



Harvard Pilgrim
HealthCare

Agent Contracting Checklist – HPHC Medicare Advantage

To expedite the contracting process, please follow the steps below:

Step 1: Complete and Sign the Following Items:

- Broker Application** *(required)*
Be sure to indicate if contracting as an individual or corporation
- Agent Agreement** *(required); sign and return all pages*
- Broker Agreement** *(required); sign and return all pages*
- Broker Agreement First Amendment; sign and return all pages**
- Business Associate Agreement; sign and return all pages**
- EFT/Direct Deposit Authorization** *(optional)* with Copy of Voided Check
Mail the EFT & check directly to HPHC – see address on form
- W-9** *(required)*
- Copy of State License(s)** *(required)*
- Copy of E&O Certificate – minimum \$1,000,000 coverage** *(required)*

Step 2: Return completed contracting material to us via email or fax:

Email: contracting@garityadvantage.com
Fax: 339-469-8155
Mail: GarityAdvantage Agencies
17 Accord Park Drive, Suite 107
Norwell, MA 02061

Questions? Call 800-234-9488



Checklist and Instructions for Completing Harvard Pilgrim Health Care's Broker Agreement and Business Associate Agreement

Broker Agreement, Page One.

Identify the name of the broker, or the contracting party entering into the Agreement with HPHC.
If you are an individual broker, **you** are the "Broker" under the Agreement.
If you are represent a brokerage firm, you should name the firm or company as the "Broker" and the Agreement should be signed by a representative with authority to bind your firm or company.
Please utilize the date of which you are signing the Agreement.

Broker Agreement, Page Five

Identify the name of your company. If you are an individual broker, your name may be the name of your company.
A signature is required by a representative with the authority to bind your firm or company.
Provide your demographic information and License Number.

Business Associate Agreement, Page One

Identify the name of the broker, or the contracting party entering into the Agreement with HPHC.
If you are an individual broker, **you** are the "Broker" under the Agreement.
If you are represent a brokerage firm, you should name the firm or company as the "Broker" and the Agreement should be signed by a representative with authority to bind your firm or company.
Please utilize the date of which you are signing the Agreement.

Business Associate Agreement, Page Two *****

Identify the name and address of the privacy contact for your group.

- ***If you are an individual broker, you will be the privacy contact unless you have delegated this responsibility to another.***
- ***If you represent a brokerage firm, please identify the name and address of the person in your firm responsible for privacy matters.***

Business Associate Agreement, Page Fourteen

Agreement should be signed by a representative with authority to bind your firm or company.
Print the person's name below the signature, along with their title and date.
Please utilize the date of which you are signing the Agreement

Please note: **All pages of both documents must be returned.** Thank you.

Return to GarityAdvantage Agencies:
Email: contracting@garityadvantage.com
Fax: 339-469-8155



Harvard Pilgrim Health Care — Broker Application

Please type or print your answers. Use a separate answer sheet if necessary.

A. Background

1. Name of firm: _____

2. Principal Address: _____

3. Mailing Address (if different from above): _____

4. Telephone: _____ Fax: _____

5. Email: _____

6. Type of firm (check one): Corporation Partnership Individual

7. Taxpayer I.D. Number: _____

8. Is the firm currently engaged in, owned or controlled by any other business interest? Yes No

If yes, explain: _____

B. Primary Contacts

Name	Title	Email

- In order to complete your application in full you must submit a copy of broker license and errors and omissions coverage.
- You must also complete Harvard Pilgrim Health Care's Broker Agreement and Business Associate Agreement contract. Please contact Broker Relations at 1-800-424-7285 for a copy of the contract.

I verify that the information contained herein is true and that I am a licensed health insurance broker in good standing with the regulatory authorities. Please direct any questions to Broker Relations at (800) 424-7285. Mail the completed form to Broker Relations, Harvard Pilgrim Health Care, 93 Worcester Street, Wellesley, Massachusetts 02481 or fax to (617) 509-2515.

Signature: _____ Date: _____

HARVARD PILGRIM HEALTH CARE, INC.
AGENT AGREEMENT

This AGENT AGREEMENT (this “Agreement”) is made and entered into this ____ day of _____, 20____, by and between Harvard Pilgrim Health Care, Inc. (“Harvard Pilgrim”), on behalf of itself and its Affiliates (collectively, the “Company”) and _____ (“Agent”).

A. Harvard Pilgrim and certain of its Affiliates offer Medicare Advantage Plans, including prescription drug plans (“MA-PD Plans”) and other health plans and products as may be designated by the Company (collectively, the “Products”).

B. Agent, or General Agent or FMO on behalf of Agent, has been recommended to the Company to market and promote the Products.”

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

ARTICLE ONE
DEFINITIONS

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 Harvard Pilgrim, and offers one or more of the Products.

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

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

1.4 **Field Marketing Organization (FMO)** is an independent contractor, who or which has entered into a contract with Company for the marketing and promotion of the Products and has directly or indirectly through a General Agent recommended Agent for appointment by the Company to market and promote the Products.

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 a General Agent, Agent or Solicitor Agent. A General Agent can be categorized in any one of three levels, General Agent (GA), Super General Agent (SGA) or Master General Agent (MGA). For clarification, an SGA can recommend an MGA, GA, Agent and Solicitor; and an MGA can recommend a GA, Agent, and Solicitor.

1.6 **MA Plan** is any Medicare Advantage Plan that may now or in the future be offered to individual Medicare beneficiaries by the Company and subject to this Agreement, including, but not limited to, Local HMO and PPO Plans (“Local MA Plans”), Special Needs Plans (“SNPs”), Regional Preferred Provider Plans, and Private Fee for Service Plans (“PFFS Plans”). The definition of MA Plan includes MA Plans which include prescription drug plan benefits (“MA-PD Plans”).

1.7 **Medicare Laws and Regulations** are (i) the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (the "MMA"); (ii) 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; (iii) all administrative guidelines (including Marketing Guidelines), 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 (iv) 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.

1.8 **Member** is an eligible individual who has been enrolled by the Company in one of the Products.

1.9 **Product** means MA-PD Plan and any other health plans and products as may be designated by the Company.

1.10 **Replacement Plan** means the plan that an eligible individual enrolls in following the initial year of enrollment in a Product that is a "like plan type" as described by CMS (as of the effective date of this Agreement, see 42 CFR 422.2274(a)(3)).

1.11 **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 Agent for all new business sales to solicit applications for Products either directly or, if applicable, through its Solicitor Agent(s) who are designated to the Company in writing by Agent and appointed by the Company. Agent hereby accepts such appointment. Agent 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, Agent. 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 Agent, or such shorter period as may be required under applicable law.

2.2 **Duties of Agent.** Agent shall:

a. Before promoting or marketing the Products and on an annual basis thereafter, attend all training required by the Company and be certified by the Company as having completed all training required by the Company, it being specifically acknowledged and agreed by Agent that no compensation shall be paid under this Agreement unless such training has been completed and such certification is received prior to the policy being written. Agent shall promote to each prospective Member only those Products for which the prospective Member is qualified to enroll and which Agent in good faith believes meets the needs of the prospective Member;

b. Hold and maintain, in good standing, any license, certification or registration (collectively, "license") required to perform Agent's duties under this Agreement in each state where Agent 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 Agent or against any of Agent's 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 Agent and not the Company;

c. Agent, or in coordination with FMO or General Agent, promote the Products and solicit and procure 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, via facsimile or scan transmission) and in compliance with standards and requirements that may be established by the Company;

d. Strictly comply with the Company's policies and procedures relating to promoting and marketing the Products to eligible beneficiaries, including the following:

- i. Agent will complete all training required by the Company for the promotion and marketing of the Products and read all Marketing Guidelines (as defined in Section 2.4 of this Agreement), and will comply with all policies therein;
- ii. Agent 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 Agent for that purpose. These written guidelines specifically include, but are not limited to, (i) 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 (ii) such other written guidelines and marketing materials that may be issued by CMS and/or established by the Company and furnished to Agent (collectively, the "Marketing Guidelines"). By entering into this Agreement, Agent is acknowledging it has received, read and understands the Marketing Guidelines;
- iii. Agent 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;
- iv. Agent shall make all disclosures to eligible Medicare beneficiaries in accordance with the Marketing Guidelines, including the following: (i) If Agent is meeting with a Medicare beneficiary, Agent shall clearly identify to the Medicare beneficiary that Agent will be discussing the Company's MA PD Plans, before Agent markets to the Medicare beneficiary; and (ii) Agent shall, prior to the enrollment or at the time of enrollment, make the following disclosure in writing to the Medicare beneficiary: "The person that is discussing plan options with you is contracted with Harvard Pilgrim Health Care, Inc.. The person is compensated based upon your enrollment in a plan.";
- v. Agent shall make no payments or gifts in violation of Medicare Laws and Regulations and applicable federal and state laws and regulations to any eligible beneficiaries or any Members;
- vi. Agent shall be subject to, and cooperate with, the Sales Training program established by the Company;
- vii. Agent shall ensure that all information on Agent's solicited applications is completely filled in by the eligible beneficiary applicant or by Agent in the applicant's presence or by the applicant's legal representative in his or her presence;

e. 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 Agent may retain copies of such records for its files;

f. Maintain and make available for inspection complete books and records of all transactions pertaining to this Agreement, as required by Medicare Laws and Regulations and as set forth in the Medicare Regulatory Addendum attached to this Agreement as **Exhibit C** and incorporated herein, and as may otherwise be required under state insurance laws and regulations or by any governmental entity or regulatory agency;

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 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. Follow and be governed by the terms and conditions of this Agreement and conform to 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.

j. Use best efforts to keep Members enrolled in the Products by providing prompt service to Members;

k. 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 Agent 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 Agent or the Company; herein

l. Comply with the Medicare Regulatory Addendum attached hereto as **Exhibit C** and incorporated herein;

m. Comply with the HIPAA Business Associate Addendum attached hereto as **Exhibit D** and incorporated herein;

n. Comply with and meet the responsibilities and duties requirements attached hereto as **Exhibit B** and which the Company may establish from time to time; it being acknowledged and agreed by Agent that failure to comply with and meet such performance requirements may result in termination of this Agreement;

o. Comply with any and all requests made by Company or by FMO and General Agent on behalf of the Company;

p. Use only the individually identifiable writing number assigned to Agent by the Company on applicable documents;

q. To the extent that Agent, directly or indirectly, has 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, Agent shall terminate any relationship with any such subcontractor.

2.3 **Limitations on Authority.** Notwithstanding any other provision in this Agreement, Agent 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 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 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 the Products, extend the time of payment of any premium, or waive payment in cash on behalf of the Company;
- h. Transfer or sell the business of the Agent created by this Agreement without the Company's prior written consent which shall not be unreasonably withheld, it being acknowledged and agreed by Agent that such business belongs exclusively to the Company;
- i. Except with prior approval of the Company, be contracted or otherwise affiliated with more than one FMO or General Agent (or Agent, in the case of a Solicitor Agent), as the case may be, at any given time in the service area designated by the Company to such FMO, General Agent or Agent. In the event that Agent wishes to contract or otherwise affiliate with a different FMO or General Agent (or Agent, in the case of a Solicitor Agent), Agent may do so only in accordance with Company rules and regulations and such additional terms and conditions as the Company may specify; or
- j. Knowingly permit any party to inappropriately use the individually identifiable writing number issued to Agent by the Company on applications solicited by such party.

2.4 **Duties of the Company.** The Company shall furnish to Agent the marketing and enrollment materials for marketing and promotion of the Products. Agent specifically acknowledges that marketing and enrollment materials must be approved by CMS and the Company and that the enrollment of Members into MA-PD Plans is governed by Medicare Laws and Regulations.

2.5 **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 Agent is 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 Agent is authorized to solicit applications for any Products upon thirty (30) days prior written notice to Agent, or such shorter period as may be required under applicable law.

2.6 **Relationship of Parties.** Agent is an independent contractor and nothing contained in this Agreement shall be construed to create an employer and employee relationship between the Company and Agent. The Company shall not be bound or liable for any actions taken or representations made by Agent beyond the scope

or in violation of this Agreement. Agent shall be responsible for all taxes on compensation earned by it under this Agreement. Agent 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 Agent's activities. Each party shall be solely responsible for and shall hold the other party harmless against any obligation for payment of wages, salaries, other compensation (including all state, federal, and local taxes and mandatory employee benefits) or 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. Agent shall not advertise using the name of Company without the express written approval of Company.

2.7 **Litigation**. Agent shall not initiate litigation in any dispute between Agent 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 Agent in connection with its activities hereunder, the Company may require Agent to defend such action, or, at its sole option, the Company may defend such action and expend such sums as may be reasonable therefor, including reasonable attorneys' fees, and Agent 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 Agent shall pay to the Company on demand.

2.8 **Indemnification**. Agent shall defend, indemnify and hold the Company harmless from and against any and all injuries, claims, demands, liabilities, 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 Agent in connection with the performance of this Agreement or the timely and accurate payment of commissions, fees or other compensation to Agent by FMO or General Agent. Agent shall indemnify and hold the Company harmless from and against any and all damages, claims, demands or liabilities which Agent or a third party may incur as a result of the installation and use of any software provided by the Company to Agent in connection with its activities under this Agreement.

2.9 **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, Agent shall not, directly or indirectly, other than in performance of its 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 steerage 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.

2.10 **Solicitor Agents**. If Agent engages or employs any Solicitor Agents, Agent shall ensure that all duties, obligations, and limitations on authority applicable to Agent in this Agreement are held enforceable against such Solicitor Agents. Agent must immediately notify the Company of the termination of the engagement or employment of any of its Solicitor Agents.

2.11 **Promoting the Products in Compliance with Medicare Marketing Guidelines and Applicable Laws and Regulations**. Notwithstanding any other provision in this Agreement, Agent agrees, on behalf of itself and its employees, agents and contractors, if any, 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. Agent 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. Agent 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 Agent for that purpose. These written guidelines specifically include, but are not limited to, (i) 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 (ii) 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 Agent (collectively, the "Marketing Guidelines"). By entering into this Agreement, Agent is acknowledging it has received, read and understands the Marketing Guidelines. Agent 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. Agent shall make all disclosures to eligible Medicare beneficiaries in accordance with the Marketing Guidelines, including the following: (i) if Agent is meeting with a Medicare beneficiary, Agent shall clearly identify to the Medicare beneficiary that Agent will be discussing the Company's MA-PD Plans before Agent markets to the Medicare beneficiary, (ii) Agent shall, prior to the enrollment or at the time of enrollment, make the following disclosure in writing to the Medicare beneficiary: "The person that is discussing plan options with you is contracted with Harvard Pilgrim Health Care, Inc.." The person is compensated based upon your enrollment in a plan". Agent shall make no payments or gifts of any kind to any eligible Medicare beneficiaries or any Members. Agent shall be subject to, and cooperate with, the Sales Training program established by the Company.

ARTICLE THREE COMPENSATION WHILE AGREEMENT IS IN EFFECT

3.1 **Compensation to Agent.** Except as set forth in Sections 3.2 and 3.3 below, the Company will pay Agent the compensation in accordance with the Agent Compensation Schedule attached as **Exhibit A**, and Agent agrees that following terms and conditions shall apply:

a. Agent shall receive compensation only on business submitted to the Company directly by the Agent or through the FMO or General Agent. Agent shall accept the compensation as set forth on the Agent Commission Schedule as compensation in full for all services performed and for all expenses incurred by Agent for the promotion and sale of the Products. In all cases where Agent's claim to compensation is disputed or is otherwise questionable, the Company shall have the right, in its sole and absolute discretion, to decide and settle the dispute. The decision of the Company shall be final, binding, conclusive and not subject to appeal.

b. The Company may, at any time, increase or decrease the compensation payable as specified on the Agent Commission Schedule, and may set the compensation payable on any or all additional products which are added to the Agreement by furnishing to Agent written notice. Notwithstanding the foregoing, any change in the compensation payable shall not be retroactive, and shall apply only to products sold by Agent on or after the effective date specified in the written notice, which effective date shall be at least thirty (30) days after the date on which such written notice is furnished to Agent.

c. All compensation due to Agent 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 Agent prior to receiving CMS confirmation of the enrollment of a Member and CMS does not, in fact, enroll the individual, Agent shall promptly refund such compensation paid to Agent and attributable to such individual. The Company may deduct such compensation from amounts otherwise owed by the Company to Agent.
- 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 Agent for such Member, Agent shall refund such compensation paid to

Agent and attributable to such Member. The Company may deduct such compensation from amounts otherwise owed by the Company to Agent and shall provide Agent with information supporting the amount of any such deductions taken pursuant to this provision.

d. The Company may offset and deduct any compensation which would otherwise be due and payable to Agent by any amounts the Company determines were inappropriately or fraudulently paid to Agent by the Company previously in violation of this Agreement.

3.2 **Responsibility for Indebtedness to Company.** Agent shall be responsible for and agrees to reimburse and indemnify the Company for (i) any unearned or improperly or mistakenly paid commissions and (ii) any obligation or any sum which may be due and payable to the Company by Agent under this Agreement (collectively, "Indebtedness"). Agent 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 Agent, for any debt due from Agent, 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 Agent 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. Agent 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 3.3 shall survive termination of this Agreement.

ARTICLE FOUR TERMINATION AND SUSPENSION

4.1 **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 Four.

4.2 **Termination Without Cause.** This Agreement may be terminated without cause by either Agent or the 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.

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

- a. If the Agent is an individual, upon the death of the individual;
- b. If the Agent 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 the Agent is a corporation, upon the dissolution of the corporation or disqualification of the corporation to do business under applicable state laws;
- d. The loss, restriction, revocation or suspension of Agent's insurance license, certification or registration by any Federal or state regulatory authority having jurisdiction over the parties;
- e. The Agent'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; or

f. The Agent is unable to pay debts as they mature, makes an assignment for the benefit of creditors or becomes the subject of bankruptcy, insolvency or similar proceedings.

