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## **Advicare**

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

Immediate Upline: \_\_\_\_\_

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

**\*Be sure to check and complete all pages that require information and signatures\***

**Pages: 2, 21-23, 28-30, 34-35, 37, 38, 40-41, 48 and W9**

## 2014 PRODUCER AGREEMENT

**THIS PRODUCER AGREEMENT** (“Agreement”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_ 20\_\_ (“Effective date”) by and between Peek Performance Inc/PPI a corporation (hereinafter referred to as the TMO/Third Party Marketing Organization) and \_\_\_\_\_, whose address is \_\_\_\_\_ (hereinafter referred to as “Producer”). For purposes of this Agreement, TMO and Producer are sometimes collectively referred to as “parties” and individually as “party.” This agreement is for the express purpose of the Agent to be authorized to offer a Medicare/Medicaid Dual Eligible Plans (MMP) through Advicare Corp. (hereinafter referred to as “Company”).

### RECITALS

**WHEREAS**, the Company desires to market the Company's MMP;

**WHEREAS**, the Company has contracted with PEEK PERFORMANCE INC., who may utilize their network of Producers to market the Company's MMP to potential enrollees of the Company, and;

**WHEREAS**, TMO and Producer enter into this Agreement in order to set forth the terms and conditions under which Company shall appoint Producer to market Company's MMP and make payments of commissions to Producer via the TMO:

**NOW, THEREFORE**, in consideration of the covenants, promises, representations and warranties set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

### ARTICLE I – DEFINITIONS

- 1.1 CAP. Corrective Action Plan.
- 1.2 CMS. Centers for Medicare & Medicaid Services.
- 1.3 Commission(s). Fixed payment(s) to Producer made in accordance with this Agreement and Attachment A for each Member application written by Producer. The term “Commission” collectively refers to Initial Compensation and Renewal Compensation, unless otherwise specified.
- 1.4 Compensation. Any monetary or non-monetary remuneration of any kind, including bonuses, Commissions, gifts, prizes, awards and finder's fees, relating to the marketing and sales of a Company plan. Compensation is designated as either Initial or Renewal compensation as defined herein. Any Compensation offered to Producer shall be described and paid in accordance with Attachment A.
- 1.5 DFS. Department of Financial Services.
- 1.6 GSA. US General Services Administration.
- 1.7 HIPAA. Health Insurance Portability & Accountability Act of 1996.
- 1.8 Initial Compensation. Compensation offered for the beneficiary's initial year of enrollment in plan. Initial Compensation shall be paid in accordance with this Agreement and Attachment A.
- 1.9 Member. An eligible MMP beneficiary who is enrolled in a Company plan.
- 1.10 OIG. Office of Inspector General.
- 1.11 OIR. Offices of Insurance Regulation.

- 1.12 Producer.** An appropriately licensed and Company appointed independent contractor or employee (ie, marketing representative) of a Third Party Marketing Organization.
- 1.13 Renewal Compensation.** Compensation paid to Producer by TMO following a beneficiary's initial year of enrollment in a plan. Renewal Compensation shall be paid in accordance with this Agreement and Attachment A.
- 1.14 Third Party Marketing Organization (TMO).** An entity such as a Field Marketing Organization (FMO), General Agent (GA), or similar type of organization that has been retained to sell or promote a plan sponsor's MMP on the plan sponsor's behalf either directly or through sales agents or a combination of both. Peek Performance Inc., is the TMO for the Producer.

## **ARTICLE II – SCOPE OF AUTHORITY**

- 2.1 Appointment of Authority.** Company hereby appoints Producer to market Company plans and products and solicit applications from potential enrollees for membership into Company's Medicare/Medicaid Dual Eligible Plan. Producer shall be bound by the terms and conditions contained in their agreement with TMO. However, Producer shall conduct any marketing activities in accordance with this Agreement and all applicable Federal and State laws, regulations, guidelines and Company/TMO's policies and procedures. Producer shall be compensated directly by TMO in accordance with Attachment A.
- 2.2 Extent of Authority.** Producer is authorized to act solely to the extent expressly stated in this Agreement and only in those states and counties where the Company is authorized to do business. Subject to CMS rules, the Company may, in its sole discretion, discontinue or modify any plans or products offered by the Company or service areas. Company does not give authority to Producer to perform certain activities, specifically but not limited to the following:
- make, alter, modify, discharge or rescind any evidence of coverage, policy, rider or contract;
  - extend any provision of any policy, rider or contract;
  - waive any forfeiture;
  - incur any debts or expenses on behalf of Company/TMO or for which Company/TMO may be liable;
  - receive any money for Company/TMO, except as may be specifically authorized herein or elsewhere in writing by Company/TMO;
  - withhold or convert to their own use or for the benefit of others any monies, securities, policies, or receipts, belonging to Company/TMO;
  - accept payments of any kind on Company's/TMO's behalf;
  - endorse or present for collection any check, draft or other instrument made payable to Company/TMO, or;
  - conduct telemarketing, "cold calling", door-to-door- solicitation, send unsolicited emails or text messages or any other form of prohibited marketing through unsolicited contacts
- 2.3 Relationship of the Parties.**
- (a) Producer is contracted with TMO/(Referring hereafter to PPI) as an independent contractor or employee. This Agreement solely governs the conduct and performance of Producer in the marketing of Company's plans and products and payment of Commission by TMO to Producer. This Agreement does not confer any third party beneficiary rights to Producer in any agreement between Company and TMO.
- (b) TMO shall have the sole right to supervise, manage, operate, pay commissions to, and control the details incident to Producer's duties under this and any additional agreement between Producer and TMO and in accordance with all applicable Federal and State laws, regulations, guidelines and Company/TMO's policies and procedures.
- (c) Producer shall not be entitled to Company's/TMO's employee rights or benefits and agrees to waive any and all of his/her rights under the EEOC and ADA to the extent that they exist, if at all. Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture or franchise relationship, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for Company/TMO whatsoever with respect to the indebtedness, liabilities, and obligations of Producer, TMO or any other party.
- (d) Producer may not hold itself out as an employee, partner, joint venturer or associate of Company/TMO. Company/TMO shall not be bound or liable for any actions taken or representations made by Producer beyond the scope or in violation of this Agreement.

## ARTICLE III – TERMS AND CONDITIONS OF APPOINTMENT

### 3.1 Compliance with Guidelines and Applicable Laws.

- (a) Producer warrants that the services performed by him/her shall comply with all requirements herein mentioned, those contained in the Sales Representative Commitment to Compliance, to Company/TMO policies and procedures, as well as, all applicable Federal, State and local laws, all regulations and guidelines issued by CMS, DFS, OIR, or any other applicable Federal or State regulatory agency, and shall be conducted with due diligence and in full compliance with the highest professional standards in the industry.
- (b) In accordance with Company/TMO policies and procedures, Producer shall report any suspected incident of noncompliance and/or fraud, waste and abuse by any individual or organization to the Company's/TMO's Compliance Officer (remaining anonymous, if desired).
- (c) Producer agrees to cooperate with Company/TMO in conducting investigations of any marketing compliance violations by Producer, including providing any and all documentation requested by Company/TMO in relation to the marketing of Company plans and products by Producer. Producer shall adhere to any CAP instituted by Company/TMO.
- (d) Producer agrees that any noncompliant activities by Producer may result in the issuance of a warning, retraining or reeducation of Producer, implementation of a CAP on Producer, and/or suspension of Producer's appointment or termination of this Agreement with cause and institution of financial penalties on Producer. The extent of the disciplinary action shall depend on the number of and/or severity of conduct and complaints and will be based on the Company's/TMO's sole and absolute discretion.

### 3.2 Representations by Producer.

- (a) Producer warrants that he/she:
  - (i) holds and maintains in good standing, for the term of this Agreement, any license, certification, or registration required to perform his/her duties under this Agreement and will be in compliance with all applicable state regulatory licensing requirements at the time of solicitation of applications for the approved products offered by and authorized for marketing by the Company/TMO;
  - (ii) is not excluded from participation in Medicare and all other Federal health care programs via the OIG's List of Excluded Individuals/Entities (LEIE) online searchable database, the CMS Medicare Exclusion Database (MED) and/or the GSA Excluded Parties List System (EPLS);
  - (iii) is not prevented from engaging in the insurance business under the Violent Crime Control and Law Enforcement Act (18 U.S.C. 1033), which makes it a crime for individuals convicted of certain felonies to willfully engage in the business of insurance, or any other applicable law; and
  - (iv) is not under any constraint, legal or otherwise, which would prevent him/her from marketing the plans and products of Company/TMO and in soliciting applications from potential enrollees of Company/TMO.

A Producer must immediately report the loss or their license to their TMO and the Company's Compliance Officer. Any Producer who has concerns about his/her ability to act as a Producer must contact their TMO, the Company's Compliance Officer and/or the appropriate regulatory agency.

- (b) Producer agrees to accurately and fully complete the Pre-Test Compliance Requirements, including Professional Profile required by the Company.
- (c) Producer agrees that, even if appropriately licensed by any state regulatory agency, Company/TMO reserves the right to not appoint Producer to market Company/TMO plans and products and may terminate any appointment in accordance with this Agreement.
- (d) Producer agrees that before promoting or marketing the Company/TMO plans or products and on a periodic and/or annual basis as required by Company/TMO thereafter, attend all training required by the Company/TMO and be certified by the Company/TMO as having completed all training required by the Company/TMO, it being specifically acknowledged and agreed by Producer that no Commission or other compensation shall be paid under this Agreement unless such training has been completed and such certification is received prior to the policy being written.

- (e) Producer shall promote to each prospective Member only those products for which the prospective Member is qualified to enroll and which Producer in good faith believes meets the needs of the prospective Member.
- (f) Producer agrees that he/she will only use marketing material approved by Company and provided to him/her by TMO. Producer may not use Company's/TMO's name or logo, the plan's name or logo, or any proprietary information of the Company/TMO on any printed materials, electronic advertising, or internet site without prior written approval of the Company/TMO. Producer may not re-create or alter any material considered proprietary by Company/TMO in electronic, printed, or any other form.
- (g) Producer agrees that each application for membership into Company benefit plan written by Producer shall be true and correct and will be reviewed for completion, accuracy and legibility before submittal.
- (h) Producer agrees to maintain full and complete records as required by TMO, including but not limited to SOA/Scope of Appointment for each prospect, Company and/or any applicable Federal or State laws and regulatory agencies and shall make such records available to Company, in the time and manner requested by Company or by TMO on behalf of Company.
- (i) Producer agrees to protect the privacy and confidentiality of Company's/TMO's plan applicants, current and former members, employer groups, and providers. As such Producer agrees to:
  - (i) not disclose personal or financial information to anyone other than Company/TMO, as is applicable for the purpose stated herein;
  - (ii) comply with all federal, state, and local laws regarding the privacy and confidentiality of information of applicants, current and former members, employer groups and providers;
  - (iii) comply with all Company/TMO privacy and confidentiality requirements and policies and procedures and those of HIPAA and the Gramm-Leach-Bliley Act of 1999 (GLB Act), including any regulations or amendments thereto.
- (j) Producer shall not, while this Agreement is in force, and following its termination for any reason, directly or indirectly contact, solicit, communicate or meet with any of the Company's/TMO's MMP members for the purpose of modifying, rewriting, canceling, lapsing or replacing the Company's/TMO's plans. Failure to comply with the provisions of this Section will result in termination of Producer's appointment with Company/TMO with cause and/or termination and forfeiture of any and all Commissions and, additionally, may result in legal action against Producer. Failure to pursue legal action under an occurrence will not waive or preclude Company's/TMO's right to legal action on present or other occurrences.

#### **ARTICLE IV – PAYMENT OF COMMISSIONS**

##### **4.1 Commission Payment to Producer.**

- (a) Commissions are payable per CMS guidelines, consistent with 42 CFR 422.2274 and 42 CFR 423.2274, and shall be paid in accordance with Attachment A. Producer shall be directly paid Commission by TMO for each application written by Producer during the plan year and as specified on Attachment A. Commission shall only be paid for an application, accepted and approved by Company and CMS, written during the 2015 Enrollment Period for a MMP beneficiary conditioned on the following requirements:
  - (i) application is accepted and approved by the Company and CMS, shown by a CMS Member Effective Date of Coverage;
  - (ii) where the CMS Member Effective Date of Coverage and the CMS Effective Date of Coverage Termination, as assigned by CMS is three (3) months or more (unless an exception applies);
  - (iii) where CMS has not retroactively disenrolled the beneficiary from the Company.
- (b) Commission is paid only for the actual months a beneficiary is enrolled in a Company plan. Should a beneficiary disenroll or be disenrolled within that first three months under circumstances defined by CMS, TMO shall recover Commission under such circumstances. *No additional Compensation, bonuses, remuneration or reimbursement will be due and payable to the Producer, unless stated in Attachment A.*

#### **4.2 Commission Payment Timeframe.**

- (a) Initial Compensation: TMO shall pay Initial Compensation to Producer for qualifying applications written by Producer. Initial Compensation shall be calculated on a pro-rata basis and paid in the month that Commission is earned.
- (b) Renewal Compensation: TMO shall pay Renewal Compensation to Producer for applications written by Producer and shall be calculated on a pro-rata basis and paid in the month that Commission is earned. Renewal Compensation shall be paid yearly after the initial Compensation year (in accordance with CMS regulations) until such time that the Member is no longer on a Company plan or upon the occurrence of any other event specified in Section 4.3 of this Agreement.
- (c) Initial and Renewal Compensation amount may be advanced and paid to Producer either annually, quarterly or more frequently, as determined by TMO in its sole and absolute discretion, however, if a beneficiary is no longer a Member of Company payment of Commission shall cease or be subject to chargeback on a pro rata basis based upon the number of months the beneficiary was enrolled.

