

## **BROKER/AGENT AGREEMENT**

This Agreement is made effective this \_\_\_\_\_ day of \_\_\_\_\_, 2008, between the New Mexico Medical Insurance Pool (referred to as the Pool) and \_\_\_\_\_ (referred to as Broker/Agent).

In consideration of the mutual promises of the parties, this Agreement consists of the following terms and conditions:

### **I. APPOINTMENT OF BROKER**

- A. **AUTHORIZATION.** The Pool hereby authorizes Broker/Agent, while properly licensed as an Insurance Broker by the appropriate governmental agency or authority, to submit to the Pool applications for insurance coverage. All applications submitted will conform to the rules and regulations of the Pool, and no coverage will be effective until applications are approved by the Pool. Broker/Agent has a duty to verify all information on applications and notify the Pool of any change in information submitted on applications.
- B. **LICENSE, TAXES, INDEMNIFICATION AND INSURANCE**
1. Broker/Agent certifies that he/she is duly licensed in the State of New Mexico and that such license is current and in good standing with the Department of Insurance. In the event the Broker's/Agent's license terminates, expires, is suspended or revoked, Broker/Agent agrees to notify the Pool within ten (10) days after the date of such action.
  2. Broker/Agent shall obtain any and all licenses required by the State of New Mexico or local laws or regulations and shall pay all license, income, self-employment, unemployment and any and all other taxes and levies upon the business of Broker/Agent and shall hold harmless the Pool from all liability for the same.
  3. Broker/Agent shall indemnify and hold harmless the Pool from any and all claims, liability, costs, damage or expense, including attorney's fees, for or on account of any damage or loss occurring by reason of any action of or failure to act by Broker/Agent either under this Agreement or in connection with the purchase of any the Pool policy by Broker's/Agent's clients.
  4. The Broker/Agent agrees to obtain and keep in force during the term of this Agreement an errors and omissions policy of insurance in an amount not less than five hundred thousand dollars (\$500,000.00). Annually, Broker/Agent shall provide the Pool a copy of a certificate of coverage which coverage shall not be permitted to lapse unless at least thirty (30) days prior written notice has been given to the Pool.
  5. Appointment fees have been waived for Brokers/Agents already licensed in the State of New Mexico and are not a requirement for purposes of this Agreement.

### **II. COMPENSATION**

- A. Upon submission of an application by the Broker/Agent, and issuance of a policy by the Pool, the Broker/Agent shall become entitled, subject to the other terms and conditions of this Agreement, to a payment of \$100.00.
- B. The \$100.00 payment shall be paid to the Broker/Agent with respect to a policy procured through Broker/Agent so long as this Agreement and that policy are in effect, the required premium has been received by the Pool, and the Broker/Agent: (1) is in compliance with all terms and conditions of this Agreement and the Pool procedures, (2) is continuously and actively engaged as a Broker/Agent in the insurance business, and (3) is recognized by the individual as the Broker/Agent of Record.

The \$100.00 payment will be paid after the first month's premium has been received by the Pool.

- C. The Pool shall have the right to terminate coverage under any policy executed between an individual and the Pool according to the terms of said policy with the individual. The Broker/Agent shall reimburse the Pool by payment to the Pool with respect to a policy which, for any reason, is rescinded or retroactively terminated by the Pool as of the enrollment date.
- D. The Pool shall have the right to recover any \$100.00 payment made in error.
- E. No other payment or commission shall be made to the Broker/Agent including at renewal.

### III. GENERAL TERMS AND CONDITIONS

- A. **Unauthorized Acts.** The Broker/Agent is without authority to do or perform, and expressly agrees not to do or perform, the following acts on behalf of the Pool.
  - 1. Incur any indebtedness or liability;
  - 2. Make, alter or discharge contracts;
  - 3. Quote rates other than as quoted by the Pool;
  - 4. Waive payment or extend the time for payment of any premium;
  - 5. Bind coverage.

