

Aetna Producer Agreement



Aetna Producer Agreement

This Aetna Producer Agreement (this “Agreement”) is between Producer and Aetna Health Management, LLC, a Delaware limited liability company, on behalf of itself and its affiliates (collectively, “Company”). For purposes of this Agreement, Aetna’s affiliates shall, at Aetna’s election, include any corporation, partnership or other legal entity directly or indirectly owned or controlled by, or which owns or controls, or which is under common ownership or control with Company. This Agreement is effective as of the date provided on the attestation page of the online application for appointment (“Agreement Effective Date”).

A. Duties and Authority of Producer

1. Producer shall solicit from groups and members of the general public, applications for the products included in Addendum A (“Company Products”), which is hereby made a part of this Agreement. Producer is only authorized to solicit business for, and this Agreement only applies to, the product included in Addendum A. Producer’s authority under this Agreement is non-exclusive.
2. Producer will service Company customers and insureds issued Company Products as a result of applications submitted by Producer (hereinafter, referred to as “Insured” or “Insureds”).
3. Producer agrees to secure and maintain such licenses, certifications and appointments by Company as is necessary to transact business on behalf of Company and as required by any state or jurisdiction where Producer solicits sales of any Company Products. Producer shall provide Company copies of all required licenses. Producer further agrees to notify Company immediately of any expiration, termination, suspension or other action by a Department of Insurance or any other governmental agency affecting said license or appointment. Producer further agrees to notify Company in writing immediately upon receiving notice of any misdemeanor or felony charges or any actions including, but not limited to, convictions by any governmental authority for commission of any act involving fraud, dishonesty, breach of trust, theft, and misappropriation of money or breach of any fiduciary duty.
4. Producer agrees to comply with the rules of Company relating to the completion and submission of applications, assist in the installation of Company Products, and to make no representation with respect to the benefits of any benefit contract or policy offered by Company not in conformity with the material prepared and furnished to Producer for that purpose by Company. Producer further understands that any quote Producer may develop out of their own system, a third-party vendor system, or in their own format for purposes of discussion with prospective clients shall be for illustrative purposes only and not binding on Company. Producer shall use best efforts to ensure that each application for coverage is fully and truthfully completed by the applicant and the completed application fully and accurately reflects and discloses the circumstances, including, if applicable, the health condition, of persons for whom coverage is sought in the application. Producer further agrees, and agrees to inform every applicant who is required to provide health information, that Company will rely upon said health representations in the underwriting process, and that the subsequent discovery of material facts known to applicant and either not disclosed or misrepresented may result in the rescission of any benefit contract or policy entered into by Company. Producer will also inform the applicant that in no event will the applicant have any coverage unless and until the application is reviewed and approved by the Company and a benefit contract or policy is issued.
5. Producer is not authorized to, and agrees not to, enter into, alter, deliver or terminate any benefit contract or policy on behalf of Company, extend the time of payment of any charges or premiums, or bind Company in any way. Producer acknowledges and agrees that Company reserves the right, in accordance with applicable law, to reject any and all applications submitted by Producer.

6. Producer is not authorized to receive any Company funds except the initial premiums for Company Products if expressly permitted by Company in writing, and Producer is not authorized to deduct compensation, service fees or allowances from any initial premiums Producer may be permitted to collect. Any funds that Producer does receive for or on behalf of Company shall be received and held by Producer in a fiduciary capacity, shall be separately accounted for, shall not be commingled by Producer with personal funds of Producer or other business accounts managed or owned by Producer, shall be deposited to a trust account in a state or federal bank authorized to do business in the appropriate state and insured by an appropriate federal insuring agency, and shall be remitted to Company promptly but in no event later than five (5) calendar days from the date of receipt. Nothing in this Agreement shall preclude Producer from collecting any fees from Insureds other than those amounts that are due and owing to Company by Insureds. Such fees can include an application fee so long as the Producer provides value-added services to the Insured during the Insured's application process that are in addition to the services that a producer typically provides during the application process.
7. Producer shall not broadcast, publish or distribute any advertisements or other material relating to Company Products, not originated by Company, nor use the name, trademark or logo of Company in any way or manner without Company's prior written consent and then only as specifically authorized in writing by Company. The restrictions on promotional and descriptive material included in this Paragraph 7 includes, but is not limited to, enrollment materials, internet communications or any other electronic transmissions representing Company Products, brochures, telephone directory advertisements (print or electronic) and Producer or agency company listings.
8. Producer agrees to maintain complete and separate records for Company for a period of at least ten (10) years of all transactions pertaining to applications submitted to and accepted by Company, and any other documents as may be required by the applicable Department of Insurance or other governmental agency. Any and all records described above or as may otherwise relate to Producer's activities in connection with Company business shall be accessible and available within five (5) days of request to representatives of Company, and to federal, state and local governmental authorities having jurisdiction over Company, or their respective designees, each of whom may audit such records at any time upon reasonable prior notice while this Agreement is in effect or within ten (10) years after termination thereof.
9. Producer agrees to obtain and maintain Errors and Omissions Insurance coverage with minimum amounts of \$1,000,000 per incident and \$1,000,000 in aggregate, or such higher amounts as may be required by law or as determined by Company, and from a carrier satisfactory to Company. Producer shall provide to Company, upon request, certificates of insurance evidencing such coverage. Producer agrees to make best efforts to provide Company with notice as soon as reasonably practicable of any modification, termination or cancellation of such coverage.
10. Producer is an independent contractor and shall have no claim to commissions except as may be provided in this Agreement and Producer shall not be entitled to reimbursement from Company for any expenses incurred in performing any of its obligations under this Agreement. Producer further agrees that to the extent of any indebtedness to Company from Producer, Company shall have a first lien against any compensation which may be due Producer by Company, and such indebtedness may be deducted at the Company's option from any compensation which may be due Producer by Company regardless of how such indebtedness was created. Moreover, this Agreement does not give Producer any power of authority other than as expressly granted herein and no other or greater power shall be implied from the grant or denial of powers specifically mentioned herein.

