

ARCADIAN HEALTH PLAN

Medicare Advantage Producer Agreement

This PRODUCER AGREEMENT (this "Agreement") is made and entered into as of _____ 200__, by and between _____, (the "COMPANY"), and _____, an individual (the "Producer"). The Producer and the COMPANY may sometimes hereinafter be referred to individually as a "party" or jointly as the "parties."

RECITALS

WHEREAS, the COMPANY desires to market some of the COMPANY'S Medicare Plans, and

WHEREAS, the Producer desires to market some of the COMPANY'S Medicare Plans, and

WHEREAS, the COMPANY has the right and obligation to ensure that the Producer maintains regulatory compliance in the sales and marketing of its products,

NOW, THEREFORE, in consideration of the covenants, promises, representations and warranties set forth herein, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the parties), intending to be legally bound hereby, the parties agree as follows:

I. APPOINTMENT AND RELATIONSHIP

- A. The COMPANY hereby appoints the Producer to act on its behalf and represent it only to the extent authorized herein.
- B. The Producer is an independent contractor with respect to the COMPANY, and nothing contained herein shall create or be construed to create the relationship of Employer/Employee between the COMPANY and the Producer or between the COMPANY and any employee of the Producer.
- C. Nothing herein contained shall be deemed to create an agency, joint venture, partnership or franchise relationship between the parties hereto. The Producer acknowledges that the Producer is NOT an employee of the COMPANY and is NOT entitled to COMPANY Employee rights and benefits; and agrees to waive any and all of his or her rights under the EEOC and ADA to the extent they exist if at all.

II. SCOPE OF SERVICES, AUTHORITY AND RESPONSIBILITY OF PRODUCER

- A. The Producer is hereby authorized on behalf of the COMPANY, but only in those States and Counties where the COMPANY is authorized to do business and provided that the Producer is in compliance with all applicable regulatory licensing requirements at the time of solicitation, to solicit applications for the approved products offered by COMPANY authorized for marketing by the COMPANY and which are listed in written documents provided to the Producer by the COMPANY which are made a part of this Contract.
- B. The Producer shall pay all expenses incurred by him or his Sub-Agents in the performance of this Contract and, when requested by the COMPANY, shall furnish a bond of indemnity in such form and amount as may be approved by the COMPANY. Any such expenses not paid by the Producer may be offset by the Company against any commissions or service fees payable to the Producer or Sub-Agents.
- C. The Producer shall be available, during the term of this Agreement, to attend and participate in all required training, monitoring and supervision activities and or seminars as required and or requested by the COMPANY.
- D. The Producer may not use COMPANY'S name or logo; the plan name or logo; or any proprietary information on any printed materials, or electronic advertising, or internet site without prior written approval of COMPANY. The Producer may create an electronic link from the Producer's Internet site to COMPANY'S internet site, but the Producer may not reproduce any of COMPANY'S Internet content or programs on the Producer's internet site. The Producer may not re-create or alter any material considered proprietary by COMPANY in electronic, printed, or any other form.
- E. The Producer is required to protect the privacy and confidentiality of personal and financial information regarding COMPANY'S Plan applicants, current and former members, employer groups, and providers. The Producer will not disclose personal or financial information to anyone other than COMPANY, as is applicable for the purpose stated herein. The Producer agrees to comply with all Federal, State, and Local laws regarding the privacy and confidentiality of information regarding applicants, current and former members, employer groups and providers. The Producer agrees to comply with all COMPANY privacy and confidentiality requirements and the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the

Gramm-Leach-Bliley Act (1999) including any regulations or amendments. The COMPANY, and the Producer all agree they will not disclose or use the non-public personal information provided to them under this joint marketing agreement to any person or entity except as necessary to carry out the joint marketing of any of the products offered by COMPANY, under this agreement, or under another expressly recognized exception to the Gramm-Leach-Bliley Act's opt-out requirement, in the ordinary course of business to carry out such joint marketing, unless and until the individual about whom the non-public personal information is shared becomes a customer of COMPANY and the Producer.

