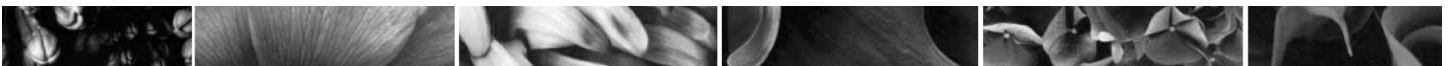




# MEDICARE PROGRAMS

PRODUCER AGREEMENT PACKET  
INDIVIDUAL AND GROUP PRODUCTS



# HEALTH NET

## PRODUCER CHECKLIST

Prior to commencing to sell or market any Health Net Medicare Product, you need to follow each step listed below to ensure accurate completion and efficient processing of your Producer Agreement. By selling or assuming Health Net business, you agree to the terms of this Agreement. Thank you.

### **STEP 1**

Complete the Producer Agreement Cover Sheet, sign and date it.

### **STEP 2**

Enclose a copy of your State Insurance license(s), and appropriate state appointment form(s) (if applicable).

**NOTE:** the name on the Producer Agreement Cover Sheet must exactly match the name appearing on the license(s) and W9 tax form.

### **STEP 3**

Enclose the appropriate completed W9 tax form:

- with your social security number, if submitting the insurance license(s) in your name
- with the tax identification number, if submitting the company insurance license(s)

### **STEP 4**

Enclose a copy of your agency affiliation (if applicable).

### **STEP 5**

Enclose a copy of your on-line certification printout(s) showing your test score.

### **STEP 6**

Send all of the above completed forms and supporting documents to our regional sales office.

Please be sure that your application is complete and accurate. Incomplete forms or applications will be returned to the applicant.

# PRODUCER AGREEMENT COVER PAGE

## MEDICARE PRODUCT - INDIVIDUAL AND GROUP

**(PLEASE PRINT: All information is required to process commission properly.)**

HEALTH NET PRODUCER ID (IF CURRENTLY CONTRACTED.):		
LICENSED PRODUCER NAME:		
DBA:		
STREET ADDRESS:		
CITY:	STATE:	ZIP CODE:
PLEASE CHECK APPROPRIATE:	<input type="checkbox"/> INDIVIDUAL / SOLE PROPRIETOR	<input type="checkbox"/> CORPORATION
	<input type="checkbox"/> PARTNERSHIP	<input type="checkbox"/> OTHER: _____
TAXPAYER ID:	OR SOCIAL SECURITY NUMBER:	DATE OF BIRTH:
BUSINESS PHONE: (        )	FAX: (        )	
EMAIL ADDRESS:		
STATE INSURANCE LICENSE NUMBER:	EXPIRATION DATE:	

### EXHIBITS

- A: CMS Requirements
- B: State-Specific Requirements
  - B-1: California
  - B-2: Oregon
- C: Commission Schedules

By selling or assuming Health Net business, the Producer named above has caused this Agreement to be executed by its respective duly authorized representative. This Agreement shall become effective on the date it is approved by Company, Health Net, Inc.

<b>PRODUCER</b>
SIGNATURE:
NAME:
TITLE:
DATE:



**Health Net®**  
A Better Decision

# HEALTH NET

## MEDICARE PROGRAMS

This PRODUCER AGREEMENT (hereinafter referred to as the “Agreement”), by and between Health Net, Inc. on behalf of the affiliates and subsidiaries of Health Net, Inc. (collectively and individually referred to herein as “Company”), and the Producer identified on the Cover Sheet (hereinafter referred to as “Producer”) shall be effective on the date it is approved by Company (“Effective Date”).

### 1. DEFINITIONS.

- a) “Individual” means a Medicare beneficiary who meets the eligibility criteria for enrollment in Company’s Medicare Product, which criteria have been approved by CMS.
- b) “Medicare Product” means one or more health benefits programs offered by Company to Groups or Individuals. The Medicare Product or Medicare Products applicable to this Agreement are set forth in the commission schedules attached as Exhibit C (“Commission Schedules”). References in this Agreement to CMS are limited to those Medicare Products that Company offers pursuant to one or more contracts with CMS.
- c) “Medicare Enrollee” means an Individual who is enrolled in Company’s Medicare Product on either a Group or Individual enrollment basis according to CMS’s records and for whom CMS has paid Company the applicable monthly payment amount.
- d) “Group” means an employer or union that meets the definition of an eligible group under applicable law and Company policies.

### 2. PRODUCER’S RESPONSIBILITIES.

- a) Producer hereby accepts appointment by Company to market Company’s Medicare Product in accordance with the terms and conditions of this Agreement. Company’s appointment of Producer is limited to those Medicare Product(s) set forth in the Commission Schedules attached as Exhibit C.