4.4 **Termination With Cause.** The Company may immediately terminate this Agreement for cause upon written notice to Agent upon the occurrence of any of the following events (and notify applicable state and/or Federal regulatory authorities of the same):

a. The failure of Agent to comply with the policies, procedures, rules and regulations of the Company, the Medicare Laws and Regulations, or the laws or regulations of the states in which the Agent is licensed to conduct business or any Federal or state regulatory authority having jurisdiction over the parties;

b. The failure of Agent to provide the Company with certificates or insurance, as required under Section 5.4, and to maintain the insurance coverage as set forth in this Agreement;

c. The failure of Agent to otherwise conform to the terms and conditions of this Agreement;

d. The conviction of Agent or any of its principals, shareholders, directors or officers of a felony crime or any other crime involving moral turpitude;

e. If Agent or any principal, partner, shareholder, director or officer of Agent directly or indirectly and systematically contacts, communicates or meets with any Member for the purpose of replacing a Product offered by the Company with another substantially similar product (in design and cost) offered by another entity, in other words, if the Agent intentionally "churns" Company's membership to another substantially similar Medicare Advantage Plan, Prescription Drug Plan or other product offered by a Medicare Advantage Organization, Prescription Drug Plan Sponsor, or other entity which is not affiliated with the Company;

f. Agent is contracted or otherwise affiliated with more than one (1) FMO or one (1) General Agent, as the case may be, at any given time in the service area designated by the Company to market and promote the Products; or

g. The promotion and marketing of the Products by Agent or any of its principals, shareholders, directors or officers when a suspension is in effect, as specified in Section 4.5, below.

4.5 **Suspension and Corrective Action of Agent.** In the event that the Company becomes aware of allegations, through Member complaints or otherwise, that Agent may have engaged in conduct in violation of this Agreement, the Company may suspend Agent'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, Agent may not market or promote the Products on behalf of the Company or receive compensation on any Products sold; provided, however, that the Company shall continue to pay compensation in accordance with the terms and conditions of this Agreement on Agent's existing business submitted prior to the date of the suspension. The Company reserves the right to initiate corrective action against Agent where the Company has determined Agent has engaged in any conduct in violation of this Agreement.

4.6 **Specific Obligations of Agent to the Company and Members Following Termination of Agreement.** Following termination of this Agreement, Agent shall direct all inquiries from Members regarding the Products to the Company. Agent shall continue to act in accordance with 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 Company's Products to Members or other beneficiaries. Agent shall continue to act in accordance with the provisions of the HIPAA Business Associate Addendum attached to this Agreement. Without limiting the foregoing, Agent 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, Agent shall copy all requested records in its possession relating to applicants for MA-PD

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 Agent.

4.7 Compensation Following Termination of Agreement: Vesting.

a. In the event this Agreement is automatically terminated under Section 4.3 or is terminated with cause by Company under Section 4.4, the Company shall cease paying compensation to Agent 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 the termination without cause of this Agreement by the Company, the compensation due to Agent as set forth in the Agent Commission Schedule in effect as of the termination date of this Agreement shall be vested in Agent and payable to Agent by the Company regardless of whether this Agreement is still in force at the time such compensation becomes due for so long as the Member remains enrolled in the Product with the Company and the premiums continued to be paid by CMS and the Member, as applicable. The obligation of the Company to pay compensation shall cease in the event that Agent, at any time while payments continue, engages in any of the conduct set forth in Section 4.4 which would have given rise to a termination for breach. This Section 4.7 shall survive termination of this Agreement.

4.8 Termination of Solicitor Agent. If Agent contracts with or is otherwise affiliated with any Solicitor Agent, then termination of Agent shall result in the termination of any and all Solicitor Agents. The Company may, in its sole and absolute discretion, terminate the participation of any Solicitor Agent by providing advance written notice of such termination to Agent. Upon receiving such notice from the Company, Agent shall cause any terminated Solicitor Agent 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 Agent with respect to any enrollments which are originated by any Solicitor Agent who or which has been terminated. The termination of participation of any one or more Solicitor Agent by the Company shall not affect the performance of this Agreement by Agent and the remaining Solicitor Agents that have not been terminated by the Company. The termination of any Solicitor Agent'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 Four or as otherwise permitted by this Agreement.

**ARTICLE FIVE
GENERAL
PROVISIONS**

5.1 Intellectual Property Rights: Confidential Information. Agent 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. Agent agrees that such proprietary and confidential information shall only be used by Agent in connection with its performance under this Agreement and only in the manner provided by this Agreement. Agent 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, Agent shall immediately return all proprietary and confidential information. Agent agrees that this Agreement is and shall remain confidential, and Agent 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. Agent 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 Agent by the Company or produced by Agent at the Company's expense or based on the Company's proprietary and

confidential information. Agent agrees to deliver this tangible property to the Company promptly upon the Company's request, but in any event, after Agent is finished using such tangible property in performing the services under this Agreement.

5.2 **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.

5.3 **Amendments: Other Agreements.**

a. **Unilateral Amendments.** The Company may amend this Agreement by providing written notice of the amendment and its effective date to Agent thirty (30) or more days before the proposed effective date of such amendment. The amendment will automatically become effective without Agent's written agreement unless Agent notifies the Company that Agent 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 Agent 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 Agent and shall not require the consent of Agent.

c. **Agreements for Sale of Other Products.** Nothing in this Agreement shall preclude Agent 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 Agent 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 Agent 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.

5.4 5.4 **Insurance.** Agent shall maintain comprehensive liability insurance, including errors and omissions insurance, in such form and amount as may be approved by company from time to time. Agent shall, upon the request of Company, provide evidence of such insurance coverage. Agent will notify Company within ten (10) days of any change in the amounts, levels or types of insurance purchased or the loss of any coverage required under this provision.

5.5

5.6 5.5 **Waiver.** Failure of the Company to enforce compliance with the terms and conditions of this Agreement shall not be construed as a waiver of its rights to exercise the same at any time.

5.6 **Notice.** Any and all notices required or permitted to be given hereunder shall be in writing and may be sent by (i) personal delivery, (ii) commercial messenger service overnight delivery, (iii) United States Postal Service or facsimile transmission with electronic confirmation of successful transmission. Irrespective of the manner of delivery or transmission used, all such notices shall be properly addressed and directed with postage or delivery charges prepaid (if any) to the party at its respective address or facsimile number set forth below or to such other address which any party may designate in writing in accordance with the provisions of this Section 5.6.

If to Company: Harvard Pilgrim Health Care, Inc.
93 Worcester Street
Wellesley, MA 02481
Attention: Vice President, Sales
Facsimile: 952-936-1396

with a copy to:

Harvard Pilgrim Health Care, Inc.
93 Worcester Street,
Wellesley, MA 02481
Attention: Legal Department
Facsimile: 617-509-7515

If to Agent: To Agent's address last known by the Company.

Notices sent by either personal delivery or facsimile transmission shall be deemed given upon independent written verification of receipt. Notices sent via overnight delivery shall be deemed given on the next business day. All other notices sent by either registered or certified mail shall be deemed given three (3) business days from mailing.

5.7 **Compliance with Applicable Law; Severability.** In the event any provision of this Agreement conflicts with laws applicable hereto or under which this Agreement is construed or if any provision of this Agreement shall be held illegal or unenforceable or partially illegal or unenforceable by a court or governmental authority with jurisdiction over the parties to this Agreement, then this Agreement shall be modified to conform with said laws or judicial determination and such provision shall be construed and enforced only to such extent as it may be a legal and enforceable provision, and all other provisions of this Agreement shall be given full effect separately therefrom and shall not be affected thereby.

5.8 **Governing Law.** This Agreement shall be construed in accordance with the laws of the Commonwealth of Massachusetts but otherwise without regard to conflicts of law principles.

5.9 **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.

5.10 **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.

5.11 **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, Agent 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.

5.12 **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.

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

- **Exhibit A** Agent Compensation Schedule
- **Exhibit B** Responsibilities and Duties
- **Exhibit C** Medicare Regulatory Addendum
- **Exhibit D** HIPAA Business Associate Addendum
- **Exhibit E** Products

Executed this _____ day of _____, 20__ .

AGENT CONTRACTING AS
 (Check one)
INDIVIDUAL
PARTNERSHIP
CORPORATION

HARVARD PILGRIM HEALTH CARE, INC.,
on behalf of itself and its Affiliates

By: _____
Authorized Signature

Title: _____

Print Name as it Appears on License

By: _____

Title: _____

Address

City State Zip Code

Telephone Number: _____

Fax Number: _____

E-mail: _____

Tax I.D. Number: _____

If agent is contracted through one of Harvard Pilgrim’s authorized General Agents or Field Marketing Organizations (FMO), complete the following:

Name of General Agent/FMO: Garity Associates_____

General Agents/FMO Tax ID# _____

EXHIBIT A

Agent Compensation Schedule

2014 Harvard Pilgrim Medicare Advantage Commission Schedule

	Year One Initial year in which Enrollee is enrolled in Medicare Advantage Plan	Years Two through Six Subsequent Years (2-6) in which Enrollee is enrolled in Medicare Advantage Plan (also referred to as "renewal")
Individual Medicare Advantage Plan	\$425.00 One-time fee	\$213.00 Per Member Per Year

For purposes of this Commission Schedule, references to "year" shall mean a calendar year, i.e. January 1 through December 31.

Eligibility for Commission

Harvard Pilgrim will pay commission for Medicare Advantage plan sales only to Agents who have a contract with Harvard Pilgrim that expressly authorizes the Agent to sell Medicare Advantage Plans, and who is contractually required to: (1) have a valid license authorizing the Agent to sell health insurance products in the states that comprise the Harvard Pilgrim service area, (2) have an Errors and Omissions Policy acceptable to Harvard Pilgrim; (3) have completed and passed AHIP, Gorman or approved industry-wide annual training and testing, 4) have completed and passed Harvard Pilgrim's certification and training program receiving a score of no less than 85%; and (5) have completed Harvard Pilgrim's broker/producer application process.

Year One Commission Amount

For the first year in which the Medicare Advantage Member is enrolled in Harvard Pilgrim's Medicare Advantage plan, Harvard Pilgrim will pay a one-time commission of \$425.00. Harvard Pilgrim will make the commission payment within 45 days of the Medicare Advantage Member's effective date of enrollment in Harvard Pilgrim's Medicare Advantage plan.

Years Two through Six (Renewal) Commission Amount

Harvard Pilgrim will pay commissions of \$213.00 per member per year pro-rated in monthly payments of \$17.75 for years two through six (2-6) that the enrollee's Medicare Advantage plan is renewed i.e., for the second, third, fourth, fifth and sixth year in which the Medicare Advantage member has been enrolled.

Date Harvard Pilgrim will pay Commission

Harvard Pilgrim will pay commissions, in accordance with the then in effect commission payment schedule, for year one and for years two through six within 45 days of the Members effective date of enrollment in Harvard Pilgrim's Medicare Advantage plan.

DISENGROLLMENTS

Agent agrees that commissions will only be paid for the months that an enrollee remains enrolled in a Medicare Advantage Plan during a plan year (i.e. a calendar year).

YEAR ONE Disenrollments

If an enrollee voluntarily or involuntarily disenrolls with an effective disenrollment date within the first three months after the original effective date and CMS notifies Harvard Pilgrim that CMS deems the disenrollment a

valid rapid disenrollment, Harvard Pilgrim will charge back to the Agent 100% of the commission Harvard Pilgrim paid.

If an enrollee voluntarily or involuntarily disenrolls with an effective disenrollment date during months 4 through 12 after the original effective date of YEAR ONE, Harvard Pilgrim will charge back the Agent for commission paid for months in which the member was not enrolled.

YEARS TWO THROUGH SIX Disenrollments

If an enrollee voluntarily or involuntarily disenrolls with an effective disenrollment date during months 4 through 12 after the original effective date for years two through six, Harvard Pilgrim will charge back the Agent for all commissions paid during months in which the member was not enrolled.

Examples:

Enrollee's Medicare Advantage enrollment is effective on 1/1/2014. Harvard Pilgrim paid Agent \$17.75 for first 6 months for Year Two commission. Enrollee disenrolls with a disenrollment effective date of 6/1/2014. The disenrollment effective date (6/1/2014) is not within the first three months of the enrollee's original effective date (1/1/2014), so Harvard Pilgrim does not charge back 100% of the commission. The disenrollment effective date occurs during the 6th month after the original effective date therefore, Harvard Pilgrim discontinues PMPM commission for July through December.

Enrollee's Medicare Advantage enrollment is effective on 1/1/2014. Harvard Pilgrim paid General Agent \$425.00 one-time fee for Year One commission. Enrollee disenrolls with a disenrollment effective date of 6/1/2014. The disenrollment effective date (6/1/2014) is not within the first three months of the enrollee's original effective date (1/1/2014), so Harvard Pilgrim does not charge back 100% of the commission. The disenrollment effective date occurs during the 6th month after the original effective date therefore, Harvard Pilgrim takes back half of the one-time commission to recoup for July through December.

EXHIBIT B
Agent Duties and Responsibilities Acknowledgement

As an AGENT, I understand the duties and responsibilities covered by this Agreement are stated within the Agreement and include but are not limited to the following:

1. Maintain all applicable licenses as required by state and federal laws
2. Complete required training and certification programs including certification through AHIP or Gorman Healthcare and successful completion of the Harvard Pilgrim sales training and certification program.
3. Complete Harvard Pilgrim agent application and on-boarding process.

AGENT acknowledges that all of the above must be completed prior to any marketing or sales activity by AGENT.

Furthermore, AGENT agrees to perform the following duties:

1. Not market any of Harvard Pilgrim's MA-PD products designated for open enrollment until October 1st.
2. Use only marketing materials that have been provided by Harvard Pilgrim and approved by CMS
3. Receive, review and submit accurate and complete enrollment forms to Harvard Pilgrim within 24 hours and according to the Harvard Pilgrim Policies and Procedures.
4. Provide accurate information regarding eligibility requirements, plan benefits, grievance, appeals, and disenrollment procedures to Medicare beneficiaries
5. Report any complaints to Harvard Pilgrim within 2 calendar days
6. Avoid any incentives to mislead Medicare beneficiaries, cherry pick certain Medicare beneficiaries or churn beneficiaries between Medicare plans
7. Not provide payments or gifts to Medicare beneficiaries to induce enrollment
8. Respect Harvard Pilgrim's professional resources and utilize technical tools, printed resources and other self support made available to you by Harvard Pilgrim

Additionally, in offering products to Medicare beneficiaries, the AGENT may not engage in any of the following practices or activities. Prohibited practices include, but are not limited to the following:

- Discriminatory practices
- Door-To-Door and all other unsolicited solicitations
- Forgeries
- Misrepresentations, activities which mislead, confuse, or misrepresent
- Improper payment
- Telemarketing without required beneficiary consent
- Unauthorized language interpretations
- Use of incorrect enrollment materials
- Enrollment at health fairs
- Offering gifts or payments to induce enrollment
- Distribution of unapproved marketing materials
- Statements, claims, or promises that conflict with, alters, or erroneously expands upon either the information contained within CMS approved materials or Harvard Pilgrim's information
- Misrepresent self as an agent of Medicare, Social Security, or any agency of the Federal Government.

AGENT agrees that it will represent Harvard Pilgrim in a responsible, accurate, and respectable manner at all times. AGENT understands and acknowledges that a violation of any of the above will result in disciplinary action up to and including contract termination.

EXHIBIT C

Medicare Regulatory Addendum

This Addendum shall apply to the services provided by Agent pursuant to the Agreement related to the Company's MA PD 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 Agent under the Agreement:
 - (a) Agent shall provide or arrange for the provision of the services set forth in the Agreement.
 - (b) Agent shall comply with any existing reporting responsibilities as are set forth in the Agreement.
 - (c) Agent 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. Agent 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) Agent 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 Agent has agreed to perform in accordance with the Agreement. In instances where CMS or the Company determines that Agent 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 Agent, or the Company may terminate the Agreement upon 45 days advance written notice to Agent. Agent 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 Agent has any arrangements with affiliates, subsidiaries or any other sub-contractors (collectively, "subcontractors"), directly or through another person or entity, to perform any of the services Agent is obligated to perform under the Agreement that is the subject of this Addendum, Agent shall ensure that all such arrangements are in writing and duly executed. Agent 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. Agent 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. Agent shall ensure that any such delegation or subcontract shall be performed by the subcontractor in accordance with the Company's contractual obligations to CMS, Agent's contractual obligation under this Agreement, and in compliance with all applicable Medicare Laws and Regulations and the requirements of this Addendum. Agent 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 Agent 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 Agent. 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) Agent represents and warrants that Agent has not been (i) listed as debarred, excluded, or otherwise ineligible for participation in federal health care programs; or (ii) convicted of a criminal felony. Agent agrees to notify the Company in writing immediately if, at any time during the term of the Agreement, Agent is (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. Agent acknowledges that the Company receives payments in whole or in part from federal funds, and Agent is subject to certain laws that are applicable to individuals and entities receiving federal funds.
3. Records.
- (a) Maintenance and Accuracy Records. Agent will maintain all pertinent records and information related to the services rendered by Agent 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 10 years from the final date of the applicable CMS 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 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 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, Agent 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 Agent 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 Agent of such amendment and its effective date. Unless such regulatory authorities direct otherwise, the signature of Agent will not be required.
5. Member Hold Harmless. Agent 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 Agent pursuant to this Agreement or otherwise.

EXHIBIT D

HIPAA BUSINESS ASSOCIATE ADDENDUM

1.0 GENERAL PROVISIONS

The terms and provisions of this Addendum are incorporated in and shall supersede any conflicting or inconsistent terms and provisions of the Service Agreement to which this Addendum is attached, including all exhibits or other attachments thereto and all documents incorporated therein by reference (the “Agreement”).

Harvard Pilgrim Health Care, Inc. (hereinafter in this Addendum referred to as “Covered Entity”) and Agent (hereinafter in this Addendum referred to as “Business Associate”) (Business Associate and Covered Entity each sometimes individually referred to herein as a “Party” and collectively referred to herein as the “Parties”) intend to protect the privacy and provide for the security of any Protected Health Information (“PHI”) (defined below) which shall be disclosed to Business Associate pursuant to the Agreement, and any Electronic Protected Health Information (“EPHI”) (defined below) that either Party may maintain, transmit or receive pursuant to the Agreement (PHI and EPHI are collectively referred to herein as PHI or Protected Health Information; EPHI will be used when only EPHI is being referenced), in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the implementing regulations at 45 CFR Parts 160, 162, and 164 promulgated by the United States Department of Health and Human Services (“HIPAA Regulations”), the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the “HITECH Act”) that are applicable to business associates, along with any guidance or regulations issued by the U. S. Department of Health and Human Services (“DHHS”), and other applicable laws.

This Addendum is intended to meet the provisions of the Privacy and Security Rule (defined below), which is part of the HIPAA Regulations, which requires Business Associate to enter into a contract containing specific provisions intended to preserve the confidentiality and security of PHI that Business Associate may create, receive, maintain or transit from, or on behalf of, Covered Entity, in the course of its business relationship with Covered Entity (defined below) prior to any disclosure of PHI to Business Associate. The specific provisions are set forth in, but not limited to, Title 45, Sections 164.306, 164.308(b), 164.314(a) and (b), 164.502(e) and 164.504(3) of the Code of Federal Regulations and are applicable to this Addendum. This Addendum is also intended to meet the requirements of all other applicable federal and state laws for the protection of personal information and the reporting of security breach incidents, including the General Laws of Massachusetts, Chapter 93H, and implementing regulations at 201 CMR 17.00, New Hampshire Revised Statutes Chapter 359-C, Maine Revised Statutes Chapter 210-B, and Connecticut General Statutes, Chapters 669 (section 36A-701B) and 743dd (hereinafter “the applicable state laws”).

