

**HEALTHPASS INSURANCE TRUST**  
**CREDENTIALLED AGENT AGREEMENT**

**THIS AGREEMENT** is made and entered into as of the \_\_\_\_ day of \_\_\_\_ 202\_\_ by and between the **HEALTHPASS INSURANCE TRUST**, ("**Trust**") with offices located at 112 West 34<sup>th</sup> Street, 18<sup>th</sup> Floor, New York, New York 10120, and the person or entity named on the signature page hereof ("**Credentialed Agent**"). Trust and Credentialed Agent may hereafter be referred to individually as a "**Party**" and collectively as the "**Parties**".

**WITNESSETH**

**WHEREAS**, Credentialed Agent is licensed by the New York State Department of Financial Services as a life, accident and health insurance agent, and is engaged in the business of selling and marketing insurance policies under the laws of the State of New York; and

**WHEREAS**, Trust was created to comply with Section 4235(c)(1)(D) of the New York Insurance Law and has contracted with several health maintenance organizations, insurers and/or benefit service corporations ("**Payors**") to offer their programs ("**Products**") to the eligible employees of Participating Employers; Trust is managed by the New York Health Purchasing Alliance, Inc. ("**Alliance**"); and

**WHEREAS**, Trust desires to engage the services of Credentialed Agent to assist Trust in connection with the distribution of the Products as more fully set forth in this Agreement; and

**WHEREAS**, Credentialed Agent desires to accept the engagement by Trust to provide such services in connection with the Products.

**NOW, THEREFORE**, for and in consideration of these premises and of the mutual covenants and agreements hereinafter set forth, the Parties hereto agree as follows:

**DEFINITIONS**

**"New Business"** means those Participation Agreements entered into by Trust and Participating Employer(s) each calendar year through the efforts of Credentialed Agent where the effective date of the Participation Agreement is on or after the effective date of this Agreement and any renewal thereof and the employer was not a Participating Employer prior to the date of the Participation Agreement arranged by Credentialed Agent.

**"Participating Employer"** means an employer that has entered into a Participation Agreement with Trust for the benefit of its employees.

**“Participation Agreement”** means the agreement between a Participating Employer and Trust pursuant to which a Participating Employer will offer some or all of the Products to eligible employees and their eligible dependents.

**“Payor Appointment”** means the appointment as an agent or broker by a Payor.

**“Products”** means the various HMO, point-of-service, preferred provider, exclusive provider, dental, vision or other health, life, disability benefit plans or other benefit plans or services that are, or may be, offered by Trust to Participating Employers pursuant to which Payors will provide healthcare coverage or other services to the eligible Participating Employer employees who elect to participate thereunder (**“Enrollees”**).

## **I. PRODUCER PROVISIONS**

### **A. Market**

To the extent allowed by law, Trust hereby appoints and authorizes Credentialed Agent to solicit purchasers for the Products. Credentialed Agent will market the Products to employer groups that meet the eligibility requirements of Trust.

Any and all marketing materials including solicitation emails, letters, brochures, magazine or news articles concerning the Products prepared by Credentialed Agent shall be approved in writing by Trust before such materials are distributed. Unless otherwise agreed to by the Parties, the costs of preparation and distribution of such materials shall be borne by the Party preparing them.

Credentialed Agent shall not employ or make use of any advertisement or material in which Trust’s, Alliance’s or Payors’ names and/or corporate symbols are contained without the prior express written consent of Alliance and Payors.

Credentialed Agent shall comply with all of Trust’s lawful rules and/or regulations and/or requirements.

Credentialed Agent shall not make any representations with respect to Products except as may be contained in the written materials approved by or prepared and furnished by Trust, and shall make no oral or written alteration, modification or waiver of any of the terms or conditions applicable to the Products.

Credentialed Agent acknowledges and agrees that it has no authority to offer a Participation Agreement to any employer on behalf of Trust without the prior approval of Trust.