### b) COMPLIANCE.

- i. Licenses. Producer represents and warrants that Producer has all licenses (including certifications and registrations) required by applicable law to perform the services contracted for by Company. Producer shall maintain any such required licensure at Producer’s sole cost and expense. Producer represents that Producer has never suffered the loss, suspension or termination of any license issued by any governmental authority in connection with the sale of any type of insurance or in connection with the performance of any functions under this Agreement. Producer shall immediately notify Company of a termination, suspension or expiration of any license of Producer issued in connection with the performance of any functions under this Agreement. In addition, Producer shall promptly notify Company of the institution of any regulatory investigation of or disciplinary proceedings against Producer relating to any license issued to Producer by any State Insurance Commissioner or any violation of insurance consumer protection or other laws or regulations. Producer shall provide Company with evidence of Producer’s current licensure and the insurance coverage required by Section 7(i).
- ii. Laws, Etc. Producer agrees to abide by and comply with all applicable state and federal laws, regulations and guidelines in performing Producer’s services. These include laws, regulations and guidelines promulgated by the State Department of Insurance (“DOI”) and CMS (collectively, “Regulatory Agencies”) governing all aspects of the sales, marketing, service and enrollment activities of Company, and all federal health care laws (including civil monetary penalty laws). Producer also agrees to abide by and comply with applicable CMS requirements set forth in Exhibit A including, but not limited to, the CMS Marketing Guidelines. Producer acknowledges and agrees that Company’s

Medicare Supplement product is regulated by state law only and is not offered pursuant to a contract between Company and CMS. Producer agrees that Producer's services in connection with Company's Medicare Supplement product shall be governed by the Agreement, Company's policies and procedures, applicable DOI rules and regulations.

- iii. Producer shall comply with the Health Net Medicare Sales and Marketing Guidelines, and Processes and Procedures (P&P's) to the extent applicable to the Medicare Product.
- iv. Materials. Producer shall only use marketing materials that have been approved by Company and CMS.

**c) EDUCATION, TRAINING AND OVERSIGHT.**

- i. Company Programs. Both Company and Producer acknowledge that the Medicare Product is highly regulated. Producer agrees that Producer shall be and remain knowledgeable about Medicare Product requirements and Producer's obligations, all as promulgated by Regulatory Agencies and Company. Producer agrees to participate in and cooperate with Company's on-going specific education and training programs for all Medicare Products that Company has authorized Producer to sell.
- ii. Monitoring. Company will audit, have compliance oversight and provide training to Producer in connection with the Medicare Product.
- iii. Corrective Action. In the event that Producer engages in behavior which is unethical, violates applicable laws, regulations, P&P's, or guidelines, or harms the reputation of Company, Company may request in writing that Producer take appropriate corrective action. With respect to any such request, Company shall describe the allegedly improper practices with specificity and describe the corrective action, if any, that Company considers appropriate including, if necessary, the

immediate cessation of Producer's marketing of Medicare Products. Producer shall promptly take corrective action to address the issues described by Company.

**d) APPLICATION SERVICES.**

- i. Company Forms. Producer shall use Company's enrollment applications and other forms in connection with the Medicare Product. Producer agrees to diligently and to the best of Producer's ability ensure that the facts set forth by an applicant in the enrollment application are true and correct. Producer shall fully inform each applicant that Company will rely solely upon these representations in rejecting, conditionally accepting or enrolling applicant, that the subsequent discovery by Company of material facts known by applicant and either not disclosed or misrepresented on the application may result in the rescission or cancellation by Company of coverage. Producer shall receive all enrollment applications directly from prospective Individuals and Groups, and shall initially verify any such forms received for their completeness and accuracy within two (2) business days of receipt. After verification, Producer shall forward within two (2) days all applications to Company for processing. Producer understands and agrees that coverage under Company's Medicare Product cannot be effective any sooner than after receipt and approval from CMS of the enrollment application.
- ii. Applications and Eligibility. An enrollment shall only be effective on the day designated by CMS. Company shall confirm the date of eligibility of each Medicare Enrollee upon Producer's request. However, Company shall not have any responsibility or liability to Producer for failure of CMS to maintain or provide accurate or timely eligibility information.
- iii. Distribution of Information. Producer agrees to promptly forward to Individuals and Groups any information that Company may provide to Producer from time

to time for distribution. Producer shall promptly forward to Company any information from Individuals and/or Groups received by Producer that is or reasonably may be relevant to a Medicare Enrollee's or Group's eligibility or coverage status. Producer further agrees to promptly forward to Company full particulars of all inquiries and other relevant correspondence received by Producer from Individuals, Groups and Medicare Enrollees.