In addition, the Broker/Agent agrees not to:

- 1. Violate any insurance law in the state in which the Broker/Agent operates;
  - 2. Withhold any monies or property of the Pool;
  - 3. Rebate or offer to rebate all or any part of a premium on any contract of coverage issued by the Pool.
  - 4. Employ or make use of any advertisement or materials not provided by the Pool that include the Pool name or symbols without the express prior written consent of the Pool.
  - 5. Make any representation with respect to the Pool's regulations, coverage, and policies except as may be contained in the New Mexico Medical Insurance Act and the written material prepared and furnished to Broker/Agent by the Pool nor make any oral or written alteration, modification or waiver of any of the terms or conditions applicable to that coverage and policy without the express prior written consent of the Pool.
- B. **Legal Actions.** The Broker/Agent shall pay the Pool upon demand for any costs incurred by the Pool to answer or defend any attachments, garnishments or legal proceedings involving the Broker/Agent, including attorneys' fees and all such funds shall be a debt hereunder.
- C. **Relationship Between the Parties.** The Broker/Agent shall be an independent contractor in relation to the Pool. The Broker/Agent shall be responsible for all expenses incurred pursuant to the exercise of any duties hereunder, unless the reimbursement of such expenses has been first expressly authorized in writing by the Pool. Nothing contained in this Agreement shall be construed as creating the relationship of employer/employee between the parties nor shall it be construed that the Broker/Agent is an agent of the Pool.
- D. **Billing.** All individuals shall be billed directly by the Pool and not through the Broker/Agent or other intermediary.
- E. **Settlement for NMMIP.** The Broker/Agent has no right to receive funds for or on behalf of the Pool, except the initial premium on benefit coverages solicited by Broker. Money or other settlements received by the Broker/Agent for or on behalf of the Pool shall be received by the Broker/Agent in a fiduciary capacity as an agent of a proposed policyholder and immediately paid to the Pool.
- F. **Waiver.** A waiver of any provision of this Agreement at any time shall not be deemed to be a continuing waiver or a waiver of any other provision of this Agreement at such time or at any other time.
- G. **Amendment and Assignment.** The Pool may at any time amend the terms of this Agreement by providing the Broker/Agent with written notice sixty (60) days in advance of such amendment. No modification or

amendment to this contract nor assignment, transfer or disposal of any interest that the Broker/Agent may have under this Agreement shall be binding upon THE POOL at any time unless approved in writing by the Pool. This Agreement shall inure to any successor(s) in interest of the Pool.

- H. **Termination.** This Agreement may be terminated at any time by either party by a thirty (30) day notice in writing by ordinary mail to the last known address of the other party; provided, however, this Agreement shall terminate immediately upon written notice by THE POOL to the Broker/Agent if the Pool has reason to believe Broker/Agent has committed fraud or misrepresentation or breached any terms of this Agreement. In addition, the authority of the Broker/Agent shall be immediately terminated without notice by the death, dissolution of the Broker/Agent, the violation of Paragraph III.A hereof, or if, at any time, the license granted to Broker/Agent is suspended, canceled or revoked or Broker's/Agent's errors and omissions insurance is permitted to lapse or is canceled.
- I. **Integration.** This Agreement supersedes any and all prior agreements, contracts, and understandings between the parties and shall govern all existing business between Broker/Agent and the Pool.
- J. **Headings.** The headings of this Agreement are inserted for reference purposes only and are not restrictive as to content.
- K. **Severability.** Should any provision of this Agreement be declared invalid by any court of competent jurisdiction, the remaining provisions hereof shall remain in full force and effect regardless of such declaration.

IV. **AUDITS**

Broker/Agent agrees to reimburse the Pool for the expense of any audit arising out of the fraud or intentional misrepresentation of the Broker/Agent.

- V. **EFFECTIVE DATE.** This Agreement, when duly executed by the Pool, shall become effective on the date cited in Paragraph 1. above, and shall be construed in accordance with state law.

Broker/Agent Signature:

New Mexico Medical Insurance Pool (The Pool)

\_\_\_\_\_

By: \_\_\_\_\_  
Leslie Malek-Chavez, Pool Administrator

**\$100.00 Payment to:**

\_\_\_\_\_  
(Print) Broker/Agent Name

\_\_\_\_\_  
(Print) Mailing Address

\_\_\_\_\_  
(Print) City, State, Zip Code

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Broker/Agent License Number

\_\_\_\_\_  
Tax Identification Number