2.0 DEFINITIONS

As used in this Addendum, the following terms shall have the indicated meaning. Capitalized terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the HIPAA Regulations and the HITECH Standards (defined below), or for Personal Information, the definition found in the applicable state laws. The definitions below which set forth a reference to the Code of Federal Regulations are defined HIPAA terms, and such definitions are incorporated herein as though set forth in full. A change to the HIPAA Regulations or the HITECH Standards which modifies any defined HIPAA term, or which alters the regulatory citation for the definition, shall be deemed incorporated into this Addendum.

- 2.1 **Agreement** means the Service Agreement between Covered Entity and Business Associate, whereby Business Associate provides or will provide certain services to Covered Entity and, in providing those services, may have access to PHI.
- 2.2 **Authorization** shall have the meaning given to the term under the Privacy and Security Rule, including, but not limited to, 45 CFR Section 164.508.
- 2.3 **Breach** shall have the same meaning as the term “breach” in Section 13400 of the HITECH Act and shall include the unauthorized acquisition, access, use, or disclosure of PHI that compromises the

security or privacy of such information. For purposes of Personal Information, the term “Breach of Security” shall have the meaning given in the applicable state laws.

- 2.4 **Business Associate** shall mean _____ [Agent]. Where the term “business associate” appears without initial capital letters, it shall have the meaning given to such term under the Privacy and Security Rule, including, but not limited to, 45 CFR Section 160.103.
- 2.5 **Covered Entity** shall mean Harvard Pilgrim Health Care, Inc. It shall also have the meaning given to the term under the Privacy and Security Rule, including, but not limited to, 45 CFR Section 160.103.
- 2.6 **Data Aggregation** shall have the meaning given to the term under the Privacy and Security Rule, including, but not limited to, 45 CFR Section 164.501.
- 2.7 **Designated Record Set** shall have the meaning given to the term under the Privacy and Security Rule, including, but not limited to, 45 CFR Section 164.501.
- 2.8 **Electronic Protected Health Information (“EPHI”)** shall have the meaning given to the term Electronic Protected Health Care Information under the Privacy and Security Rule, including, but not limited to, 45 CFR Section 160.103.
- 2.9 **Encryption** means the transformation of data through the use of a 128-bit or higher algorithmic process into a form in which there is a low probability of assigning meaning without use of a confidential process or key, unless a higher standard is further defined by the appropriate regulatory body under the applicable state laws.
- 2.10 **Health Care Operations** shall have the meaning given to the term under the Privacy and Security Rule, including, but not limited to, 45 CFR Section 164.501.
- 2.11 **HITECH Standards** means the privacy, security and security Breach notification provisions applicable to a Business Associate under the HITECH Act.
- 2.12 **Individual** shall have the meaning given to the term under the Privacy and Security Rule, including, but not limited to, 45 CFR Section 164.501. It shall also include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.502(g).
- 2.13 **Personal Information** shall have the meaning given by applicable state laws in states in which Business Associate receives Personal Information.
- 2.14 **Privacy and Security Rule** shall mean the Standards for Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of Electronic Protected Health Information that is codified at 45 CFR parts 160 and 164.
- 2.15 **Protected Health Information (“PHI”)** means any information, whether oral or recorded in any form, or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual, and shall have the meaning given to the term under the Privacy and Security Rule, including, but not limited to, 45 CFR Section 164.501.
- 2.16 **Required by Law** shall have the meaning given to the term under the Privacy and Security Rule, including but not limited to, 45 CFR Section 164.501.
- 2.17 **Security Incident** shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of EPHI, or interference with system operations in an information system.

- 2.18 **Security Standards** shall mean those security standards promulgated or to be promulgated pursuant to HIPAA and other applicable federal or state regulations or statutes.
- 2.19 **Unsecured Protected Health Information** or Unsecured PHI shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in Section 13402(h) of the HITECH Act.

3.0 Obligations of Business Associate

- 3.1 **Permitted Use and Disclosure of Protected Health Information.** Business Associate may use and disclose PHI only as required to satisfy its obligations under the Agreement or this Addendum, as permitted herein, as allowed by HIPAA and HIPAA Regulations or as Required by Law, but shall not otherwise use or disclose any PHI. Business Associate shall not, and shall ensure that its directors, officers, employees, contractors and agents do not, use or disclose PHI in any manner that would constitute a violation of the Privacy and Security Rule or the HITECH Act if done by the Covered Entity, except that Business Associate may use PHI if necessary (i) for the proper management and administration of Business Associate, (ii) to carry out the legal responsibilities of Business Associate, or (iii) to provide Data Aggregation services relating to the Health Care Operations of the Covered Entity. Business Associate further represents that, to the extent it requests Covered Entity to disclose PHI to Business Associate, such request will only be for the minimum PHI necessary for the accomplishment of Business Associate's purpose.
- 3.2 **Safeguarding PHI and Personal Information.** Business Associate shall use any and all appropriate safeguards to prevent use or disclosure of PHI and/or Personal Information other than as permitted by this Addendum. Business Associate further agrees to use appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of any PHI and/or Personal Information that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity, in accordance with the HIPAA Regulations, the HITECH Standards, and for Personal Information, the applicable state laws in states in which Business Associate receives Personal Information. More specifically, to comply with the HIPAA Security Standards for PHI, the requirements of the HITECH Act, and to applicable state laws protecting Personal Information, Business Associate agrees that it shall: (i) Develop and implement policies and procedures that meet the Security Standards documentation requirements of the HITECH Act; (ii) As also provided for in Section 2.5 below, ensure that any agent, including a subcontractor, to whom it provides such PHI or Personal Information agrees to implement reasonable and appropriate safeguards to protect it; (iii) Report to Covered Entity, any Security Incidents or Breaches of Security of which Business Associate becomes aware that result in the unauthorized access, use, disclosure, modification, or destruction of the Covered Entity's PHI or Personal Information, (hereinafter referred to as "Successful Security Incidents"). Business Associate shall report Successful Security Incidents to Covered Entity as specified in Section 2.4.3 and upon Covered Entity's request, shall provide access to and copies of documentation regarding Business associate's safeguards for PHI; (iv) For any other Security Incidents that do not result in unauthorized access, use, disclosure, modification, or destruction of PHI (including, for purposes of example, and not for purposes of limitation, pings on Business Associate's firewall, port scans, attempts to log onto a system or enter a database with an invalid password or username, denial-of-service attacks that do not result in the system being taken off-line, or malware such as worms or viruses) (hereinafter "Unsuccessful Security Incidents"), Business Associate shall, upon Covered Entity's written request, report to the Covered Entity in accordance with the reporting requirements identified in Section 2.4.3; (v) Encrypt all PHI and/or Personal Information stored on laptops or other personal devices, encrypt all transmitted records and files containing PHI and/or Personal Information that will travel across public networks, and encrypt all PHI and/or Personal Information to be transmitted wirelessly; and (vi) Business Associate agrees that this Addendum constitutes its representation that it has a written, comprehensive information security program that meets its obligation to safeguard Personal Information in its possession as required by the applicable state laws.

- 3.3 **Mitigation of Harmful Effects.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI or Personal Information by Business Associate in violation of the requirements of this Addendum.
- 3.4 **Breach of Privacy or Security Obligations.**
- 3.4.1 **Notice and Reporting of Violations.** Business Associate shall notify and report to Covered Entity in the manner described herein any use or disclosure of PHI or Personal Information in violation of this Agreement by Business Associate or any of its officers, directors, employees, contractors or agents.
- 3.4.2 **Notice to Covered Entity.** Business Associate will notify Covered Entity following discovery and without unreasonable delay but in no event later than five (5) business days following discovery, any Breach of Unsecured Protected Health Information as these terms are defined by the HITECH Act and any implementing regulations or any Breach of Security under the applicable state laws. Business Associate shall cooperate with Covered Entity in investigating the Breach and in meeting Covered Entity's obligations under the HITECH Act and any other security breach notification laws. Business Associate shall follow its notification to the Covered Entity with a report that meets the requirements outlined immediately below.
- 3.4.3 **Reporting to Covered Entity.** (i) For Successful Security Incidents and any other use or disclosure of PHI or Personal Information that is not permitted by this Addendum, the Agreement, by applicable law, or without the prior written approval of the Covered Entity, Business Associate, without unreasonable delay, but in no event later than ten (10) business days after Business Associate learns of such Successful Security Incident or non-permitted use or disclosure, shall provide Covered Entity a report that will: (a.) Identify, if known, each individual whose Unsecured Protected Health Information or Personal Information has been, or is reasonably believed by Business Associate to have been accessed, acquired, or disclosed during such Breach; (b) Identify the nature of the non-permitted access, use, or disclosure, including the date of the incident and the date of discovery; (c) Identify the PHI or Personal Information accessed, used, or disclosed (e.g., name; social security number, date of birth); (d) Identify who made the non-permitted access, use, or received the non-permitted disclosure; (e) Identify what corrective action Business Associate took or will take to prevent further non-permitted access, use or disclosure; (f) Identify what Business Associate did or will do to mitigate any deleterious effect of the non-permitted access, use, or disclosure; and (g) Provide such other information, including a written report, as the Covered Entity may reasonably request. (ii) For Unsuccessful Security Incidents, Business Associate shall provide Covered Entity, upon its written request, a report that: (a) identifies the categories of Unsuccessful Security Incidents as described in Section 2.2; (b) indicates whether Business Associate believes its current defensive security measures are adequate to address all Unsuccessful Security Incidents, given the scope and nature of such attempts; and (c) if the security measures are not adequate, the measures Business Associate will implement to address the security inadequacies.
- 3.4.4 **Reporting by Covered Entity.** Where a Breach relates to PHI, if Covered Entity determines pursuant to section 4.2 of this Addendum that termination of this Addendum is not feasible, in Covered Entity's sole discretion, then Covered Entity shall have the right to report Business Associate's Breach to the Secretary of the Department of Health and Human Services.
- 3.5 **Agreements by Third Parties.** Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides or transmits PHI and/or Personal Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Addendum to Business Associate with respect to such information.

- 3.6 **Access to Information.** Within ten (10) days of a request by Covered Entity for access to PHI about an Individual contained in a Designated Record Set, Business Associate shall make available to Covered Entity such PHI in order to enable Covered Entity to meet the requirements of 45 CFR Section 164.524, and where applicable, the requirements of the HITECH Act and any related implementing regulations. In the event any Individual requests access to his or her PHI directly from Business Associate, it shall within two (2) days forward such request to Covered Entity so that Covered Entity can comply with the request. Business Associate shall not provide direct access to any Individual who requests access to his or her PHI. Any denials of access to the PHI requested shall be the responsibility of Covered Entity.
- 3.7 **Availability of Protected Health Information for Amendment.** Within thirty (30) days of receipt of a request from Covered Entity for the amendment of an Individual's PHI or a record regarding an individual contained in a Designated Record Set, Business Associate shall provide such information to Covered Entity for amendment and shall incorporate any such amendments in the PHI as required by 45 CFR Section 164.526. Any denials of requested amendments shall be the responsibility of Covered Entity.
- 3.8 **Accounting of Disclosures.** Within twenty (20) days of making a disclosure of PHI, other than disclosures excepted under 45 CFR Section 164.528(a), Business Associate shall report such disclosure to Covered Entity in writing as provided for in 45 CFR Section 164.528 or the HIPAA Regulations, and where so required by the HITECH Act and/or any implementing regulations.. At a minimum, Business Associate shall provide the following information for each disclosure: (i) the date of the disclosure; (ii) the name of the entity or person who received the PHI and, if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event that an Individual's request for an accounting is delivered directly to Business Associate, it shall within five (5) days forward such request to the Covered Entity so that Covered Entity can comply with the request. Such information must be maintained by Business Associate and its agents and subcontractors for a period of six (6) years from the date of each disclosure.
- 3.9 **Auditing, Inspections and Enforcement.** Upon reasonable notice, Business Associate agrees to make its internal practices, books and records relating to the use or disclosure of PHI available to Covered Entity and the Secretary of the Department of Health and Human Services, or the Secretary's designee, for purposes of determining Covered Entity's compliance with the Privacy and Security Rule. Business Associate shall provide appropriate training regarding the requirements of this Addendum to any employee accessing, using or disclosing PHI and shall develop and implement a system of sanctions for any employee, agent or subcontractor who violates this Addendum.
- 3.10 **Indemnification.** Business Associate shall indemnify and hold harmless Covered Entity from and against any and all losses, expense, damage or injury that Covered Entity sustains as a result of, or arising out of a breach of this Addendum by Business Associate or its agents or subcontractors, including but not limited to any unauthorized use or disclosure of PHI.
- 3.11 **Notice of Request for Data.** Business Associate agrees to notify Covered Entity within five (5) days of Business Associate's receipt of any request, subpoena, or judicial or administrative order to disclose PHI. To the extent that Covered Entity decides to assume responsibility for challenging the validity of such request, subpoena or order, Business Associate agrees to cooperate with Covered Entity in such challenge.
- 3.12 **Compliance with HITECH Standards.** Business Associate understands that it must comply with the security provisions made applicable to Business Associates by HITECH section 13401 and the privacy provisions made applicable to Business Associates by HITECH section 13404; in addition, Business Associate shall comply with the HITECH Standards, including, but not limited to: (i) compliance with the requirements regarding minimum necessary under HITECH section 13405(b); (ii)

requests for restrictions on use or disclosure to health plans for payment or health care operations purposes when the provider has been paid out of pocket in full consistent with HITECH section 13405(a); (iii) the prohibition of sale of PHI without authorization unless an exception under HITECH section 13405(d) applies; (iv) the prohibition on receiving remuneration for certain communications that fall within the exceptions to the definition of marketing under 45 CFR section 164.501 unless permitted by this Addendum and section 13406 of HITECH; (v) the requirements relating to the provision of access to certain information in electronic access under HITECH section 13405(e); (vi) compliance with each of the Standards and Implementation specifications of 45 CFR sections 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards) and 164.316 (Policies and Procedures and Documentation Requirements); and (vii) the requirements regarding accounting of certain disclosures of PHI maintained in an Electronic Health Record under HITECH section 13405(c).

3.13 **Acknowledgement of Direct Liability.** Business Associate acknowledges that it is directly liable under the Final HIPAA Rule and subject to penalties in accordance with the HIPAA Rules for making uses and disclosures of PHI that are not authorized by its contract or required by law, and that it is directly liable and subject to civil penalties for failing to safeguard EPHI in accordance with the HIPAA Security Rule.

4.0 Covered Entity's Obligations

4.1 **Notice of Privacy Practices.** Covered Entity shall provide Business Associate with the notice of any privacy practices that Covered Entity produces in accordance with 45 CFR Section 164.520, as well as any changes to such notice. Business Associate shall not distribute its own notice, if any, to Individuals, without the prior written consent of Covered Entity.

4.2 **Revocation of Authorization by Individual.** Covered Entity agrees to inform Business Associate of any change to, or revocation of, an Individual's Authorization to use or disclose PHI to the extent that such change may affect Business Associate's use or disclosure of PHI, within a reasonable period of time after Covered Entity becomes aware of such change.

4.3 **Restrictions on Use and Disclosure.** Covered Entity agrees to notify Business Associate of any restrictions to the use or disclosure of PHI agreed to by Covered Entity in accordance with 45 CFR Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

4.4 **Permissible Requests.** Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy and Security Rule if done by Covered Entity.

4.5 **Safeguards.** Covered Entity shall use appropriate safeguards in accordance with 45 CFR Section 164.306 to ensure the security of PHI provided to Business Associate pursuant to the Agreement and this Addendum, until such PHI is received by Business Associate.

5.0 Termination of Addendum

5.1 **Term.** This Addendum shall be effective from the Addendum Effective Date until all PHI provided by or received or created for Covered Entity is destroyed or returned to Covered Entity, or if it is infeasible to return or destroy PHI, protections are extended to such PHI in accordance with the terms of this Addendum. The term of this Addendum shall also end upon termination of the underlying Agreement, subject, however, to the requirements of this Section 5.0 for return or destruction of all PHI.

5.2 **Termination Upon Breach of Provisions Applicable to Protected Health Information or Personal Information.** Any other provision of this Addendum notwithstanding, this Addendum and the Agreement may be terminated by Covered Entity upon ten

(10) days prior written notice to Business Associate in the event that Business Associate materially breaches any obligation of this Addendum and fails to cure the breach within such ten (10) day period.

5.3 **Return or Destruction of Protected Health Information and Personal Information Upon Termination.** Upon termination of this Addendum and the Agreement, Business Associate shall either return to Covered Entity or destroy all PHI and Personal Information in Business Associate's possession or in the possession of its agents or subcontractors. Business Associate shall not retain any copies of PHI or Personal Information. Notwithstanding the foregoing, if Business Associate determines that returning or destroying PHI and/or Personal Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI and/or Personal Information is infeasible, Business Associate shall extend the protections of this Addendum to such PHI and/or Personal Information and limit further uses and disclosures of such PHI and/or Personal Information to those purposes that make return or destruction infeasible, for so long as Business Associate maintains such PHI and/or Personal Information. If Business Associate elects to destroy all PHI and/or Personal Information, it shall certify in writing to Covered Entity that such PHI and/or Personal Information has been destroyed.

5.4 **Remedies.** Notwithstanding any rights or remedies set forth in this Addendum or provided by law, Covered Entity retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of PHI and/or Personal Information by Business Associate, any of its agents or subcontractors, or any third party who has received PHI and/or Personal Information from Business Associate.

5.5 **Judicial or Administrative Proceedings.** Either Party may terminate this Addendum, effective immediately, if (i) the other Party is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Regulations, the HITECH Act or other security or privacy laws, or (ii) a finding or stipulation that the other Party has violated any standard or requirement of HIPAA, the HIPAA Regulations, the HITECH Act or other security or privacy laws is made in any administrative or civil proceeding in which the Party has been joined.

6.0 Miscellaneous

6.1 **Relationship of the Parties.** None of the provisions of this Addendum are intended to create or shall be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Addendum and any other Agreement between the Parties.