- e) **REPORTS.** Producer shall submit to Company such reports as may be required from time to time by Company pursuant to Company's policies and procedures.
- f) **RECORDS.** Producer shall keep full and complete records of all transactions pertaining to this Agreement and any and all other records pertaining to enrollments submitted and accepted hereunder and any and all other records that may be required by any governmental entity or Regulatory Agency in connection with Producer's relationship with the Company, its enrollees, and the public. Producer shall preserve all books and records for a period of not less than ten (10) years from the end date of this Agreement or such longer period as required by law; the first two (2) years of which shall be in an easily accessible place at the offices of the Producer. Thereafter, such records may be warehoused or stored, subject to their availability to the Company and to Regulatory Agencies within five (5) days of receipt thereof.
- g) **MEDICARE ENROLLEE AND GROUP INFORMATION, RECORDS, FILES, ETC.** Producer shall promptly provide Company with a copy of all Medicare Enrollee and Group records or other information that is required to allow Company to properly fulfill its obligations to such Medicare Enrollees and Groups and to comply with all regulatory requirements. In the event of termination of this Agreement, Producer shall return to Company all unused materials provided by Company under this Agreement.

- h) **REPRESENTATIONS, MODIFICATIONS AND AMENDMENTS.** The parties agree that Producer shall not:
  - i. Make any representations with respect to Company's Medicare Product except as may be explicitly set forth in materials prepared and provided to Producer by Company;
  - ii. Make any oral or written amendments, alterations, modifications or waivers of any of the terms or conditions applicable to any of Company's Medicare Product; or
  - iii. Bind or attempt to bind Company in any way except as expressly stated herein or in the Medicare Product documentation provided by Company.
- i) **PRODUCER EMPLOYEES AND CONTRACTORS.** Producer shall provide Company with a list of any individual producers employed by or under contract with Producer who may provide services contemplated by this Agreement on behalf of Producer. Producer shall provide Company with an updated list as changes occur. Producer agrees to the following with respect to such persons:
  - i. Producer warrants and represents that any individual employed by or contracted with Producer and who performs or may perform services pursuant to this Agreement is Health Net certified and shall remain duly licensed in accordance with applicable law. Producer shall require each such person to abide by the terms of this Agreement.
  - ii. Upon request from Company, Producer shall provide Company with evidence of such persons' employment or contractual arrangement, as applicable, as well as current licensure and insurance coverage.
  - iii. Producer shall oversee the activities of its employees and contractors in accordance with Company requirements. Producer shall notify Company immediately in the event that any person employed by or

under contract with Producer has his/her license suspended, terminated or revoked; is otherwise subject to disciplinary action or investigation under state or federal law; or has or may have violated this Agreement. Producer agrees to terminate any person's provision of services under this Agreement immediately upon discovering that the person's license has been suspended, terminated or revoked, or upon receipt of a written request from Company.

### 3. COMPANY'S RESPONSIBILITIES.

- a) **APPOINTMENT.** Company hereby appoints Producer for purposes of marketing and selling Company's Medicare Product. Nothing precludes Company from appointing others for the purposes of marketing and selling Company's Medicare Product or other products.
- b) **MARKETING MATERIALS AND FORMS.** Company shall provide Producer with copies or photo ready templates of all CMS approved marketing brochures and materials to be used in connection with the sale of the Medicare Product. Any such templates may not be modified or incorporated into other materials without the prior written consent of Company. Producer acknowledges and agrees that Producer may incur an expense in connection with the preparation, production or reproduction of marketing materials provided or made available by Company. Such expenses are subject to Section 4(e) of this Agreement. Company shall also provide Producer with any and all forms to be used in connection with enrollment and the provision of other services under this Agreement. This Section shall not be interpreted to limit or restrict Producer's ability to create any marketing materials subject to Company's and CMS' prior written approval. Company shall respond to any such requests for marketing material approval as soon as practical after receiving CMS approval.
- c) **ENROLLMENT.** Company shall receive enrollment applications from Producer and shall review such applications with respect to

Company's enrollment criteria and submit complete applications to CMS. Notwithstanding the foregoing, Company reserves the right to accept or reject any enrollment application, regardless of any determination made by Producer regarding completeness or eligibility.

