

AGENT COMMISSION AGREEMENT

THIS AGREEMENT, dated as of _____, (this "**Agreement**"), is by and between Healthplex, Inc., a New York corporation, having offices located at 333 Earle Ovington Boulevard, Suite 300, Uniondale, NY 11553 (the "**Company**"), and _____, a _____ corporation, having offices located at _____), (hereinafter the "**Agent**").

RECITALS

WHEREAS, the Company conducts business in the States of New York and New Jersey as a third party administrator;

WHEREAS, the Company, as a third party administrator and pursuant to a service agreement, administers and handles the marketing of dental insurance plans of certain affiliated and unaffiliated insurers (the "**Insurer(s)**"), as more fully set forth in Attachment A annexed hereto and made a part hereof.

WHEREAS, the parties desire to establish a business relationship whereby the Agent shall, on behalf of the Company, solicit applications for memberships in dental insurance plans of the Insurer(s) within the States of New York and New Jersey;

NOW, THEREFORE, in consideration of the terms and conditions set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

SECTION 1: RELATIONSHIP OF PARTIES

- 1.1 Relationship.** The parties agree that nothing in this Agreement shall be construed to establish an employee-employer relationship between the Company and the Agent, nor shall it be construed to constitute an affiliation, partnership or joint venture. The Agent shall be considered a contractor of the Company, and the Agent understands that the Company will not pay or withhold from the compensation paid to the Agent pursuant to this Agreement any sums customarily paid or withheld for, or on behalf of, employees for income tax, unemployment insurance, social security, workers' compensation or any other withholding tax, insurance, or payment pursuant to any law or governmental requirement, and all such payments as may be required by law are the responsibilities of the Agent. The Agent agrees that it will not and does not have any authority to (a) enter into any agreements, arrangements or undertakings on behalf of or which will be binding on the Company or Insurer(s), whether or not for the benefit of the Company or Insurer(s), or (b) make any representation that it has, or otherwise holds out as having, any authority to act for or bind the Company or Insurer(s), or represent that it is engaged by the Company in any capacity other than as an agent during the Term (as such term is defined in Section 7.1 of this Agreement), except if otherwise authorized in advance by an executive officer of the Company in writing. Agent may enter into separate agreements with employees, consultants or independent contractors in order to carry out its duties hereunder, however, Agent shall have no authority with respect to such Insurer(s) dental insurance plans other than that which is expressly granted by this Agreement and any subsequent written agreements between the Company and the Agent. Each party agrees to pay its own costs and expenses associated with this

Agreement and the relationship contemplated hereby, and to be responsible to the other for errors and omissions.

SECTION 2: AGENT RESPONSIBILITIES

- 2.1 Solicitation.** Pursuant to the terms and conditions of this Agreement, the Agent will:
- i. Diligently solicit memberships in Insurer(s) individual or group dental insurance plans at the rates established by the Company or the Insurer(s) and/or set forth in any addenda hereto, as amended from time to time.
 - ii. Comply with all applicable federal, state and local laws applicable to its duties as contemplated hereby, as well as the Company's and Insurer(s) rules and regulations as to application, completion and submission, as amended from time to time.
 - iii. Represent to members and potential members the nature and scope of membership benefits only by means of the written material furnished to the Agent by the Company on behalf of such Insurer(s) from time to time and the Agent shall not, under any circumstances, represent membership benefits other than as set forth in such materials.
 - iv. Provide written disclosures pertaining to the Agent's compensation to all prospective insureds prior to the sale of a plan or policy.
 - v. Not alter or waive, orally or in writing, any of the membership terms or conditions set by the Company and/or the Insurer(s).
 - vi. Take no action and make no representation prejudicing the Company's right to determine an applicant's acceptability or subsequent benefits underwritten through the Insurer(s).
 - vii. Have no authority to bind coverage or issue contracts, policies, endorsements or cancel notices.
 - viii. Comply with the professional ethical standards governing the solicitation, sales and servicing of the dental insurance plans administered by the Company.
- 2.2 Communication.** The Agent shall (a) transmit to the Company only those applications made by, or on behalf of, membership applicants which the Agent reasonably believes are true and complete and (b) inform applicants that they will be eligible for membership only after the Company has received and reviewed their application and sent them written notice of acceptance. Agent shall promptly transmit to each individual or group for which Agent is responsible all communications and documents sent to the Agent by the Company for such individual or group.
- 2.3 Funds.** The Agent shall accept and promptly issue receipts for all initial subscription charges paid by group and individual applicants and immediately remit to the appropriate payee, without combining with the Agent's own funds, (without any deduction or setoff of any kind). In connection with the foregoing, the Agent shall not accept any payment of any kind with respect to any of Insurer(s) dental insurance plans from an applicant, or subscriber, which cites as the payee anyone other than the Insurer(s) (or the Company as administrator).
- 2.4 Records.** The Agent shall maintain complete records of all transactions as to membership applications the Agent receives or transmits, together with any and all other records required by federal, state and/or local governmental agencies. The Company shall have the right to inspect and review these records at any time and the

Agent shall maintain these records as long as this Agreement remains in force, subject to Section 8.5 hereof.