6.2 **Ownership of Protected Health Information and Personal Information.** As between Covered Entity and Business Associate, Covered Entity holds all right, title and interest in and to any and all PHI and/or Personal Information received by Business Associate from, or created or received by Business Associate on behalf of, Covered Entity, and Business Associate does not hold, and will not acquire by virtue of this Addendum or by virtue of providing any services or goods to Covered Entity in the course of fulfilling its obligations pursuant to the Agreement, any right, title or interest in or to such PHI and/or Personal Information. Except as specified in section 3.1 of this Addendum, Business Associate shall have no right to compile or distribute any statistical analysis or report utilizing such PHI and/or Personal Information derived from such PHI and/or Personal Information, any aggregate information derived from such PHI and/or Personal Information, or any other health and medical information obtained from Covered Entity.

6.3 **No Third Party Beneficiaries.** Nothing expressed or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person or entity, other than Covered Entity, Business Associate and their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever.

- 6.4 **Amendment to Comply With Law.** Business Associate and Covered Entity agree to amend this Addendum to the extent necessary to allow either Party to comply with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable state and federal laws relating to the security or confidentiality of PHI and/or Personal Information. Business Associate and Covered Entity will fully comply with all applicable standards and requirements of such federal or state regulations or statutes. To the extent that any amendment of such laws requires changes to this Addendum, Covered Entity shall provide written notice to Business Associate of such changes and this Addendum shall be automatically amended to incorporate the changes set forth in the written notice provided by Covered Entity to Business Associate unless the Business Associate objects to such changes in writing within fifteen (15) days of receipt of such notice. If Business Associate objects in a timely manner to such amendment, the Parties shall work in good faith to reach agreement on a change to the Addendum that complies with the amendment of such laws. If the Parties are unable to reach agreement on a change to the Addendum within thirty (30) days of the date that Covered Entity receives written objection from Business Associate, then either Party may terminate this Addendum upon written notice of such termination.
- 6.5 **Other Amendments.** . Any other amendment to this Addendum unrelated to compliance with applicable law and regulations shall be effective only upon execution of a written agreement between the Parties.
- 6.6 **Waiver.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation on any other occasion.
- 6.7 **Survival.** The respective rights and obligations of Business Associate under Section 5.3 of this Addendum shall survive the termination of this Addendum and the underlying Agreement.
- 6.8 **Effect on Agreement.** The provisions of this Addendum shall prevail over any provisions of the Agreement that conflict with or are inconsistent with any provision of this Addendum. All other terms of the Agreement shall remain in full force and effect.
- 6.9 **Interpretation.** This Addendum and the Agreement shall be interpreted as broadly as necessary to implement and comply with the Privacy and Security Rule. The Parties agree that any ambiguity in this Addendum or the Agreement shall be resolved in favor of a meaning that complies with and is consistent with the Privacy Rule.
- 6.10 **Costs.** Each Party, at its own expense, shall provide and maintain the personnel, equipment, hardware, software, services (including without limitation telecommunications services) and testing necessary to comply with the privacy and security provisions of this Agreement.
- 6.11 **Contact Information for Parties' Privacy and Security Officers.** The name, address, and email address of each Party's Privacy Officer ("PO") and Information Security Officer ("ISO") is as follows:

Covered Entity	Privacy Officer ("PO") Denise Chouinard 93 Worcester Street Wellesley, MA 02481 Denise_Chouinard@hphc.org
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With a copy to Information Security Officer (“ISO”)
Ken Patterson
93 Worcester Street
Wellesley, MA 02481
Ken_Patterson@hphc.org

Business Associate Privacy Officer (“PO”)
[Name]
[Title, if different than Privacy Officer]]
[Address]
[Address]
[Address]
[email address]

With a copy to Information Security Officer (“ISO”)
[Name]
[Title, if different than ISO]
[Address]
[Address]
[Address]
[email address]

6.12 **Best Practices.** Attached hereto for BA’s use is HPHC’s Practices for Information Security.

ATTACHMENT

Harvard Pilgrim Health Care
Practices for Information Security

Harvard Pilgrim Health Care is committed to the security of our members’ Electronic Protected Health Information (EPHI) and Personal Information (PI). We adhere to the following security safeguards, and present these baseline practices to our Business Associates and other business partners and third parties as examples of good security practice. Our commitment to security is not only good for our healthcare members and our workforce, but makes a statement that effective, ongoing processes for maintaining information security are vital for the entire healthcare industry. We encourage our Business Associates, third parties and other business partners to join Harvard Pilgrim in following our recommendations to promote a secure information technology environment.

1. **Security Management** encompasses the policies and procedures to safeguard the confidentiality, integrity, and availability of Electronic Protected Health Information (EPHI) and Personal Information (PI), the use of tools to identify threats and vulnerabilities, escalation of security incidents that threaten the privacy of EPHI and PI, notification when a breach of privacy occurs, and ensuring compliance with the following standards:
 - 1.1. Complete a thorough assessment of the potential risk and vulnerabilities to the confidentiality, integrity, and availability of EPHI and PI. Implement processes, procedures, and other security measures sufficient to reduce risks and vulnerabilities to a reasonable and appropriate level.
 - 1.2. Perform a regular records review of information system activity (e.g., audit logs, access reports and security incident tracking reports).
 - 1.3. Identify a security official who is responsible for the development and implementation of the policies and procedures in place to protect the security of EPHI and PI. Harvard Pilgrim’s Information Security Officer is Ken Patterson. For questions about Harvard Pilgrim’s security policies or any of the best practices outlined in this document, please contact Ken at (617) 509-3068.

- 1.4. Implement policies, processes, and procedures to ensure that all members of the workforce have appropriate access to EPHI and PI, and to prevent those workforce members who should not have access from obtaining access to EPHI. Implement policies and procedures for authorizing access to EPHI and PI.
- 1.5. Implement procedures for the authorization and/or supervision of workforce members who will work with EPHI and PI, or in a location where EPHI or PI might be accessed.
- 1.6. Implement procedures for terminating access to EPHI and PI when the employment of a workforce member ends or when there is a job change.
- 1.7. Implement procedures to corroborate the identity of an individual before granting access to EPHI or PI.
- 1.8. Implement procedures for creating, changing, and safeguarding passwords. Implement a Password Policy that includes: password minimum length, password composition, handling of unsuccessful password attempts, password re-use, preventing use of easily guessed passwords, password storage and password transmission. It is important that the Password Policy is documented and communicated throughout the organization.
- 1.9. Protect against malicious code, whereby hosts are updated with service packs, security vulnerability patches, virus protection, etc, in a manner appropriate to risk.
- 1.10. Have a security incident response plan in place that addresses the handling of a security breach, event escalation, notification, and management process, and perform a periodic test of the plan.
- 1.11. In the case of a security incident where the privacy of EPHI to PI is breached, notification to the covered entity or other applicable business partners or third parties should be made within twenty-four (24) hours, or one (1) business day, as to the cause and remedial steps taken to resolve the incident.
- 1.12. Conduct criminal background checks on workforce members who have access to EPHI or PI.
- 1.13. Implement sanctions for non-compliance with security policies and procedures.
- 1.14. Implement monitoring to perform security patch assessment, network and database security, and the review of firewall logs.
- 1.15. Secure all EPHI and PI transmitted via a public network or transmitted wirelessly against unauthorized access through encryption. Encrypt all PHI and PI stored on laptops or other portable devices.
- 1.16. Establish (and implement as needed) policies and procedures for responding to an emergency or other occurrence (for example fire, vandalism, system failure and natural disaster) that damages systems containing EPHI or PI.
- 1.17. Implement security awareness and training program for all workforce members, including management. At a minimum, conduct formal security training every two (2) years.
- 1.18. Take reasonable steps to verify that business associates and third-party service providers with access to EPHI or PI have the capacity to protect such information and contractually requiring business associates and third-party service providers to maintain such safeguards.
- 1.9. Document a Written Information Security Program (WISP) and update the WISP at least annually or when a change to the security program occurs.
2. **Physical Security** encompasses the policies and procedures designed to limit the physical access to EPHI, PI, and the facilities in which it is housed, the tools to identify vulnerabilities and ensure compliance to standards, and staffing to review reports and logs.

- 2.1. Take steps to ensure physical access controls are in place to secure access to the location, computer room(s), computer equipment, data, and paper files.
 - 2.2. Implement physical safeguards for all workstations that access EPHI or PI, and restrict access to authorized users.
 - 2.3. Implement procedures that document the following areas of physical security: granting access to authorized personnel, revocation of terminated workforce member's access, the escort of non-workforce members in areas where EPHI or PI is created, received, maintained or transmitted, and safeguarding the storage of paper files.
 - 2.4. Implement procedures to address the following areas: safeguarding the storage of tape backups, logs, mail messages and other electronic media containing EPHI or PI.
 - 2.5. Implement policies and procedures to address the final disposition of EPHI, PI, and/or the hardware of electronic media on which it is stored.
3. **Network And Audit Security Vulnerability Assessment** is performed as a safeguard to help verify that software patch and network configurations are secure against known threats. Security of its network configuration should be verified through the following:
- 3.1. Contract with an independent third party to perform a network security assessment on server(s) and network perimeter.
 - 3.2. Review the scope of the security measures at least annually or whenever there is a material change in business practices that may reasonably implicate the security or integrity of records containing EPHI or PI.

EXHIBIT E
PRODUCTS

Harvard Pilgrim's
Stride HMO and Stride of NH HMO Medicare Advantage Benefits

(This document is in Power Point Presentation format and, therefore, is attached separately.)

BROKER AGREEMENT

This Agreement is made this ___ day of _____ 20___ (the "Effective Date"), by and between Harvard Pilgrim Health Care, Inc., on behalf of itself and all present and future affiliates (hereinafter referred to as "HPHC"), and _____, on behalf of itself as an individual broker or broker organization, and if a broker organization, also on behalf of any present and future employees, ("Broker").

WHEREAS, HPHC is a health plan in the business of selling health insurance products in New England;

WHEREAS, Broker is a licensed insurance producer in the business of selling such health insurance products to employer groups in one or more of the states in which HPHC does business; and

WHEREAS, Broker desires to offer HPHC's health insurance products to its employer group clients or to individuals subject to the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the promises, mutual covenants and agreements set forth herein, the parties hereto agree as follows:

1. **Scope of Agreement.** Broker hereby agrees to perform services as described below, and HPHC agrees to compensate Broker as provided herein.
2. **Duties of Broker.** Broker agrees:
 - (a) to use reasonable efforts to promote and publicize HPHC's health care insurance product(s) (the "Product(s)"), to procure applications to purchase the Product(s) from Qualified Groups, as herein defined, or from individuals, to assist HPHC personnel in similar activities, and to help serve and renew existing Qualified Groups and individuals. A Qualified Group is an employer group that is (i) either newly enrolling or renewing in an HPHC Product, and (ii) meets HPHC's underwriting guidelines. To the extent permitted under applicable state or federal law, HPHC reserves the right to accept or reject, at its sole discretion, any applications.
 - (b) to make reasonable efforts to become familiar with HPHC's Product(s) and applicable guidelines, including attendance at HPHC-sponsored training sessions, seminars and other meetings that may be required by HPHC from time to time;
 - (c) to provide in a manner mutually agreed upon by HPHC and Broker all necessary follow-up and support services to: (1) each Qualified Group whose application to purchase the Product(s) is accepted by HPHC and on whose account Broker has earned commissions ("Commission Group"), and (2) each individual whose application to purchase an individual Product(s) is accepted by HPHC and on whose account Broker has earned commissions ("Individual Commission") ;
 - (d) to maintain office and staff reasonably adequate for the performance of all services described in this Agreement;
 - (e) to conform with all applicable HPHC underwriting guidelines and procedural rules related to the performance of Broker's services; and
 - (f) if any premiums paid by Commission Groups or individuals are adjusted or refunded, to refund to HPHC the entire commission previously paid to Broker on such adjusted or refunded

premiums, as provided herein.

3. **Limits of Authority.**

(a) The Broker has no authority to do or perform, and expressly agrees not to do or perform the following acts on behalf of HPHC: (1) incur any indebtedness or liability; (2) waive, alter, modify or change any of the terms, rates, provisions or conditions of coverage, (3) modify or extend the amount or time of any premium payment is due HPHC, (4) make, alter or discharge contracts, or (5) quote rates other than those quoted by HPHC or authorized third parties under written agreement with HPHC. For information on the third parties currently under agreement with HPHC, Broker may contact HPHC Broker Relations. Broker will not submit to any Qualified Group or individual any information or material describing or proposing HPHC's benefits or rates without HPHC's prior written consent.

(b) Broker is not an agent for HPHC and shall have no authority to accept or bind coverage on behalf of HPHC or to otherwise make, alter or discharge and contract in the name of HPHC.

(c) Broker shall not submit to HPHC any application that Broker has not reviewed and reasonably believes to be accurate and complete.

4. **Non-Exclusivity.** HPHC and Broker agree that HPHC may execute contracts with other Brokers for the services described herein, that Broker may render such services for others health plans, and that HPHC's own sales force may render services to Qualified and Commission Groups and individuals.

5. **Compensation of Broker.** HPHC agrees to pay Broker in accordance with the Broker Compensation Plan in place at the time of sale. The applicable current Broker Compensation Plan(s) is/are attached hereto as Exhibit A and incorporated herein. HPHC revises the Broker Compensation Plan(s) annually, and publishes such revisions at least 30 days prior to effective date. Revised Broker Compensation Plan(s) are distributed electronically each year and are available upon request at any time. In addition to annual revisions, HPHC reserves the right to modify the Broker Compensation Plan(s) at any time upon reasonable prior written notice to Broker, which notice shall set forth the terms of the revision and its effective date. HPHC shall provide Broker with notice of revisions by electronic mail or any other reasonable method of communication. For purposes of this section, reasonable prior notice shall mean a minimum of 30 days before the effective date of revision(s). Commissions will be determined earned each month when applicable premiums are paid to HPHC and shall be payable within thirty (30) days after the month in which premium was received, provided that Broker has provided to HPHC satisfactory evidence of the following:

- a) Broker is currently and appropriately licensed in one or more of the states in which HPHC does business and credentialed with HPHC to perform the services described in this Agreement;
- b) Broker has provided substantial services during the premium term in question in (i) obtaining an application to purchase the Product(s) from the premium-paying group or individual, or (ii) obtaining such group's or individual's renewal, and in either case has provided follow-up support services to such group or individual; and
- c) Broker has provided HPHC with a Broker of Record letter from the Commission Group for which commission is requested. A Broker of Record letter is not required for payment of commissions on sales of individual Product(s).

- d) Broker has provided HPHC with all documents necessary to process the Commission Group or individual policy correctly.

Any indebtedness of Broker to HPHC may be set off against such commissions prior to payment. Upon notice by a Broker, any amounts that the Broker believes is owed by HPHC will be promptly investigated by HPHC, including a review of any supporting documentation provided, and reconciled with Broker as appropriate.

6. **Compensation of Broker on a Take-over Account.**

- a) *Non-Brokered Commission Groups.* In the case that a Broker takes over the account of a non-brokered Commission Group, the take-over Broker must submit a new Broker of Record letter to HPHC. Broker of Record takeovers are allowed only at the time of renewal of the account. If Broker takes over the account of a Commission Group at a time other than the renewal of the account, Broker will not be eligible for compensation for services on the take-over account until the next renewal date. In order to be entitled to compensation, take-over Broker must satisfy all applicable conditions and terms of this Agreement and the Broker Compensation Plan in place.
- b) *Brokered Commission Groups.* In the case where a Broker takes over an account from a brokered Commission Group, the take-over Broker must submit a new Broker of Record letter to HPHC. The take-over Broker shall only be entitled to compensation for the takeover account effective on the first month following the month in which HPHC receives the new Broker of Record letter. HPHC will attempt to provide the replaced Broker with notice that a new broker has been engaged by the Commission Group. Notwithstanding the foregoing, HPHC's failure to provide such notice shall not entitle replaced Broker to any commission(s) for services provided after termination.
- c) *Individual Policies.* HPHC will not pay commissions on individual policies written without the services of a Broker, even if the individual produces a Broker of Record letter.

7. **Licensing; Compliance with Law and Policies.** Broker warrants and represents that [he/she/it] has all licenses, and that any employees, agents or contractors rendering services hereunder have obtained all licenses, required for the performances of services under this Agreement and that Broker and all of its employees, agents and contractors will keep such licenses in effect for the duration of this Agreement. Broker shall provide evidence of such licenses to HPHC upon written request, and notify HPHC within two (2) business days of any suspension or revocation of Broker's license by any state regulatory body. Broker shall comply in all respects with all applicable Federal and State laws and regulations (including, without limitation, all disclosure requirements with respect to compensation received pursuant to this Agreement and, as applicable, M.G.L. Ch. 176D with respect to unfair trade practices and the requirement of maintaining complaint handling procedures) and with HPHC's policies and procedures. Broker acknowledges receipt of HPHC's Broker Compensation Plan, as of the Effective Date, and will comply with all applicable policies and procedures of HPHC, as those policies may be amended from time to time. Notwithstanding any terms of this Agreement to the contrary, HPHC shall have the right to terminate this Agreement immediately upon Broker's failure to comply with the terms of this paragraph.

8. **Indemnification and Liability.** Each party to this Agreement does hereby defend, indemnify, and hold harmless the other from and against any and all damage, claim, expense or liability (including costs and attorney's fees) arising out of such party's own actions or neglect, providing that neither party shall have an obligation to indemnify the other party unless the party seeking indemnification shall promptly notify the other party in writing of all claims asserted and actions instituted against the party seeking indemnification

and the other party is given the opportunity to defend the same at its own cost and expense. Broker's liability in this regard includes, without limitation, the performance of any act or the making of any statement not authorized by HPHC, including unauthorized premium quotations. HPHC's liability hereunder shall be limited to amounts due Broker for commissions earned and payable.

9. **Term and Termination.** The term of this Agreement will commence on the Effective Date noted above, and will automatically renew on each July 1st following the Effective Date for successive one-year terms unless terminated sooner as set forth herein. This Agreement may be terminated by either party at any time upon thirty (30) days written notice, and as otherwise provided herein.

10. **Confidentiality.** Neither party shall, except as needed in performing its duties under this Agreement, directly or indirectly disclose or use, or enable anyone else to disclose or use, either during the term hereof or any time thereafter, any Confidential Information obtained from the other. "Confidential Information" shall include, without limitation, the following: Information regarding either party, its affiliates, members, personnel, clinicians or any other party with which it has business dealings: rate information, including rate models and rate development; HPHC member lists or Broker client lists and related demographic or other data; products, techniques, methods, systems, price books, or rating tools; corporate information, including financial and contractual arrangements, plans, benefits, strategies, tactics, or policies; marketing information, including sales or product plans, strategies, tactics, methods, customers, prospects, or market research data; financial information; operational information, including trade secrets, health care delivery processes and methods, and suppliers; technical information including computer software programs and any passwords provided to Broker by HPHC; and personnel or clinician information, including personnel or clinician lists.