- d) **COMPANY'S RIGHT TO SERVICE MEDICARE ENROLLEES AND GROUPS.** Notwithstanding any other provision of this Agreement, Company may, at any time during the term or following the termination of this Agreement, take any actions and make any communication necessary to allow Company to fulfill its obligations to continue to provide coverage to Medicare Enrollees and Group pursuant to its benefit agreement with such Medicare Enrollees and Group, and CMS requirements. Producer shall provide any information required by Company to fulfill such obligation.
- e) **NON-PROMOTIONAL PRINTED MATERIAL.** Non-promotional printed material used in the enrollment process shall be the responsibility of Company. Such material shall include the Medicare Product application forms, identification cards, transmittal and coding forms, etc. These shall be designed and printed by Company and supplied to Producer or the Medicare Enrollee and Group. They shall be prepared in sufficient quantities to support the projected enrollment.
- f) **RIGHTS OF COMPANY.** This Agreement is subject to the right of Company to:
  - i. Decline acceptance of any application deemed not acceptable by Company or CMS, as it shall determine in its sole discretion;
  - ii. Amend or rescind any benefit agreements and all other rights under the terms of any issued policies;
  - iii. Monitor the services performed by Producer;
  - iv. Modify any Company policy; and
  - v. Establish and amend a commission schedule for benefit plans not presently offered by Company.

## 4. COMPENSATION

- a) **COMPENSATION RATE.** Company shall pay Producer pursuant to the Commission Schedule set forth in Exhibit C for the applicable Medicare Product for each Individual enrolled as a Medicare Enrollee by Producer. Compensation shall be paid solely on Individuals enrolled by Producer in the Medicare Product as confirmed by CMS pursuant to a Group or Individual enrollment.
- b) **WAIVER OF OBJECTIONS TO COMPENSATION.** Producer agrees that all objections to any monthly statement provided to Producer by Company shall be waived unless Producer gives Company notice of the objections within thirty (30) days after Producer's receipt of the statement.
- c) **SPLITTING COMPENSATION.** Producer agrees that under no circumstances may Producer give any part of compensation received by Producer for the sale of Medicare Products to any Individual or to any other third party who assisted Producer in making a sale who is not licensed or otherwise eligible under applicable law to receive such compensation. Producer acknowledges and agrees that Company does not pay split commissions.
- d) **COMPANY CONTROL OF ACCOUNTS.** Producer agrees that Company shall have full control of and discretion as to the collection, adjustment or compromise of any or all CMS payments. If Company, for any reason, refunds any CMS payment for which Producer would otherwise be entitled to compensation under this Agreement, Producer shall lose all right to compensation on said payment, and shall pay to Company upon demand any amounts previously received by Producer as compensation on said CMS payment.
- e) **EXPENSES.** Producer shall be solely responsible for all expenses incurred by Producer in the performance of this Agreement unless Company notifies Producer in advance and in writing that Company will reimburse Producer for specifically identified expenses.

- f) **AMOUNTS OWED COMPANY.** Company reserves the right to offset against any commissions owed to Producer any amounts Producer owes to Company under this Agreement.
- g) **MEDICARE ENROLLEE HOLD HARMLESS.** Producer agrees that in no event, including, but not limited to, nonpayment by Company or the insolvency or breach of this Agreement by Company, shall Producer bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against a Medicare Enrollee, Group or other person, other than Company, acting on a Medicare Enrollee's behalf, for payments that are the financial responsibility of Company under the Agreement.

## 5. TERM AND TERMINATION

- a) **TERM.** This Agreement shall continue in full force and effect from the Effective Date for one year ("Initial Term"). Thereafter, this Agreement shall automatically renew for successive terms of one year each, unless either party provides the other with thirty (30) days prior written notice of non-renewal. Notwithstanding the foregoing, this Agreement may also be terminated as set forth in this Section 5.
- b) **TERMINATION WITHOUT CAUSE.** After the Initial Term, either party may terminate this Agreement without cause upon thirty (30) days prior written notice to the other party. The termination of this Agreement shall not affect the obligations of either party to the other with respect to any obligations arising prior to termination of this Agreement.
- c) **TERMINATION FOR BREACH.** Either party may terminate this Agreement upon fifteen (15) days prior written notice to the other party if the party to whom such notice is given is in material breach of this Agreement, provided that such breach is not cured to the non-breaching party's satisfaction within the fifteen (15) day notice period. Notwithstanding the foregoing, Company may terminate this Agreement immediately upon notice and without prejudice to any other right or remedy available to Company if Producer (i)

violates, in the opinion of Company, or is accused in writing of violating, in the opinion of a Regulatory Agency, any law or regulation applicable to Producer including, but not limited to, any CMS requirement applicable to Company or the Medicare Products; or (ii) makes a general assignment for the benefit of creditors or files a petition in bankruptcy. The termination of this Agreement shall not affect the obligations of either party to the other with respect to any obligations arising prior to termination of this Agreement.

