

## OHIOHEALTHY AGENT/BROKER AGREEMENT

This Broker Agreement (the “Agreement”) between OhioHealthy Insurance Company (“OHIC”) and OhioHealthy Health Insuring Corporation (“OHP,” along with OHIC, collectively “OhioHealthy”), and the licensed health insurance Broker named below (“Broker”) is effective as of the date the Agreement is signed by both parties (the “Effective Date”).

Whereas, OhioHealthy desires to appoint Broker as its agent for the purpose of soliciting applications for OhioHealthy insurance products; and

Whereas, Broker desires to be appointed as a broker/agent for OhioHealthy;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and promises contained herein, and for other good and valuable consideration, OhioHealthy and Broker agree as follows:

1. Appointment. Subject to the terms, limitations, and conditions of this Agreement, Broker is hereby appointed to solicit applications for such products and policies that are issued by OhioHealthy in the state of Ohio. Broker hereby accepts such appointment and agrees to comply with all policies, rules, and regulations of OhioHealthy.
2. Broker Licensing. Broker hereby represents and warrants that Broker currently holds, and will maintain in good standing, a valid license to be an insurance broker/agent in the State of Ohio. Upon execution of this Agreement, Broker will submit a copy of Broker’s license to OhioHealthy. Broker immediately notify OhioHealthy if Broker’s license is revoked, suspended or otherwise limited; if Broker is subject to any other disciplinary action related to Broker’s license; or if Broker is under investigation by the Ohio Department of Insurance or other regulatory body.
3. Broker Responsibilities. Broker agrees that it:
  - a. Shall be responsible for complying with OhioHealthy’s marketing and enrollment policies, including but not limited to, training all employees and agents on OhioHealthy’s policies, complying with OhioHealthy’s enrollment and sales call policies, complying with OhioHealthy policies for routine evaluation of Broker’s performance under this Agreement, and such other policies as may be required by OhioHealthy from time to time.
  - b. Shall ensure adequate compliance with OhioHealthy policies and procedures.
  - c. Shall accept or reject individuals pursuant to OhioHealthy policies and procedures. OhioHealthy has the exclusive right to accept or reject any individual based on enrollment policies.
  - d. Shall be responsible for ensuring that each applicable employee or agent holds, and will maintain in good standing, a valid license to be an insurance broker/agent in the State of Ohio.
  - e. Shall not create any partnerships, arrange assignments, or use any other such method as a means of combining business for the purpose of maximizing overrides, commissions, bonuses, or rewards.

- f. Shall be responsible or servicing the employer group(s)/individual(s) solicited pursuant to this Agreement.
- g. Shall obtain advanced written approval from OhioHealthy of any promotional materials used by Broker to directly or indirectly market or sell OhioHealthy plans.
- h. Shall cooperate at Broker's expense with OhioHealthy in relation to any audit, review, investigation, or request for records or information initiated by any federal, state, or local governmental entity or regulator.

4. Compensation.

a. Subject to the terms and conditions of this Agreement, OhioHealthy shall pay Broker commissions on premiums for policies issued upon applications procured under this Agreement in accordance with the Agent/Broker Commission Schedule, which is attached hereto as Exhibit A and incorporated herein. Commissions shall only be paid for premiums that are received and accepted by OhioHealthy. Broker shall be responsible for any and all taxes. OhioHealthy will not withhold any taxes. Broker shall not be entitled to any other compensation, remuneration, bonuses via various OhioHealthy programs or sales contests, or other benefits of any nature for services rendered other than the commissions specified in the Agent/Broker Commission Schedule. The Agent/Broker Commission Schedule shall be subject to change, upon written notice to Broker by OhioHealthy, but such change shall not affect any commissions on policies issued upon applications received by OhioHealthy prior to the date when such change becomes effective. OhioHealthy may fix the rates of compensation on any new plan or plans of insurance that it develops.

b. If OhioHealthy shall become liable for the return of any premiums for any cause, Broker shall repay to OhioHealthy on demand the total amount of commissions previously paid to Broker for such premiums. OhioHealthy reserves the right to offset any amounts owed by Broker for refunded commissions or otherwise from future commissions owed to Broker by OhioHealthy. Broker shall not be entitled to any commissions on policies written in violation of any applicable federal or state law or regulation. In addition, if Broker's appointment or license is terminated for any reason, OhioHealthy reserve the right to discontinue payment of any and all commissions upon notice of such termination. Upon Broker's presentation to OhioHealthy of Broker's license or appointment reinstatement, OhioHealthy may, in its sole discretion, resume paying commissions. However, OhioHealthy will not retroactively pay commissions to Broker, which were incurred during the time when Broker did not have a valid license or appointment.