11. **Advertising and Marketing Materials.** Broker shall not advertise the Product(s) without the prior written consent of HPHC. When performing its duties hereunder, Broker will only use advertising and marketing materials and other forms provided by HPHC. Materials provided by HPHC may include trade secrets as defined by applicable state or federal laws and all such materials must be returned immediately to HPHC on termination of this Agreement or upon HPHC's request. All marketing materials and forms provided to Broker by HPHC are and shall remain the sole property of HPHC.

12. **Modification of Product(s).** HPHC retains, in its sole discretion and to the extent allowed by applicable law, the right to withdraw Product(s) from sale, add new Product(s) for sale, and to modify the Product(s) at any time.

13. **Cancellation of Employer Group or Individual Policy.** HPHC reserves the right, in accordance with applicable law and HPHC's policies and procedures, to terminate the contract of any Commission Group or individual policy solicited by Broker. Upon termination of any group or individual policy by HPHC for nonpayment of premium, Broker will only be entitled to the payment of any commission by HPHC for past due payments actually collected by HPHC after the date of the notice of cancellation; *provided however*, that Broker shall be entitled to payment of commissions during all times for which premiums have been paid. If premiums are retroactively paid, Broker will be entitled to commissions for such coverage period(s) corresponding with the term of retroactive premium payments. Upon termination of a Commission Group or individual policy for any reason other than nonpayment of premium, Broker will be entitled to payment for services provided through the later of the date of termination of the Commission Group's or individual's contract with HPHC or the date of receipt of final premium payment from the terminated account. Thereafter, Broker will not be entitled to any further payment for such account.

14. **Error in Payment.** Broker will reimburse HPHC for any commissions erroneously paid to Broker

for any reason. HPHC will offset such commissions against commissions otherwise due Broker. HPHC will adjust payments to Broker for a period of time not to exceed the 12 months immediately preceding the date upon which HPHC receives notice of any error. HPHC may pay commissions retroactively if a Broker of Record letter is not processed correctly. Notwithstanding the preceding sentence, however, no commissions will be paid retroactively more than 12 months.

15. **Insurance.** Broker shall maintain comprehensive liability insurance, including errors and omissions insurance, in such form and amount as may be approved by HPHC from time to time. Broker shall, upon the request of HPHC, provide evidence of such insurance coverage. Broker will notify HPHC within 10 days of any change in the amounts, levels or types of insurance purchased or the loss of any coverage required under this provision.

16. **Agencies.** If Broker is a firm or organization, all applications for health insurance products under this Agreement shall be solicited only by individuals representing the Broker who are properly licensed as Brokers under the applicable laws and regulations. If Broker is a firm or organization, Broker agrees to supply to HPHC, upon request, a list of all licensed individual brokers working for the Broker firm organization. If Broker is a firm or organization, Broker further agrees to take appropriate steps to ensure that employees working for the Broker firm or organization are aware of and understand the terms and requirements of this Agreement.

17. **Relationship Between the Parties.** The parties agree that Broker is acting as an independent contractor, and nothing contained herein is intended to create the relationship of employer and employee between HPHC and Broker.

18. **Health Insurance Portability and Accountability Act (HIPAA).** –Broker agrees to also execute HPHC’s Business Associate Agreement, with respect to Broker’s access to HPHC’s members’ “protected health information” (within the meaning of 45 CFR Parts 160-164) (“PHI”) while performing its duties under this Agreement.

19. **Amendments.** HPHC may amend this Agreement at any time by providing written notice of such amendment to Broker. This Agreement shall be automatically amended to incorporate the changes set forth in the written notice unless Broker objects to such changes in writing within fifteen (15) days of receipt of such notice. If Broker objects in a timely manner to such amendment, the Parties shall work in good faith to reach agreement on a change to the Agreement. If the Parties are unable to reach agreement on a change to the Agreement within thirty (30) days of the date that HPHC receives written objection from Broker, then either Party may terminate this Agreement upon written notice of such termination.

20. **Miscellaneous.** Neither HPHC nor Broker shall assign or transfer any interest in this Agreement without written consent of both parties. This Agreement represents the entire and integrated agreement between HPHC and Broker and supersedes all prior negotiations, representations or agreements, either written or oral. The provisions of this Agreement will be governed and construed in accordance with the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF the parties hereto have executed this Agreement effective the day and year first above written.

Harvard Pilgrim Health Care, Inc.

By: 
Vincent Capozzi, SR VP Sales and Marketing

BROKER: _____
Name of Company

By: _____
Name/Title

Address: _____

Telephone Number: _____

E-mail address: _____

Date: _____

Massachusetts License Number: _____

Maine License Number _____

New Hampshire License Number: _____

Other State License Number: _____

EXHIBIT A
BROKER COMPENSATION PLAN(S)
(SEE SEPARATE ATTACHMENT)

**FIRST AMENDMENT OF
HARVARD PILGRIM HEALTH CARE
BROKER AGREEMENT**

FIRST AMENDMENT OF BROKER AGREEMENT

This First Amendment of the Harvard Pilgrim Health Care Broker Agreement (the "Amendment"), dated as of _____ to be effective as of October 1, 2011, is made and entered into by and between Harvard Pilgrim Health Care, Inc., a Massachusetts non-profit corporation, on behalf of itself and all present and future affiliates (hereinafter referred to as "HPHC"), and _____ - _____, on behalf of itself as an individual broker or broker organization, and if a broker organization, also on behalf of any present and future employees ("Broker").

WHEREAS, HPHC and Broker entered into the Harvard Pilgrim Health Care Broker Agreement so that Broker could offer HPHC's health insurance products to its employer group clients subject to the terms and conditions set forth in such Agreement; and

WHEREAS, HPHC is now expanding the health insurance products that Broker may offer to include individual health insurance products; and

WHEREAS, Broker desires to offer such individual health insurance products to its individual clients;

NOW, THEREFORE, in consideration of the promises, mutual covenants and agreements set forth herein, the parties hereto agree as follows:

1. The second Whereas clause of the Broker Agreement is amended by deleting the clause in its entirety and replacing it with a new Whereas clause as follows: "WHEREAS, Broker is a licensed insurance producer in the business of selling such health insurance products to employer groups in one or more of the state(s) in which HPHC does business; and"
2. The third Whereas clause of the Broker Agreement is amended by adding after the words "group clients" the words "or to individuals"
3. Section 2(a) of the Broker Agreement is amended by adding after the words "as herein defined," the words "or from individuals,"; and adding after the words "renew existing Qualified Groups" the words "and individuals"
4. Section 2 (c) of the Broker Agreement is amended by deleting subsection (c) in its entirety and replacing it with a new subsection (c) as follows:
 - c) To provide in a manner mutually agreed upon by HPHC and Broker all necessary follow-up and support services to : (1) each Qualified Group whose application to purchase the Product(s) is accepted by HPHC and on whose account Broker has earned commissions ("Commission Group") and (2) each individual whose application to purchase an individual Product(s) is accepted by HPHC and on whose account Broker has earned commissions ("Individual Commission");
5. Section 2(f) of the Broker Agreement is amended by adding after the words "Commission Groups" the words "or individuals"

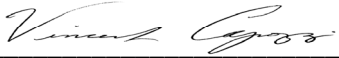
6. Section 3(a) of the Broker Agreement is amended by adding in the last sentence, after the words "Qualified Group", the words "or individual"
7. Section 4 of the Broker Agreement is amended by adding at the end of the section the words "and individuals"
8. Section 5 of the Broker Agreement is amended by deleting the fourth sentence in the section and replacing it with the following sentence: "Revised Broker Compensation Plan(s) are distributed electronically each year and are available upon request at any time."
9. Section 5(a) of the Broker Agreement is amended by deleting Section 5(a) in its entirety and replacing it with the following: "Broker is currently and appropriately licensed in one or more of the states in which HPHC does business and credentialed with HPHC;"
10. Section 5(b) of the Broker Agreement is amended by deleting subsection (b) in its entirety and replacing it with the following: "Broker has provided substantial services during the premium term in question in (i) obtaining an application to purchase the Product(s) from the premium-paying group or individual, or (ii) obtaining such group's or individual's renewal, and in either case has provided follow-up support services to such group or individual; and"
11. Section 5(c) of the Broker Agreement is amended by adding at the end of the section the following: "A Broker of Record letter is not required for payment of commissions on sales of individual Product(s)"
12. Section 5(d) of the Broker Agreement is amended by adding after the words "Commission Group" the words "or individual policy"
13. Section 6(b) of the Broker Agreement is amended by adding at the end of the section the following: "HPHC will attempt to provide the replaced Broker with notice that a new broker has been engaged by the Commission Group. Notwithstanding the foregoing, HPHC's failure to provide such notice shall not entitle replaced Broker to any commission(s) for services provided after termination."
14. Section 6 of the Broker Agreement is amended by adding a new subsection 6(c) as follows: "*Individual Policies.* HPHC will not pay commissions on individual policies written without the services of a Broker, even if the individual produces a Broker of Record letter."
15. Section 9 of the Broker Agreement is amended by deleting in their entirety the third, fourth and fifth sentences .
16. Section 12 of the Broker Agreement is amended by adding after the words "from sale" the words ",add new Product(s) for sale,"
17. Section 13 of the Broker Agreement is amended by adding after the words "Employer Group" in the heading, the words "**or Individual Policy**"; by adding after the words "Commission Group" in the first sentence, the words "or individual policy"; by adding after the words "of any group" in the second sentence the words "or individual policy"; deleting in the second sentence the words "**provided however**" and replacing the words with "*provided however*"; by adding after the words "Upon termination of a Commission Group" in the fourth sentence the words "or individual policy"; and by adding after the words "date of termination of the Commission Group's" in the fourth sentence the words "or individual's"
18. The Broker Agreement is amended by adding a new section 19 as follows: "Amendments. HPHC may amend this Agreement at any time by providing written notice of such amendment to

Broker. This Agreement shall be automatically amended to incorporate the changes set forth in the written notice unless Broker objects to such changes in writing within fifteen (15) days of receipt of such notice. If Broker objects in a timely manner to such amendment, the Parties shall work in good faith to reach agreement on a change to the Agreement. If the Parties are unable to reach agreement on a change to the Agreement within thirty (30) days of the date that HPHC receives written objection from Broker, then either Party may terminate this Agreement upon written notice of such termination.”

- 19. The Broker Agreement is amended by renumbering the prior section 19 as section 20.
- 20. The Broker Agreement is amended by adding after the signature line for Broker four new lines with the captions “Address:”, “Telephone Number:”, “E-mail address:”, and “Date:”
- 21. The Broker Agreement is amended by adding after the signature lines, in the list of state license numbers, a new line as follows: “Other State License Number:_____”
- 22. Integration. This Amendment together with the Broker Agreement (together with any Exhibits thereto) constitute the entire agreement of the Parties and supersede all prior agreements and undertakings, both written and oral, between the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment effective the day and year first above written.

Harvard Pilgrim Health Care, Inc.

By: 
Vincent Capozzi, Sr. VP Sales and Customer Service
Name/Title

Broker _____

Name of Company

By: _____

Principal/Title

Date: _____

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into and is in effect as of _____ (mm/dd/yyyy), by and between **HARVARD PILGRIM HEALTH CARE, INC.**, a Massachusetts non-profit corporation licensed as a health maintenance organization under the laws of Massachusetts, on behalf of itself and all present and future affiliates (hereinafter referred to as the “Covered Entity”) and

[Broker], on behalf of itself as an individual broker or broker organization, and if a broker organization, also on behalf of any present and future employees (hereinafter referred to as “Business Associate”) (collectively the “Parties”).

WHEREAS, the Parties wish to enter into or have entered into an arrangement (“Arrangement”) whereby Business Associate will provide certain services to Covered Entity and, in providing those services, Business Associate may create, receive, maintain or transmit from, or on behalf of, Covered Entity Protected Health Information (“PHI”) (defined below) and may create, receive, maintain or transmit Electronic Protected Health Information (“EPHI”)(defined below)(PHI and EPHI are collectively referred to herein as PHI or Protected Health Information; EPHI will be used when only EPHI is being referenced);

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and provide for the security of any PHI which shall be disclosed to or created by Business Associate pursuant to the Arrangement, in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the implementing regulations at 45 CFR Parts 160, 162, and 164 promulgated by the United States Department of Health and Human Services (“HIPAA Regulations”), the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the “HITECH Act”) that are applicable to business associates, along with any guidance or regulations issued by the U. S. Department of Health and Human Services (“DHHS”), and other applicable laws;

WHEREAS, as part of the HIPAA Regulations, the Privacy and Security Rule (defined below) requires Business Associate to enter into a contract containing specific provisions intended to preserve the confidentiality and security of PHI obtained by Business Associate in the course of its business relationship with Covered Entity (defined below) prior to any disclosure of the PHI to Business Associate. The specific provisions are set forth in, but not limited to, Title 45, Sections 164.306, 164.308(b), 164.314(a) and (b), 164.502(e) and 164.504(e) of the Code of Federal Regulations and are applicable to this Agreement; and

WHEREAS, Business Associate agrees to comply with all other applicable federal and state laws for the protection of personal information and the reporting of security breach

incidents, including the General Laws of Massachusetts Chapter 93H, and implementing regulations at 201 CMR 17.00, New Hampshire Revised Statutes Chapter 359-C, Maine Revised Statutes Chapter 210-B, and Connecticut General Statutes, Chapters 669 (section 36A-701B) and 743dd (hereinafter “the applicable state laws”).

NOW THEREFORE, in consideration of the mutual promises below, and the exchange of PHI pursuant to the terms of this Agreement, the Parties agree as follows:

1.0 DEFINITIONS

As used in this Agreement, the following terms shall have the indicated meaning. Capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Regulations and the HITECH Standards (defined below), or for Personal Information, the definition found in the applicable state laws. The definitions below which set forth a reference to the Code of Federal Regulations are defined HIPAA terms, and such definitions are incorporated herein as though set forth in full. A change to the HIPAA Regulations or the HITECH Standards which modifies any defined term, or which alters the regulatory citation for the definition shall be deemed incorporated into this Agreement.

- 1.1 **Arrangement** means the agreement, either with or without a written contract, between Covered Entity and Business Associate, whereby Business Associate provides or will provide certain services to Covered Entity and, in providing those services, may have access to PHI.
- 1.2 **Authorization** shall have the meaning given to the term under the Privacy and Security Rule, including, but not limited to, 45 CFR Section 164.508.
- 1.3 **Breach** shall have the same meaning as the term “breach” in Section 13400 of the HITECH Act and shall include the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information. For purposes of Personal Information, the term “Breach of Security” shall have the meaning given in the applicable state laws.
- 1.4 **Business Associate** shall mean _____ [Broker].
Where the term “business associate” appears without initial capital letters, it shall have the meaning given to such term under the Privacy and Security Rule, including, but not limited to, 45 CFR Section 160.103.
- 1.5 **Covered Entity** shall mean Harvard Pilgrim Health Care, Inc., as defined. It shall also have the meaning given to the term under the Privacy and Security Rule, including, but not limited to, 45 CFR Section 160.103.

- 1.6 **Data Aggregation** shall have the meaning given to the term under the Privacy and Security Rule, including, but not limited to, 45 CFR Section 164.501.
- 1.7 **Designated Record Set** shall have the meaning given to the term under the Privacy and Security Rule, including, but not limited to, 45 CFR Section 164.501.
- 1.8 **Electronic Protected Health Information (“EPHI”)** shall have the meaning given to the term Electronic Protected Health Care Information under the Privacy and Security Rule, including, but not limited to, 45 CFR Section 160.103.
- 1.9 **Encryption** means the transformation of data through the use of a 128-bit or higher algorithmic process into a form in which there is a low probability of assigning meaning without use of a confidential process or key, unless a higher standard is defined by the appropriate regulatory body under the applicable state laws.
- 1.10 **Health Care Operations** shall have the meaning given to the term under the Privacy and Security Rule, including, but not limited to, 45 CFR Section 164.501.
- 1.11 **HITECH Standards** means the privacy, security and security Breach notification provisions applicable to a Business Associate under the HITECH Act.
- 1.12 **Individual** shall have the meaning given to the term under the Privacy and Security Rule, including, but not limited to, 45 CFR Section 164.501. It shall also include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.502(g).
- 1.13 **Personal Information** will have the meaning given by applicable state laws in states in which Business Associate receives Personal Information.
- 1.14 **Privacy and Security Rule** shall mean the Standards for Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of Electronic Protected Health Information that is codified at 45 CFR parts 160 and 164.
- 1.15 **Protected Health Information (“PHI”)** means any information, whether oral or recorded in any form, or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe that

the information can be used to identify the individual, and shall have the meaning given to the term under the Privacy and Security Rule, including, but not limited to, 45 CFR Section 164.501.

- 1.16 **Required by Law** shall have the meaning given to the term under the Privacy and Security Rule, including but not limited to, 45 CFR Section 164.501.
- 1.17 **Security Incident** shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of EPHI, or interference with system operations in an information system.
- 1.18 **Security Standards** shall mean those security standards promulgated or to be promulgated pursuant to HIPAA and other applicable federal or state regulations or statutes.
- 1.19 **Unsecured Protected Health Information** or Unsecured PHI shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in Section 13402(h) of the HITECH Act.