d) **CONTINUING COMPENSATION PAYMENTS FOLLOWING TERMINATION.**

- i. In the event that Company terminates this Agreement under any of the circumstances set forth in Section 5(c) of this Agreement, Company's obligation to pay Producer any commissions shall cease as of the effective date of termination.
- ii. Company's obligation to pay Producer any commissions shall cease as of the date of Producer's assignment, sale or transfer of its business or of its rights under this Agreement without the prior written consent of Company as required under Section 7(c) of this Agreement.
- iii. In the event that this Agreement is terminated under any other circumstances, Company shall continue to pay Producer any commissions on Medicare Enrollees and Groups enrolled by Producer prior to the date of termination of this Agreement, for so long as the Medicare Enrollee or Group, as applicable, remains enrolled in the Medicare Product for which Producer so enrolled the Medicare Enrollee or Group, and so long as the Medicare Enrollee or Group does not designate another producer of record.

e) **COMMUNICATIONS FOLLOWING**

**TERMINATION.** In the event of termination or notice of termination of this Agreement, the parties agree that they will not thereafter make any written or oral statements or communications to Medicare Enrollees or Groups that

disparage or criticize the other party or the quality of services provided thereby.

## 6. CONFIDENTIAL AND PROPRIETARY INFORMATION

- a) **CONFIDENTIAL INFORMATION.** During the term of this Agreement and in the course of Producer's performance hereunder, Producer may receive and otherwise be exposed to certain confidential and proprietary information relating to Company's business practices, strategies, and technologies (collectively referred to hereafter as "Confidential Information"). Confidential Information shall also include, but not be limited to, information related to marketing and customer support strategies; Company's financial information, including sales, costs, profits and pricing methods; Company's internal organization, employee lists and Group lists and Medicare Enrollee lists; and information of third parties as to which Company has an obligation of confidentiality.
- b) **NON-DISCLOSURE OF CONFIDENTIAL INFORMATION.** Producer acknowledges the confidential and secret character of all Confidential Information that Producer may have access to or become acquainted with, and agrees that all such Confidential Information is the sole, exclusive, and extremely valuable property of Company. Accordingly, Producer agrees not to circulate, otherwise share, distribute or reproduce any of the Confidential Information without Company's prior written consent; Producer will not use the information except in the performance of the Agreement, and Producer will not divulge all or any part of the Confidential Information in any form to any third party, either during or after the term of this Agreement. Upon termination of this Agreement for any reason, including expiration of the term of this Agreement, Producer agrees to cease using and to return all whole and partial copies and excerpts, derivatives, summaries, or analyses of the Confidential Information, whether in Producer's possession or under Producer's direct or indirect control.

- c) **PROTECTION OF MEDICARE ENROLLEE INFORMATION.** Producer further acknowledges that Medicare Enrollee medical and nonpublic personal financial information shall remain the property of Company, shall be deemed confidential, and shall not be disclosed or removed from Company facilities without the express prior written consent of Company. Producer shall comply with the state financial information privacy laws to the extent applicable.
- d) **SURVIVAL.** This Section 6 shall survive the termination of this Agreement for any reason.

## 7. MISCELLANEOUS.

- a) **INDEPENDENT CONTRACTOR.** Producer shall be an independent contractor with respect to Company. Nothing contained in this Agreement is intended to create, nor shall it be construed to create, any relationship between the parties other than that of independent parties contracting with each other solely for the purpose of effectuating the provisions of this Agreement; neither is this Agreement intended, except as may otherwise be specifically set forth, to create a relationship of agency, representation, joint venture, or employment between the parties. The parties agree that no payroll or employment taxes of any kind shall be withheld or paid with respect to payments to Producer under this Agreement. The payroll or employment taxes that are the subject of this section include, but are not limited to, FICA, FUTA, federal personal income tax, state income tax, and state unemployment insurance tax. Producer shall pay any payroll or employment taxes that are due to any taxing authority by virtue of Producer's work under this Agreement. Producer shall comply with the applicable workers' compensation laws as applicable to Producer.
- b) **HEADINGS.** The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

- c) **ASSIGNMENT.** Producer shall not assign, sell or transfer this Agreement or any interest herein without the prior written consent of Company, and any unauthorized assignment or transfer of this Agreement or any interest therein shall be null and void.
- d) **WAIVER.** Waiver of a breach of any provision of this Agreement shall not be deemed a waiver of any other breach of the same or different provision.
- e) **SEVERABILITY.** In the event that any provision of this Agreement is rendered invalid or unenforceable by any valid law or regulation of the State identified in Section 7(l) or of the United States, or declared void by any tribunal of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.
- f) **AMENDMENT.** Producer agrees that the Company shall have the right to amend the Agreement and Commission Schedules as it deems appropriate. Modifications and amendments to the Agreement and Commission Schedules shall become effective on the date set forth in any such modification, amendment or endorsement or upon the date the Producer receives notification of the Amendment or replacement Commission Schedule as defined below, whichever is earlier. Producer will be deemed to have received notification upon the date his/her office signs a certified or registered return receipt of said notification or the expiration of seven (7) days from the United States Post Office postmark date of the mailing to him/her by the Company, whichever is earlier.

