



## **Enroll Covered California Participants in Vision Coverage**

Covered California's open enrollment for vision care presents a unique opportunity to **generate** revenue. You receive 5% commission for enrollment and renewals, while your members enjoy consumers' #1 choice in vision insurance and the lowest out-of-pocket costs.

To sign up to enroll Covered California participants in vision coverage you will need to:

1. Complete the agent application form.
2. Send the agent application and a copy of your W-9 to VSP® Vision Care via fax (916)389-8253 or email [CCAgentEnrollment@vsp.com](mailto:CCAgentEnrollment@vsp.com). If you require a W-9 form, a copy can be retrieved from the [irs.gov](http://irs.gov) website.
3. Wait to receive a unique link, which is required for participant enrollment. Your unique link will be used to track your enrollments and pay appropriate commissions.
4. Market to new and existing Covered California participants.
5. Receive your commissions.

Give your members the best value in eye care, and let VSP handle administration, billing, and renewals, while you receive a revenue share. For questions, please refer to the attached FAQ's or contact us at [CCAgentEnrollment@vsp.com](mailto:CCAgentEnrollment@vsp.com).

# Covered California Vision Coverage Agent Application Form

**Applicant must be a Covered California Certified Insurance Agent.**

Fax completed form and a **copy of your W-9** to (916)389-8253, or email to VSP Vision Care at [CCAgentEnrollment@vsp.com](mailto:CCAgentEnrollment@vsp.com) to receive your unique link to enroll individuals and families in the Covered California Vision Coverage.

## Agent

First Name \_\_\_\_\_ Last Name \_\_\_\_\_ Date of Birth \_\_\_\_\_  
 E-Mail \_\_\_\_\_ Phone Number \_\_\_\_\_  
 SSN/TIN \_\_\_\_\_ National Producer Number \_\_\_\_\_

## Agency

Agency Name  
(as shown on State License) \_\_\_\_\_  
 Business Address Line 1 \_\_\_\_\_ Address Line 2 \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

## License

CA State License Number \_\_\_\_\_ Expiration Date \_\_\_\_\_

## Direct Deposit

Name of Bank/  
Financial Institution \_\_\_\_\_ Name of  
Account Holder \_\_\_\_\_  
 Nine-Digit Routing \_\_\_\_\_ Account \_\_\_\_\_ Type of  Savings  
 Transit Number \_\_\_\_\_ Number \_\_\_\_\_ Account  Checking

### Direct Deposit Terms and Conditions

I hereby authorize Core V to deposit any amounts owed me by initiating credit entries to my account at the financial institution(s) indicated on this form. Further, I authorize the financial institution(s) to accept and credit to my account any deposits received from Core V, once commissions reach or exceed the standard \$25.00. Monthly ACH transfers should be processed by the 15th of the month for the prior month's commissions. In the event that Core V deposits funds erroneously into my account, I authorize Core V to debit my account for an amount not to exceed the original amount of the erroneous credit. This authorization is to remain in full force and effect until Core V has received written notice from me of its termination in such time and in such manner as to afford Core V reasonable opportunity to act upon it.

I certify that I am entitled to the payment identified above and that I have read and understood the terms and conditions on this form. In signing this form I authorize Core V to deposit the designated amount in to the financial institution named above.

### Signature and Agreement to Terms of the Agent Agreement

**By checking this box and signing my name below, I am applying to be a Covered California Vision Coverage Agent and indicating that I have read and agree to the terms of the Agent Agreement.**

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

## Agent Agreement

**This Agent Agreement (herein “Agreement”)** is made and effective as of the date the Registering Agent signs the Agreement and is made by and between Vision Service Plan (herein "VSP" or "Company"), 3333 Quality Drive, Rancho Cordova, California 95670, and the Registering Agent (herein "Agent"). For the purposes of this Agreement, an Agent signs by completing the online Covered California Vision Coverage Agent Application Form.

