

# Agent Agreement

## Commercial Group Products



This Commercial Group Agent Agreement (this “Agreement”) is made this day of \_\_\_\_\_, 20\_\_ by and between AvMed, Inc. d/b/a AvMed Health Plans, a Florida not-for-profit corporation (“AvMed”) and \_\_\_\_\_, an individual (“Agent”). AvMed and Agent are sometimes referred to in this Agreement individually as the “Party” and collectively as the “Parties”.

Whereas, AvMed offers commercial group health products to eligible Employer Groups and their eligible dependents residing in Florida (the “Commercial Group Product”); and

Whereas, Agent and AvMed desire to enter into this Agreement;

Now therefore, in consideration of the foregoing and the mutual covenants contained herein and intending to be legally bound hereby, the Parties agree as follows:

### **1. Authorization to Sell the Commercial Group Product:**

AvMed hereby authorizes Agent to solicit sales of the Commercial Group Product from prospective Employer Groups although nothing in this Agreement shall create, or be construed to create, an exclusive authority to represent AvMed or an exclusive right to effect sales of the Commercial Group Product.

### **2. Duties of Agent:**

#### **2.1 Presenting the Commercial Group Product**

Agent shall be responsible for offering the Commercial Group Product for sale in accordance with the terms of this Agreement. All applications for the Commercial Group Product shall be made on the appropriate application forms supplied by AvMed and Agent shall ensure the completeness and accuracy of such applications. Agent shall promptly forward to AvMed all completed applications with the full amount of the initial premiums received with the applications. Agent acknowledges that AvMed reserves the right to reject any application and return any payment in connection with an application which is rejected. Agent further agrees to inform every Employer Group applicant that AvMed will rely upon applicants’ health representations in the underwriting process, and that the subsequent discovery of material facts known to applicants and either not disclosed or misrepresented may result in the rescission of the Commercial Group Product issued by AvMed. Agent will also inform the Employer Group that in no event will the Employer Group applicants have any coverage unless and until their applications are reviewed and approved by AvMed and the Commercial Group Product is issued.

#### **2.2 Records**

Agent shall keep thorough, current and correct records and books of accounts for transactions covered by this Agreement and shall preserve and hold all documents, correspondence and records that come into its possession or under its control relating to the Commercial Group Product for a period not less than seven (7) years. All books of accounts, documents, correspondence and records of the Agent shall belong to the Agent but shall be opened to reasonable inspection by a duly authorized representative of AvMed during normal business hours while this agreement is in effect or within seven (7) years after termination thereof.

#### **2.3 Notification to AvMed**

Agent shall promptly notify AvMed of any material complaint or inquiry that may involve AvMed. Agent agrees to furnish AvMed with all information available to Agent necessary to enable AvMed to comply with its obligation under this Agreement and applicable law, including, but not limited to, licensing information and information regarding AvMed’s and, if applicable, Agent’s employed agents’ status with an Employer Group.

## **AGENT AGREEMENT** **For Commercial Group Products**

### **2.4 Group Premium**

Agent agrees that all Employer Groups enrolled under this Agreement shall be billed directly by AvMed, and not through any intermediary, including the Agent, unless expressly authorized otherwise in writing by AvMed.

### **2.5 Authority**

Agent agrees that this Agreement does not give Agent any power of authority other than as expressly granted herein and no other or greater power shall be implied from the grant or denial of powers specifically mentioned herein.

### **2.6 Service to Employer Group**

Agent shall forward to Employer Group in a timely manner all Commercial Group Products, riders, contracts, quotes, proposals, notices, caveats, disclosures, reports and other information and materials from AvMed that relate to or may affect coverage or services provided or proposed to be provided to Employer Group by AvMed or that AvMed may request be forwarded to Employer Group.

### **2.7 Producer License and Appointment Fees**

Agent agrees to secure and maintain such licenses and appointments by AvMed as are necessary to transact business on behalf of AvMed and as required by Florida law. Agent shall provide AvMed copies of all required licenses. Agent further agrees to immediately notify AvMed of any expiration, termination, suspension or other action by the Florida Department of Financial Services or any other governmental agency affecting said license or appointment. Agent further agrees to notify AvMed in writing immediately upon receiving notice of any misdemeanor or felony charges or any actions including, but not limited to, convictions by any governmental authority for commission of any act involving fraud, dishonesty, breach of trust, theft, misappropriation of money or breach of any fiduciary duty. Florida Department of Financial Services appointment fees shall be paid by AvMed. The Agent's appointment with AvMed will be renewed, if AvMed, in its sole discretion, determines that Agent has met acceptable production standards for the Commercial Group Product. If the Agent's appointment has been terminated by the Florida Department of Financial Services, the reinstatement appointment fee will be paid to AvMed by Agent. No retroactive compensation will be paid for Commercial Group Product where compensation was forfeited due to lack of licensing and appointment.