[For the purpose of calculating the payment of Commission, CMS defines "year" as a plan year, meaning January 1 through December 31. For example, if a beneficiary turns 65 and enrolls in a plan in September, then the initial year for that beneficiary ends on December 31st of that year, even though the beneficiary has only been in the plan for four months. In January of the next year, the plan would begin paying renewal payments to the agent that assisted this beneficiary.]

#### **4.3 Obligation for Payment of Commission and/or Compensation.** Company/TMO shall not pay or will cease payment of Commissions or any other compensation upon the following events:

- (i) Upon Producer's loss of State licensure or certification;
- (ii) If Producer is no longer appointed to sell in the State;
- (iii) If Producer has not been trained and tested in accordance with the Company's policies and procedures or attained a passing score of eighty-five (85);
- (iv) If Producer has been terminated *with cause* in accordance with Section 5.2(b) of this Agreement;
- (v) If Company no longer provides services in the State or the county in which the Member is located;
- (vi) Producer initiates, directly or indirectly, any communications with any Members for the purpose of replacing a product offered by the Company with a product offered by another company;
- (vii) the Company/TMO reasonably determines that Producer's renewal attrition rate is materially higher than that of other producers appointed with the Company
- (viii) Upon Company's termination of its MA contract with CMS for any reason.
- (ix) If Producer's commission debt to TMO remains unpaid for a period of more than 30 days from written notice provided by TMO.

*Any Commission earned prior to the above events may be calculated on a pro-rata basis, unless Producer was terminated with cause, in which case, payment of Commissions may immediately cease.*

#### **4.4 Expenses to be Paid by Producer.** Producer shall pay all expenses incurred by himself/herself in the performance of this Agreement. Any such expenses not paid by Producer shall be offset by the Company/TMO against any Commission or compensation payable to Producer. If there is no Commission or compensation payable to Producer, Company/TMO shall bill Producer for any amounts owed Company/TMO. Producer must immediately remit full amount upon receipt of any such bill. Company/TMO shall reserve all rights and remedies available to it at law in such an event.

#### **4.5 Expenses Paid by Company.**

- (a) Company shall pay for appointment of Producer; however, if Producer does not submit five (5) or more Applications within a year of his/her appointment, Producer will reimburse Company the amount paid by Company for the Producer's appointment. Producer authorizes the Company to offset the reimbursement amount against, and deduct from, any Commission and/or other compensation due Producer.

- (b) Company shall pay for CMS-required fulfillment services necessary to welcome an accepted member into their plan.
- (c) Unless the Producer receives written notification signed by a duly authorized representative of Company all other expenses are the sole responsibility of Producer.
- 4.6 Charge-Back or Nonpayment of Producer Commission (Initial and Renewal).** Commission on any Application or Accepted Application will be charged back, and/or will not be paid, to the Producer if a beneficiary is disenrolled from a Company plan within the first three (3) months of enrollment (“Rapid Disenrollment”), unless an exception applies, and any other time a beneficiary is not enrolled in a Company plan, in accordance with CMS guidelines. Additionally, should Company terminate Producer with cause prior to Commission being fully earned by Producer, then the unearned portion of Producer’s Commission, shall be charged-back by Company/TMO and/or will not be paid. In the event that Commission was advanced by Company/TMO, any charge-back may be offset against any compensation or Commission due or to become due to Producer. In the event Producer is not due any compensation or Commission, any amount due to Company/TMO as a result of a charge-back shall be payable upon demand.
- 4.7 Indebtedness of Producer.**
- (a) In the event that Producer incurs indebtedness to Company/TMO, affiliate, and/or any assignee of Company arising from any transaction under this Agreement, or any previous or subsequent agreement, the Company/TMO may offset the indebtedness against, and deduct from, any Commission and/or other compensation due Producer.
- (b) Company/TMO or any assignee may offset any indebtedness created by Producer including the repayment of advance commissions against Commission or overrides due Producer.
- (c) Unless otherwise specifically provided, all debts of Producer due Company/TMO, including advances against Commissions or other compensation, are payable upon demand and are not recoverable solely from Commission or other compensation.
- (d) Should the Company/TMO, for any reason, refund any premium on any policy secured hereunder, then the Producer shall repay, on demand, any Commissions received on that premium. A failure to repay these Commissions constitutes authorization for the Company/TMO to offset such amounts against any Commissions or service fees due the Producer on any policy secured hereunder.
- (e) Producer agrees and acknowledges any indebtedness shall be a first lien against any future Commission or compensation.
- (f) Producer shall be liable to TMO/Company for the payment of all monies due from the Producer, or debit balances on the account of the Producer or debit balances resulting from loans to Producer from the Company/TMO. Collection fees on unpaid debits to the Company shall be at Producer’s cost.
- (g) The Company’s/TMO books and records shall be prima facie evidence of such debit balances or loans due.
- (h) Company/TMO shall reserve all rights and remedies available to it at law in the event of any indebtedness.
- 4.8 Commission Modification.** Producer acknowledges that payments of Commissions are subject to change based on the implementation of federal or state statutory guidelines. Further, Company/TMO may, at any time increase or decrease the Commission payable to Producer as specified on Attachment A by furnishing Producer with written notice, however, any change shall not be retroactive and shall apply only on or after the effective date specified in the written notice.
- 4.9 Right to Periodic Statements.** Company/TMO shall furnish Producer with a periodic electronic statement of Producer’s account and shall pay any amount due Producer hereunder. Upon receipt of such statement, Producer shall immediately examine it, and, if not satisfied as to its accuracy, Producer shall return such statement and the payment to TMO with full particulars of any discrepancy therein within fifteen (15) days of the date of the statement; otherwise the statement shall be deemed accepted by Producer as true and correct. The account on the books of Company/TMO shall be competent evidence of such Account for all purposes.

## **ARTICLE V – TERM AND TERMINATION**

- 5.1 Term.** This Agreement shall be effective for member applications with an effective date *of or after January 1, 2015* and shall be applicable only to those applications written during the 2014 – 2015 Enrollment Period with a 2015 effective date.

## **5.2 Termination by Company/TMO.**

- (a)** Company or TMO may terminate this Agreement, at any time during the term of the Agreement without cause upon written notice to TMO and Producer.
- (b)** Regardless of anything to the contrary contained in this Agreement, the Company/TMO may terminate this Agreement, and therefore the appointment of Producer, immediately with cause. For purposes of this Section, “cause” shall include, without limitation, the following:
  - (i) if the Producer does not pay to Company/TMO, affiliate of Company/TMO, or any assignee, any and all amounts due for charge-backs, advance repayments, cancellations or rescissions within thirty (30) days of notification by Company/TMO, affiliate of Company/TMO or any assignee;
  - (ii) if the Producer does not comply with governmental regulatory statutes, Medicare Marketing Guidelines, HIPAA Confidentiality rules, Sales Representative Commitment to Compliance, investigations conducted by Company/TMO or any corrective action plan (“CAP”) implemented by the Company/TMO;
  - (iii) if the Producer does not conform to the terms and conditions of this Agreement;
  - (iv) upon any intentional misrepresentation or fraudulent activity by Producer during the enrollment process or on any member enrollment application;
  - (v) upon loss, restriction, revocation or suspension of Producer’s state licensure;
  - (vi) the conviction of Producer of any felony crime or crime involving moral turpitude, or;
  - (vii) upon the Company’s/TMO determination, in their sole discretion, that Producer has acted in a manner that is materially detrimental to the Company/TMO.

**5.3 Termination by Producer.** Producer may terminate this Agreement, and therefore his/her appointment with Company, at any time by giving Company ten (10) business days prior written notice thereof. Producers who self-terminate will not be allowed to reappoint with the Company for a period of 24 months. Producers may not move to another TMO without written permission by Peek Performance Inc.

## **5.4 Effect of Termination on Payments.**

- (a)** In the event of termination of this Agreement by the Company without cause, the Company/TMO shall have no further obligation or liability to Producer other than for Commission due for business written and submitted while this Agreement is in force, through the effective date of termination, less applicable charge-backs or debts, as stated in the Agreement and/or the Schedule of Commission (“Commission Schedule”) attached. Commission shall be paid so long as a beneficiary remains a Member of Company.
- (b)** In the event of termination of this Agreement by the Company/TMO with cause, the Company/TMO shall not be obligated to pay any further Commissions (including renewals or other payments) from the date the with cause event occurred. Producer will continue to be liable and responsible for repayment of applicable charge-backs or debts, as stated in the Agreement and/or Commission Schedule.
- (c)** In the event of termination of this Agreement by Producer, the Company/TMO shall have no further obligation or liability to the Producer other than for Commission due for business written and submitted while this Agreement is in force, through the effective date of termination, less applicable charge-backs or debts, as stated in the Agreement and/or Commission Schedule attached. Commission shall be paid so long as a beneficiary remains a Member of Company.

**5.5 Effect of Termination on Indebtedness.** If Producer does not repay any indebtedness to the Company/TMO upon termination of this Agreement, he/she shall agree to the entry of judgment against themselves equal to the amount of the indebtedness plus applicable attorney’s fees or costs related to entry of the judgment.

**5.6 Dispute of Termination.** The Producer shall have thirty (30) days after notice of termination of this Agreement to notify the Company/TMO in writing of any complaints Producer may have against the Company/TMO. Notice must be sent by certified mail, return receipt requested, to the address specified in the Notices section of this Agreement. If no notice of dispute is given within the thirty (30) day period or if the notice of dispute is not given in the manner provided for in this Section, Producer shall waive any and all rights to any claims against the Company/TMO.

## **5.7 Return of Company/TMO Property upon Termination.**

- (a) Producer agrees to end all further use and utilization of all property belonging to the Company/TMO, if any, including, without limitation:
- (i) property or equipment furnished by the Company/TMO, including, but not limited to, computer equipment (including any external drives), laptops, telephones, cellular phones and other mobile devices, office equipment, passwords, and access cards provided by the Company/TMO;
  - (ii) any property or equipment created or prepared by Producer, either alone or jointly with another, pursuant to the provisions or requirements of this Agreement;
  - (iii) all correspondence, reports, records, charts, advertising materials and other similar data pertaining to the Company's/TMO's business;
  - (iv) intellectual property, trade secrets, or confidential information regarding the Company/TMO;
  - (v) any and all materials relating to the future plans of Company/TMO, including any and all copies or reproductions thereof, and;
  - (vi) other items known, or that should have been known, by Producer as property of the Company/TMO.
- (b) All above items shall be collectively referred to as "Company or TMO Property." Producer acknowledges that Company/TMO Property given to him may be either confidential or proprietary, and agrees to treat it as such. Producer will return all Company/TMO Property promptly and in good condition, without request, upon termination of this Agreement.
- (c) Producer agrees that Company/TMO shall deduct the cost of any Company Property that is not returned upon termination from any Commissions or other amounts payable to Producer.
- (d) Producer acknowledges that intellectual property, trade secrets or other such confidential and proprietary information relating to the Company/TMO and/or its members and providers is proprietary and commercially and competitively valuable to the Company/TMO and that the unauthorized disclosure or use or the failure to return such information upon termination would cause irreparable harm to the Company/TMO.

## **ARTICLE VI – GENERAL PROVISIONS**

- 6.1 Confidential Information.** Producer agrees that all marketing materials (including, without limitation, promotional materials, advertisements, circulars, brochures or similar material) concerning the Company's/TMO's plans or products, rate and benefit schedules, contracts, records files, software, manuals, forms, and other materials and information furnished by the Company/TMO, whether furnished in paper form, electronic format or through the Internet, is and shall remain confidential and proprietary to the Company/TMO (collectively "Confidential Information"). Producer agrees that Confidential Information shall only be used by Producer in connection with performance under this Agreement and only in the manner provided by this Agreement. Producer shall not use any of Company's/TMO's Confidential Information to directly or indirectly compete with Company/TMO, or to assist any competitor of Company/TMO to compete with Company/TMO, during the term of this Agreement or at any time thereafter. Upon expiration or termination of this Agreement, Producer shall immediately return all Confidential Information. Producer acknowledges and agrees that Company/TMO owns all tangible property, including, but not limited to, goods, equipment, documents, spreadsheets, notes, disks, text, artwork, computer software, and similar property that may be provided to Producer by Company/TMO or may be produced by Producer at Company's/TMO's expense or based on Company's/TMO's Confidential Information. Producer agrees to deliver this tangible property to the Company/TMO promptly upon the Company's/TMO's request, but in any event, after Producer is finished using such tangible property in performing the services under this Agreement.
- 6.2 Change in Law.** In the event of any change in or promulgation of any federal or state law, regulation, or administrative ruling of an overseeing agency affecting this Agreement or services provided hereunder, the parties shall act in good faith to restructure the Agreement to conform with such changed or new law or requirement.