c. Broker shall not be eligible for any bonus or reward program except as specified in Exhibit A of this Agreement. This provision shall not prevent a Broker from receiving a bonus payment in accordance with any applicable bonus program. OhioHealthy may exclude any case from eligibility for any and all bonus programs if case creates an actual or perceived conflict of interest for Broker and/or customer of OhioHealthy. In addition, OhioHealthy shall have the right at its sole discretion to exclude any case from eligibility for any bonus program for any reason.

d. OhioHealthy may terminate any bonus, recognition, or reward program at any time for any reason without prior notification to Broker.

5. Term. This Agreement shall become effective upon the Effective Date and shall remain in effect for a two (2) year term. The Agreement shall automatically renew for additional one (1) year terms unless either party gives written notice of its intent not to renew the Agreement within thirty (30)

days prior to the end of the then current term, or unless the Agreement is otherwise terminated as specified herein.

6. Termination. This Agreement may be terminated at will, with or without cause, by either party giving the other party thirty (30) days' written notice, provided however that if termination is for cause, the terminating party shall provide the non-terminating party the opportunity to cure the breach no later than the expiration of the thirty (30) day notice period. OhioHealthy may, at its sole discretion, immediately terminate this Agreement without notice as of the date of any one or more of the following circumstances: (i) if Broker violates any insurance laws resulting in the suspension or revocation of Broker's license; (ii) if Broker incurs other disciplinary action by the appropriate regulatory authorities; (iii) if Broker is unable to obtain renewal of licensure; (iv) if Broker is convicted of a felony, becomes bankrupt, undergoes dissolution of a corporate or partnership form, or dies; (v) if Broker merges with or is acquired by a competitor of OhioHealthy; (vi) if a competitor of OhioHealthy acquires substantially all of the assets of Broker; (vii) if Broker fails to provide OhioHealthy with timely notification of any modifications to the insurance coverage required pursuant to Section 13 of this Agreement; or (viii) if Broker violates any rule, policy or procedure of OhioHealthy.

7. Independent Contractor. Nothing contained herein shall be construed to create the relationship of employer and employee between Broker and OhioHealthy. Broker is an independent contractor for all purposes and in all situations. Broker shall not represent that Broker is an employee of OhioHealthy, nor shall Broker in any manner hold himself/herself out to be an employee of OhioHealthy. Broker shall be free to exercise independent judgment as to the time, place, and manner of exercising the authority granted under this Agreement.

8. OhioHealthy Conduct of Business. OhioHealthy shall at all times have the right to refuse, decline, or withdraw from consideration any application for insurance submitted by Broker. OhioHealthy may make changes as it deems advisable in the conduct of its business, or discontinue issuing any of its products or policies at any time. No liability to Broker or right of action against OhioHealthy shall arise from OhioHealthy's exercise of the above rights.

9. Indemnification. Broker shall indemnify and hold OhioHealthy and OhioHealthy's affiliated entities, and each of their directors, offices, employees and agents, harmless from any and all expenses, costs, reasonable attorneys' fees, causes of action, losses, and damages resulting or arising from Broker's acts or omissions, or unauthorized acts done by Broker or Broker's agents or employees.

10. Confidentiality of Applicants' and Customers' Information.

a. Broker shall comply with the rules and policies of OhioHealthy with regard to confidentiality and the maintenance of the privacy of all non-public, personal information of applicants and customers. Broker and OhioHealthy also agree to comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the rules and regulations promulgated thereunder, as well as guidance issued by the United States Department of Health and Human Services, (the "HIPAA" Regulations"). In addition, Broker and OhioHealthy agree to comply with all applicable laws and regulations with regard to maintaining the privacy of all non-public, personal information of applicants, customers, and beneficiaries, including, but not limited to the Gramm-Leach-Bliley Act.

b. It is understood that in the performance of its duties, Broker will obtain information about potential customers, and that such information may include Protected Health Information (“PHI”) (that is subject to protection and defined under HIPAA). Broker agrees to maintain in strict confidence as required by law all information and data relating to a customer’s PHI. The parties further agree to the terms and conditions of the Business Associate Agreement (Exhibit C) that has been executed by the parties and is incorporated herein. This provision shall survive the termination of this Agreement.

