



**GROUP HEALTH INCORPORATED  
SELLING AGENT AGREEMENT**

This Agreement, made between Group Health Inc., having its principal office at 441 Ninth Avenue, New York, NY 10001 ("GHI"), and \_\_\_\_\_, having its principal office at, \_\_\_\_\_ ("Selling Agent").

WHEREAS GHI is in the business of providing hospital and medical insurance benefits in multiple markets including the small group market consisting of employer groups of one (1) to fifty (50) employees, and is desirous of expanding its distribution and of modifying the way in which these Groups are solicited by utilizing the services of licensed Accident and Health Agents and Brokers licensed under section 2104 of New York Insurance Law; and

WHEREAS GHI has established a network of agents and brokers, programs and products and General Agents ("GA"); and

WHEREAS Selling Agent possesses a level of familiarity and expertise in the way in which group insurance products are marketed and sold through the use of licensed Accident and Health Agents and/or Brokers licensed under section 2104 of the New York Insurance Law; and

WHEREAS Selling Agent is willing, qualified and able to perform all of the duties required by GHI for participation in GHI's network of brokers and agents (hereinafter "Network"); and

WHEREAS Selling Agent's ability to enter into this Agreement and to fulfill the obligations required by this Agreement is in no way restricted by any other agreements;

NOW THEREFORE in consideration of these covenants, it is agreed as follows:

**1. Applicable Markets and Products**

This Agreement is applicable to the community-rated small group market consisting of employer groups of one (1) to fifty (50) employees.

This Agreement is not applicable to the sale of any health insurance product subsidized, in whole or part, by local, state or federal government.

**2. Scope of Authority**

Selling Agent is hereby authorized to: (a) solicit applications for insurance coverage in accordance with GHI's Network rules and procedures and limits of coverage which shall be set forth and amended from time to time; (b) collect and remit initial premium; and (c) service such contracts of insurance issued on those applications. Selling Agent may not alter the terms of any application or contract, and may not change or modify any rates for any insurance contracts or proposals. Selling Agent is permitted to present only those applications for insurance that meet GHI's rules and requirements. Selling Agent may not modify or change any of GHI's rules or requirements. Selling Agent further agrees to abide by all Network rules and procedures as shall be set forth and amended from time to time.

Selling Agent may enter into separate agreements with General Agents. However, Selling Agent shall have no authority with regard to GHI products or services other than that which is expressly granted by this Agreement, subsequent written agreements between GHI and Selling Agent, and/or any separate agreements between Selling Agent and General Agent provided that such authority has been approved and accepted by GHI. Without limiting the foregoing in any manner, unless specifically authorized in writing by an authorized Officer of GHI, Selling Agent may not, on behalf of GHI, incur any expense, alter any contract, discharge any obligation, bind in any way, reject or accept any application for insurance, prepare or render any premium notice, make any payment, waive any obligation due, commence or compromise any litigation, or pay, settle or reject any claim for benefits under any insurance contracts issued by GHI.

### **2-a. Indemnification**

The Selling Agent agrees to indemnify, defend and hold harmless GHI and its directors, officers, employees, successors and assigns from and against any and all claims penalties, liabilities, losses, damages, suits, settlements, judgments, or costs, including reasonable attorney's fees, which may arise from the acts or omissions of the Selling Agent or its Selling Agents, brokers, officers, employees in performing under this Agreement.

The Selling Agent shall maintain a Fidelity Bond of at least \$250,000 or in such greater amounts if deemed necessary by GHI. The Fidelity Bond will protect both the Selling Agent and GHI for loss of GHI property. Selling Agent shall provide GHI a copy of the Fidelity Bond upon request.

### **3. Premium**

Selling Agent may collect only the initial premium in connection with submission of an application for insurance coverage to GHI. All such premium shall be made payable to GHI and shall be immediately forwarded to GHI through its General Agent or, if there is no General Agent, then directly to GHI. Selling Agent may not commingle any premium collected on behalf of GHI with any other funds. Selling Agent may not collect any premium other than the initial premium paid with the application for insurance. Selling Agent may not extend the time for the payment of any premium due GHI.

### **4. Capacity**

The Selling Agent, including its employees, is an independent contractor and shall not be deemed an employee of GHI. Selling 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 Selling Agent and the Selling Agent's employees, if any. Neither Selling Agent nor its employees shall represent in any manner that they are employees of GHI.