2.0 **Obligations of Business Associate**

- 2.1 **Permitted Use and Disclosure of Protected Health Information.** Business Associate may use and disclose PHI only as required to satisfy its obligations under the Arrangement or this Agreement, as permitted herein, as allowed by HIPAA and HIPAA Regulations, or as Required by Law, but shall not otherwise use or disclose any PHI. Business Associate shall not, and shall ensure that its directors, officers, employees, contractors and agents do not, use or disclose PHI in any manner that would constitute a violation of the Privacy and Security Rule or the HITECH Act if done by the Covered Entity, except that Business Associate may use PHI if necessary (i) for the proper management and administration of Business Associate, (ii) to carry out the legal responsibilities of Business Associate, or (iii) to provide Data Aggregation services relating to the Health Care Operations of the Covered Entity. Business Associate further represents that, to the extent it requests Covered Entity to disclose PHI to Business Associate such request will only be for the minimum PHI necessary for the accomplishment of Business Associate's purpose.
- 2.2 **Safeguarding PHI and Personal Information.** Business Associate shall use any and all appropriate safeguards to prevent use or disclosure of PHI and/or Personal Information other than as permitted by this Agreement. Business Associate further agrees to use appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of any PHI and/or Personal Information that Business Associate

creates, receives, maintains, or transmits on behalf of Covered Entity, in accordance with the HIPAA Regulations, the HITECH Standards, and for Personal Information, the applicable state laws in states in which Business Associate receives Personal Information. More specifically, to comply with the HIPAA Security Standards for PHI, the requirements of the HITECH Act, and to applicable state laws protecting Personal Information, Business Associate agrees that it shall: (i) Develop and implement policies and procedures that meet the Security Standards documentation requirements of the HITECH Act; (ii) As also provided for in Section 2.5 below, ensure that any agent, including a subcontractor, to whom it provides such PHI or Personal Information agrees to implement reasonable and appropriate safeguards to protect it; (iii) Report to Covered Entity, any Security Incidents or Breaches of Security of which Business Associate becomes aware that result in the unauthorized access, use, disclosure, modification, or destruction of the Covered Entity's PHI or Personal Information, (hereinafter referred to as "Successful Security Incidents"). Business Associate shall report Successful Security Incidents to Covered Entity as specified in Section 2.4.3, and upon Covered Entity's request, shall provide access to and copies of documentation regarding Business Associate's safeguards for PHI; (iv) For any other Security Incidents that do not result in unauthorized access, use, disclosure, modification, or destruction of PHI (including, for purposes of example, and not for purposes of limitation, pings on Business Associate's firewall, port scans, attempts to log onto a system or enter a database with an invalid password or username, denial-of-service attacks that do not result in the system being taken off-line, or malware such as worms or viruses)(hereinafter "Unsuccessful Security Incidents"), Business Associate shall, upon Covered Entity's written request, report to the Covered Entity in accordance with the reporting requirements identified in Section 2.4.3; (v) Encrypt all PHI and/or Personal Information stored on laptops or other personal devices, encrypt all transmitted records and files containing PHI and/or Personal Information that will travel across public networks, and encrypt all PHI and/or Personal Information to be transmitted wirelessly; and (vi) Business Associate agrees that this Agreement constitutes its representation that it has a written, comprehensive information security program that meets its obligation to safeguard Personal Information in its possession as required by the applicable state laws.

2.3 Mitigation of Harmful Effects. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI or Personal Information by Business Associate in violation of the requirements of this Agreement.

2.4 Breach of Privacy or Security Obligations.

- 2.4.1 **Notice and Reporting of Violations.** Business Associate shall notify and report to Covered Entity in the manner described herein any use or disclosure of PHI or Personal Information in violation of this Agreement by Business Associate or any of its officers, directors, employees, contractors or agents.
- 2.4.2 **Notice to Covered Entity.** Business Associate will notify Covered Entity following discovery and without unreasonable delay but in no event later than five (5) business days following discovery, any Breach of Unsecured Protected Health Information as these terms are defined by the HITECH Act and any implementing regulations, or any Breach of Security under the applicable state laws. Business Associate shall cooperate with Covered Entity in investigating the Breach and in meeting Covered Entity's obligations under the HITECH Act and any other security breach notification laws. Business Associate shall follow its notification to the Covered Entity with a report that meets the requirements outlined immediately below.
- 2.4.3 **Reporting to Covered Entity.** (i) For Successful Security Incidents and any other use or disclosure of PHI or Personal Information that is not permitted by this Agreement, the Arrangement, by applicable law, or without the prior written approval of the Covered Entity, Business Associate, without unreasonable delay, but in no event later than ten (10) business days after Business Associate learns of such Successful Security Incident or non-permitted use or disclosure, shall provide Covered Entity a report that will: (a.) Identify, if known, each individual whose Unsecured Protected Health Information or Personal Information has been, or is reasonably believed by Business Associate to have been accessed, acquired, or disclosed during such Breach; (b) Identify the nature of the non-permitted access, use, or disclosure, including the date of the incident and the date of discovery; (c) Identify the PHI or Personal Information accessed, used, or disclosed (e.g., name; social security number, date of birth); (d) Identify who made the non-permitted access, use, or received the non-permitted disclosure; (e) Identify what corrective action Business Associate took or will take to prevent further non-permitted access, use or disclosure; (f) Identify what Business Associate did or will do to mitigate any deleterious effect of the non-permitted access, use, or disclosure; and (g) Provide such other information, including a written report, as the Covered Entity may reasonably request. (ii) For Unsuccessful Security Incidents, Business Associate shall provide Covered Entity, upon its written request, a report that: (a) identifies the categories of Unsuccessful Security

Incidents as described in Section 2.2; (b) indicates whether Business Associate believes its current defensive security measures are adequate to address all Unsuccessful Security Incidents, given the scope and nature of such attempts; and (c) if the security measures are not adequate, the measures Business Associate will implement to address the security inadequacies.

- 2.4.4 **Reporting by Covered Entity.** Where a Breach relates to PHI, if Covered Entity determines pursuant to section 4.2 of this Agreement that termination of this Agreement is not feasible, in Covered Entity's sole discretion, then Covered Entity shall have the right to report Business Associate's Breach to the Secretary of the Department of Health and Human Services.
- 2.5 **Agreements by Third Parties.** Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides or transmits PHI and/or Personal Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 2.6 **Access to Information.** Within ten (10) days of a request by Covered Entity for access to PHI about an Individual contained in a Designated Record Set, Business Associate shall make available to Covered Entity such PHI in order to enable Covered Entity to meet the requirements of 45 CFR Section 164.524, and where applicable, the requirements of the HITECH Act and any related implementing regulations. In the event any Individual requests access to his or her PHI directly from Business Associate, it shall within two (2) days forward such request to Covered Entity so that Covered Entity can comply with the request. Business Associate shall not provide direct access to any Individual who requests access to his or her PHI. Any denials of access to the PHI requested shall be the responsibility of Covered Entity.
- 2.7 **Availability of Protected Health Information for Amendment.** Within thirty (30) days of receipt of a request from Covered Entity for the amendment of an Individual's PHI or a record regarding an individual contained in a Designated Record Set, Business Associate shall provide such information to Covered Entity for amendment and shall incorporate any such amendments in the PHI as required by 45 CFR Section 164.526. Any denials of requested amendments shall be the responsibility of Covered Entity.
- 2.8 **Accounting of Disclosures.** Within twenty (20) days of making a disclosure of PHI, other than disclosures excepted under 45 CFR Section 164.528(a), Business Associate shall report such disclosure to Covered Entity in writing as provided for in 45 CFR Section 164.528 or the HIPAA Regulations, and

where so required by the HITECH Act and/or any implementing regulations. At a minimum, Business Associate shall provide the following information for each disclosure: (i) the date of the disclosure; (ii) the name of the entity or person who received the PHI and, if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event that an Individual's request for an accounting is delivered directly to Business Associate, it shall within five (5) days forward such request to the Covered Entity so that Covered Entity can comply with the request. Such information must be maintained by Business Associate and its agents and subcontractors for a period of six (6) years from the date of each disclosure.

- 2.9 **Auditing, Inspections and Enforcement.** Upon reasonable notice, Business Associate agrees to make its internal practices, books and records relating to the use or disclosure of PHI available to Covered Entity and the Secretary of the Department of Health and Human Services, or the Secretary's designee, for purposes of determining Covered Entity's compliance with the Privacy and Security Rule. Business Associate shall provide appropriate training regarding the requirements of this Agreement to any employee accessing, using or disclosing PHI and shall develop and implement a system of sanctions for any employee, agent or subcontractor who violates this Agreement.
- 2.10 **Indemnification.** Business Associate shall indemnify and hold harmless Covered Entity from and against any and all losses, expense, damage or injury that Covered Entity sustains as a result of, or arising out of a breach of this Agreement by Business Associate or its agents or subcontractors, including but not limited to any unauthorized use or disclosure of PHI.
- 2.11 **Notice of Request for Data.** Business Associate agrees to notify Covered Entity within five (5) days of Business Associate's receipt of any request, subpoena, or judicial or administrative order to disclose PHI. To the extent the Covered Entity decides to assume responsibility for challenging the validity of such request, subpoena or order, Business Associate agrees to cooperate with Covered Entity in such challenge.
- 2.12 **Compliance with HITECH Standards.** Business Associate understands that it must comply with the security provisions made applicable to Business Associates by HITECH section 13401 and the privacy provisions made applicable to Business Associates by HITECH section 13404; in addition, Business Associate shall comply with the HITECH Standards, including, but not limited to: (i) compliance with the requirements regarding minimum necessary under HITECH section 13405(b); (ii) requests for restrictions on use or disclosure to health plans for payment or health care operations purposes when the provider has been paid out of pocket in full consistent

with HITECH section 13405(a); (iii) the prohibition of sale of PHI without authorization unless an exception under HITECH section 13405(d) applies; (iv) the prohibition on receiving remuneration for certain communications that fall within the exceptions to the definition of marketing under 45 CFR section 164.501 unless permitted by this Agreement and section 13406 of HITECH; (v) the requirements relating to the provision of access to certain information in electronic access under HITECH section 13405(e); (vi) compliance with each of the Standards and Implementation specifications of 45 CFR sections 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards) and 164.316 (Policies and Procedures and Documentation Requirements); and (vii) the requirements regarding accounting of certain disclosures of PHI maintained in an Electronic Health Record under HITECH section 13405(c).

- 2.13 **Acknowledgement of Direct Liability.** Business Associate acknowledges that it is directly liable under the Final HIPAA Rule and subject to penalties in accordance with the HIPAA Rules for making uses and disclosures of Protected Health Information that are not authorized by its contract or required by law, and that it is directly liable and subject to civil penalties for failing to safeguard EPHI in accordance with the HIPAA Security Rule.

3.0 **Covered Entity's Obligations.**

- 3.1 **Notice of Privacy Practices.** Covered Entity shall provide Business Associate with the notice of any privacy practices that Covered Entity produces in accordance with 45 CFR Section 164.520, as well as any changes to such notice. Business Associate shall not distribute its own notice, if any, to Individuals, without the prior written consent of Covered Entity.
- 3.2 **Revocation of Authorization by Individual.** Covered Entity agrees to inform Business Associate of any change to, or revocation of, an Individual's Authorization to use or disclose PHI to the extent that such change may affect Business Associate's use or disclosure of PHI, within a reasonable period of time after Covered Entity becomes aware of such change.
- 3.3 **Restrictions on Use and Disclosure.** Covered Entity agrees to notify Business Associate of any restrictions to the use or disclosure of PHI agreed to by Covered Entity in accordance with 45 CFR Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- 3.4 **Permissible Requests.** Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy and Security Rule if done by Covered Entity.

3.5 **Safeguards.** Covered Entity shall use appropriate safeguards in accordance with 45 CFR Section 164.306 to ensure the security of PHI provided to Business Associate pursuant to the Arrangement and this Agreement, until such PHI is received by Business Associate.

4.0 **Termination of Agreement.**

4.1 **Term.** This Agreement shall be effective from the Effective Date until all PHI provided by or received or created for Covered Entity is destroyed or returned to Covered Entity, or if it is infeasible to return or destroy PHI, protections are extended to such PHI in accordance with the terms of this Agreement. The term of this Agreement shall also end upon termination of the underlying Arrangement, subject, however, to the requirements of this section 4.0 for return or destruction of all PHI.

4.2 **Termination Upon Breach of Provisions Applicable to Protected Health Information or Personal Information.** Any other provision of this Agreement notwithstanding, this Agreement and the Arrangement may be terminated by Covered Entity upon ten (10) days prior written notice to Business Associate in the event that Business Associate materially breaches any obligation of this Agreement and fails to cure the breach within such ten (10) day period.

4.3 **Return or Destruction of Protected Health Information and Personal Information upon Termination.** Upon termination of this Agreement and the Arrangement, Business Associate shall either return to Covered Entity or destroy all PHI and Personal Information in Business Associate's possession or in the possession of its agents or subcontractors. Business Associate shall not retain any copies of PHI or Personal Information. Notwithstanding the foregoing, if Business Associate determines that returning or destroying PHI and/or Personal Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI and/or Personal Information is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and/or Personal Information and limit further uses and disclosures of such PHI and/or Personal Information to those purposes that make return or destruction infeasible, for so long as Business Associate maintains such PHI and/or Personal Information. If Business Associate elects to destroy all PHI and/or Personal Information, it shall certify in writing to Covered Entity that such PHI and/or Personal Information has been destroyed.

4.4 **Remedies.** Notwithstanding any rights or remedies set forth in this

Agreement or provided by law, Covered Entity retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of PHI and/or Personal Information by Business Associate, any of its agents or subcontractors, or any third party who has received PHI and/or Personal Information from Business Associate.

- 4.5 **Judicial or Administrative Proceedings.** Either Party may terminate this Agreement, effective immediately, if (i) the other Party is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Regulations, the HITECH Act, or other security or privacy laws, or (ii) a finding or stipulation that the other party has violated any standard or requirement of HIPAA, the HIPAA Regulations, the HITECH Act or other security or privacy laws is made in any administrative or civil proceeding in which the Party has been joined.

5.0 Miscellaneous

- 5.1 **Relationship of the Parties.** None of the provisions of this Agreement are intended to create or shall be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other Arrangement between the Parties.
- 5.2 **Ownership of Protected Health Information and Personal Information.** As between Covered Entity and Business Associate, Covered Entity holds all right, title and interest in and to any and all PHI and/or Personal Information received by Business Associate from, or created or received by Business Associate on behalf of, Covered Entity, and Business Associate does not hold, and will not acquire by virtue of this Agreement or by virtue of providing any services or goods to Covered Entity in the course of fulfilling its obligations pursuant to the Arrangement, any right, title or interest in or to such PHI and/or Personal Information. Except as specified in section 2.1 of this Agreement, Business Associate shall have no right to compile or distribute any statistical analysis or report utilizing such PHI and/or Personal Information derived from such PHI and/or Personal Information, any aggregate information derived from such PHI and/or Personal Information, or any other health and medical information obtained from Covered Entity.
- 5.3 **No Third Party Beneficiaries.** Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person or entity, other than Covered Entity, Business Associate and their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever.

- 5.4 **Amendment to Comply With Law.** Business Associate and Covered Entity agree to amend this Agreement to the extent necessary to allow either Party to comply with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable state and federal laws relating to the security or confidentiality of PHI and/or Personal Information. Business Associate and Covered Entity will fully comply with all applicable standards and requirements of such federal or state regulations or statutes. To the extent that any amendment of such laws requires changes to this Agreement, Covered Entity shall provide written notice to Business Associate of such changes and this Agreement shall be automatically amended to incorporate the changes set forth in the written notice provided by Covered Entity to Business Associate unless the Business Associate objects to such changes in writing within fifteen (15) days of receipt of such notice. If Business Associate objects in a timely manner to such amendment, the Parties shall work in good faith to reach agreement on a change to the Agreement that complies with the amendment of such laws. If the Parties are unable to reach agreement on a change to the Agreement within thirty (30) days of the date that Covered Entity receives written objection from Business Associate, then either Party may terminate this Agreement upon written notice of such termination.
- 5.5 **Other Amendments.** Any other amendment to this Agreement unrelated to compliance with applicable law and regulations shall be effective only upon execution of a written agreement between the Parties.
- 5.6 **Waiver.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation on any other occasion.
- 5.7 **Survival.** The respective rights and obligations of Business Associate under Section 4.3 of this Agreement shall survive the termination of this Agreement and the underlying Arrangement.
- 5.8 **Notice.** Any notice to the other party pursuant to this Agreement shall be deemed provided if sent by first class United States mail, postage prepaid, or by email, as follows:

To Covered Entity: Privacy Officer (“PO”)
Dee Chouinard
93 Worcester Street
Wellesley, MA 02481
Dee_Chouinard@hphc.org

or to Information Security Officer (“ISO”)
Ken Patterson
93 Worcester Street
Wellesley, MA 02481
Ken_Patterson@hphc.org

To Business Associate: At Broker’s address on file or
Broker’s email address on file


The above addresses may be changed by giving notice of such change in the manner provided above for giving notice.

- 5.9 **Effect on Arrangement.** The provisions of this Agreement shall prevail over any provisions of the Arrangement that conflict with or are inconsistent with any provision of this Agreement. All other terms of the Arrangement shall remain in full force and effect.
- 5.10 **Interpretation.** This Agreement and the Arrangement shall be interpreted as broadly as necessary to implement and comply with the Privacy and Security Rule. The Parties agree that any ambiguity in this Agreement or the Arrangement shall be resolved in favor of a meaning that complies with and is consistent with the Privacy Rule.
- 5.11 **Costs.** Each Party, at its own expense, shall provide and maintain the personnel, equipment, hardware, software, services (including without limitation telecommunications services) and testing necessary to comply with the privacy and security provisions of this Agreement.
- 5.12 **Best Practices.** Attached hereto for BA’s use is HPHC’s Practices for Information Security.

IN Witness Whereof, the Parties hereto have duly executed the Agreement.

**HARVARD PILGRIM
HEALTH CARE, INC.**

BUSINESS ASSOCIATE

By:  By: _____

Name: Vincent Capozzi Name: _____

Title: Senior Vice President
Sales and Marketing Title: _____

Date: _____ Date: _____

ATTACHMENT

Harvard Pilgrim Health Care Practices for Information Security

Harvard Pilgrim Health Care is committed to the security of our members' Electronic Protected Health Information (EPHI) and Personal Information (PI). We adhere to the following security safeguards, and present these baseline practices to our Business Associates and other business partners as examples of good security practice. Our commitment to security is not only good for our healthcare members and our workforce, but makes a statement that effective, ongoing processes for maintaining information security are vital for the entire healthcare industry. We encourage our Business Associates, third parties and other business partners to join Harvard Pilgrim in following our recommendations to promote a secure information technology environment.

1. **Security Management** encompasses the policies and procedures to safeguard the confidentiality, integrity, and availability of Electronic Protected Health Information (EPHI) and Personal Information (PI), the use of tools to identify threats and vulnerabilities, escalation of security incidents that threaten the privacy of EPHI and PI, notification when a breach of privacy occurs, and ensuring compliance with the following standards:
 - 1.1. Complete a thorough assessment of the potential risk and vulnerabilities to the confidentiality, integrity, and availability of EPHI and PI. Implement processes, procedures, and other security measures sufficient to reduce risks and vulnerabilities to a reasonable and appropriate level.
 - 1.2. Perform a regular records review of information system activity (e.g., audit logs, access reports and security incident tracking reports).
 - 1.3. Identify a security official who is responsible for the development and implementation of the policies and procedures in place to protect the security of EPHI and PI. Harvard Pilgrim's Information Security Officer is Ken Patterson. For questions about Harvard Pilgrim's security policies or any of the best practices outlined in this document, please contact Ken at (617) 509-3068.
 - 1.4. Implement policies, processes, and procedures to ensure that all members of the workforce have appropriate access to EPHI and PI, and to prevent those workforce members who should not have access from obtaining access to EPHI. Implement policies and procedures for authorizing access to EPHI and PI.

