

**EMBLEM HEALTH  
MARKETING ORGANIZATION AGREEMENT**

This MARKETING ORGANIZATION AGREEMENT (this “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between EMBLEM HEALTH. (“EH”), on behalf of itself, its Affiliates and successor companies (collectively, the “Company”) and \_\_\_\_\_ (“Producer”), which is defined as follows:

The Producer contracts as:

- Individual
- Corporation
- Partnership

Producer is a:

- Field Marketing Organization (“FMO”)
- General Agent
- X      Agent

A. Company offers Medicare Advantage Plans (“MA Plans”) and products as may be designated by the Company (collectively, “Products”).

B. Agent desires to provide such services as outlined in this Agreement and also desires to operate as a professional liaison between the Company and Representatives, as defined below, who interact with eligible Medicare beneficiaries interested in enrolling in the Products.

C. The Company desires to promote the Products to eligible beneficiaries who are interested in enrolling therein.

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement, it is agreed as follows:

**ARTICLE ONE - DEFINITIONS**

As used herein, capitalized terms shall have the meanings set forth below:

1.1 **Affiliate** is any entity which directly or indirectly, through one or more intermediaries, owns or controls, is controlled or owned by or is under common ownership or control with the Company, and offers one or more of the Products. Affiliates offering the Products are specifically set forth in the Producer Compensation Schedule attached hereto and incorporated herein as Exhibit A.

1.2 **Agent** is an appropriately licensed, independent contractor, appointed by the Company, free to exercise his or its own judgment as to the time and manner of performing services pursuant to an agreement between the Agent and the Company.

1.3 **CMS** is the Centers for Medicare & Medicaid Services.

1.4 **CMS Contract** is the contract entered into by CMS and the Company pursuant to which the Company offers one or more MA Plans in a specified service area or region.

1.5 **General Agent** is an appropriately licensed, independent contractor, appointed by the Company, free to exercise his or its own judgment as to the time and manner of performing services pursuant to an agreement between the General Agent and the Company and authorized to recommend another agent for appointment as Agent or Solicitor Agent.

1.6 **MA Organization** is an entity that has entered into a contract with CMS to operate an MA Plan.

1.7 **MA Plan** is any Medicare Advantage Plan that may now or in the future be offered to individual Medicare beneficiaries by the Company including, but not limited to, Local HMO and PPO Plans (“Local MA Plans”), Special

Needs Plans (“SNPs”), Regional Preferred Provider Plans (“Regional PPO Plans”). The definition of an MA Plan includes an MA Plan which include prescription drug plan benefits (“MA-PD Plans”).

**1.8 Medicare Laws and Regulations** are (i) 42 CFR Parts 417, 422 and 423 Medicare Program; Revisions to the Medicare Advantage and Prescription Drug Benefit Programs; Final Rule (ii) the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (the “MMA”); (iii) Part C and Part D of Title XVIII of the Social Security Act and all rules and regulations related thereto that are from time to time adopted by CMS; (iv) all administrative guidelines (including Marketing Guidelines, as defined in Section 2.4 of this Agreement), bulletins, manuals, instructions, requirements, policies, standards or directives from time to time adopted or issued by CMS or the Department of Health and Human Services (“HHS”) relating to any of the foregoing; and (v) any laws and regulations enacted, adopted, promulgated, applied, followed or imposed by any governmental authority or court in respect of Medicare or any successor federal governmental program, as any of the preceding Medicare Laws and Regulations from time to time may be amended, modified, revised or replaced, or interpreted by any governmental authority or court.

**1.09 Member** is an eligible individual who has been enrolled by the Company in an MA Plan or other plan designated by the Company.

**1.10 Product** means MA Plan and any other health plans and products as may be designated by the Company. Products are specifically set forth in the Compensation Schedule attached hereto and incorporated herein as Exhibit A.

**1.11 Representatives** mean appropriately licensed, contracted and appointed General Agents and Agents with whom FMO has direct and indirect relationships to promote and market the Products.

**1.12 Solicitor Agent** is an appropriately licensed captive agent employed by or independently contracted with FMO, General Agent or Agent, appointed by the Company, and is free to exercise his or its own judgment as to the time and manner of performing services pursuant to a direct or indirect agreement between the Solicitor Agent and the FMO, General Agent or Agent. Company shall under no circumstance be responsible for compensating Solicitor Agents.

## ARTICLE TWO - APPOINTMENT, DUTIES AND LIMITATIONS ON AUTHORITY

**2.1 Appointment.** Subject to the terms and conditions of this Agreement, the Company hereby appoints Producer for all new business sales to solicit applications for Products either directly or through its network of Representatives who are designated to the Company in writing by Producer and appointed by and contracted with the Company. Producer hereby accepts such appointment. Producer acknowledges that the Company may have relationships with existing field marketing organizations, general agents, agents and other representatives (including general agents, agents and other representatives that have relationships with Producer) and Producer agrees that the Company shall have no obligation to terminate any such existing relationships. Further, Producer acknowledges that the Company may in the future enter into relationships with field marketing organizations, general agents, agents and other representatives (including general agents, agents and other representatives that have relationships with Producer), and Producer agrees that there are no restrictions on the Company entering into such relationships. Producer acknowledges and agrees that the authorization and appointment as set forth in this Agreement is limited to the service areas as the Company may designate in writing from time to time or may otherwise make such list of service areas available to, and accessible by, Producer. The service area is specifically set forth in the Producer Compensation Schedule attached hereto and incorporated herein as Exhibit A. The Company may add, modify or delete any such service areas in the Company’s sole discretion upon thirty (30) days prior written notice to Producer, or such shorter period as may be required under applicable law.

**2.2 Duties of Producer.** Producer shall:

- a. Establish, equip, staff and maintain an office for the conduct of business under this Agreement, and subject to the Company’s prior review and written approval, prepare and provide all proposals for Products, based upon terms provided by the Company, for delivery to prospective Members. Producer shall ensure that Producer and all Representatives promote to each prospective Member only those Products for which the prospective Member is qualified to enroll and which Producer and Representatives in good faith believe meet the needs of the prospective Member;

- b. Implement a focused marketing strategy under which Producer will actively promote and market the Products and will recruit to the Company, subject to the provisions of Article Three below, a network of Representatives, duly licensed, trained and appointed by the Company, who specialize in the promotion and marketing of products that are offered by the Company to promote and market such products. The marketing strategy implemented by Producer shall be in compliance with the Marketing Guidelines (as defined in Section 2.4 of this Agreement) and all Medicare Laws and Regulations and applicable state and federal laws. Prior to the execution of this Agreement, Producer shall provide the Company with a current list of Representatives. The list of Representatives shall be provided in the format specified by the Company and will include the name, address, telephone number, fax number and e-mail of each Representative. Producer shall notify the Company of any changes to the list of Representatives on an ongoing basis and as soon as practicable. In addition the Producer shall provide the Company with a list of all planned community marketing and sales events in which Producer or Representatives will participate. The list of events shall be provided in the format and time frames specified by the Company. Producer shall notify the Company of any changes to the list of events as soon as practicable;
- c. Ensure, at Producer's sole expense, that Producer and all Representatives complete the training and certification required by the Company for the promotion and marketing of the Products. As directed by the Company, such training may be provided by the Company, its designee or Producer. Such training shall cover at a minimum (i) the requirements of the Marketing Guidelines (as defined in Section 2.4 of this Agreement), (ii) the coverage to be provided to Members, and (iii) administrative and operational issues relating to the Products. Producer and all Representatives must be certified by the Company as having completed the training required by the Company prior to promoting and marketing the Products and on an annual basis thereafter. All materials used to train the Producer or Representatives on the Company's products must be approved by the Company;
- d. Solicit and procure, and cause to be solicited and procured by Representatives, applications from interested and eligible beneficiaries using the Company's designated marketing materials and application forms, including, without limitation, the collection of information designated by the Company and CMS to process enrollments and the transmission of enrollment information to the Company in a manner specified by the Company (for example, utilizing an Internet-based enrollment facility, via electronic file transmission, or via facsimile transmission) and in compliance with standards and requirements that may be established by the Company;
- e. To the extent Producer is owned or controlled by a licensed individual agent or agents who promote and market the Products to eligible beneficiaries, ensure that such individual or individuals comply with all of the requirements applicable to FMO as set forth in this Agreement and with Company's policies and procedures relating to promoting and marketing the Products to eligible beneficiaries;
- f. Maintain proper records and accounts of all transactions pertaining to this Agreement; make such records and accounts available to the Company or its representatives during normal business hours upon seven (7) business days prior notice and turn such records over to the Company immediately upon termination of this Agreement, provided that Producer may retain copies of such records for its files;
- g. Generally endeavor to promote the interests of the Company as contemplated by this Agreement; and conduct itself so as not to affect adversely the business or reputation of itself or the Company;
- h. As applicable, inform all prospective Members how premium payments for the Products are to be made, as prescribed by the Company and consistent with CMS requirements and applicable state and federal laws;
- i. As applicable, advise members to pay premiums directly to Company, and where payment is inadvertently received by Producer, hold any check or monies for or on behalf of the Company in a fiduciary capacity and keep such funds segregated from Producer's assets, it being specifically agreed that any such funds shall be deposited to a trust account in a state or federal bank authorized to do business in the state where the deposit is made and insured by an appropriate federal insuring agency no later than one (1) business day after receipt of such funds, and shall be transmitted to the Company within five (5) business days; provided, that to the extent applicable laws and regulations provide for more stringent requirements relating to receipt, handling or transmission of funds, Producer shall comply with the more stringent requirements;

