

Fallon Community Health Plan (FCHP) and Fallon Health & Life Assurance Company (FHLAC) Brokerage Agreement

This Agreement is made as of the _____ day of _____, ____; between Fallon Community Health Plan, Inc. ("FCHP"), a Massachusetts health maintenance organization ("HMO"), Fallon Health & Life Assurance Company, Inc. ("FHLAC") (collectively "FCHP/ FHLAC"), and _____ ("Broker"), as follows:

WHEREAS, FCHP and FHLAC are both duly licensed and operating health care services organizations selling prepaid health care plans in the Commonwealth of Massachusetts,

WHEREAS, Broker is licensed by the Massachusetts Division of Insurance to sell FCHP/FHLAC's plans and its license is current and in full force and effect, and

WHEREAS, Broker is not an employee of FCHP/FHLAC,

WHEREAS, Broker has been designated as the Broker of Record by the employer group offering the plan, and

WHEREAS, FCHP and Broker desire to enter into an agreement whereby FCHP/FHLAC compensates Broker for Broker's services in marketing FCHP's fully insured commercial HMO plan(s) and FHLAC's fully insured POS and PPO plan(s) ("FCHP/FHLAC's Plans").

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, it is mutually agreed by and between the parties hereto as follows:

1. Broker shall provide sales and marketing services for FCHP/FHLAC in the marketing of FCHP/FHLAC's Plans to employer groups in the Commonwealth of Massachusetts. Broker shall at all times be licensed by the Massachusetts Division of Insurance as a broker in good standing and will remain in strict compliance with all applicable state laws, federal laws, and FCHP/FHLAC sales, marketing and broker policies and procedures, including adherence to FCHP/FHLAC's underwriting guidelines, and this Agreement. Broker shall notify FCHP/FHLAC in writing within 15 days of the termination, expiration, surrender, suspension, revocation, or disciplinary proceedings relating to Broker's license. It is the responsibility of any brokerage agency to ensure that all of its Brokers are licensed.
2. In order to be qualified for FCHP/FHLAC Broker compensation, the Broker is required to supply the following documents: Completed W-9 form, a copy of current Massachusetts resident broker's license/producer license, FCHP/FHLAC Brokerage Agreement signed by licensed agents and Assistant Vice President, New Business Sales and Broker Relations and a Broker of Record letter from the employer group, with effective date of Broker of Record designation, the Broker name(s) (and any splits in commission among multiple Brokers) and signed by an officer of the account.
3. Upon request, Broker shall provide to FCHP/FHLAC evidence of general liability and other insurance coverage in an amount satisfactory to FCHP/FHLAC and shall maintain said coverage during the term of this Agreement. Broker agrees to indemnify and hold FCHP/FHLAC harmless as to any suit, damages, or loss resulting from negligence of Broker and arising out of or in connection with Broker's duties hereunder. Broker shall supply a copy of the declaration page of their E&O policy showing coverage of at least \$1,000,000. The Broker is responsible for maintaining E&O coverage in full form.
4. FCHP/FHLAC shall not pay to Broker commission based on premiums paid by employer and procured by Broker until Broker provides FCHP/FHLAC a written letter of confirmation from such employer designating Broker as "Broker of Record."
5. FCHP will not pay broker commissions on a retroactive basis beyond a period of 12 months.
6. Broker agrees to use its best efforts to maintain the relationship between FCHP/FHLAC and the employer, and to maintain full cooperation by the employer and its group of employees with FCHP/FHLAC.
7. FCHP/FHLAC reserves the right to review and approve all applications for contracts with prospective groups identified by Broker. Further, FCHP/FHLAC reserves the right to approve all Broker's proposals to ensure that all proposals are in conformance with FCHP/FHLAC's policies and procedures. FCHP/FHLAC's right of prior approval of all employer group contracts shall be clearly stated in all proposals prepared by Broker. All enrollments shall take the form of a contract between the employer group and FCHP/FHLAC.
8. In representing FCHP/FHLAC in the marketing of FCHP/FHLAC's Plans, Broker shall utilize only sales material authorized by FCHP/FHLAC, shall adhere to all policies, rules and regulations provided by FCHP/FHLAC to Broker in writing with regard to sales, and shall in no way misrepresent FCHP/FHLAC.
9. FCHP/FHLAC shall submit an invoice for premiums to each employer group. In the event that Broker receives funds on behalf of FCHP/FHLAC from any person, Broker shall accept such funds from employer groups only in the form of checks made payable to "Fallon Community Health Plan" and shall forward such checks to FCHP/FHLAC by the close of the business day following receipt thereof.
10. In consideration for Broker's services in marketing FCHP/FHLAC's Plans, FCHP/FHLAC shall pay Broker a commission in accordance with the compensation schedule attached hereto on a monthly basis based upon the premium payments received. The commission shall be calculated on actual premium payment received by FCHP/FHLAC. The records of the employer group as to enrollment shall be conclusive. Such compensation shall be payable only so long as this Agreement is in effect and Broker is recognized by the employer as the Broker of Record to receive said compensation. The compensation rates may be modified from time to time.
11. In the event FCHP/FHLAC pays a commission to Broker due to error, whether Broker or FCHP/FHLAC error, including, but not limited to, payment of commission for premiums that the employer fails to pay to FCHP/FHLAC, FCHP/FHLAC may offset any future commissions payable against such amount or collect such amount thereof directly from Broker. If collected directly from the Broker, the Broker shall promptly refund all such commissions to FCHP/FHLAC, within thirty (30) days of FCHP/FHLAC's written request for such refund.
12. A Broker shall notify FCHP in writing of any acquisition or merger (hereinafter an "Acquisition") of/with any other broker. For the purpose of measuring and paying any earned broker bonus, FCHP will deem such Acquisition as having occurred at the beginning of the year following the date of the Acquisition.
13. The initial term of this Agreement is one (1) year from the date as of which this Agreement is executed. This Agreement shall automatically renew at the end of the initial term and continue in effect from year to year thereafter until terminated. If any party defaults in the performance of any of its duties or obligations hereunder, and such default has not been cured within thirty (30) days of the non-defaulting party's giving of written notice of such default, specifying the nature of the alleged default or breach, the non-defaulting party