- F. The Violent Crime Control and Law Enforcement Act (18 U.S.C. 1033 et seq.) makes it a crime for individuals convicted of certain felonies to willfully engage in the business of insurance. By entering into this contract the Producer represents that he/she is not prevented from engaging in insurance business under this act or any other applicable law. The Producer agrees to accurately and fully complete the Background Information forms provided and required by the COMPANY, and to advise COMPANY in writing within 30 days if they have been convicted of a felony while this contract is in effect. The COMPANY recommends that any Producer who has concerns about their ability to act as a Producer to contact the appropriate regulatory agency.
- G. The Producer understands and agrees that the COMPANY and the Producer through the established business relationship by this agreement, may choose to communicate with each other through the use of telephone, mail, email or facsimile to the mailing address(es), phone numbers, or email address(es) provided herein. The Producer agrees to notify the COMPANY immediately of any change of any of the Producer's contact information.
- H. The Producer agrees that while this agreement is in force, and following its termination for any reason, the Producer shall not directly or indirectly contact, solicit, communicate or meet with any of the COMPANY'S Medicare Advantage enrollees for the purpose of modifying, rewriting, canceling, lapsing or replacing the COMPANY'S Medicare Advantage Plans. Failure to comply with the provisions of this Section will result in termination of this agreement for cause and termination and forfeiture of any and all commissions or Vested Commissions (if any).

III. LIMITATIONS OF AUTHORITY

- A. The Producer shall have no authority to make, alter, modify or discharge any evidence of coverage, policy, rider, or contract; extend any Provision thereof; waive any forfeiture; incur any debts or expenses for which COMPANY may be liable; receive any money for COMPANY, except as may herein or elsewhere specifically in writing be authorized by the COMPANY; withhold or convert to this own use or for the benefit of others any monies, securities, policies or receipts belonging to COMPANY or fail to submit promptly to the COMPANY any applications for coverage; or accept payments of any kind for COMPANY'S Plan.

- B. The Producer shall have no authority to endorse or present for collection any check, draft or other instrument made payable to COMPANY.
- C. The Producer shall have no authority to conduct telemarketing, "cold calling", door-to-door solicitation or any other form of "direct" solicitation.

IV. PAYMENT

- A. In consideration for the provision of the Services by the Producer, the Producer shall be compensated by commission, as follows: The COMPANY shall pay a Commission on approved and accepted new enrollments, based upon the current Producer Schedule of Commission then in effect (see Attachment "Producers Commission Schedule"). No additional compensation, bonuses, remuneration or reimbursement will be due and payable to the Producer. Any officer of the COMPANY may amend the Producer's Commission Schedule at any time. All expenses incurred in the marketing or enrollment of plans offered by COMPANY are the sole responsibility of Producer. The COMPANY's liability is limited to the payment of commissions as delineated in the Producer's Commission Schedule, as amended from time to time.
- B. No commissions shall be payable on any application not accepted by CMS or COMPANY. In the event that the Producer or Agents in the Producer's hierarchy incur indebtedness to the COMPANY, or any assignee of COMPANY may offset against, and deduct from, any compensation due the Producer. Producer agrees such indebtedness shall be a first lien against all such compensation. The COMPANY, or any assignee may offset any indebtedness created by Producer or any Agents in the Producer's hierarchy including the repayment of advance commissions with the COMPANY against commission or overrides due Producer. Collection fees on unpaid debits to the COMPANY shall be at Agents cost.

Producer acknowledges and agrees that all payments to Producer and Agents in the Producer's hierarchy upon the enrollment of members in the Medicare Advantage Plans shall be deemed an advance of compensation to Producer. The COMPANY, or any assignee may set off any advances or other amounts owed by Producer or its Agents to COMPANY against the amount of any commissions owed by COMPANY to Producer.