**6.3 Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to be effective only if delivered by hand against written receipt or mailed by prepaid registered or certified mail, return receipt requested, to the parties at their respective addresses set forth below, or to such other address as each party may specify by written notice to the other from time to time in accordance with the terms of this paragraph. Such notices, requests, demands and other communications hereunder shall be deemed to have been duly given upon receipt thereof.

**If to Company:**

Peek Performance Inc.  
ATTN: Legal Department  
4115 East North Street  
Greenville, SC 29615

**If to Producer:** To the address first stated above

**6.4 Legal Action against Beneficiaries/Member Hold Harmless.** Producer shall notify Company/TMO in writing ten (10) days prior to taking any legal action and/or instituting legal proceedings against any Company members, former members and/or TMOs. Producer shall not, in any event (including, without limitation, nonpayment of any Commission or compensation hereunder, bankruptcy or insolvency of Company/TMO or its affiliates or breach of this Agreement), bill, charge, collect a deposit from, seek compensation or remuneration or reimbursement from, hold responsible, or otherwise have any recourse against any actual or prospective Member for any amounts otherwise payable to Producer pursuant to this Agreement or otherwise.

**6.5 Legal Action against Company.** Producer shall notify Company/TMO in writing ten (days) prior to taking any legal action and/or instituting legal proceedings against Company/TMO, its subsidiaries, affiliates, directors, employees, agents, successors or assigns. None of the aforementioned shall be liable for any claim which is asserted by Producer more than thirty (30) days after the Producer becomes or reasonably aware, or should have become aware, of such claim, and will in no event be liable for any claim which is asserted by Producer more than twelve (12) months after the event resulting in damages or loss.

**6.6 Remedies in the Event of Breach.** In the event of a breach by the Producer of any of the provisions of this Agreement, the Company/TMO shall be entitled to the following remedies:

- (a) obtain an injunction enjoining any violation or threatened violation of the covenants herein for the benefit and protection of the Company/TMO, and/or;
- (b) obtain an injunction compelling the performance by Producer of all obligations and covenants owed to the Company/TMO under the is Agreement, and/or;
- (c) seek all other remedies available to the Company/TMO at law or equity, and/or;
- (d) pursue reasonable legal fees incurred in connection with remedying the breach, and/or;
- (e) withhold from Producer and not pay to Producer any sum otherwise payable by Company/TMO to Producer, including without limitation, any such sum attributable to Commissions (including renewals).

**6.7 Modification.** This Agreement may only be amended or modified only by an instrument in writing duly executed by an Officer of Company/TMO and Producer. Whenever possible, Company/TMO will provide written notification of amendments or modifications thirty (30) days prior to effective date of amendment or modification. Company/TMO, however, reserves the right to amend or modify immediately as is required or directed to maintain regulatory compliance. This Agreement cannot be changed by any oral promise or statement by whosoever made, and no written modification or change will bind the Company/TMO unless it is signed by an Officer of the Company/TMO, and expresses an intention to modify or change this Contract.

**6.8 Entire Agreement** This Agreement and all attachments thereto, constitute the entire agreement among the parties and supersede all prior agreements and understandings, both written and oral.

**6.9 Waiver.** Any term or condition of this Agreement may be waived at any time by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by an Officer of Company/TMO and Producer. No waiver by any party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion.

- 6.10 No Assignment; Binding Effect.** Neither this Agreement nor any right, interest or obligation hereunder may be assigned (by operation of law or otherwise) by Producer and any attempt to do so will be void.
- 6.11 Survival.** The following provisions shall survive termination of this Agreement for any reason: 3.1(c), 3.2(h), 3.2(i), 3.2(j), 5.7, 6.1, 6.4, and 6.5.
- 6.12 Headings.** The headings or captions in this Agreement are for convenience and reference only and do not in any way modify, interpret or construe the intent of the parties or affect any of the provisions of this Agreement.
- 6.13 Severability.** If any provision hereof shall be deemed to be unenforceable by law, the remaining provisions of this Agreement shall be enforced and the offending provision shall be deemed to be re-written so as to give maximum effect to the intent of the parties.
- 6.14 Governing Law/Arbitration.** This Agreement and all matters concerning its interpretation, performance or the enforcement hereof, shall be governed by and construed in accordance with the laws of the State of South Carolina. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by binding arbitration in Greenville County, South Carolina, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The sole right of the arbitrator shall be to enforce and interpret the terms of this Agreement and not to expand the rights or obligations of the parties. The arbitrator shall have only the right to award actual or direct damages and shall not have the right to award special, consequential or punitive damages. The costs of the arbitration, including the fees of the arbitrator, shall be borne equally by the parties and each party shall be responsible for its own attorneys and experts. The arbitrator shall not consolidate the claims of third parties into one proceeding, nor shall the arbitrator have the power to hear the arbitration as a class action. Notwithstanding the foregoing, the Company/TMO may seek relief for breaches of Sections 3.2(i), 3.2(j), 5.7, 6.1 in any court of competent jurisdiction, as the parties recognize that the breach of such sections would result in irreparable harm for which monetary damages would be inadequate. In the event of a breach of the aforementioned sections, the Company/TMO shall be entitled to receive special or consequential damages to the extent awarded by a court of law.
- 6.15 Jurisdiction; Venue.** All actions and proceedings, including arbitration, arising out of or relating to this Agreement shall be heard and determined in any South Carolina state court located in Greenville County, South Carolina or federal court sitting in the city of Greenville, South Carolina and each party hereby irrevocably accepts and consents to the exclusive personal jurisdiction of those courts for such purpose. In addition, each party hereby irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any judgment entered by any court in respect thereof brought in any state or federal court sitting in the county of Greenville, and further irrevocably waives any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum.
- 6.16 Waiver of Trial by Jury.** In any action or proceeding arising from this Agreement, the parties hereto consent to trial without a jury in any action, proceeding, or counterclaim brought by any party hereto against the other or their successors in respect of any matter arising out of or in connection with this Agreement, regardless of the form of action or proceeding.
- 6.17 Counterparts and Facsimile, E-mail or other digital Execution.** This Agreement may be executed and delivered in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement, any amendments, or other documents related to this Agreement bearing a signature delivered via facsimile or E-mail, or executed digitally via Company's/TMO's Producer portal, shall be treated in all manner and respects and for all purposes as an original agreement and shall have the same binding effect as if it were the original signed version delivered in person.
- 6.18 Indemnification.** Producer shall indemnify, defend and hold harmless Company/TMO, its subsidiaries, affiliates, officers, directors, stockholders, employees, agents and assignees from and against any and all claims, actions, demands, costs and expenses, including but not limited to reasonable attorney's fees and disbursements and any and all fines imposed by any federal, state or local agency, as a result of a breach by Producer of any of its obligations under this Agreement or arising out of the negligent act or omission or willful misconduct of Producer, subject to the terms of this Agreement.

## ARTICLE VII – SCDHHS CONTRACT PROVISIONS

The provisions in this Section shall be primary and supersede any provision to the contrary which may occur in any other section of this subcontract.

### A. Definitions:

1. Action – As related to Grievance, either (1) the denial or limited authorization of a requested service, including the type or level of service; (2) the reduction, suspension, or termination of a previously authorized service; (3) the denial, in whole or in part, of payment for a service; (4) the failure to provide services in a timely manner, as defined by SCDHHS; (5) the failure of the CICO to act within the timeframes provided in the CICO Contract; or (6) for a resident of a rural area with only one CICO, the denial of a Medicaid CICO Member's request to exercise his or her right, under 42 CFR §438.52(b)(2)(ii), to obtain services outside the CICO's network.
2. Flexible Service(s) – A service(s) provided by the CICO which is a non-covered service(s) by the South Carolina State Plan for Medical Assistance and is offered to CICO Members in accordance with the standards and other requirements set forth in the CICO Contract which are outlined in another section of this Contract.
3. Clean Claim – A claim that can be processed without obtaining additional information from the Provider of the service or from a third party.
4. Continuity of Care – The continuous treatment for a condition or duration of illness from the time of first contact with a healthcare provider through the point of release or long-term maintenance.
5. Emergency Medical Condition – A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in: placing the health of the individual (or, with respect to a pregnant woman, the health of the woman and/or her unborn child) in serious jeopardy; serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.
6. Emergency Services – Covered inpatient and outpatient services that are as follows: (1) furnished by a provider that is qualified to furnish these services under this title; and (2) needed to evaluate or stabilize an Emergency Medical Condition.
7. Federal Qualified Health Center (FQHC) – A South Carolina licensed health center certified by the Centers for Medicare and Medicaid Services that receives Public Health Services grants. An FQHC provides a wide range of primary care and enhanced services in a medically under-served area.
8. Grievance – An expression of dissatisfaction about any matter other than an Action. The term is also used to refer to the overall system that includes grievances and appeals handled at the CICO level. (Possible subjects for Grievances include, but are not limited to, the quality of care or services provided, and aspects of interpersonal relationships such as rudeness of a provider or employee, or failure to respect the Medicaid CICO Member's rights.)
9. Healthcare Medicaid Provider – A provider of healthcare services or products which includes but is not limited to an institution, facility, agency, person, corporation, partnership, practitioner, specialty physician, group or association approved by SCDHHS, licensed and/or credentialed which accepts as payment in full for providing benefits to Medicaid CICO Members amounts pursuant to the CICO reimbursement provisions, business requirements and schedules.
10. Managed Care Organization – An entity that has, or is seeking to qualify for, a comprehensive risk contract that is (1) a Federally qualified HMO that meets the advance directive requirements of subpart I of 42 CFR Part 489; or (2) any public or private entity that meets the advance directives requirements and is determined to also meet the following conditions: (a) makes the services it provides to its Medicaid CICO Members as accessible (in terms of timeliness, amount, duration, and scope) as those services are to other Medicaid recipients within the area serviced by the entity; and (b) meets the solvency standards of 42 CFR §438.116. This includes any of the entity's employees, affiliated providers, agents, or contractors.

11. Medically Necessary Service – Those medical services which: (a) are essential to prevent, diagnose, prevent the worsening of, alleviate, correct or cure medical conditions that endanger life, cause suffering or pain, cause physical deformity or malfunction, threaten to cause or aggravate a handicap, or result in illness or infirmity of a Medicaid CICO Member; (b) are provided at an appropriate facility and at the appropriate level of care for the treatment of the Medicaid CICO Member's medical condition; and, (c) are provided in accordance with generally accepted standards of medical practice.
12. Medicaid CICO Member – An eligible person(s) who is enrolled with a SCDHHS approved Medicaid Coordinated and Integrated Care Organization. For purpose of this subcontract, Medicaid CICO Member shall include the patient, parent(s), guardian, spouse or any other person legally responsible for the Medicaid CICO Member being served.
13. CICO - The Coordinated and Integrated Care Organization who is requesting services under this Contract.
14. Rural Health Clinic (RHC) – A South Carolina licensed rural health clinic is certified by the Centers for Medicare and Medicaid Services and receiving Public Health Services grants. An RHC is eligible for state defined cost based reimbursement from the Medicaid fee-for-service program. An RHC provides a wide range of primary care and enhanced services in a medically underserved area.
15. Provider – The Healthcare Medicaid Provider who is providing services for the CICO under this Contract.

**B. Administration**

1. SCDHHS retains the right to review any and all subcontracts entered into for the provision of any services under this Contract.
2. SCDHHS does not require Provider to participate in any other line of business (i.e. Medicare Advantage or commercial) offered by the CICO in order to participate in the CICO's Medicaid network.
3. SCDHHS does not require Provider to participate in the network of any other Managed Care Organization as a condition of participation in CICO's network.
4. CICO and Provider shall be responsible for resolving any disputes that may arise between the two (2) parties, and no dispute shall disrupt or interfere with the Continuity of Care of a Medicaid CICO Member.
5. Provider represents and covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Provider further covenants that, in the performance of this Contract, no person having any such known interests shall be employed.
6. Provider recognizes that in the event of termination of the CICO Contract between CICO and SCDHHS, the CICO is required to make available to SCDHHS or its designated representative, in a usable form, any and all records, whether medical or financial, related to the CICO's and Provider's activities undertaken pursuant to this Contract. The Provider agrees to furnish any records to the CICO which the CICO would need in order to comply with this provision. The provision of such records shall be at no expense to SCDHHS.
7. In the event of termination of this Contract, SCDHHS will be notified of the intent to terminate this Contract one hundred and twenty (120) calendar days prior to the effective date of termination. The date of termination will be at midnight on the last day of the month of termination.
8. If the termination of this Contract is as a result of a condition or situation which would have an adverse impact on the health and safety of Medicaid CICO Members, the termination shall be effective immediately and SCDHHS will be immediately notified of the termination and provided any information requested by SCDHHS.

