

Aetna Producer Agreement

Aetna Producer Agreement

Agreement between Aetna Health Management, LLC, a Delaware limited liability company, on behalf of itself and its affiliates (“Company”), and _____ (“Producer”) having its principal place of business at _____

Producer has read and fully understands the terms and conditions of this Agreement (the “Agreement”), and its attachments. **In signing this Agreement, Producer certifies that Producer has not been convicted of any criminal felony involving dishonesty or breach of trust or been convicted of an offense under Section 1033 of the Violent Crime Control and Law Enforcement Act of 1994. Producer further agrees to immediately inform the Company of any conviction of the types described in the preceding sentence.**

To signify their agreement to the provisions of this Agreement, Company and Producer have made and entered into this Agreement as of _____, _____ (“Effective Date”).

Producer Name: _____,
(Print Name)

Tax ID/SSN #: _____,

Phone: _____,

E-mail Address: _____,

Signature: _____,

Title: _____,

Date: _____,

Aetna Health Management, LLC.

Print Name: _____,

Signature: _____,

Title: _____,

Date: _____,

Please indicate the size of customer that you typically represent: ___ Medicare-eligible individuals and/or individuals age 65 and over, ___ 1 – 50 eligible employees, ___ 51 – 3,000 eligible employees, or ___ 3,000+ eligible employees. If you currently work with an Aetna sales representative, please indicate his/her name: _____. Once completed, please return the completed Agreement, along with the other necessary forms and applications, to Company at the following address: Aetna, Licensing and Appointment Administration Unit, P.O. Box 5066, Sugar Land, TX 77487. You will receive written confirmation of Company acceptance.

Producer Agreement

A. Duties and Authority of Producer

- 1) Producer shall solicit from groups and members of the general public, applications for the products included in Addendum A (“Company Products”), which is hereby made a part of this Agreement. Producer is only authorized to solicit business for, and this Agreement only applies to, the products included in Addendum A. Producer’s authority under this Agreement is non-exclusive.
- 2) Producer will service Company customers and insureds issued Company Products as a result of applications submitted by Producer (hereinafter, referred to as “Insured” or “Insureds”). Such service will include, but not be limited to, the following:
 - a) Acting as liaison between the Insured and Company if requested by Company;
 - b) Assisting the Insured to take the proper action in connection with any Company Products when there is a change of address, change in marital status or change in dependent status;
 - c) Assisting a family member/dependent to obtain other appropriate coverage when he or she is no longer entitled to coverage as a family member, e.g., when a dependent child reaches the limiting age, or upon a divorce or a dissolution of marriage; and
 - d) Maintaining a working and current knowledge of Company Products and the ability to explain the benefits and coverages.
- 3) Producer agrees to secure and maintain such licenses and appointments by Company as is necessary to transact business on behalf of Company and as required by any state or jurisdiction where Producer solicits sales of any Company Products. Producer shall provide Company copies of all required licenses. Producer further agrees to notify Company immediately of any expiration, termination, suspension or other action by a Department of Insurance or any other governmental agency affecting said license or appointment. Producer further agrees to notify Company in writing immediately upon receiving notice of any misdemeanor or felony charges or any actions including, but not limited to, convictions by any governmental authority for commission of any act involving fraud, dishonesty, breach of trust, theft, misappropriation of money or breach of any fiduciary duty.
- 4) Producer agrees to comply with the rules of Company relating to the completion and submission of applications, assist in the installation of Company Products, and to make no representation with respect to the benefits of any benefit contract or policy offered by Company not in conformity with the material prepared and furnished to Producer for that purpose by Company. Producer shall use best efforts to ensure that each application for coverage is fully and truthfully completed by the applicant and the completed application fully and accurately reflects and discloses the circumstances, including the health condition, of persons for whom coverage is sought in the application. Producer further agrees to inform every applicant that Company will rely upon said health representations in the underwriting process, and that the subsequent discovery of material facts known to applicant and either not disclosed or misrepresented may result in the rescission of any benefit contract or policy entered into by Company. Producer will also inform the applicant that in no event will the applicant have any coverage unless and until the application is reviewed and approved by the Company and a benefit contract or policy is issued.
- 5) Producer is not authorized to, and agrees not to, enter into, alter, deliver or terminate any benefit contract or policy on behalf of Company, extend the time of payment of any charges or premiums, or bind Company in any way without the prior written permission of Company. Producer acknowledges and agrees that Company reserves the right, in accordance with applicable law, to reject any and all applications submitted by Producer.
- 6) Producer is not authorized to receive any Company funds except the initial premiums for Company Products, and Producer is not authorized to deduct compensation, commissions, service fees or allowances from any initial premiums Producer may collect. Any funds that Producer does receive for or on behalf of Company shall be received and held by Producer in a fiduciary capacity, shall be separately accounted for, shall not be commingled by Producer with personal funds of Producer or other business accounts managed or owned by Producer, and shall be remitted to Company promptly but in no event later than five (5) calendar days from the date of receipt.
- 7) Producer shall not broadcast, publish or distribute any advertisements or other material relating to Company Products, not originated by Company (and approved by The Centers for Medicare and Medicaid Services, where required, and as it pertains to materials for Retiree Markets’ Products), nor use the name, trademark or logo of Company or any of its affiliated companies in any way or manner without Company’s prior written consent and then only as specifically authorized in writing by Company.