- 1.5. Implement procedures for the authorization and/or supervision of workforce members who will work with EPHI and PI, or in a location where EPHI or PI might be accessed.
- 1.6. Implement procedures for terminating access to EPHI and PI when the employment of a workforce member ends or when there is a job change.
- 1.7. Implement procedures for creating, changing, and safeguarding passwords. Implement a Password Policy that includes: password minimum length, password composition, handling of unsuccessful password attempts, password re-use, preventing use of easily guessed passwords, password storage and password transmission. It is important that the Password Policy is documented and communicated throughout the organization.
- 1.8. Protect against malicious code, whereby hosts are updated with service packs, security vulnerability patches, virus protection, etc, in a manner appropriate to risk.
- 1.9. Have a security incident response plan in place that addresses the handling of a security breach, event escalation, notification, and management process.
- 1.10. In the case of a security incident where the privacy of EPHI or PI is breached, notification to the covered entity should be made within twenty-four (24) hours, or one (1) business day, as to the cause and remedial steps taken to resolve the incident.
- 1.11. Conduct criminal background checks on workforce members who have access to EPHI or PI.
- 1.12. Implement sanctions for non-compliance with security policies and procedures.
- 1.13. Implement monitoring to perform security patch assessment, network and database security, and the review of firewall logs.
- 1.14. Secure all EPHI and PI transmitted via a public network or transmitted wirelessly against unauthorized access through encryption. Encryption of all PHI and PI stored on laptops or other portable devices.
- 1.15. Establish (and implement as needed) policies and procedures for responding to an emergency or other occurrence (for example fire, vandalism, system failure and natural disaster) that damages systems containing EPHI or PI.
- 1.16. Implement security awareness and training program for all workforce members, including management.
- 1.17. Take reasonable steps to verify that business associates and third-party service providers with access to EPHI or PI have the capacity to protect such

information and contractually requiring business associates and third-party service providers to maintain such safeguards.

2. **Physical Security** encompasses the policies and procedures designed to limit the physical access to EPHI, PI, and the facilities in which it is housed, the tools to identify vulnerabilities and ensure compliance to standards, and staffing to review reports and logs.
 - 2.1. Take steps to ensure physical access controls are in place to secure access to the location, computer room(s), computer equipment, data, and paper files.
 - 2.2. Implement physical safeguards for all workstations that access EPHI or PI, and restrict access to authorized users.
 - 2.3. Implement procedures that document the following areas of physical security: granting access to authorized personnel, revocation of terminated workforce member's access, the escort of non-workforce members in areas where EPHI or PI is created, received, maintained or transmitted, and safeguarding the storage of paper files.
 - 2.4. Implement procedures to address the following areas: safeguarding the storage of tape backups, logs, mail messages and other electronic media containing EPHI or PI.
 - 2.5. Implement policies and procedures to address the final disposition of EPHI, PI, and/or the hardware of electronic media on which it is stored.
3. **Network and Audit Security Vulnerability Assessment** is performed as a safeguard to help verify that software patch and network configurations are secure against known threats. Security of its network configuration should be verified through the following:
 - 3.1. Contract with an independent third party to perform a network security assessment on server(s) and network perimeter.
 - 3.2. Review the scope of the security measures at least annually or whenever there is a material change in business practices that may reasonably implicate the security or integrity of records containing EPHI or PI.



Harvard Pilgrim
HealthCare *of New England*

HARVARD PILGRIM HEALTH CARE

2013 **Broker** **Compensation Plan**

NEW HAMPSHIRE



2013 BROKER COMPENSATION

Small Group Commissions

(Less than 51 Eligibles)

For New Hampshire-based accounts sold with an effective date of January 1, 2013 or later, Harvard Pilgrim will pay commissions to qualified brokers based on a per employee per month (PEPM) schedule, described below. Commissions are paid each month based on the number of employees *enrolled* as of the last day of the month.

ENROLLED EMPLOYEES	COMMISSION
1	\$10 per enrolled subscriber
2	\$15 per enrolled subscriber
3-9	\$30 per enrolled subscriber
10-50	\$35 per enrolled subscriber

New Business Commissions

(51+ Eligibles)

Commissions are paid each month based on premiums received in the prior month.

ANNUALIZED PAID PREMIUM	COMMISSION	
	HSA/ACCESS AMERICA	NON-HSA
1st \$50,000	4.5%	3.5%
Next \$50,000	6.5%	5.5%
Next \$400,000	5.0%	4.5%
Next \$500,000	2.0%	2.0%
Over \$1 million	1.5%	1.5%

NOTES:

- Applies to fully insured and Medicare Enhance accounts only.
- The HSA/Access America Commission Schedule will be paid on the first 12 months' premium only.

Renewal Commissions (51+ Eligibles)

ANNUALIZED PAID PREMIUM	COMMISSION
1st \$50,000	3.5%
Next \$50,000	5.5%
Next \$400,000	4.5%
Next \$500,000	2.0%
Over \$1 million	1.5%

NOTES:

- The Renewal Commission Schedule will be implemented at the account's renewal date, usually 12 months after the start date.
- For accounts written direct with Harvard Pilgrim, renewal commissions will be paid out at the "top" of the schedule (i.e., the 3.5% level) each year beginning with January commissions, regardless of the account's anniversary date.

Medicare Enhance (Group)

Harvard Pilgrim will pay commissions to qualified brokers based on the New Business Commissions and Renewal Commissions schedules.

Medicare Supplement (Non-Group)

Commissions on newly enrolled beneficiaries are paid one time in the first year and as the plans renew. Commission rate is determined by the Plan in which the beneficiary is enrolled.

PLAN	1ST YEAR COMMISSION	RENEWAL YEARS 2-6
Plan A	\$240	\$10/month
Plan F	\$360	\$20/month
Plan M	\$360	\$20/month
Plan N	\$360	\$20/month

NOTES:

- Brokers must be certified by Harvard Pilgrim to sell these products.
- Renewal commissions will be paid once the beneficiary has paid his/her first renewal premium payment.
- Commissions will be recouped on a pro-rated basis for beneficiaries who terminate coverage within 6 months of their effective date.
- Commission rate may change if beneficiary changes Plan.
- Commissions are payable up to 6 years per enrolled beneficiary.
- Medicare Supplement business does not count toward bonus eligibility.
- No commissions will be paid if Harvard Pilgrim Medicare Supplement Plan is sold to an individual with another active Medicare Supplement policy.

Broker of Record Takeover Commissions

If an account on which commissions are not being paid names a credentialed broker as its Broker of Record, Harvard Pilgrim will pay commissions to that broker based on the Renewal Commissions described previously.

NOTES:

- A valid and dated Broker of Record letter on the account's letterhead and signed by an officer of the account must be presented.
- Commission payments will be payable beginning on the next anniversary date after Harvard Pilgrim receives the Broker of Record letter.
- Applies to accounts sold directly through Harvard Pilgrim.
- Premiums generated on Broker of Record Takeover accounts do not qualify as new business for bonus programs.

Change in Broker of Record

Upon receipt of a valid and dated letter on the account's letterhead and signed by an officer of the account changing the Broker of Record, Harvard Pilgrim will make the change effective the first day of the month following receipt of the letter. Authorization letters will be honored up to 90 days from the date of the letter. The named broker must be credentialed with Harvard Pilgrim.

Elite Broker Bonus

To become an "Elite" broker, you must achieve several goals:

- Have at least \$2 million in combined new (annualized) and existing business in 2013;
- Sell at least five new accounts with effective dates in 2013 (or three new accounts with annualized premium of at least \$1.5 million);
- Sell at least \$750,000 (annualized) in new business in 2013;
- Renew at least 90% of your existing business in 2013;
- Have a minimum of 10 accounts as of 12/31/2013.

Bonus Levels

There are four bonus levels, each dependent on how much annualized new business premium is generated. Each level requires **BOTH** the selling of new (annualized) premium combined with existing business premium. No bonuses will be paid if retention is less than 90%.

Health Plans, Inc. Bonus

Administrative expenses for self-insured medical plans (excluding dental) received by Health Plans, Inc. in 2013 will be added to a broker's 2013 Harvard Pilgrim block of business for bonus calculation purposes.

EXAMPLE: Broker's Harvard Pilgrim premiums received equal \$5,000,000 and Health Plans, Inc. administrative expenses received equal \$300,000. If the Broker qualifies for a 2013 bonus, the bonus factor will be applied to \$5,300,000.

Bonus with Retention Reward

In addition, brokers who meet the Standard Bonus requirements **AND** renew 95% or more of their existing Harvard Pilgrim business qualify for a higher bonus level, as shown in the following chart.

LEVEL	NEW CASES SOLD	NEW PREMIUMS	TOTAL PREMIUMS (INCL. NEW)	BONUS AT 90% RETENTION	BONUS AT 95% RETENTION
1	5	\$750,000	\$2,000,000	0.15%	0.30%
2	3	\$1,500,000	\$2,500,000	0.25%	0.40%
3	3	\$2,500,000	\$3,500,000	0.65%	0.90%
4	3	\$4,000,000	\$6,000,000	1.00%	1.25%

EXAMPLE: Broker has \$4,000,000 of premium in force with Harvard Pilgrim and sells another \$3,000,000 (annualized premium) in new business during 2013. Broker has retention of 95%. Broker will receive a bonus of 0.9% applied to all premiums received in 2013.

Continued ►

Determining Retention Rate

Retention rates will be determined by establishing a baseline amount of premium in the broker's block of business as of December 31, 2012 ("Beginning Block") as well as a determination of the broker's block of business as of December 31, 2013 ("Ending Block"). The Beginning Block will be calculated by adding the annualized premiums for each fully insured commissioned account in the broker's block of business as of December 31, 2012. A factor of 5.0% will then be applied to this amount to account for anticipated rate increases in 2013. The Ending Block will be calculated by adding the annualized premiums for each fully insured commissioned account in the broker's block of business as of December 31, 2013.

The Retention Rate is the Ending Block divided by the Beginning Block.

NOTES:

- Bonuses apply only to accounts sold directly through Harvard Pilgrim.
- Brokers with a retention rate of less than 90% do not qualify for a bonus.
- Bonuses will be paid based on premiums received in 2013 and paid no later than March 31, 2014.

Terms and Conditions

- The commission and bonus plans described in this brochure are available only to qualified brokers who are licensed by the New Hampshire Insurance Department and who have signed the Harvard Pilgrim Health Care Broker Agreement and Business Associate Agreement.
- For brokers who write business with Harvard Pilgrim in more than one state, we will apply the bonus plan of the state in which the majority of premiums are generated.
- On a case-by-case basis, Harvard Pilgrim may make exceptions to the retention rate calculation if an account leaves a broker's block of business but remains a Harvard Pilgrim account.
- For bonus calculations, if a broker/agency acquires another broker's block of business, Harvard Pilgrim will combine all premiums received after the merger to determine bonus eligibility. We will not combine New Accounts Sold or premiums (YTD or Annualized) generated prior to the merger.
- To assign a commission schedule to a small group account, Harvard Pilgrim counts the number of enrolled subscribers at the account's effective date and once a year thereafter, at the account's anniversary date. Off-anniversary changes in subscriber count will not change the account's commission schedule.
- Non-group commercial products are not covered by this compensation plan.
- Harvard Pilgrim may pay commissions retroactively if a Broker of Record letter is not processed correctly. However, no commissions will be paid retroactively more than 12 months.
- Harvard Pilgrim reserves the right to change or modify this plan without prior notice.
- If Harvard Pilgrim receives multiple Broker of Record takeover letters on the same account, the most current letter will be honored.
- If there are disputes regarding the interpretation of any of the details of this Broker Compensation Plan, Harvard Pilgrim reserves the right to final interpretations.

The commission and bonus plans described herein apply to fully insured groups with up to 1,000 eligible employees. For groups with 1,000 or more eligible employees, Harvard Pilgrim reserves the right to negotiate a client-specific commission schedule with the broker.



650 Elm Street, 7th Floor, Manchester, NH 03101

1-800-424-7285

www.harvardpilgrim.org

HARVARD PILGRIM HEALTH CARE

2013 **Broker** **Compensation Plan**

MAINE



Small Group Commissions (Less than 51 Eligibles)

For Maine-based accounts sold with an effective date of January 1, 2013 or later, Harvard Pilgrim will pay commissions to qualified brokers based on a per employee per month (PEPM) schedule, described below. Commissions are paid each month based on the number of employees *enrolled* as of the last day of the month.

ENROLLED EMPLOYEES	COMMISSION
Less than 50	\$30 per enrolled subscriber

New Business Commissions (51+ Eligibles)

Commissions are paid each month based on premiums received in the prior month.

ANNUALIZED PAID PREMIUM	COMMISSION	
	HSA/ACCESS AMERICA	NON-HSA
1st \$500,000	5%	4%
Next \$500,000	3.5%	3.5%
Next \$3 million	2%	2%
Over \$4 million	1%	1%

NOTES:

- Applies to fully insured and Medicare Enhance accounts only.
- The HSA/Access America Commission Schedule will be paid on the first 12 months' premium only.

Renewal Commissions (51+ Eligibles)

ANNUALIZED PAID PREMIUM	COMMISSION
1st \$500,000	4%
Next \$500,000	3.5%
Next \$3 million	2%
Over \$4 million	1%

NOTES:

- The Renewal Commission Schedule will be implemented at the account's renewal date, usually 12 months after the start date.
- For accounts written direct with Harvard Pilgrim, renewal commissions will be paid out at the "top" of the schedule (i.e., the 4% level) each year beginning with January commissions, regardless of the account's anniversary date.
- For accounts written on our Compass program products (with UnitedHealthcare), renewal commissions will be paid out at the "top" of the schedule beginning at the account's anniversary date.

DirigoChoice

Sole Proprietors

\$15.00 per subscriber per month

Groups

\$23.00 per subscriber per month

NOTE:

- Commissions are not paid on Individual plans

Medicare Enhance (Group)

Harvard Pilgrim will pay commissions to qualified brokers based on the New Business Commissions and Renewal Commissions schedules.

Medicare Supplement (Non-Group)

Commissions on newly enrolled beneficiaries are paid one time in the first year and as the plans renew. Commission rate is determined by the Plan in which the beneficiary is enrolled.

PLAN	1ST YEAR COMMISSION	RENEWAL YEARS 2-6
Plan A	\$240	\$10/month
Plan F	\$360	\$20/month
Plan M	\$360	\$20/month
Plan N	\$360	\$20/month

NOTES:

- Brokers must be certified by Harvard Pilgrim to sell these products.
- Renewal commissions will be paid once the beneficiary has paid his/her first renewal premium payment.
- Commissions will be recouped on a pro-rated basis for beneficiaries who terminate coverage within 6 months of their effective date.
- Commission rate may change if beneficiary changes Plan.
- Commissions are payable up to 6 years per enrolled beneficiary.
- Medicare Supplement business does not count toward bonus eligibility.
- No commissions will be paid if Harvard Pilgrim Medicare Supplement Plan is sold to an individual with another active Medicare Supplement policy.

Broker of Record Takeover Commissions

If an account on which commissions are not being paid names a credentialed broker as its Broker of Record, Harvard Pilgrim will pay commissions to that broker based on the Renewal Commissions described previously.

NOTES:

- A valid and dated Broker of Record letter on the account's letterhead and signed by an officer of the account must be presented.
- Commission payments will be payable beginning on the next anniversary date after Harvard Pilgrim receives the Broker of Record letter.
- Applies to group accounts sold directly through Harvard Pilgrim.
- Premiums generated on Broker of Record Takeover accounts do not qualify as new business for bonus programs.

Change in Broker of Record

Upon receipt of a valid and dated letter on the account's letterhead and signed by an officer of the account changing the Broker of Record, Harvard Pilgrim will make the change effective the first day of the month following receipt of the letter. Authorization letters will be honored up to 90 days from the date of the letter. The named broker must be credentialed with Harvard Pilgrim.

Elite Broker Bonus

To become an "Elite" broker, you must achieve several goals:

- Have at least \$1.5 million in combined new (annualized) and existing business in 2013;
- Sell at least 5 new accounts with effective dates in 2013 (or three new accounts with annualized premium of at least \$1 million);
- Sell at least \$500,000 (annualized) in new business in 2013;
- Renew at least 90% of your existing business in 2013;
- Have a minimum of 10 accounts as of 12/31/2013.

Bonus Levels

There are four bonus levels, each dependent on how much annualized new business premium is generated. Each level requires **BOTH** the selling of new (annualized) premium combined with existing business premium. No bonuses will be paid if retention is less than 90%.

Health Plans, Inc. Bonus

Administrative expenses for self-insured medical plans (excluding dental) received by Health Plans, Inc. in 2013 will be added to a broker's 2013 Harvard Pilgrim block of business for bonus calculation purposes.

EXAMPLE: Broker's Harvard Pilgrim premiums received equal \$5,000,000 and Health Plans, Inc. administrative expenses received equal \$300,000. If the Broker qualifies for a 2013 bonus, the bonus factor will be applied to \$5,300,000.

Bonus with Retention Reward

In addition, brokers who meet the Standard Bonus requirements **AND** renew 95% or more of their existing Harvard Pilgrim business qualify for a higher bonus level, as shown in the following chart.

LEVEL	NEW CASES SOLD	NEW PREMIUMS	TOTAL PREMIUMS (INCL. NEW)	BONUS AT 90% RETENTION	BONUS AT 95% RETENTION
1	5	\$500,000	\$1,500,000	0.25%	0.50%
2	3	\$1,000,000	\$2,000,000	0.50%	0.75%
3	3	\$2,000,000	\$3,000,000	0.75%	1.00%
4	3	\$3,000,000	\$5,000,000	1.00%	1.25%

EXAMPLE: Broker has \$3,000,000 of premium in force with Harvard Pilgrim and sells another \$2,500,000 (annualized premium) in new business during 2013. Broker has retention of 95%. Broker will receive a bonus of 1.0% applied to all premiums received in 2013.

Determining Retention Rate

Retention rates will be determined by establishing a baseline amount of premium in the broker's block of business as of December 31, 2012 ("Beginning Block") as well as a determination of the broker's block of business as of December 31, 2013 ("Ending Block"). The Beginning Block will be calculated by adding the annualized premiums for each fully insured commissioned account in the broker's block of business as of December 31, 2012. A factor of 5.0% will then be applied to this amount to account for anticipated rate increases in 2013. The Ending Block will be calculated by adding the annualized premiums for each fully insured commissioned account in the broker's block of business as of December 31, 2013.

