SWHP immediately upon termination of this Agreement.

- 2.9 Materials:** Upon request, AGENT may obtain from SWHP such marketing and enrollment materials (collectively “Materials”) as are necessary for solicitation of Clients. AGENT shall not use any Materials or

other information regarding SWHP to the competitive advantage of any competitor of SWHP. AGENT shall not distribute any Materials that have not been furnished or approved by SWHP including, but not limited to:

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

AGENT shall return all such Materials to SWHP immediately upon termination of this Agreement.

2.10 Books and Records:

- a. AGENT shall maintain adequate books and records in accordance with industry standards and applicable laws related to the services provided pursuant to this Agreement (collectively "Books and Records");
- b. During Business Days and upon reasonable notice, SWHP shall have access to and the right to audit Books and Records; and
- c. Unless applicable law requires a longer time, SWHP shall have access to Books and Records as described in Section 2.10 during the term of this Agreement and for ten (10) years following its termination, unless otherwise required herein or by law.

SECTION 3

Compliance with State, Federal and HIPAA Regulations

The information to which AGENT may have access to pursuant to this Agreement may contain confidential protected health information ("PHI") and Personally Identifiable Information ("PII"). Accordingly, AGENT agrees to comply with all applicable state, federal and HIPAA regulations, and Exhibit C: Business Associate Agreement attached hereto; and any other related regulatory Addenda attached hereto or agreed to later by the parties including but not limited to the Medicare Addendum and the QHP Regulatory Compliance Addendum. Failure to do so by AGENT will be a material breach of this Agreement.

SECTION 4

Payment

- 4.1 Payments:** For services performed pursuant to this Agreement, SWHP shall pay AGENT, according to the Exhibit(s) attached hereto and pursuant to the following:
 - a. For New Business, AGENT shall be compensated for Benefit Plans issued to a Client which has identified AGENT, as the Agent of Record. For renewal business initially generated as New Business by AGENT, AGENT shall be compensated according to the attached Exhibit(s).
 - b. Any compensation payable to AGENT for duties other than those set forth in Section 2 shall be made pursuant to a separate agreement.
 - c. SWHP shall not pay additional compensation or recoup payments more than fifteen (15) months from when a payment dispute arises, or shorter as required by law.
 - d. SWHP will not split Commission between two Agents.
- 4.2 Retroactive Transactions:** To the extent retroactive terminations and additions are made by a group Client, such retroactive transactions will be reflected in the Premiums statements submitted to and paid by that Client, and will therefore be reflected in the Commission paid pursuant the attached Exhibit C. In the event that retroactive transactions are made after a group Client terminates coverage with SWHP, AGENT agrees to reimburse SWHP any overpayment of Commissions paid to AGENT and SWHP agrees to pay AGENT any underpayment of Commissions due to the retroactive transaction(s).
- 4.3 Taxes:** SWHP shall not be responsible for taxes associated with compensation paid to AGENT and/or its Agent(s) pursuant to this Agreement. AGENT is solely responsible for the reporting and payment of taxes of any type (including but not limited to social security taxes, workers' compensation taxes or costs, unemployment compensation taxes or costs, or any other similar taxes, costs or charges) related to

compensation for performance of services under this Agreement. AGENT shall indemnify and hold SWHP harmless from any such taxes or charges. This Section shall survive any termination of this Agreement.

SECTION 5

Agent of Record

- 5.1 Designation of Agent of Record:** An “Agent of Record” is the Agent designated by a Client to serve as its insurance Agent and that SWHP may compensate under the terms of this Agreement. Unless otherwise stipulated by the Client, Agent shall be considered the Agent of Record for all Clients enrolled by Agent.
- 5.2 Change of Agent of Record:** A Client may change its Agent of Record at any time for any reason in accordance with applicable law and this Section is not intended to limit this right in any way.
- 5.3 Written request from Client:** In its sole discretion, SWHP will recognize a request to change an Agent of Record only if it is in writing and signed by Client or an individual authorized to bind Client. If Client requests SWHP to change its Agent of Record, SWHP will determine the effective date of the change in its sole discretion.