- j. Timely pay to the Company all monies which may be or become due to it by reason of advances or loans or overpayments to Producer or otherwise;
- k. Follow and be governed, and take appropriate steps to require Representatives to follow and be governed, by the terms and conditions of this Agreement and by the policies, procedures, rules and regulations of the Company now or hereafter to become in force, which policies, procedures, rules and regulations shall constitute a part of this Agreement;
- l. Use best efforts to keep Members enrolled in the Products by providing prompt service to Representatives and to Members;
- m. Promptly report to the Company any complaints or inquiries of which it becomes aware (and the facts relevant thereto) to or from any governmental authority regarding Producer, any Representatives or the Company; and fully cooperate with, promptly respond to any requests for information from, and provide assistance to the Company and the Company's designees, as reasonably requested by the Company, on any complaints or inquiries received relating to Producer, any Representatives or the Company;
- n. Comply with and meet the performance requirements which the Company may establish from time to time; it being acknowledged and agreed by Producer that failure to comply with and meet such performance requirements may result in termination of this Agreement by the Company. Without limiting the generality of the foregoing, in the case of an FMO, Company has set as a benchmark a minimum annual production requirement of Five Hundred (500) new Members enrolled during each calendar year. FMO further acknowledges and agrees that failure to meet such minimum annual production requirement may result in termination of this Agreement by the Company. No payment under this Agreement will be paid after the effective date of such termination.
- o. Use only the individually identifiable writing number assigned to Producer by the Company on applicable documents;
- p. Comply with the Medicare Regulatory Addendum attached hereto as Exhibit B and incorporated herein;
- q. Comply with the HIPAA Business Associate Addendum attached hereto as Exhibit C and incorporated herein;
- r. Hold and maintain in good standing, and cause to be held and maintained by Representatives in good standing, any license, certification or registration (collectively, "license") required to perform Producer's and Representative's duties under this Agreement in each state where Producer promotes and markets the Products, and immediately notify the Company of (i) any expiration, termination, suspension, or other action affecting such license, and (ii) any disciplinary proceedings against Producer or Representatives or against their respective principals, partners, shareholders, directors, officers or employees relating to any license issued to any such person by a regulatory authority. All state licensures and state license fees are the responsibility of Producer and/or Representatives and not the Company; and
- s. To the extent that Producer or its Representatives, directly or indirectly, have any arrangements with any subcontractors to perform any services in connection with this Agreement, ensure that any such subcontractors perform in compliance with the terms and conditions of this Agreement. If a subcontractor is performing services in a manner which is not in compliance with the terms and conditions of this Agreement, or upon the Company's request, Producer shall terminate or require that its Representatives terminate any relationship with any such subcontractor.

**2.3 Limitations on Authority.** Notwithstanding any other provision in this Agreement, Producer has no authority to, nor shall it represent itself as having such authority to, nor shall it do, any of the following:

- a. Hold itself out as an employee, partner, joint venture or associate of the Company;
- b. Hold itself out as an agent of the Company in any manner, or for any purpose, except as specified in this Agreement;

- c. Alter, modify, waive or change any of the terms, rates or conditions of any advertisements or other promotional literature, receipts, policies or contracts of the Company in any respect;
- d. Insert any advertising in respect to the Company or any of the Products in any publication whatsoever, distribute any promotional literature or other information in any media, or use the logo/service marks of the Company without prior written authority of the Company;
- e. Collect, or authorize a Representative or any other person to collect, any premiums or payments on behalf of the Company whatsoever, except the initial premium if authorized by the Company;
- f. Bind the Company on any application for any Product, it being expressly understood that all applications must be approved by the Company and/or CMS;
- g. Incur any indebtedness or liability, make, alter, or discharge contracts, waive or forfeit any of the Company's rights, requirements or conditions under any Product, extend the time of payment of any premium, or waive payment in cash on behalf of the Company;
- h. Except as may be otherwise permitted by prior approval of the Company, deduct any payments due Producer or any Representatives from premiums or payments collected on behalf of the Company;
- i. Make any payment or otherwise offer or give anything of value to any Representative in connection with the promotion and marketing of the Products, except as permitted under this Agreement and as may be specifically authorized in advance and in writing by the Company;
- j. Transfer or sell the business of Producer created by this Agreement without the Company's prior written consent which shall not be unreasonably withheld, it being acknowledged and agreed by Producer that such business belongs exclusively to the Company;
- k. Knowingly recruit or engage any General Agent, Agent or Solicitor Agent who is contracted or otherwise affiliated with another Producer, General Agent or Agent, as the case may be, in the service area designated by the Company to such Producer, General Agent or Agent, except as may be permitted in accordance with Company rules and regulations and such additional terms and conditions as the Company may specify;
- l. Except as may be otherwise permitted by prior approval of the Company, knowingly recruit or engage any General Agent, Agent or Solicitor Agent who was previously sanctioned and/or terminated for cause by the Company or by another insurer, health plan, or other insurance agency or entity; or
- m. Knowingly permit any party, including any Representative, to inappropriately use the individually identifiable writing number issued to Producer by the Company on applications solicited by such party.

**2.4 Promoting the Products in Compliance with Medicare Marketing Guidelines and Applicable Laws and Regulations.** Notwithstanding any other provision in this Agreement, Producer agrees, on behalf of itself and its employees, agents, contractors and Representatives, to strictly comply with the Company's policies and procedures and all applicable federal and state laws, rules and regulations (including, but not limited, to anti-kickback statutes, false claims acts and fraud and abuse statutes) relating to promoting the Products to Members. Producer and Representatives will complete the training required by the Company for the promotion and marketing of the Products and read all Marketing Guidelines (as defined below), and will comply with all policies therein. Producer and Representatives shall not make representations with respect to the nature or scope of the benefits of enrollment in the Products except in conformity with the written guidelines and marketing materials furnished by the Company to Producer and Representatives for that purpose. These written guidelines specifically include, but are not limited to, (i) 42 CFR Parts 417, 422 and 423 Medicare Program; Revisions to the Medicare Advantage and Prescription Drug Benefit Programs; Final Rule (ii) CMS's Medicare Marketing Guidelines For Medicare Advantage Plans, Prescription Drug Plans and 1876 Cost Plans and any and all updates, revisions and additions thereto and (iii) such other written guidelines and marketing materials that may be issued by CMS or other applicable regulatory agencies or otherwise be established by the Company and furnished to Producer (collectively, the "Marketing Guidelines"). By entering into this Agreement, Producer is acknowledging it has received, read and understands the Marketing Guidelines and that it will ensure that Representatives will receive, read and understand the Marketing Guidelines. Producer and Representatives shall have no

authority to, and will not purport to, make any oral or written alteration, modification or waiver of any of the terms or conditions applicable to enrollment in the Products. Producer and Representatives shall make all disclosures to eligible Medicare beneficiaries in accordance with the Marketing Guidelines, including the following: (i) if Producer or Representative is meeting with a Medicare beneficiary, Producer or Representative shall clearly identify to the Medicare beneficiary that Producer or Representative will be discussing the Company's MA Plans and/or PDP Plans before Producer or Representative markets to the Medicare beneficiary, (ii) Producer or Representative shall, prior to any marketing appointment, the beneficiary must agree to the scope of the appointment and that agreement must be documented. This documentation may be in writing or recorded by phone. This documentation must be maintained for a period prescribed by law. Failure to produce documentation of the scope of appointment with will result in termination. Additionally, the following disclosure in writing to the Medicare beneficiary: "The person that is discussing plan options with you is contracted with <plan name, as provided by Company>. The person is compensated based upon your enrollment in a plan" and (iii) if Producer or Representative makes any presentation regarding the Company's Plans, Producer or Representative shall strictly comply with the Company and CMS requirements. Producer and Representatives shall make no payments or gifts of any kind to any eligible Medicare beneficiaries or any Members. Producer or Representatives shall be subject to, and cooperate with, the "Sales Incident" program established by the Company.