- 2.5 Reports.** The Agent shall be solely responsible to prepare and submit all reports and returns required of Agent by any governmental statute or regulation now or hereafter in force, and keep copies thereof accessible to the Company pursuant to Section 2.4 above. The Agent shall timely pay all applicable taxes, contributions, and other sums levied or assessed on Agent because of activities hereunder or because of commissions paid by the Company. All records and reports are the property of the Company, and shall be deemed "Materials" (as such term is defined in Section 8.5 hereof) and shall be subject to all terms and provisions of Section 8.5 hereof.
- 2.6 Hold Harmless.** The Agent shall fully indemnify and hold harmless the Company and Insurer(s) and the Company's and Insurer(s) representatives, officers, directors, shareholders subsidiaries, and any related persons (collectively, the "**Indemnified Persons**"), and will reimburse the Indemnified Persons for any loss, liability, claim, damage, expense (including costs of investigation and defense and reasonable attorneys' fees and expenses) or diminution of value, including the advancement of expenses, whether or not involving a third-party claim arising from or in connection with: (a) any breach of any representation, warranty, covenant or obligation of the Agent in this Agreement or in any other certificate, document, writing or instrument delivered by the Agent pursuant to this Agreement and/or (b) any operations of the Agent including, but not limited to, any third-party claims brought against the Agent.
- 2.7 Material.** The Agent shall treat all printed matter, application blanks, and completed applications as administered by the Company and as property of the Insurer(s) subject at all times to the Company's control and discretion. The return and/or destruction of such materials shall be governed by Section 8.5 below.
- 2.8 Errors and Omissions Insurance.** At all times during the Term of this Agreement, the Agent shall maintain Errors and Omissions insurance in an amount not less than \$1,000,000 per claim. Upon request by the Company, the Agent shall furnish the Company and Insurer(s) with proof of coverage in its favor, satisfactory to Company, for such amount as the Company deems necessary.
- 2.9 Change of Address.** The Agent shall send to Company written notice ten (10) days in advance of any change in Agent's address. Upon failure of agent to notify Company of such address change, Company may discontinue sending commission checks and terminate this Agreement. Any commission not claimed within one (1) year of termination of the Agreement will be forfeited and become the property of the Company.
- 2.10 Status of Agent.** Throughout this Agreement, the term "**Agent**" shall include any "**Licensed Broker**" of the Agent, as such term is defined under the laws of the state(s) or jurisdiction wherein the Agent solicits sales of any dental insurance plans. As a material inducement for the Company to enter into this Agreement, the Agent represents and warrants that:
- i. The Agent does business as an independent contractor or agency employee at the address set forth below.
 - ii. The Agent is duly licensed as such under the laws of the state where the address is located under the laws of the state where the agent performs obligations under this Agreement. The Agent shall at all times maintain such

license during the Term of this Agreement. The Agent shall provide its license as listed on Attachment D as annexed hereto and made a part hereof.

- iii. No license issued to the Agent by any government authority for the sale of any type insurance, prepaid health care, or hospital, or professional benefits agreement has ever been revoked or suspended.
- iv. None of the Licensed Brokers of Agent have been convicted of any crime involving moral turpitude.
- v. Agent agrees to notify Company immediately of any expiration, termination, suspension or other action by any Department of Insurance or any other governmental agency affecting license or appointment in any state which the Agent is contracting to do business pursuant to this Agreement.

SECTION 3: APPROVAL OF BUSINESS

- 3.1 Discretion to Approve/Continue Coverage.** Insurer(s) have no obligation to accept any application for coverage received from the Agent or to continue any coverage already issued by Insurer(s), except in accordance with the policy terms, as applicable. All determinations with respect to any insurance coverage shall be made by Insurer(s) in its sole discretion.

SECTION 4: COMMISSIONS

- 4.1** The Company negotiates unique offerings from a variety of insurance earners, and other providers, that constitute an exclusive Company offering. In exchange for the Agent's marketing of this package, enrolling Insurer(s) members, servicing the account, renewing the enrollment at least annually, and assisting member employers in complying with the rules and guidelines established by the Insurer(s), the Company hereby agrees to provide compensation to the Agent as commissions under Attachment A, annexed hereto (the "**Commission Schedule**"). The Company shall have the right, at any time and from time to time in its discretion, to assign or delegate its obligation to make payments to the Agent to any affiliated entity including, but not limited to, the Insurer(s). In the event there is more than one Agent identified as the Broker of Record ("BOR") for a specific policy or contract, the Commission due from the Company or Insurer(s) to all Agents shall not exceed the total amount due as if there was one Agent.

Said compensation will be paid no less than 20 days after the end of the each month either through direct deposit or check sent by USPS to the Agent directly. Such commission paid shall be based on the number of members the premium represents that is collected by the Company during the previous month. The number of members is determined based on members paid only for products listed in the Commission Schedule, and does not include other products or items listed as billing or account fees.