Notwithstanding anything to the contrary in the above, any amended Commission Schedules shall apply prospectively only to new Individual and Group policy applications submitted to the Company by Producer after the effective date of the amendment. Commissions for Individual and Group policies issued prior to the effective date of any amended Commission Schedule shall be governed by the producer Agreement and Commission

Schedule in effect at the time of issuance of said Individual or Group policies.

- g) **NOTICES.** Any notice or other communication required or permitted hereunder shall be in writing and shall be delivered personally, sent by facsimile transmission, or sent by regular U.S., mail or certified, registered or express mail, Federal Express (or similar overnight courier service), postage prepaid. Any facsimile transmission shall be confirmed by another method permitted hereunder. Any such notice shall be deemed given either (1) at the date and time when so delivered personally or sent by facsimile transmission (assuming facsimile transmission is confirmed as required by the preceding sentence), or (2) if mailed, three (3) days after the date of deposit in the mail, addressed as follows:

If to Producer, at the address set forth on the Cover Sheet.

If to Company:

**Health Net, Inc.**

21650 Oxnard Street

Woodland Hills, CA 91367

The parties must give notice in accordance with this Section 7(g). However, either party may change the address or person designated to receive such notice by notifying the other party in accordance with this Section 7(g).

- h) **INDEMNIFICATION.** Producer agrees to indemnify and hold harmless the Company from any and all claims, liability, loss, cost, damage, or expense for, on or account of injury to or death of persons, damage to, destruction or loss of property occurring by reason of any misfeasance or nonfeasance by Producer, its employees or contractors, or Producer's, its employees' or contractors' failure to conform to the provisions of this Agreement. Without limiting the generality of the foregoing, Producer further agrees to reimburse Company for any expenses which it may incur in enforcing Producer's obligations hereunder, including but not limited to court costs and attorney's fees. The obligations of Producer to indemnify the Company shall survive the termination of the Agreement.

- i) **INSURANCE.** Producer shall at all times maintain Errors and Omissions Insurance in amounts consistent with industry standards, but no less than \$1,000,000 per occurrence and \$1,000,000 aggregate limit of all claims filed in a policy year for Producer and its employees and agents. Upon Company's request, Producer shall provide Company with written proof of Producer's compliance with this section.
- j) **ARBITRATION.** Binding /Mandatory Arbitration: The parties agree to meet and confer in good faith to resolve any problems or disputes that may arise under this Agreement. Such good faith meet and confer shall be a condition precedent to the filing of any arbitration demand by either party. In addition, should the parties, prior to submitting a dispute to arbitration, desire to utilize other impartial dispute settlement techniques such as mediation or fact-finding, a joint request for such services may be made to the American Arbitration Association ("AAA") or the Judicial Arbitration and Mediation Services ("JAMS"). Or the parties may initiate such other procedures as they may mutually agree upon at such time.

The parties further agree that any controversy or claim arising out of, or relating to this Agreement, or the breach thereof, whether involving a claim in tort, contract, or otherwise, shall be settled by final and binding arbitration, upon the motion of either party, for arbitration under the appropriate rules of the AAA or JAMS, as agreed by the parties. The arbitration shall be conducted in Sacramento, Los Angeles or San Francisco, California, by a single neutral arbitrator who is licensed to practice law. The written demand shall contain a detailed statement of the matter and facts and include copies of all related documents supporting the demand. The party seeking arbitration must initiate arbitration within six (6) months after the alleged controversy or claim giving rise to the dispute occurred, by submitting a written demand to the other party. The failure to initiate arbitration within that period shall conclusively mean the complaining party shall be barred forever from

initiating such proceedings as to the controversy or claim giving rise to the dispute.

All such arbitration proceedings shall be administered by AAA or JAMS, as agreed by the parties; however, the arbitrator shall be bound by applicable state and federal law, and shall issue a written opinion setting forth findings of fact and conclusions of law. The parties agree that the decision of the arbitrator shall be final and binding as to each of them. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitrator shall have no authority to make material errors of law or to award punitive damages or to add to, modify, or refuse to enforce any agreement between the parties. The arbitrator shall make written findings of fact and conclusions of law and shall have no authority to make any award which could not have been made by a court of law. The party against whom the award is rendered shall pay any monetary award and/or comply with any other order of the arbitrator within sixty (60) days of the entry of judgment on the award. The parties waive their right to a jury or court trial.