**2.5 Rapid Disenrollment.** Producer and Representatives shall maintain a "Rapid Disenrollment" rate of no more than ten percent (10%) for each calendar year throughout the term of this Agreement. For purposes of this provision, "Rapid Disenrollment" means the voluntary disenrollment of a Member from an MA Plan on or before ninety (90) days after the Member's initial enrollment effective date. Disenrollments for all MA Plans marketed and promoted by Producer and Representatives are reported to the Company by CMS on the "Monthly Membership Reconciliation" (MMR) file. If the Rapid Disenrollment rate exceeds ten percent (10%) for any calendar year, Producer shall, at the request of Company, remove any Representative(s) determined by the Company or Producer to be responsible and Company shall terminate any agreement with such Producer and/or Representative. No payment under this Agreement will be made after the effective date of such termination.

**2.6 Duties of the Company.** The Company shall furnish to Producer the marketing and enrollment materials for marketing and promotion of the Products. Producer specifically acknowledges that marketing and enrollment materials must be approved by CMS and the Company and that the enrollment of Members into MA Plans and PDP Plans is governed by Medicare Laws and Regulations. Producer further acknowledges that marketing and enrollment materials for health plan products which are subject to state regulations must be approved by applicable state regulatory agencies and are governed by state laws and regulations.

**2.7 Company's Right to Modify Products and Service Area.** Subject to Medicare Laws and Regulations and applicable federal and state laws and regulations, the Company may, in its discretion, discontinue or modify any of the Products. Company may, in its sole discretion, limit which Products Producer and Representatives are authorized to solicit applications for on the Company's behalf. Company may, in its sole discretion, add, discontinue or modify any of the service areas in which Producer is authorized to solicit applications for any Products upon thirty (30) days prior written notice to Producer, or such shorter period as may be required under applicable law.

**2.8 Relationship of Parties.** Producer is an independent contractor and nothing contained in this Agreement shall be construed to create an employer and employee relationship between the Company and Producer. The Company shall not be bound or liable for any actions taken or representations made by Producer beyond the scope or in violation of this Agreement. Producer shall be responsible for all taxes on compensation earned by it under this Agreement. Producer shall be responsible for providing any and all insurance coverages it is required to provide for itself, or for any of its employees, by law. Except as provided in this Agreement, Company does not control the time, place or manner of Producer's activities. Each party shall be solely responsible for and shall hold the other party harmless against any obligation for payment of wages, salaries, or other compensation (including all state, federal, and local taxes and mandatory employee benefits), and insurance and voluntary employment-related or other contractual or fringe benefits as may be due and payable by the party to or on behalf of such party's employees and other contractors. Neither party shall use the trademarks or tradenames of the other party except as specifically contemplated by this Agreement. Producer shall not advertise using the name of Company without the express written approval of Company.

**2.9 Litigation.** Producer shall not initiate litigation in any dispute between Producer and any Representatives, or between Producer and any prospective or existing Member, without the prior written consent of the Company, which consent may be withheld by the Company for any or no reason. If any legal action is brought against either party hereto, or against

both parties jointly, by reason of any alleged act, fault or failure of Producer in connection with its activities hereunder, the Company may require FMO to defend such action, or at its sole option, the Company may defend such action and expend such sums as may be reasonable therefore, including reasonable attorneys' fees, and Producer shall be chargeable therewith as well as with any amounts which may be recovered against the Company by judgment, settlement or otherwise, in any such action, which amount Producer shall pay to the Company on demand.

**2.10 Indemnification.** Producer shall defend, indemnify and hold the Company harmless from and against any and all injuries, claims, demands, liabilities, including reasonable attorneys' fees, suits at law or in equity, or judgments of any nature whatsoever, which the Company, its employees, representatives or third parties may sustain or incur by reason of any act, neglect or default of Producer or any Representatives in connection with its activities under this Agreement or the timely and accurate payment of commissions, fees, or other compensation to Representatives, including payments to General Agents, Agents or Solicitor Agents for sales of or enrollments in the Products. Producer shall indemnify and hold the Company harmless from and against any and all damages, claims, demands or liabilities which Producer, any Representative or a third party may incur as a result of the installation and use of any software provided by the Company to Producer or any Representative in connection with its activities under this Agreement.

**2.11 Audits.** Producer shall permit the Company to inspect and audit all information and records related to services Producer performs under this Agreement. The Company must give Producer reasonable notice and conduct the inspection and audit during regular business hours. Producer shall also comply with the audit requirements set forth in the Medicare Regulatory Addendum. The Company may conduct, or arrange for a third party to conduct, a pre-contracting audit and subsequent periodic audits of Producer's operations relating to the performance of its duties hereunder, and compliance with this Agreement. Producer shall promptly take corrective action to address any issues identified by the Company in connection with its audit and oversight activities. All corrective actions must be communicated to the Company, and approved by the Company. The Company has the right to alter or request the necessary corrective action to be taken.

**2.12 Non-Solicitation.** During the term of this Agreement and for a period of one year following the later of (a) the effective date of termination of this Agreement; or (b) the last day in the month in which the Company pays any renewal fees, Producer shall not, and shall require that all Representatives shall not, directly or indirectly, other than in performance of its or their obligations hereunder, (i) solicit any business from a Member of the Company in a manner that is in violation of Medicare Laws and Regulations, including the prohibition on steering and "cherry picking", or in violation of any other applicable state or federal laws and regulations; or (ii) knowingly employ or engage or offer to employ or engage any person who is then (or was at any time within one year prior to the time of such employment, engagement or offer) an employee, sales representative or agent of the Company, unless mutually agreed to by the parties.

### ARTICLE THREE - NETWORK OF REPRESENTATIVES

**3.1 Recommended Appointment.** Producer may recommend Representatives for appointment by the Company. The Company, in its sole discretion, shall have the right to make such appointments and retains the right, in its sole discretion, to terminate such appointments. Producer and each Representative must be appointed by, and contracted with, the Company before engaging in any marketing activities under this Agreement. As directed by the Company, Producer shall provide the Company with the information required by the Company for the appointment of Producer and each Representative with each applicable state regulatory agency. If the Company expands Producer's designated service area to include any additional state(s), Producer shall provide the Company with the information required by the Company for the appointment of Producer and Representatives in the additional state(s). Producer acknowledges and agrees that neither Producer nor any Representatives may market the Products in any additional state(s) until such time as the Company makes the appointments in such additional state(s). Any required appointment fees in any such additional state(s) are the responsibility of Producer and/or Representatives and not the Company.

**3.2 Agreements with General Agents and Agents.** Any and all agreements made with General Agents and Agents shall be made directly with the Company and on the Company's forms. Such agreements shall not become effective until they are executed by the Company. Producer shall have no authority to modify or amend such agreements. The Company may, at its option, refuse to enter into an agreement with any proposed General Agent or Agent and may terminate such agreement at any time with or without cause.

**3.3 Agreements with Solicitor Agents.** Agreements with Solicitor Agents are entered into between Producer, General Agent or Agent on the one hand, and the Solicitor Agent on the other. Producer, General Agent or Agent, and not the Company, is responsible for compensating the Solicitor Agent. The Company is not a party to any agreement between the Producer, General Agent or Agent and the Solicitor Agent. However, the Company may direct Producer to take action with respect to any of its contracted Solicitor Agents' promotion and marketing of the Products, and Producer shall take such action immediately upon the Company's direction.

**3.4 Oversight and Responsibility for Representatives.** Producer shall actively supervise all Representatives it recommends and assume compliance with this Agreement and all its terms and conditions, and shall be responsible for the conduct, acts and performance of each Representative. Producer shall take all necessary steps to communicate to all Representatives the Company's requirements for the marketing and promotion of the Products, and shall assure that each Representative complies with such requirements, Medicare Laws and Regulations, and other applicable federal and state laws and regulations. Producer shall not pay, and shall not allow its Representatives to pay, any form of rebate in order to obtain business. Producer shall immediately inform the Company of any actual or suspected rebate by any person acting on behalf of Producer or any Representative.

