

# 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 1<sup>st</sup> 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)