**Whereas**, VSP offers various vision insurance products for sale to the public; and

**Whereas**, Agent is a Covered California Certified Insurance Agent and duly licensed and authorized to lawfully market and distribute certain of these products, as set forth herein;

Now, therefore, the parties agree as follows:

1. **Term.** The term of this Agreement shall begin on the effective date of this Agreement and will continue until the Agreement is terminated.
2. **Appointment.** VSP hereby appoints Agent to sell the products available through the Covered California vision program (hereinafter referred to as "Products") to individuals (hereinafter referred to as "Customers"). Agent agrees to sell the Products at VSP's prevailing rates as reflected on VSP's Covered California portal, which rates and Products may be amended from time to time in VSP's sole and absolute discretion. It is understood that this is not an exclusive Agreement; VSP may enter into similar agreements with other parties. Agent accepts this appointment as an independent contractor, on the terms herein. Under no circumstances will appointments be retroactive.
3. **Authority and Responsibility.** Agent is responsible for and authorized to use and supervise Agent's own employees and/or sub-agents who are duly licensed, certified by Covered California and appointed to sell products. Agent shall (a) comply with all federal, state, local, and other laws; (b) notify VSP of any complaints; (c) reasonably perform in good faith each authorized action hereunder in accordance with VSP's administrative procedures; and (d) cooperate with VSP as required to provide service for the Products. Agent is responsible for and authorized to recruit sub-agents at the Agent's expense without any reimbursement from VSP. No variation of this authority and responsibility shall be permitted except with VSP's written consent. No other greater authority shall be implied from the grant or denial of powers specifically mentioned in this Agreement. VSP shall have the right to service Customers as deemed necessary by VSP, to ensure the Products are working as designed and to the Customer's satisfaction.
4. **HIPAA Compliance.** Agent agrees to perform under this Agreement in compliance with all obligations imposed by the Health Insurance Portability and Accountability Act (herein “HIPAA”) and to manage Protected Health Information created, received, maintained, or transmitted by or to Agent in accordance with VSP’s Business Associate Agreement attached as Exhibit 2.
5. **Prohibitions.** Agent has no authority to, and shall not (a) make any promise or incur any debt on behalf of VSP; (b) hold itself out as an employee of VSP; (c) add, alter, waive or discharge any provision(s) of the Products; (d) waive any forfeiture, extend the time of making any payments, or alter or substitute VSP's forms; (e) unless permitted by applicable law, pay or allow to be paid to any Customer an inducement not specified in the policy or contract for the Products; (f) give or offer to give, on VSP's behalf, any advice or opinion regarding the taxation of any Customer's income or estate in connection with the purchase of any Product; (g) take any action beyond the scope of the authority granted under this Agreement; (h) have any underwriting or price-setting authority and shall not bind coverage under VSP's Products without VSP's express prior written approval.

6. **Representation and Warranties.** Agent represents and warrants that it and each person or entity to whom it pays commissions pursuant to this Agreement will be a Covered California Certified Insurance Agent and have sound business reputations and backgrounds, will be duly licensed and appointed to represent VSP in compliance with all applicable laws and regulations prior to and during the sale of any Products pursuant to this Agreement and will comply with applicable procedures, manuals and regulations of VSP and all other applicable laws and regulations. Agent represents and warrants that it has full power and authority to enter into this Agreement and to perform its obligations hereunder.
7. **Commissions.**
  - a. Agent Commission Rate. VSP appoints Agent and Agent becomes the Agent of Record for any individual who purchases a plan of vision care benefits from VSP ("Individual") through the Covered California site and Individual enrolls using the Agent's unique URL provided by VSP. VSP shall pay Agent the commissions set forth on the commission schedule attached as Exhibit 1 for each premium payment received and accepted by VSP on a Product issued pursuant to an Individual's application submitted for whom the Agent is the Agent of Record. Commissions are applicable only to new Products issued to Customers who are not already covered by any products offered by VSP. Agent shall not be entitled to any other compensation, remuneration or benefits of any nature from VSP for services rendered other than set forth in Exhibit 1. VSP reserves the right to revise the commission reflected on Exhibit 1 upon 30 days advance notice by email. Any revised Exhibit 1 shall then become part of the Agreement on its effective date and shall supersede all previous exhibits to this Agreement. Revised commissions will only apply to new Products issued after the effective date of such revised commissions.
  - b. Unearned Commissions. If VSP returns the premium on a policy or portion of such premium for any reason or if a policy terminates or is canceled for any reason, Agent shall repay VSP on demand the amount of all unearned commission received by Agent or its agents or employees on account of such cancellation or termination. Agent shall be liable to VSP for any unearned commissions paid to Agent or its agents or employees for returned premiums on cancelled, surrendered or terminated policies.
  - c. Right to Offset/No Assignment. VSP may at any time offset any commissions, fees or bonuses accrued or to accrue to Agent against any debt or debts due VSP from Agent, its agents or employees. No assignment, transfer or disposal of any interest Agent may have on account of the Agreement shall be made at any time without the written approval of VSP.
  - d. Policy Termination. If any Product terminates for any reason, all rights to commissions that might otherwise have accrued hereunder on such Products shall cease and terminate. If a Customer terminates their Product purchased pursuant to this Agreement and elects to purchase Products directly from VSP, Agent will no longer be eligible for commissions for that Customer.
  - e. Agent commissions. VSP shall be solely liable for paying commissions to an applicable Broker of Record for each premium payment received and accepted by VSP in connection with the sales of Products generated by Agent. A change in Broker of Record shall not affect Agent's right to earn commission pursuant to this Agreement.
8. **Policyholder Authorization.** No commissions shall be payable for a Product if the Agent does not have the Customer's permission to serve its interests. For the purposes of this agreement, Customers give permission when they enroll using the Agent's unique URL provided by VSP.
9. **Approval of Advertising.** Agent must follow VSP's guidelines as provided on VSP's website at [www.individualbrokervision.com/Default.aspx](http://www.individualbrokervision.com/Default.aspx) in the use of any advertising, promotional material, circular, marketing or written material containing references to the name(s), logo(s), trademark(s), or product(s) of VSP or its affiliates. Agent shall indemnify and hold VSP and/or its affiliates harmless from and against all liabilities, losses, expenses, fines, penalties, orders, claims, demands, judgments, actions, causes of action, in the event of suit or regulatory action