#### **ARTICLE FOUR - COMPENSATION WHILE AGREEMENT IS IN EFFECT**

**4.1 Compensation to Producer.** Except as provided for in Section 4.2 and 4.3 below, the Company shall compensate Producer for the marketing and promotion of the Products, in accordance with the Producer Compensation Schedule attached as Exhibit A, and Producer agrees that the following terms and conditions shall apply:

- a. Producer shall receive compensation only on (i) business submitted to the Company directly by Producer and (ii) business submitted by Producer's Representatives to the Company. Producer shall not be entitled to receive Agent level commissions except on business (a) generated directly by Producer, (b) submitted to Company directly by Producer and (c) for which Producer's name and producer number appear on the application as the writing agent. Producer shall accept the compensation set forth on the Compensation Schedule as compensation in full for all services performed and for all expenses incurred by Producer under this Agreement. In the event that more than one party claims entitlement to receive compensation on the sale of any Product, the Company shall have the right, in its sole and absolute discretion, to decide and settle the dispute and determines which Producer shall receive payment. Any decision of the Company shall be final, binding, conclusive and non-appealable.
- b. Producer, as the case may be, and not the Company, shall have the sole responsibility to compensate Solicitor Agents such Producer may recommend to Company for all activities conducted by Solicitor Agents on their behalf. Producer shall ensure that the compensation methodology and the compensation amounts to be paid to Solicitor Agents comply at all times with CMS requirements and applicable Medicare Laws and Regulations, and any other applicable federal and state laws and regulations. Producer agrees to disclose to the Company at any time the compensation structure and amounts payable or paid to Solicitor Agents.
- c. The Company may, at any time, increase or decrease the compensation payable as specified on the Compensation Schedule, and may set the compensation payable on any or all additional products which are added to the Compensation Schedule by furnishing to Producer written notice. Notwithstanding the foregoing, any change in the compensation payable shall not be retroactive, and shall apply only to Products, as applicable, solicited or arranged by Producer or any Representative on or after the effective date specified in the written notice or revised compensation schedule, which effective date shall be at least thirty (30) days after the date on which such written notice or revised compensation schedule is furnished to Producer.
- d. All compensation due to Producer under this Agreement shall be based on the enrollment of Members in a Product, as determined by CMS and/or the Company, as the case may be.
  - i. **Deductions for Non-Enrollment.** If the Company, in its sole discretion, elects to pay any compensation to Producer prior to receiving CMS confirmation of the enrollment of a

Member in an MA Plan and CMS does not, in fact, enroll the individual in the MA Plan.. Producer shall promptly refund such compensation paid to Producer and attributable to such individual or Representative. The Company may deduct such compensation from amounts otherwise owed by the Affiliate to Producer.

- ii. **Deductions for Rapid Disenrollment.** If a Member voluntarily disenrolls from an MA Plan or PDP Plan within ninety (90) days of enrollment and the Company has paid any compensation to Producer for such Member, Producer shall refund such compensation paid to Producer and attributable to such Member. The Company may deduct such compensation from amounts otherwise owed by the Company to Producer and shall provide Producer with information supporting the amount of any such deductions taken pursuant to this provision.

**4.2. Responsibility for Indebtedness to Company.** Producer shall be responsible for and agrees to reimburse and indemnify the Company for (i) any unearned or improperly or mistakenly paid compensation under this Agreement;(ii) any obligation or any sum which may be due and payable to the Company by Producer under this Agreement and (iii) to the extent Producer may be responsible for commission payments to a Representative, any obligation or any sum which may be due and payable to the Company by any such Representatives under the agreement between the Company and the Representative or under any agreement between Producer and the Representative (collectively, “Indebtedness”). Producer grants the Company a first lien in and to all compensation payable under this Agreement and any compensation payable under any other agreement between the Company and Producer, for any debt due from Producer, including sums advanced or loaned by the Company. At any time during the term of this Agreement and at any time following termination of this Agreement, the Company may withhold, deduct and apply all sums due which would otherwise be due and payable to Producer to reduce any Indebtedness. The Company may, in its sole discretion, demand full payment of any Indebtedness that remains outstanding for more than thirty (30) days. Producer agrees to pay the Company any and all Indebtedness immediately upon demand. If such Indebtedness is not paid within thirty (30)days of the Company’s written demand for payment, the Company will be entitled to recover, in addition to such Indebtedness, all cost of collection, including, but not limited to, court costs, reasonable attorneys fees and other expenses. Failure to pay any Indebtedness within thirty (30) days of Company’s written demand for payment shall also be the basis for termination of this Agreement with cause. This Section 4.2 shall survive termination of this Agreement.

## **ARTICLE FIVE - TERM, TERMINATION AND SUSPENSION**

**5.1 Term of Agreement.** The term of this Agreement shall begin on the date first written above (the “Effective Date”) and shall continue until terminated in accordance with the provisions of this Article Five.

**5.2 Termination.** This Agreement may be terminated without cause by either Producer or Company upon thirty (30) days prior written notice or such minimum number of days as required by applicable law, which notice shall be provided in accordance with the notice procedures set forth in this Agreement.

**5.3 Automatic Termination.** This Agreement will terminate automatically upon the occurrence of any of the following events:

- a. If Producer is an individual, upon the death of the individual;
- b. If Producer is a partnership, upon the death of any partner or any change in the partners composing the partnership, or dissolution of the partnership for any reason;
- c. If Producer is a corporation, upon the dissolution of the corporation or disqualification of the corporation to do business under applicable state laws;
- d. Producer is unable to pay debts as they mature, makes an assignment for the benefit of creditors or becomes the subject of a bankruptcy, insolvency or similar proceedings;
- e. The loss, restriction, revocation or suspension of Producer’s insurance license, certification or registration by any federal or state regulatory authority having jurisdiction over the parties; or

- f. Producer's business is sold, transferred or merged and the Company has not consented to such sale, transfer or merger or has not appointed the successor.

**5.4 Termination with Cause.** The Company may immediately terminate this Agreement for cause upon written notice to Producer upon the occurrence of any of the following events:

- a. The failure of Producer to comply with (i) the policies, procedures, rules and regulations of the Company, (ii) the Marketing Guidelines, (iii) the Medicare Laws and Regulations or (iv) the laws or regulations of the states in which the Producer is licensed to conduct business or any federal or state regulatory authority having jurisdiction over the parties;
- b. The failure of Producer to perform any material obligations imposed upon Producer under the terms and conditions of this Agreement;
- c. The conviction of Producer or any of its principals, shareholders, directors or officers of a felony crime or any other crime involving moral turpitude;
- d. The exclusion of Producer from participation in Medicare, Medicaid or any federal health care program;
- e. The failure of Producer to provide the Company with certificates of insurance and to maintain the insurance coverage set forth in this Agreement;
- f. If Producer or any principal, partner, shareholder, director or officer of Producer or Representative directly or indirectly and systematically contacts, communicates or meets with Members for the purpose of replacing a Product offered by the Company with a Medicare Advantage Plan or other product offered by an MA Organization, PDP Plan Sponsor or other entity that is not affiliated with the Company; or
- g. The promotion and marketing of the Products by Producer or any of its principals, shareholders, directors or officers or any Representative when a suspension is in effect, as specified in Section 5.5 below.

**5.5 Suspension and Corrective Action of Producer.** In the event that the Company becomes aware of allegations, through Member complaints or otherwise, that Producer may have engaged in conduct in violation of this Agreement, the Company may suspend Producer's or the Representative's authority under this Agreement pending the Company's final outcome of an investigation of such allegations. During the time such suspension is in effect, Producer or the Representative, as specified by the Company, may not market or promote the Products on behalf of the Company; provided, however, that the Company shall continue to pay compensation in accordance with the terms and conditions of this Agreement on Producer's existing business submitted prior to the date of the suspension. The Company reserves the right to initiate corrective action against Producer or Representatives where the Company has determined Producer or Representatives have engaged in any conduct in violation of this Agreement.

**5.6 Specific Obligations of Producer to the Company and Members Following Termination of Agreement.** Following termination of this Agreement, Producer shall direct inquiries regarding the Products to the Company. Producer shall continue to act in accordance with applicable Medicare Laws and Regulations and federal and state laws and regulations applicable to marketing representatives, and shall refrain from making any negative statements about the Company or the Products to Members or other beneficiaries. Producer shall continue to act in accordance with the provisions of the HIPAA Business Associate Addendum attached to this Agreement. Without limiting the foregoing, Producer shall refrain from using or disclosing Member names and contact information, as well as all other Protected Health Information, as defined in the HIPAA Business Associate Addendum attached to this Agreement. At the request of the Company, Producer shall copy all requested records in its possession relating to applicants for MA Plans and/or other Products and relating to Members and forward such copies to the Company. The cost of copying such records shall be borne by Producer. Producer shall ensure that Representatives comply with the provisions of this Section 5.6 following termination of this Agreement.