SECTION 6

Insurance and Indemnification

- 6.1 Insurance:** AGENT shall maintain general liability, professional liability and errors and omissions insurance policies or bonds in amounts and in forms standard and adequate for AGENT’s business but not less than \$500,000 per occurrence. AGENT shall provide proof of such insurance annually and shall immediately give written notice to SWHP in the event of any termination, cancellation or material change in such insurance. Written notice shall be sent to SWHP Broker/Agent Support at the address provided in Section 10.5 below.
- 6.2 Indemnification:** AGENT indemnifies and holds SWHP, its directors, officers, employees, and Subscribers harmless from any claims, liability, judgments, damages or costs, including reasonable attorneys’ fees, asserted or awarded against or incurred by SWHP, its directors, officers, employees and Subscribers as a result of any act, error or omission of AGENT or other personnel of AGENT.

AGENT shall indemnify, defend and hold harmless SWHP, its affiliates, and their directors, officers, employees, agents or assigns, from any and all damages, costs, losses, liabilities and expenses (including reasonable attorneys’ fees and expenses and other professional fees) arising from, in connection with, or based on any allegation or claim by any third party regarding any of the following: (a) AGENT’s breach of any of its representations, warranties or covenants under the Agreement; (b) the death or bodily injury of any person caused by the fault or negligence of AGENT or any individual assigned by AGENT hereunder; or (c) personal property damage caused by the fault or negligence of AGENT or any individual assigned by AGENT hereunder.

SECTION 7

Term and Termination

- 7.1 Term:** This Agreement shall commence on the Effective Date and shall continue for one (1) year and shall automatically renew for successive one (1) year terms unless terminated pursuant to this Section.
- 7.2 Termination without Cause:** This Agreement may be terminated without cause by either party to this Agreement upon thirty (30) days prior written notice to the other party. However, termination without cause shall be subject to the following provisions:
- a. SWHP shall pay Commissions until either:
 - i. AGENT is no longer Agent of Record with a Client; or,
 - ii. Until such time Client is no longer enrolled in a Benefit Plan.
 - b. Section 10.7: Amending Exhibits.
- 7.3 Termination with Cause:** This Agreement and any other contract between SWHP and AGENT may be terminated with cause by SWHP immediately upon written notice AGENT, limited to the following conditions and subject to the following provisions:
- a. AGENT’s material breach of this Agreement;

- b. Unprofessional conduct by AGENT;
- c. Moving 25% or more of Client's business to a competitor of SWHP;
- d. Disparaging or derogatory comments about SWHP made by an AGENT to a SWHP customer, potential customer, Client, Subscriber, Provider, other field marketing organization, or to any individual or entity with a business interest in SWHP, excluding truthful, factual and accurate representations presented for comparison;
- e. Failure by AGENT to cure any violation of HIPAA regulations;
- f. Failure by AGENT to remain duly licensed pursuant to applicable law; or
- g. Suspension or discipline of AGENT by any state or federal regulatory authority or reprimand of AGENT in any way in connection with performance of its duties as an AGENT.

AGENT shall immediately notify SWHP if any of the conditions contained in Section 7.3 occur.

In the event this Agreement is terminated with cause, no Commission shall be payable to AGENT following the date of such termination.

SECTION 8

Reservation of Rights by SWHP

- 8.1** SWHP specifically reserves the right to:
- a. Withdraw or discontinue any Benefit Plan, certificate, contract, marketing material, or special marketing concept in any jurisdiction;
 - b. Modify, change, or amend any certificate, policy, contract or Premium rate;
 - c. Review AGENT's accounting records;
 - d. Cease doing business in any market segment in any jurisdiction;
 - e. Modify its business practices or operations in any other manner deemed appropriate by SWHP; or
 - f. Preclude an Agent of AGENT from selling and/or marketing SWHP Benefit Plan(s).

SECTION 9

Resolution of Disputes

- 9.1 Good Fair Negotiation Required:** SWHP and AGENT agree to work together in good faith to resolve any disputes arising under this Agreement. If after at least forty-five (45) days following the date one party sent written notice of the dispute to the other party the dispute is not resolved, any party may pursue resolution of the dispute by other means.
- 9.2 Governing Law/Venue:** This Agreement shall be governed by the laws of the State of Texas, without regard to its choice of laws principles. The parties hereby irrevocably consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in Bell County, Texas for the purposes of adjudicating any matter arising from or in connection with this Agreement.