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The restrictions on promotional and descriptive material included in this Paragraph 7 includes, but is not limited to, enrollment materials, internet communications or any other electronic transmissions representing Company Products, brochures, telephone directory advertisements (print or electronic) and Producer or agency company listings.

- 8) Producer agrees to maintain complete and separate records for Company for a period of at least seven (7) years of all transactions pertaining to applications submitted to and accepted by Company, and any other documents as may be required by the applicable Department of Insurance or other governmental agency. Any and all records described above or as may otherwise relate to Producer's activities in connection with Company business shall be accessible and available to representatives of Company who may audit them from time to time while this Agreement is in effect or within seven (7) years after termination thereof.

In the case of business for Retiree Markets' Products, Producer agrees to maintain complete and separate records for Company for a period of at least ten (10) years of all transactions pertaining to applications submitted to and accepted by Company, and any other documents as may be required by the Centers for Medicare and Medicaid Services, or other governmental agency. Any and all records described above or as may otherwise relate to Producer's activities in connection with Company business shall be accessible and available to representatives of Company who may audit them from time to time while this Agreement is in effect or within ten (10) years after termination thereof.

- 9) Producer agrees to obtain and maintain Errors and Omissions Insurance coverage with minimum amounts of \$1,000,000 per incident and \$1,000,000 in aggregate, or such higher amounts as may be required by law or as determined by Company and from a carrier satisfactory to Company. Producer shall provide to Company upon request certificates of insurance evidencing such coverage. Producer agrees to make best efforts to provide Company with thirty (30) days prior written notice, and in any event will provide notice as soon as reasonably practicable, of any modification, termination or cancellation of such coverage.
- 10) Producer is an independent contractor and shall have no claim to compensation except as provided in this Agreement and Producer shall not be entitled to reimbursement from Company for any expenses incurred in performing this Agreement. Producer further agrees that to the extent of any indebtedness to Company from Producer, Company shall have a first lien against any commissions due Producer, and such indebtedness may be deducted at the Company's option from any commissions due Producer. Moreover, this Agreement does not give Producer any power of authority other than as expressly granted herein and no other or greater power shall be implied from the grant or denial of powers specifically mentioned herein.