### **2.8 Maintain Insurance**

Agent shall maintain professional liability insurance reasonably sufficient to cover any professional liability, but no less than \$500,000 per incident/\$1,000,000 aggregate per year. Professional liability that shall be insured under such insurance shall include, but not be limited to, liability that Agent may incur as a result of presenting the Commercial Group Product to Employer Groups or Agent's actions or omissions related in any way to this Agreement or the Commercial Group Product. Upon request, Agent shall provide certificates of insurance to AvMed evidencing such coverage. Agent agrees to make best efforts to provide AvMed with thirty (30) days prior written notice of any modification, termination or cancellation of such coverage, and in any event will provide notice as soon as reasonably practicable.

### **2.9 ERISA Reporting/Disclosure**

All commission and bonus payments, as well as the value of any compensation, to the extent required by law, shall be reported by AvMed to a plan sponsor to allow them to file Form Schedule A pursuant to the Employee Retirement Income Security Act of 1974 (ERISA).

The Agent shall discuss with each Employer Group the amount and method of calculating all compensation received from AvMed in connection with the sale or renewal of Commercial Group Products sold to such group, and the Agent shall take such other actions and make such disclosures as may be required to comply with any and all statutory requirements applicable to the Agent.

## **AGENT AGREEMENT**

### **For Commercial Group Products**

#### **2.10 Limitations on Agent's Authority**

Except as otherwise approved by AvMed in writing, Agent is not authorized to: accept any risks on behalf of AvMed; make any promise or agreement on behalf of AvMed; bind or commit AvMed in any way; incur any expense, indebtedness or liability in the name of AvMed; make, alter, waive or discharge any of the terms, rates, proposals, limitations or conditions of any application or Commercial Group Product issued, or to be issued, by AvMed; receive any monies due or to become due to AvMed, except the initial premiums; deduct compensation from the initial premiums received; waive any forfeiture or extend the time for making payment of any premiums; adjust or settle any claims; enter into any proceeding in a court of law or before a regulatory agency in the name of or on behalf of AvMed including acceptance of legal process on behalf of AvMed, but where Agent is named with AvMed, Agent must retain its own counsel.

#### **3. Payment of Compensation:**

AvMed shall pay Agent compensation at the rates and in accordance with the terms and conditions in this Agreement, and as specifically set forth in the most current, published AvMed Agent and Agency Incentive Program (Program), which is included by reference herein. AvMed may modify or replace its compensation schedule with no less than thirty (30) days prior written notice to Agent. Such modified or replacement Program shall apply to: 1) all new Commercial Group Products which become effective on or after the effective date of such modification or replacement; and 2) upon renewal of any existing Commercial Group Product which occurs on or following the effective date of such modification or replacement.

#### **3.1 Preconditions for Payment of Compensation**

In order to receive compensation for the sale of the Commercial Group Product to an Employer Group, all of the following conditions must be met:

3.1.1 AvMed has on file at its offices: (i) a fully completed and current Internal Revenue Service W-9 form, (ii) a completed Application for Agent Appointment form (iii) a copy of Agent's health insurance license, iv) a current Errors & Omissions Certificate of Insurance; v) an executed Commercial Agent Agreement; and

3.1.2 AvMed has received and posted the premiums related to the compensation due to Agent; and

3.1.3 Agent maintains his/her professional license with the State of Florida and AvMed's appointment with the Florida Department of Financial Services, and

3.1.4 Agent has been designated "Agent of Record" by the Employer Group and Agent's information is accurately noted in the Employer Group's Master Application , and

3.1.5 Agent complies with the terms of this Agreement.

#### **3.2 Following Termination of Agreement**

Upon termination of this Agreement for any reason whatsoever, Agent shall have no right to receive and AvMed shall have no obligation to pay any and all compensation accrued or not otherwise paid to Agent as of the effective date of the termination of this agreement, including, but not limited to, any renewal compensation.

#### **3.3 Agent's Death**

No compensation payable to an Agent or an Agent's firm which is a sole proprietorship shall accrue and be payable on or after the death of the Agent. If Agent's compensation is being paid to an entity other than to Agent or Agent's own sole proprietorship, the current payee entity will have 90 days to notify AvMed of a licensed and appointed AvMed agent who will be taking over as Agent of Record for the group, without forfeiture of compensation.