SECTION 10

Miscellaneous

- 10.1 Agreement as Confidential:** SWHP and AGENT shall treat this Agreement as confidential and shall not disclose its terms to any third party; except that SWHP may file this Agreement with any federal or state regulatory entity as may be required by applicable law.
- 10.2 Relationship of the Parties:** The sole relationship between SWHP and AGENT is that of independent contractor. Nothing in this Agreement or otherwise shall be deemed or construed to create an employment relationship, joint venture, or partnership between the parties.
- 10.3 Data Rights:** AGENT acknowledges that it has no ownership rights in Confidential Information, PHI, PII, or any other data provided to it by SWHP pursuant to the terms of this Agreement.
- 10.4 Offshore Restrictions.** AGENT, including its subcontractors, shall not transmit or transfer to, or store from any offshore location any Confidential Information. AGENT shall not perform any services offshore, without SWHP's prior written consent, which may be withheld for any or no reason. Any such consent, if given, may be conditioned upon, among other things, AGENT's satisfactory and timely completion of an

Attestation Concerning Offshore Vendors and any other requirements from the Centers for Medicaid & Medicare Services, a State Medicaid program, any other regulatory body, or accreditation organization. For purposes of this Agreement, the term “offshore location” shall mean any location not within the United States.

- 10.5 Notice:** Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed effectively delivered upon: (i) personal delivery, if delivered by hand; (ii) receipt by the receiving party of a confirmed electronic mail if sent during a Business Day (otherwise, upon the next Business Day following such transmission); (iii) one (1) Business Day following deposit with a nationally recognized overnight courier, specifying next business day delivery, freight prepaid, with written verification of receipt; or (iv) three (3) Business Days following deposit with the United States Postal Service, specifying certified mail with return receipt requested, postage prepaid, with verification of delivery. Notice shall be sent to parties at the below address, or at such other address as a party may designate by ten (10) days’ advance written notice to the other party hereto:

If to SWHP:

If to AGENT:

Scott and White Health Plan
Attn: Broker/Agent Support
1206 W. Campus Dr.
Temple, TX 76502
SWHPLicensing@BSWHealth.org

- 10.6 Amendment:** Except as otherwise provided in Section 10.9, SWHP may amend this Agreement upon at least thirty (30) days prior written notice to AGENT, or shorter time if mutually agreed by parties.
- 10.7 Amending Exhibits:** The Exhibits to this Agreement may be amended from time to time by SWHP. If the parties do not agree to the terms of an amended Exhibit, this Agreement may be terminated upon thirty (30) days prior written notice to the other party subject to the provisions of Section 7.2.
- 10.8 Assignment:** SWHP may assign any or all of its rights and responsibilities under this Agreement to any entity controlling, controlled by, or under common control with SWHP. AGENT acknowledges that persons and entities under contract with SWHP may perform certain administrative services under this Agreement. AGENT may not assign any of its rights, responsibilities or Commissions payable under this Agreement to any person or entity without the prior written consent of SWHP.
- 10.9 Entire Agreement:** This Agreement, including all Exhibits attached hereto, contains the entire understanding of the parties regarding the matters described herein and supersedes all previous agreements entered into between SWHP and AGENT.
- 10.10 Survival:** In addition to any provisions expressly noted to survive termination of this Agreement, the Exhibits attached hereto, and the following Sections shall survive the termination of this Agreement: 2.8- Confidentiality, 2.10- Books and Records, 3- Compliance with State, Federal and HIPAA Regulations, 4- Payment, 6.2- Indemnification, 9- Resolution of Disputes, and 10.1- Agreement as Confidential.

THE EFFECTIVE DATE OF THIS AGENT AGREEMENT IS _____, 20__.