- 11) Producer will treat as trade secrets any and all information concerning customers of Company or its business, products, techniques, methods, systems, price-books, rating tools, plans or policies; and Producer will not, during the term of this Agreement or at any time thereafter, disclose such information, in whole or in part, to any person, firm or corporation for any reason or purpose whatsoever, or use such information in any way or in any capacity other than as a sales agent/producer of Company in furtherance of Company's interests. With respect to information concerning customers of Company, Producer will implement a comprehensive written information security program that includes administrative, technical and physical safeguards for the protection of such information that are appropriate to Producer's size, complexity, nature and scope of activities and that is designed to:

- a) Ensure the integrity and confidentiality of such information;
- b) Protect against any anticipated threats or hazards to the security or integrity of such information; and
- c) Protect against unauthorized access to, or use of, such information that could result in substantial harm or inconvenience to any customer of Company.

Upon termination of this Agreement, or sooner if requested by Company, Producer will immediately deliver to Company any and all literature, documents, data, information, order forms, memoranda, correspondence, customer and prospective customer lists (obtained from Company), customer orders, records, cards or notes acquired, compiled or coming into Producer's knowledge, possession, custody or control in connection with his/her activities as a sales agent/producer or sales representative of Company, as well as all machines, parts, equipment, rating tools and other materials received by Producer from Company or from any of its customers, agents/producers or suppliers in connection with such activities.

- 12) With respect to information concerning customers of Company, Producer agrees to:
- a) Ensure that any agent, including a subcontractor, to whom it provides any such information received from, or created or received by Producer, agrees to the same restrictions and conditions that apply through this Agreement to Producer with respect to such information; and
 - b) In no event, without Company's prior written approval, provide such information to any employee or agent, including a subcontractor, if such employee, agent or subcontractor receives, processes, or otherwise has access to such information outside of the United States.
- 13) Producer shall indemnify, defend and hold Company harmless from and against any loss, damage or expense, including reasonable attorneys' fees, caused by or arising from the negligence, misconduct or breach of this Agreement by Producer, or from the failure of Producer to comply with any federal or state laws, rules or regulations.

Producer Agreement

B. Commissions and Rights Reserved to Company

1) Commissions.

Company will pay Producer first year and renewal commissions on the benefit contracts or policies produced by Producer and issued by Company in accordance with the terms set forth in Addendum B, Producer Commission Schedules, which is hereby made a part of this Agreement. Commissions will only be paid on such business for which Producer has been designated “Agent of Record” or “Broker of Record” in writing by the Insured. Any change in “Agent of Record” or “Broker of Record” designation by an Insured must be in writing on the plan sponsor’s letterhead and signed by an authorized company officer. Except for Individual Advantage business, an “Agent of Record” or “Broker of Record” letter that designates a change for commission payments will become effective on the first of the month following receipt by the Company unless another future date is designated in the letter. If Producer produces an application for individual coverage for an individual who was previously covered as a dependent pursuant to a group benefit contract or policy issued by Company and now no longer qualifies as a dependent, such Producer shall receive renewal commissions if the individual was required to complete a change of coverage application and not a new application for coverage by Company, irrespective of any prior lapse in coverage for such individual. In the event Producer is the designated “Agent of Record” or “Broker of Record” on the benefit contract or policy which previously covered such individual as a dependent and Company did not require such individual to complete a new application for coverage or a change of coverage application, Producer will be considered to have produced the benefit contract or policy which covers such individual as an Insured and Producer will receive renewal commissions. In the event Company required such individual to complete a new application for coverage, Producer shall receive first year and renewal commissions. Such commissions shall be based on the commission schedules set forth in Addendum B and shall be paid on net premium charges actually received by Company on the benefit contract or policy issued by Company which covers such individual.

In the case of business for Medicare-eligible individuals and/or individuals age 65 and over, commissions are earned on the Company’s receipt of premiums due and the applicant’s acceptance of the Company offered Medicare individual or group policy/benefit contract (see Addendum A) subject to the following: No commissions are payable on an Aetna Medicare individual or group policy/benefit contract that replaces an existing in-force Aetna Medicare individual or group policy/benefit contract.