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

In addition, Producer acknowledges and agrees that Company may impose required privacy and security measures from time to time, including but not limited to, encryption of electronic devices that are used by Producer in fulfilling its obligations under this Agreement, and that it shall promptly implement such security measures following Company's disclosure of the same. Failure to promptly implement such security measures shall be considered a material breach under Paragraph 3 of Section C of this Agreement. Upon termination of this Agreement, or sooner if requested by Company, Producer will immediately deliver to Company any and all literature, documents, data, information, order forms, memoranda, correspondence, customer and prospective customer lists (obtained from Company), customer orders, records, cards or notes acquired, compiled or coming into Producer's knowledge, possession, custody or control in connection with his/her activities as a sales agent/producer or sales representative of Company, as well as all machines, parts, equipment, rating tools and other materials received by Producer from Company or from any of its customers, agents/producers or suppliers in connection with such activities.

12. With respect to information concerning customers of Company, Producer agrees to:
- a) Ensure that any agent, including a subcontractor, to whom it provides any such information received from, or created or received by Producer, agrees to the same restrictions and conditions that apply through this Agreement to Producer with respect to such information; and
 - b) In no event, without Company's prior written approval, provide such information to any employee or agent, including a subcontractor, if such employee, agent or subcontractor receives, processes, or otherwise has access to such information outside of the United States.
13. Producer shall indemnify, defend and hold Company harmless from and against any loss, damage or expense, including reasonable attorneys' fees, caused by or arising from the negligence, misconduct or breach of this Agreement by Producer or any of its permitted agents' or subcontractors' use of automatic dialing systems, artificial or prerecorded voice messages, SMS text messages, and fax machines, or from the failure of Producer or any of its permitted agents or subcontractors (or other persons purporting to act on any of their behalf) to comply with any federal or state laws, rules or regulations now in effect or as they may be enacted, amended, or interpreted during the term of this Agreement.
14. Company reserves the right, in its sole discretion, without any liability or obligation to Producer, to operate Company's business, including making any changes to its business operations, as it chooses, including taking any of the following actions:
- a) To discontinue and withdraw from distribution any Company Product in any state;
 - b) To modify or amend any benefit contract or policy;
 - c) To establish, modify or change the premium rate charged by Company for any Company Product

- d) To determine all terms, conditions, and limitations, including the effective date, of any benefit contract or policy
 - e) To modify or change the terms and conditions pursuant to which any Company Product is authorized to be sold;
 - f) To cease doing business in any state or jurisdiction;
 - g) To reject any application for coverage submitted by Producer;
 - h) To modify or discontinue, or change the form or methodology of, any payments of commissions (as such term is defined in Paragraph 1 of Section B) to Producer (to the extent any such payments were previously made) upon prior notice as set forth Paragraph 8 of Section F, including all commission payments due and owing to Producer by Company for all new business produced by Producer as of the effective date of such modification or change and all business in force as of the effective date of such modification or change.
 - i) To establish, modify or change any Company processes that differentiate between Producer and other producers of Company, including processes that may include or exclude conditions on the issuance of quotes.
15. Producer agrees to participate in any and all seminars, online training courses, and other education programs that Company may require from time to time. To the extent Company requires Producer to certify to the completion of such programs, or to obtain a minimum score on a program that contains an examination, the Producer must so certify or obtain such score. The failure to participate in such program, or to so certify or obtain such minimum score, if required, shall enable the Company to terminate this Agreement pursuant to paragraph 3 of Section C.
16. Producer shall cooperate fully with Company in effectuating the terms of this Agreement, in its business operations with Insureds and its potential customers, and in any investigation or proceeding of any regulatory or governmental body, or court of competent jurisdiction, including, where required by law, making its books and records available to such entities for inspection, if it is determined by Company that the investigation or proceeding affects matters covered by, related to, or arising out of this Agreement.
17. Producer agrees to reasonably assist Company, at no cost to the Company, to ensure Company's compliance with all applicable laws, rules or regulations that relate to the Company Product(s) sold to the Insured. Such assistance shall include, but not be limited to, (a) providing notice to Company regarding Producer's receipt of a request by Company's member, an Insured, or prospective Insured for a Summary of Benefits and Coverage (as defined by federal law) ("SBC"); and/or (b) providing timely delivery of the SBCs to Company's members, Insureds, and prospective Insureds, in each case as Company may request pursuant to the terms of its written policies that are communicated to Producer and that may be amended from time to time. Upon request by Company, Producer shall promptly provide Company with all relevant information and/or documentation regarding Producer's fulfillment of its obligations set forth in this Section. Furthermore, Producer agrees to indemnify Company from and against any loss, damage or expense, including reasonable attorneys' fees, caused by or arising from Producer's failure to provide such reasonable assistance.
18. Producer agrees to comply, and will cause its principal persons and employees to comply, with any and all applicable state laws and regulations, including any and all applicable anti-corruption and anti-money laundering laws, other applicable rules, regulations and including, without limitation, those of the U.S. Office of Foreign Assets Control and the Securities and Exchange Commission, as well as the Foreign Corrupt Practices Act 1977 (as amended) with respect to all matters arising out of and in connection with this Agreement. With respect to anti-corruption laws, no money or other inducement will be offered, promised or paid in connection with this Agreement for the purpose of influencing an official act or decision, to exert influence or otherwise secure an improper advantage, or to obtain or retain business, and all transactions related to this Agreement will be fully, accurately and transparently recorded. In addition, Producer agrees that it does not and will not discriminate on the basis of race, color, national origin, disability, age, sex, gender identity, sexual orientation, or health status in its performance under this Agreement.