## **AGENT AGREEMENT**

### **For Commercial Group Products**

#### **3.4 Overpayments/Compensation Paid in Error**

In the event AvMed pays compensation to Agent due to error, whether Agent or AvMed error, including, but not limited to, payment of compensation for premiums that the Employer Group fails to pay to AvMed, overpayments of compensation resulting from a refund of premiums on any Commercial Group Product, or from compensation payments after Agent is no longer an Employer Group's Agent of Record, AvMed may collect such amount thereof directly from Agent by offsetting any future compensation payable to Agent against such amount, or such amount shall be returned in full to AvMed within 10 business days of notification to the Agent and shall constitute indebtedness to AvMed until returned. AvMed shall not pursue compensation overpayments after expiration of the eighteen (18) month period commencing the first day of the month following the month in which the error occurred. Agent shall have one-hundred twenty (120) days to dispute compensation underpayments in writing to AvMed. AvMed will resolve such disputes no later than 60 days from the date reported. Agent shall reimburse AvMed for all expense incurred by AvMed to obtain reimbursement of the overpayment from Agent, including, but not limited to, collection agency and/or legal fees and costs.

#### **3.5 Renewal Compensations**

Renewal compensation shall be payable to Agent by AvMed as long as all of the following conditions have been satisfied:

3.5.1 Agent's Employer Group remains active with AvMed, and

3.5.2 Agent remains designated Agent of Record of Employer Group, and

3.5.3 Agent maintains his/her appointment with AvMed, and

3.5.4 Agent's health care license is in good standing with the Florida Department of Financial Services, and

3.5.5 Agent complies with the terms of this Agreement.

#### **3.6 Agent of Record Changes**

**3.6.1 Agent Leaves Agency.** It is the Agent's responsibility upon leaving an agency to make a written request to AvMed for a change in assignment of payee for any groups for which Agent is the Agent of Record. If Agent does not request a change in payee upon leaving the agency assigned by them as payee, AvMed will designate a new Agent of Record at that agency at its discretion and continue to pay agency on file as payee, subject to new Agent of Record being licensed and appointed by AvMed within 15 days of Agent's written request.

**3.6.2 Sale of Agent's Book of Business.** It is the Agent's responsibility to make a written request to AvMed for a change in payee or Agent of Record for their AvMed book of business due to a Sale or Merger, and to provide AvMed with details specifying how the sale or merger affects agents of records and payees for the book of business.

**3.6.3 Agent of Record Changes by Employer Group.** It is the new agent's responsibility to provide AvMed with an Agent of Record letter on the Employer Group letterhead and signed by a corporate officer or bona fide representative of the Employer Group within 90 days of the date on the letter. The effective date of the change in Agent of Record for compensation payments will be the first of the month following receipt of the letter by AvMed unless another future date is designated on the letter, subject to Agent meeting requirements stated in this agreement under sections 3.1 and 3.5. If the Employer Group was written as new business by AvMed less than six months previously, the change in agent of record and compensation payments will not be effective until the 1st day of the seventh month of coverage. No request for retroactive effective dates will be approved by AvMed.

**AGENT AGREEMENT**  
**For Commercial Group Products**

**3.7 Non-assignment of Compensation**

No compensation may be assigned or transferred, either in part or in whole, without prior written consent of AvMed. This includes absolute assignments and assignments as collateral security. Any indebtedness of the Agent to AvMed shall constitute a first lien on any compensation due to the Agent by AvMed.

**4. Nondisclosure / Confidentiality:**

**4.1 Confidential Information.** In order for Agent to perform their respective obligations under this Agreement, it may be necessary or desirable for AvMed to disclose Confidential Information (hereinafter defined) to Agent. Agent agrees that any such Confidential Information disclosed to it or to its employees shall be used only in connection with the legitimate purposes of this Agreement, shall be disclosed only to those who have a need to know it, and shall be safeguarded with the same care normally afforded such Confidential Information in the possession, custody or control of the Agent, provided, however, that such care shall be no less than reasonable care necessary to safeguard the Confidential Information.

“Confidential Information” shall mean the proprietary, trade secret or business information of AvMed that relates to AvMed’s past, present or future research or development activities, business operations or financial condition.

The foregoing shall not apply when, after, and to the extent the Confidential Information disclosed: (i) becomes available to the public through no fault of the Agent; (ii) is subsequently received by Agent in good faith from a third party without breaching any confidential obligation between the third party and AvMed; or (iii) is required by law, administrative or judicial order to be disclosed.