**5.7 Compensation Following Termination of Agreement; Vesting.**

- a. In the event this Agreement is automatically terminated under Section 5.3 or is terminated by Company for cause under Section 5.4, Company shall cease paying to Producer any compensation due to Producer under this

Agreement and no further payment shall be due. This termination of payment shall be independent of any other rights that Company may have as a result of the breach of this Agreement.

b. Upon termination of this Agreement without cause, any compensation due to Producer as set forth on the Compensation Schedule in effect as of the effective termination date of this Agreement shall be vested in Producer and payable to Producer for a limited period of five (5) years after the effective date of the termination by the Company regardless of whether this Agreement is still in force at the time such compensation become due, so long as premiums continue to be paid by CMS and the Member, as applicable. The obligation of the Company to pay such compensation shall cease in the event that (i) Producer, at any time while such payments continue, contacts existing Members for the purpose of replacing any of the Products with a Medicare Advantage Plan or other Product offered by another MA Organization, health plan or insurer (notwithstanding anything to the contrary herein above, the parties expressly acknowledge and agree that the occasional or inadvertent replacement of business is practically unavoidable and that unless such conduct is part of an intentional effort to migrate the Company's business to a competitor of the Company, it shall not give rise to the cessation of payments provided for hereunder and furthermore, the parties hereto acknowledge and agree that the foregoing shall not apply in any instance where the Company's services or coverage are no longer generally accepted in such Member's geographic area), (ii) Producer, at any time while payments continue, engages in any of the conduct set forth in Section 5.4 which would have given rise to a termination for breach, or (iii) the Company's payments to Producer as required by this Agreement are less than Six Hundred Dollars (\$600.00) per year. This Section 5.7 shall survive termination of this Agreement.

**5.8 Termination of Representative.** Termination of Producer shall result in the termination of Producer's "downstream" network of Representatives. The Company may, in its sole and absolute discretion, terminate the participation of any Representative, and such Representative's "downstream" network, by providing advance written notice of such termination to Producer. Upon receiving such notice from the Company, Producer shall cause any terminated Representative(s) to cease marketing the Products and to cease soliciting applications on behalf of the Company. The Company shall have no obligation to pay any further compensation to Producer with respect to any enrollments which are originated after the termination date by any Representative who or which has been terminated. The termination of participation of any one or more of the Producer's Representatives by the Company shall not affect the performance of this Agreement by Producer and the remaining Representatives that have not been terminated by the Company. The termination of any Representative's participation hereunder shall not prevent the subsequent termination of this Agreement in its entirety by the Company in accordance with the provisions of this Article Five or as otherwise permitted by this Agreement. If Producer engages or employs any Solicitor Agents, Producer must immediately notify the Company of the termination of the engagement or employment of any such Solicitor Agents.

## ARTICLE SIX - GENERAL PROVISIONS

**6.1 Intellectual Property Rights; Confidential Information.** Producer agrees that all marketing and promotional materials, advertisements, circulars, brochures or similar material concerning the Products, rate and benefit schedules, contracts, records files, software, manuals, forms, and other materials and information furnished by the Company, whether furnished in paper form, electronic format or through the Internet, is and shall remain confidential and proprietary to the Company. Producer agrees that such proprietary and confidential information shall only be used by Producer in connection with performance under this Agreement and only in the manner provided by this Agreement. Producer shall not use any of the Company's proprietary and confidential information to directly or indirectly compete with the Company, or to assist any competitor of the Company to compete with the Company, during the term of this Agreement or at any time thereafter. Upon expiration or termination of this Agreement, Producer shall immediately return all proprietary and confidential information. Producer agrees that this Agreement is and shall remain confidential, and Producer agrees not to disclose this Agreement, or any term of it, to any third party without the prior written consent of the Company, except as required by law. Producer acknowledges and agrees that the Company owns all tangible property, including, but not limited to, goods, equipment, documents, spreadsheets, notes, disks, text, artwork, computer software, and similar property provided to Producer by the Company or produced by Producer at the Company's expense or based on the Company's proprietary and confidential information. Producer agrees to deliver this tangible property to the Company promptly upon the Company's request, but in any event, after Producer is finished using such tangible property in performing the services under this Agreement.

**6.2 Assignment.** Neither this Agreement nor any of the duties or benefits of this Agreement shall be assigned or transferred, either in whole or in part, without the prior written consent of the Company, except, notwithstanding the

above, company may assign the Agreement to a successor company arising from the Company converting to for profit status.

### 6.3 Amendments; Other Agreements.

a. **Unilateral Amendments.** The Company may amend this Agreement by providing written notice of the amendment and its effective date to Producer thirty (30) or more days before the proposed effective date of such amendment. The amendment will automatically become effective without Producer's written agreement unless Producer notifies the Company that Producer is terminating this Agreement before the effective date of the amendment.

b. **Amendments to Comply with Laws and Regulations.** The Company may amend, revise or supplement this Agreement with written notice to Producer in order to maintain compliance with Medicare Laws and Regulations and any applicable state, federal or local statutes, ordinances, codes, rules, regulations, restrictions, orders, procedures, directives, guidelines, policies or requirements enacted, adopted, applied or imposed by any governmental authority or court. The written notice shall specify the effective date of the amendment, revision or supplement to the provisions of this Agreement. Such amendment shall be binding upon Producer and shall not require the consent of Producer.

c. **Agreements for Sale of Other Products.** Nothing in this Agreement shall preclude FMO from entering into agreements with the Company for the sale of any Company products other than the Products, and no provision of this Agreement shall be construed to supplant or modify any provision of any such agreements.

d. **Prior Agreements.** The Company and Producer agree that this Agreement, including all exhibits, appendices and addenda attached hereto or incorporated into this Agreement by reference, constitutes the entire agreement between the Company and Producer and will, upon execution by the parties, supersede any prior agreement, oral or written, between the parties concerning the subject matter of this Agreement. If any such agreements are in existence, they are, upon execution of this Agreement by the parties, hereby cancelled, except with respect to any compensation or commissions payable thereunder, which compensation or commissions shall continue to be paid in accordance with the terms thereof.

### 6.4 Insurance. Producer shall maintain the following insurance coverage:

a. Commercial General Liability Insurance, including, but not limited to, premises and contractual liability with limits of not less than one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) annual aggregate for bodily injury and property damage. Said insurance shall be provided on an "occurrence" form.

b. If the Producer is an employer of one or more employees, workers compensation and employers liability coverage with minimum limits of:

i. Workers Compensation - Statutory as required by law

ii. Employers Liability-

Bodily injury by accident: \$1,000,000 each accident

Bodily injury by disease: \$1,000,000 each employee

Bodily injury by disease: \$1,000,000 policy limit

c. Producer's Errors and Omissions Insurance in an amount of not less than one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) annual aggregate.

d. If Producer has a claims-made based policy (or policies) and such policy (or policies) are cancelled or not renewed, Producer agrees to exercise any option contained in said policy (or policies) to extend the reporting period to the maximum period permitted; provided, however, that Producer need not exercise such option if the superseding insurer will accept all prior claims.

e. None of the foregoing requirements as to the type and limits of insurance to be maintained by Producer are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Producer under this Agreement. Each of the Producer insurance policies shall:



6.8 **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of New York, but without regard to conflict of law principles.

6.9 **Incorporation of Other Legal Requirements.** Any provisions now or hereafter required to be included in the Agreement by any federal or state governmental authority with competent jurisdiction over the subject matter hereof, including, but not limited to, CMS, shall be binding upon and enforceable against the parties hereto and deemed incorporated herein, irrespective of whether or not such provisions are expressly set forth in this Agreement.

6.10 **Survival of Terms.** The parties' respective rights and obligations under this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive. This includes, by way of example but is not limited to, the obligations provided in the following Sections, Appendices and Addenda: Insurance and Indemnification, Exhibit A, the Medicare Regulatory Addendum, and the HIPAA Business Associate Addendum.

6.11 **Signatures Delivered by Facsimile or E-Mail.** This Agreement, any amendments to this Agreement, and any other documents related to this Agreement (such as notices, etc.) to the extent bearing a signature by the person authorized by the respective party, but delivered by means of a facsimile machine or e-mail of a pdf file containing a copy of such executed document, shall be treated in all manner and respects and for all purposes as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of the Company, Producer shall re-execute original forms thereof and deliver them to the Company. No party hereto shall raise the use of a facsimile machine to deliver a signed document or the fact that any signed document or agreement or instrument was transmitted or communicated through the use of a facsimile machine or e-mail of a pdf file containing a copy of an executed agreement as a defense to the formation or enforceability of this agreement or any such agreement or instrument, and each such party forever waives any such defense.