### **5. Licensure and Insurance**

At all times while this Agreement remains in effect, Selling Agent shall maintain all valid New York State Insurance Department licenses and registrations, as well as any other licenses, permits or registrations necessary for fulfilling its duties and obligations hereunder. Selling Agent shall immediately notify GHI and/or its General Agent, as applicable, in writing in the event that any such license, permit or registration is suspended or terminated, or if Selling Agent is the subject of any disciplinary action initiated by the Insurance Department of the State of New York or any other regulatory or governmental body or court.

Selling Agent shall also maintain at all times General Liability/Errors and Omissions insurance coverage in an amount not less than one million (1,000,000) dollars. Upon request, Selling Agent shall provide GHI and/or its General Agent, as applicable, with a Certificate of Insurance evincing said coverage. Selling Agent shall immediately notify GHI and/or its General Agent, as applicable, in the event such liability insurance is terminated or modified.

## **6. Territory**

Selling Agent is hereby authorized to solicit applications for insurance in accordance with this Agreement and GHI's rules for soliciting and providing insurance to the community-rated small group market. Selling Agent may not solicit applications for insurance for applicants located or domiciled outside of the State of New York.

## **7. Compensation**

As full compensation for services provided hereunder, Selling Agent shall receive commissions in accordance with GHI's commission schedules. Said commission schedules are attached to and made a part of this Agreement, and may be amended from time to time.

All commission compensation shall be due and payable after premium is received and credited by GHI. All commission compensation shall be calculated based upon premium received by GHI and in accordance with GHI's rules and protocols for crediting premium; said rules and protocols may be amended from time to time. Commission payments shall be made directly by GHI or its General Agent, as applicable in accordance with usual cycles for paying such commissions.

For commissions that become payable hereunder as a result of the sale of insurance where GHI was (a) not the prior insurance carrier, and (b) GHI had not paid Selling Agent commissions, then Selling Agent shall be vested in any commissions payable for the first twelve (12) consecutive months that the insurance program remains in force. Commencing on the thirteenth (13th) month, commissions payable hereunder shall continue to be paid provided that the Selling Agent continues to be recognized as the Selling Agent of Record.

For insurance sales where GHI is the current insurer and GHI is obligated to pay commissions to another Selling Agent, then no commissions will be payable hereunder to the succeeding Selling Agent until such time as GHI's obligations to the Selling Agent who originally solicited the insurance has expired. In addition, in order for a subsequent or succeeding Selling Agent to receive commission payments hereunder, the Selling Agent must first deliver to GHI a current, written Selling Agent of Record acknowledgment signed by the Policyholder. Said Agent of Record letter shall become effective ninety (90) days after it is received by GHI.

GHI shall only pay commissions provided that: (1) the Selling Agent is living or if a corporation, that the corporation remains an entity; (2) the Selling Agent continues to service the businesses pursuant to the terms of this Agreement; (3) the Selling Agent is actively and continuously engaged as a licensed agent or broker in the insurance business and services the active business written pursuant to this Agreement; and (4) the Selling Agent is not terminated as defined by this Agreement. If any premium is refunded by GHI, then Selling Agent shall be responsible for repaying the commission compensation applicable to the portion of premium refunded.

For community-rated products, Selling Agent must associate with an authorized GHI General Agent. Selling Agent shall choose the General Agent with whom he or she shall be associated. However, in the event of any conflict, GHI reserves the right to assign Selling Agent to a General Agent for Compensation and all other purposes. Full consideration of the wishes of the Selling Agent, and of the efforts expended

by the General Agent in recruiting and/or assisting the Selling Agent, shall be given. GHI's decision shall be final, and Selling Agent hereby agrees to abide by such decision.

## **8. Grievance Procedures**

Any controversy, complaint and/or grievance on the part of Selling Agent, as alleged against GHI or the General Agent, shall be submitted to GHI for investigation and resolution pursuant to GHI's grievance procedures before being submitted to any agency or court. GHI shall set forth and amend its grievance procedures from time to time.

## **9. Assignment**

This Agreement is for services specific to the Selling Agent, and may not be assigned or transferred by the Selling Agent without the written consent of GHI.