c. In addition, Broker: (i) shall keep confidential all Confidential Information of OhioHealthy; (ii) shall not use or disclose Confidential Information of OhioHealthy for any purpose other than in performance of this Agreement; and (iii) shall not disclose such Confidential Information either during or at any time after the term of this Agreement, without OhioHealthy’s express written consent, unless required to do so by law, court order or subpoena in which case Broker shall not disclose such information until it has provided advance notice to OhioHealthy such that it may timely act to protect such disclosure. For purposes of this Section, “Confidential Information” means non-public information about OhioHealthy and its employees that is disclosed or becomes known to Broker as a consequence of or through its activities under this Agreement, including, but not limited to, matters of a business nature, such as professional and prospective professional names and information, billing rates, compensation and benefits packages and structure, costs, profits, margins, markets, sales, business processes, information systems, and any other information of a similar nature. Broker shall use reasonable security measures to protect Confidential Information from unauthorized access, destruction, use, modification, or disclosures. Upon termination of this Agreement for any reason, including expiration of the term of this Agreement, Broker agrees to cease using and to return all whole and partial copies and excerpts, derivatives, summaries, or analyses of the Confidential Information, whether in Broker’s possession or under Broker’s direct control.

11. Enrollment Processing; Limitations. Broker agrees to assist companies and/or OhioHealthy in enrolling and maintaining members and in reviewing applications, as reasonably required by OhioHealthy. However, Broker shall have no authority to, nor shall Broker do any of the following:

- a. Make, waive, discharge or change any term, rate or condition stated in any OhioHealthy policy, agreement, or approved form; or
- b. Extend the time for payment of premiums or other monies due OhioHealthy; or
- c. Bring or defend any legal proceeding in connection with any matter pertaining to OhioHealthy’s business; or
- d. Offer to pay, directly or indirectly, any rebate of premiums or any other inducement not specified in the policy to any person, except as permitted by law; or
- e. Transact business in contravention of the laws and regulations of any applicable insurance department and/or governmental authorities having jurisdiction of all subject matters embraced within this Agreement.

12. Broker of Record. OhioHealthy will consider Broker to be a Broker of Record for every person or company to whom Broker sells an OhioHealthy product during the term of this Agreement, unless such person or company requests OhioHealthy to remove Broker as a Broker of Record. In

addition, OhioHealthy may change the Broker of Record at any time for any reason. If the Broker of Record does request Broker to be removed or replaced by another Broker and OhioHealthy agrees to, the previous Broker would continue to collect commissions on premiums generated by agent of record prior to the effective date of the change until the book of business renews or changes contract in place.

13. QHP Standards for Downstream and Delegated Entities. Exhibit B is hereby attached to this Agreement and incorporated by reference herein, which addresses the parties' obligations regarding compliance with Affordable Care Act Marketplace standards for qualified health plan issuers' downstream and delegated entities.

14. Advertisements. Broker shall not broadcast, publish or distribute any advertisements or matters referring to OhioHealthy products without first securing OhioHealthy's approval in writing for such publications or distributions.

15. OhioHealthy Materials. Any enrollment subscription forms, applications, or other OhioHealthy material furnished to Broker by OhioHealthy may not be altered by Broker, and shall remain the property of OhioHealthy, and all property of OhioHealthy shall be accounted for and returned to OhioHealthy on demand. If this Agreement is terminated or the return of OhioHealthy property is otherwise requested, no further commissions shall be payable to Broker until such property has been returned.

16. Assignment. The interest of the Broker in this Agreement and all rights hereunder, including specifically Broker's right to receive payment, is not assignable by operation of law or otherwise, unless OhioHealthy consents in writing to such assignment.

17. Insurance Coverage. Broker shall obtain insurance coverage in greater of amounts usual and customary or amounts reasonably requested by OhioHealthy from time to time. Broker shall provide evidence of such coverage to OhioHealthy upon request.

18. Training. Broker agrees to complete or attend any relevant training that OhioHealthy requires within six (6) months after notification by OhioHealthy. If requested by OhioHealthy, Broker will provide evidence of the successful completion of any required training.

19. Collection of Premium. Broker shall collect only the initial premium on applications or insurance policies solicited under the terms of this Agreement and shall be responsible for all such monies. Such monies shall be collected only by check, money order, or other instrument made payable to OhioHealthy. Broker is not authorized to receive premiums payable to Broker's personal order. Broker shall not collect premiums in currency or coin unless specifically authorized by OhioHealthy for a particular transaction. All premium funds received for or on behalf of OhioHealthy shall be segregated and held by Broker as a fiduciary; and such funds shall not be used by Broker for any purpose whatsoever, but shall be transmitted to OhioHealthy immediately following receipt by Broker.