- 4.2 Eligibility for Commissions.** The parties agree that in order to be eligible for commissions under this Agreement the Agent must:
- a. Maintain a valid insurance license in any state which the Agent is contracting to do business pursuant to this Agreement;
 - b. Provide the Company annually with current copies of all required appointment certificates;
 - c. Maintain a policy for Errors and Omissions insurance in the amount required under Section 2.8 under this Agreement;

- d. Notify the Company immediately of the loss of its insurance license, Errors and Omissions insurance; and
- e. Remain as a BOR for all dental plans sold under this Agreement.

4.3 Individual and Group Sales Commission Addendum. The Company will pay commissions and renewal fees only for dental contracts whose application solicitation is authorized by this Agreement. Unless governed by a separate commission agreement, all commission programs are subject to the terms of this Agreement.

4.4 Re-Payment. The Agent agrees to the prompt repayment to the Company for any compensation received for canceled policies, retroactive terminations, reduced premiums or commissions paid in error; or commissions paid to the Agent on subscriptions that are waived, reduced or returned. Alternatively, at the Company's option, such commissions may be debited from the Agent's account.

4.5 Clerical Error. In the event that the Company, through inadvertent error, fails to pay commissions to the Agent, it is agreed that regarding any claim by the Agent for payment of such commissions, the Company shall be obligated to pay to Agent only those unpaid commissions due and payable to the Agent during the 12-month period (365 days) prior to the date on which the Company receives the first notice of claim. The Agent waives any right to earned but unpaid commissions due and payable for the Company to Agent over twelve (12) months (365 days) prior to the date on which the Company receives the first notice of the Agent's claim for payment. Notwithstanding the foregoing, the Agent shall not, under any circumstances (including, but not limited to, the Agent's good-faith belief that past-due commissions are owed and outstanding by the Company) be entitled to withhold any monies from the Company following collection thereof from membership applicants. Any such withholding by the Agent shall be deemed a breach of this Agreement and may, in the Company's discretion, be grounds for immediate termination of this Agreement.

SECTION 5: ADVERTISING AND TRADEMARKS

5.1 The Agent agrees not to use any name or trademark in any advertising or promotion of any kind without prior written approval of the Company. The Agent agrees not to use any service mark(s), name(s) or symbol(s) either presently existing or hereafter established without the expressed written permission of a duly authorized representative of the Company, and will cease any and all such use immediately upon the earlier of termination of this Agreement or the withdrawal of the Company of such permission. No advertising promotional or informational materials prepared by the Agent under this Agreement shall be released or disseminated without the Company's prior written permission. Without limiting the generality of the foregoing the Agent shall obtain the Company's prior written consent with respect to contents or text, of all brochures, cover letters, mailer envelopes, premium notices, inserts and materials which accompany any mailings.

5.2 Mailing lists are the confidential sole property of the Company. The Agent will not be given access to the mailing list for any reason during the Term of this Agreement. In the event the Agent did gain possession of or access to the mailing list, the Agent shall return the mailing list promptly, notify the Company, and disclose the circumstances of how the Agent gained possession, or access to the mailing list of the Company.

The Agent may request to make mailing(s) to members of the Company, or to make mailings to prospects of the Agent through the Company. Approval will be at the discretion of the Company. The cost of developing, producing and any postage will be the sole responsibility of the Agent. Agreed upon mailings will be delivered to the Company for mailing. The Agent will be responsible to reimburse the Company for all costs related to the mailing. Costs of the mailing will be communicated by the Company to the Agent prior to mailing. Payment to the Company must be made prior to the Company executing the mailing.

- 5.3** The Company shall have sole discretion in negotiating, selecting, contracting and executing mailing with mail vendors.

SECTION 6: MARKETING MATERIALS

- 6.1** The Company agrees to provide all materials needed to market and distribute Insurer(s) dental plans. The Agent agrees not to create or distribute any marketing material without prior written approval of the Company. Said materials include, but are not limited to, written, electronic, display, telemarketing, advertising, radio, television, and Internet protocols. The Agent agrees not to develop, or use, at any time, any logo(s) or name(s), without prior written approval of the Company. Any request for the development or use of marketing materials, or concepts, not provided by the Company, under this Agreement shall be submitted by the Agent to the Company for review and approval prior to use, production, or distribution.

SECTION 7: TERM

- 7.1** The term (the "**Term**") of this Agreement shall commence as of 12:01 A.M. on the first (1) day following the execution and delivery of this Agreement by both parties hereto.