2) Renewal Commissions.

Subject to Paragraph 5 of Section B, renewal commissions shall be payable to Producer by Company as long as all the following conditions are satisfied:

- a) At least six (6) individual policies produced by the Producer and issued by Company remain in effect or, in the case of group business, at least one (1) benefit contract produced by the Producer and issued by Company remains in effect; and
- b) In the case of group business, no other producer is designated in writing as “Agent of Record” or “Broker of Record” by the Insured with respect to the benefit contract for which renewal commissions are paid.

3) Commission Assignment Rights.

- a) Producer may, with Company’s prior written consent, assign commissions payable with respect to individual medical policies and/or group benefit contracts produced by Producer and issued by Company under this Agreement, subject to the following conditions:
 - (i) The assignment must be in writing, in a form acceptable to Company and irrevocable, and will be honored only when the assignee certifies that (a) the assignor is a true employee of the assignee (or that the assignor is a partner of the assignee if the assignee is a partnership), (b) the assignor is required to assign all commissions to the assignee as a condition of employment and (c) because of such relationship, it is appropriate for Company to report such commissions for tax purposes as income to the assignee.
 - (ii) The terms of the assignment must be determined by Company not to prejudice the interest of Company; and
 - (iii) This Agreement is in force and in good standing at the time of assignment.
- b) Any purported assignment or transfer of any interest in Producer’s commissions other than in strict compliance with this Paragraph 3 shall be void as to Company.

4) Rights to Commissions on Termination.

Unless Company terminates this Agreement for cause under Paragraph 3 of Section C, if this Agreement otherwise terminates and at the time of termination (i) at least six (6) individual policies (excluding an Aetna Medicare individual policy/benefit contract) produced by Producer and issued by Company remain in effect or, (ii) in the case of group business at least one (1) benefit contract (excluding an Aetna Medicare group policy/benefit contract) produced by Producer and issued by Company remains in effect subject to Paragraph 5 of

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Section B, the Company shall continue to pay commissions to Producer (excluding commissions on an Aetna Medicare individual or group policy/benefit contract) at the applicable renewal rates used by Company to pay renewal commissions to Producer on benefit contracts and policies produced by Producer at the time of termination for as long as Producer continues to be designated as “Agent of Record” or “Broker of Record” by the Insured with respect to the benefit contract for which renewal commissions are paid. The provisions of this Paragraph 4 of Section B shall apply to commissions on an Aetna Medicare individual or group policy/benefit contract if at the time of termination of this Agreement, other than termination for cause under Paragraph 3 of Section C, (i) at least six (6) Aetna Medicare individual policies/benefit contracts produced by Producer and issued by Company remain in effect or, (ii) in the case of group business at least one (1) Aetna Medicare group policy/benefit contract produced by Producer and issued by Company remains in effect. Additionally, pursuant to this Paragraph 4 of Section B, commissions on an Aetna Medicare individual or group policy/benefit contract shall continue to be payable, subject to Paragraph 5 of Section B, at the applicable renewal rates set forth on attached Addendum B but only for the remaining term of years set forth on Addendum B. Additionally, commissions will only be payable to Producer pursuant to this Paragraph 4 on those benefit contracts and policies that remain in effect on the books and records of Company.

5) Loss of Renewal Commissions.

- a) No further commissions shall be payable to Producer should Company terminate this Agreement for cause pursuant to Paragraph 3 of Section C.
- b) If Producer is receiving commissions pursuant to post termination rights under Paragraph 4 of Section B, no further commissions shall be payable to Producer if:
 - (i) Producer fails to immediately remit to Company any funds received on behalf of the Company;
 - (ii) Producer shall at any time be indebted to Company for more than sixty (60) days;
 - (iii) Producer induces or attempts to induce any Insured to give up coverage or replace a benefit contract or policy with coverage by another company unless such change is clearly in the best interest of the Insured;
 - (iv) Producer purports to act, or represents that Producer is entitled to act in any way on behalf of Company;
 - (v) Producer commits any act of fraud or dishonesty or breaches any fiduciary duty or does anything which would have been a material default or substantive breach during the period this Agreement remained in effect; or

(vi) Producer fails to notify Company of any change in Producer’s address within one (1) year of such change.