## **10. Advertising**

Selling Agent shall comply with all GHI Network rules and procedures regarding all advertising, soliciting and sales materials. Only approved advertising and sales material may be utilized by Selling Agent. Selling Agent shall not permit or cause any person, firm or entity to use GHI's name, trade or service mark or logo without the express written permission of GHI's General Counsel. Selling Agent shall comply with all laws, rules and regulations that pertain to advertising and solicitation of the products or services covered hereunder.

## **11. Supplies**

All material furnished to Selling Agent by GHI, including forms, applications, proposals and related advertising, and sales material are the property of GHI and, shall be used only in the manner intended and for the furtherance of GHI's business. Any materials in the Selling Agent's possession or control at the termination of this Agreement shall be promptly returned to either GHI or its General Agent as applicable.

## **12. Privacy, Security and HIPAA Requirements**

Selling Agent shall maintain the privacy and security of all health and financial information pertaining to GHI members in accordance with applicable federal, state and local laws and regulations and in accordance with the terms of Appendix A of this Agreement. Selling Agent further acknowledges and agrees that it serves as a "business associate" of GHI pursuant to 45 C.F.R. Parts 160 and 164 (the "HIPAA Regulations") and that Selling Agent shall satisfy all terms and conditions set forth in Appendix A of this Agreement.

## **13. Termination**

This Agreement shall remain in effect for a term of one (1) year, unless terminated sooner in a manner and for a reason set forth below. The Agreement will automatically renew, subject to the same terms and conditions, unless a party hereto provides notice to the other parties of its desire not to renew. Said notice shall be served at least sixty (60) days prior to the expiration of the current term.

Notwithstanding the above, this Agreement shall terminate immediately in the event Selling Agent's license to conduct the business contemplated hereunder is suspended or terminated, or upon five (5) days written notice in the event (a) Selling Agent, or an Owner or Principal thereof, is convicted of any crime or misdemeanor involving moral turpitude or dishonesty; (b) Selling Agent, or an Owner or Principal thereof, is subject to disciplinary action by any regulatory or governmental body or court; (c) Selling Agent fails to achieve the sales, production or administrative requirements of GHI as shall be set forth and amended from time to time; (d) the material furnished by Selling Agent to GHI, and relied upon by GHI in issuing this Agreement, contained any misstatement of fact; (e) Selling Agent induces or causes the cancellation of 10% or more of the Selling Agent's book of business in a year; (f) upon the death of the Selling Agent; or (g) such other grounds as may be set forth in a separate agreement between the Selling Agent and the General Agent as applicable, provided that said grounds for termination have been approved by GHI.

If GHI reasonably determines that Selling Agent has breached a material term of Appendix A of this Agreement, including, without limitation, any provision of Appendix A governing the use and disclosure of Protected Health Information, GHI may immediately terminate this Agreement. In the alternative, GHI at its option may provide Selling Agent with a written notice specifying the nature of the breach and allow Selling Agent the opportunity to cure the breach. If Selling Agent fails to cure such breach within thirty (30) days of GHI's written notice, GHI may immediately terminate this Agreement.

Upon termination of this Agreement, Selling Agent shall: a) if feasible, return or destroy all Protected Health Information as defined in Appendix A received from, or created or received by Selling Agent on behalf of, GHI that Selling Agent still maintains in any form, and Selling Agent shall retain no copies of such information; or b) if Selling Agent and GHI reasonably determine that such return or destruction is not feasible, extend the protections of Appendix A to such information and limit further uses and disclosures to those purposes that make the return or destruction of the Protected Health Information infeasible.

### **13-a. Reservation of Rights**

GHI specifically reserves the following rights, subject to appropriate regulatory approval where applicable:

- 13-a.1** To discontinue or withdraw from sale any certificate, contract, marketing material, proposal or special marketing concept;
- 13-a.2** To modify, change, cancel or amend any certificate or contract;
- 13-a.3** To determine all terms, conditions and limitations on any certificate or contract;
- 13-a.4** To modify, change or amend the terms and condition under which any certificate or contract may be offered;
- 13-a.5** To modify, change, amend , delete or add any GHI procedure;
- 13-a.6** To require Agents to sign an acknowledgment of relationship or any other disclosure forms which GHI deems necessary;

**13-a.7** Upon reasonable notice, to audit and make copies of any and all records in the Selling Agent's possession which relate to the Selling Agent's performance of its obligations under this Agreement.