In all cases submitted to arbitration, the parties agree to share equally in paying the administrative fee as well as the arbitrator's fee, if any, unless otherwise assessed by the arbitrator. The filing fees shall be advanced by the initiating party subject to final apportionment by the arbitrator in an award.

- k) **NO THIRD PARTY BENEFICIARY.** Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person, firm, or corporation other than the parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this Agreement or any term, covenant, or condition hereof, as third party beneficiaries or otherwise, and all of the terms, covenants, and conditions hereof shall be for

the sole and exclusive benefit of the parties hereto and their successors and assigns.

- l) **GOVERNING LAW.** This Agreement shall be governed by and construed according to federal law to the extent federal law applies, and otherwise by the laws of the state where the Health Net affiliate or subsidiary accessing Producer's services pursuant to this Agreement is situated. All actions relating to this Agreement shall be brought and heard in a court of competent jurisdiction located in the county and state of such Health Net affiliate or subsidiary, and the parties hereby consent to the jurisdiction of such court and waive any objection to such venue.
- m) **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement of the parties with respect to the subject matter hereof. No promises, terms, conditions, or obligations other than those contained herein shall be valid or binding. Any prior agreements, statements, promises, either oral or written, made by any party or agent of any party that are not contained in this Agreement are of no force or effect.
- n) **SUBCONTRACTS.** To the extent that Producer performs its obligations through subcontracts, such subcontractors shall be subject to the prior approval of Company. Producer agrees to incorporate the terms of Exhibit A into its contractual arrangements with subcontractors.
- o) **STATE-SPECIFIC REQUIREMENTS.** The parties agree to comply with the applicable provisions of Exhibit B, State-Specific Obligations, to the extent applicable to Producer's operations. In the event of conflict between the terms and conditions of this Agreement and Exhibit B, the terms and conditions of Exhibit B shall control.

# EXHIBIT A

## CMS REQUIREMENTS

Producer agrees to comply with the following CMS requirements with respect to this Agreement and all Medicare Products covered by it. To the extent that the terms and conditions of the Agreement directly conflict with or contradict any terms and conditions set forth in this Exhibit, the terms and conditions of this Exhibit shall control.

1. Producer agrees to comply with all applicable state and federal laws including, but not limited to, Medicare laws, regulations, and CMS instructions. Producer agrees any coordinated marketing by Producer must be done in accordance with all applicable Medicare Advantage, Part D laws, CMS policies, including CMS marketing guidelines, and all Federal health care laws (including civil monetary penalty laws).
2. Producer agrees to comply with all State and Federal confidentiality and security requirements, including the requirements established by Company and the Medicare Advantage (42 C.F.R. § 422.118) and PDP (42 C.F.R. § 423.136) programs.
3. Producer agrees to abide by CMS Marketing Guidelines.
4. Producer will maintain all pertinent records and information related to the services rendered by Producer under the Agreement in an accurate and timely manner.
5. Producer and Company agree that Company may delegate activities or functions to Producer only in a manner consistent with the following requirements: (i) the Agreement shall specify Producer's delegated activities and reporting responsibilities; (ii) Company may revoke delegation of the activities and reporting responsibilities in instances when CMS or Company determines that Producer has not performed satisfactorily; and (iii) Producer shall comply with all applicable Federal laws, regulations, and CMS instructions.
6. Producer agrees that the services or other activity performed by it under this Agreement shall be consistent and comply with Company's contractual obligations to CMS.
7. Company and its contractors, and subcontractors paid by Company to fulfill obligations under a CMS contract, are subject to certain laws that are applicable to individuals and entities receiving federal funds. Producer acknowledges that payments it receives from Company are, in whole or in part, from federal funds.
8. To the extent that Producer performs its obligations through subcontracts, such subcontractors shall be subject to the prior approval of Company. Producer agrees to incorporate the terms of Exhibit A and this Addendum into its contractual arrangements with subcontractors.
9. Producer agrees that (i) the Department of Health and Human Services ("HHS"), the Comptroller General, or their designees have the right to inspect, evaluate, and audit any pertinent contracts, books, documents, papers, and records of Producer involving transactions related to Company's contract with CMS; and (ii) HHS', the Comptroller General's, or their designee's right to inspect, evaluate, and audit any pertinent information for any particular contract period that exists through ten (10) years from the final date of the contract period or from the date of completion of any audit, whichever is later.
10. Producer acknowledges and agrees that the responsibilities performed by Producer are monitored by Company on an ongoing basis, and that Company is ultimately responsible to CMS for the performance of all services.
11. Producer acknowledges and agrees that it cannot solicit or sell to Individuals in a physicians office, waiting room or examining room.