- 6) Company will pay to Producer compensation due under this Agreement within thirty (30) days following the end of each calendar month based on premiums actually received and recorded by Company. However, Company reserves the right to accumulate commissions until commissions due Producer equal at least \$100.00. If a return premium charge is due on Producer-generated business, Company has the right to charge back to Producer, or set-off against future commissions due Producer, the amount of commission previously paid to Producer on the amount of returned premium charge.

In the case of business for Retiree Markets’ Products, Company or General Agent will pay to Producer compensation due for the sale of Retiree Markets’ Products under this Agreement upon confirmation of enrollment by the Centers for Medicare and Medicaid Services and recorded by Company. However, Company reserves the right to accumulate commissions until commissions due Producer equal at least \$100.00. Notwithstanding anything to the contrary contained herein, if Producer is affiliated with a General Agent with financial responsibility for compensating Producer for the sale of a Retiree Markets’ Product, Producer shall look solely to such General Agent for such compensation, and Company shall have no liability whatsoever to Producer for any compensation related to the sale of a Retiree Markets’ Product. If a return premium charge is due on Producer-generated business, Company has the right to charge back to Producer, or set-off against future commissions due Producer (to the extent Company pays Producer directly), the amount of commission previously paid to Producer on the amount of returned premium charge. In addition, Company shall have the right to require Producer promptly, on demand, to refund Company all compensation paid to Producer on account of any individual who disenrolls from a Retiree Markets’ Product within ninety (90) days of the date the individual’s coverage under which such product took effect.

7) Rights Reserved to Company.

Company reserves the right, in its sole discretion, without any liability or obligation to Producer, to take the following actions:

- a) To discontinue and withdraw from distribution any Company Product in any state;
- b) To modify or amend any benefit contract or policy;
- c) To establish, modify or change the premium rate charged by Company for any Company Product;

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- d) To determine all terms, conditions and limitations, including the effective date, of any benefit contract or policy;
 - e) To modify or change the terms and conditions pursuant to which any Company Product is authorized to be sold;
 - f) To cease doing business in any state or jurisdiction; and
 - g) To reject any application for coverage submitted by Producer.
- 8) Disclosure of Compensation.

Producer agrees to disclose in writing to each customer in advance of purchase the nature of any compensation Producer will receive or may be eligible to receive from Aetna in connection with the placement or servicing of the customer's business, as well as the nature of any other material business relationship that Producer has with Aetna. Producer will provide any additional disclosure required under state or federal law, including if applicable any disclosure that may be required pursuant to the Federal Department of Labor's ERISA Prohibited Transaction Exemption 77-9. Aetna may disclose to customers compensation paid to Producer or for which Producer may be eligible in accordance with Aetna's policies on producer compensation disclosure and in accordance with applicable state or federal law.

C. Term and Termination

- 1) This Agreement shall be effective for an initial term of one (1) year from the Effective Date, and thereafter shall automatically renew for additional terms of one (1) year each, unless and until terminated in accordance with the provisions of this Agreement.
- 2) This Agreement may be terminated without cause at any time by Producer or Company by either party giving thirty (30) days prior written notice thereof to the other party.
- 3) Company may terminate this Agreement immediately upon written notice to Producer at any time upon material default or substantive breach by Producer of one or more of its obligations under this Agreement (including any amendments), or Producer's commission of fraud, dishonesty, breach of trust, theft, misappropriation of money, or breach of any fiduciary duty. Producer's failure to comply with any provision of this Agreement shall be material if Company determines that such failure affects Producer's ability to perform under this Agreement. Termination for cause shall not be Company's exclusive remedy, but shall be cumulative with all other remedies available at law or in equity. A failure to terminate this

Agreement for cause shall not be a waiver of the right to do so with respect to any past, current or future default.