**13-a.8** To decline Selling Agent's request to appoint a sub or Selling Agent.

#### **14. Miscellaneous**

##### **14.1 Compliance With Federal, State, And Local Laws**

All parties will comply with all federal, state, municipal and local laws, rules and regulations that may be applicable to this Agreement.

##### **14.2 No Waiver of Default**

The failure of either party to exercise any right of termination hereunder shall not constitute a waiver of the rights granted herein with respect to any subsequent default.

##### **14.3 Section Titles**

Section titles as to the subject matter of particular sections herein are for convenience only and are in no way to be construed as part of this Agreement or as a limitation of the scope of the particular sections to which they refer.

##### **14.4 Governing Law and Choice of Forum**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Any lawsuit arising from this Agreement shall be commenced in a court of the State of New York located in New York, Suffolk or Nassau county, or in a United States District Court of the Southern or Eastern District of New York.

##### **14.5 Severability**

If any of the provisions of this Agreement are held to be invalid or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

**14.6 Coordination With Previous Agreements**

This Agreement supersedes all previous agreements between Selling Agent and GHI.

**IN WITNESS WHEREOF** the parties have set their hand, effective the date first shown above.

**Group Health Incorporated**

**Selling Agent**

By: \_\_\_\_\_  
sign name

By: \_\_\_\_\_  
sign name

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print name

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fax number

## APPENDIX A

### PRIVACY & SECURITY OF GHI MEMBER HEALTH & FINANCIAL INFORMATION

#### 1. Definitions

The following definitions shall apply to this Appendix A:

"Protected Health Information" shall mean Individually Identifiable Health Information (as defined below) that is transmitted or maintained in any form or medium. However, it does not include Individually Identifiable Health Information in education records covered by the Family Educational Right and Privacy Act, as amended (20 U.S.C. § 1232g), records described at 20 U.S.C. § 1232g(a)(4)(B)(iv), and employment records held by a HIPAA covered entity in its role as an employer.

"Individually Identifiable Health Information" shall mean health information, including demographic information collected from an individual, that:

- (a) is created or received by a health care provider, health plan (including GHI), employer or health care clearinghouse; and
- (b) 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 and that: (1) identifies the individual or (2) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

"Financial Information" shall mean personally identifiable financial information and any list description or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information other than publicly available information. For purposes of this definition, "personally identifiable financial information" means any information other than Protected Health Information:

- (a) a consumer provides to GHI, or to Selling Agent on behalf of GHI, to obtain an insurance product or service from GHI;
- (b) about a consumer resulting from a transaction involving an insurance product or service between GHI, or Selling Agent on behalf of GHI, and a consumer; or
- (c) GHI, or Selling Agent on behalf of GHI, otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.

"Required by Law" shall mean a mandate contained in law that compels the use or disclosure of Protected Health Information and that is enforceable in a court of law. It includes, but is not limited to: court orders and court ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.



## 2. Permitted Uses and Disclosures of Protected Health Information

Selling Agent may use or disclose Protected Health Information received or created by Selling Agent pursuant to this Agreement solely for the following purposes:

- A. Selling Agent may use or disclose Protected Health Information as necessary to carry out its responsibilities and duties under this Agreement.
- B. Selling Agent may use or disclose Protected Health Information for its proper management and administration or to fulfill any present or future legal responsibilities of Selling Agent; provided, however, that if Selling Agent discloses Protected Health Information to a third party under this Paragraph 2(B), Selling Agent shall:
  - (i) in advance of the disclosure, notify the GHI Privacy Office in writing of the disclosure and supply to GHI such information as may be requested by the GHI Privacy Office to enable GHI to account for the disclosure in accordance with 45 C.F.R. § 164.528;
  - (ii) obtain reasonable assurances from the person to whom the Protected Health Information is disclosed that it will be held confidentially and used or further disclosed only as Required by Law or for the purpose for which it was disclosed; and
  - (iii) obligate such person to notify Selling Agent of any instances of which it is aware in which the confidentiality of the Protected Health Information has been breached.
- C. Selling Agent may use or disclose Protected Health Information as Required By Law provided that Selling Agent, in advance of the disclosure, notifies the GHI Privacy Office in writing of the disclosure and supplies to GHI such information as may be requested by the GHI Privacy Office to enable to GHI to account for the disclosure in accordance with 45 C.F.R. § 164.528. Disclosures "Require by Law," include, but are not limited to disclosures pursuant to: court orders and court ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

Selling Agent agrees that it will comply with all applicable state and federal laws regarding the use and disclosure of Protected Health Information to the extent that such laws are not pre-empted by the HIPAA Regulations when using or disclosing Protected Health Information pursuant to this Agreement.