SECTION 8: TERMINATION

- 8.1** The parties agree that this Agreement may be terminated by either party without cause by delivery of 30 days advance written notice to the other. Such notice shall be effective on the thirtieth (30th) day following the delivery date determined pursuant to Section 11 hereof.
- 8.2** Upon termination, the Agent agrees to return all materials and cease all marketing of the Insurer(s) dental plans in accordance with Section 8.5 below. Payment of commissions on existing dental contracts shall survive termination of this Agreement, so long as the member employer designates the Agent as their representative and the Agent meets the conditions set forth in the Section 4.2 above and does not violate any other terms of this Agreement. It is the intent of the Company to make commission payments to the Agent so long as Company receives amounts sufficient to pay such commissions.
- 8.3** This Agreement and all Attachments attached hereto shall automatically terminate in event of the following event(s):
- i the dissolution and/or liquidation of the Agent,
 - ii bankruptcy, insolvency or cessation of the Agent,
 - iii failure to promptly provide any required data in a form acceptable to the Company,
 - iv failure of Agent to deliver products and/or services sold to members as contemplated and determined by the Company,

- v failure of the Agent to maintain the required Errors and Omissions Coverage bonding pursuant to Section 2.8 of this Agreement,
- vi The investigation of the Agent (or the indictment of any of the Agent's employees and/or Licensed Brokers) of negligence, fraud or embezzlement,
- vii Failure of the Agent to comply with applicable federal, state and/or local licensing requirements,
- viii Misrepresentation on the part of the Agent, and/or the Agent's employee(s) or Licensed Brokers, as deemed to occur in the Company's reasonable judgment,
- ix Revocation, cancellation, or suspension of the Agent's license.

8.4 In the event of termination of this Agreement, the Agent shall complete the processing and delivery of all applications and services under the Agreement which were received prior to the termination of this Agreement, but the Agent shall have no obligation to:

- i Complete the processing and delivery of any such requests upon its determination that the eligible member has failed to provide funds for payment of billing due.
- ii Process requests for orders presented to it after termination of the Agreement.

8.5 All forms, marketing materials, applications, advertising materials, membership records and any other information (collectively, the "**Materials**") designed and printed by the Company or utilized by the Agent in furtherance of its duties hereunder are deemed to be the property of the Company and shall be returned at the Agent's expense immediately following termination (or upon the delivery by the Company of a written demand to this effect). The Materials shall include, without limitation, Agent Reference Manuals, underwriting guidelines and procedures, applications, promotional materials and other documents related to the Insurer(s) dental plans or as described under this Agreement. Upon the termination of this Agreement for any reason (or upon the delivery by the Company of a written demand to this effect), the Agent shall either (a) immediately destroy all of the Materials and provide the Company with a written certification as to the destruction of the Materials, or (b) return all of the Materials to the Company and provide the Company with a written certification stating that all of the Materials have been returned.

SECTION 9: CONFIDENTIALITY; NON-SOLICITATION

9.1 Confidentiality. Each of the Agent, its affiliates and subsidiaries, and Licensed Brokers, employees, consultants and independent contractors in their respective individual capacities (collectively, the "**Agent Parties**"), recognize and acknowledge that the business and financial records, Trade Secrets, private processes, database, products and confidential methods of operations of the Company and Insurer(s) as they may exist from time to time, and the identity of and information about members, potential members, referral sources, and vendors (collectively, the "**Confidential Information**"), are valuable, special and unique assets of the Company and Insurer(s), access to and knowledge of which are essential to the performance of the duties of the Agent hereunder. The Agent therefore agrees that none of the Agent Parties, during or at any time after the termination of this Agreement, disclose any of the Confidential Information to any person, firm, corporation, limited liability company, partnership, association or other entity for any reason or purpose whatsoever, except in connection with the performance of their duties hereunder, nor shall they make use of the Confidential Information for their own purposes or for the benefit of any person, firm, corporation, limited liability company, partnership or other entity except the Company. If any of the Agent Parties are required under a final judicial or governmental order to

disclose any Confidential Information received from the Company and Insurer(s), then the Agent Parties may disclose the Confidential Information provided that the Agent gives the Company sufficient prior notice to contest such order.

- 9.2 Non-Competition; Non-Solicitation.** During the term of this Agreement and for a period of three (3) years thereafter, the Agent agrees that none of the Agent Parties shall, directly or indirectly, employ or solicit the employment or engagement of any of the Company's employees or of any independent contractors or suppliers that service the Company, or interfere in any way with any such person's relationship with the Company. During the term of this Agreement and for a period of three (3) years thereafter, the Agent further agrees that none of the Agent Parties shall, for itself/himself or any other person, firm or corporation, canvass, solicit or accept any business from any of the Insurer(s) members and/or potential members, or in any way interfere with any such person's relationship with the Company.
- 9.3** The existence of any claim or cause of action by the Agent against the Company shall not constitute a defense to the enforcement by the Company of the covenants contained in this Section 9, but such claim or cause of action shall be litigated separately.
- 9.4** The Agent acknowledges that the restrictions specified under this Section 9 are reasonable, in view of the nature of the business in which the Company is engaged and the Agent's special and unique skills, reputation and knowledge of the Company's operations. The Agent further acknowledges that its/his services, if used by a competitor, could cause significant harm to the Company. Therefore, the Agent consents and agree that if any of the Agent Parties violate or threaten to violate any of the provisions contained in this Section 9, the Company shall, in addition to such other remedies as it may have at law or in equity, be entitled to an injunction to be issued (without posting any bond or other undertaking) by a court or arbitrator of competent jurisdiction, restraining and prohibiting the Agent Parties, as applicable, from committing or continuing any violation of such provisions.
- 9.5** Notwithstanding anything contained in this Section 9 to the contrary, if the restrictions specified under this Section 9 should be determined to be unreasonable in any judicial proceeding, then the period of time, scope and area of the restriction shall be modified by a court so that this Agreement may be enforced to the maximum extent in such area, scope and during such period of time as shall be determined to be permitted by law.
- 9.6** The Agent's obligations with regard to the Confidential Information shall survive the termination or expiration of this Agreement for a period of three (3) years. The Agent's obligations with respect to any Confidential Information that is considered Trade Secrets of the Company shall survive until the later of (i) the date of termination of this Agreement, or (ii) the date on which such Confidential Information no longer constitutes a Trade Secret of the Company, its successors, or assigns.