brought as a result of the dissemination or publication by Agent, its agents or employees of any such material not so approved. The costs associated with printing, distribution and development of any customized marketing pieces or campaigns proposed by Agent will be the responsibility of Agent. VSP reserves the right to assist with the development and positioning of any language pertaining to the description and definition of any Products. Agent shall in no way misrepresent VSP or its Products.

10. **Confidentiality.** Agent and VSP each agree that all information communicated to it by the other, whether before the effective date or during the term of this Agreement, shall be received in strict confidence, shall be used only for the purposes of this Agreement and that no such information shall be disclosed by the recipient party, its agents or employees without the prior written consent of the other party. Each party hereto agrees to take all reasonable precautions to prevent the disclosure to outside parties of such information including, without limitation, the terms of this Agreement. Upon termination of this Agreement, the parties shall each return to the other party any confidential information received by such party under this Agreement. This confidentiality provision shall survive termination of this Agreement.

11. **Termination.**

a. **Termination for Cause.** This Agreement and Agent's appointment may be terminated by VSP immediately and without notice if Agent fails to comply with any licensing laws or any other law or regulation; becomes insolvent, bankrupt or suffers some other financial impairment which may affect Agent's performance of this Agreement; improperly handles VSP's funds; commits any act of fraud or malfeasance; commits any breach of this Agreement or any other agreement with VSP; or commits any act injurious to VSP or its policyholders, including, but not limited to bad faith acts such as poor field underwriting or inadequate or improper supervision or recruiting of agents.

b. **Termination without Cause**

Agent's appointment and this Agreement may be terminated by VSP without cause upon thirty (30) days written notice. This Agreement will automatically terminate as follows: (a) upon the death of the Agent, if an individual; (b) upon the total physical or mental disability of the Agent, if an individual; (c) upon the dissolution of the corporation or partnership, if Agent is a corporation or partnership; or (d) upon the change of control of Agent without the prior written consent of VSP; or (e) if Agent is no longer a Covered California Agent. For the purposes of this Agreement, Covered California Agent shall mean an agent that is trained and certified to sell Covered California Health Insurance Plans.

**Effect of Termination.** Upon termination of this Agreement: Products issued to Customers through Agent shall remain in full force and effect for the remainder of the applicable policy term. If a Customer renews its policy with VSP after this Agreement has been terminated, commissions to Agent will no longer accrue and will not be payable.

**Records and Accounts.** Agent shall hold and preserve as the property of VSP all books of account, documents, receipts, vouchers, files, certificates, literature, policies, applications, policyholder lists, correspondence and records of any kind which at any time come into Agent's possession or under its control relating to transactions for or by VSP. During the term of this Agreement, upon request of VSP and at VSP's expense, Agent shall open these records to examination by VSP upon reasonable notice to Agent. Upon termination of this Agreement, Agent shall surrender the original records, together with any other property of VSP in its possession to VSP.