SWHP:
SCOTT AND WHITE HEALTH PLAN,
on behalf of itself and its subsidiaries

AGENT:

Name: Randal Mitchell

Title: VP Sales Officer

Date: _____

Name:

Title:

Date: _____

EXHIBIT A

{Intentionally Omitted}

EXHIBIT B

Commission Schedule for Non-Medicare Benefit Plans

A. Compensation

Commission to be paid monthly based upon a percentage of paid Premium as provided in the following tables:

INDIVIDUAL PRODUCTS	
Off Exchange Plans	Agent Commission
Scott and White Health Plan Scott & White Care Plans Insurance Company of Scott and White	0%
SHA, L.L.C. Southwest Life & Health Insurance Company	4%
On Exchange Plans	Agent Commission
Scott and White Health Plan Scott & White Care Plans Insurance Company of Scott and White	N/A
SHA, L.L.C. Southwest Life & Health Insurance Company	4%*

*Commission payable to CMS Certified Agents only.

GROUP PRODUCTS**		
Fully Insured Benefit Plans	Group Size	Agent Commission
Scott and White Health Plan Scott & White Care Plans Insurance Company of Scott and White	2-50	5.5%
	51-100	5%
	100+	Negotiable
SHA, L.L.C. Southwest Life & Health Insurance Company	2-50	5%
	50+	5% or Negotiated
Self-Funded (ASO) Groups	Group Size	Agent Commission
Scott and White Health Plan Scott & White Care Plans Insurance Company of Scott and White	All Groups	Negotiable
SHA, L.L.C. Southwest Life & Health Insurance Company	All Groups	Negotiable

** No commission payable for government programs, including but not limited to, TRS, ERS and FEHB.

FFM Regulatory Compliance Addendum

This Regulatory Compliance Addendum (this “Addendum”) supplements and is made part of the _____ (“the Agreement”) between SHA L.L.C. d/b/a FirstCare Health Plans (referred to herein as “FirstCare”) and _____ (referred to herein as “_____”). This Addendum is effective as of the Effective Date of the Agreement and applies to FirstCare’s Qualified Health Plan (“QHP”) products. This Addendum shall apply to the extent that _____ is a Delegated Entity or Downstream Entity, as defined below. In the event of a conflict between this Addendum and the Agreement, this Addendum shall govern with respect to the services related to FirstCare’s participation in state and federal Exchanges.

SECTION I QHP Definitions

Capitalized terms used in this Addendum that are not otherwise defined herein shall have the meanings set forth in the Agreement.

- 1.1 **Delegated Entity.** Any party that enters into an agreement with FirstCare to provide administrative or health care services to FirstCare members or employers if such members or employers use FirstCare’s QHP products.
- 1.2 **Downstream Entity.** Any party that enters into an agreement below the level of the arrangement between FirstCare and Delegated Entity for the provision of administrative or health care services related to FirstCare’s agreement with a Delegated Entity. These written arrangements continue down to the level of the ultimate provider of administrative or health care services.
- 1.3 **Exchange or Health Insurance Marketplace.** A governmental agency or non-profit entity that meets the applicable standards of 45 C.F.R. §155 subpart D and makes QHPs available to individuals and employers. This term includes both State-based and Federally-facilitated Exchanges.
- 1.4 **Federally-facilitated Exchange.** An Exchange established by the United States Department of Health and Human Services and operated by the Centers for Medicare & Medicaid Services (“CMS”) under section 1321(c)(1) of the Affordable Care Act for individual or small group market coverage, including the Federally-facilitated Small Business Health Options Program and the Federal eligibility and enrollment platform upon which certain State-based Exchanges rely for their eligibility and enrollment functions.
- 1.5 **Qualified Health Plan or QHP.** A health plan that has been certified that it meets the standards described in 45 C.F.R. § 156 subpart C or that has been approved by the state Exchange through which such plan is offered.
- 1.6 **QHP Issuer Agreement.** An agreement between the Centers for Medicare & Medicaid Services (“CMS”) and FirstCare, for FirstCare to offer QHPs through a Federally-facilitated Exchange.
- 1.7 **QHP Services.** Administrative or health care services provided to FirstCare members or employers if such members or employers use FirstCare’s QHP products.