B. Commissions

***THIS SECTION SHALL ONLY APPLY TO THE EXTENT PRODUCER RECEIVES COMMISSIONS FROM
COMPANY PURSUANT TO THE APPLICABLE COMMISSION SCHEDULE***

1. **Commissions.** For purposes of this Agreement, the term “commissions” shall be defined broadly to include any compensation paid by Company out of Company funds to Producer on Company’s behalf in exchange for the services provided by Producer and described in this Agreement and may include payments based on (i) the amount of premium collected by Company from an Insured or (ii) the number of employees eligible for benefits employed by Insured, in each case, which are included in the premiums charged by Company to Insured, but shall specifically exclude (a) any bonus payments; and (b) any payments made by an Insured to Producer for which Company acts as a billing and collection agent or in a similar capacity, including payments that Producer has negotiated directly with Insured and are collected outside of Company’s premium. Company will pay Producer commissions on the benefit contracts or policies produced by Producer and issued by Company, if such commissions are required to be paid, in accordance with the terms set forth in the applicable commission schedule, which is hereby made a part of this Agreement. Calculations for any commissions owed by Company to Producer under this Agreement shall commence as of the effective date of the benefit contract or policy, subject to the requirements outlined in this Section B and in Section C, below.
2. **Agent of Record.** Commissions will only be paid on such business for the time period which Producer has been designated “Agent of Record” or “Broker of Record” in writing by the Insured. Any change in “Agent of Record” or “Broker of Record” designation by an Insured must either be (i) in writing on the plan sponsor’s letterhead and signed by an authorized company officer or other Insured personnel acceptable to Company, or (ii) provided to Company by a state- or federally-based exchange. An “Agent of Record” or “Broker of Record” letter that designates a change for commission payments (including a change in the recipient of such payments) will become effective on the first of the month following receipt by the Company unless another future date is designated in the letter. If commission payments are adjusted retroactively and Producer is no longer the “Agent of Record” or “Broker of Record” as of an earlier date, Producer agrees that Company can set- off against future commissions, and/or can require Producer to remit to the Company any excess commission payments made by the Company within ten (10) days of the effective date except to the extent Producer can document, to the reasonable satisfaction of Company, that Producer continued to service such customer during the period between such earlier date and the retroactive date.
3. **Electronic Delivery.** Any or all commission required to be paid by Company under this Agreement may, in Company’s sole discretion, be paid to Producer by electronic means. Company reserves the right to withhold commissions until Producer has established the means for Company to pay Producer electronically. If Company delivers payment to Producer by paper check, Company may assess a reasonable delivery fee, the reasonableness of which shall be determined by Company in its sole discretion. If paper check is required, Company may either separately invoice Producer for the delivery fee or reduce the commissions otherwise owed to Producer.
4. **Renewal Commissions.** Subject to Paragraph 7 of Section B, renewal commissions shall be payable to Producer by Company, subject to the terms of this Agreement, including the applicable commission schedule, as long as no other producer is designated in writing as “Agent of Record” or “Broker of Record” by the Insured with respect to the benefit contract for which renewal commissions are paid.