**Insurance.** Agent shall maintain Errors and Omissions insurance coverage with minimum amounts of \$1,000,000 per incident and \$1,000,000 in aggregate, or such other amounts as determined by VSP.

## Miscellaneous Provisions.

- a. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to any conflict of law rule or provision thereof that would cause the application of the laws of any other jurisdiction. Consent is hereby given to the jurisdiction of the state and federal courts located in, or having jurisdiction over, Sacramento County, California, U.S.A., for any action or proceeding.
- b. Entire Agreement. This Agreement together with the attached Exhibit(s) contains the entire understanding and agreement between the parties hereto with respect to the sale and distribution of the Products and terminates and supersedes all prior and/or contemporaneous agreements. In executing this Agreement, Agent and VSP hereby agree that they have not relied upon any representations other than the representations expressly contained within this Agreement. This Agreement may not be amended, modified, supplemented or changed, in any respect whatsoever, except by a written agreement signed by both parties
- c. Successors in Interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and, except to the extent prohibited hereunder, assigns.
- d. Non-transferable. This Agreement is not transferable or assignable by Agent. No rights or interests arising therefrom shall be subject to assignment except with the prior written consent of VSP.
- e. Right to Refuse Applications. VSP reserves the unconditional right to refuse to accept applications procured by Agent if such applications do not meet the underwriting or other standards of the VSP. Furthermore, VSP reserves the unconditional right to modify, to the extent permitted by law, any of the Products in any respect whatsoever or suspend the sale of any of the Products, in whole or in part, at any time without prior notice.
- f. Indemnification. Agent shall indemnify and hold VSP and its affiliate companies, directors, officers, employees and agents harmless from and against all liabilities, losses, expenses, fines, penalties, judgments, orders, claims, demands, damages, actions, causes of action, and the expense of defending same (including reasonable attorney's fees and related court costs) resulting from or arising out of the breach of this Agreement or any unauthorized or negligent or willful act or omission of Agent, its agents or employees. This indemnification provision shall survive the termination of this Agreement.
- g. No Waiver. Failure of VSP to enforce or insist upon the provisions of this Agreement in any instance(s) shall not be construed as waiver of its right to enforce or insist upon such provision(s) either currently or in the future.
- h. Arbitration. Any controversy or claim arising out of or relating to this Agreement or the breach, termination or validity thereof, except for temporary, preliminary, or permanent injunctive relief or any other form of equitable relief, shall be settled by binding arbitration in Sacramento County, California administered by the American Arbitration Association ("AAA") and conducted by a sole arbitrator in accordance with the AAA's Commercial Arbitration Rules ("Rules"). The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16, to the exclusion of state laws inconsistent therewith or that would produce a different result, and judgment on the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. Except as may be required by law or to the extent necessary in connection with a judicial challenge, or enforcement of an award, neither party nor the arbitrator may disclose the existence, content, record or results of an arbitration. Fourteen (14) calendar days before the hearing, the parties will exchange and provide to the arbitrator (a) a list of witnesses they intend to call (including any experts) with a short description of the anticipated direct testimony of each witness and an estimate of the length thereof, and (b) pre-marked copies of all exhibits they intend to use at the hearing. Depositions for discovery purposes shall not be

permitted. The arbitrator may award only monetary relief and is not empowered to award damages other than compensatory damages.