6.12 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original, and all of which together shall constitute but one and the same instrument.

The following exhibits and attachments are incorporated by reference into this Agreement:

- \_\_\_ **Exhibit A** Compensation Schedule
- \_\_\_ **Exhibit B** Medicare Regulatory Addendum
- \_\_\_ **Exhibit C** HIPAA Business Associate Addendum
- \_\_\_ **Exhibit D** Participating Agent Addendum for Supervising General Agency

[SIGNATURE ON NEXT PAGE]

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**PRODUCER CONTRACTING AS**

**EMBLEM HEALTH**  
**on behalf of itself and its Affiliates**

\_\_\_\_\_  
Print Name on License

By: \_\_\_\_\_  
Authorized Signature

By: \_\_\_\_\_  
Company Officer

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

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip Code

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

Fax Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

Tax I.D. Number: \_\_\_\_\_

**EXHIBIT A - Compensation Schedule**

Emblem Health (referred to as the “Company”) will compensate Producer and its Representatives as follows for the marketing and promotion of the Products specified herein.

Company will compensate Producer and its Representatives, as set forth herein, for each individual properly enrolled in those Products offered by the Company (a complete listing of which is available to Producer and its Representatives by the Company) which Producer and its Representatives are approved and authorized to market and promote by the Company in the jurisdiction(s) in which Producer and its Representatives are approved and authorized to operate in by the Company for the time periods set forth herein.

All compensation payable to FMO and its Representatives is subject to cancellation or reduction, pursuant to Company guidelines and in compliance with state and federal laws and regulations.

**Exhibit A Table of Contents**

**MEDICARE ADVANTAGE PLANS – LOCAL MA PLANS AND SPECIAL NEEDS PLANS (SNPS)**

**One-Time Initial Payment for CMS Contract Year 2010 beginning with 01/01/10 Effective Enrollments**

A one-time initial payment will be made to Producer and its Representatives for each individual properly enrolled, as determined by Company, in a Company Product, through the efforts of Producer, which Producer and its Representatives are approved and authorized to market and promote for the 2010 CMS Contract Year, beginning with 01/01/10 effective enrollments. The one-time initial payments listed below at each level are net of compensation payable to all lower sales levels. To the extent any sales level is not involved in the sale of the Local MA Plans/SNPs, the compensation payable to such sales level shall roll-up and be payable to the next higher sales level. Payment will be made in the first commission payment cycle following the entry of a qualifying application into the Company’s enrollment system. Additionally, it is the responsibility of the each General Agent to provide the appropriate compensation to each of its assigned Producers and its Representatives. Per CMS guidance issued November 10, 2008, the health plan will pay a renewal commission for all new enrollments for the 2010 plan year. CMS will identify to the plan those beneficiaries enrolled in a MA plan who were newly entitled or enrolled from original Medicare (a “CMS Deemed Initial Enrollment”). If upon receipt of the CMS report that a new enrollment was a CMS Deemed Initial Enrollment, the plan will then pay the producer an initial commission less any commission amount already paid for the enrollment. All CMS Deemed Initial Enrollments will have a five year renewal period. All other enrollments will be paid renewal commission in 2010 and four additional years (2011 – 2014) provided the member is still enrolled with the plan.

Total Applications Approved for an Effective Month which have been submitted electronically::

<b>Level</b>	<b>Minimum Amount Payable to each Level</b>	<b>Maximum Amount Payable Based on roll-up From Non-existent Lower Levels</b>
Agent	\$403	\$403

Total Applications Approved for an Effective Month which have been submitted via paper:

<b>Level</b>	<b>Minimum Amount Payable to each Level</b>	<b>Maximum Amount Payable Based on roll-up From Non-existent Lower Levels</b>
Agent	\$350	\$350

If the FMO or GA brings enrollments which are Initial Enrollments to the plan or its Affiliates, the FMO and/or GA will be reimbursed based on the Initial Enrollment schedule noted above. If the FMO and/or GA enrolls a member from one affiliate to another, the renewal schedule will apply for the FMO/GA. No payment will be made if individual is already enrolled in a Company Local MA Plan/SNP at the time of enrollment.

**Annual Renewal Fee**

Beginning with the thirteenth (13th) month of continuous enrollment and annually thereafter, an renewal fee will be paid to Producer and its Representatives for each individual properly enrolled in a Local MA Plan/SNP for the 2010 CMS Contract Year. **Such renewal fees will not be made if individual was already enrolled in a Company Product at the time of enrollment.** The renewal fees listed below at each level are net of compensation payable to all lower sales levels. To the extent any sales level is not involved in the sale of the Local MA Plans/SNPs, the compensation payable to such sales level shall roll-up and be payable to the next higher sales level. Per CMS guidance issued November 10, 2008, the health plan will pay a renewal commission for all CMS deemed renewal in 2010 and four additional years (2011 – 2014) provided the member is still enrolled with the plan.

Total Applications Approved for an Effective Month which have been submitted electronically::

<b>Level</b>	<b>Minimum Amount Payable to each Level</b>	<b>Maximum Amount Payable Based on roll-up From Non-existent Lower Levels</b>
Agent	\$201.50	\$201.50

Total Applications Approved for an Effective Month which have been submitted via paper:

<b>Level</b>	<b>Minimum Amount Payable to each Level</b>	<b>Maximum Amount Payable Based on roll-up From Non-existent Lower Levels</b>
Agent	\$175	\$175.00

## EXHIBIT B - Medicare Regulatory Addendum

This Addendum shall apply to the services provided by Producer pursuant to the Agreement related to the Company's MA Plans. With respect to the rendering of such services, the provisions of this Addendum shall prevail over any provision in the Agreement, which may conflict or appear inconsistent with any provision in this Addendum. Unless otherwise defined in this Addendum, all capitalized terms contained in the Addendum shall be defined as set forth in the Agreement.

1. **Delegated Activities.** The following shall apply with respect to any activities for which the Company is responsible under the CMS Contract, and that have been delegated to Producer under the Agreement:

- (a) Producer shall provide or arrange for the provision of the services set forth in the Agreement.
- (b) Producer shall comply with any existing reporting responsibilities as are set forth in the Agreement.
- (c) Producer shall comply with all applicable Medicare laws, regulations and CMS instructions, and cooperate with the Company in its efforts to comply with the laws, regulations and other requirements of applicable regulatory authorities. Producer shall perform the services set forth in the Agreement in a manner consistent with and in compliance with the Company's contractual obligations under the CMS Contract.
- (d) Producer acknowledges that the Company oversees on an on-going basis, and is ultimately accountable to CMS for, any functions or responsibilities that are contained in the CMS Contract, including those that Producer has agreed to perform in accordance with the Agreement. In instances where CMS or the Company determines that Producer has not performed satisfactorily, or has failed to meet all reporting and disclosure requirements in a timely manner, the Company has the right to revoke and assume the delegated activities or reporting and disclosure requirements upon written notice to Producer, or the Company may terminate the Agreement upon 30 days advance written notice to Producer. Producer shall cooperate with the Company regarding any delegated activities or reporting and disclosure requirements which have been revoked and assumed by the Company.
- (e) If Producer has any arrangements with affiliates, subsidiaries or any other sub-contractors (collectively, "subcontractors"), directly or through another person or entity, including its Representatives, to perform any of the services Producer is obligated to perform under the Agreement that is the subject of this Addendum, Producer shall ensure that all such arrangements are in writing and duly executed. Producer shall also ensure that all such agreements are duly amended to incorporate the terms contained in this Addendum, and shall provide notice to the Company of such amendment. Producer shall ensure that the terms of this Addendum are included in all future and pending agreements with subcontractors that relate to the same subject matter. Producer shall ensure that any such delegation or subcontract shall be performed by the subcontractor in accordance with the Company's contractual obligations to CMS, Producer's contractual obligation under this Agreement, and in compliance with all applicable Medicare Laws and Regulations and the requirements of this Addendum. Producer further agrees to promptly amend the agreements with subcontractors, in the manner requested by the Company, to meet any additional CMS requirements. In the event that any sub-contractor fails or is unable (for any reason whatsoever) to perform in a satisfactory manner any services Producer is obligated to perform under the Agreement, then the Company or CMS shall have the right to suspend, revoke or terminate the arrangement with the sub-contractor effective upon the date set forth in a written notice furnished to Producer. Additionally, the Company or CMS shall have the right to institute corrective action plans or seek other remedies or curative measures respecting the unsatisfactory performance consistent with applicable Medicare Laws and Regulations.
- (f) Producer represents and warrants that Producer, or its principals, have not been (i) listed as debarred, excluded, or otherwise ineligible for participation in federal health care programs or (ii) convicted of a criminal felony. Producer agrees to notify the Company in writing immediately if, at any time during the term of the Agreement, Producer, or its principal, are (i) listed as debarred, excluded, or otherwise ineligible for participation in federal health care programs or (ii) convicted of a criminal felony, in

which case the Company may terminate the Agreement pursuant to the applicable provision in this Agreement or take such other corrective or remedial action as warranted under the circumstances.