SECTION II QHP Requirements

- 2.1 Provision of Services. _____ will provide Services, as defined in the Agreement, and which include QHP Services, in a manner consistent with professionally recognized standards of care as may be required pursuant to the QHP Issuer Agreement and all applicable laws, regulations and instructions and in a manner so as to assure quality of Services.
- 2.2 Laws, Rules and Instructions. _____ will and will cause any Downstream Entities to, comply with:
- (a) all applicable state and federal laws;
 - (b) all applicable state and federal regulations and CMS bulletins, instructions and guidance including but not limited to:
 - (i) 45 C.F.R. §156, subpart C as amended, if applicable;
 - (ii) 45 C.F.R. §155, subparts H and K as amended, if applicable;
 - (iii) 45 C.F.R. §155.705 as amended, if applicable;
 - (iv) 45 C.F.R. §155.220 as amended, if applicable;
 - (v) 45 C.F.R. §156.705 as amended, if applicable;
 - (vi) 45 C.F.R. §156.715 as amended, if applicable; and
 - (vii) 45 C.F.R. §156.340 as amended, if applicable;
 - (c) all federal laws and regulations designed to prevent or ameliorate fraud, waste or abuse including, but not limited to, applicable provisions of federal criminal law, the False Claims Act (31 U.S.C. 3729 et. seq.) and the anti-kickback statute (section 1128B(b) of the Social Security Act);
 - (d) HIPAA administrative simplification rules at 45 CFR Parts 160, 162, and 164 and the Health Care Administrative Simplification Act of 1994;
 - (e) The Standard Rules of Conduct contained in the QHP Issuer Agreement as may be amended, if applicable.
- 2.3 Provision of QHP Services.
- (a) FirstCare has contracted with _____ for certain QHP Services that allow FirstCare to perform under the QHP Issuer Agreement and in compliance with state statutes. _____ acknowledges and agrees that to the extent CMS directs revocation, FirstCare shall provide immediate written notice of such to _____, and such revocation shall become effective as directed by CMS. FirstCare shall provide for revocation of the delegated activities and reporting standards or specify other remedies in instances where a regulatory body or FirstCare oversight determines that _____ has not performed satisfactorily. _____ shall cooperate with FirstCare regarding the transition of any QHP Services that have been revoked by FirstCare. No additional financial obligations shall accrue to FirstCare with respect to such revoked activities from and after the date of

such revocation in accordance with this section.

- (b) If FirstCare asks _____ to provide additional QHP Services other than the activities described herein and in the Agreement, FirstCare and _____ agree that this Addendum shall apply to the provision of the additional QHP Services.
 - (c) If FirstCare has delegated to _____ the selection of any subcontractor, or other Downstream Entity, FirstCare retains the right to approve, suspend or terminate the arrangement with such subcontractors or other Downstream Entities.
- 2.4 Downstream Entities. If _____ has any arrangements, in accordance with the terms of the Agreement, with affiliates, subsidiaries, or Downstream Entities, directly or through another person or entity, to perform any QHP Services, _____ shall ensure that all such arrangements are in writing, duly executed, and include all the terms contained in this Addendum as may be interpreted, supplemented or amended in accordance with the terms and conditions of this Addendum. _____ shall provide proof of such to FirstCare upon request.
- 2.5 Monitoring and Oversight. _____ agrees to cooperate with the monitoring and oversight activities reasonably requested by FirstCare.
- 2.6 Privacy. _____ agrees to comply with all applicable state and federal privacy and security requirements. To the extent that _____ is a Business Associate of FirstCare, the terms of any Business Associate Agreement or Addendum between the parties shall apply.
- 2.7 Record Retention. _____ shall maintain records arising out of or related to the Agreement and the provision of QHP Services for at least ten (10) years from the date of termination or expiration of the Agreement or the date of completion of any audit, whichever is later, or such longer period required by law.
- 2.8 Government Access to Records. _____ acknowledges and agrees that the Secretary of the U.S. Department of Health and Human Services (“HHS”), the Office of Inspector General or their designees, shall have the right to audit, evaluate and inspect any pertinent books, contracts, computer or other electronic systems, including FirstCare records and documentation related to _____’s QHP Services. This right shall exist through ten (10) years from the date of termination or expiration of the Agreement or the date of completion of any audit, whichever is later, or such longer period required by law.
- 2.9 FirstCare Access to Records. _____ shall grant FirstCare or its designees such audit, evaluation, and inspection rights identified in Section 2.8 herein, as are necessary for FirstCare to comply with its obligations to perform under the QHP Issuer Agreement and applicable law. Whenever possible, FirstCare will give _____ reasonable notice of the need for such audit, evaluation or inspection, and will conduct such audit, evaluation or inspection at a reasonable time and place.