- i. Confidentiality. Agent and VSP agree that neither shall disclose the terms and conditions of this Agreement to a third party without the prior written approval of the other.
- j. Waiver and Severability. The failure of Agent or VSP, in any one or more instances, to enforce any of the terms of this Agreement shall not be construed as a waiver of future enforcement of that or any other term. The provisions of this Agreement are severable, and if one or more provisions (or subcomponents) should be determined to be judicially unenforceable, in whole or in part, the remaining provision or subcomponents thereof shall nevertheless be binding and enforceable.
- k. Execution. Each person who signs this Agreement represents and warrants that he/she has the authority to do so, both individually and on behalf of the party for whom it is signing.
- l. Notice. Any notice required under this Agreement may be delivered in person or by mail to Agent at its last known address. Any notice to VSP shall be delivered in person or by mail to 3333 Quality Drive, Rancho Cordova, California 95670. Notice shall be deemed delivered upon deposit in the U.S. mail, or if delivered in person, upon actual receipt.
- m. California Knox-Keene Health Care Service Plan Act. If Agent is licensed by the California Insurance Commissioner, Agent shall comply and shall cause its principal persons and employees to comply with all applicable provisions of the California Knox-Keene Health Care Service Plan Act and the rules thereunder. Agent shall promptly notify VSP of the institution of any disciplinary proceedings against Agent or against any of its principal persons or employees relating to any license issued to any such person by the California Insurance Commissioner. Agent shall keep all records, books and papers open to inspection by the Director of the Department of Managed Health Care ("Director") during business hours, and shall not be removed out of state without the Director's prior consent. Agent shall preserve Agent's books and records for a period of not less than five (5) years, the last two of which shall be in an easily-accessible place at Agent's offices.
- n. Headings. The headings in this Agreement are for reference purposes only and shall not be deemed part of this Agreement or to affect its meaning or interpretation.

## **Agent Agreement Between Vision Service Plan and Registering Agent**

### **Exhibit 1**

#### **1. Products**

Products include all Covered California vision insurance products underwritten and approved for sale by VSP through the Covered California vision program. The rates offered for such products shall be the prevailing rates established by VSP as shown on VSP's Covered California portal. VSP reserves the right to change the rates at any time in its sole and absolute discretion.

This agreement does not apply to the sale of individual and group vision insurance products not approved for sale by VSP through the Covered California vision program.

#### **2. Commissions**

VSP shall pay to the Agent commissions on contributions paid in cash to VSP for vision care benefits by any individual who purchases a plan of vision care benefits from VSP ("Individual") through the Covered California site, so long as the Agent continues to be designated as its

Agent of Record. VSP shall pay Agent a commission rate of the following for new sales generated by Agent in accordance with Section 7:

**STANDARD SCHEDULE OF COMMISSION  
RATES**

<u>Annual Premium Paid by Individuals</u>	<u>Commission Paid to Agent</u>
Initial Enrollment	5%
Renewed Enrollments	5%

3. Agent agrees that the Individual shall make all payments due VSP directly to VSP and that Agent shall not collect, hold or receive any funds from Individual or on behalf of VSP.

Broker Commissions

VSP shall pay a separate commission to an applicable Broker of Record pursuant to paragraph 7(e), in accordance with the applicable agreement between VSP and the Broker of Record.

4. **Services**

The Agent shall perform the following services:

- o Market, quote and sell VSP's Products to Individuals
- o Conduct sales presentations concerning VSP's Products to Individuals
- o Submit Individual applications for new sales in accordance with VSP standard processes.

**Exhibit 2**

**Business Associate Agreement**

1. **Definitions**

- a. "Business Associate" shall mean **Registering Agent or Agent**.
- b. "Covered Entity" shall mean **Vision Service Plan ("VSP")**.
- c. "Individual" shall have the same meaning as the term "individual" is used in 45 CFR 160.103, and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- d. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information in 45 CFR part 160 and part 164, subparts A and E.
- e. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 160.103, limited to the information created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity.
- f. "Electronic Protected Health Information" shall have the same meaning as the term "electronic protected health information" as defined in 45 CFR 160.103.
- g. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.103.
- h. "Secretary" shall mean the Secretary of the Department of Health and Human Services or designee.
- i. "Security Rule" shall mean the Security Standards for Protection of Electronic Protected Health Information in 45 CFR part 160 and part 164, subparts A and C.



Terms used but not otherwise defined in this Agreement shall have the same meaning as the meaning ascribed to those terms in the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. § 1320d (“HIPAA”), the Health Information Technology Act of 2009, (“HITECH Act”), as set forth in Sections 13400 through 13424, inclusive, of Public Law 111-5, and any current and future regulations promulgated under either. HIPAA, HITECH Act and any current and future regulations promulgated under either are collectively referred to herein as the “Regulations”.