**4.2 HIPAA and Member Information.** Agent agrees to maintain the confidentiality of all Member Information received from AvMed, whether received from an enrollee or a parent of an enrollee (if under the age of 18). “Member Information” shall include: (i) individually identifiable health information, deemed protected health information (“PHI”) under applicable regulations promulgated under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, as amended from time to time and particularly Title II, Subtitle F (Administrative Simplification) thereof (42 U.S.C. §§ 1171 et. seq.), such as information relating to treatment, medical condition or payment for health care services of the member; and (ii) non-public personal information (“NPPI”) under the Gramm Leach Bliley Act and applicable state law and/or regulations, as amended from time to time, such as, but not limited to, Member identification numbers, addresses, or phone numbers. Agent agrees to obtain such necessary authorizations and to enter into all necessary agreements in connection with the use or disclosure of Member Information. Agent agrees not to further disclose Member Information without the Member’s authorization. Agent further agrees not to make any changes to any application enrollment forms, statements of health or any other forms or documents provided by individuals or their eligible dependents in connection with enrollment in AvMed health benefits products.

**4.3 Breach.** In the event of a breach or an alleged breach of this Section 4, the Parties hereto agree and acknowledge that the remedy of law for any breach or threatened breach shall be inadequate and AvMed shall be entitled to an injunction restraining Agent from committing or continuing to commit any such breach, without being required to post bond or other security and without having to prove the inadequacy of the available remedies at law. Nothing contained herein shall be construed as prohibiting AvMed from pursuing any other remedies for such breach or alleged breach.

**AGENT AGREEMENT**  
**For Commercial Group Products**

**5. Regulatory Compliance.** AvMed and Agent each agree to comply with all statutes, regulations and requirements now or hereafter in force and effect of all municipal, county, state and federal authorities, to the extent that they directly or indirectly bear upon the subject matter of this Agreement. Such statutes, regulations and requirements shall include, without limitation, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the regulations promulgated thereunder, each as amended from time to time, and the applicable requirements under any state or federal fair employment practices or similar laws declaring discrimination in employment based on age, race, color, creed, religion, sex, sexual orientation or national origin as illegal and, if applicable, Title VII of the Civil Rights Act of 1964, or any applicable rules or regulations promulgated pursuant to any such laws herein described.

Further, the Parties acknowledge and agree that any provision that is required to be in this Agreement by such statutes, regulations, and requirements, but is not expressly set forth herein, whether enacted prior to or after the execution of this Agreement, shall be incorporated herein by this reference upon written notice by either party and shall bind both Parties. At the request of either Party, both Parties shall execute an amendment to this Agreement to expressly include any such provision.

**6. Intellectual Property.** Any applications, printed materials and any other sales materials provided to aid Agent in processing information for applications for insurance are the exclusive property of AvMed and are to be used by Agent only in the promotion and presentation on behalf of and for the exclusive benefit of AvMed. At the request of AvMed all materials provided to Agent shall be returned upon the termination or expiration of this Agreement. Agent shall not make use of any advertisement or any other material in which the name or logo of AvMed is used without obtaining AvMed's express consent in writing.

**7. Indemnification.** Both Parties hereby agree to indemnify, defend and hold harmless, each other and its respective officers, directors, and employees, against any claim, loss, cost, damage, expense or other liability, including, without limitation, all costs and attorney's fees, arising out of, or in connection with, the act or omissions of either Party or its respective officers, directors, employees, agents, servants or independent contractors, related to this Agreement, including but not limited to any such acts or omissions found to violate state or federal law or regulation.

**8. Audit.** AvMed may audit Agent's records relating to Agent's performance under this Agreement. AvMed shall provide Agent with fourteen (14) days advance written notice of its intent to audit Agent. Any audit will be conducted during regular business hours of Agent by AvMed or by an auditor appointed by AvMed and the cost of the audit shall be borne by AvMed unless AvMed determines that Agent has materially breached the terms and conditions of this Agreement, in which case Agent shall pay all of AvMed's cost of the audit within thirty (30) days of AvMed's request for such payment.

**9. No Solicitation.** Agent agrees that so long as this Agreement is in effect and for a period of two (2) years after the date of termination of this Agreement, Agent shall not, either directly or indirectly, in any capacity whatsoever, solicit or attempt to solicit any person employed by AvMed, any of its subsidiaries, its parent corporation or a corporation with which AvMed, directly or indirectly, shares a common parent ("Employee"), to leave such employment. For purposes of this Agreement, indirect solicitation shall not include advertising in professional journals and newspapers, provided Agent does not request or advise an Employee to make application for such advertised positions.