### **C. Hold Harmless**

1. At all times during the term of this Contract, Provider shall, except as otherwise prohibited or limited by law, indemnify and hold SCDHHS harmless from all claims, losses, or suits relating to activities undertaken pursuant to this Contract.
2. If Provider is not a political subdivision of the State of South Carolina, an affiliate organization, or otherwise prohibited or limited by law, Provider shall indemnify, defend, protect, and hold harmless SCDHHS and any of its officers, agents, and employees from:
  - a. Any claims for damages or losses arising from services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies for the Provider in connection with the performance of this Contract;
  - b. Any claims for damages or losses to any person or firm injured or damaged by erroneous or negligent acts, including disregard of state or federal Medicaid regulations or legal statutes, by Provider, its agents, officers, employees, or subcontractors in the performance of this Contract;
  - c. Any claims for damages or losses resulting to any person or firm injured or damaged by Provider, its agents, officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data processed under this Contract in a manner not authorized by the Contract or by federal or state regulations or statutes;
  - d. Any failure of the Provider, its agents, officers, employees, or subcontractors to observe the federal or state laws, including, but not limited to, labor laws and minimum wage laws;
  - e. Any claims for damages, losses, or costs associated with legal expenses, including, but not limited to, those incurred by or on behalf of SCDHHS in connection with the defense of claims for such injuries, losses, claims, or damages specified above;
  - f. Any injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses which may in any manner accrue against SCDHHS or their agents, officers or employees, through the intentional conduct, negligence or omission of the Provider, its agents, officers, employees or subcontractors.
3. As required by the South Carolina Attorney General, in circumstances where the Provider is a political subdivision of the State of South Carolina, or an affiliate organization, except as otherwise prohibited by law, neither Provider nor SCDHHS shall be liable for any claims, demands, expenses, liabilities and losses (including reasonable attorney's fees) which may arise out of any acts or failures to act by the other party, its employees or agents, in connection with the performance of services pursuant to this Contract.
4. In accordance with the requirements of S.C. Code Ann. § 38-33-130(b) (Supp. 2001, as amended), and as a condition of participation as a Healthcare Medicaid Provider, Provider hereby agrees not to bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have recourse against, Medicaid CICO Members, or persons acting on their behalf, for health care services which are rendered to such Medicaid CICO Members by the Provider, and which are covered benefits under the Medicaid CICO Member's evidence of coverage. This provision applies to all covered health care services furnished to the Medicaid CICO Member for which SCDHHS does not pay the CICO or the CICO does not pay the Provider. Provider agrees that this provision is applicable in all circumstances including, but not limited to, non-payment by CICO and insolvency of CICO. Provider further agrees that this provision shall be construed to be for the benefit of Medicaid CICO Members and that this provision supersedes any oral or written contrary agreement now existing or hereafter entered into between Provider and such Medicaid CICO Members.
5. It is expressly agreed that the CICO, Provider and agents, officers, and employees of the CICO or Provider in the performance of this Contract shall act in an independent capacity and not as officers and employees of SCDHHS or the State of South Carolina. It is further expressly agreed that this Contract shall not be construed as a partnership or joint venture between the CICO or Provider and SCDHHS and the State of South Carolina.

### **D. Health Care Services**

1. Provider shall ensure adequate access to the services provided under this Contract in accordance with the prevailing medical community standards.

2. The services covered by this Contract must be in accordance with the South Carolina State Plan for Medical Assistance under Title XIX of the Social Security Act, and Provider shall provide these services to Medicaid CICO Members through the last day that this Contract is in effect. All final Medicaid benefit determinations are within the sole and exclusive authority of SCDHHS or its designee.
3. Provider may not refuse to provide Medically Necessary Services or covered preventive services to Medicaid CICO Members for non-medical reasons.
4. Provider shall render Emergency Services without the requirement of prior authorization of any kind.
5. The Provider shall not be prohibited or otherwise restricted from advising a Medicaid CICO Member about the health status of the Medicaid CICO Member or medical care or treatment for the Medicaid CICO Member's condition or disease, regardless of whether benefits for such care or treatment are provided under the CICO Contract, if Provider is acting within the lawful scope of practice.
6. Provider must take adequate steps to ensure that Medicaid CICO Members with limited English skills receive, free of charge, the language assistance necessary to afford them meaningful and equal access to the benefits and services provided under this Contract in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et. seq.) (2001, as amended) and its implementing regulation at 45 C.F.R. Part 80 (2001, as amended).
7. Provider shall provide effective Continuity of Care activities, if applicable, that seek to ensure that the appropriate personnel are kept informed of the Medicaid CICO Member's treatment needs, changes, progress or problems
8. Provider must adhere to the Quality Assessment Performance Improvement and Utilization Management (UM) requirements as outlined by SCDHHS and/or its designee.
9. Provider shall have an appointment system for Medically Necessary Services that is in accordance with prevailing medical community standards.
10. Provider shall not use discriminatory practices with regard to Medicaid CICO Members such as separate waiting rooms, separate appointment days, or preference to private pay patients.
11. Provider must identify Medicaid CICO Members in a manner which will not result in discrimination against the Medicaid CICO Member in order to provide or coordinate the provision of all core benefits and/or Flexible Services and out of plan services.
12. Provider agrees that no person, on the grounds of handicap, age, race, color, religion, sex, or national origin, shall be excluded from participation in, or be denied benefits of the CICO's program or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of Provider. Provider shall upon request show proof of such non-discrimination, and shall post in conspicuous places, available to all employees and applicants, notices of non-discrimination.
13. If the Provider performs laboratory services, the Provider must meet all applicable state and federal requirements related thereto.
14. If Provider is an FQHC/RHC, Provider shall adhere to federal requirements for reimbursement for FQHC/RHC services. This Contract shall specify the agreed upon payment from the CICO to the FQHC/RHC. Any bonus or incentive arrangements made to the FQHCs/RHCs associated with Medicaid CICO Members must also be specified and included this Contract.

**E. Laws**

1. Provider shall recognize and abide by all state and federal laws, regulations and SCDHHS guidelines applicable to the provision of services under the Medicaid CICO Program.

2. Provider must comply with all applicable statutory and regulatory requirements of the Medicaid program and be eligible to participate in the Medicaid program.
3. This Contract shall be subject to and hereby incorporates by reference all applicable federal and state laws, regulations, policies, and revisions of such laws or regulations shall automatically be incorporated into the Contract as they become effective.
4. Provider represents and warrants that it has not been excluded from participation in the Medicare and/or Medicaid program pursuant to §§ 1128 (42 U.S.C. 1320a-7) (2001, as amended) or 1156 (42 U.S.C. 1320 c-5) (2001, as amended) of the Social Security Act or is not otherwise barred from participation in the Medicaid and/or Medicare program.
5. Provider also represents and warrants that it has not been debarred, suspended or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from non-procurement activities under regulations issued under Executive Orders.
6. Provider shall not have a Medicaid contract with SCDHHS that was terminated, suspended, denied, or not renewed as a result of any action of Center for Medicare and Medicaid Services (CMS), United States Department of Health and Human Services (HHS), or the Medicaid Fraud Unit of the Office of the South Carolina Attorney General. Providers who have been sanctioned by any state or federal controlling agency for Medicaid and/or Medicare fraud and abuse and are currently under suspension shall not be allowed to participate in the Medicaid CICO Program. In the event Provider is suspended, sanctioned or otherwise excluded during the term of this Contract, Provider shall immediately notify CICO in writing.
7. Provider ensures that it does not employ individuals who are debarred, suspended, or otherwise excluded from participating in federal procurement activities and/or have an employment, consulting, or other Contract with debarred individuals for the provision of items and services that are significant to the CICO's contractual obligation.
8. Provider shall check the Excluded Parties List Service administered by the General Services Administration, when it hires any employee or contracts with any subcontractor, to ensure that it does not employ individuals or use subcontractors who are debarred, suspended, or otherwise excluded from participating in federal procurement activities and/or have an employment, consulting, or other contract with debarred individuals for the provision of items and services that are significant to Provider's contractual obligation. Provider shall also report to the CICO any employees or subcontractors that have been debarred, suspended, and/or excluded from participation in Medicaid, Medicare, or any other federal program.
9. In accordance with 42 CFR §455.104 (2010, as amended), the Provider agrees to provide full and complete ownership and disclosure information with the execution of this Contract and to report any ownership changes within thirty-five (35) calendar days to CICO. Provider must download the appropriate form from the CICO website or request a printed copy be sent. Failure by the Provider to disclose this information may result in termination of this Contract.
10. It is mutually understood and agreed this Section of the Contract shall be governed by the laws and regulations of the State of South Carolina both as to interpretation and performance by Provider. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Section of the Contract or any provision thereof shall be instituted only in the courts of the State of South Carolina. Specific provisions related to dispute resolution between the CICO and Provider related to the other sections of this Contract are provided in those other sections.

**F. Billing a Medicaid CICO Member**

Provider may only bill a Medicaid CICO Member under the following conditions:

1. When Provider renders services that are non-covered services and are not Flexible Services, as long as the Provider:
  - Provides to the Medicaid CICO Member a written statement of the services prior to rendering said services, which must include:
    - The cost of each service(s)
    - An acknowledgement of Medicaid CICO Member's payment responsibility, and

- Obtains Medicaid CICO Member's signature on the statement.
2. When the service provided has a co-payment, as allowed by the CICO, Provider may charge the Medicaid CICO Member only the amount of the allowed co-payment, which cannot exceed the co-payment amount allowed by SCDHHS.

**G. Audit, Records and Oversight**

1. Provider shall maintain an adequate record system for recording services, service providers, charges, dates and all other commonly accepted information elements for services rendered to Medicaid CICO Members pursuant to this Contract (including, but not limited to, such records as are necessary for the evaluation of the quality, appropriateness, and timeliness of services performed). Medicaid CICO Members and their representatives shall be given access to and can request copies of the Medicaid CICO Members' medical records, to the extent and in the manner provided by S.C. Code Ann. §44-115-10 et. seq., (Supp. 2000, as amended).
2. SCDHHS, HHS, CMS, the Office of Inspector General, the State Comptroller, the State Auditor's Office, and the South Carolina Attorney General's Office shall have the right to evaluate, through audit, inspection, or other means, whether announced or unannounced, any records pertinent to this Contract, including those pertaining to quality, appropriateness and timeliness of services and the timeliness and accuracy of encounter data and Provider claims submitted to the CICO. The Provider shall cooperate with these evaluations and inspections. Provider will make office work space available for any of the above-mentioned entities or their designees when the entities are inspecting or reviewing any records related to the provision of services under this Contract.
3. Whether announced or unannounced, Provider shall participate and cooperate in any internal and external quality assessment review, utilization management, and Grievance procedures established by SCDHHS or its designee.
4. Provider shall comply with any plan of correction initiated by the CICO and/or required by SCDHHS.
5. All records originated or prepared in connection with the Provider's performance of its obligations under this Contract, including, but not limited to, working papers related to the preparation of fiscal reports, medical records, progress notes, charges, journals, ledgers, and electronic media, will be retained and safeguarded by the Provider in accordance with the terms and conditions of this Contract. The Provider agrees to retain all financial and programmatic records, supporting documents, statistical records and other records of Medicaid CICO Members relating to the delivery of care or service under this Contract, and as further required by SCDHHS, for a period of five (5) years from the expiration date of the Contract, including any Contract extension(s). If any litigation, claim, or other actions involving the records have been initiated prior to the expiration of the five (5) year period, the records shall be retained until completion of the action and resolution of all issues which arise from it or until the end of the five (5) year period, whichever is later. If Provider stores records on microfilm or microfiche, Provider must produce, at its expense, legible hard copy records upon the request of state or federal authorities, within fifteen (15) calendar days of the request.
6. SCDHHS and/or any designee will also have the right to:
  - a. Inspect and evaluate the qualifications and certification or licensure of Provider;
  - b. Evaluate, through inspection of Provider's facilities or otherwise, the appropriateness and adequacy of equipment and facilities for the provision of quality health care to Medicaid CICO Members;
  - c. Audit and inspect any of Provider's records that pertain to health care or other services performed under this Contract, determine amounts payable under this Contract;
  - d. Audit and verify the sources of encounter data and any other information furnished by Provider or CICO in response to reporting requirements of this Contract or the CICO Contract, including data and information furnished by subcontractors.
7. Provider shall release medical records of Medicaid CICO Members, as may be authorized by the Medicaid CICO Member or as may be directed by authorized personnel of SCDHHS, appropriate agencies of the State of South Carolina, or the United States Government. Release of medical records shall be consistent with the provisions of

confidentiality as expressed in this Contract.

8. Provider shall maintain up-to-date medical records at the site where medical services are provided for each Medicaid CICO Member for whom services are provided under this Contract. Each Medicaid CICO Member's record must be legible and maintained in detail consistent with good medical and professional practice which permits effective internal and external quality review and/or medical audit and facilitates an adequate system of follow-up treatment. SCDHHS representatives or designees shall have immediate and complete access to all records pertaining to the health care services provided to the Medicaid CICO Member.