- 4) This Agreement will automatically terminate (i) upon the death of Producer, if Producer is an individual, or (ii) upon the dissolution of the corporation or partnership, if Producer is a corporation or partnership.
- 5) Except as provided in Paragraph 4 of Section B, all commission payments to Producer under this Agreement shall cease upon termination of this Agreement.

D. Settlement of Disputes

- 1) Producer shall cooperate fully with Company in any investigation or proceeding of any regulatory or governmental body, or court of competent jurisdiction, including, where required by law, making its books and records available to such entities for inspection, if it is determined by Company that the investigation or proceeding affects matters covered by, related to, or arising out of this Agreement.
- 2) Producer shall defend any act or alleged act of Producer or its employees at its own expense. Producer shall reimburse Company for all costs, expenses or legal fees that Company incurs for the defense of any administrative action in which Company or Producer is named and which is determined by a court of competent jurisdiction or by an appointed arbitrator to be the consequence of any unauthorized act of Producer.
- 3) Any controversy or claim arising out of or relating to this Agreement or the breach, termination or validity thereof, except for temporary, preliminary or permanent injunctive relief or any other form of equitable relief, shall be settled by binding arbitration in Montgomery County, PA, or Hartford, CT, administered by the American Arbitration Association ("AAA") and conducted by a sole arbitrator in accordance with the AAA's Commercial Arbitration Rules ("Rules"). The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16, to the exclusion of state laws inconsistent therewith or that would produce a different result, and judgment on the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. Except as may be required by law or to the extent necessary in connection with a judicial challenge, or enforcement of an award, neither a party nor the arbitrator may disclose the existence, content, record or results of an arbitration. Fourteen (14) calendar days before the hearing, the parties will exchange and provide to the arbitrator (a) a list of witnesses they intend to call (including any experts) with a short description of the anticipated direct testimony of each

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witness and an estimate of the length thereof, and (b) pre-marked copies of all exhibits they intend to use at the hearing. Depositions for discovery purposes shall not be permitted. The arbitrator may award only monetary relief and is not empowered to award damages other than compensatory damages.

E. Health Insurance Portability and Accountability Act (HIPAA) — Privacy and Security Rules

In the event Producer obtains access to “protected health information” (within the meaning of 45 C.F.R. Parts 160-164) (“PHI”) concerning Company’s members in the course of performing its duties under this Agreement, Producer shall be subject to the following terms:

- 1) Except as set forth in paragraph 2 of this Section E, Producer shall not use or disclose PHI for any purpose other than to perform its obligations under this Agreement or as required by law.
- 2) Producer may use PHI it received in its capacity as Producer, as necessary for: (i) the proper management and administration of Producer or (ii) to carry out its legal responsibilities. Producer may disclose PHI it received in its capacity as Producer, as necessary for the purposes described in the preceding sentence, if: (i) the disclosure is required by law; or (ii) Producer obtains from the person to whom the PHI is disclosed a written agreement that (A) the PHI will be held confidentially and will not be used or further disclosed except as required by law or for the purpose for which it was disclosed and (B) the person to whom the PHI is disclosed will notify Producer (who will in turn promptly notify Company) of any instances of which such person is aware in which the confidentiality of the PHI has been breached.
- 3) Producer shall use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by this Agreement. Producer shall report to Company any unauthorized use or disclosure of PHI by Producer or its workforce or any of its agents/producers or subcontractors, of which it becomes aware. Producer shall mitigate, to the extent practicable, any harmful effect that is known to Producer of any use or disclosure of PHI by Producer or its workforce or any of its agents/producers or subcontractors in violation of this Agreement.
- 4) Producer shall not provide any PHI to any of its agents/producers or subcontractors without first obtaining their agreement to the same restrictions and conditions that apply to Producer with respect to such information.
- 5) Producer shall afford Company’s members (i) the right to access PHI in accordance with 45 C.F.R. 164.524 and (ii) the right to amend PHI in accordance with 45 C.F.R. 164.526.
- 6) Producer shall make its records available for purposes of responding to member requests for an accounting in accordance with 45 C.F.R. 164.528. In the event Producer makes any disclosures of PHI that are subject to the accounting requirements of 45 C.F.R. 164.528, it shall promptly report such disclosures to Company, including the date of the disclosure, the name and, if available, address of the recipient of the PHI, a brief statement of the PHI disclosed, and a brief description of the purpose of the disclosure that reasonably informs the individual of the basis of the disclosure. Producer should send such information to Company at the following address or fax:

Aetna Legal Support Services
151 Farmington Avenue, W121
Hartford, CT 06156-9998
Fax: (860) 907-3017
- 7) Effective April 21, 2005, with respect to “electronic protected health information” (within the meaning of 45 C.F.R. Parts 160-164) (“ePHI”), Producer shall:
 - a) Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic PHI that it creates, receives, maintains or transmits on behalf of Company;
 - b) Ensure that any agent, including a subcontractor to whom it provides ePHI agrees to implement reasonable and appropriate safeguards to protect it; and
 - c) In no event, without Company’s prior written approval, provide ePHI received from, or created or received by Producer on behalf of Company, to any employee or agent, including a subcontractor, if such employee, agent or subcontractor receives, processes, or otherwise has access to such ePHI outside of the United States; and
 - d) Make policies and procedures relating to Producer’s safeguarding of ePHI available to Company, or at the request of Company to the Secretary of Health and Human Services (the “Secretary”), in a time and manner designated by Company or the Secretary, for purposes of the Secretary determining Company’s compliance with HIPAA;
 - e) Report to Company any security incident of which Producer becomes aware.

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F. General Terms

- 1) Company and Producer shall comply with all applicable state and federal laws (including federal health care laws) and regulations applicable to their businesses, their licenses and the transactions into which they enter, including but not limited to all applicable Medicare Advantage and/or Medicare Part D laws, the Centers for Medicare and Medicaid Services' policies and marketing guidelines, as well as the Federal Communications Commission final rule amending the Telephone Consumer Protection Act, where Producer engages in outbound telemarketing solicitation on behalf of Company.
- 2) Producer agrees that in performing under this Agreement Producer is acting in a fiduciary capacity to Company. Producer shall act in the best interest of Company. Producer shall not permit other interests, activities or responsibilities to interfere with Producer's faithful performance under this Agreement.
- 3) Except as specifically provided in Paragraph 3 of Section B, neither this Agreement nor the right to receive money hereunder may be assigned without the prior written consent of Company, and any assignment made contrary to this provision shall be void as to Company; provided, however, Company may assign, delegate or transfer this Agreement in whole or in part to any affiliate, now or in the future, or to any entity which succeeds to the applicable portion of its business through a sale, merger or other transaction, provided that such other entity assumes the obligations of Company hereunder. This Agreement is personal to Producer, and Producer's duties hereunder shall not be delegated or subcontracted by Producer. Producer shall not use subagents/subproducers.
- 4) Any notice required from Company under this Agreement shall be deemed given on the day such notice is deposited in the United States mail with first class postage pre-paid and addressed to Producer at the address of the Producer appearing on the records of Company. Any notice required from Producer shall be deemed given on the day after such notice is deposited in the United States mail with first class postage pre-paid and addressed to Company.
- 5) This Agreement (including any attached addendums or schedules) is the complete and sole contract between the parties regarding the distribution of Company Products by Producer subsequent to the Effective Date of this Agreement and supersedes any and all prior understandings or agreements between the parties whether oral or in writing on this subject matter.
- 6) In this Agreement the words "shall" and "will" are used in the mandatory sense. Unless the context otherwise clearly requires, any one gender includes all others, the singular includes the plural, and the plural includes the singular.
- 7) The fact that Company may not have insisted upon strict compliance with this Agreement with respect to an act or transaction of Producer shall not relieve Producer from the obligation to perform strictly in accordance with the terms of this Agreement.