20. Delivery of Applications. For compensation to be paid, Broker must deliver an original completed OhioHealthy application for each applicant, unless electronic enrollment is being used. In the event that electronic enrollment is being used the Broker and/or sub agent(s) are recommended to keep applications on file. In the event electronic enrollment is not being used, the application should be immediately faxed or mailed to:

OhioHealthy Enrollment Department 3430  
Ohio Health Parkway  
Columbus, OH 43202

21. Non-Waiver. No waiver or modification of this Agreement shall be effective unless it is in writing and signed by a duly authorized OhioHealthy Officer. The failure of OhioHealthy to enforce any provision of this Agreement shall not constitute a waiver by OhioHealthy of that provision. The past waiver of a provision by OhioHealthy shall not constitute a course of conduct or a waiver of that provision in the future.

22. Records; Audit. Broker agrees to maintain adequate books and records. OhioHealthy shall have the right, upon reasonable notice to Broker, to inspect and/or audit any and all of Broker's books, records, or other information related to Broker's services to OhioHealthy. Such audit will be conducted during regulator business hours.

23. Enforcement. The parties agree that if either party brings an action because it believes the other has violated any commitments or obligations pursuant to any section of this Agreement, the non-prevailing party will be liable to the other for any damages suffered as a result, including reasonable attorney's fees and costs incurred in pursuing its rights hereunder.

24. Governing Law; Venue. The laws of the State of Ohio shall govern all matters concerning the validity, performance and interpretation of this Agreement. The parties hereby irrevocably consent to the exclusive jurisdiction and venue of the state and federal courts located in Franklin County, Ohio for the purpose of any action or proceeding brought by either of them in connection with this Agreement or the relationship of the parties.

25. Entire Agreement. This Agreement renders void all previous Agreements, whether oral or in writing, between Broker and OhioHealthy. This Agreement, together with the Agent/Broker Commission Schedule and any amendments attached hereto now or in the future, constitute the entire Agreement among OhioHealthy and Broker. The authority of Broker shall extend no further than that which is stated in this Agreement.

26. Severability. If any provision of this Agreement is in conflict with or is rendered invalid or unenforceable by any local, state or federal law, rule or regulation, or declared null and void by any court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

27. Amendment for Compliance with Laws. This Agreement shall be deemed automatically amended to comply with all local, state and federal laws, rules and regulations.

28. Confidentiality of Agreement. This Agreement is confidential, and the parties agree to not disclose the Agreement or its contents to any third party without the other party's prior written consent, unless such disclosure is required by law.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers, as of the Effective Date.

**OhioHealthy Insurance Company**

**Broker**

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

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

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

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**OhioHealthy Health Insuring Corporation**

By: \_\_\_\_\_  
(Signature)

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

Dated: \_\_\_\_\_

## Exhibit A

### Ohio Standard Commission Schedule For Health and Life Accounts

The Ohio Standard Commission Schedule for Health and Life Accounts is effective as of January 1, 2020 and replaces the prior Exhibit A.

#### Health Business

##### Individual Under Age 65 Commission Rates

The following are commission rates for Individual Under Age 65 Health accounts. For current grandfathered transitional and short-term accounts that move into an Affordable Care Act (ACA) product, OhioHealthy will pay commission at the first year rate below. First year commission will not be paid on Individual accounts moving from one ACA product to another ACA product.

<b>Level-Funded (Self-Funded) Employers 5-99 Eligible Employees</b>	<b>OhioHealthy Broker Commission:</b>
New Business	\$35 per employee per month
Renewing Business	\$35 per employee per month

##### OhioHealthy Broker Bonus:

- 100-199 Employees: \$15 PEPY Retro-active to 1st sold employee\*
- 200-299 Employees: \$25 PEPY Retro-active to 1st sold employee\*
- > 300 Employees: \$30 PEPY Retro-active to 1st sold employee\*
- Top Selling Broker will receive a gift/vacation package valued at \$10,000 or less for the producer who sells the most employees during the contest time period (1/1/2023 thru 3/31/2023)

##### OhioHealthy Broker Bonus:

- 100-199 Employees: \$15 PEPY Retro-active to 1st sold employee\*
- 200-299 Employees: \$25 PEPY Retro-active to 1st sold employee\*
- > 300 Employees: \$30 PEPY Retro-active to 1st sold employee\*
- Top Selling Broker will receive a gift/vacation package valued at \$10,000 or less for the producer who sells the most employees during the contest time period (1/1/2023 thru 3/31/2023)

Commission will not be paid on accounts with the Young Adult Essentials (catastrophic) plans having effective dates beginning on and after January 1, 2016.