SECTION 10: ASSIGNMENT

- 10.1** This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective affiliates, administrators, legal representatives, successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned or assignable by any of the parties hereto without the prior written consent (which consent will not be unreasonably withheld or delayed) of the other party, except by operation of law;

provided, however, that notwithstanding the foregoing provision, with respect to its obligations to make payments to the Agent, the Company shall have the right to assign or delegate its obligations to any affiliated entity from time to time in its sole discretion.

SECTION 11: NOTICES

11.1 Except as otherwise provided in this Agreement, any notices, requests, demands and other communications required or permitted to be given hereunder shall be in writing and shall be (i) personally delivered, (ii) transmitted by postage pre-paid first class certified mail, (iii) transmitted pre-paid by an overnight courier for priority next day delivery, or (iv) transmitted by facsimile or email transmission (with the confirmation by certified mail as described below) and shall bear the address or facsimile number or email address (as applicable) as follows:

Company: Healthplex, Inc.
333 Earle Ovington Boulevard, Suite 300
Uniondale, NY 11553
Attn: Valerie Vignola, Chief Financial Officer
Fax: (516) 228-1735
Email: VVignola@healthplex.com

Agent:

Attn: _____
Fax: _____
Email: _____

or to such other person or address as the parties shall furnish to the other in writing. All notices and other communications shall be deemed to have been duly given, received and effective on (i) the date of receipt if delivered personally, (ii) 3 business days after the date of posting if transmitted by certified mail, (iii) the business day after the date of transmission if by overnight delivery, or (iv) if transmitted by facsimile or email transmission, 2 business days following transmission if it is simultaneously sent by one other method of delivery.

SECTION 12: COMPLAINTS AND LITIGATION

12.1 The Agent shall immediately notify the Company of any complaint to or from any state agency of which the Agent becomes aware in connection with any transaction covered by this Agreement. Any complaint letter pertaining to a product or service from any state agency received by the Agent together with its file and detailed report on the matter should be forwarded to the specific state agency and the Company.

12.2 Each party to this Agreement shall provide immediate notice, via email or facsimile, of receipt of any legal process wherein the other party is designated a defendant, or which, relates in any way to this Agreement. A copy of such legal process shall be faxed and/or emailed immediately or sent immediately by one-day express mail to the other party. Except to the extent a party is entitled to indemnification pursuant to this Agreement, each party hereto shall be responsible at its own expense for defending itself in any litigation brought against it, whether or not the other party hereto is also a defendant, arising out of or in connection with the terms and conditions of this Agreement.

SECTION 13: WAIVER

- 13.1** No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver. The failure of either party to insist upon strict compliance with any of the terms, covenants or conditions shall not be deemed a waiver of such terms, covenants and/or conditions.

SECTION 14: REMEDIES

- 14.1** In the event suit or action is filed to enforce this Agreement or resolve any dispute relating to or arising under this Agreement, the prevailing party shall be reimbursed by the other party for all costs and expenses incurred in connection with the suit or action, including without limitation, reasonable attorney fees determined at the time of the trial and/or on appeal.
- 14.2** The parties agree that any legal action resulting from, arising under, out of or in connection with, directly or indirectly, this Agreement shall be commenced in the State of New York, County of Nassau. All parties to this Agreement hereby submit themselves to the jurisdiction of such court, and agree that service of process on them in any such action, suit or proceeding may be affected by the means by which notices are to be given under this Agreement.

SECTION 15: ENTIRE AGREEMENT

- 15.1** This Agreement, and any attachments, schedules and/or exhibits hereto, constitute the entire understanding between the parties pertaining to its subject matter, and supersedes all prior and contemporaneous agreements, representations and understandings, either oral or written, of the parties. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or otherwise have been made by any party, or by anyone acting on behalf of any party which are not embodied herein. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all the parties hereto (except with respect to the Commission Schedule, which may be amended by the Company in its sole discretion).

SECTION 16: CONFLICT OF TERMS

- 16.1** In the event of any conflict between the terms contained herein and the terms contained in any of the Attachments, or any other document delivered by either party to this Agreement to the other party, the terms and conditions of this Agreement shall prevail.

SECTION 17: SECTION HEADINGS

- 17.1** The section headings used in this Agreement are solely for convenience of reference, are not part of this Agreement, and are not to be considered in construing or interpreting this Agreement.