## 2. **Obligations and Activities of Business Associate**

### **Business Associate agrees:**

- a. Not to use or further disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law.
- b. To limit uses and disclosures of protected health information to the minimum necessary for that use or disclosure.
- c. To use appropriate safeguards to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- d. To assist Covered Entity to mitigate, to the extent practicable, any harmful effect that is known to Business Associate, of a use or disclosure of Protected Health Information by Business Associate, in violation of the requirements of this Agreement.
- e. To immediately report to Covered Entity, any use or disclosure of the Protected Health Information, including Electronic Protected Health Information, not provided for by this Agreement.
- f. To immediately report to Covered Entity any security incident.
- g. To ensure that any Subcontractor that creates, receives, maintains, or transmits Protected Health Information on behalf of Business Associate agrees to the same restrictions and conditions that apply to Business Associate under this Agreement, including compliance with the applicable requirements of the Security Rule.
- h. To provide access to Protected Health Information in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual within 20 calendar days of Covered Entity’s request as necessary to meet the requirements under 45 CFR 164.524.
- i. To make any appropriate amendment(s) to Protected Health Information in a Designated Record Set, pursuant to 45 CFR 164.526, and in the time and manner, as Covered Entity or Individual directs or agrees.
- j. To conduct, where applicable, electronic transactions, for which the Department of Health and Human Services has established standards, on behalf of the Covered Entity pursuant to the requirements in 45 CFR Part 162, and to require that any agent or subcontractor involved in conducting these transactions maintains compliance with these requirements.
- k. To make internal practices, books, and records relating to the use and disclosure of Protected Health Information available to Covered Entity, or at the request of Covered Entity to the Secretary, in the time and manner designated by the Covered Entity or the Secretary, for purposes of determining Covered Entity's compliance with the Privacy Rule.
- l. To document uses and disclosures of Protected Health Information and related information as required of Covered Entity to respond to any request from Individual for an accounting of such disclosures or access report in accordance with 45 CFR 164.528. Nothing in this section shall require Business Associate to maintain information necessary to create an access report of Protected Health Information unless such action is required by amendments to 45 C.F.R. § 164.528.

- m. To provide to Covered Entity or Individual, in time and manner directed by Covered Entity, any and all information sufficient to permit Covered Entity to respond to any request from Individual for an accounting of disclosures and/or an access report pursuant to 45 CFR 164.528. Nothing in this section shall require Business Associate to provide an access report of Protected Health Information unless such action is required by amendments to 45 C.F.R. § 164.528.
- n. To comply with the applicable requirements of the Security Rule, including to maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information.
- o. To the extent that Business Associate is to carry out one or more of Covered Entity's obligations under the Privacy Rule, including but not limited to the provision of a notice of privacy practices on behalf of Covered Entity, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations.
- p. To indemnify, hold harmless and defend VSP, its affiliates, members, covered person, and its or their respective officers, directors, employees, agents and representatives (collectively "Indemnified Parties"), from and against any claims, losses, damages, liabilities or expenses (including, without limitation, reasonable attorneys' fees) resulting from, or related or incidental to use of Vendor's services.

### **3. Permissible Use and Disclosure by Business Associate**

- a. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- b. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information as necessary for its proper management and administration or to carry out its legal responsibilities, so long as any such disclosure is Required By Law or Business Associate has received from the recipient reasonable written assurances that: (1) the information will remain confidential and will be used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the recipient; and (2) the recipient will notify Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been breached.
- c. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information for data aggregation services related to the health care operations of Covered Entity.
- d. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to create de-identified health information in accordance with 45 CFR 164.514(b).

### **4. Obligations of Covered Entity**

#### **Covered Entity shall:**

- a. Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- b. Provide Business Associate with any changes in, or revocation of, permission by Individual, to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

- c. Notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522.

**5. Permissible Requests by Covered Entity**

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

**6. Term and Termination**

- a. Term. This Agreement shall be effective as of the date of execution hereof, and shall terminate when all of the Protected Health Information is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy such Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this section.
- b. Termination for Cause. Upon Covered Entity's actual knowledge of a material breach by Business Associate to the terms of this Agreement, Covered Entity may provide Business Associate with a reasonable opportunity to cure such breach, or terminate this Agreement.
- c. Effect of Termination. (1) Except as provided herein, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information. This provision shall apply to Protected Health Information in the possession of any agents or subcontractors Business Associate. Business Associate shall not retain any copy(ies) of the Protected Health Information. (2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make such return or destruction infeasible. Upon mutual further agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit all further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

**7. Miscellaneous**

- a. Regulatory References. Any reference in this Agreement to a section in the Privacy Rule means the section as then in effect, or as amended, and for which compliance is required.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement, from time to time, as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- c. Survival. The respective rights and obligations of Business Associate under this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.