## **H. Safeguarding Information**

1. Provider shall safeguard information about Medicaid CICO Members according to applicable state and federal laws and regulations.
2. Provider shall assure that all material and information, in particular information relating to Medicaid CICO Members, which is provided to or obtained by or through the Provider's performance under this Contract, whether verbal, written, electronic file, or otherwise, shall be protected as confidential information to the extent confidential treatment is protected under state and federal laws. Provider shall not use any information so obtained in any manner except as necessary for the proper discharge of its obligations and securement of its rights under this Contract.
3. All information as to personal facts and circumstances concerning Medicaid CICO Members obtained by the Provider shall be treated as privileged communications, shall be held confidential, and shall not be divulged to third parties without the written consent of SCDHHS or the Medicaid CICO Member, provided that nothing stated herein shall prohibit the disclosure of information in summary, statistical, or other form which does not identify particular individuals. The use or disclosure of information concerning Medicaid CICO Members shall be limited to purposes directly connected with the administration of this Contract.
4. All records originated or prepared in connection with Provider's performance of its obligations under this Contract, including but not limited to, working papers related to the preparation of fiscal reports, medical records, progress notes, charges, journals, ledgers, and electronic media, will be retained and safeguarded by the Provider and its subcontractors in accordance with the terms and conditions of this Contract.

## **I. Payment Timeframes**

1. The CICO shall pay ninety percent (90%) of all Clean Claims from practitioners, either in individual or group practice or who practice in shared health facilities, within thirty (30) days of the date of receipt. The CICO shall pay ninety-nine percent (99%) of all Clean Claims from practitioners, either in individual or group practice or who practice in shared health facilities, within ninety (90) days of the date of receipt. The date of receipt is the date the CICO receives the claim, as indicated by its data stamp on the claim. The date of payment is the date of the check or other form of payment.
2. The CICO and Provider may, by mutual agreement, establish an alternative payment schedule to the one presented.
3. Provider shall accept payment made by the CICO as payment-in-full for covered services and Flexible Services provided and shall not solicit or accept any surety or guarantee of payment from the Medicaid CICO Member, except a specifically allowed by Subsection F, Member Billing, of this Section.
4. This Contract shall not contain any provision which provides incentives, monetary or otherwise, for the withholding of Medically Necessary Services.
5. Any incentive plans for providers shall be in compliance with 42 CFR Part 434 (2009, as amended), 42 CFR §417.479 (2008, as amended), 42 CFR §422.208 and 42 CFR §422.210 (2008, as amended).

## ARTICLE VIII - MEDICARE CONTRACT PROVISIONS

**Compliance with Law.** Delegate agrees to comply with all applicable Medicare laws, rules and regulations, reporting requirements, CMS instructions, and applicable requirements of the contract between Plan and CMS (the "Medicare Contract") and with all other applicable state and federal laws and regulations, as may be amended from time to time, including, without limitation: (1) Federal laws and regulations designed to prevent or ameliorate fraud, waste, and 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 Act); and (2) the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") administrative simplification rules at 45 CFR parts 160, 162, and 164. [42 C.F.R. § 422.504(i)(4)(v) and § 422.504(h)(1)]. Delegate's performance will be monitored by the Plan on an ongoing basis. The Plan retains the right to suspend or revoke their contract in response to compliance violations identified by the Plan.

**Member Privacy and Confidentiality.** Delegate agrees to comply with all state and federal laws, rules and regulations, Medicare program requirements, and/or requirements in the Medicare Contract regarding privacy, security, confidentiality, accuracy and/or disclosure of records (including, but not limited to, medical records), personally identifiable information and/or protected health information and enrollment information including, without limitation: (1) HIPAA and the rules and regulations promulgated there under, (2) 42 C.F.R. § 422.504(a)(13), and (3) 42 C.F.R. § 422.118; (iv) 42 C.F.R. § 422.516 and 42 C.F.R. § 422.310 regarding certain reporting obligations to CMS. Delegate also agrees to release such information only in accordance with applicable State and/or Federal law or pursuant to valid court orders or subpoenas.

**Audits; Access to and Maintenance of Records.** Delegate shall permit inspection, evaluation and audit directly by Plan, the Department of Health and Human Services (DHHS), the Comptroller General, the Office of the Inspector General, the General Accounting Office, CMS and/or their designees, and as the Secretary of the DHHS may deem necessary to enforce the Medicare Contract, of Delegate's physical facilities and equipment and any pertinent information including books, contracts (including any agreements between Delegate and its employees, contractors and/or subcontractors providing services related to the Agreement), documents, papers, medical records, patient care documentation and other records and information involving or relating to the provision of services under the Agreement, and any additional relevant information that CMS may require (collectively, "Books and Records"). All Books and Records shall be maintained in an accurate and timely manner and shall be made available for such inspection, evaluation or audit for a time period of not less than ten (10) years, or such longer period of time as may be required by law, from the end of the calendar year in which expiration or termination of this Agreement occurs or from completion of any audit or investigation, whichever is greater, unless CMS, an authorized federal agency, or such agency's designee, determines there is a special need to retain records for a longer period of time, which may include but not be limited to: (i) up to an additional six (6) years from the date of final resolution of a dispute, allegation of fraud or similar fault; or (ii) completion of any audit should that date be later than the time frame(s) indicated above; (iii) if CMS determines that there is a reasonable possibility of fraud or similar fault, in which case CMS may inspect, evaluate, and audit Books and Records at any time; or (iv) such greater period of time as provided for by law. Delegate shall cooperate and assist with and provide such Books and Records to Plan and/or CMS or its designee for purposes of the above inspections, evaluations, and/or audits, as requested by CMS or its designee and shall also ensure accuracy and timely access for Members to their medical, health and enrollment information and records. Delegate agrees and shall require its employees, contractors and/or subcontractors and those individuals or entities performing administrative services for or on behalf of Delegate and/or any of the above referenced individuals or entities: (i) to provide Plan and/or CMS with timely access to records, information and data necessary for: (1) Plan to meet its obligations under its Medicare Contract(s); and/or (2) CMS to administer and evaluate the MA program; and (ii) to submit all reports and clinical information required by Plan under the Medicare Contract. [42 C.F.R. § 422.504(e)(4), (h), (i)(2), and (i)(4)(v).]

**Prompt Payment of Claims.** Plan and/or Delegate, as applicable, agree to process and pay or deny claims for Covered Services within thirty (30) calendar days of receipt of such claims in accordance with the Agreement. [42 C.F.R. § 422.520(b).]

**Hold Harmless of Plan Members.** Delegate agrees: (i) that in no event, including but not limited to, non-payment by Plan, Plan's determination that services were not Medically Necessary, Plan's insolvency, or breach of the Agreement, shall Delegate bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against a Member for amounts that are the legal obligation of Plan; and (ii) that Members shall be held harmless from and shall not be liable for payment of any such amounts. Delegate further agrees that this provision (a) shall be construed for the benefit of Members; (b) shall survive the termination of this Agreement regardless of the cause giving rise to termination, and (b) supersedes any oral or written contrary agreement now existing or hereafter entered into between Delegate and Members, or persons acting on behalf of a Member. [42 C.F.R. § 422.505(g)(1)(i) and (i)(3)(i).]

**Accountability.** Plan and Delegate acknowledge and agree that Plan shall oversee the provision of services by Delegate (and any approved Sub-Delegate) on an ongoing basis and shall be accountable under the Medicare Contract for services provided to Members by Delegate under this Agreement [42 C.F.R. § 422.504(i)(1); (i)(4)(iii); and (i)(3)(ii).]

**Sub-Delegation/Downstream Contracting** Delegate understands and agrees that: (i) Delegate may not sub-delegate, transfer or assign any of Delegate's obligations to a third party without Plan's prior written consent. Any proposed Sub-Delegate must demonstrate, to Plan's satisfaction, its ability to perform the activities to be sub-Delegated. The Sub-Delegation agreement must be in writing and include (1) the specific activities or functions to be Sub-Delegated; (2) any reporting responsibilities and obligations pursuant to Plan's policies and procedures, the requirements of the Medicare Contract and/or Plan's accrediting body's standards; (3) monitoring and oversight activities by Plan including without limitation review and approval by Plan of the Sub-Delegate's credentialing process, as applicable, and audit of such process on an ongoing basis; and (4) corrective action measures, up to and including termination or revocation of the sub-Delegated activities or functions and reporting responsibilities if CMS or Plan determines that the Sub-Delegated activities have not been performed satisfactorily. [42 C.F.R. § 422.504(i)(3)(iii); 422.504(i)(4)(i)-(v).]

If Delegate contracts, directly or indirectly, with any health care practitioners to provide Covered Services to Members (Downstream Providers), Delegate shall ensure that all of the terms and conditions of this Agreement shall apply to the downstream agreement between Delegate and its Downstream Providers and that the Downstream Providers shall agree to all of the terms and conditions that govern this Agreement.

**Compliance with Health Plan's Policies and Procedures.** Delegate shall comply with all policies and procedures of Plan including, without limitation, written standards for the following: (a) timeliness of access to care and Member services; (b) policies and procedures that allow for individual medical necessity determinations (e.g., coverage rules, practice guidelines, payment policies); (c) provider consideration of Member input into any proposed treatment plan; and (d) Plan's compliance and delegation oversight program which encourages effective communication between Delegate and Plan's Compliance Officer and participation by Delegate in education and training programs regarding the prevention, correction and detection of fraud, waste and abuse and other initiatives identified by CMS. The aforementioned policies and procedures are identified in Plan's manuals which are incorporated herein by reference and may be amended from time to time by Plan. [42 C.F.R. § 422.112; 422.504(i)(4)(v); 42 C.F.R. § 422.202(b); 42 C.F.R. § 422.504(a)(5); 42 C.F.R. § 422.503(b)(4)(vi)(C) & (D) & (G)(3).]

**Continuation of Benefits.** Delegate agrees that except in instances of immediate termination by Plan for reasons related to professional competency or conduct of Delegate or its employed or contracted providers, and upon expiration or termination of the Agreement, Delegate and/or its employed or contracted providers will continue to provide Covered Services to Members as indicated below and to cooperate with Plan to transition Members to other Plan participating providers in a manner that ensures medically appropriate continuity of care. In accordance with the requirements of the Medicare Contract, URAC/NCQA 's accreditation standards and applicable law and regulation, Delegate will continue to provide, or will require its employed or contracted providers to continue to provide, Covered Services to Members after the expiration or termination of the Agreement, whether by virtue of insolvency or cessation of operations of Plan, or otherwise: (i) for those Members who are confined in an inpatient facility on the date of termination until discharge; (ii) for all Members through the date of the applicable Medicare Contract for which payments have been made by CMS to Plan; and (iii) for those Members undergoing active treatment of chronic or acute medical conditions as of the date of expiration or termination through their current course of active treatment not to exceed ninety (90) days unless otherwise required by item (ii) above. [42 C.F.R. 422.504(g) (2) & (3).]

**Physician Incentive Plans.** The parties agree: (i) that nothing contained in this Agreement nor any payment made by Plan to Delegate is a financial incentive or inducement to reduce, limit or withhold Medically Necessary services to Members; and (ii) that any incentive plans between Plan and Delegate and/or between Delegate and its employed or contracted physicians and other health care practitioners shall be in compliance with applicable state and federal laws, rules and regulations and in accordance with the Medicare Contract. Upon request, Delegate agrees to disclose to Plan the terms and conditions of any "physician incentive plan" as defined by CMS and/or any state or federal law, rule or regulation. Plan reserves the right to monitor any financial incentives provided by Delegate to its physicians/providers, employees, agents or contractors to ensure that quality of care or service to Plan's Members is not compromised. [42 C.F.R. § 422.208]

**Producer hereby acknowledges that he/she has read and understood all parts of this Agreement including all relevant attachments.**

**I, \_\_\_\_\_, have had the opportunity to thoroughly read and analyze this Agreement. I fully understand all the terms and conditions and agree to them without reservation.**

IN WITNESS WHEREOF, Company/TMO and the Producer have executed this Agreement as of the date first written above

**PEEK PERFORMANCE INC.:**

Name: Donald C. Peek

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

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

**PRODUCER:**

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

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

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

**ATTACHMENT A**

**SCHEDULE OF COMPENSATION  
2015**

South Carolina Advicare				
*For Sale of MMP Plan and accompanying "Assessment"		Initial Year on Company Plan	Renewal Compensation Year 1 (Plan to Plan, Like Plan Changes)	Yearly Renewal Compensation (to be received every year so long as the member remains on Company plan or upon the happening of any other event specified in 4.3 of Agreement)
All Counties in SC	All Plans	\$408.00	\$204.00	\$204.00

**Other Terms and Considerations:**

- (1) "Initial Year" and "Renewal Year" shall be defined as per CMS regulations.
  - (2) "Initial Compensation" and "Renewal Compensation" are defined and paid in accordance with CMS guidelines:
    - Initial Compensation is offered for a beneficiary's initial year of enrollment in a plan.
    - Renewal Compensation is paid yearly following a beneficiary's initial year of enrollment in a plan. Renewal Compensation is also paid when a beneficiary enrolls in a different plan but one that is a "like-plan type" (i.e., MA-PD to MA-PD) following the initial year of enrollment.
- Note:** Renewal compensation will apply whether or not the new enrollment is in a plan offered by the same or a new (receiving) organization, (e.g., the member moves to a different plan within the same parent organization). Renewal compensation shall cease at such time that the Member is no longer on a Company plan or upon the occurrence of any other event specified in Section 4.3 of the Agreement.
- (3) Rates on the Attachment apply to the 2015 policy effective date.
  - (4) This Schedule of Commission is subject to revision or denial by CMS.
  - (5) CMS will periodically notify plans of 2015 enrollments that qualify as Initial Year enrollments, in which case Producer will receive additional payment for the differences between Initial Compensation rates and Renewal Compensation rates.