- C. The COMPANY will furnish the Producer with a periodic statement of the Producer's Account and will pay any amount due Producer hereunder. Upon receipt of such statement the Producer shall immediately examine it, and if not satisfied as to its accuracy, Producer shall return such statement and the payment to COMPANY with full particulars of any discrepancy therein within sixty (60) days of the date of the statement; otherwise the statement shall be deemed accepted by Producer as true and correct. The Account on the books of COMPANY shall be competent evidence of such Account for all purposes.
- D. If this Contract is terminated by the Company or the Producer or should the Producer die or become totally disabled while this Contract is in force, he , or in the case of his death,

his heirs or legal representatives shall, except as hereinafter provided in this Contract, receive commissions that accrue under the provisions of this Contract, if any. Such renewal commissions shall terminate when the total renewal commissions so payable are less than \$600.00 annually.

- E. The COMPANY may at any time offset any debt or debts due from the Producer to the COMPANY arising from his transactions under this or any previous or subsequent contract against any commission, service fees, or other compensation due or to become due him from the COMPANY and any and all affiliates of the COMPANY. Unless otherwise specifically provided, all debts due the COMPANY, including advances to the Producer or his Sub-Agents against commissions or other compensation, are payable upon demand and are not recoverable solely from commissions or other compensation.
- F. The Producer shall be jointly and severally liable, with each Producer in their hierarchy, to the COMPANY for the payment of all monies due from the Producer or his Sub-Agents, or debit balances on the account of the Producer or his Sub-Agents or debit balances resulting from loans to the Producer or Sub-Agents from the COMPANY. The COMPANY'S books and records shall be prima facie evidence of such debit balances or loans due.

The Producer hereby assigns to the COMPANY, with recourse, as collateral for all such monies due, debit balance or loans, all amounts due and to become due to the Producer from each Sub-Agent or from the COMPANY and all notes, of Sub-Agents in favor of the Producer. The Producer agrees to execute all other documents required of him by the COMPANY in order to properly evidence and effectuate such assignments, and to guarantee the legal enforceability thereof.

V. TERM.

This Agreement shall commence on the date hereof and continue in effect, unless terminated earlier in accordance with Section VII hereof. The term of this Agreement shall be ongoing, unless either party notifies the other in writing, not less than ten business days prior to the end of the then current enrollment period.

VI. RETURN OF PROPERTY.

Upon the termination of this Agreement for any reason whatsoever, the Producer agrees to end all further use and utilization of, and to immediately return to the COMPANY, in good condition, all property of COMPANY including, without limitation, any property or equipment furnished by the COMPANY or created or prepared by the Producer, either alone or jointly with others, pursuant to the provisions or requirements of this Agreement. Without limiting the generality of the foregoing, all correspondence, reports, records, charts, advertising materials and other similar data pertaining to the business, activities, research and development, Intellectual Property or future plans of COMPANY and/ that are collected by the Producer, including any and all copies or reproductions thereof, as well as any computer equipment, passwords and access

cards provided to the Producer by COMPANY, shall be delivered promptly to the COMPANY without request by it upon termination of this Agreement. In the event that any such items are not so returned, the COMPANY will have the right to enjoin the retention and/or use of said material by Producer, as it is agreed that the continued retention and use by the Producer will cause irreparable harm.

VII. TERMINATION.

- A. Regardless of anything to the contrary contained in this agreement, (a) the COMPANY may terminate this Agreement immediately for any reason or for no reason and, in such event, the Producer shall immediately stop performing all Services (unless otherwise directed by the COMPANY in writing), and (b) the Producer may terminate this Agreement at any time upon not less than 10 business days' prior written notice to the COMPANY. Upon the effective date of the termination of this Agreement, the COMPANY shall have no further obligation or liability to the Producer other than to make any payments of commissions due for business written and submitted while this agreement is in force, less applicable chargebacks (Commissions due and payable, following termination without breach or cause, for business written while this agreement is in effect will be paid at the rate of 100%, less applicable chargebacks, on the first pay period following the third full month of membership) provided however, that in the event that the COMPANY terminates this Agreement for cause, as a result of a breach of this Agreement, or due to violation of Section X of this agreement or unpaid indebtedness, by the Producer, the COMPANY shall not be obligated to pay any further commissions or renewals.