Selling Agent shall not use Protected Health Information received or created by Selling Agent pursuant to this Agreement for data aggregation services. Data aggregation services means the combining of Protected Health Information by Selling Agent with the protected health information received by Selling Agent in its capacity as a business associate of another HIPAA covered entity, to permit data analyses that relate to the health care operations of GHI and the other entity. Selling Agent shall also not de-identify Protected Health Information received or created by Selling Agent

pursuant to this Agreement or use such de-identified Protected Health Information for any purpose.

### **3. Disclosure to Agents**

In the event that Selling Agent discloses to any agent, including a subcontractor, Protected Health Information received from, or created or received by Selling Agent on behalf of, GHI, Selling Agent shall obligate each such agent to agree to the same restrictions and conditions regarding the use and disclosure of Protected Health Information as are applicable to Selling Agent under this Appendix.

### **4. Safeguards**

Selling Agent shall use appropriate administrative, technical and physical safeguards, consistent with the size and complexity of Selling Agent's operations, to prevent the use or disclosure of Protected Health Information in any manner inconsistent with the terms of this Appendix A. Selling Agent shall maintain a written security program describing such safeguards, a copy of which shall be available to GHI upon request.

### **5. Reporting of Improper Disclosures**

Selling Agent shall report to GHI any unauthorized or improper use or disclosure of Protected Health Information within one (1) business day of the date on which Selling Agent becomes aware of such use or disclosure. Selling Agent shall report such uses or disclosures to GHI by telephone by calling the GHI Privacy Tip Line at (212) 615-4477 and in writing to: GHI Privacy Office, P.O. Box 2871, New York, N.Y. 10116-2871. In the event that the telephone notice is received by GHI through an automated recording device, the notice must include the name and telephone number of the appropriate contact person of the Selling Agent and the reason for the call.

Selling Agent shall mitigate, to the extent practicable, any harmful effect that is known to Selling Agent of a use or disclosure of Protected Health Information by Selling Agent in violation of this Appendix.

### **6. Access to Protected Health Information by GHI.**

- A. Within ten (10) days of a request by GHI, Selling Agent shall provide to GHI all Protected Health Information in Selling Agent's possession necessary for GHI to provide GHI members or their representatives with access to or copies thereof in accordance with 45 C.F.R. § 164.524.
- B. In advance of any disclosure of Protected Health Information that is not for a purpose necessary to carry out Selling Agent's responsibilities and duties under this Agreement, Selling Agent shall notify the GHI Privacy Office in writing of the disclosure and supply to GHI such information as may be requested by the GHI Privacy Office regarding the disclosure to enable GHI to maintain an accounting of disclosures in accordance with 45 C.F.R. § 164.528. In addition, within ten (10) days of any request by GHI, Selling Agent shall provide to GHI all information and records in Selling Agent's possession necessary for GHI to provide GHI members or their representatives with an accounting of disclosures thereof in accordance with 45 C.F.R. § 164.528.
- C. Within ten (10) days of a request by GHI, Selling Agent shall provide to GHI all Protected Health Information in Selling Agent's possession necessary for GHI to respond to a request by a GHI member to amend such Protected Health Information in accordance with 45 C.F.R. § 164.526. At GHI's direction, Selling Agent shall incorporate any amendments to a GHI member's Protected Health Information made by GHI into the copies of such information maintained by Selling Agent.

## **7. Access by HHS**

Selling Agent shall make its internal practices, books and records relating to the use and disclosure of Protected Health Information received from GHI, or created or received by Selling Agent on behalf of GHI, GHI or to the United States Department of Health and Human Services in accordance with the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder.