SECTION 18: SEVERABILITY

18.1 The invalidity of any one or more of the words, phrases, sentences, clauses, sections or subsections contained in this Agreement shall not affect the enforceability of the remaining portions of this Agreement or any part hereof, all of which are inserted conditionally on their being valid in law, and, in the event that any one or more of the words, phrases, sentences, clauses, sections or subsections contained in this Agreement shall be declared invalid by a court of competent jurisdiction, this Agreement shall be construed as if such invalid word or words, phrase or phrases, sentence or sentences, clause or clauses, section or sections, or subsection or subsections had not been inserted.

SECTION 19: CONTROLLING LAW

19.1 This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its principles of conflict or choice of law.

SECTION 20: MISCELLANEOUS

20.1 Unless otherwise prohibited elsewhere in this Agreement, the provisions of this Agreement shall be binding upon and inure to the profit of the heirs, personal representatives, successors and assigns of the parties.

20.2 The terms of this Agreement shall be construed according to its plain meaning and shall not be construed against either party by reason of their having drafted any or all of this document.

21. HIPAA

The parties agree to comply with applicable provisions of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (“HIPAA”), including that the parties shall enter into and maintain the Business Associate Agreement annexed hereto as Attachment C and incorporated herein throughout the term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

Healthplex, Inc.

[Agent]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

ATTACHMENT A

INSURERS

[AGENT] may sell dental plans that are underwritten by the following companies:

Healthplex Insurance Company (“HIC”)

Dentcare Delivery Systems, Inc. (“Dentcare”)

International Healthcare Services (“IHS”)

ATTACHMENT B

COMMISSION SCHEDULE

EFFECTIVE DATE of SCHEDULE: January 1, 2017 or the Agreement Effective Date (whichever is later).

The purpose of this Attachment is to set forth the commission schedules to be effective under this Agreement. Unless otherwise negotiated and approved by Healthplex Inc., this schedule supersedes all other commission schedules, in any other form, for business applied for on or after the effective date of this commissions schedule.

Healthplex, Inc. is a dental insurance administrator for all plans underwritten by the Insurer(s) as defined in Attachment A. Agent’s commission may vary by underwriter or product as noted below.

Healthplex Insurance Company (HIC) Underwritten Group Plans

<u>Group Dental Annual (Eligible) Premium</u>	<u>New Business Compensation</u>
Up to \$15,000	10%
\$15,001 - \$25,000	10%
\$25,001 - \$50,000	10%
\$50,001 - \$150,000	10%
\$150,001 - \$250,000	10%
Over \$250,000	Negotiated

Dentcare Delivery Systems, Inc. (Dentcare) Underwritten Group Plans

<u>Group Dental Annual (Eligible) Premium</u>	<u>New Business Compensation</u>
Up to \$25,000	10%
\$25,001 - \$150,000	10%
\$150,001 - \$250,000	10%
Over \$250,000	Negotiated

International Healthcare Services (IHS) Underwritten Group Plans

<u>Group Dental Annual (Eligible) Premium</u>	<u>New Business Compensation</u>
Up to \$25,000	10%
\$25,001 - \$150,000	10%
\$150,001 - \$250,000	10%
Over \$250,000	Negotiated

Current HIC, Dentcare and IHS business with a renewal after the effective date of this commission schedule will maintain the commission rate from the prior period unless otherwise negotiated. Cases with negotiated, non-standard commissions and Administrative Services Only (ASO) are not eligible for the Agent Commission. Healthplex Inc. reserves the right, in it's sole discretion, to alter or void the compensation programs at any time.

Notwithstanding anything herein above set forth, a group that was previously insured by HIC, Dentcare and IHS and merely had a change in brokerage representation, shall not be deemed a “new” group under this Schedule B.

ATTACHMENT C

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) by and between _____ (“Business Associate”) and HEALTHPLEX, INC. (“Covered Entity”) (“collectively, “the Parties”) effective as of _____ (“Effective Date”), is entered into pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (“HITECH”) and the regulations promulgated hereunder including all pertinent regulation issued by the Department of Health and Human Services (“HHS”)(collectively, HIPAA, HITECH and any other state or federal law relating to the protection of health information is referred to herein as “Applicable Privacy Law”) and Personal Identifiable Information as hereinafter defined.

Applicable Privacy Law requires that the Parties enter into this Agreement in order to protect the privacy of Protected Health Information (“PHI”) and Personal Identifiable Information (“PII”) which either party and its employees, affiliates, agents, or representatives may access in carrying out its obligations to each respective party.

The Parties desire to enter into this Agreement to protect PHI, PII and Confidential Information (“CI”) and to amend any agreement between them, whether oral or written, by executing this Agreement.

In consideration of the mutual covenants contained in this Agreement and intending to be legally bound, the parties agree as follows:

Section 1. Definitions.

Terms used, but not otherwise defined in this Agreement shall have the same meaning as those in 45 C.F.R. § 160.103, 164.501, and 164.402.