No commission shall be paid on any business transitioned to OhioHealthy from any entity that is the subject of a Delinquency proceeding (as defined in O.R.C §3903.01(G)) commenced by the Ohio Department of Insurance until such business renews with OhioHealthy at which time the Subsequent Year(s) commission rate will apply.

Accounts transitioned to OhioHealthy from the Federal Marketplace, referred to as Alternate Enrollees, will not be considered new business but will be paid the subsequent Year(s) commission rate.

**Affordable Care Act (ACA), Fully Insured Accounts with 2-50 Eligible Employees – Standard Broker Commission Rates**

The account size for groups with 2-50 eligible employees is determined by OhioHealthy at the time of sale or renewal development.

For groups with 2-50 total employees, the Account Size is based on the number of enrolled employees.

The following standard Health commission rates are for ACA business for all channels for groups with 2-50 total employees.

<u>Account Size</u>	<u>New Sale Commission Rate</u>	<u>Renewal Commission Rate</u>
2 to 50	\$35 per employee per month	\$30 per employee per month

**Level-Funded Accounts with 5-99 Eligible Employees – Standard Broker Commission Rates**

The account size for groups with 5-99 eligible employees is determined by OhioHealthy at the time of sale or renewal development.

For groups with 5-99 total employees, the Account Size is based on the number of enrolled employees.

The following standard Health commission/override rates are for level-funded business for all channels for groups with 5-99 total employees.

<u>Account Size</u>	<u>New Sale Commission Rate</u>	<u>Renewal Commission Rate</u>
5 to 99	\$35 per employee per month	\$35 per employee per month

*[Remainder of page intentionally left blank]*

**Exhibit B**  
**QHP Standards for Downstream and Delegated Entities**

1. Standards. As a delegated or downstream entity of OhioHealthy, Broker shall comply with applicable Affordable Care Act Marketplace (“Marketplace”) standards in the performance of services relating to Marketplace products on behalf of OhioHealthy, including but not limited to the following:
  - a. Standards of Title 45 of the Code of Federal Regulations (“CFR”), subpart C (Qualified Health Plan Minimum Certification Standards) of part 156 with respect to each of OhioHealthy’s qualified health plans on an ongoing basis;
  - b. Marketplace processes, procedures, and standards in accordance with Title 45 of the CFR, subparts H (Marketplace Functions: Small Business Health Options Program) and K (Marketplace Functions: Certification of QHPs) of part 155 and, in the small group market, 45 CFR § 155.705 (Functions of a SHOP);
  - c. Standards of 45 CFR § 155.220 with respect to assisting with enrollment in QHPs; and
  - d. Standards of 45 CFR §§ 156.705 and 156.715 for maintenance of records and compliance reviews for QHP issuers operating in a Federally-facilitated Marketplace or a Federally-facilitated-SHOP.
  
2. Delegation agreement specifications. To the extent that any of OhioHealthy’s activities or obligations arising from Section 1 are delegated to Broker, the following provisions shall apply:
  - a. The delegated activities from OhioHealthy to Broker are as follows: selling, soliciting, or negotiating insurance as more specifically set forth in the Agreement.
  - b. The reporting responsibilities relating to the delegated activities are as follows: such reporting obligations as are more specifically set forth in the Agreement.
  - c. OhioHealthy shall be entitled to revoke the delegated activities and reporting standards, in addition to any other remedy under this Agreement or available by law, in instances where the U.S. Department of Health and Human Services (“HHS”) or OhioHealthy determines that Broker has not performed satisfactorily.
  - d. Broker must permit access by the Secretary of HHS and the U.S. Office of the Inspector General or their designees in connection with their right to evaluate through audit, inspection, or other means, to Broker’s books, contracts, computers, or other electronic systems, including medical records and documentation, relating to OhioHealthy’s obligations in accordance with Federal standards under Section 1 until 10 years from the final date of this Agreement.

## **Exhibit C**

### **Business Associate Agreement**

This Business Associate Agreement (this “Agreement”) is entered into and effective this \_\_\_\_ day of \_\_\_\_\_, 2022 (“Effective Date”) by and between \_\_\_\_\_ (“Business Associate”), and OhioHealthy Medical Plan Inc. (“Covered Entity”) on behalf of itself, its operating divisions, and its affiliates and subsidiaries.