Credentialed Agent acknowledges and agrees that it has no authority to sign any contract on behalf of Trust. Approval will arise, if at all, from eligibility and other criteria established solely by Trust and Payors.

Trust, Alliance and Payors shall not be liable for any compensation, expenses, costs or damages resulting from their failure or refusal to accept a potential Participating Employer solicited by Credentialed Agent irrespective of the reason or cause for such failure or refusal.

Credentialed Agent agrees to maintain all documents, records and other information concerning its arrangements with Participating Employers and eligible employees in accordance with applicable law and standards within the healthcare insurance industry and at a minimum of six (6) years following the termination of this Agreement and to make such documents, records and information available to Trust and Payors on request. This provision shall survive the termination of this Agreement.

**B. Compensation**

Trust shall pay Credentialed Agents monthly compensation as a result of their efforts to issue New Business through Trust, and on renewals thereof, in accordance with the terms and conditions set forth in this Agreement. Compensation is subject to any applicable commission, bonus or other compensation schedule or information (as determined solely by Trust) that may be made available by Trust from time to time or upon request. Credentialed Agents must remain duly licensed and maintain all required Payor Appointments and meet all other requirements set forth in this Agreement to be eligible to receive compensation.

Compensation will be paid only on Participating Employer group invoices that are paid in full, received by Trust, and which clear an invoice cycle. For up to sixty (60) days, adjustments will be made in subsequent months to reconcile any underpayment or overpayment of Credentialed Agent demonstrated by information received subsequent to the calculation of a month's compensation or any errors in calculating compensation.

Trust will not pay compensation to Credentialed Agents who (i) have not maintained their New York State life, accident and health insurance licenses, (ii) have not kept their appointments current with Payors, or (iii) have not provided renewal information to Trust or (iv) have a cancelled New York State license.

In the event that a Participating Employer Agreement is terminated by the Employer or by Trust, no future compensation will be payable by Trust under this Agreement with respect to the portion of the coverage which was terminated unless the Participating Employer enters into a new Participation Agreement through the efforts of Credentialed Agent.

Trust shall change the Broker of Record on an existing account and pay compensation to a Credentialed Agent on previously placed Trust business provided that Trust receives a Broker of Record Letter from the Participating Employer which identifies Credentialed Agent as the new Broker of Record for

the Participating Employer. Trust shall pay compensation commencing on the first day of the month following Trust's receipt of the Participating Employer's designation of Credentialed Agent as the Broker of Record.

Trust shall have the right to discontinue providing or to alter the benefits provided under the Participation Agreement executed by a Participating Employer and Trust in accordance with the terms of such Participation Agreement. If Trust terminates, rescinds, or otherwise cancels its Participation Agreement with a Participating Employer and returns payments, Credentialed Agent agrees to repay to Trust the amount of compensation that it has received based upon the returned payments. If Credentialed Agent does not make that repayment within thirty (30) days written notice of returned payment, Trust shall have the right to: (i) offset the amount to be refunded against any future compensation due under this Agreement; and/or (ii) terminate this Agreement, effective immediately; and/or (iii) invoice the Credential Agent the amount to be refunded.

No compensation shall be payable under this Agreement on any interest earned or due on any unpaid premium charges, late fees, reinstatement fees or other fees that Trust may charge Participating Employers.

Trust may, at its discretion, place compensation of Credentialed Agent on hold, if, based on Credentialed Agent's information on file with the Trust, Credentialed Agent no longer complies with the terms of this Agreement. Credentialed Agent agrees to forfeit any compensation placed on hold, if the cause of such hold has not been resolved within two (2) months of the hold's effective date, as indicated on a hold notification letter.

#### **Adjustments to Compensation**

**(a)** Each party agrees to promptly notify the other upon becoming aware of an incorrect payment amount. Subject to subsections (b) and (c) below, Credentialed Agent agrees to promptly remit to Trust any amounts overpaid pursuant to this Agreement.

**(b)** Trust may correct an overpayment error by notifying Credentialed Agent of the error and asking for repayment. At its sole option Trust may instead recover overpayments from Credentialed Agent by offsetting the overpayment against future compensation and notifying Credentialed Agent of the offset and the reason for it.