2. **Federal Funds.** Producer acknowledges that the Company receives payments in whole or in part from federal funds, and Producer is subject to certain laws that are applicable to individuals and entities receiving federal funds.

3. **Records.**

- (a) **Maintenance and Accuracy of Records.** Producer will maintain all pertinent records and information related to the services rendered by Producer under the Agreement in an accurate and timely manner.
- (b) **Access to Records.**
  - (i) The Company, The Secretary of Health and Human Services (the “Secretary”), the Comptroller General or their designees shall have the right to audit, evaluate or inspect any books, contracts, records, documentation and other information that pertains to:
    - (1) the services performed under the Agreement;
    - (2) determination of amounts payable or
    - (3) other relevant matters as such person conducting the audit, evaluation or inspection deems necessary.
  - (ii) The right described above shall extend through ten (10) years from the final date of the applicable Medicare Contract period or completion of audit, whichever is later; provided, however, that such access may be required for a longer time period if:
    - (1) CMS determines that there is a special need to retain a particular record or group of records for a longer period and CMS provides notice at least thirty (30) days before the normal disposition date;
    - (2) CMS determines that there has been a termination, dispute, fraud or similar fault, in which case the retention may be extended to ten (10) years from the date of any resulting final resolution of the matter; or
    - (3) CMS determines that there is a reasonable possibility of fraud, in which case it may perform the inspection, evaluation or audit at any time.
  - (iii) For the purpose of conducting the above activities, Producer shall make available its premises, physical facilities and equipment, records relating to the services provided under the Agreement, and any additional relevant information that the Company or CMS may require.
- (c) **Confidentiality.** The Company and Producer shall abide by all federal and state laws regarding confidentiality and disclosure of records and information including, but not limited to, the requirements established by the Company and CMS, as applicable.

4. **Regulatory Amendment.** The Company may amend this Addendum to comply with the requirements of state and federal regulatory authorities, and shall give written notice to Producer of such amendment and its effective date. Unless such regulatory authorities direct otherwise, the signature of Producer will not be required.

5. **Member Hold Harmless.** Producer shall not, in any event (including, without limitation, non-payment of any compensation hereunder, bankruptcy or insolvency of an Affiliate or breach of this Agreement), bill, charge, collect a deposit from, seek compensation or remuneration or reimbursement from, hold responsible, or otherwise have any recourse against any actual or prospective Member for any amounts otherwise payable to Producer pursuant to this Agreement or otherwise.

## EXHIBIT C - HIPAA Business Associate Addendum

This Business Associate Addendum (“Addendum”) is incorporated into the attached Marketing Organization Agreement (the “Agreement”). This Addendum supplements, amends, and is made a part of any and all HIPAA Related Agreements. The term “HIPAA Related Agreements” means the Agreement and any and all agreements in effect as of the date of full execution of the Agreement and any and all agreements entered into any time thereafter by and between the Company (herein, “the Company”) and Producer (herein, “Business Associate”) under which Business Associate has created or received and/or may create or receive Protected Health Information (as defined below) from or on behalf of the Company.

### Recitals

- A. The Company and Business Associate are parties to one or more HIPAA Related Agreements pursuant to which Business Associate provides certain services to the Company, and, in connection with those services, the Company discloses to Business Associate certain protected health information as defined at 45 CFR § 160.103 (the “Protected Health Information”) that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA,” found at Public Law 94-191), and certain regulations promulgated by the U.S. Department of Health and Human Services to implement certain provisions of HIPAA (the “HIPAA Privacy Rule,” 45 CFR Part 160 and 45 CFR Part 164, subparts “A” and “E”).
- B. The Company is a “covered entity,” as that term is defined in the HIPAA Privacy Rule. Business Associate, as recipient of Protected Health Information from the Company under the HIPAA Related Agreements, is a “business associate” of the Company, as that term is defined in the HIPAA Privacy Rule.
- C. Pursuant to the HIPAA Privacy Rule, all business associates of the Company, as a condition of doing business with the Company, must agree in writing to certain mandatory provisions regarding, among other things, the use and disclosure of Protected Health Information. The parties agree that the obligations specified herein shall commence upon the Effective Date.
- D. The purpose of this Addendum is to satisfy the requirements of the HIPAA Privacy Rule and the HIPAA Security Rule (defined in Section 14), as well as other confidentiality and data security concerns of the Company.

IN CONSIDERATION OF THE FOREGOING, and the mutual promises and covenants contain herein, the parties agree as follows:

### Agreement

- 1. Definitions.** Unless otherwise defined in this Addendum or the Agreement, capitalized terms have the same meaning as set forth in the HIPAA Privacy Rule, the HIPAA Security Rule, or the Agreement.
- 2. Applicability.** This Addendum shall be applicable to Protected Health Information: (i) received by Business Associate from the Company pursuant to the HIPAA Related Agreements; or (ii) created or received by Business Associate on behalf of the Company pursuant to the HIPAA Related Agreements.
- 3. Scope of Use of Protected Health Information.** Business Associate shall not use or disclose Protected Health Information for any purpose other than; (i) As permitted or required by the HIPAA Related Agreements (including this Addendum); and (ii) as otherwise required by law.
- 4. Safeguards for the Protection of Protected Health Information.** Business Associate shall implement and use appropriate safeguards, including, but not limited to, any and all such safeguards directed by the Company, to ensure that Protected Health Information is not used or disclosed by Business Associate or by any subcontractors, affiliates or business associates of Business Associate, except as provided in the HIPAA Related Agreements (including this Addendum).
- 5. Reporting of Unauthorized Uses or Disclosures.** Business Associate shall promptly report to the Company any use or disclosure of Protected Health Information by Business Associate or its subcontractors of which Business Associate becomes aware that is not provided for or permitted in the HIPAA Related Agreements (including this Addendum). Business Associate shall permit the Company reasonable access to Business Associate’s employees and records (including electronic records) as reasonably necessary to investigate any such report.

**6. Use of Subcontractors.** To the extent that any HIPAA Related Agreement expressly permits Business Associate to use subcontractors and/or agents to perform its obligations under such HIPAA Related Agreement or to otherwise delegate performance of its obligations (if at all), Business Associate shall cause each such subcontractor, agent or delegatee to sign an agreement with Business Associate containing the same provisions and conditions related to the protection and confidentiality of Protected Health Information as those that apply to Business Associate under the applicable HIPAA Related Agreements (including this Addendum).

**7. Authorized Access to Protected Health Information.** To the extent that Business Associate maintains Protected Health Information in a Designated Record Set, at the request of the Company, Business Associate shall provide the Company (or an Individual as directed by the Company) access to such Protected Health Information in a Designated Record Set in the time and manner reasonably designated by the Company in order for the Company to meet the requirements imposed on the Company by 45 CFR § 164.524.

**8. Amendment of Protected Health Information.** To the extent that Business Associate maintains Protected Health Information in a Designated Record Set, Business Associate shall make any amendment(s) to Protected Health Information in a Designated Record Set that the Company directs or agrees to pursuant to 45 CFR § 164.526, and in the time and manner reasonably designated by the Company.

**9. Accounting of Disclosures of Protected Health Information.** Business Associate shall keep records of all disclosures of Protected Health Information made by Business Associate (the "Disclosure Accounting") on an ongoing basis for a period of at least six (6) years (or such longer period as may be required by the HIPAA Related Agreements or by applicable law), except for disclosures:

- (i) To carry out Treatment, Payment, or Health Care Operations, as provided in 45 CFR § 164.502;
- (ii) To individuals of Protected Health Information about them as provided in 45 CFR § 164.502; or
- (iii) That occurred prior to April 14, 2003.