- 8) Producer shall be an independent contractor of Company, and nothing herein shall be construed as creating a relationship of employer-employee, partner, joint venturer, officer or agent of Company in any manner for any other purpose, other than as specifically provided in this Agreement.
- 9) This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.
- 10) Notwithstanding Paragraph 9 of this Section F, Company's liability, if any, for damages to Producer for any cause whatsoever arising out of or related to this Agreement, and regardless of the form of the action, shall be limited to Producer's actual damages. Company shall not be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever sustained as a result of a breach of this Agreement or any action, inaction or alleged tortious conduct or delay by Company.
- 11) In addition to those provisions which by their terms survive expiration or termination of this Agreement, Paragraphs 8, 10, 11 and 12 of Section A, Paragraphs 4, 5, 6 and 7 of Section B, Section D, Section E, and Paragraphs 3, 9, 10 and 13 of Section F shall survive expiration or termination of this Agreement, regardless of the cause giving rise thereto.
- 12) Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations or liabilities whatsoever.
- 13) Company may modify this Agreement upon thirty (30) days prior written notice to Producer, including the producer commission schedules set forth in Addendum B, but any such modification shall not reduce the rate or rates with respect to commission payments due Producer in connection with benefit contracts or policies produced by Producer and issued by Company with effective dates prior to the effective date of such modification. Notwithstanding the foregoing, upon the enactment of any law or regulation, or any order or direction of any governmental agency affecting this Agreement, Company may, by written notice to Producer, amend the Agreement in such manner as Company determines necessary to comply with such law or regulation, or any order or directive of any governmental agency. Company may provide written notice pursuant to this Paragraph 13 by letter, newsletter, electronic mail or other media.

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Addendum A — Product Authorization

Producer is authorized to solicit and submit applications for those Group Medical Products, Group Life Products, Group Disability Products, Group Dental Products, Individual Medical Products, Student Health Plan Products (whether sold as Group, Blanket or Individual), and Aetna Medicare Products (including Individual/Group Medical Products for Medicare-eligible individuals and/or individuals age 65 and over) that are available and being offered in such market by Company, as of the Effective Date of this Agreement, in the state or states for which Producer is properly licensed, appointed and/or registered by Company ("Company Products"), as applicable. Company may at any time add to, delete from or otherwise alter the coverages, provisions or exclusions of any Company Products without the consent of Producer.

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Addendum B — Producer Commission

Commission schedules applicable to this Agreement are posted on the websites listed below and are incorporated by reference into this Addendum B. The posted commission schedules will be subject to change in accordance with Paragraph F.13 of this Agreement.

National Accounts (3,001 and above Eligible Employees):

http://www.aetna.com/producer/national_accounts.html

Middle Market Accounts (51 – 3,000 Eligible Employees):

<http://www.aetna.com/producer/middlemarket.html>

Small Group (2 – 50 Eligible Employees*):

http://www.aetna.com/producer/smallgroup_aakit.html

Aetna Advantage-Individual:

<http://www.aetna.com/producer/individual.html>

Retiree Markets:

Aetna-Individual Medicare Products:

<http://www.aetna.com/producer/IndivCommissionSchedule.pdf>

Aetna-Group Medicare Products:

<http://www.aetna.com/producer/GroupCommisionSchedule.pdf>

Aetna Global Benefits:

<http://www.aetnaglobalbenefits.com/producer/default.jsp>

*1 – 50 Eligible Employees in some states