**(c)** Trust will not adjust any incorrect payments to Credentialed Agent except for payments made within ninety (90) days prior to the date of adjustment. In this regard, neither Credentialed Agent nor Trust may assert a claim against the other relating to an incorrect payment amount under the terms of this Agreement unless such claim is made (and the resulting adjustment is commenced) within six (6) months of the date of said incorrect payment.

**(d)** If full repayment is not promptly made, Trust will invoice Credentialed Agent for any unrecovered payments and may refer Credentialed Agent to collections thereafter. If Trust incurs any costs in collecting reimbursement of an overpayment from Credentialed Agent, including but not limited to collection

agency and attorney fees but not including the costs of offsetting future payments, Credentialed Agent will pay Trust's costs, as applicable.

(e) Notwithstanding anything in this Agreement or any compensation schedule to the contrary, Trust will not pay any amount to Credentialed Agent that exceeds a maximum prescribed by any applicable law.

**C. Reports and Audits**

Each party agrees to allow the other party to audit all relevant books and records upon reasonable notice and during regular business hours. Each party is solely responsible for its own expenses in connection with conducting the audit.

Each Party shall make available to the other Party upon request, and permit such Party to copy, all relevant files and business records in connection with this Agreement, the Products, and sales activities undertaken pursuant to this Agreement.

**D. Licenses, Appointments and Taxes**

Credentialed Agent shall maintain its New York State life, accident and health insurance agent or broker licenses and Payor Appointments by each Payor during the term of this Agreement. Credentialed Agent shall notify Trust immediately if it suffers termination, suspension or expiration of its license to engage in the health insurance business within the State of New York or of any of its appointments.

Credentialed Agent, including its agents and employees, is an independent contractor and shall not be deemed an employee of Trust. Credentialed Agent is responsible for payment of all withholding and similar taxes, and for the provision of all statutory benefits (such as, but not limited to Worker's Compensation) for Credentialed Agent and its agents and employees, if any. Neither Credentialed Agent nor its agents and employees shall represent in any manner that they are employees of Trust or Trust's manager, the Alliance.

**E. Miscellaneous**

Trust and Credentialed Agent shall comply with all federal, state and local laws and regulations applicable to their respective businesses. Credentialed Agent shall comply with Trust's policies, procedures, rules and regulations which have been furnished to Credentialed Agent in performing its obligations hereunder.

All printed materials, applications, sales literature and other written material which Trust may furnish to Credentialed Agent shall remain the property of Trust,

subject at all times to its control, and Credentialed Agent shall return all such materials to Trust immediately upon request.

During the term of this Agreement and at all times thereafter Credentialed Agent shall not, directly or indirectly, disclose to any person or entity any confidential information which it has obtained by reason of its association with Trust about the business of Trust, Alliance or Participating Employers covered through Trust, nor shall Credentialed Agent use such information in any way that may adversely affect Trust or Alliance.

Credentialed Agent hereby represents and warrants to Trust as follows:

- (i) There is no restriction or limitation, by reason of any law, regulation, contract, agreement or otherwise, upon Credentialed Agent's right or ability to enter into this Agreement or to fulfill its obligations hereunder.
- (ii) Credentialed Agent will comply with all applicable statutory and regulatory requirements, including but without limitation, licenses, certificates and permits required by the State of New York during the term of this Agreement. Credentialed Agent shall notify Trust of any loss or suspension of its license. Credentialed Agent shall immediately on learning thereof, notify Trust of any criminal, civil or administrative action involving Credentialed Agent.
- (iii) Credentialed Agent hereby warrants and represents that: (i) it has never suffered any loss, suspension or termination of any license issued by a federal, state or local government authority in connection with the sale of any type of health insurance; and (ii) has never suffered suspension or termination of the right to represent an insurance company for cause other than normal expiration of an agreement.