Upon termination of this Agreement for whatever reason, the Producer has sixty (60) days after termination of this Agreement to notify the COMPANY in writing of any complaints or issues he/she may have against the COMPANY or the Producer will waive all rights to any claims against the COMPANY. Such must be sent by certified mail to the COMPANY to the attention of:

_____ (Name of Company)

Atten: General Counsel

If the Producer does not repay any indebtedness to the COMPANY after termination of this Agreement, for whatever reason, the Producer agrees to the entry of a judgement against Producer equal to the amount of the indebtedness.

VIII. COMPLIANCE WITH APPLICABLE LAWS.

- A. The Producer warrants that the Services performed under this Agreement shall comply with all applicable federal, state and local laws and regulations.
- B. The Producer's performance under this Agreement shall be conducted with due diligence and in full compliance with the highest professional standards in the industry. The Producer shall comply with all COMPANY policies and procedures, applicable laws, rules and regulations in the course of performing the Services.

IX. PRODUCER REPRESENTATION.

Producer is authorized by this Agreement to act on behalf of the COMPANY solely to conduct approved and regulatory compliant marketing and sales activities for membership into COMPANY’s Medicare Advantage Plans. Producer and COMPANY understand and agree that this contract is sufficient evidence of Producer’s assignment to the hierarchy of _____ (Name of Company).

also sent by first class United States mail as provided for in this Section XI(A), and (iv) if delivered by overnight courier to the address as provided in this Section XI(A), be deemed given on the earlier of the first business day following the date sent by such overnight courier or upon receipt. Any party from time to time may change its address, facsimile number or other information for the purpose of notices to that party by giving notice specifying such change to the other party hereto.

X. REMEDIES IN THE EVENT OF BREACH

In the event of a breach by the Producer of any of the covenants of this Agreement, the COMPANY shall be entitled to:

- (1) Obtain an injunction enjoining any violation or threatened violation of the covenants herein for the benefit and protection of the COMPANY;
- (2) Obtain an injunction compelling the performance by Producer of all obligations and covenants owed to the COMPANY under this Agreement;
- (3) Obtain a judgment for all losses, damages, profits or expenses which are incurred, lost or suffered by the COMPANY, including all reasonable attorneys’ fees and court costs incurred by the COMPANY, in enforcing any right under this Agreement;
- (4) Withhold from Producer and not pay to Producer any sum otherwise payable by COMPANY to Producer, including without limitation, any such sum attributable to salary, wages, commissions or benefits.

B. Entire Agreement; Modification. This Agreement and Attached exhibits, constitutes the entire agreement among the parties with respect to the Services. This Agreement supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. This Agreement may be amended or modified only by an instrument in writing duly executed by the parties to this Agreement. Whenever possible, the COMPANY will provide written notification of amendments or modifications 30 days prior to effective date of amendment or modification, however, reserves the right to amend or modify immediately as is required or directed to maintain regulatory compliance. This Contract cannot be changed by any oral promise or statement by whomsoever made, and no written modification or change will bind the COMPANY unless it is signed by the President, a Vice President, or the Secretary of the COMPANY, and expresses and intention to modify or change this Contract.

C. Waiver. Any term or condition of this Agreement may be waived at any time by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the party waiving such term or condition. No waiver by any party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by law or otherwise afforded, will be cumulative and not alternative.

XI. GENERAL.

A. Notices. All notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if delivered personally against written receipt, or by facsimile transmission against facsimile confirmation, or by email against confirmation of receipt (but only if a copy if also sent by first class United States mail (postage prepaid) on the same day or on the next business day), or mailed by internationally recognized overnight courier prepaid, to the parties at the following addresses or facsimile numbers:

D. No Assignment; Binding Effect. Neither this Agreement nor any right, interest or obligation hereunder may be assigned (by operation of law or otherwise) by Producer without the prior written consent of the COMPANY and any attempt to do so will be void. Subject to the preceding sentence, this Agreement is binding upon, inures to the benefit of and is enforceable by the parties hereto and their respective successors and assigns.