**10. Term and Termination.**

**10.1 Term.** This Agreement shall have an initial term of one (1) year. Thereafter, this Agreement shall automatically renew every twelve (12) months for successive one year periods unless sooner terminated.

**AGENT AGREEMENT**  
**For Commercial Group Products**

**10.2 Without Cause Termination.** This Agreement may be terminated after the effective date of this Agreement upon thirty (30) days prior written notice by one Party to the other Party (unless additional time for notice is required by applicable law).

**10.3 Mutual Termination.** This Agreement may be terminated at anytime upon the mutual written consent of all parties.

**10.4 Termination for Actions Detrimental to AvMed.** AvMed may terminate this Agreement immediately upon written notice to Agent, if AvMed, in its sole discretion, determines that the Agent has acted in a manner that is materially detrimental to AvMed.

**10.5 Termination for Cause and Other.** This Agreement may be terminated by AvMed immediately:

10.5.1 If based upon AvMed's investigation of Agent's background and qualifications, AvMed does not appoint Agent to sell its Commercial Group Products; or

10.5.2 Upon the Agent's death or total disability (physical or mental) or adjudication of incompetence if Agent is an individual; or

10.5.3 Upon the Agent's dissolution if Agent is a legal entity (e.g., corporation or partnership); or

10.5.4 If Agent does any of the following: (i) violates state insurance laws or regulations; (ii) knowingly misrepresents the provisions, benefits or premiums of any Commercial Group Product; (iii) commingles, withholds or misappropriates funds or other property of AvMed; (iv) commits a fraudulent act or other malfeasance in the performance of duties under this Agreement; or (v) breaches any material provision of this Agreement.

## **11. Miscellaneous**

**11.1 Notice.** All notices, requests, demands and other communications required or permitted hereunder shall be in writing and shall be deemed sufficiently given upon actual receipt if delivered in person or upon date of mailing if delivered by registered or certified mail, postage prepaid, return receipt requested, addressed to the last known address of the Party to be notified or such other address as such Party may hereafter specify in writing for the purpose of providing notice.

For legal notice to AvMed:

Stephen J. DeMontmollin, Sr. VP and General Counsel  
AvMed, Inc. d/b/a AvMed Health Plans  
4300 NW 89th Ave.  
Gainesville, FL 32606

**11.2 Entire Agreement: Modification.** This Agreement constitutes the entire understanding of the parties hereto and supersedes any and all written or oral agreements, representations, or understandings. No modifications, discharges, amendments or alterations shall be effective unless evidenced by an instrument in writing signed by Agent and AvMed, except as such changes may be required by and become effective according to law.

**AGENT AGREEMENT**  
**For Commercial Group Products**

11.3 Relationship of the Parties. AvMed and Agent are separate and independent entities. The relationship between AvMed and Agent is purely contractual and neither AvMed nor Agent, nor the employees, servants, agents or representatives of either shall be considered the employee, servant, agent or representative of the other. As independent contracting Parties, AvMed and Agent shall maintain separate and independent management, and each has full, unrestricted authority and responsibility regarding its organization and structure.

11.4 No Third Party Beneficiaries. The Parties agree that this Agreement shall be interpreted to be between Agent and AvMed only. No third person or entity is intended to be, or is, a beneficiary of or under this Agreement. Nothing in this Agreement shall be construed to create any liability on the part of AvMed or Agent or their respective directors, officers, shareholders, employees or agents, to any third parties for any act or failure to act of any party hereto.

11.5 Assignment. This Agreement shall not be assigned or transferred by Agent without prior written consent of AvMed in its sole discretion.

11.6 Non-Waiver of Provisions. Any failure by AvMed to insist upon performance of any provision of this Agreement shall not be construed as a waiver of such provision or of the right of AvMed to require performance of and to enforce all of the terms and provisions of this Agreement.

11.7 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity of any remaining provisions, and all remaining provisions shall continue in full force and effect and shall in no way be affected, impaired or invalidated.

11.8 Applicable Law. This Agreement shall be construed under and in accordance with the laws of the State of Florida.

11.9 Arbitration. Any controversy or claim arising out of or relating to the interpretation or application of this Agreement, or breach thereof, that cannot be resolved through negotiation by the parties may be submitted to arbitration in accordance with the rules of the American Health Lawyers Association Alternative Resolution Dispute Service or in accordance with any other rules agreed upon by the parties. Written request for arbitration shall be made within 12 months following the date such claim or controversy cannot be resolved through negotiations. Judgment upon the decision issued by the arbitrator may be entered in any court having jurisdiction thereof. The expenses of the arbitrators will be shared equally by both parties. AvMed and Agent waive their right to seek remedies in court, including their right to trial by jury, except for enforcement of the decision of the arbitrator(s).