## **8. Financial Information**

- A. Selling Agent acknowledges and agrees that it is required by law to comply with all applicable requirements of New York State Insurance Regulation 169, including but not limited to providing notice and opportunity to “opt out” to the consumer or customer, with respect to Selling Agent’s use and disclosure of Financial Information. For purposes of this Paragraph 8, a “consumer” is an individual who seeks to obtain, obtains or has obtained an insurance product or service, directly or through a legal representative, from GHI (or through Selling Agent on behalf of GHI), and a “customer” is a consumer with a continuing relationship, as defined by 11 N.Y.C.R.R. § 420.3(h)(i), with GHI.
- B. Notwithstanding Paragraph 8(A) of this Appendix A, Selling Agent shall not be subject to the notice and/or “opt out” requirements of Regulation 169 if Selling Agent discloses Financial Information regarding consumers and customers only to GHI or GHI’s affiliates in accordance with 11 N.Y.C.R.R. § 420.3(p)(2), or pursuant to an exception set forth at 11 N.Y.C.R.R. § § 420.14, 420.15 or 420.16 provided that the disclosure is within the scope of its agency relationship with GHI and complies with GHI’s prevailing privacy notice provisions relating to financial information. For purposes of this paragraph, the parties acknowledge that GHI complies with, and provides the notices required by, New York State Insurance Regulation 169 with respect to its customers and consumers.

## **9. Security Standards**

Selling Agent agrees to comply with the requirements of 45 C.F.R. Parts 160 and 164 pertaining to the standards for the security of electronic Protected Health Information. Selling Agent shall:

- A. Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of GHI;
- B. Ensure that any agent, including a subcontractor, to whom it provides electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect such electronic Protected Health Information;
- C. Promptly report to GHI any security incident involving electronic Protected Health Information of which it becomes aware; and
- D. Comply with any other requirements that the Secretary of Health and Human Services may require from time to time with respect to electronic Protected Health Information by the issuance of additional guidance or regulations pursuant to HIPAA.

## **10. Electronic Data Interchange**

Selling Agent shall satisfy all applicable provisions of the HIPAA standards for electronic transactions and

code sets, also known as the Electronic Data Interchange (EDI) Standards, codified at 45 C.F.R. Part 162. Selling Agent further agrees to ensure that any agent, including a subcontractor, that conducts standard transactions, as such term is defined at 45 C.F.R. § 162.103, on its behalf will comply with the EDI standards.

## **11. Termination**

If GHI reasonably determines that Selling Agent has breached a material term of this Appendix A, including, without limitation, any provision governing the use and disclosure of Protected Health Information, GHI may immediately terminate this Agreement. In the alternative, GHI at its option may provide Selling Agent with written notice specifying the nature of the breach and allow Selling Agent the opportunity to cure the breach. If Selling Agent fails to cure such breach within thirty (30) days of GHI's written notice, GHI may immediately terminate this Agreement.

## **12. Return of Protected Health Information Upon Termination**

Upon termination of this Agreement, Selling Agent shall:

- (a) if feasible, return or destroy all Protected Health Information received from, or created or received by Selling Agent on behalf of, GHI that Selling Agent still maintains in any form, and Selling Agent shall retain no copies of such information; or
- (b) if Selling Agent and GHI reasonably determine that such return or destruction is not feasible, extend the protections of this Appendix A to such information and limit further uses and disclosures to those purposes that make the return or destruction of the Protected Health Information infeasible.

## **13. Construction**

This Appendix is intended to reflect the applicable requirements of the HIPAA Regulations and New York State Insurance Regulation 169. In the event of any inconsistency between the definitions and terms of this Appendix other than the definition of "Financial Information" and Paragraph 8, and the definitions and mandatory provisions of the HIPAA Regulations, as amended, the HIPAA Regulations shall control. In the event of any inconsistency between the definition of "Financial Information" and the terms of Paragraph 8 of this Appendix and the terms of New York State Insurance Regulation 169, as amended, the terms of New York State Insurance Regulation 169 shall control. In the event that GHI believes in good faith that any provision of this Appendix fails to comply with the then-current requirements of the HIPAA Regulations and/or New York State Insurance Regulation 169, GHI shall have the right to amend the terms of this Appendix as necessary and appropriate to bring it into compliance.