The Retention Rate is the Ending Block divided by the Beginning Block.

NOTES:

- Bonuses apply only to accounts sold directly through Harvard Pilgrim.
- Brokers with a retention rate of less than 90% do not qualify for a bonus.
- Bonuses will be paid based on premiums received in 2013, and paid no later than March 31, 2014.

Terms and Conditions

- The commission and bonus plans described in this brochure are available only to qualified brokers who are licensed by the Maine Bureau of Insurance and who have signed the Harvard Pilgrim Health Care Broker Agreement and Business Associate Agreement.
- For brokers who write business with Harvard Pilgrim in more than one state, we will apply the bonus plan of the state in which the majority of premiums are generated.
- On a case-by-case basis, Harvard Pilgrim may make exceptions to the retention rate calculation if an account leaves a broker's block of business but remains a Harvard Pilgrim account.
- For bonus calculations, if a broker/agency acquires another broker's block of business, Harvard Pilgrim will combine all premiums received after the merger to determine bonus eligibility. We will not combine New Accounts Sold or premiums (YTD or Annualized) generated prior to the merger.
- To assign a commission schedule to a small group account, Harvard Pilgrim counts the number of enrolled subscribers at the account's effective date and once a year thereafter, at the account's anniversary date. Off-anniversary changes in subscriber count will not change the account's commission schedule.
- Non-group commercial products are not covered by this compensation plan.
- Harvard Pilgrim may pay commissions retroactively if a Broker of Record letter is not processed correctly. However, no commissions will be paid retroactively more than 12 months.
- Harvard Pilgrim reserves the right to change or modify this plan without prior notice.
- If Harvard Pilgrim receives multiple Broker of Record takeover letters on the same account, the most current letter will be honored.
- If there are disputes regarding the interpretation of any of the details of this Broker Compensation Plan, Harvard Pilgrim reserves the right to final interpretations.

The commission and bonus plans described herein apply to fully insured groups with up to 1,000 eligible employees. For groups with 1,000 or more eligible employees, Harvard Pilgrim reserves the right to negotiate a client-specific commission schedule with the broker.



1 Market Street, Portland, ME 04101

Broker Relations Service Center 1-800-424-7285

www.harvardpilgrim.org

HARVARD PILGRIM HEALTH CARE

2013 **Broker** **Compensation Plan**

MASSACHUSETTS



2013 BROKER COMPENSA

Small Group Commissions

(Less than 10 enrolled)

For Massachusetts-based accounts sold with an effective date of January 1, 2013 or later, Harvard Pilgrim will pay commissions to qualified brokers based on a per employee per month (PEPM) schedule, described below. Commissions are paid each month based on the number of employees *enrolled* as of the last day of the month.

ENROLLED EMPLOYEES	COMMISSION
Less than 10	\$23 per enrolled subscriber

NOTES:

- Applies to accounts sold directly through Harvard Pilgrim.
- Applies to accounts of six or more eligible subscribers only.

New Business Commissions

(10+ Enrolled)

Commissions are paid each month based on premiums received in the prior month.

ANNUALIZED PAID PREMIUM	COMMISSION	
	HSA/ACCESS AMERICA	NON-HSA
1st \$500,000	5%	4%
Next \$500,000	2%	2%
Over \$1 million	1%	1%

NOTES:

- Applies to fully insured and Medicare Enhance accounts only.
- The New Business and HSA/Access America Commission Schedules will be paid on the first 12 months' premium only.

Renewal Commissions

(10+ Enrolled)

Harvard Pilgrim will pay renewal commissions to the broker of record based on the following schedule:

ANNUALIZED PAID PREMIUM	COMMISSION
1st \$500,000	3%
Next \$500,000	2%
Over \$1 million	1%

NOTES:

- The Renewal Commission Schedule will be implemented at the account's renewal date, usually 12 months after the start date.
- For accounts written direct with Harvard Pilgrim, renewal commissions will be paid out at the "top" of the schedule (i.e., the 3% level) each year beginning with January commissions, regardless of the account's anniversary date.

MACCE Commissions

For accounts written through Massachusetts Association of Chamber of Commerce Executives, new business and renewal commissions will be paid as shown below, based on the number of *enrolled* subscribers.

ENROLLED EMPLOYEES	COMMISSION
2-5	\$10 per enrolled subscriber
6-9	\$23 per enrolled subscriber
10-50	Standard 10+ schedules

iBuy125 for Non-Benefit Eligibles

\$8.00 per enrolled subscriber per month

NOTE:

- Membership in iBuy125 plans does not contribute toward bonus calculations.

Medicare Enhance (Group)

Harvard Pilgrim will pay commissions to qualified brokers based on the New Business Commissions and Renewal Commissions schedules.

Medicare Supplement (Non-Group)

Commissions on newly enrolled beneficiaries are paid one time in the first year and as the plans renew. Commission rate is determined by the Plan in which the beneficiary is enrolled.

PLAN	1 ST YEAR COMMISSION	RENEWAL YEARS 2-6
Core	\$240	\$10/month
Med Supp 1	\$360	\$20/month

TION PLAN - Massachusetts

NOTES:

- Brokers must be certified by Harvard Pilgrim to sell these products.
- Renewal commissions will be paid once the beneficiary has paid his/her first renewal premium payment.
- Commissions will be recouped on a pro-rated basis for beneficiaries who terminate coverage within 6 months of their effective date.
- Commission rate may change if beneficiary changes Plan.
- Commissions are payable up to 6 years per enrolled beneficiary.
- Medicare Supplement business does not count toward bonus eligibility.
- No commissions will be paid if Harvard Pilgrim Medicare Supplement Plan is sold to an individual with another active Medicare Supplement policy.

Broker of Record Takeover Commissions

If an account on which commissions are not being paid names a credentialed broker as its Broker of Record, Harvard Pilgrim will pay commissions to that broker based on the Renewal Commissions described previously.

NOTES:

- A valid and dated Broker of Record letter on the account's letterhead and signed by an officer of the account must be presented.
- Commission payments will be payable beginning on the next anniversary date after Harvard Pilgrim receives the Broker of Record letter.
- Applies to accounts sold directly through Harvard Pilgrim.
- Premiums generated on Broker of Record Takeover accounts do not qualify as new business for bonus programs.

Change in Broker of Record

Upon receipt of a valid and dated letter on the account's letterhead and signed by an officer of the account changing the Broker of Record, Harvard Pilgrim will make the change effective the first day of the month following receipt of the letter. Authorization letters will be honored up to 90 days from the date of the letter. The named broker must be credentialed with Harvard Pilgrim.

Standard and Elite Broker Bonus

Brokers will be eligible for Standard or Elite bonus levels based on selling New Business and Retention of Existing Business, using the following criteria:

- Ending Block of Business as of 12/31/2012:
 - less than \$25 million = Standard level;
 - \$25 million and above = Elite level;
- Having a minimum of 10 direct-written accounts (i.e., not written through intermediaries as of 12/31/12);
- iBuy125 and Medicare Supplement membership does not count toward bonus programs.

Health Plans, Inc. Bonus

Administrative expenses for self-insured medical plans (excluding dental) received by Health Plans, Inc. in 2013 will be added to a broker's 2013 Harvard Pilgrim block of business for bonus calculation purposes.

EXAMPLE: Broker's Harvard Pilgrim premiums received equal \$5,000,000 and Health Plans, Inc. administrative expenses received equal \$300,000. If the Broker qualifies for a 2013 bonus, the bonus factor will be applied to \$5,300,000.

Standard Bonus Level

To qualify for a Standard-level bonus, you must achieve several goals:

- Have at least \$2.5 million in combined new (annualized) and existing business in 2013;
- Sell at least five new direct-written accounts with effective dates in 2013 (or three new accounts with annualized premium of at least \$1.5 million);
- Sell at least \$750,000 (annualized) in new business in 2013;
- Renew at least 90% of your existing business in 2013.

Level	New Cases sold	New Premiums	Total Premiums (incl. New)	Bonus at 90% ret.	Bonus at 95% ret.
1	5	\$750,000	\$2,500,000	0.25%	0.50%
2	3	\$1,500,000	\$3,500,000	0.50%	0.75%
3	3	\$2,500,000	\$6,000,000	0.75%	1.00%
4	3	\$4,000,000	\$8,000,000	1.00%	1.25%

Elite Bonus Level

To qualify for an Elite-level bonus, you must achieve several goals:

- Have an Ending Block of Business of \$25 million or more as of 12/31/2012;
- Sell at least \$2 million (annualized) in new business in 2013, or get paid at a lower retention level;
- Renew at least 85% of your existing business in 2013.

Continued ►

NEW BUSINESS BONUS

New Premiums Sold 1.25%

- Bonus paid on Actual Premiums received from Accounts sold in 2013.

RETENTION BONUS

Retention	Bonus Factor (\$2 MM new)	Bonus Factor* (<\$2 MM new)
85%	1.00%	0.85%
90%	1.10%	0.95%
95%	1.25%	1.10%

- Bonus paid on Actual Premiums received during 2013 on accounts in Ending BOB as of 12/31/2012.

* If annualized value of new business sold in 2013 is less than \$2 million, the retention bonus will be based on the factors in this column.

Determining Retention Rate

Retention rates will be determined by establishing a base-line amount of premium in the broker's block of business as of December 31, 2012 ("Beginning Block") as well as a determination of the broker's block of business as of December 31, 2013 ("Ending Block"). The Beginning Block will be calculated by adding the annualized premiums for each fully insured commissioned account in the broker's block of business as of December 31, 2012. A factor of 5.0% will then be applied to this amount to account for anticipated rate increases in 2013. The Ending Block will be calculated by adding the premiums received for each fully insured commissioned account (**excluding premiums for accounts sold in 2013 by Elite-level brokers**) in the broker's block of business as of December 31, 2013.

The Retention Rate is the Ending Block divided by the Beginning Block.

NOTES:

- Bonuses apply only to accounts sold directly through Harvard Pilgrim.
- Brokers with a retention rate of less than 90% (85% for Elite-level brokers) do not qualify for a bonus.
- Bonuses will be based on premiums received in 2013 and paid no later than March 31, 2014.

Terms and Conditions

- The commission and bonus plans described in this brochure are available only to qualified brokers who are licensed by the Massachusetts Division of Insurance and who have signed the Harvard Pilgrim Health Care Broker Agreement and Business Associate Agreement.
- For brokers who write business with Harvard Pilgrim in more than one state, we will apply the bonus plan of the state in which the majority of premiums are generated.
- On a case-by-case basis, Harvard Pilgrim may make exceptions to the retention rate calculation if an account leaves a broker's block of business but remains a Harvard Pilgrim account.
- For bonus calculations, if a broker/agency acquires another broker's block of business, Harvard Pilgrim will combine all premiums received after the merger to determine bonus eligibility. We will not combine New Accounts Sold or premiums (YTD or Annualized) generated prior to the merger.
- Small group accounts written through intermediaries are not eligible for the plans described in this compensation plan.
- To assign a commission schedule to an account, Harvard Pilgrim counts the number of enrolled subscribers at the account's effective date and once a year thereafter, at the account's anniversary date. Off-anniversary changes in subscriber count will not change the account's commission schedule.
- Harvard Pilgrim does not pay commissions on non-group (BuyDirect) policies.
- Harvard Pilgrim may pay commissions retroactively if a Broker of Record letter is not processed correctly. However, no commissions will be paid retroactively more than 12 months.
- Harvard Pilgrim reserves the right to change or modify this plan without prior notice.
- If Harvard Pilgrim receives multiple Broker of Record takeover letters on the same account, the most current letter will be honored.
- If there are disputes regarding the interpretation of any of the details of this Broker Compensation Plan, Harvard Pilgrim reserves the right to final interpretations.

The commission and bonus plans described herein apply to fully insured groups with up to 1,000 eligible employees. For groups with 1,000 or more eligible employees, Harvard Pilgrim reserves the right to negotiate a client-specific commission schedule with the broker.



Harvard Pilgrim
HealthCare



93 Worcester Street, Wellesley, MA 02481

Broker Relations Service Center 1-800-424-7285

www.harvardpilgrim.org



Harvard Pilgrim Health Care

Electronic Funds Transfer (EFT) Form

Please choose one of these options:

- Elect EFT payments
 Change EFT information
 Terminate EFT payments

Name of Brokerage Firm: _____

Name of Broker: _____

Business Address: _____

City: _____ State: _____ Zip Code: _____

Phone Number: _____

Please attach a voided check. When providing the Account and Routing/Transit Numbers, please refer to the series of numbers located at the bottom of your check and insert those numbers located between the symbols shown. For your reference, please see the sample check on the reverse side of this form.

Type of Account: Business Account or Personal Account (check one)
 Checking or Savings (check one)

Name(s) on Account: _____
Please list all names that appear on the account

Account Number: # _____ #

Name of Financial Institution: _____

City: _____ State: _____

Routing/Transit Number: #

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IMPORTANT NOTE: It is the applicant's responsibility to ensure that the information provided on this form is complete and accurate. Harvard Pilgrim will not be responsible and shall be held harmless for errors made in EFT payments that are a result of inaccurate or incomplete information provided on this form. In no event and under no circumstances will Harvard Pilgrim's liability exceed the amount of the EFT payments in question.

Signature of Account Owner _____ Date _____

Signature of Brokerage Firm Authorized Representative _____ Date _____

Print Name _____

Print Name _____

Title _____

Title _____

To protect the privacy of your financial information, please **DO NOT fax or e-mail completed forms.** Please mail your signed and completed forms to the following address: Harvard Pilgrim Health Care, Inc., Treasury Department, 93 Worcester Street, Wellesley, MA 02481

For Internal Use Only:	Vendor ID #
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Frequently Asked Questions

When should I expect my first deposit?

Depending on when Harvard Pilgrim receives your completed form, you can expect to receive your first payment by the next payment cycle or the one thereafter. Please call your broker relations assistant if you have any questions.

Will I continue to receive a commission statement once I begin receiving EFT payments?

Harvard Pilgrim will continue to mail your commission statements to you. You can expect to receive your statement 2-5 days after your account is credited with the funds.

What happens if my account information changes?

In the event that your account information changes, you will need to submit another signed and completed Harvard Pilgrim EFT form with your updated information and mail it to Harvard Pilgrim.

Please call Harvard Pilgrim's Broker Relations Service Center with any questions at 1-800-424-7285.

* [NAME(S) ON ACCOUNT	SAMPLE	Check No. 10001 _____ 20 _____
Pay to the order of _____ \$		
_____ DOLLARS		
* [NAME OF FINANCIAL INSTITUTION		
Memo _____		
⌘ 1 2 3 4 5 6 7 8 9 ⌘	123 456 789 ⌘	10001
Routing Number	Account Number	Check Number



Harvard Pilgrim
HealthCare

This information refers to products and services offered by Harvard Pilgrim Health Care and its affiliates, Harvard Pilgrim Health Care of New England and HPHC Insurance Company.

Request for Taxpayer Identification Number and Certification

**Give Form to the
requester. Do not
send to the IRS.**

Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return)	
	Business name/disregarded entity name, if different from above	
	Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ <input type="checkbox"/> Other (see instructions) ▶ _____	
	<input type="checkbox"/> Exempt payee	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
City, state, and ZIP code		
List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number									

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Employer identification number									

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,
- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a “saving clause.” Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS a percentage of such payments. This is called “backup withholding.” Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account, for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the “Name” line. You may enter your business, trade, or “doing business as (DBA)” name on the “Business name/disregarded entity name” line.

Partnership, C Corporation, or S Corporation. Enter the entity's name on the “Name” line and any business, trade, or “doing business as (DBA) name” on the “Business name/disregarded entity name” line.

Disregarded entity. Enter the owner's name on the “Name” line. The name of the entity entered on the “Name” line should never be a disregarded entity. The name on the “Name” line must be the name shown on the income tax return on which the income will be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a domestic owner, the domestic owner's name is required to be provided on the “Name” line. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on the “Business name/disregarded entity name” line. If the owner of the disregarded entity is a foreign person, you must complete an appropriate Form W-8.

Note. Check the appropriate box for the federal tax classification of the person whose name is entered on the “Name” line (Individual/sole proprietor, Partnership, C Corporation, S Corporation, Trust/estate).

Limited Liability Company (LLC). If the person identified on the “Name” line is an LLC, check the “Limited liability company” box only and enter the appropriate code for the tax classification in the space provided. If you are an LLC that is treated as a partnership for federal tax purposes, enter “P” for partnership. If you are an LLC that has filed a Form 8832 or a Form 2553 to be taxed as a corporation, enter “C” for C corporation or “S” for S corporation. If you are an LLC that is disregarded as an entity separate from its owner under Regulation section 301.7701-3 (except for employment and excise tax), do not check the LLC box unless the owner of the LLC (required to be identified on the “Name” line) is another LLC that is not disregarded for federal tax purposes. If the LLC is disregarded as an entity separate from its owner, enter the appropriate tax classification of the owner identified on the “Name” line.

Other entities. Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name/disregarded entity name" line.

Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the "Business name/disregarded entity name," sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
 2. The United States or any of its agencies or instrumentalities,
 3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
 4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
 5. An international organization or any of its agencies or instrumentalities.
- Other payees that may be exempt from backup withholding include:
6. A corporation,
 7. A foreign central bank of issue,
 8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
 9. A futures commission merchant registered with the Commodity Futures Trading Commission,
 10. A real estate investment trust,
 11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
 12. A common trust fund operated by a bank under section 584(a),
 13. A financial institution,
 14. A middleman known in the investment community as a nominee or custodian, or
 15. A trust exempt from tax under section 664 or described in section 4947.

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 5 and 7 through 13. Also, C corporations.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 7 ²

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney, and payments for services paid by a federal executive agency.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at www.ssa.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting IRS.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, below, and items 4 and 5 on page 4 indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on the "Name" line must sign. Exempt payees, see *Exempt Payee* on page 3.

Signature requirements. Complete the certification as indicated in items 1 through 3, below, and items 4 and 5 on page 4.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee ¹ The actual owner ¹
5. Sole proprietorship or disregarded entity owned by an individual	The owner ³
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulation section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	Give name and EIN of:
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity ⁴
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulation section 1.671-4(b)(2)(i)(B))	The trust

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or "DBA" name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

*Note. Grantor also must provide a Form W-9 to trustee of trust.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: spam@uce.gov or contact them at www.ftc.gov/idtheft or 1-877-IDTHEFT (1-877-438-4338).

Visit IRS.gov to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.