If to the COMPANY to: _____(Name of Company)

E. Survival. Notwithstanding anything to the contrary contained in this Agreement, the provisions of Sections II H and IV hereof shall survive the termination or expiration, for any reason, of this Agreement.

If to the Producer:
Information provided on Agent data sheet.

F. Headings. The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

All such notices, requests and other communications will (i) if delivered personally to the address as provided in this Section XI(A), be deemed given upon delivery, (ii) if delivered by facsimile transmission to the facsimile number as provided for in this Section XI(A), be deemed given upon facsimile confirmation, (iii) if delivered by email to the email address as provided for in this Section XI(A), be deemed given upon confirmation of receipt (provided that a copy is

G. Severability. Any term or provision of this Agreement that is invalid, illegal or unenforceable in any situation in any jurisdiction shall not affect the validity, legality or enforceability of the offending term or provision in any other

situation or in any other jurisdiction. If such invalidity, illegality or unenforceability is caused by length of time or size of area, or both, the otherwise invalid provision shall be, without further action by the parties, automatically amended to such reduced period or area as would cure such invalidity, illegality or unenforceability; provided, however, that such amendment shall apply only with respect to the operation of such provision in the particular jurisdiction in which such determinations is made.

H. Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Florida, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Florida or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Florida.

I. Jurisdiction; Venue. All actions and proceedings arising out of or relating to this Agreement shall be heard and determined in any Florida state court in Pinellas County Florida or federal court sitting in the city of Tampa, Florida, and each party hereby irrevocably accepts and consents to the exclusive personal jurisdiction of those courts for such purpose. In addition, each party hereby irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any judgment entered by any court in respect thereof brought in any state or federal court sitting in the counties of Pinellas or Hillsborough, Florida, and further irrevocably waives any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum.

J. Waiver of Trial by Jury. In any action or proceeding arising herefrom, the parties hereto consent to trial without a jury in any action, proceeding, or counterclaim brought by any party hereto against the other or their successors in respect of any matter arising out of or in connection with this Agreement, regardless of the form of action or proceeding.

K. Counterparts; Facsimile Execution. This Agreement may be executed and delivered (i) in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument, and/or (ii) by facsimile, in which case the instruments so executed and delivered shall be binding and effective for all purposes.

L. Indemnification. The Producer agrees to indemnify, defend, and hold the COMPANY harmless from and against any and all claims, damages, costs, losses, and expenses, including, without limitation, reasonable attorney's fees and costs of settlement or defenses, for all acts or for those arising out of or relating to the actual or alleged negligent or actual or alleged willful misconduct of the Producer and employees or agents of the Producer with respect to their obligations under this Agreement.

M. Accounting. The COMPANY shall have the right to inspect and copy (at its own expense), and the Producer shall make available at its primary offices for such purposes, all records reflecting business placed with the COMPANY of the Producer, or its Agents, including the hierarchy of Agents and the policies written by such hierarchy, which arose, directly or indirectly, from the efforts of the Producer. Such inspection shall be granted within thirty (30) days of written request by the COMPANY for same and shall be conducted during normal business hours. The above shall not be requested for frequently than once a year.

The Producer hereby acknowledges they have read and understood all parts of this agreement including all relevant attachments. The Producer also acknowledges and understands the COMPANY may add to, remove from or amend any section of this agreement or attachments. The Producer will be held accountable for all new information, rules or regulations.

I, _____, have had the opportunity to thoroughly read and analyze this contract. I fully understand all the terms and conditions and agree to them without reservation. I have been afforded an opportunity to discuss this contract with my attorney and have declined to do so.

IN WITNESS WHEREOF, the COMPANY and the Producer have executed this Agreement as of the date first written above.