**PEEK PERFORMANCE INC.:**

Name: Donald C. Peek

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

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

**PRODUCER:**

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

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

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

**ATTACHMENT B**

**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“BAA”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by and between \_\_\_\_\_ with its principal office at

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(“The Business Associate”) and Peek Performance Inc. with its principal office at 4115 East North Street, Greenville, SC 29615

**WHEREAS**, the United States Department of Health and Human Services has recently modified certain standards relating to the privacy of Protected Health Information (the “Privacy Rule”) which standards implement the privacy requirements of the Health Insurance Portability and Accountability Act of 1996; and

**WHEREAS**, in order to comply with the Privacy Rule, Business Associate must agree to certain provisions contained in this Agreement regarding the use and disclosure of Personal Health Information (“PHI”);

**NOW THEREFORE**, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties hereby agree as follows:

**I. DEFINITIONS:**

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule and HITECH Act.

- a. Covered Entity. "Covered Entity" shall mean Peek Performance Inc.
- b. HITECH Act. “HITECH Act” shall mean the Health Information Technology for Economic and Clinical Health Act (specifically Subpart D), enacted as part of the American Recovery and Reinvestment Act of 2009 and signed into law on February 17, 2009
- c. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- d. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- e. Protected Health Information. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- f. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.103.

- g. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- h. Security Breach. "Security Breach" shall mean, generally, the unauthorized acquisition, access, use, or disclosure of protected health information which compromises the security or privacy of such information as defined in Section 13402 of the HITECH Act

## **II. OBLIGATIONS and ACTIVITIES of BUSINESS ASSOCIATE**

- a. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as required by Law.
- b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement
- d. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- e. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- f. Business Associate agrees to provide access, at the request of Covered Entity to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual, in a time and manner not to exceed 10 days from the date of original request in order to meet the requirements under 45 CFR § 164.524.
- g. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual, in a time and manner not to exceed 10 days from the date of original request.
- h. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or to the Secretary, in a time and manner not to exceed 10 days from the date of original

request or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

- i. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
- j. Business Associate agrees to provide to Covered Entity or an Individual information collected in accordance with II.(i) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
- k. Business Associate agrees to notify Covered entity of any security breaches of protected health information within 3 days of Business Associate's knowledge of such security breach. Furthermore, Business Associate agrees to provide all information regarding such security breach that covered entity requires for providing notification of breach, in accordance with Section 13402 of the HITECH Act, to the Secretary, State entities, law enforcement (if applicable), and for member notification.
- l. Business Associate agrees and acknowledges they are subject to the same privacy provisions and penalties as if they were a covered entity as promulgated under Section 13404 of the HITECH Act.

### **III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Delegation Agreement and/or Provider Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

#### **1. Specific Use and Disclosure Provisions**

Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business

- a. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

- b. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).
- c. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).

#### **IV. OBLIGATIONS OF COVERED ENTITY**

##### **1. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions**

Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

- a. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- b. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

##### **2. Permissible Requests by Covered Entity**

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

#### **V. TERM and TERMINATION**

- a. Term. The Term of this Agreement shall be effective as of the date and year first above written, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- b. Either party may terminate this Agreement at any time upon thirty (30) days prior written notice to the other party
- c. Termination for Cause. Upon Plan knowledge of a material breach or violation of this Agreement by Business Associate, Plan shall provide an opportunity for Business Associate to cure the breach or end the violation. Plan may terminate this Agreement,

and the vendor or similar agreement, if Business Associate does not cure the breach or end the violation within the time specified by Plan. In addition, Plan may immediately terminate this Agreement, and the vendor or similar agreement, if Business Associate has breached a material term of this Agreement and cure is not possible.

d. Effect of Termination.

1. Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon agreement between Covered Entity and Business Associate that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

## VI. MISCELLANEOUS

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule or HITECH Act means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- c. Survival. The respective rights and obligations of Business Associate under Section V(c) of this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.
- e. Indemnity. Business Associate hereby agrees to save and hold harmless Plan of and from, and indemnifies and agrees to defend Plan against any and all losses, liabilities, damages and expenses (including, without limitation, reasonable attorneys' fees and expenses) which Plan may incur or be compelled to pay, or for which Plan may become liable in any action, claim or proceeding against Plan or its officers, directors, employees or agents, for or by reason of Business Associate's failure to perform its obligations

under this Agreement and/or the Privacy Standards.

This Agreement is in effect as of the last date of signature below.

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

Peek Performance Inc:

X \_\_\_\_\_

X \_\_\_\_\_

Donald Clayton Peek, President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ATTACHMENT C**

**PEEK PERFORMANCE INSURANCE CONFLICT OF INTEREST AND AGENT CODE OF CONDUCT**

**PEEK PERFORMANCE INSURANCE CONFLICT OF INTEREST**

It is the goal of Peek Performance Insurance to provide accurate and appropriate information for health insurance choices and related services to our clients in an industry that is extremely ethically sensitive. Every service we provide to our clients requires confidentiality, sound judgment and the assurance that no conflict of interest exists. All PPI agents are expected to adhere to a high standard of ethics. You are personally responsible for performing your duties with the very highest sense of integrity, which includes providing the most suitable product to meet each beneficiary's needs.

Peek Performance Insurance requires every agent to complete an annual conflict of interest statement as an act of disclosure of potential conflicts as required by our affiliation with health/insurance plans regulated by government contracts. All affiliated agents, brokers and agency employees are required to participate in compliance training and disclose any conflicts of interest upon initial contracting/hire and annually thereafter, or as personal circumstances change.

Peek Performance Insurance agents, brokers and employees should avoid situations in which personal interests could conflict, or reasonably appear to conflict, with the interests of the Peek Performance Insurance or our clients by avoiding any outside financial interest that might influence, or appear to influence, selling decisions or actions. Such interests include a personal or family interest in an enterprise that has business relations with, or competes directly against, Peek Performance Insurance or companies that we contract with.

**Please indicate "yes" or "no" and provide an explanation for all "yes" answers in the disclosures section below.**

**Yes    No**

- |                          |                          |   |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Do you or any relative or member of your immediate household have management, decision-making, consulting, or other relationships with, or have worked for an insurance company or healthcare provider in the past three years?                         |
| <input type="checkbox"/> | <input type="checkbox"/> | Are you, or member of your immediate family, involved in employment or activities that would have a negative impact on the performance of your contract, conflict with your obligations, or negatively impact the agency's reputation in the community? |
| <input type="checkbox"/> | <input type="checkbox"/> | Do you, or any member of your immediate family, have a financial interest or business relationship with any entity that is a competitor of or with whom we have a contractual relationship with?  |
| <input type="checkbox"/> | <input type="checkbox"/> | Have you ever promoted products that are not in the best interest of your client solely to receive compensation?  |

**Disclosures:** Please explain any potential conflict of interest:

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I hereby certify that I have read and understand this policy and all the information I have provided is correct and true to the best of my knowledge. I understand that incomplete or incorrect information given by me may result in disciplinary action up to and including termination from Peek Performance Insurance.

Signature \_\_\_\_\_ Date \_\_\_\_\_

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

All agents, brokers and agency personnel are required to complete an annual Conflict of Interest disclosure form. This form must be submitted at a specific time each year, to be determined by the Peek Performance Insurance. This form is to be filled out completely and accurately, and submitted prior to the mandated deadline. If during the year there is a new situation regarding potential conflicts of interest, a new updated form should be submitted within 30 days of the change. Failure to complete the Conflict of Interest disclosure form in an accurate and timely manner will be grounds for disciplinary action, up to and including termination of the contract/employment with the Peek Performance Insurance.

# **Peek Performance Commitment to Compliance and Code of Conduct and Agency Agreement**

## **Compliance**

**Compliance** is making sure we obey all rules and laws that concern our type of business. It's a commitment to honest values for agents, employees, and our company.

Our Compliance program serves several purposes:

- To put our values in writing so everyone can understand the foundation of our Agency.
- To explain your role in making sure we follow all laws, regulations and policies that concern our business practices.
- To explain our Agency's commitment to following all laws, regulations, and ethical business practices.
- To outline expectations for understanding and following basic legal principles and standards of behavior.

What are the HIPAA Privacy and Security Rules? The Health Insurance Portability and Accountability Act of 1996 (HIPAA) created national standards for protecting the privacy and confidentiality of individuals' medical records and other personal information, and the confidentiality, integrity and availability of electronic health and personal information. It also standardized the right to be informed of and control how an individual's information is used.

How does this affect our Agency? We deal with Protected Health Information/Personally Identifiable Information (PHI/PII) on a daily basis, either electronically, on paper or by phone. Federal law directs us to comply with HIPAA rules and regulations.

PHI includes information that can be used to identify a person, such as the person's Social Security number, name or address. The Privacy Rule protects all individually identifiable information in any form or media, whether electronic, paper or verbal.

We require all agents and employees to receive privacy training within 30 days of employment and annually thereafter. The Agency Compliance officer must document and retain a record of the initial HIPAA training for ten years.

### **Safeguarding Paper Documents/Forms**

- Store documents containing PHI/PII securely to prevent unauthorized viewing when not in use.
- Whenever possible, mark documents containing PHI/PII to alert readers to the sensitive nature of the information.
- Destroy documents containing PHI/PII by using approved shredding or recycling methods.

### **Computer and PHI/PII Security**

- Always lock or secure computer/laptop when leaving them unattended to prevent others from accessing data.
- Shut down your computer/laptop when you depart the office or when in transit.

Ensure laptop computers are protected from unintended or unauthorized access, change or destruction in the event of theft.

### **PHI Safeguards - Internet & Email Usage and Security**

- Any sensitive information that must be transmitted over the Internet must be secured using an encryption tool.
- Assume that mail on the Internet is not secure. Never put in an email message anything you would not want printed in a newspaper.

### **Complaint Process**

A complaint from a client (not an employee) related to privacy and security must be sent promptly to the Agency Compliance Officer for investigation and response. The Compliance Officer will document each complaint and its disposition. They will enter the information into a database and keep that information for at least ten years.

### **Reportable Events**

Any time you learn that a person's PHI/PII was sent to the wrong person or company, even if the disclosure was accidental, you must immediately report this to the Compliance Officer. The Agency Compliance Officer will report disclosures to associated carriers or appropriate government agencies.

Here are some examples of disclosures:

- Sending an email containing PHI/PII to the wrong person
- Misdirecting or sending any information including correspondence that contains PHI/PII to the wrong person
- Losing a laptop computer or paper/electronic documents that contain PHI/PII

## **Code of Conduct**

**Code of Conduct** encompasses values that can be defined as broad preferences concerning appropriate courses of action or outcomes. As such, values reflect a person's sense of right and wrong or what "ought" to be. "Equal rights for all", "Excellence deserves admiration", and "People should be treated with respect and dignity" are representative of values. Values tend to influence attitudes and behavior and reflect what we believe in and what we stand for. Our effective compliance program helps make us successful in gaining new business and retaining our current clients.

### **Integrity**

We will meet all our responsibilities in an honest and ethical manner. We will follow all laws, rules and regulations. And remember, just because it may be legal, doesn't mean it's right. We will maintain the highest ethical and moral standards and look beyond the legal issues.

- We will follow all laws and regulations that apply to our business and are dedicated to doing the right thing.
- We will not knowingly go after business opportunities that call for us to do anything unethical or illegal.
- We will pursue our sales goals with the highest ethical standards in mind.
- We will not accept kickbacks, bribes or other benefits in exchange for payments, referrals for services or other actions.

### **Service**

We will focus on the client. We will give excellent service and customer satisfaction.

- We will understand what our clients need and expect from us – and deliver those products and services to the best of our ability.
- We will treat all our clients with dignity, concern and respect for their well-being.
- We will gather enough information to guide our clients to the best purchase for their individual needs.
- We will guard the personal privacy of all clients and business partners.

### **Honesty**

With the strong incentives to sell a product at any cost, an agent may feel pressure to not only exaggerate to make a sale but to make claims that are entirely false.

- We will be truthful in all communication with our clients.
- We will never manipulate or omit information in order to make a sale.
- We will not make any false or misleading statements to clients.
- We will relate all product limitations, premiums, and cost share accurately to our clients.
- We will respond honestly and completely when questioned about any work-related activity or any activity outside the company that could create a potential conflict of interest.

## **Peek Performance Insurance Agency Agreement**

### Commitment to the Client:

As agreed in the Conflict of Interest, Code of Conduct and Compliance documents, all PPI agents commit to do their best to offer sound and appropriate insurance solutions that would benefit their prospects and clients.

### Commitment to High Standards

Informed by insurance company and PPI guidelines, all PPI agents agree to utilize all best practices and to maintain standards of excellence and prudence when communicating with clients and prospects. PPI agents understand that part of the responsibility that they owe to the insurance company is to engage in appropriate marketing and to understanding that each insurance company may impose minimum sales standards as a condition of ongoing appointment.