WHEREAS, Business Associate and Covered Entity have entered into a relationship (“Underlying Relationship”) *and to the extent* Business Associate will be, on behalf of Covered Entity, performing or assisting in performing a function or activity involving the use or disclosure of individually identifiable health information or another function regulated by 45 C.F.R. Parts 160-164, or otherwise performing services requiring the disclosure of individually identifiable health information to Business Associate (the “Services”) the parties agree to comply with this Agreement;

WHEREAS, for purposes of providing the Services identified above, Covered Entity may disclose to Business Associate, and Business Associate may use, Protected Health Information (“PHI”), as that term is defined in Regulations;

WHEREAS, Covered Entity’s disclosure of, and Business Associate’s use of, such PHI is in furtherance of the business operations of Covered Entity, treatment of Covered Entity patients, or the payment for services provided by Covered Entity;

NOW, THEREFORE, for purposes of complying with the Regulations, the parties hereby agree as follows:

#### **I. Definitions.**

- A. For purposes of this Agreement, Protected Health Information or PHI as defined by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) regulations on patient privacy, confidentiality, security, transactions and unique identifiers, including 45 C.F.R. Parts 160 through 164, as revised and amended from time to time (the “Regulations”), at 45 C.F.R. §160.103, shall mean information that is received by Business Associate from, or created or received by Business Associate on behalf of, Covered Entity and is information about an individual which relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual. PHI also either identifies the individual or there is a reasonable basis to believe the information can be used to identify the individual. PHI pertains to both living and deceased individuals.
- B. All other terms used, but not otherwise defined herein shall have the same meaning as those terms in the Regulations, limited to the extent such terms are applicable to the obligations of the parties with respect to PHI created or received by Business Associate on behalf of Covered Entity.

#### **II. Duties & Responsibilities of Business Associate**

- A. Except as otherwise limited in this Agreement, Business Associate may use and/or disclose PHI to perform the Services for, or on behalf of, Covered Entity as contemplated and necessary to perform services in the Underlying Relationship, provided such use or disclosure would not violate the Regulations. Business Associate agrees not to use or further disclose PHI other than as authorized by this Agreement or as required by law, and acknowledges that any such unauthorized use or disclosure may be a violation of federal law and may trigger penalties as set forth in the Regulations and in 42 U.S.C. 17931. Business Associate shall not use or disclose PHI in a manner that would not be permissible under HIPAA if done by Covered Entity, except for the purposes specified under Section II(B) below.
- B. Unless otherwise limited by this Agreement, Business Associate may also:
1. Use the PHI in its possession for the proper management and administration of Business Associate or to carry out its legal responsibilities.
  2. Disclose the PHI in its possession for the proper management and administration of Business Associate or to carry out its legal responsibilities, if (a) such disclosure is required by law or (b) the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and that the person will notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

3. Use the PHI to provide data aggregation services to the Covered Entity relating to the health care operations of the Covered Entity provided such data aggregation services are requested and approved in writing by Covered Entity.
- C. Business Associate may not:
1. Use or disclose PHI in any manner that would constitute a violation of 45 C.F.R. Parts 160 or 164.
  2. Sell PHI, unless provided patient authorizations from Covered Entity pursuant to and in compliance with 45 C.F.R. 164.508(a)(4), expressly permitting such sale.
- D. Business Associate is required to Disclose PHI:
1. When required by HHS under the provisions of HIPAA to investigate or determine Business Associate's compliance with HIPAA.
  2. To the Covered Entity to allow Covered Entity to meet its requirements to satisfy an individual's request for an electronic copy of PHI, as described in 45 C.F.R. 164.524(c)(ii).
- E. When using or disclosing PHI or when requesting PHI, Business Associate must make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request, pursuant to and subject to the exceptions provided in 45 C.F.R. 164.502(b).
- F. Business Associate shall implement and use appropriate safeguards to prevent uses or disclosures of PHI other than as provided for by this Agreement, and comply, where applicable, with the applicable security standards in 45 C.F.R. Part 164, Subpart C, with respect to electronic PHI to prevent use or disclosure of the information other than as provided for in this Agreement. Upon request, Business Associate shall provide to Covered Entity a written description of such safeguards.
- G. If Business Associate becomes aware of any unauthorized use, disclosure, acquisition or access of PHI, or any breach of unsecured PHI as described in Section II(P), it shall report such incident to Covered Entity in writing without unreasonable delay, and in no case later than sixty (60) days after the discovery of such incident. Business Associate shall also mitigate, to the extent practicable and as soon as practicable, any harmful effect that is known to Business Associate of such incident.
- H. Business Associate shall require that the subcontractors that create, receive, maintain or transmit PHI on behalf of Business Associate, agree to the same restrictions and conditions that apply to Business Associate with respect to such information and comply with the applicable security standards in 45 C.F.R. Part 164, Subpart C, by entering into a business associate agreement with all subcontractor business associates as provided in 45 C.F.R. 164.504(e)(5) and shall notify Covered Entity of any subcontractors who shall receive or access PHI pursuant to this Agreement upon request from Covered Entity.
- I. Within fifteen (15) business days of a written request by Covered Entity, Business Associate agrees to comply with Covered Entity's request to accommodate an individual's access to his/her PHI that is maintained by Business Associate in a Designated Record Set, to the extent necessary to assist Covered Entity to fulfill its obligations under 45 C.F.R. 164.524. In the event an individual contacts Business Associate directly about the access to PHI, Business Associate will not provide access to the individual but shall forward such request to Covered Entity within five (5) business days of such contact.
- J. Within fifteen (15) business days of a written request by Covered Entity, Business Associate agrees to comply with Covered Entity's request to make amendments to PHI that is maintained by Business Associate in a Designated Record Set, to the extent necessary to assist Covered Entity to fulfill its obligations under 45 C.F.R. 164.526. Business Associate shall promptly incorporate any such amendments into the PHI. In the event an individual contacts Business Associate directly about making amendments to PHI, Business Associate will not make any amendments to the individual's PHI but shall either promptly forward such request to Covered Entity or advise the individual to contact Covered Entity directly to make such request.