Specific definitions are as follows:

- A. “Individual” shall have the same meaning as the term “individual” in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).
- B. “Protected Health Information (“PHI”)” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103 (broadly defined as information, including demographic information, related to the past, present or future physical or mental health or condition, the provision of health care to an individual, or the past, present or future payment for such health care, that is created or received by both parties and that either identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual).
- C. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- D. “Personal Identifiable Information (“PII”)” is any information that by itself or as part of a combination of information specifically distinguishes an individual by unique descriptors or identifiers. Examples of PII may include:

- Name (in combination with any of the following items)
- Credit Card Number
- Social Security Number
- Income Tax or Wage Records or Other Financial Information
- Postal Address
- Birth Date or Age
- Driver’s License Number
- Personal Phone Number
- Mother’s Maiden Name
- Passport Number
- Fax Number
- Online Identifiers
- Personal Email Address
- Bank Account Numbers
- Birth Certificate Number
- Marital or Family Status
- Racial, National, or Ethnic Origin
- Medical & Health Records
- Immigration Status, Green Card or Documentation Number

E. “Confidential Information (“CI”)

Confidential information is Healthplex information, records, systems and property of prospective and covered members, employees, providers, business associates and other affiliates. It includes, but is not limited to, the following:

- Any information about Healthplex’s method, tactics, or strategies of conducting business
- Financial information and records
- Client or prospective or current covered member lists, names or information
- Pricing methods
- New product ideas and prototypes
- Current and projected marketing and sales statistics and studies
- Technology, programs, developments and proposals
- Processing methods and plans
- Computer programs, designs, passwords, hardware and software
- Group, covered member and/or provider contracts and agreements

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured PHI, PII or CI and Use.

Section 2. Obligations and Activities of the Parties.

- A. The Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by the Covered Entity.
- B. The Business Associate agrees not to use or disclose PHI, PII or CI other than as permitted or required by this Agreement or Applicable Privacy Law, as amended from time to time.
- C. The Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI, PII or CI other than as permitted by this Agreement.
- D. The Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI, PII or CI by the Business Associate in violation of the requirements of this Agreement.
- E. The Parties agree to report to each other any use or disclosure of PHI, PII or CI not permitted by this Agreement of which they become aware.

- F. The Business Associate agrees to require that any agent, including subcontractors, to whom it provides PHI, PII or CI received from, or created or received by either party, agree to the same restrictions and conditions that apply through this Agreement to the Business Associate with respect to such information.
- G. If requested, in a time and manner reasonably designated by the Covered Entity, the Business Associate agrees to provide access to the Covered Entity PHI, PII or CI, or as directed by the Covered Entity, to an individual in order to meet the requirements under 45 C.F.R. § 164.524.
- H. If requested, in a time and manner reasonably designated by the Covered Entity, the Business Associate agrees to make amendments to PHI, PII or CI or a record about an Individual as the Business Associate directs or agrees to pursuant to 45 C.F.R. § 164.526.
- I. The Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI, PII or CI received from, or created or received by the Business Associate available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining the Business Associate's compliance with Applicable Privacy Law.
- J. The Business Associate agrees to document such disclosures of PHI, PII or CI and information related to such disclosures as would be required for the Business Associate to respond to a request by an Individual for an accounting of disclosures of PHI, PII or CI in accordance with 45 C.F.R. § 164.528.
- K. The Business Associate agrees to provide to the Covered Entity or an Individual, in a time and manner reasonably designated by the Covered Entity, information collected in accordance with this Agreement to allow the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI, PII or CI in accordance with 45 C.F.R. § 164.528.
- L. The Business Associate agrees to implement administrative, physical and technical safeguards ("Safeguards") that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI, PI or CI as required by 45 CFR Part 164, Subpart C ("Security Rule").
- M. The Business Associate agrees to ensure that any agent and subcontractor to whom it provides electronic PHI, PII or CI agree to implement reasonable and appropriate Safeguards to protect electronic PHI, PII or CI.
- N. The Business Associate agrees to report promptly to the Covered Entity any "Security Incident" of which the Business Associate becomes aware; as such term is defined in the Security Rule. At the request of the Covered Entity, the Business Associate shall identify the following: the date of the Security Incident, the scope of the Security Incident, the response to the Security Incident, and the identification of the party responsible for causing the Security Incident, if known. Thereafter, upon the Covered Entity's request, shall provide periodic updates regarding the Security Incident.
- O. The Business Associate agrees to make its policies, procedures and documents required by the Security Rule related to Safeguards available to the Secretary for purposes of determining both parties compliance with the Security Rule.
- P. The Business Associate shall, upon request with reasonable notice from the Covered Entity, provide the Covered Entity access to its premises for a review and demonstration of its internal practices and procedures for safeguarding PHI, PII or CI.

- Q. To the extent that the Business Associate is to carry out one or more of the Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, it shall comply with the requirements of Subpart E that apply to the performance of the Business Associate's obligation(s).

Section 3. Breach Notification Requirement.