{Signatures on following page}

Acknowledge and Accepted:

SHA L.L.C. d/b/a FirstCare Health Plans

{Company Name}

Signed By:

Signed By:

Printed Name:

Printed Name:

Title:

Title:

Date:

Date:

EXHIBIT C
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this “BAA”) is made as of _____, 20__ (the “BAA Effective Date”) by and between SCOTT AND WHITE HEALTH PLAN, on behalf of itself and its subsidiaries, as Covered Entity (“SWHP”) and _____ (“Business Associate”).

RECITALS

WHEREAS, SWHP and Business Associate are engaged in some arrangement(s) whereby SWHP obtains from Business Associate, and Business Associate provides to SWHP, certain products, services or other items;

WHEREAS, as part of some or all such arrangements, Business Associate performs or assists in performing a function or activity on behalf of SWHP that involves the Use and/or Disclosure of Protected Health Information (“PHI”) and that established Business Associate (the party hereto) as a Business Associate (as defined in the HIPAA Rules) of SWHP (each a “Business Relationship”); and

WHEREAS, the parties desire to enter into this BAA regarding the Use and/or Disclosure of PHI as required by (a) the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”); (b) the Standards for Privacy of Individually Identifiable Health Information (the “Privacy Rule”) and the Standards for Security of Electronic PHI (the “Security Rule”) promulgated under HIPAA; (c) the Health Information Technology for Economic and Clinical Health Act (Division A, Title XIII and Division B, Title IV of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) (the “HITECH Act”); and (d) the regulations implementing HIPAA and the HITECH Act. HIPAA, the Privacy Rule, the Security Rule, the HITECH Act and their implementing regulations shall collectively be referred herein as the “HIPAA Rules.”

NOW, THEREFORE, for and in consideration of the parties’ entry into the Business Relationship(s) and the representations, warranties and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. Terms Used.

a. HIPAA Rules’ Definitions. Terms used but not otherwise defined in this BAA shall have the same meanings given to such terms in the HIPAA Rules. Best, but not infallible, efforts have been made to capitalize such terms in this BAA.

b. PHI. For the avoidance of doubt, the term PHI as used in this BAA shall include Electronic Protected Health Information and shall be limited to PHI which Business Associate, or its Subcontractor, creates, receives, maintains or transmits on behalf of SWHP.

c. Unsuccessful Security Incidents; Notice Thereof. The term “Unsuccessful Security Incident” means a Security Incident (as defined at 45 CFR 164.304) which (i) does not result in unauthorized acquisition, access, use or disclosure of PHI (such as a “ping” on an information system firewall; port scan; attempt to log on to an information system or enter a database with an invalid password or user name; or service attack that does not result in a server being taken offline); and, (ii) does not cause Business Associate, using at least the same degree of skill and judgment as an information security analyst of ordinary prudence, to suspect a malicious, prolonged or deliberate effort to adversely affect or interfere with Business Associate’s or SWHP’s information system(s). This Section 1(c) constitutes notice by Business Associate to SWHP of the ongoing existence and occurrence of Unsuccessful Security Incidents for which no additional notice to SWHP shall be required

2. Obligations and Activities of Business Associate. Business Associate shall:

a. not Use or Disclose PHI other than as permitted or required by this BAA or as Required By Law;

b. use appropriate Administrative Safeguards, Physical Safeguards and Technical Safeguards, use at least ordinary care, and comply, where applicable, with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, in each case to prevent Use and Disclosure of PHI other than as provided for by this BAA;

c. report to SWHP any Use or Disclosure of PHI not provided for by this BAA of which Business Associate becomes aware, including without limitation Breaches of Unsecured PHI as required at 45 CFR 164.410 and Security Incidents which are not Unsuccessful Security Incidents, which report shall be in writing and shall be given within ten (10) days after Business Associate's Discovery of such Breach or Business Associate's awareness of such Security Incident or other impermissible Use or Disclosure of PHI;