12. Producer and Company acknowledge and agree that Company oversees and is accountable to CMS for any functions or responsibilities imposed by CMS, and that Company maintains ultimate responsibility for adhering to and otherwise fully complying with all terms and conditions of Company's contract with CMS. Accordingly, Producer agrees that Company shall, on an ongoing basis, monitor Producer's performance directly or through an auditing or consulting firm engaged by Company, and Producer agrees to cooperate with Company and its auditors, consultants and representatives in connection therewith.
13. Producer agrees to make the following disclosure, prior to enrollment or at the time of enrollment, in writing, to each Individual:

“The person that is discussing plan options with you is either employed by or contracted with [Name of Health Net affiliate]. The person may be compensated based on your enrollment in a plan.”

# EXHIBIT B

## STATE-SPECIFIC REQUIREMENTS

# EXHIBIT B-1

## CALIFORNIA

This Exhibit B-1 is limited to the performance of Company and Producer's respective obligations under the Agreement that are performed in the State of California.

### 1. COMPLIANCE WITH KNOX-KEENE HEALTH

**CARE SERVICES PLAN ACT.** Producer agrees to comply with the following provisions of the Knox Keene Health Care Services Plan Act ("Act"):

- a. All funds received by Producer for the account of Company shall at all times be segregated from the assets of Producer and shall be promptly deposited to a trust account in a state or federal bank authorized to do business in this state and insured by an appropriate federal insuring agency. "Promptly deposited" means deposited no later than the business day following receipt by Producer.
- b. All funds received by Producer for the account of Company shall be transmitted to Company within (5) five business days after such funds are received by Producer.
- c. Producer shall comply and shall cause its principal persons and employees to comply with all applicable provisions of the Act and the rules thereunder.
- d. Producer shall promptly notify Company of the institution of any disciplinary proceedings against it or against any of its principal persons or employees relating to any license issued to any such person by the California Insurance Commissioner.

- e. Producer shall at all times maintain a tangible net worth at least equal to twenty percent (20%) of Producer's aggregated indebtedness or \$10,000, whichever is greater, and shall maintain liquid net assets of at least \$5,000 in excess of its current liabilities. The foregoing sentence shall not apply to Producer if Producer accepts only funds in the form of checks payable to Company, Medicare Enrollees or other persons contracting with Company and forwards such checks to the payee by the close of the business day following receipt thereof.
  - f. Producer shall not permit an employee to maintain an account with a financial institution for funds of Company, Producer, Medicare Enrollees or group representatives, except an account which is in the name of and under the control of Producer.
  - g. Producer shall not permit an employee or contractor to receive funds on behalf of Company or Producer except in the form of checks payable to Company or if such person deposits such checks to an account of Producer or Company by the close of the business day following receipt thereof.
2. **NO MEDICARE ENROLLEE CONTACT.** Producer agrees that under no circumstances shall Producer discuss with any Medicare Enrollee any coverage or plan option that does or could compete with Company's Medicare Products without the express prior written consent of Company.

# EXHIBIT B-2

## OREGON

This Exhibit B-2 is limited to the performance of Company and Producer's respective obligations under the Agreement that are performed in the State of Oregon on behalf of Health Net Health Plan of Oregon, Inc. and Health Net Insurance Company.

1. **TERM AND TERMINATION.** The following paragraphs (a) and (b) shall govern the parties' respective rights and obligations in lieu of Sections 5(a) and 5(b) of the Agreement:

a) **TERM.** This Agreement shall commence on the Effective Date and shall continue in full force and effect from the Effective Date through December 31 of the current year ("Initial Term"). Thereafter, this Agreement shall automatically renew for successive terms

of one year each, unless terminated upon the mutual agreement of the parties or as otherwise provided herein.

b) **TERMINATION WITHOUT CAUSE.** After the Initial Term, either party may terminate this Agreement without cause as follows. Company may terminate this Agreement upon no less than ninety (90) days prior written notice to Agent. Notwithstanding the foregoing, Agent may terminate this Agreement upon thirty (30) days prior written notice to Company. The termination of this Agreement shall not affect the obligations of either party to the other with respect to any obligations arising prior to termination of this Agreement.

# EXHIBIT C

## COMMISSION SCHEDULES

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**Health Net<sup>®</sup>**  
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*Health Net Medicare Programs*  
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