At a minimum, the Disclosure Accounting shall contain:

- (a) The date of the disclosure;
- (b) The name of the entity or person to whom or which the Protected Health Information was provided and, if known, the address of such entity or person;
- (c) A brief description of the Protected Health Information disclosed; and
- (d) A brief statement of the purpose of the disclosure that reasonably informs the Individual of the basis for the disclosure or, in lieu of such statement, a copy of the Individual's written authorization or request for disclosure pursuant to the HIPAA Privacy Rule.

Business Associate shall provide the Disclosure Accounting to the Company (or to an Individual, if so directed by the Company) within sixty (60) days of receiving a written request therefore from the Company.

**10. Right to Audit.** Upon the request of the Company and/or the Secretary of the Department of Health and Human Services, Business Associate shall make its practices, books and records related to Protected Health Information available to the Secretary of the Department of Health and Human Services for the purpose of determining the Company's compliance with the HIPAA Privacy Rule.

**11. Future Confidentiality of Protected Health Information.** Upon the expiration or earlier termination of any HIPAA Related Agreement for any reason, Business Associate shall return to the Company, or, at the Company's direction, delete, purge and destroy, all Protected Health Information (in any form, recorded on any medium, or stored in any storage system) that was created or obtained pursuant to that terminated HIPAA Related Agreement (and that Business Associate does not need to maintain to perform its obligations under any then-existing HIPAA Related Agreement) and shall retain no copies of such information. If Business Associate destroys Protected Health Information, an officer of Business Associate shall certify such destruction to the Company in writing. If such return or destruction is not feasible, Business Associate shall extend the

protections of this Addendum to the information and shall limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

**12. Termination in Event of Breach.** In the event that Business Associate violates any material term of any HIPAA Related Agreement (including this Addendum), the Company may terminate the HIPAA Related Agreement immediately by providing written notice of such termination to Business Associate.

**13. Indemnification.** Business Associate agrees that it shall be financially responsible for, and agrees that it shall defend, indemnify, and hold harmless, the Company (including its corporate affiliates and each of its and their shareholders, affiliates, officers, directors, employees, agents, attorneys, successors, successors-in-interest, and assigns) from and against any and all claims, causes of action, suits, litigation, proceedings, complaints, demands, charges, liens, disputes, obligations, damages, losses, debts, indebtedness, liabilities, costs (including settlement costs and costs of investigation), expenses and fees (including reasonable attorneys' fees) arising out of or in connection with Business Associate's actions and omissions involving Protected Health Information relating to enrollees, subscribers, insured, customers, or patients of the Company. The provisions of this Section 13 shall survive the expiration or earlier termination of this Addendum.

**14. Data Security.** Business Associate agrees that it shall:

- (a) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Company as required by 45 CFR, Part 164, Subpart "C."
- (b) Ensure that any agent, including a subcontractor, to whom Vendor provides Electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect such Electronic Protected Health Information; provided, however, that Vendor shall not assign, delegate or subcontract any obligation of Vendor owed by the Company in violation of the Agreement.
- (c) Report to the Company promptly any Security Incident of which Business Associate becomes aware.
- (d) Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Addendum or the Agreement.

**15. Amendments.** The parties shall negotiate in good faith any amendments to this Addendum or a replacement of this Addendum to the extent necessary in order to maintain compliance with applicable laws and regulations.

**16. Effect on HIPAA Related Agreements.** Except as amended herein, all terms of all of the HIPAA Related Agreements shall remain in full force and effect.

**17. Construction.** Any ambiguity in this Addendum shall be resolved in favor of a meaning that complies with HIPAA, the HIPAA Privacy Rule, and the HIPAA Security Rule.

**18. Agent Liaison Function.** If a Member requests Business Associate's assistance, Business Associate may request and receive from the Company information related to Member inquiries, including issues relating to: enrollment and disenrollment; premium payment; claims payment; network and non-network providers (including availability and access issues); and other questions or issues posed by the Member regarding the administration of their plan. Business Associate shall promptly transmit all relevant information provided by the Company to Member. Business Associate acknowledges that, as a business associate of the Company, Business Associate is prohibited by law and this Agreement from disclosing Protected Health Information to any plan sponsor (such as an employer, labor union, trust, organization or association) or any other third party unless the Member has executed a valid, written authorization, permitting the Company and Business Associate to disclose the information to that party.

## EXHIBIT D - PARTICIPATING AGENT ADDENDUM

Effective as of the date executed by the **Company** and below, the undersigned Field Marketing Office (the “FMO”) hereby agrees to be bound by the terms and conditions of the Agreement, attached hereto, and the terms and conditions set forth in this Participating Agent Addendum. All capitalized terms in this Addendum shall have the meaning ascribed to them in the Agreement.

### A. Compensation to SGA

1. Payment of Commission. The applicable Plan shall pay FMO the applicable Commission amount set forth in Exhibit A, attached to this Addendum, in accordance with the terms and conditions set forth in the Agreement and this Addendum. FMO acknowledges and agrees that the Commission plan set forth in Exhibit A supersedes any and all prior written or oral agreements on compensation or commission rates, and that compensation calculated under Exhibit A shall be the sole compensation of FMO for the **Company**. The **Company** may change the rate of commission and alter any of the terms and conditions of Exhibit A by providing FMO with 30 day written notice.
2. Rules of the Road – FMO agrees to fully comply with the **Company** rules of the road set forth in this addendum.

### B. FMO, FMO MGA GA and Agent Appointment

The entire distribution hierarchy (FMO through Agent) must be licensed to sell the product in that for which commission state is to be paid. In addition, the producing agent must be certified and appointed with the **Company** to sell the product via an agent contract.

All license and contract requirements for the State of New York must be met prior to making a sale.

### C. Licensing and Appointment

1. Certification. All agents must first pass the required annual certification training that includes Medicare Basics, CMS Guidelines and **Company** product training. Initial training is offered in a classroom setting and can be scheduled and coordinated through the **Company** broker manager. The **Company** will accept testing certification from the CMS Broker Training Modules or the Association of Health Insurance Plans (AHIP) if the successful certification date is on or after September 1<sup>st</sup>. Any fees resulting from this certification are the responsibility of the agent.

2. Recertification. All persons receiving commission payments from **Company** will be required to obtain annual recertification for the **Company**'s products sold in areas where they are licensed. This recertification must be completed prior to November 15<sup>th</sup> of each year.

3. Licensing. Annual resident and non-resident licenses and fees required to be paid by the licensee.

The table below provides a summary of the documentation required for an FMO and each member of the hierarchy.

**NOTE: Licensing and certification requirements must be updated annually.**

Documents Required (renewal requirements)	FMO	General Agent	Agent
Appointment Application	Yes	Yes	Yes
FMO/General Agency/ Agent Agreement	Yes	Yes	Yes
Certification (annual)	Yes	Yes	Yes
Resident and Non Resident Licenses (annual)	Yes	Yes	Yes
Errors & Omissions Insurance Declaration	Yes	Yes	Yes
W-9	Yes	Yes	Yes

#### D. FMO Hierarchy

**Switching Hierarchies.** Agents cannot switch to different hierarchies unless one of the following occurs. The Agent obtains a Letter of Release from their current FMO. The Agent has not sold any new business under the contract during the last 6 months. The **Company** agrees not to solicit any agent who is currently under contract with a current FMO.

**Roll-Overs.** The roll-over of an existing **Company** Medicare member to a new plan within the same product group does not generate a first-year commission; however, residuals continue to be paid when applicable.

**Commission Payments .** First year commissions are treated as a loan for financial reporting purposes and are not taxable until fully vested (3 months after the effective date of the policy). Commission payments to agents will follow the hierarchy rules and will be calculated based in the commission schedule in effect at the time the policy was sold. Renewal commissions are paid quarterly.

**Charge-Backs .** Rapid disenrollments are defined as any policy that is terminated or surrendered within 90 days of the effective date. Any commission paid on a policy that is a rapid disenrollment will be charged back in full to all levels that were paid for that policy

**Writing Agent Terminations.** If an agent is terminated while they still have an outstanding debit balance to be repaid, we will allow the system to recover the charge-backs on a per policy basis until the debit balance is cleared. If the debit balance is not recouped in 90 days all renewals for the agent with a remaining debit balance the agent will immediately forfeit all unpaid renewals.

**Qualification.** FMO contracts will be awarded at the sole discretion of the **Company**.. The award will be based on commitment of mutually agreed upon production levels. FMO, GA and Agent contract production levels will be negotiated by the FMO receiving credit for the production. In the event an FMO is terminated for any reason their remaining FMO, GA and Agents will be permitted to align themselves with the remaining FMO should they choose to do so immediately following the effective date of the termination.

The FMO will be accountable for the number of contracts awarded in their hierarchy.