d. use at least commercially reasonable efforts to mitigate any harmful effect of a Use or Disclosure of PHI by Business Associate or its Subcontractor in violation of the requirements of this BAA;

e. in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any Subcontractor that creates, receives, maintains or transmits PHI agrees in writing to the same restrictions, conditions and requirements that apply to Business Associate with respect to such PHI;

f. provide access or make available to SWHP the PHI in a Designated Record Set, if any, at reasonable times at the request of SWHP as necessary for SWHP to satisfy its obligations under 45 CFR 164.524;

g. make any amendment to PHI in a Designated Record Set, if any, as directed or agreed to by SWHP pursuant to 45 CFR 164.526 or take other measures as necessary for SWHP to satisfy its obligations under 45 CFR 164.526;

h. maintain and make available to SWHP the information required for an accounting of Disclosures as necessary for SWHP to satisfy its obligations under 45 CFR 164.528;

i. to the extent Business Associate is to carry out any obligation of SWHP under Subpart E of 45 CFR Part 164, comply with the requirements of such Subpart as applicable to SWHP in the performance of such obligation; and

j. make its internal practices, books and records relating to the Use and Disclosure of PHI available to the Secretary for purposes of determining compliance with the HIPAA Rules.

3. Permitted Uses and Disclosures by Business Associate.

a. Business Associate may Use and Disclose PHI to perform functions, activities or services for, or on behalf of, SWHP as necessary to accomplish the purpose(s) of the Business Relationship(s) for which SWHP engaged Business Associate provided that such Use or Disclosure would not violate the HIPAA Rules if done by SWHP.

b. Business Associate may Use and Disclose PHI as Required By Law.

c. Business Associate may *Use* PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate.

d. Business Associate may *Disclose* PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate if (i) the Disclosure is Required By Law or (ii) Business Associate obtains reasonable assurances from the party to whom the PHI is Disclosed that (1) the PHI will be held confidentially and Used or further Disclosed only as Required By Law or for the purposes for which it was Disclosed to the party and (2) the party will notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

e. Business Associate may provide to SWHP Data Aggregation services relating to the Health Care Operations of SWHP.

4. Obligations of and Permissible Requests by SWHP.

a. SWHP shall notify Business Associate in writing of any limitation in SWHP's notice of privacy practices under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of PHI.

b. SWHP shall notify Business Associate in writing of any changes in, or revocation of, the permission by an Individual to Use or Disclose his or her PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.

c. SWHP shall notify Business Associate in writing of any restriction on the Use or Disclosure of PHI to which SWHP has agreed or by which SWHP is required to abide under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of PHI.

d. SWHP shall not request Business Associate to Use or Disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by SWHP, except as for the specific uses and disclosures in Section 3 (Permitted Uses and Disclosures by Business Associate).

5. Term and Termination.

a. Term. The term of this BAA shall be effective as of the BAA Effective Date and shall expire: (i) when all PHI is destroyed or returned to SWHP; or (ii) on the date SWHP terminates for cause as authorized in Section 5(b) (Termination for Cause), whichever is sooner.

b. Termination for Cause. SWHP may terminate this BAA and the Business Relationship(s) if SWHP determines Business Associate has violated a material term of this BAA and further, provided cure is possible, if Business Associate has not cured the violation within the reasonable time specified by SWHP.

c. Obligations of Business Associate Upon Termination. Upon expiration or termination of this BAA for any reason, Business Associate shall return to SWHP or destroy all PHI in the possession or control of Business Associate or its Subcontractor and shall, upon SWHP's written request, certify such return or destruction in writing. In the event Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide written notice to SWHP of the conditions that make return or destruction infeasible, and Business Associate shall extend the protections of this BAA to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, in each case for so long as Business Associate maintains such PHI.

d. Survival. The following shall survive expiration or termination of this BAA: Section 1 (Terms Used), Section 5(c) (Obligations of Business Associate Upon Termination), Section 5(d) (Survival), Section 6 (Remedies) and Section 7 (Miscellaneous).