5. Commission Assignment Rights.

- a) Producer may, with Company's prior written consent, assign commissions payable with respect to individual medical policies and/or group benefit contracts produced by Producer and issued by Company under this Agreement, subject to the following conditions:
 - i. The assignment must be in writing, in a form acceptable to Company and irrevocable, and will be honored only when the assignee certifies that (a) the assignor is a true employee of the assignee (or that the assignor is a partner of the assignee if the assignee is a partnership), (b) the assignor is required to assign all commissions to the assignee as a condition of employment and (c) because of such relationship, it is appropriate for Company to report such commissions for tax purposes as income to the assignee;
 - ii. The terms of the assignment must be determined by Company not to prejudice the interest of Company;
 - iii. This Agreement is in force and in good standing at the time of assignment; and
 - iv. The Company determines in its sole discretion that such assignment of commissions is lawful.
- b) Any purported assignment or transfer of any interest in Producer's commissions other than in strict compliance with this Paragraph 3 shall be void as to Company.
- c) Any assignment or transfer of any interest in Producer's commission in compliance with this Paragraph 3 will not relieve Producer of its obligation to refund any impermissible commission payments, including, without limitation, payments made to Producer prior to Company's receipt of an "Agent of Record" or "Broker of Record" letter that designates a retroactive change in an Insured's producer.

6. Rights to Commissions on Termination. If this Agreement terminates (other than under Paragraph 3 of Section C), the Company shall continue to pay commissions to Producer (excluding commissions on an Aetna Medicare group policy/benefit contract except as otherwise specified by Aetna) at the applicable renewal rates used by Company to pay renewal commissions to Producer on benefit contracts and policies produced by Producer at the time of termination for as long as Producer continues to be designated as "Agent of Record" or "Broker of Record" by the Insured with respect to the benefit contract for which renewal commissions are paid. Notwithstanding anything said above, should an individual Producer be hired by Company as an employee at any point after this Agreement becomes effective, such individual Producer shall not be entitled to any commissions for any renewal or on-going benefits contracts whether or not customer wishes Producer to remain as "Broker of Record." Payment of commissions shall cease as of the date of hire by the Company. Please also reference Term and Termination.

7. Loss of Renewal Commissions.

- a) No further commissions shall be payable to Producer should Company terminate this Agreement pursuant to Paragraph 3 of Section C.
- b) If Producer is receiving commissions pursuant to post termination rights under Paragraph 6 of Section B, no further commissions shall be payable to Producer if:
 - i. Producer fails to immediately remit to Company any funds received on behalf of the Company;
 - ii. Notwithstanding Company's right of setoff, Producer shall at any time be indebted to Company for more than sixty (60) days;
 - iii. Producer induces or attempts to induce any Insured to give up coverage or replace a benefit contract or policy with coverage by another company unless such change is clearly in the best interest of the Insured;
 - iv. Producer purports to act, or represents that Producer is entitled to act, in any way on behalf of Company other than as expressly permitted by this Agreement; or
 - v. Producer commits any act of fraud or dishonesty, engages in inappropriate behavior or conduct, breaches any fiduciary duty or does anything which would have been a material default or substantive breach during the period this Agreement remained in effect.

8. **Limitations on Commission Payments.** Subject to the terms of this paragraph and the applicable addendum, Company will pay to Producer commissions due under this Agreement within thirty (30) days following the end of each calendar month based on premiums actually received and recorded by Company, if such commission is required to be paid. However, Company reserves the right to accumulate commissions until commissions due Producer equal at least \$100.00. In addition, if Company does not receive a required percentage of the Insured's billed premium within thirty (30) days of such billed premium's due date, the Company may withhold payment of any and all commissions that are otherwise due to Producer that are associated with such billed premium. The Company shall disclose any such required percentage in writing to Producer prior to implementing any premium collection requirement. If a return premium charge is due on Producer-generated business, Company has the right to charge back to Producer, or set-off against future commissions due Producer, the amount of commission previously paid to Producer on the amount of returned premium charge in situations in which commission payments by Company to a Producer are based on premiums paid by an Insured to Company. If employee eligibility for an Insured is retroactively adjusted, Company has the right to charge back to Producer, or set-off against future commissions due Producer, the amount of commission previously paid to Producer based on the number of eligible employees in situations in which commission payments by Company to a Producer are based on eligible employees of an Insured.
9. **Offsets and Overpayments.** Company shall not seek to offset or have the Producer remit any overpayments to Company beyond two years from the date of the event(s) giving rise to such recovery or offset efforts by Company. Notwithstanding the foregoing, the Company shall be entitled to seek to offset any amounts due from Producer to Company under this Agreement or otherwise or have the Producer remit such overpayments beyond such two year period if the Company initiates such actions within such two year period. These rights are in addition to any other rights or remedies Company may have under this Agreement or otherwise. Producer shall not seek to recover any underpayments or non-payments by Company to Producer beyond two years from the date of the event(s) giving rise to such recovery efforts by Producer.
10. **Disclosure of Compensation.** Producer agrees to disclose in writing to each customer in advance of purchase the nature of any compensation Producer will receive or may be eligible to receive from Company in connection with the placement or servicing of the customer's business, as well as the nature of any other material business relationship that Producer has with Company. Producer will provide any additional disclosure required under state or federal law, including if applicable any disclosure that may be required pursuant to the Federal Department of Labor's ERISA Prohibited Transaction Exemption 77-9. Company may disclose to customers compensation paid to Producer by Company or for which Producer may be eligible in accordance with Company's policies on producers.