### Agent/Agency Commitment

Since Peek Performance, Inc. is also committed to the success of our agents and to providing guidance in the area of compliance and marketing, both PPI and each agent, as indicated by their signatures below, agree to maintain this agreement and contracting relationship until 12-31-2015. This agreement supersedes all previous agreements oral or written. All PPI agents understand and agree that PPI may, from time to time, require documentation of certification, applications, Scopes of Appointment, etc., and responses to any alleged marketing infractions. Agents also understand that PPI may be required to provide additional training, marketing restriction or even termination if a serious marketing infraction occurs. It is always the desire of PPI to assist each agent toward success and to work on means to create a positive and successful marketing experience.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Clay Peek, President, Peek Performance, Inc.

\_\_\_\_\_  
Date

## **HIPAA/Compliance Attestation**

I hereby attest that I have received, read, and fully understand the Agency Commitment to Compliance and Code of Conduct.

**Agent or Employee ID:** \_\_\_\_\_

**Name:** \_\_\_\_\_  
(print)

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_



## **Release Authorization Form**

### **DISCLOSURE - NOTICE REGARDING BACKGROUND INVESTIGATION**

Advicare Corp. (“Advicare”) may obtain information about you from a consumer reporting agency for employment purposes. Thus, you may be the subject of a “consumer report” and/or an “investigative consumer report” which may include information about your character, general reputation, personal characteristics, and/or mode of living and which can involve personal interviews with sources such as your neighbors, friends, or associates. These reports may be obtained at any time after receipt of your authorization and, if you are hired, throughout your employment. You have the right, upon written request made within a reasonable time after receipt of this notice, to request disclosure of the nature and scope of any investigative consumer report. The most common form of investigative consumer report obtained with regard to applicants for employment is an investigation into your education and/or employment history. Other types of information that may be obtained include but are not limited to social security number verification, sex offender registry checks, criminal records checks, inmate records searches, motor vehicle records, and court records checks. The information contained in these consumer reports may be obtained from public record sources and will not be used to discriminate against you in violation of any law. The scope of this Disclosure and Authorization is all-encompassing, allowing Advicare to obtain from any outside organization all manner of consumer reports and investigative consumer reports now and, if you are hired, throughout the course of your employment to the extent permitted by law.

### **AUTHORIZATION AND ACKNOWLEDGMENT**

I acknowledge receipt of the “A SUMMARY OF YOUR RIGHTS UNDER THE FAIR CREDIT REPORTING ACT” and certify that I have read and understand this document. I hereby authorize the obtaining of “consumer reports” and/or “investigative consumer reports” at any time after receipt of this authorization and, if I am hired, throughout my tenure as an agent for Advicare. To this end, I hereby authorize, without reservation, any law enforcement agency, administrator, state or federal agency, military branch, institution, school or university (public or private), information service bureau, past or present employer, supervisor or officer, private business, insurance company or personal reference, and/or other persons to furnish any and all background information requested by Advicare or any third-party organizations acting on behalf of Advicare.

\*\*\* PLEASE PRINT CLEARLY \*\*\*

Name (First) \_\_\_\_\_ (Middle) \_\_\_\_\_ (Last) \_\_\_\_\_

List any other name used in the last 7 years (*Maiden name*)

\_\_\_\_\_

Address: \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_

Zip \_\_\_\_\_ County \_\_\_\_\_ Driver's License # \_\_\_\_\_ State \_\_\_\_\_

Gender: Male or Female Race: \_\_\_\_\_ Phone (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Social Security Number \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ Date of Birth \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_  
Month / Day / Year

**Applicant Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

I agree that a facsimile ("fax") or photographic copy of this Authorization shall be as valid as the original

*Para informacion en espanol, visite [www.ftc.gov/credit](http://www.ftc.gov/credit) o escribe a la FTC Consumer Response Center, Room 130-A 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.*

### **A Summary of Your Rights Under the Fair Credit Reporting Act**

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. **For more information, including information about additional rights, go to [www.ftc.gov/credit](http://www.ftc.gov/credit) or write to: Consumer Response Center, Room 130-A, Federal Trade Commission, 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.**

- **You must be told if information in your file has been used against you.** Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.
- **You have the right to know what is in your file.** You may request and obtain all the information about you in the files of a consumer reporting agency (your “file disclosure”). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:
  - a person has taken adverse action against you because of information in your credit report;
  - you are the victim of identify theft and place a fraud alert in your file;
  - your file contains inaccurate information as a result of fraud;
  - you are on public assistance;
  - you are unemployed but expect to apply for employment within 60 days.

In addition, by September 2005 all consumers will be entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See [www.ftc.gov/credit](http://www.ftc.gov/credit) for additional information.

- **You have the right to ask for a credit score.** Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.
- **You have the right to dispute incomplete or inaccurate information.** If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See [www.ftc.gov/credit](http://www.ftc.gov/credit) for an explanation of dispute procedures.
- **Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.** Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.
- **Consumer reporting agencies may not report outdated negative information.** In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.
- **Access to your file is limited.** A consumer reporting agency may provide information about you only to people with a valid need -- usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.

- **You must give your consent for reports to be provided to employers.** A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to [www.ftc.gov/credit](http://www.ftc.gov/credit).
- **You may limit “prescreened” offers of credit and insurance you get based on information in your credit report.** Unsolicited “prescreened” offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt-out with the nationwide credit bureaus at 1-888-5-OPTOUT (1-888-567-8688).
- **You may seek damages from violators.** If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.
- **Identity theft victims and active duty military personnel have additional rights.** For more information, visit [www.ftc.gov/credit](http://www.ftc.gov/credit).

**States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. Federal enforcers are:**

<b>TYPE OF BUSINESS:</b>	<b>CONTACT:</b>
Consumer reporting agencies, creditors and others not listed below	Federal Trade Commission: Consumer Response Center - FCRA Washington, DC 20580 1-877-382-4357
National banks, federal branches/agencies of foreign banks (word "National" or initials "N.A." appear in or after bank's name)	Office of the Comptroller of the Currency Compliance Management, Mail Stop 6-6 Washington, DC 20219 800-613-6743
Federal Reserve System member banks (except national banks, and federal branches/agencies of foreign banks)	Federal Reserve Consumer Help (FRCH) P O Box 1200 Minneapolis, MN 55480 Telephone: 888-851-1920 Website Address: <a href="http://www.federalreserveconsumerhelp.gov">www.federalreserveconsumerhelp.gov</a> Email Address: ConsumerHelp@FederalReserve.gov
Savings associations and federally chartered savings banks (word "Federal" or initials "F.S.B." appear in federal institution's name)	Office of Thrift Supervision Consumer Complaints Washington, DC 20552 800-842-6929
Federal credit unions (words "Federal Credit Union" appear in institution's name)	National Credit Union Administration 1775 Duke Street Alexandria, VA 22314 703-519-4600
State-chartered banks that are not members of the Federal Reserve System	Federal Deposit Insurance Corporation Consumer Response Center, 2345 Grand Avenue, Suite 100 Kansas City, Missouri 64108-2638 1-877-275-3342
Air, surface, or rail common carriers regulated by former Civil Aeronautics Board or Interstate Commerce Commission	Department of Transportation, Office of Financial Management Washington, DC 20590 202-366-1306
Activities subject to the Packers and Stockyards Act, 1921	Department of Agriculture
	Office of Deputy Administrator-GIPSA Washington DC 20250 202-720-7051



## NON DISCLOSURE/CONFIDENTIALITY AGREEMENT

Advicare recognizes the importance of confidentiality. Therefore anyone who improperly uses or discloses trade secrets or confidential information within Advicare or to outside parties is subject to disciplinary action, up to and including termination of employment/contract and legal action, even if they do not actually benefit from the disclosed information.

As a Sales Agent for Advicare I understand that the protection of information is vital to Advicare. As a sales agent, I will have access to confidential information. I understand that I am being trusted not to talk about, disclose or misuse any of this information. Therefore, understand and agree to abide by the following:

I agree that any document(s) or information that I see or hear must be kept strictly confidential. I will not describe, discuss, talk about or keep copies of any of the information that I am not entitled to, materials or documents that I see, hear about or work on in connection with my employment. I will not misuse or attempt to alter any materials or information in any way.

I understand that if I do something wrong with respect to confidential information I will not be allowed to continue as an employee or contracted agent and may be subject to fines or other penalties. Confidential information may include but not be limited to, the following examples:

- Customer (potential, current, former) information
- Claims Data
- Financial Information
- Marketing Strategies
- Medical Issues
- New materials research
- Pending projects or proposals
- Personnel Issues (potential, current, former) information
- Policies and Procedures
- Proprietary Production Processes
- Research and Development strategies
- Underwriting Data

By my signature below, I understand and agree with the above statements.

X \_\_\_\_\_ / / \_\_\_\_\_  
Signature of Agent                      Date                      Printed Name



Peek Performance, Inc.  
4115 East North Street Ste. 201  
Greenville, SC 29615  
864-228-2635 Office  
800-539-1021 Fax

### **Peek Performance Inc. / PPI Agent - ADVICARE Agreement**

THIS Contract sets out the complete agreement by and between PEEK PERFORMANCE INSURANCE, INC. of Greenville, SC, herein called "PPI", and \_\_\_\_\_ herein called "Agent," specifically regarding their relationship regarding the selling of any ADVICARE product. By signing this PPI Agent Agreement, the Agent agrees to be bound by it, and any similarly executed addendums, attachments, or schedules that may be executed and made a part of this Contract. PPI expects to maintain agreements for services with insurance companies, herein called "COs" which are necessary to enable you to solicit applications for insurance. The Agent understands that in order to be granted access to Insurance Technology and Quoting Tool(s) and PPI Training/Marketing, as provided by PPI or other affiliated agencies/organizations, that this Agreement must be signed. WHEREIN IT IS MUTAULLY AGREED UPON AS FOLLOWS:

#### **APPOINTMENT**

PPI hereby appoints the Agent to act on its behalf and be a representative of PPI only to the extent authorized herein. The Agent agrees that PPI or COs, as a condition of such appointment, may periodically at their discretion complete an investigative report, including information regarding character, credit/income, reputation, and general health as set forth under the FAIR CREDIT REPORTING ACT.

#### **RELATIONSHIP**

The Agent's relationship to PPI is that of an Independent Contractor and nothing contained herein shall be construed as creating the relationship of employer and employee between PPI and the Agent. The Agent shall be free to exercise his own judgment as to the time, place and manner in which to perform the services authorized under this Contract. No authority shall be implied from the authority expressly granted.

#### **LIMITATION OF AUTHORITY**

Except as expressly provided herein, the Agent or sub-agent shall have no authority, expressed or implied, actual or apparent, to act or fail to act or do anything whatsoever on behalf of PPI. The foregoing limitation of authority includes, but is not limited to the Agent and sub-agent not being authorized to (i) make any contract or incur any debt in the name or on behalf of PPI; (ii) make, modify or amend any application for insurance or any policy of insurance; (iii) extend or modify the time for making any payment which may become due on any policy; (iv) waive, alter, modify or amend any of PPI's rights, privileges or obligation under its policies or applications; (v) collect or receive premiums other than the initial premiums with applications for insurance; (vi) institute any type of administrative or legal proceedings in the name or on behalf of PPI for any cause or reason; or (vii) make any misrepresentations, promises or agreements on behalf of PPI. No act, forbearance or neglect on the part

of either the Agent or PPI shall be construed as a waiver of any of the provisions of this Contract or imply the existence of any authority on behalf of the Agent not expressly granted herein.

### **ADVERTISING**

The names, logos, trademarks and other advertising of PPI or COs may not be used unless approval is received in writing, and then only while this Contract is in effect. All circulars, advertisements or other material pertaining to PPI, COs or proprietary products or services, which you shall publish, print, distribute or use in any way shall not be used until first approved in writing by PPI and/or COs.

### **CONDUCT**

PPI and COs may from time to time prescribe rules and regulations with respect to the conduct of the business covered herein. The Agent shall conform to and observe such rules and regulations as established. The Agent shall not make any misrepresentation in connection with the sale of any insurance policy or the solicitation of any application.

### **SOLICITATION**

The Agent is hereby authorized to solicit applications for the approved products offered by PPI through COs, but only in those states that PPI and COs are authorized to do business in and provided that the Agent is in compliance with all applicable regulatory licensing requirements at the time of solicitation. The Agent agrees to assist PPI in obtaining documentation necessary for COs to issue policies.

### **COLLECTION OF MONEY**

The Agent is not authorized to receive or collect any money due or becoming due to the COs with the exception of the initial premium payment on applications being obtained by the Agent. Initial premium checks should be made payable to COs or other entities as designated by PPI. The Agent shall have no authority to endorse or present for collection any check, draft or other instrument made payable to PPI or COs. Any and all monies collected shall not be used by the Agent for any personal or other purpose whatsoever, but shall be immediately sent to CO (or PPI if appropriate) for processing.