PRODUCER

X _____

X _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

ARCADIAN

HEALTH PLAN

Producer's Commission Schedule

- A. The attached commissions are stated in whole dollars (not percentages).
- B. Commissions are advanced on fully completed applications after the Company receives notification from the Center For Medicare and Medicaid Services that the applicant is eligible for coverage.
- C. Full charge back of all commissions if CMS rejects the application and/or the Company does not retain at least three months of premium from the policyholder and/or CMS. If the Company receives and retains at least three months of premium, there is no charge back of any of the commissions advanced. All commission charge backs may be charged against the next commission advance, earned commission or otherwise offset by the Company against other compensation due or to become due to you.
- D. A Paid and Issued Enrollment means each new Company MEDICARE ADVANTAGE PLAN enrollment issued with a 2007 effective date to a person who was not enrolled in an existing Company MEDICARE ADVANTAGE PLAN and with respect to which the Company retains at least three months of premium from the policyholder and/or CMS.
- E. You will not be eligible for commissions for enrolling a person from an existing Company MEDICARE ADVANTAGE PLAN to an alternative Company MEDICARE ADVANTAGE PLAN.
- F. The Company has the right, at any time, to increase or decrease the commissions payable on any policy to be issued by the Company by delivering to you thirty (30) days advanced written notice of the increase or decrease. Any such commission increase or decrease shall not be retroactive, but apply only to policies issued by the Company on or after the effective date specified in the written notice. Nothing shall prohibit you from passing on such commission increases or decreases to your agents.

ARCADIAN HEALTH PLAN

BENEFIT CONSULTANT ENROLLMENT CERTIFICATION

Course Name: “Medicare Part D Marketing Guidelines”
“Specific Guidance Regarding the Use Of Persons Employed
By An Organization To Market Or Contract With
To Perform Marketing”

Initials

I have reviewed Arcadian Health Plans’s “Medicare Part D Marketing Guidelines” training presentation.

Initials

I have received a copy of the Medicare Part D Marketing Guidelines that pertain to subcontracted sales agents. (“Person Employed by and Organization to Market or Contract with the Perform Marketing”)

Initials

I have read and understand the medicare Part D marketing Guidelines that pertain to subcontracted sales agents.

Initials

I was give the opportunity to ask questions and I understand that I may direct further questions to my supervisor and/or the subcontractor’s marketing contact.

Initials

I was given a handout that contained Arcadian Health Plan’s marketing contact information.

Printed Name: _____

Signature: _____

Date: _____

A COPY OF YOUR CURRENT STATE INSURANCE LICENSE
MUST BE ATTACHED TO THIS FORM

PRODUCER'S QUESTIONNAIRE

I. PRODUCER DATA (Please type or print clearly)

Name: _____ Date: _____

RESIDENCE INFORMATION

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Social Security #: _____ Date of Birth: ____/____/____

Marital Status: _____ Male Female _____

II. CORPORATE DATA (Complete only if you want to be appointed as a corporation)

Corporate Name: _____

Tax I.D. #: _____

BUSINESS INFORMATION

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Business Email: _____

Send Mail To: Residence Business

AUTHORIZATION AGREEMENT FOR ACH CREDITS

(Allows For Electronic Funds Transfer Of Commissions To Your Bank Account)

Company/Individual Name: _____

ID Number: (Company Tax ID or SSN) _____

I (WE) hereby authorize Arcadian Senior Health Division, herein after called **COMPANY**, to initiate, credit entries and/or correction entries to our [] Checking [] Savings account (select one) indicated below at the depository named below, herein called DEPOSITORY, to credit the same such account.

DEPOSITORY NAME: _____ BRANCH: _____

CITY: _____ STATE: _____

BANK TRANSIT/ABA NUMBER: _____ ACCOUNT NUMBER: _____

This authorization is to remain in full force until COMPANY has received written notification from me (or either of us) of its termination in such time and in such manner as to afford COMPANY and DEPOSITORY reasonable opportunity to act upon it.

NAME(S): _____ ID Number: _____

(Company Tax ID or SSN)

SIGNATURE: _____ DATE: _____

SIGNATURE: _____ DATE: _____