Trust hereby represents and warrants to Credentialed Agent as follows:

- (iv) There is no restriction or limitation, by reason of any law, regulation, contract, agreement or otherwise, upon Trust's right or ability to enter into this Agreement or to fulfill its obligations hereunder.
- (v) Trust is in compliance with and will continue to comply with all applicable statutory and regulatory requirements related to its business, including but without limitation, licenses, certificates and permits required by the State of New York.

**F. Insurance**

Credentialed Agent shall maintain, at a minimum, errors and omissions insurance during the term of this Agreement in the amount that is standard and adequate for Credentialed Agent's business and agreed upon by Payors. Credentialed Agent warrants to Trust that such coverage is in force at the time of the execution hereof, and shall provide evidence from time to time upon Trust's request. Credentialed Agent shall notify Trust immediately upon notice that such insurance is or will be reduced, modified, canceled or terminated.

**GENERAL PROVISIONS**

**G. Term and Termination**

The term of this Agreement shall be one year, commencing on the date set forth on the first page hereof. Unless sooner terminated in accordance with the provisions set forth below, this Agreement shall automatically renew for successive one-year term(s).

This Agreement may be terminated:

- (i) by either Party, at anytime, without cause, upon sixty (60) days written notice;
- (ii) by either Party on thirty (30) days written notice upon the failure of either Party to comply with any material term, condition or obligation of this Agreement and the failure of such Party to undertake substantial efforts to remedy the default within fifteen (15) days after the non-defaulting Party shall have given written notice thereof to the non-performing Party, or such other longer period of time as in the opinion of the non-defaulting Party shall be reasonable under the circumstances;
- (iii) by either Party immediately upon determination by a court of law or administrative body having jurisdiction over one or both of the Parties, that the performance of obligations or the exercise of rights hereunder is illegal, or violates any law or regulation which may be enacted subsequent to the date hereof, or any interpretation of any existing law or regulation, or violates any existing agreement with a third party or any rule or guideline promulgated pursuant to such agreement, and such disability results in a material adverse effect on the Agreement. No such right to terminate this Agreement shall arise unless and until the Party desiring such termination shall make all reasonable efforts to cure the illegality or violation in question and to suggest reasonable and appropriate amendments or

modifications to this Agreement so as to permit performance hereunder without effecting the illegality or violation in question;

- (iv) by either Party immediately upon written notice, if the other Party is unable to pay its debts, files or has filed against it a petition in bankruptcy, commences or has commenced against it any other insolvency proceedings which are not dismissed within forty-five (45) days or seeks reorganization or an arrangement with creditors;
- (v) By the Trust immediately upon a change of ownership and control of Credentialed Agent or a merger of Credentialed Agent with any other entity; or
- (vi) No waiver of any breach of any provision of this Agreement shall be deemed a waiver of any subsequent breach of the same or a breach of any other provision of this Agreement.

Termination of this Agreement shall in no way affect the terms and conditions of any Participating Agreement issued during the term of this Agreement.

Neither Party shall incur any liability to the other by reason of the expiration or termination of this Agreement or its non-renewal, provided, however, that the termination of this Agreement for any reason shall not terminate any rights, obligations or liabilities which either Party may accrue prior to such termination which, under the terms of this Agreement, continue after such termination.

At Trust's request, after termination, Credentialed Agent agrees to continue to provide administrative and account support services until such time as Trust, or its designee, assumes the administrative and account support services responsibilities. Credentialed Agent further agrees that it shall cooperate with Trust to assure an orderly transition of administrative and account support services to Trust or its designee.

On the effective date of any termination, compensation to the Credentialed Agent shall cease.

#### **H. Indemnification**

Credentialed Agent shall indemnify, defend and hold Trust, Alliance, its administrative agent and Payors and their directors, officers, employees, agents and affiliated companies harmless from and against any and all claims, suits, demands, liabilities, costs, damages and expenses whatsoever, including reasonable attorney's fees, arising from or related in any way to: (i) any and all services rendered hereunder by Credentialed Agent, its officers, directors, employees, and independent contractors, or any omission with respect to such services; (ii) any unauthorized warranties made by Credentialed Agent, its officers, directors, employees or independent contractors with respect to the Products, whether express or implied; (iii) any breach by Credentialed Agent, its

officers, directors, employees or independent contractors of its agreements, obligations, representations and warranties hereunder; and (iv) any violation by Credentialed Agent, its officers, directors, employees or independent contractors of federal, state or local laws or regulations or other requirements. This section shall survive termination of the agreement.

Trust shall indemnify, defend and hold Credentialed Agent and its directors, officers, employees, and agents harmless from and against any and all claims, suits, demands, liabilities, costs, damages and expenses whatsoever, including reasonable attorney's fees, arising from or related in any way to: (i) any and all services rendered hereunder by Trust, its officers, directors, employees, and independent contractors, or any omission with respect to such services; (ii) any unauthorized warranties made by Trust, its officers, directors, employees or independent contractors with respect to the Products, whether express or implied; (iii) any breach by Trust, its officers, directors, employees or independent contractors of its agreements, obligations, representations and warranties hereunder; and (iv) any violation by Trust, its officers, directors, employees or independent contractors of federal, state or local laws or regulations or other requirements.

This section shall survive termination of the agreement.

## **I. Intellectual Property**

In no event shall either Party use the name, trademark, service mark, logo and other proprietary designation of the other in any way without the prior written consent of the other Party, nor shall Credentialed Agent use the name, trademark, service mark, logo or other proprietary designation of Alliance in any way without the prior written consent of Alliance.

Each Party agrees to submit to the other, for its prior written approval, all materials in connection with the subject matter of this Agreement which name or refer to the other, its products or use its symbol, trademarks or service marks; additionally, Credentialed Agent shall submit to Alliance, for its prior written approval, any materials with name or refer to Alliance, its symbols, trademarks or service marks.

Upon termination of this Agreement, Trust and Credentialed Agent shall cease to use one another's name, symbol, trademarks, service marks and/or any other proprietary designation in any of their activities in connection with this Agreement and each shall promptly return to the other all internal documents, materials and items furnished in connection with this Agreement, with the exception of records which must be maintained pursuant to law or regulation. Additionally, Credentialed Agent shall cease to the Alliance's name, symbol, trademarks, service marks and shall return to Alliance all internal documents, materials and items furnished by Alliance in furtherance of this Agreement.

**J. Confidentiality; Proprietary Information**

In performing its obligations pursuant to this Agreement, each Party may have access and receive certain non-public information about the other and its affiliates (including Alliance) including, not limited to, product marketing philosophy, telemarketing design and service, product advantages and disadvantages, financial, demographic and actuarial information, eligibility guidelines, internal policies concerning enrollment, billing and other information and/or proprietary materials which are considered confidential or proprietary to the disclosing Party. This section is not intended to grant the parties rights to confidential information, but to circumscribe the use that the parties may make of any information to which they have access. Additionally, Credentialed Agent may have access to or receive confidential information about Enrollees. All such information shall also be considered to be confidential by Credentialed Agent and shall not be disclosed to entities or persons not a party to this Agreement unless required by law.

Each Party hereto agrees to and shall maintain the confidentiality of all such confidential and/or proprietary information and shall not disclose the same to any third party, except as may be required by law or court order, and shall not use such confidential and/or proprietary information for any reason other than the fulfillment of its obligation hereunder, for the term of the Agreement and thereafter.

Each Party shall retain all ownership rights to its confidential and/or proprietary information.

Each Party recognizes that any breach or violation of this section may result in irreparable harm to the non-breaching party; each Party agrees that, in addition to any and all other remedies available, the non-breaching party shall be entitled to an injunction restraining the breaching party and any related person(s) from violating this section.

**K. Solicitation of Employees**

Each Party agrees that during the term of this Agreement, including any renewals, and for a period of one (1) year following the termination of the Agreement, it will not employ or contract with any individual who has been employed by or affiliated with the other Party, including the employees or affiliates of Trust's manager, Alliance, within the preceding twelve (12) months, without the prior written consent of that party.

**L. Notices**

Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent via telecopy, overnight courier or certified mail, return receipt requested:

to Trust to its Manager:

**HEALTHPASS INSURANCE TRUST**  
112 West 34<sup>th</sup> Street, 18<sup>th</sup> Floor  
New York, New York 10120  
Attn: Trustee

to Credentialed Agent: address shown on the signature page

Notice shall be effective in the case of telecopy, when sent; overnight courier service, the day delivered; and certified mail, seven (7) days after letter is deposited, postage prepaid, in a United States post office depository.

**M. Governing Law**

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of New York. In the event that one or more of the provisions herein shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforcement of the remaining provisions shall not be affected or impaired. This Agreement shall automatically be deemed amended to comply with all applicable laws and regulations.

**N. Assignment**

Trust has delegated some of its responsibilities hereunder to a chosen administrative agent and to Alliance. Trust reserves the right to assign, delegate, subcontract, or otherwise transfer its rights, obligations and/or interests under this Agreement to a different administrative agent, entity and to Payors. Credentialed Agent may not assign, delegate, subcontract, or otherwise transfer its rights, obligations and/or interests arising under this Agreement without the prior written consent of the Trust and any attempted assignment by Credentialed Agent shall be null and void.

**O. Waiver and Remedies**

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

**P. Relationship as Independent Contractors**

It is understood and agreed that the Parties shall have no authority to make a representation, warranty or binding commitment on behalf of the other Party, except expressly provided in this Agreement. Trust and Credentialed Agent are independent contractors contracting with each other for the purpose of effecting

the provisions of the Agreement. Neither the relationship of the Parties nor their performance of any obligations under this Agreement shall render the Parties partners or joint venturers.

**Q. Headings**

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

(The balance of this page is intentionally blank.)

**R. Entire Agreement, Modification, Waiver**

This Agreement, and the Exhibits annexed hereto, constitute the entire agreement and understanding between and among the Parties hereto and supersedes all prior agreements and understandings relating to the subject matter of this Agreement. Neither Agreement nor any provision hereof may be changed, waived, discharged or terminated orally but only by writing signed by the Parties hereto.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

**CREDENTIALLED AGENT**

**HEALTHPASS INSURANCE TRUST**

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
Vincent C. Ashton, Trustee

\_\_\_\_\_  
(PRINT NAME)

\_\_\_\_\_  
(DATE)

\_\_\_\_\_  
(AGENCY – IF APPLICABLE)

\_\_\_\_\_  
(STREET ADDRESS)

\_\_\_\_\_  
(CITY, STATE, ZIP)

\_\_\_\_\_  
(DATE)

**EXHIBIT A**

**COMPENSATION**

**Credentialed Agent Compensation Schedule**

**All commissions are paid by the Trust on behalf of the Payors and partners. Compensation is payable on insurance products and services only. Fees are not eligible for compensation. Commission percentages verified as of April 1<sup>st</sup>, 2023.**

**Medical Products** - All Medical lines of business follow the direct commission schedule set forth by the Payors. They currently are:

EmblemHealth	4%
Empire BlueCross BlueShield	4%
Healthfirst	4%
Oxford	3.75%

**Dental & Vision Products**

Guardian	7%
Solstice	7%
UnitedHealthcare	7%

**EverGuard Products** (bundled Term Life, AD&D and LTD)

Guardian	13%
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**Accident Product**

Guardian	7%
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**ID Theft Products**

Allstate Identity Protection	10%
LifeLock	10%

**Pet Product**

Total Pet Plan	8%
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### **Changes of Compensation**

The above compensation schedule is subject to a prospective change at any time, unless otherwise required by state or federal law or regulators or by a Payor.

### **Additional Fee Program(s)**

The Trust, on its own or in conjunction with the Payors and partners, may institute additional fee programs to compensate agents for services performed above and beyond sales. Any such program may be modified, suspended or withdrawn at any time.