11.10 Punitive and Exemplary Damages. AvMed and Agent agree that the arbitrator(s) shall have no authority to award punitive and/or exemplary damages and waive their right to such damages.

**AGENT AGREEMENT  
For Commercial Group Products**

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the first day set forth above.

**AvMed, Inc. d/b/a AvMed Health Plans**

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

James M. Repp  
(Print name)

Vice President of Sales  
(Title)

(Date) \_\_\_\_\_

**Commercial Group Agent**

\_\_\_\_\_  
(Print name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(DFS License Number)

\_\_\_\_\_  
(Agency Name)

\_\_\_\_\_  
(Address of Record for Notice under 11.1)

\_\_\_\_\_  
(City, State, Zip Code for Notice under 11.1)

\_\_\_\_\_  
(Date)

**Rest of page intentionally left blank.**

**AGENT AGREEMENT  
For Commercial Group Products**

**Information for Agents and Brokers  
Regarding the HIPAA Business Associate Addendum**

You may be aware that the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) requires health plans such as AvMed to enter into Business Associate Agreements with any service providers or vendors with whom protected health information is shared.

Should you desire to assist your groups and members with any possible issues regarding their account or claims information, it will be necessary that you enter into a Business Associate Agreement with AvMed before we can release to you any protected health information. For example, if you call our Member Services Department and request information specific to a member or claim, we can not release the information until you have signed the Business Associate Addendum or the member completes a release form.

If you should have any questions regarding this Addendum, please do not hesitate to contact our Privacy Office at (800) 346-0231, ext. 40782.

**AGENT AGREEMENT**  
**For Commercial Group Products**

**Business Associate Addendum**

This HIPAA Business Associate Addendum (“Addendum”) supplements and is made a part of the agent agreement (“Agreement”) by and between AvMed, Inc., d/b/a AvMed Health Plans or AvMed (“Covered Entity”) and \_\_\_\_\_ (“Business Associate”), and is effective as of \_\_\_\_\_ (the Addendum Effective Date).

**RECITALS**

A. AvMed wishes to disclose certain information to Business Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”) (defined below).

B. AvMed and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and regulations promulgated there under by the U.S. department of Health and Human Services (the “HIPAA regulations”) and other applicable laws.

C. As part of the HIPAA regulations, the Privacy Rule (defined below) requires Covered Entity to enter into a contract containing specific requirements with Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.502 (e) and 164.504(e) of the Code of Federal Regulations (“CFR”) and contained in this Addendum.

**1. Definitions**

a. **“Business Associate”** shall have the meaning given to such term under the privacy Rule, including, but not limited to, 45 CFR Section 160.103.

b. **“Covered Entity”** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 160.103.

c. **“Data Aggregation”** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR 164.501.

d. **“Designated Record Set”** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.

e. **“Health Care Operations”** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.

f. **“Privacy Rule”** shall mean the HIPAA Regulation that is codified at 45 CFR Part 160 and 164, Subparts A and E.

g. **“Protected Health Information”** or **“PHI”** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental 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 (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the privacy Rule, including, but not limited to, 45 CFR Section 160.103.

h. **“Security Rule”** shall mean the HIPAA Regulation that is codified at 45 CFR Part 160 and Part 164, Subtitle A and Subchapter C.

**AGENT AGREEMENT**  
**For Commercial Group Products**

**2. Protected Health Information to be Obtained or Disclosed**

The following details the Protected Health Information that may be transmitted by AvMed to the Business Associate:

- Enrollment/Eligibility Information
- Benefit Information
- Claims Information
- Authorization Information

The Protected Health Information shall be used for the following purposes:

Functions and activities on AvMed's behalf or for the proper management and administration of agent/agency operations. Agent is permitted to use and disclose Protected Health Information it creates or receives for or from Company to perform the following functions: Quoting, Enrollment, Customer Service, Renewal and related functions, or as otherwise specifically set forth in this Agreement.

The following Protected Health Information may be obtained by the Business Associate directly from AvMed members:

- Enrollment/Eligibility Information
- Benefit Plan Information
- Claims Information
- Prescription Information
- Authorization Information

Of the Protected Health Information obtained by the Business Associate, the following is contained in AvMed's Designated Record Set:

- Enrollment/Eligibility Information
- Claims Information
- Health Plan Medically Related Authorization Information – Denied Authorizations Only
- Pharmacy Claims Information
- Participation in Care Management Programs

**3. Obligations of Business Associate**

a. **Permitted Uses:** Business Associate shall not use Protected Health Information except for the purpose of performing Business Associate's obligations under the Agreement and as permitted under the Agreement and Addendum. Further, Business Associate shall not use Protected Health Information in any manner that would constitute a violation of the Privacy Rule if so used by AvMed, except that Business Associate may use Protected Health Information (i) for the proper management and administration of Business Associate, (ii) to carry out the legal responsibilities of Business Associate, or (iii) for Data Aggregation purposes for the Health Care Operations of AvMed.

b. **Permitted Disclosures:** Business Associate shall not disclose Protected Health Information in any manner that would constitute a violation of the Privacy Rule if disclosed by AvMed, except that Business Associate may disclose Protected Health Information (i) in a manner permitted pursuant to the Agreement and Addendum, (ii) for the proper management and administration of Business Associate; (iii) as required by law, or (iv) for Data Aggregation purposes for the Health Care Operations of AvMed. To the extent that Business Associate discloses Protected Health Information to a third party, Business Associate must obtain, prior to making any such disclosure, (aa) reasonable assurances from such third party that such Protected Health Information will be held confidential as provided pursuant to this Addendum and only disclosed as required

## AGENT AGREEMENT For Commercial Group Products

by law or for the purposes for which it was disclosed to such third party, and (bb) an agreement from such third party to immediately notify Business Associate of any breaches of confidentiality of the Protected Health Information, to the extent it has obtained knowledge of such breach.

c. **Security Safeguards:** Business Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Health Information otherwise than as permitted by this Agreement. Business Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities.

d. **Reporting of Improper Use or Disclosure:** Business Associate shall report to AvMed in writing of any use or disclosure of Protected Health Information otherwise than as provided for by the Agreement and this Addendum within five (5) days of becoming aware of such use or disclosure.

e. **Business Associate's Agents:** Business Associate shall ensure that any agents, including subcontractors, to whom it provides Protected Health Information agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such PHI. Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation.

f. **Access to Protected Health Information:** Business Associate shall make Protected Health Information maintained by Business Associate or its agents or subcontractors in Designated Record Sets available to AvMed for inspection and copying within ten (10) days of a request by AvMed to enable AvMed to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR Section 164.524.

g. **Amendment of PHI:** Within ten (10) days of receipt of a request from AvMed for an amendment of Protected Health Information or a record about an individual contained in a Designated Record Set, Business Associate or its agents or subcontractors shall make such Protected Health Information available to AvMed for amendment and incorporate any such amendment to enable AvMed to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR Section 164.526. If any individual requests an amendment of Protected Health Information directly from Business Associate or its agents or subcontractors, Business Associate must notify AvMed in writing within five (5) days of the request. Any denial of amendment of Protected Health Information maintained by Business Associate or its agents or subcontractors shall be the responsibility of AvMed.

h. **Accounting Rights:** Within ten (10) days of notice by AvMed of a request for an accounting of disclosures of Protected Health Information, Business Associate and its agents or subcontractors shall make available to AvMed the information required to provide an accounting of disclosures to enable AvMed to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR Section 164.528. As set forth in, and as limited by, 45 CFR Section 164.528, Business Associate shall not provide an accounting to AvMed of disclosures: (i) to carry out treatment, payment or health care operations, as set forth in 45 CFR Section 164.502; (ii) to individuals of Protected Health Information about them as set forth in 45 CFR 164.502; (iii) to persons involved in the individual's care or other notification purposes as set forth in 45 CFR Section 164.510; (iv) for national security or intelligence purposes as set forth in 45 CFR Section 164.512(k)(2); or (v) to correctional institutions or law enforcement officials as set forth in 45 CFR section 164.512(k)(5). Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years prior to the request. At a minimum, such information shall include: (aa) the date of disclosure; (bb) the name of the entity or person who received Protected Health Information and, if known, the address of the entity or person; (cc) a brief description of Protected Health Information disclosed; and (dd) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's

## AGENT AGREEMENT For Commercial Group Products

authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall within five (5) days of a request forward it to AvMed in writing. It shall be AvMed's responsibility to prepare and deliver any such accounting requested. Business Associate shall not disclose any Protected Health Information except as set forth in Section 2(b) of this Addendum.

i. **Governmental Access to Records:** Business Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Health Information available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining Covered Entity's compliance with the Privacy Rule. Business Associate shall provide to AvMed a copy of any Protected Health Information that Business Associate provides to the Secretary concurrently with providing such Protected Health Information to the Secretary.