may give notice of intent to terminate this Agreement to the defaulting party, and this Agreement shall terminate with regard to all parties on the last day of the month in which the thirtieth (30th) day following the date of the initial written notice of default occurs.

Instances of default under the Agreement shall include, but not be limited to: (i) Broker's license being suspended, revoked or not renewed by the Commonwealth of Massachusetts; (ii) Broker acting in a manner that is injurious to FCHP/FHLAC; (iii) Broker acting in a manner that constitutes fraud and/or misrepresentation.

14. If FCHP/FHLAC determines that fraud and/or misrepresentation has occurred on any of the Broker of Record letters, credentials, quote requests, authorizations to quote, forms, remittances, membership applications and/or any other transactions submitted by the Broker to FCHP/FHLAC, FCHP/FHLAC may terminate this Agreement retroactive to the date of the fraud or misrepresentation at its sole discretion. The Broker will be responsible for reimbursing FCHP/FHLAC for any commission and/or bonus paid to the Broker by FCHP/FHLAC from the point of the fraud and/or misrepresentation to the termination date.
15. Broker acknowledges that FCHP/FHLAC has developed certain symbols, trademarks, service marks, data, processes, plans, procedures and information which are proprietary information and trade secrets of FCHP/FHLAC (the "Proprietary Information"). At all times, both during Broker's performance of services pursuant to this Agreement and after the termination of this Agreement, Broker agrees not to use or permit the use of the Proprietary Information, except as expressly contemplated by this Agreement, without the prior written consent of FCHP/FHLAC and Broker shall cease or cause the cessation of any and all usage of the Proprietary Information and shall return copies thereof, including all sales materials for the Plan, to FCHP/FHLAC immediately upon the termination of this Agreement.
16. Broker covenants and agrees that the contract between FCHP/FHLAC and the employer is the exclusive property of FCHP/FHLAC, and Broker has no property or other interest whatsoever in such contract.
17. This Agreement and all exhibits and other documents furnished pursuant to this Agreement and expressly made a part hereof shall constitute the entire agreement relating to the subject matter hereof between the parties hereto. Each party acknowledges that no representation, inducement, promise or agreement has been made, orally or otherwise, by the other party, or anyone acting on behalf of the other party, unless such representation, inducement, promise or agreement is embodied in this Agreement, expressly or by incorporation.
18. Except as otherwise provided in this Agreement, no amendment to this Agreement shall be valid unless it is in writing and signed by the parties.
19. The validity and interpretation of this Agreement, and the rights and obligations of the parties hereunder, shall be governed by the laws of the Commonwealth of Massachusetts from time to time in force.
20. If any provision of this Agreement is held to be invalid, void or unenforceable, such part will be treated as severable and the remaining provisions shall nevertheless continue in full force and effect.
21. The obligations of each party to this Agreement shall inure solely to the benefit of the other party, and no person or entity shall be a third-party beneficiary of this Agreement.
22. Any notice or other communication made or contemplated by this Agreement to be in writing shall be deemed to have been received by the party to whom it is addressed three (3) business days after it is deposited in the United States mail, postage prepaid, return receipt requested and addressed as follows:

If to FCHP or FHLAC:

Keith Ledoux
Fallon Community Health Plan
10 Chestnut Street
One Chestnut Place
Worcester, MA 01608

If to Agency/Broker:

Company name: _____
Attn: _____
Address: _____

Agency owner: _____
Broker name: _____
Tel: _____
Fax: _____

Or to such other address of which the receiving party has given notice pursuant to this Section.

23. This Agreement may be assigned by either party only with the prior written consent of the other party. Unless otherwise agreed, any such assignor shall remain liable for all assigned obligations in the event of any failure of performance thereof. All of the terms, provisions and obligations of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, representatives, successors and assigns.
24. None of the provisions of this Agreement are intended to create, nor shall be deemed nor construed to create, any relationship between FCHP/FHLAC and Broker other than that of independent entities contracting with each other hereunder solely for the purpose of effecting the provisions of this Agreement. Neither of the parties hereto, nor any of their respective employees or agents, shall be construed to be the agent, partner, co-venturer, employee, or representative of the other.
25. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above-written.

Fallon Community Health Plan, Inc./ Fallon Health & Life Assurance Company, Inc.

By: _____
Title: _____
Date: _____

Broker

By: _____
Title: _____
Date: _____