C. Term and Termination

1. This Agreement shall be effective for an initial term of one (1) year from the Agreement Effective Date, and thereafter shall automatically renew for additional terms of one (1) year each, unless and until terminated in accordance with the provisions of this Agreement.
2. This Agreement may be terminated without cause at any time by Producer or Company by either party giving thirty (30) days prior written notice thereof to the other party.
3. Company may terminate this Agreement immediately upon written notice to Producer at any time upon:
 - a) material default or substantive breach by Producer of one or more of its obligations under this Agreement (including any amendments);

- b) any expiration, termination, or suspension of any license and appointment that is necessary for Producer to transact business on behalf of Company and that are required by any state or jurisdiction where Producer solicits sales of any Company Products, or Producer's commission of fraud, dishonesty, breach of trust, theft, misappropriation of money, or breach of any fiduciary duty. Producer's failure to comply with any provision of this Agreement shall be material if Company determines that such failure affects Producer's ability to perform under this Agreement. Termination for cause shall not be Company's exclusive remedy, but shall be cumulative with all other remedies available at law or in equity. A failure to terminate this Agreement for cause shall not be a waiver of the right to do so with respect to any past, current or future default.
4. This Agreement will automatically terminate:
- a) upon the death of Producer, if Producer is an individual;
 - b) upon the dissolution of the corporation or partnership, if Producer is a corporation or partnership; or
 - c) upon the Company's employment of Producer as an employee, if the Producer is an individual. In the case of (iii), such individual Producer shall also not be entitled to any further payments as a Producer; to the extent such Producer was so entitled prior to such employment. Please reference "Rights to Commissions on Termination", if applicable.

D. Settlement of Disputes

1. Any controversy or claim arising out of or relating to this Agreement or the breach, termination or validity thereof, except for temporary, preliminary or permanent injunctive relief or any other form of equitable relief, shall be settled by binding arbitration, administered by the American Arbitration Association ("AAA") and conducted by a sole arbitrator in accordance with the AAA's Commercial Arbitration Rules ("Rules") at a proceeding located in Montgomery County, PA or Hartford, CT. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16, to the exclusion of state laws inconsistent therewith or that would produce a different result, and judgment on the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. Except as may be required by law or to the extent necessary in connection with a judicial challenge, or enforcement of an award, neither a party nor the arbitrator may disclose the existence, content, record or results of an arbitration. Fourteen (14) calendar days before the hearing, the parties will exchange and provide to the arbitrator:
- a) a list of witnesses they intend to call (including any experts) with a short description of the anticipated direct testimony of each witness and an estimate of the length thereof, and
 - b) pre-marked copies of all exhibits they intend to use at the hearing. Depositions for discovery purposes shall not be permitted. The arbitrator may award only monetary relief and is not empowered to award damages other than compensatory damages.

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

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

- 1. Except as set forth in paragraph 2 of this Section E, Producer shall not use or disclose PHI for any purpose other than to perform its obligations under this Agreement or as required by law.
- 2. Producer may use PHI it received in its capacity as Producer, as necessary for:
 - i. the proper management and administration of Producer or (ii) to carry out its legal responsibilities. Producer may disclose PHI it received in its capacity as Producer, as necessary for the purposes described in the preceding sentence, if: (i) the disclosure is required by law; or

- ii. Producer obtains from the person to whom the PHI is disclosed a written agreement that (A) the PHI will be held confidentially and will not be used or further disclosed except as required by law or for the purpose for which it was disclosed and (B) the person to whom the PHI is disclosed will notify Producer (who will in turn promptly notify Company) of any instances of which such person is aware in which the confidentiality of the PHI has been breached.
- 3. Producer shall use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by this Agreement. Producer shall report to Company any unauthorized use or disclosure of PHI by Producer or its workforce or any of its agents/producers or subcontractors, of which it becomes aware. Producer shall mitigate, to the extent practicable, any harmful effect that is known to Producer of any use or disclosure of PHI by Producer or its workforce or any of its agents/producers or subcontractors in violation of this Agreement.
- 4. Producer agrees to ensure that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of Producer agree in writing to the same restrictions and conditions that apply through this Agreement to Producer with respect to such information.
- 5. Producer shall afford Company's members (i) the right to access PHI in accordance with 45 C.F.R. 164.524 and (ii) the right to amend PHI in accordance with 45 C.F.R. 164.526.
- 6. Producer shall make its records available for purposes of responding to member requests for an accounting in accordance with 45 C.F.R. 164.528. In the event Producer makes any disclosures of PHI that are subject to the accounting requirements of 45 C.F.R. 164.528, it shall promptly report such disclosures to Company, including the date of the disclosure, the name and, if available, address of the recipient of the e PHI, a brief statement of the PHI disclosed, and a brief description of the purpose of the disclosure that reasonably informs the individual of the basis of the disclosure. Producer should send such information to Company at the following email, address or fax:

Aetna HIPAA Member Rights Team
151 Farmington Avenue, RT65, Hartford, CT 06156
Fax: (859) 280-1272
Email: HIPAAFulfillment@aetna.com
- 7. With respect to "electronic protected health information" (within the meaning of 45 C.F.R. Parts 160-164) ("ePHI"), Producer shall comply with (and ensure that its subcontractors implement and comply with):
 - a) the administrative safeguards set forth at 45 C.F.R. 164.308, the physical safeguards set forth at 45C.F.R.310, the technical safeguards set forth at 45 C.F.R. 164.312, and the policies and procedures set forth at 45 C.F.R. 164.316 to reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of Company;
 - b) Ensure that any subcontractor that creates, receives, maintains or transmits PHI on behalf of Producer agrees to comply with the applicable requirements of Subpart C of 45 C.F.R. Part 164 by entering into a contract that complies with 45 C.F.R. Section 164.314;
 - c) In no event, without Company's prior written approval, provide ePHI received from, or created or received by Producer on behalf of Company, to any employee or agent, including a subcontractor, if such employee, agent or subcontractor receives, processes, or otherwise has access to such ePHI outside of the United States; and
 - d) Make policies and procedures relating to Producer's safeguarding of ePHI available to Company, or at the request of Company to the Secretary of Health and Human Services (the "Secretary"), in a time and manner designated by Company or the Secretary, for purposes of the Secretary determining Company's compliance with HIPAA; and
 - e) Report to Company any Security Incident of which Producer becomes aware.

8. Producer acknowledges and agrees that, as of the applicable effective dates for such provisions, Producer shall comply with each provision of the American Recovery and Reinvestment Act of 2009 ("ARRA") that extends a HIPAA Privacy Rule or Security Rule requirement to business associates of HIPAA covered entities.

In particular, but without limitation, Producer:

- a) shall report to Company any Security Breach of Unsecured PHI without unreasonable delay and, in no case, less than ten (10) days after Discovery; and
- b) shall not directly or indirectly receive remuneration in exchange for any PHI of an individual without Company's prior written approval and notice from Company that it has obtained from the individual a valid authorization that includes a specification of whether the PHI can be further exchanged for remuneration by Producer. The foregoing shall not apply to Company's payments to Producer for services delivered by Producer to Company.

For purposes of this Agreement, the following definitions apply:

- a) "Discovery" means the first day on which a Security Breach is known to Producer (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of Producer), or should reasonably have been known to Producer, to have occurred.
 - b) "Breach" has the same meaning as the term "breach" in 45 C.F.R. 160.501.
 - c) "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
 - d) "Unsecured PHI" means PHI that is not secured through the use of a technology or methodology specified by guidance issued by the Secretary of the Department of Health and Human Services from time to time.
9. Producer shall encrypt all laptops, computers, or other portable electronic devices in a manner as to render ePHI contained on such devices unreadable, undecipherable, or unusable.
10. Producer acknowledges that, effective the later of the Agreement Effective Date or February 17, 2010, it shall be liable under the civil and criminal enforcement provisions set forth at 42 U.S.C. 1320d -5 and 1320d-6, as amended from time to time, for failure to comply with any of the safeguards, security, use and disclosure requirements of this Agreement and any guidance issued by the Secretary from time to time with respect to such safeguards, security, use and disclosure requirements.

F. General Terms

1. Producer agrees that in performing under this Agreement, Producer may be acting in a fiduciary capacity to Company. To the extent Producer is acting as a fiduciary to Company, Producer shall act in the best interest of Company and shall not permit other interests, activities or responsibilities to interfere with Producer's faithful performance under this Agreement.
2. This Agreement is personal to Producer, and Producer's duties hereunder shall not be assigned, delegated or subcontracted by Producer without the prior written consent of Company. Producer shall not use subagents/sub producers. In no event shall any person, including any assignee under this Paragraph 2, be considered a third party beneficiary under this Agreement or otherwise have any rights or obligations under this Agreement. In addition to all other rights of Company under the Agreement, this Agreement may be assigned by Company, at any time and from time to time, in whole or in part, to an affiliate, successor in interest or other entity that acquires a Company Product or line of business. At Company's option, the Agreement shall survive, without any other change in its terms, as a distinct, separate agreement with Company for those products/lines of business designated by Company and in duplicate form as a separate, distinct producer agreement with the applicable affiliate(s)/successor(s)/acquiring entity(ies) for the products/lines of business assigned to such entity(ies). In the event of any assignment by Company under this paragraph, Company shall provide advance written notice to Producer. In the event of a conflict between this paragraph and any other provision of the Agreement, the terms of this paragraph shall supersede and prevail.