j. **Minimum Necessary:** Business Associate (and its agents or subcontractors) shall only request, use and disclose the minimum amount of Protected Health Information necessary to accomplish the purpose of the request, use or disclosure.

k. **Data Ownership:** Business Associate acknowledges that Business Associate has no ownership rights with respect to the Protected Health Information.

l. **Retention of Protected Health Information:** Notwithstanding Section 4(d) of this Addendum, Business Associate and its subcontractors or agents shall retain all Protected Health Information throughout the term of the Agreement and shall continue to maintain the information required under Section 2(h) of this Addendum for a period of six (6) years after termination of the Agreement.

m. **Notification of Breach:** During the term of this agreement, Business Associate shall notify AvMed within twenty-four (24) hours of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

n. **Audits, Inspection and Enforcement:** Within ten (10) days of a written request by AvMed, Business Associate and its agents or subcontractors shall allow AvMed to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Health Information pursuant to this Addendum for the purpose of determining whether Business Associate has complied with this Addendum; provided, however, that (i) Business Associate and AvMed shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) AvMed shall protect the confidentiality of all confidential and proprietary information of Business Associate to which AvMed has access during the course of such inspection; and (iii) AvMed shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate. The fact that AvMed inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate of its responsibility to comply with this Addendum, nor does AvMed's (aa) failure to detect or (bb) detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of AvMed's enforcement rights under this Agreement.

#### 4. Obligations of AvMed:

AvMed shall be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy, and security of PHI transmitted to Business Associate pursuant to this Agreement, in accordance with the standards and requirements of the Privacy Rule, until Business Associate receives such PHI.

## **AGENT AGREEMENT**

### **For Commercial Group Products**

#### **5. Termination**

a. **Material Breach:** A breach by Business Associate of any material provision of this Addendum, as determined by AvMed, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement by AvMed pursuant to the Termination Section of the Agreement.

b. **Reasonable Steps to Cure Breach:** If AvMed knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of the Business Associate's obligations under the provisions of this Addendum or another arrangement and does not terminate this Agreement pursuant to Section 4(a), then AvMed shall take reasonable steps to cure such breach or end such violation, as applicable. If AvMed's efforts to cure such breach or end such violation are unsuccessful, AvMed shall either (i) terminate this Agreement, if feasible or (ii) if termination of this Agreement is not feasible, AvMed shall report Business Associate's breach or violation to the Secretary of the Department of Health and Human Services.

c. **Judicial or Administrative Proceedings:** Either party may terminate this Agreement, effective immediately, if (i) the other party is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the other party has violated any standard or requirement of HIPAA, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

d. **Effect of Termination:** Upon termination of this Agreement for any reason, Business Associate shall return or destroy all Protected Health Information that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Health Information. If return or destruction is not feasible, Business Associate shall continue to extend the protections of Sections 2(a), 2(b), 2(c) and 2(e) of this Addendum to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. If Business Associate elects to destroy the PHI, Business Associate shall certify in writing to AvMed that such PHI has been destroyed.

#### **6. Disclaimer**

AvMed makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA or the HIPAA Regulations will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

#### **7. Certification**

To the extent that AvMed determines that such examination is necessary to comply with AvMed's legal obligations pursuant to HIPAA relating to certification of its security practices, AvMed or its authorized agents or contractors, may, at AvMed's expense, examine Business Associate's facilities, system, procedures and records as may be necessary for such agents or contractors to certify to AvMed the extent to which Business Associate's security safeguards comply with HIPAA, the HIPAA Regulations or this Addendum.

#### **8. Amendment**

**Amendment to Comply with Law:** The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the Privacy Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that AvMed must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all Protected Health Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the Privacy Rule or other applicable laws. AvMed may terminate this Agreement upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter

**AGENT AGREEMENT  
For Commercial Group Products**

into negotiations to amend this Agreement when requested by AvMed pursuant to this Section or (ii) Business Associate does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of PHI that AvMed, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the Privacy Rule.

**9. No Third-Party Beneficiaries**

Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than AvMed, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

**10. Effect on Agreement**

Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Agreement shall remain in force and effect.

**11. Interpretation**

The provision of this Addendum shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provision in this Addendum. This Addendum and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA and the Privacy Rule. **The** parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the Privacy Rule.

IN WITNESS WHEREOF, the parties hereto have duly executed this Addendum as of the Addendum Effective Date.

**AVMED, INC.**

**BUSINESS ASSOCIATE**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print name: James M. Repp

Print name: \_\_\_\_\_

Title: Vice President of Sales

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_