6. Remedies. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, FORESEEABLE OR UNFORESEEABLE, OF ANY KIND (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS OR BUSINESS GOODWILL) (COLLECTIVELY, "NON-DIRECT DAMAGES") ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF THIS BAA UNLESS SUCH NON-DIRECT DAMAGES AROSE FROM THE PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. The parties agree that fines, penalties and similar amounts imposed by a governmental agency and attorney fees are not Non-Direct Damages. Except for the foregoing sentences in this Section 6 (Remedies) and further except as provided in Section 7(g) (Enforcement), nothing in this BAA and nothing in any document(s) describing the Business Relationship(s) shall be construed or operate to (a) restrict either party's right to pursue all remedies available under law for damages or other relief arising from acts or omissions of another party related to this BAA or (b) limit either party's right to assert immunities, claims, cross-claims and defenses to which it may be entitled under applicable law. Business Associate shall be liable to SWHP for any non-compliance with this BAA by Business Associate's Subcontractors.

7. Miscellaneous.

a. Application and Incorporation. As of the BAA Effective Date, this BAA supersedes any preexisting business associate agreement between the parties and automatically applies to all preexisting and future Business Relationships which establish Business Associate as a HIPAA-defined "business associate" of SWHP.

b. Regulatory and Statutory References. Any reference in this BAA to a section of the HIPAA Rules shall mean such regulation or statute as in effect on the BAA Effective Date or, if and to the extent applicable, as subsequently updated, amended or revised.

c. Amendment. The parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for SWHP and Business Associate to comply with the requirements of the HIPAA Rules. Notwithstanding the forgoing, if SWHP and Business Associate have not amended this BAA to address a statute or final regulation that becomes effective after the BAA Effective Date and that is applicable to this BAA, then upon the effective date of such statute or regulation (or any portion thereof) this BAA shall be amended automatically and deemed to incorporate such new or revised provisions as are necessary for this BAA to be consistent with such statute or regulation and for SWHP and Business Associate to be and remain in compliance with all applicable laws. Except as provided herein, no amendment to this BAA shall be effective unless it is in writing and signed on behalf of SWHP and Business Associate.

d. Interpretation. Any conflict, inconsistency or ambiguity in or between this BAA and the HIPAA Rules shall be resolved in favor of a meaning that permits the parties to comply with the HIPAA Rules. Any conflict, inconsistency or ambiguity between this BAA and any document(s) describing the Business Relationship(s) shall be resolved in favor of this BAA.

e. No Third-Party Beneficiary. Nothing in this BAA is intended, nor shall be deemed, to confer any benefits on any third-party other than the [affiliate(s)] of SWHP on whose behalf SWHP has entered into this BAA.

f. Assignment. This BAA may not be transferred or assigned by either party without the prior written consent of the other party, except that SWHP may assign this BAA to a parent, subsidiary or affiliate or to a successor by merger or consolidation without notice to or consent of Business Associate. Any assignment in violation of this Section 7(f) is void and without effect.

g. Enforcement. This BAA is enforceable separately from any document(s) describing the Business Relationship(s). This BAA shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America. Any action by any party to enforce this BAA, whether at law or in equity, shall be exclusively commenced and maintained in the courts for Bell County, Texas.

h. Notices. Notwithstanding anything to the contrary in any document(s) describing the Business Relationship(s), notices under this BAA shall be sufficient only if in writing and delivered—by a major commercial rapid delivery courier service or mailed by certified or registered mail, postage prepaid and return receipt requested—to a party at the address set forth below or as amended by notice pursuant to this Section 7(h).

If to SWHP:

Baylor Scott & White Health
Attn: Privacy Officer, MS-AR-300
2401 S 31st St
Temple, TX 76508

If to Business Associate:

with a copy to:

Baylor Scott & White Health
Attn: Legal Department, MS-20-D642
2401 S 31st St
Temple, TX 76508
SWHPGeneralCounsel@BSWHealth.org

{Signature Blocks on following page}

SWHP:

**SCOTT AND WHITE HEALTH PLAN, on
behalf of itself and on behalf of its affiliates, as
Covered Entity**

BUSINESS ASSOCIATE:

_____, as Business Associate

Name: Jeffrey C. Ingrum
Title: President & CEO

Date:

Name:
Title:

Date: