

Producer's Agreement

This **PRODUCER'S AGREEMENT** (this "Agreement") is entered into effective as of _____ (the "Effective Date") by and between the following parties:

- 1) _____ [Insert Producer's Name] ("Producer," "You," "Your") and
- 2) **GROUP INSURANCE TRUST OF THE CALIFORNIA SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS** ("Trust," "Us," "We," "Our").

The parties choose to enter into this Agreement to further their business interests. As such, the parties agree to uphold the promises, commitments and conditions set forth below.

PRODUCER'S COMMITMENTS

By entering into this Agreement, You agree to perform and fulfill the following services and meet the following requirements.

1. **Trust Plans.** By entering into this Agreement, You are authorized – on a non-exclusive basis – to solicit and submit applications for health coverage under Plans adopted by the Trust (each, a "Plan" and collectively, the "Plans") from employers who are members or who are eligible to become members of the California Society of Certified Public Accountants (the "Society").

You acknowledge that You and any solicitors You employ are knowledgeable about, and agree to maintain a current knowledge of, the following:

- The Trust;
- The Plans;
- The terms of this Agreement;
- The California Insurance Code, as amended ("CIC"), and the rules and regulations related to it.

You agree to comply, and require Your solicitors to comply, with the applicable rules, practices and procedures of the Trust communicated to you with respect to the Trust's Plans for which You and Your solicitors will be soliciting applications.

2. **Licenses.** You represent and warrant that You are licensed by the California Department of Insurance as an insurance agent specifically to transact Life and Disability insurance. You agree to notify Us promptly if the California Department of Insurance institutes any disciplinary proceedings against Your license or against any of Your solicitors relating to their licenses.
3. **Independent Contractor Relationship.** You acknowledge that, in soliciting applications for and servicing the Plans, You are an independent contractor. No employer-employee relationship, employee rights or employee benefits are created by or included in this Agreement.
4. **Law.** You agree to comply, and cause Your solicitors to comply, with all applicable provisions of the CIC. You agree to file the reports required by law and pay any taxes or fees that may be charged on commissions paid to You by Us.

5. **Equal Sales Opportunity.** You agree not to discriminate against the Trust when soliciting or offering membership in the Society or Plans or coverage of a similar nature. You will use Your commercially practicable efforts to solicit and submit applications for the Trust's Plans from qualified clients whenever possible.
6. **Services.** You agree that You or Your solicitors will perform the following services, as appropriate, when a client meets Our underwriting guidelines.
 - a. Contact the client and fully and fairly explain all applicable Plans. If the client is not a member of the Society, You shall provide membership materials pertaining to Society membership.
 - b. If the client is interested, You will have the client complete a Plan application and will explain to the client that submitting an application does not bind the Trust or the Plans and that only the Trust may approve the application and issue a health service contract.
 - c. Provide the client with the appropriate disclosure (Summary of Benefits or Evidence of Coverage) and rate proposal, making it clear that only the Trust can approve applications, issue health service contracts, or negotiate changes in rates, terms or conditions of coverage.
 - d. Make no commitments on Our behalf that have not been approved by Us in writing.
 - e. Direct Trust-approved clients to send all premiums – according to Our billing statement procedure – to the mailing address specified by Us.
 - f. Reasonably assist Us in resolving any problems that arise with the client when We request Your assistance.
7. **The Trust's Authority.** You acknowledge and agree, and agree to cause Your solicitors to acknowledge, that only We have the authority to:
 - Approve Plan applications and issue contracts for coverage under the Plans;
 - Change the premiums, conditions or terms of any application, Plan health service contract or *any* document issued by the Trust;
 - Waive or change the terms or conditions regarding application, eligibility, enrollment, coverage or benefits; and
 - Accept applicants. (The Trust reserves the right to reject any application submitted.)

You and Your solicitors do not have the authority to make any statements about the nature or scope of the Trust's application or eligibility requirements – or about health service contract coverage or benefits under the Plans – except through the use of written materials prepared and furnished by Us for that purpose. You and Your solicitors may not act in any way or make any statement to lead an applicant to believe that You have the authority to take these actions. Neither may You or Your solicitors say or imply that You have the authority to accept any applicant.

8. **Solicitors.** You agree to complete and submit to Us a "Solicitor Notification" for each person who is employed by or has a contract with You to solicit applications on Your behalf. The "Solicitor Notification" will not take effect until it has been received and approved by Us and returned to You. We may reject any such solicitor whom We believe does not have a reputation for honesty and integrity in the community. You acknowledge Our right to reject any "Solicitor Notification" and the right to terminate any such solicitor. You agree to be solely responsible for

Your solicitors (including but not limited to those persons who are employed by or have a contract with You to solicit applications on Your behalf) under this Agreement and for their compensation, training, supplies and correspondence. You agree to ensure Your solicitors' adherence to all the applicable terms of this Agreement, including – but not limited to – the requirements regarding Errors and Omissions liability insurance coverage, licensure, soliciting and advertising. You will verify that all Your solicitors are licensed with all applicable State and governmental agencies to the extent required by law and will, if requested, provide Us such proof of licensing and compliance with the law. You will not allow any solicitor to solicit applications unless You and the solicitor are in compliance with all applicable licensing and regulatory requirements.

9. Premium Checks. You agree that You and Your solicitors are prohibited from receiving funds on Our behalf, except for the first premium check in the form of an Employer's check made out to the Trust; said checks shall be promptly forwarded by You to the Trust or its authorized General Agent, or authorized Administrator, as directed by Us.

10. Books and Records. You agree to keep and maintain Your books of account and other records on a current basis, including – but not limited to – records of all transactions regarding applications for coverage under the Plans applicable to this agreement. You agree to keep a current list of the names and addresses of Your principals, partners and investors, as well as all Your employees, staff or other persons who themselves solicit or otherwise assist You in soliciting the Plans. You agree to preserve these books of account and other records, including all applications, for five (5) years, keeping the most recent two (2) years' books of account and records in an easily accessible place at Your offices. After two (2) years, these books of account and other records may be warehoused, stored or microfilmed as long as they are available to the California Department of Insurance or the Trust within not more than five (5) days after they are requested. You acknowledge that these books of account and other records must be available in California to the California Department of Insurance.

11. Advertising and Marketing Materials. Unless You have Our prior written consent in each instance, You acknowledge and agree that You and Your solicitors may not use *any* advertisement or marketing materials that contain the name, logo or service marks of the Trust or the Society or any variation of the aforementioned.

You agree that You and Your solicitors may not state or imply that You or they are the Trust or the Society. You agree to comply with all Our rules and guidelines regarding advertising and written materials. You acknowledge that Our printed materials – as well as any other tangible forms of Our advertising and marketing materials – belong to Us, and You agree to return them to Us immediately upon demand.

12. Errors and Omissions (E&O) Liability Insurance. While this Agreement is in effect, You agree to maintain E&O liability insurance, with a liability insurance carrier admitted in California, of at least \$1,000,000 specific and \$1,000,000 aggregate coverage. This insurance must specifically cover Your activities and the activities of Your solicitors under this Agreement. You agree to submit proof of Your E&O liability insurance coverage to the Trust each year. You agree to make all reasonable efforts, consistent with the advice of Your counsel and the requirements of Your E&O liability insurance carrier, to coordinate the defense of all claims in which We are named as a defendant or could possibly be named.

OUR COMMITMENTS

13. Commissions and Termination of Payment of Commissions. Subject to this Agreement, We will pay you commissions on the Plans and commission rate(s) set forth in Schedule A “Schedule of Commissions”.

Schedule A:

SCHEDULE OF COMMISSIONS

Coverage:	Groups 2-50 employees	Groups 51-99 employees	Groups 100+ employees
	First year and renewal years	First year and renewal years	First year and renewal years
Medical	7%	5%	____%
Dental	10%	10%	____%
Vision	10%	10%	10%
LTD	10%	10%	10%
Term Life	10%	10%	10%

- a. Commissions shall be paid on net premium charges actually received by the Trust on applications issued by the Trust that are produced by You. Please note: You are not entitled to reimbursement for Your expenses.
- b. Trust may modify or replace its commission schedule on sixty (60) days prior written notice to You, and such modified or replacement schedule shall apply to all other policies effective following the effective date of such modification or replacement. Your enrollment of a group on or after such effective date shall constitute your acceptance of such revised “Schedule of Commissions”.
- c. Trust may discontinue or modify the payment of all Commissions should the law require. Any such discontinuance or modification of the payment of Commissions shall be effective as required by the applicable law. Trust shall provide notice of such discontinuance as soon as practicable.
- d. The size of a group is determined by the total number of eligible employees as of the first effective date of coverage.
- e. You acknowledge that We have the right to offset any commissions to which You are entitled by the amount of any funds under Your control, which belong to Us, or by the amount of any other debt(s) You owe Us. You grant to Us a lien on all commissions due under this Agreement to secure all funds under Your control, which belong to Us, or to secure any other debt(s) You owe Us.

- f. You acknowledge and agree that Our payment of commissions to You will terminate immediately if any one of the following events occurs:
 - i. A client's Plan contract is terminated or We receive a request for a new producer (see below).
 - ii. Your license expires, lapses or is terminated (except as provided below) or the California Department of Insurance takes any disciplinary action against You or Your license, in which case this Agreement will terminate immediately.
 - iii. You commit any act of fraud, dishonesty or moral turpitude, or breach any fiduciary duty, or do anything that is or would have been a material breach of this Agreement, in which case this Agreement will terminate immediately.

14. Rights Regarding the Health Service Contracts. You agree that We retain all rights and obligations contained within the Trust's Plan contracts issued to Your clients, and that You and Your solicitors will take no action that interferes with or limits those rights and obligations.

POLICIES & PROCEDURES

15. Requests for a New Producer. Plan participants have the right to transfer from one producer to another at any time. They may change producers by sending Us a written request using Our "Broker of Record Change Form." Upon receiving the written request, We will notify the Plan holder's current producer. We will honor the Plan holder's written request on the first day of the month occurring thirty (30) days after We receive the request, unless notified in writing by the contract holder to disregard the request. The new producer will be the Plan contract holder's designated producer of record. Notwithstanding the foregoing, Producer may not accept a Broker of Record letter for any firm currently insured through the Trust as a result of a direct sale by the Trust. The Trust may not sell directly to a firm sold by a Producer.

16. Assigning Plan Contracts. You may "sell" or assign Your "book" of Trust Plans to another authorized Trust producer, subject to Our prior written consent (which will not be unreasonably withheld), by notifying Us in writing of the date of the sale or assignment. We will pay the new producer the commissions We had paid You on the Plan contracts being sold or assigned, subject to the requirements of Paragraph 13.

If You sell or assign a Plan to another authorized Trust producer, the new producer will be the Plan holder's producer of record.

Except as set forth in this paragraph, *You may not sell or assign* this Agreement, Plan contracts or Your commissions.

17. Retirement. If You retire and let Your license lapse, notify Us in writing of the date of Your retirement. If You retire but maintain Your license, maintain the required E&O liability insurance and otherwise meet the requirements of paragraph 13, we will continue to pay You the full commission for those Plans for which You continue to be the designated producer of record.

18. Survivorship. If You die and Your “book” of Plan contracts passes to a beneficiary, Your beneficiary must notify Us in writing within thirty (30) days of the beneficiary obtaining ownership. If Your beneficiary is an authorized Trust producer, We will pay that producer as if You had assigned Your “book” of Plan contracts to him/her (see above).

19. Confidentiality and Privacy. (a) Trust and Producer acknowledge that in performance of this Agreement, each party has and will continue to disclose to the other, proprietary and confidential information (“Confidential Information”), including, but not limited to, client and broker lists. The parties agree that each shall: (i) keep such Confidential Information of the other party in strict confidence; (ii) not disclose Confidential Information of the other party to any third parties or to any of its employees not having a legitimate need to know such information; and (iii) not use Confidential Information of the other party for any purpose not directly related to and necessary for the performance of its obligations under this Agreement, unless required to do so by a court of competent jurisdiction or a regulatory body having authority to require such disclosure. The term “Confidential Information,” as used herein, does not include information which: (iv) becomes generally available to the public other than as a result of a disclosure by a party hereto, its representatives, or its agents; (v) was available to the receiving party on a non-confidential basis prior to its disclosure hereunder by a party or its agents; (vi) becomes available on a non-confidential basis from a third party source provided that such third party source is not bound by a confidentiality agreement with the other party hereto; or (vii) is independently developed by the receiving party without the use of, or reference to, the disclosing party’s Confidential Information. The parties agree that in the event of a breach or threatened breach of this section, the non-breaching party shall be entitled to injunctive and/or other preliminary or equitable relief, in addition to any other remedies as provided for in this Agreement or available by applicable law.

(b) In the event that Producer obtains access to “protected health information” (as defined in 45 C.F.R Parts 160-164, “PHI”) concerning individuals insured under the Plans or members of the Society, Producer shall use PHI only as necessary (i) for the proper management and administration of Producer or (ii) to carry out its legal responsibilities. Producer may not disclose PHI for any purpose other than as required by law. Producer shall use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by this Agreement. Producer shall report to the Trust any unauthorized use or disclosure of PHI by Producer or its workforce or any of its agents/producers or subcontractors, of which it becomes aware. Producer shall afford the Society’s members and insureds under the Plans the right to access PHI in accordance with 45 C.F.R.164.524 and the right to amend PHI in accordance with 45 C.F.R. 164.526. Producer shall at all times comply with the federal Health Insurance Portability and Accountability Act (“HIPAA”) and the privacy and security rules and requirements set forth thereunder.

(c) This paragraph 19 will survive any termination of this Agreement.

20. Indemnification. (a) You agree to indemnify and hold Us harmless from any and all liability, losses, costs, damages or expenses – including reasonable attorneys’ fees – arising out of:

- Any failure by You or any of Your solicitors to comply with this Agreement or the CIC, including any and all rules and regulations related to it;
- Any business dispute between You or Your solicitors or between You and a client or Plan holder or subscriber; or
- Any fraud, malpractice, negligence, misrepresentation, defamation or intentional misconduct caused or alleged to have been caused by You or Your solicitors in Your or their performance of this Agreement.

(b) Trust agrees to indemnify and hold You harmless from any and all liability, losses, costs, damages or expenses – including reasonable attorneys’ fees – arising out of any failure by Us to comply with this Agreement or the CIC, including any and all rules and regulations related to it. (We do not assume any responsibility to defend You against Your actions or omissions.)

This paragraph 20 will survive any termination of this Agreement.

21. Disputes. If any dispute, claim, question, or disagreement should arise out of or relating to this Agreement or a breach of this Agreement, the parties agree to use their best efforts to settle it. They agree first to consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable resolution satisfactory to the parties. If they do not reach such resolution within a period of sixty (60) days, the parties then agree to attempt to settle the dispute by mediation administered by JAMS under its Commercial Mediation Rules. If a resolution is still not reached, the parties agree to settle the unresolved dispute by arbitration administered by JAMS in accordance with its Commercial Arbitration Rules with the judgment upon the award rendered by the arbitrator(s) to be entered in any court having jurisdiction thereof.

The prevailing party in any dispute arising out of this Agreement may recover reasonable attorneys’ fees and court costs in addition to any other relief to which they are entitled.

This paragraph 21 will survive any termination of this Agreement.

22. California Law. This Agreement will be governed by and construed and interpreted in accordance with California law, excepting such State’s choice of law provisions.

INITIATING AND TERMINATING THIS AGREEMENT

23. All parties must enter into this Agreement. This Agreement will be effective only when it is executed by You and by Our authorized officers and continue until terminated as set forth in this Agreement. This Agreement establishes the entire understanding of the parties and replaces and supersedes any and all other written or oral agreements, representations, or understandings between or among any of the parties or their predecessors.

No changes, exceptions, amendments or alterations to this Agreement will be effective unless mutually agreed to in writing by both parties.

24. Either party may terminate this Agreement. Either party may terminate this Agreement without cause at any time with sixty (60) days prior written notice to the other party. Upon termination, You will no longer be authorized to solicit applications for Plans. We will continue to pay You commissions on Your remaining Plans as long as You otherwise meet the requirements of Paragraph 13. All notices may be delivered in person or by mail and will be addressed to You at Your last known address, as shown in Our records, or to Us at Group Insurance Trust of the California Society of CPAs, ATTN: Chief Executive Officer, 1710 Gilbreth Rd., Suite 300 Burlingame, CA 94010 (or any future address We may furnish You).

This Agreement will be terminated for cause for the reasons described in Paragraph 13,e,ii and 13,e,iii.

In addition, this Agreement may be terminated for cause upon the occurrence of any of the following:

- Failure to Meet Obligations: In the event that a party defaults in the performance of any duties or obligations described in this Agreement, including the inability or refusal to provide services, and the default or breach has not been cured within thirty (30) days of any non-defaulting party's giving of written notice of default, the non-defaulting party may terminate this Agreement upon thirty (30) days prior written notice to the other parties.
- Failure to Comply: We may terminate this Agreement upon thirty (30) days prior written notice to You should You fail to comply with the rules, practices, underwriting guidelines or procedures established by Us and communicated to you, or with any applicable rules and regulations of the U.S. Department of Labor, the California Department of Insurance, or any other governmental agency which regulates Our marketing, and Your failure to comply has not been cured within thirty (30) days of the giving of the written notice.

You acknowledge that termination of this Agreement will not relieve You of any obligations arising under it. Upon termination, You agree to immediately remit to Us all funds belonging to Us or held for Our account, and to forward to Us all records, applications and property that are Ours.

WE LOOK FORWARD TO A REWARDING ASSOCIATION

Please sign both copies of this Agreement. Return one copy of the Agreement to Us with proof of Your Errors and Omissions liability insurance coverage and a photocopy of Your Life Agent's License (if You haven't already sent Us a copy). Keep the second copy of the Agreement for Your records.

PRODUCER

Producer Firm Name: _____
As listed on W9 in Box 1 and Box 2 (when applicable)

By: _____
[Signature]

[Typed Name]

Its: _____
[Title]

GROUP INSURANCE TRUST OF THE CALIFORNIA SOCIETY OF CPA'S

By: _____
[Signature]

[Typed Name]

Its: _____
[Title]

TRUST ADMINISTRATIVE USE ONLY:

E&O: _____ Signature: _____

Received By: _____ Group Sales Rep Code: _____

License: _____

GA: _____