- K. Business Associate shall keep a record of disclosures of any PHI, including PHI maintained electronically, to any entity outside of Business Associate and Covered Entity and agrees to make information regarding disclosures of PHI available to Covered Entity within ten (10) days of a written request by Covered Entity. Within ten (10) days of written notice by Covered Entity to Business Associate that Covered Entity has received a request for an accounting of disclosures of PHI (other than disclosures to which an exception to the accounting requirement applies), Business Associate shall make available to Covered Entity such information as is in Business Associate's possession and is required for Covered Entity to make the accounting required by 45 C.F.R. 164.528.
- L. Business Associate shall provide, at a minimum, the following information: (i) the date of disclosure; (ii) the name of the entity or person who received the PHI, and the address of such entity or person, if known; (iii) a brief description of the PHI disclosed; (iv) a brief statement regarding the purpose and explanation of the basis of such disclosure and (v) the names of all individuals whose PHI was disclosed.
- M. Business Associate agrees it shall comply with any reasonable voluntary restriction on use or disclosure of PHI accepted by Covered Entity under 45 C.F.R. 164.522(a), which is properly communicated to Business Associate to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- N. Business Associate shall make its internal practices, books and records relating to uses and disclosures of PHI and compliance with the HIPAA Regulations available to the Secretary of the U.S. Department of Health and Human Services or designee, for purposes of determining Covered Entity's and Business Associate's compliance with the Regulations.
- O. Upon the termination of the Underlying Relationship, Business Associate shall return or destroy all PHI, in a manner approved by HHS for the proper destruction of PHI, and will retain no copies of such information. If such return or destruction of PHI is not feasible, as approved by Covered Entity, Business Associate agrees that the provisions of this Agreement are extended beyond termination to the PHI, and Business Associate shall limit all further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible.
- P. To the extent Business Associate is to carry out Covered Entity's obligations under the HIPAA privacy standards in 45 C.F.R. Part 164, Subpart E, Business Associate shall comply with privacy standards in 45 C.F.R. Part 164, Subpart E, that apply to Covered Entity in the performance of such obligation.
- Q. Business Associate shall promptly report to Covered Entity any Security Incident with respect to Electronic PHI of which it becomes aware except that, for purposes of the Security Incident reporting requirement, the term "Security Incident" shall not include inconsequential incidents that occur routinely, such as scans, "pings" or other unsuccessful attempts to penetrate computer networks or servers containing Electronic PHI maintained by Business Associate.
- R. Business Associate shall immediately, but in no event later than sixty (60) days, notify Covered Entity of any occurrence, event or fact that could reasonably be considered an indication that a breach of unsecured PHI has occurred, including the date and time of the discovery and as much information regarding the suspected breach as is available. Business Associate shall also undertake an investigation of whether a breach of unsecured PHI did occur and apprise Covered Entity of the results of the investigation no later than sixth (60) days of any such occurrence, event or fact. Business Associate shall cooperate fully with Covered Entity in Covered Entity's investigation and shall provide any additional information requested by Covered Entity in connection with the breach. If Covered Entity determines that a breach of unsecured PHI has occurred, which shall be determined in Covered Entity's reasonable discretion, Business Associate shall, at Business Associate's cost, take all action, which is reasonably requested by Covered Entity to mitigate the breach and to prevent further breaches of unsecured PHI. In addition to any indemnification in Section III, Business Associate shall also bear all costs incurred by Covered Entity to investigate and make required notifications of any breach of unsecured PHI by Business Associate.
- S. Business Associate shall ensure that the PHI resides at all times on servers located in the continental United States of America and is not accessed by, or otherwise disclosed to, any entity or person located outside of the United States of America.
- T. Business Associate agrees that Covered Entity has the right to audit, upon reasonable advance notice, Business Associate's compliance with the Regulations and the obligations and requirements of this Agreement. Business

Associate shall further provide copies of any SSAE 16 or equivalent audit reports promptly after such reports become available, but not less than annually.