### **COMMISSION COMPENSATION**

As compensation to the Agent, in full, for the performance of services as authorize in the Contract, PPI will pay commissions as set forth in the attached Schedules of Commissions. The rate of commissions may be changed, altered or amended from time to time by PPI, and effective upon any business written by the Agent subsequent to the effective date of the change. Typical reasons for a commission adjustment would be: an increase of commission due to higher production, a reduction in commission due to insufficient production to merit current levels, or a modification (increase or decrease) based on a change from the insurance company commission schedule to PPI. The Agent will receive at least five (5) days prior written notice of any change in the Schedule of Commissions. Commissions are calculated on the basis of the commission rate on the effective date of the policy in the original commissionable policy premium, unless the commissionable policy premium is decreased, at which time commission will be paid on the decrease premium. Commissions are not payable on administrative fees or policy application fees. In the event that PPI's commissions on any in-force premium are reduced, commissions to the Agent on the same in-force premium may be reduced in the same proportion. If

commissions on any premiums must be refunded by PPI to the COs, the Agent shall repay to PPI corresponding commissions that may have been previously paid to the agent. Commission advances are the sole discretion of PPI, and may be change at any time by PPI without prior notice. Each advance paid to the Agent will be charged (debited) to the Agent's account, and PPI will credit the Agent's account with all commissions earned by the Agent. The Agent who receives commission advances from PPI may not market directly or indirectly the same or similar product through other commission sources within the same insurance company.

### **RECRUITING, CONTRACTING, AND COMMISSIONS**

The Agent is authorized to recruit other soliciting agents for Contracting with PPI. All Contracts with such agents shall be made directly with PPI. PPI reserves the right to refuse to Contract any proposed agent, or once done, to thereafter terminate the same. Should an agent be authorized by PPI to manage sub-agents, the Agent shall be responsible to PPI for the fidelity and honesty of any sub-agents, and for all funds collected or business done by or entrusted to him or his sub-agents. The Agent shall indemnify and hold PPI harmless from the expenses, costs, causes of action and damages resulting from or growing out of acts or omissions by him, his sub-agents or employees. The Schedules of Commissions constitute the total commission payable to Agent. Commissions payable to agents will be paid directly by PPI. Agent agrees that all Advicare contracting/appointment (including but not limited to any future Medicare Advantage and or ACA/Health Reform plans) must be maintained through PPI and agent agrees that they may not seek a secondary appointment for any Advicare product directly through the home office or through another agency or risk termination with cause, unless first provided with a written release from PPI, which release is provided at the sole discretion of PPI.

### **REFUNDS**

The Agent shall make prompt refund of all commissions paid to Agent or sub-agents on which the COs declines to issue a policy and on any application on which a policy shall be issued by the COs and not accepted by the applicant. The Agent shall also make prompt refund of all commissions to PPI if the COs has to rescind all premiums due to a fraudulent application. If any premiums shall be refunded by the COs for any reason or cause before or after termination of this Contract, the Agent shall repay to PPI all commissions previously allowed on that premium. PPI reserve the right to offset all commissions accrued or to accrue to the Agent against any refunds due form the Agent or his sub-agents.

### **DELIVERY OF POLICIES**

All policies sent to the Agent shall be delivered promptly to the applicant and whenever delivery of the policy cannot be made within 14 days of being received by the Agent, the Agent will immediately return the policy to PPI with a written report stating the specific reason for non-delivery.

### **SERVICE OF POLICIES**

The Agent shall service all policies that the Agent initially sells. Agent agrees that commissions paid to Agent in accordance with the terms herein constitute full payment for soliciting the application that resulted in the policy being issued and the continued servicing of the policyholder. In the event that the policyholder shall request another agent of record, if the soliciting agent received commission advances from PPI, then first year commissions will continue to be paid to the soliciting agent. All subsequent commissions will be paid to the requested agent of record. Should another Agent of PPI submit additional applications on a policyholder or group policyholder, the original Agent shall continue to be

paid commissions on policies which Agent originally sold; however, the original Agent will not be paid commissions on the additional applications which were solicited by another Agent of PPI.

#### **AGENT'S FEES AND EXPENSES**

The Agent shall be responsible for the payment of all taxes, fees or levies imposed upon him for the purpose of doing business. The Agent shall pay for any and all expenses incurred by him in the performance of this Contract, unless the Company has in writing agreed to do otherwise.

#### **INDEBTEDNESS**

PPI shall have a first lien all commissions payable under this Contract or any monies due the Agent by PPI for any debt owed by the Agent or his sub-agents to PPI or to another person or persons acting for PPI. For purposes of this Contract, indebtedness shall include, but not be limited to, as earned or advanced commissions, lead costs, collection fees including attorney fees, or other cash advances. PPI may at any time offset against all commissions accrued or to accrue to the Agent any debt due from the Agent arising from all transactions under this or any other previous Contract or any amount becoming due from a sub-agent of the Agent. The entire indebtedness of the Agent may be deemed due and payable in full within sixty (60) days of demand by PPI. PPI shall have the right to escrow an Agent's earned commissions to secure the indebtedness of sub-agents for which the Agent is responsible. If policy persistency below 70% occurs, then PPI shall have the right, at its discretion, to adjust rate of commission, advance and/or escrow levels.

#### **ASSIGNMENTS**

No assignment of this Contract or any compensation payable hereunder shall be valid and binding on PPI, unless authorized in advance, in writing by the **President or Treasurer** of PPI. Any assignment so authorized shall be subject to any and all indebtedness of the Agent then existing or thereafter occurring.

#### **ALL SUMS PAYABLE**

Any and all sums of money due and to become due PPI from the Agent shall be payable at the PPI office in Greenville, South Carolina.

#### **ACCOUNTING**

PPI will each month, or at reasonable intervals, furnish the Agent with a statement of his account and remittance for any amount due him. The Agent hereby agrees that the ledger accounts of PPI shall be competent and sufficient prima facie evidence of the state of accounts between the parties hereto. Upon receipt of such statement, the Agent shall immediately examine same, and if not satisfied as to the accuracy and correctness of same, shall return said statement and remittance to PPI with full particulars of any discrepancy therein. Failure of the Agent to notify PPI within twenty (20) calendar days from the date he receives such statement and remittance shall be deemed an admission by the Agent of the accuracy and correctness of such statement and remittance.

### **SERVICE CHARGE / ADMINISTRATIVE FEE**

PPI may be charged a monthly service fee of up to 1.5% on any outstanding indebtedness on the Agent's statement of account. PPI may charge a modest per app or monthly processing fee to the Agent or pass through to the agent any per app fees as may be charged by the payroll administrator.

### **AGENT RESPONSIBILITIES UNDER FEDERAL AND STATE TAX LAWS**

The Agent is hereby advised that as an Independent Contractor, the Agent has certain responsibilities under the federal and state (where applicable) tax laws. The Agent must report all commissions to the Internal Revenue Service and appropriate State Department (where applicable) on the appropriate tax form and pay certain taxes due with respect to these amounts. To assist the Agent in complying with these requirements, PPI, after the close of each calendar year, furnishes the Agent with a copy of the Form 1099 that PPI is also required to send to the Internal Revenue Service and, if applicable, appropriate State Department.

### **VIOLATION OF LAWS AND PPI RULES**

The Agent shall not rebate or offer to rebate any premium or premiums on a policy of insurance issued by the COs, or induce any customer of PPI to discontinue the payment of any premiums on any policy, or induce or endeavor to induce any Contracted agent of PPI to discontinue active service, or violate any insurance law, regulation or ruling of any Insurance Commissioner of Department in any State, or violate PPI or COs prescribed rules or regulations. In the event the Agent should do any of the acts aforementioned before or after termination of the Contract, PPI shall have the right, at its discretion, to declare a complete forfeiture of any and all compensation due or to become due under this Contract.

### **TERMINATION WITHOUT CAUSE**

The Agent or PPI may terminate this Contract at any time by giving a ten (10) day written notice to the other of such termination and mail in this notice to the last known address of the other party. The Contract shall be terminated by the death or permanent disability of the Agent. Disability will be determined by PPI in accordance with current published federal Social Security guidelines. Termination by the Agent does not create a release of insurance company appointment through PPI.

### **TERMINATION WITH CAUSE**

This Contract will terminate for cause immediately if Agent violates any provision of this Contract, fails to respond in a timely manner to an agent allegation, is adjudicated bankrupt or violates any provision of the association agreement. Further if the Agent experiences Loss/Termination of Insurance license due to Revocation by a regulatory body as a result of a determination of wrongdoing by the agent, or if the Agent experiences termination of appointment by an insurance company because of a determination of wrongdoing by the Agent, then PPI may consider this/these event(s) as a "with cause" termination of this agreement and may cease payment of commission and/or overrides.

### **COMMISSIONS AFTER TERMINATION**

The Agent's rights to receive all commissions that may accrue on account of policies issued on applications secured by Agent or his sub-agents, shall if vested, be payable to the Agent upon termination of this Contract without cause, unless such commissions in any one month amount to less

than \$50.00, in which case no further commissions shall be payable. If this Contract is terminated with cause, as defined in this Contract, no further commissions or other compensation or allowance will be payable.

#### **ERRORS AND OMISSIONS COVERAGE**

The Agents agrees at time of initial contract with PPI to furnish satisfactory evidence of Errors and Omissions coverage to secure the faithful performance of his duties. The Agent is also required to continuously maintain such coverage, and is subject upon demand by PPI to provide proof of this coverage.

#### **CLAIMS AND LITIGATION**

The Agent has no authority to institute legal proceedings in the name of PPI or COs, nor shall he institute any legal proceedings in connection with the transaction of business on behalf of PPI unless such actions shall have been approved in advance by PPI. The Agent shall defend any act or alleged act of his own at his own expense, and shall pay to the agency on demand any costs or expenses incurred by PPI should PPI be made a party to, have to answer, or defend any such suit because of the Agent's act or acts. However, PPI may, if not satisfied with the manner in which such defense is conducted, employ counsel to conduct the defense, and any expense thus incurred shall be paid by the Agent unless, in the judgment of PPI, the Agent is in no way at fault or responsible for such suit and PPI agrees in writing to bear the expenses of such litigation.

#### **VENUE STATED**

Any suit between PPI and the Agent growing out of any transaction arising from, based on, or in any way connected with this Contract shall be instituted and tried only in Greenville County, South Carolina. All the terms, provisions and conditions of this Contract shall be conducted according to the laws of South Carolina.

#### **MODIFICATION**

This Contract cannot be changed by any verbal promise or statement by any of the parties hereto, and no written modification or change shall bind PPI, unless it is signed by the President or Treasurer of PPI and expresses an intention to modify or change this Contract. This Contract supersedes any previous contract(s) with PPI.

#### **CONFIDENTIALITY**

The Agent understands and agrees that information including, but not limited to, agent lists, customer lists, marketing, and trade secrets are proprietary in nature and are owned by PPI. These lists and information are extremely confidential and the Agent is expressly prohibited from disclosing any of the information contained therein to any third party and may only use the lists and information as authorized by PPI. Any disclosure or unauthorized use by the Agent will subject PPI to immediate and irreparable damage and, because such damages would be difficult to calculate, in addition to other rights and remedies available to PPI, PPI shall be entitled to injunctive relief to stop or prohibit such disclosure or unauthorized use from any court of competent jurisdiction. In addition, the Agent will forfeit any and all vesting rights as well as future renewals under this Contract.

**VESTING**

An Agent's commission will be Lifetime Vested provided that the agent has met all DOI, CMS or other regulatory requirements, proper licensing, maintained current errors and omissions coverage, has submitted a record of sales activity as may be required by PPI and has not been terminated "with cause." All comp is subject to the \$50 minimum monthly commission payment clause mentioned previously in this contract.

**PPI BUSINESS**

PPI may discontinue or withdraw from the Agent any policy plan and may fix commissions on any policy plan offered by PPI. PPI reserves the right without notice of liability to retire from any state or territory and at its discretion discontinue said policy plans; set minimum production requirements; change commissions; and amend, add, delete or modify any PPI procedure.

**LEAD PROGRAM**

If the Agent is participating in a PPI/CO lead program, the Agent agrees that such leads may only be used in the sale of products sponsored by PPI, and that these leads may not be sold or given to other agents without the express written consent of an officer of PPI. Any violation of these lead program guidelines may result in the Agent forfeiting all vesting rights and future renewals under this Contract.

**SEVERABILITY**

The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

**DEFINITIONS**

Where the words "representative", "person", or the pronouns "he", "him", or "his" are used in the Contract, they are intended to mean the Agent, whether the Agent is an individual, a partnership, or a corporation. Where the word "policy" is used herein, it also means "certificate" of insurance. Where the word "commissions" is used, it means "first year and renewal commissions".

**IN WITNESS WHEREOF**, this Contract is execute in duplicate this \_\_\_\_\_ day of \_\_\_\_\_ (month), \_\_\_\_\_ (year), and when approved by an authorized officer of PEEK PERFORMANCE INSURANCE, INC., shall be effective for all purposes as of the aforesaid date.

Agent's Signature: \_\_\_\_\_

Print Agent's Name: \_\_\_\_\_

PPI Authorized Signature: \_\_\_\_\_

**PERSONAL GUARANTY IF AGENT IS NOT SOLE PROPRIETOR**

To induce PEEK PERFORMANCE INSURANCE, INC. to execute this Contract and in consideration therefore, the undersigned does hereby unconditionally guarantee performance by the legal entity and its Agents under this Contract. The undersigned waives all notices with respect to this Guaranty, including notice of any failure of the legal entity and its Agents to perform its obligations under this Contract or to pay when due any amount due hereunder. This Guaranty is unconditional and absolute.

Personal Guaranty Signature: \_\_\_\_\_ (L.S.)