3. Any notice required to Producer under this Agreement shall be deemed given on the day such notice is deposited in the United States mail with first class postage pre-paid and addressed to Producer at the address of the Producer appearing on the records of Company. Any notice required to Company shall be deemed given on the day after such notice is deposited in the United States mail with first class postage pre-paid and addressed to Company. In addition, any notice required to Producer required under this Agreement may be made by letter, newsletter, electronic mail or other media, including the posting of information on Company's website(s).
4. This Agreement (including any attached addendums or schedules) is the complete and sole contract between the parties regarding compensation by Company to Producer of commissions, if applicable, and the distribution of Company Products by Producer subsequent to the Agreement Effective Date and supersedes any and all prior understandings or agreements between the parties whether oral or in writing on this subject matter. Notwithstanding the foregoing, Company and Producer may enter into other arrangements under which Producer will receive non-commission-based compensation (e.g., bonuses) from Company for securing and/or servicing customers.
5. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.
6. Notwithstanding Paragraph 5 of this Section F, Company's liability, if any, for damages to Producer for any cause whatsoever arising out of or related to this Agreement, and regardless of the form of the action, shall be limited to Producer's actual damages. Company shall not be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever sustained as a result of a breach of this Agreement or any action, or alleged tortuous conduct or delay by Company.
7. In addition to those provisions which by their terms survive expiration or termination of this Agreement, Paragraphs 8, 10, 11, 12 and 14 of Section A, Paragraphs 6, 7 and 8 of Section B, Section D, Section E, and Paragraphs 3, 5, 6, 7 and 8 of Section F shall survive expiration or termination of this Agreement, regardless of the cause giving rise thereto.
8. Company may modify this Agreement upon thirty (30) days prior written notice to Producer, including the applicable commission schedules, if applicable, as set forth in Paragraph 14 of Section A. Company may make changes to the applicable commission schedules or changes to Section A(9) upon ninety (90) days written notice to Producers in Louisiana. Notwithstanding the foregoing, upon the enactment of any law or regulation, or any order or direction of any governmental agency affecting this Agreement, Company may, by written notice to Producer, amend the Agreement in such manner as Company determines necessary to comply with such law or regulation, or any order or directive of any governmental agency. Company may provide written notice pursuant to this Paragraph 8 by letter, newsletter, electronic mail or other media.
9. To the extent that Producer engages in the offer or sale of an Aetna Medicare Product, Producer agrees to the Medicare requirements set forth in Addendum B. In cases of conflict between this Agreement and the applicable addendum, the terms of the applicable addendum shall govern.

G. COMPLIANCE WITH RECORDING AND TELEMARKETING REQUIREMENTS

1. To the extent Producer or any of Producer's agents, subcontractors or other persons purporting to act on behalf of Producer receives, places or otherwise engages in telephone calls to or from any individual or entity with respect to any product or service that Producer is authorized to offer on behalf of the Company, Producer and its agents, subcontractors or other person shall comply with all federal, state and municipal laws, regulations and administrative guidance pertaining to (i) the recording and/or monitoring of telephone calls, (ii) audible notice requirements regarding the recordation and/or monitoring of telephone calls (including notifying such individual or entity at the inception of the call that such calls will be recorded and monitored), (iii) obtaining consent at the inception of the recordation and/or monitoring of telephone calls, and/or (iv) the storage, privacy, security and destruction of any recorded telephone calls. Without limiting the generality of the foregoing, Producer shall comply with Cal. Penal Code § 630 et seq.; Conn. Gen. Stat § 52-570d.; Fla. Stat. Ann. 934.03 et. seq.; Haw. Rev. Stat. § 803-42; 720 ILCS 5/14-2; Md. Code Ann., Cts. & Jud. Proc. § 10-402; Mass. Gen. Laws Ann. ch. 272 § 99; Mont. Code Ann. § 45-8-213; N.H. Rev. Stat. Ann. § 570-A:2; 18 Pa. Cons. Stat. Ann. § 5703; and Wash. Rev. Code Ann. § 9.73.030.
2. For the purposes of this Agreement, the term "telemarketing" means all forms of telemarketing subject to state or federal regulation, including but not limited to telemarketing as regulated under the Telephone Consumer Protection Act, 43 U.S.C. §227 et seq. (the "TCPA") and all state or local laws, rules and ordinances that regulate telemarketing. For illustrative purposes only, and without limitation, telemarketing includes but is not limited to the use of automatic telephone dialing systems, artificial or prerecorded voice messages, SMS text messages, and fax machines, as well as live calls that may be subject to any applicable law, regulation, or ordinance limiting, for example, the hours of such calls or contacting persons on any "do not call" registry. Without limitation, the term telemarketing shall further be understood to include all forms of telemarketing subject to the Telemarketing Sales Rule (16 CFR Part 310) as amended by the Federal Trade Commission (FTC), the rules and interpretations promulgated by the Federal Communication Commission (FCC) under the TCPA, and where applicable, the requirements established by the Centers for Medicare and Medicaid (CMS), within its process and systems.
3. Nothing in this Agreement does or shall be construed to require, encourage or suggest that Producer engage in telemarketing. As an independent contractor, Producer acknowledges and agrees that Producer is solely and exclusively responsible for any decision to engage in telemarketing. Producer further acknowledges and agrees that its activities with respect to telemarketing are and shall be deemed to be an effort by Producer to manage or expand its own independent business, and not telemarketing taken at the request, on behalf of, or for the benefit of the Company.
4. To the extent Producer or any of Producer's agents, subcontractors or other persons purporting to work on behalf of Producer engage in any form of telemarketing, Producer represents and warrants to the Company that at all times all such telemarketing shall be conducted in compliance with all applicable federal, state and local laws, regulations and ordinances as may be adopted, modified, or interpreted from time to time by the courts or regulators, that govern telemarketing.