### **III. Indemnity**

Business Associate shall indemnify, defend and hold Covered Entity and its officers, governors, trustees, employees and workforce members harmless from any alleged third-party claim or penalty against Covered Entity and/or its officers, governors, trustees or employees to the extent such claim or penalty arises from: (i) any unauthorized uses and/or disclosures of PHI (including any patient identifying information under Section II.U.) arising from the acts or omissions of Business Associate or its subcontractors; or (ii) a breach of unsecured PHI arising from Business Associate's acts or omissions.

### **IV. Termination**

Notwithstanding any other provisions of this or any other agreement between Covered Entity and Business Associate, Covered Entity may immediately terminate this Agreement and the Underlying Relationship if Business Associate has materially violated its responsibilities regarding PHI under this Agreement and has failed to provide satisfactory assurances to Covered Entity within ten (10) days of occurrence of such material violation that the violation has been cured and steps taken to prevent its recurrence.

### **V. Governing Law**

This Agreement is made pursuant to and shall be construed and enforced in accordance with the laws of the State of Ohio, without regard to its choice of law principles. Any action arising out of or related to this Agreement shall be brought exclusively in the state or Federal courts located in Franklin County, Ohio, and each party consents to the exclusive jurisdiction and venue of such courts.

### **VI. Independent Contractors**

In the performance of the duties and obligations of Business Associate hereunder, Business Associate is at all times acting and performing as an independent contractor, and nothing in this Agreement is intended to, nor shall be construed to, create between Covered Entity and Business Associate an agency, employer/employee, partnership or joint venture relationship. The parties agree and acknowledge that Business Associate, including any of its subcontractors or agents, is an independent contractor, and is not acting as an agent of Covered Entity.

### **VII. Amendment**

This Agreement may be amended only in a written document signed by both parties. Notwithstanding anything contained herein to the contrary, to the extent that any provision of this Agreement is in conflict with any law, regulations, rule or administrative policy of any governmental entity, this Agreement will have been deemed to have been amended in order to bring it into conformity with these provisions.

### **VIII. Assignment**

This Agreement may not be assigned by either party without the prior written consent of the other party. Except for the prohibition on assignment contained in the preceding sentence, this Agreement shall be binding upon and inure to the benefits of the successors and assigns of the parties hereto.

### **IX. Waiver of Breach**

The waiver by either party of a breach or a violation of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision hereof. No waiver shall be effective against any party hereto unless in a writing signed by the party.

### **X. Survival**

The responsibilities of Business Associate under this Agreement shall survive termination of this Agreement indefinitely.

### **XI. No Third-Party Beneficiaries**

Nothing express or implied in this Agreement is intended or implied to confer, and nothing herein shall confer, any rights, remedies, liabilities, or obligations whatsoever upon any person or entity other than the parties hereto.

**XII. Severability**

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected unless the invalid provision substantially impairs the benefits of the remaining provisions of this Agreement.

**XIII. Notices**

Notices or communications required or permitted by this Agreement or by law to be served on or given to any party hereto by another party to this Agreement shall be in writing and shall be deemed duly served when personally delivered in person or mailed by certified or registered mail (postage prepaid) or sent by any nationally recognized overnight courier service (charges prepaid), addressed as follows:

**If to Covered Entity:** OhioHealthy Medical Plan Inc.  
3430 OhioHealth Parkway  
Columbus, Ohio 43202

**with copy to:** OhioHealth Corporation  
3430 OhioHealth Parkway, 5<sup>th</sup> Floor  
Columbus, Ohio 43202  
Attention: Office of the General Counsel

**If to Business Associate:** \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**with copy to:** \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf as of the Effective Date.

**“COVERED ENTITY”**

**OhioHealthy Medical Plan Inc.**

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

**“BUSINESS ASSOCIATE”**

**Business Associate Name**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name of Authorized Representative

\_\_\_\_\_  
Title

Date

Date