- A. In compliance with section 13402 of the HITECH Act, and 45 CFR § 164.410, as they may be amended from time to time, the Business Associate agrees to notify the Covered Entity of any breach of unsecured PHI, PII or CI without unreasonable delay and in no case later than sixty (60) calendar days after discovery of breach. The notification shall include, to the extent possible, the identification of each individual whose unsecured PHI, PII or CI has been or is reasonably believed by the Business Associate to have been, accessed, acquired, used, or disclosed during the breach. The Business Associate shall provide to the Covered Entity any other available information that is required to include in notification to the individual under 45 CFR § 164.404(c) at the time of the notification or as promptly thereafter as information becomes available.
- B. The Business Associate agrees to indemnify and hold the Covered Entity harmless and pay for any and all costs associated with any breach of unsecured PHI, PII or CI including, but not limited to: the costs of notifying Members, the Department of Health and Human Services, and any media; providing credit monitoring; investigating the breach; taking measures to prevent such breaches in the future; and defending against any subsequent lawsuits.

Section 4. Permitted Uses by the Business Associate.

Except as otherwise limited in this Agreement, the Business Associate may use or disclose PHI, PII or CI to perform functions, activities, or services for, or on behalf of, the Covered Entity as specified in any other Agreement entered into between the Parties.

Section 5. Obligations of the Parties.

- A. The Covered Entity shall notify the Business Associate of any limitation(s) in its notice of privacy practices of the Covered Entity in accordance with 45 CFR § 164.520, to the extent such limitation may impact the Business Associate's use or disclosure of PHI, PII or CI.
- B. The Covered Entity shall immediately notify the Business Associate of any changes in, or revocation of, permission by any Individual to use or disclose PHI, PII or CI to the extent that such changes may affect the Business Associate's use or disclosure of PHI, PII or CI.
- C. The Covered Entity shall immediately notify the Business Associate of any restriction to the use or disclosure of Protected Health Information that the Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI, PII or CI.

Section 6. Permissible Requests by the Parties.

The Parties shall not request each other to use or disclose PHI, PII or CI in any manner that would not be permissible under Applicable Privacy Law if done by the other party.

Section 7. Term and Termination.

- A. **Term.** The term of this Agreement shall commence as of the Effective Date of this Agreement, and shall terminate when all of the PHI, PII or CI provided by the Covered Entity, or created or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to each other except for any and all information that must be maintained pursuant to any federal, state and/or local regulatory authority. If it is not feasible to return or destroy the PHI, PII or CI, protections are extended to such information, in accordance with the termination provisions of this Section.
- B. **Termination for Cause.** Upon Covered Entity's knowledge that the Business Associate has breached a material term of this Agreement, the Covered Entity shall:
- (1) Provide an opportunity for the Business Associate to cure the breach or end the violation and terminate this Agreement. If Business Associate does not cure the material breach or end the violation within a reasonable period of time, the Covered Entity may terminate this Agreement;
 - (2) Immediately terminate this Agreement if the Business Associate has breached a material term of this Agreement and cure is not possible; or
 - (3) If neither termination nor cure is feasible, Covered Entity shall report the violations to the Secretary.
- C. **Effect of Termination.**
- (1) Except as provided in subparagraph (2) of this paragraph, upon termination of this Agreement, for any reason, the Business Associate shall return or destroy all PHI, PII or CI received from the Covered Entity or created or received by Business Associate on behalf of the Covered Entity. This provision shall apply to PHI, PII or CI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI, PII or CI, unless return or destruction is not reasonably feasible.
 - (2) In the event that the Business Associate determines that returning or destroying the PHI, PII or CI is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI, PII or CI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI, PII or CI and limit further uses and disclosures of such PHI, PII or CI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI, PII or CI.
- D. **State Law.** If state law applicable to the relationship between the Parties contain additional or more stringent requirements than federal law for the Parties regarding any aspect of PHI, PII or CI privacy, then the Parties agree to comply with the higher standard contained in applicable state law.
- E. **Consideration.** The Parties recognize that the promises they have made in this Agreement shall, henceforth, be detrimentally relied upon by the Parties in choosing to continue or commence a business relationship with each other.
- F. **Indemnification.** The Business Associate shall indemnify and hold harmless the Covered Entity and its officers, employees, agents, and instrumentalities (the indemnified parties) from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Covered Party or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to, or resulting from the

performance of this Agreement by the Business Associate or its employees, agents, servants, partners, principals, or subcontractors.

- G. Modification. This Agreement may only be modified through writing signed by the Parties and, thus, no oral modification hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Parties to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996 as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH Act"), including all pertinent regulations issued by the Department of Health and Human Services ("HHS");

Section 8. Miscellaneous.

- A. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section then in effect or as amended.
- B. Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for either parties to comply with the requirements of Applicable Privacy Law.
- C. Survival. The respective rights and obligations of either parties under Section 6C of this Agreement shall survive the termination of this Agreement.
- D. Interpretation. Any ambiguity in this Agreement shall be resolved to permit either party to comply with Privacy Regulations.

The parties have caused this Agreement to be executed on the date first written above.

NAME OF BUSINESS ASSOCIATE

BY: _____

TITLE: _____

DATE: _____

HEALTHPLEX, INC.

BY: _____

TITLE: _____

DATE: _____

ATTACHMENT D

Documents to be provided by the Agent:

Independent Agent/Broker License(s)

New York and/or New Jersey