5. If Producer or any of Producer's agents, subcontractors or other persons purporting to work on behalf of Producer engage in telemarketing with respect to any product or service subject to this Agreement, Producer and its agents and subcontractors shall:
- a) scrub on a daily basis, all phone numbers against federal, state and internal do not call lists in accordance with applicable law. Producer will provide Company, promptly, and in no event later than ten (10) business days from the date of receipt of the request from Company, phone numbers of persons requesting to be on the Company's internal "do not call" list;
 - b) maintain records regarding compliance with call abandonment rates in accordance with all telemarketing laws and regulations that now or hereafter govern telemarketing;
 - c) implement written policies and procedures designed to ensure full compliance with the laws and regulations that now or hereafter govern telemarketing;
 - d) train personnel involved in compliance with all laws and regulations that now or hereafter govern telemarketing;
 - e) document all steps to meet and maintain compliance with all aspects of the laws and regulations that now or hereafter govern telemarketing; and
 - f) allow Company, upon request, the right to review all documentation, policies and procedures of the Producer, its agents, or subcontractors related to telemarketing. Such review shall be a right and not an obligation of Company hereunder. Such review does not, and shall not be construed to constitute approval or endorsement of any telemarketing practices by Producer and such review shall not be deemed to excuse or alleviate Producer from its independent duty of compliance with the law or indemnification hereunder.
6. Any notice or documentation required to be given by Producer to Company under this Section G, will be effective only if given in writing and sent by overnight delivery service with proof of receipt, electronic mail or other generally accepted media. Notices shall be sent to Producer's Company account representative.

Addendum A – Product Authorization

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

Addendum B - Medicare Requirements

Company is required to identify and oversee its First Tier Entities (as defined in **Exhibit 1** of **Addendum B**) consistent with CMS requirements. Producer acknowledges and agrees that it acts in a capacity as a First Tier Entity in the performance of services for Company under the Agreement, and shall comply, and shall cause its Downstream Entities to comply, with the requirements set forth in this **Addendum B** and **Exhibit 1** of **Addendum B** with respect to the provision of services under this Agreement, including the performance of delegated activities in connection with Company's or its affiliates Medicare Advantage and/or Part D Programs ("Aetna Medicare Products"). Except as provided herein, all other provisions of this Agreement between Company and Producer not inconsistent herein shall remain in full force and effect. This **Addendum B** and **Exhibit 1** of **Addendum B** shall supersede and replace any inconsistent provisions to such Agreement to ensure compliance with required CMS provisions, and shall continue concurrently with the term of such Agreement. The Company shall monitor Producer's performance of its obligations under the Agreement (including this **Addendum B** and **Exhibit 1** of **Addendum B**) on an ongoing basis. Producer's obligations under this **Addendum B** specifically include the following:

A. CMS Medicare Required Terms and Conditions.

Producer agrees to comply with all of the provisions of **Exhibit 1** of **Addendum B**, attached hereto and incorporated into the Agreement. Producer also agrees to comply with the CMS Medicare Marketing Guidelines in effect at the time any sales or marketing services are provided by Producer in respect of the Aetna Medicare Products.

B. First Tier or Downstream Entity Requirements.

1. Producer represents and warrants that all provisions of this **Addendum B** and **Exhibit 1** shall apply equally to any employee, temporary employee, principal, partner, or other individual that performs services under this Agreement. Producer shall take all steps necessary to cause such individuals to comply with this **Addendum B** and **Exhibit 1** and all applicable laws (including CMS instructions). Producer represents and warrants that Producer has the authority to bind such individuals, and shall provide written evidence of the same upon request. Producer also represents and warrants that all provisions of this **Addendum B** and **Exhibit 1** shall apply equally to any of Producer's Downstream Entities, as defined by CMS and **Exhibit 1**. Producer shall include in Producer's contracts with Downstream Entities all of the contractual and legal obligations required by Company in order for the Downstream Entity and Company to comply with applicable law (including CMS instructions). Producer shall take all steps necessary to cause its Downstream Entities to comply with this **Addendum B** and **Exhibit 1**, and applicable law (including CMS instructions). To the extent CMS requires additional provisions to be included in such subcontracts, Company shall amend its contracts with its Downstream Entities accordingly.

2. Maintenance of Records and Audits

- (a) Producer shall retain— and Company or its designee(s) shall have the right, but not the obligation, to audit, inspect and copy, during regular business hours at Company's cost and in a manner that does not unreasonably interfere with Producer's business— any books and records Producer maintains pursuant to this Agreement and the services performed, upon ten (10) business days' written notice to Producer; but only to the extent that such inspection is not prohibited by applicable law. To the extent that Company uses a third-party to audit Producer, such third party may not be a competitor of Producer and shall execute confidentiality agreement acceptable to Producer, such acceptance shall not be unreasonably denied, delayed or withheld.

(b) Producer shall maintain (and shall cause Downstream Entities (as defined in **Exhibit 1** hereto) to maintain) operational, financial, administrative and medical records, contracts, books, files and other documents (including, without limitation, records with respect to sales and referrals, Aetna Medicare Product enrollees' applications for coverage and other transactions with Aetna Medicare Product enrollees and prospective Aetna Medicare Product Enrollees) for ten (10) years, or longer to the extent required by applicable law in connection with services performed under this Agreement ("**Records**"). Such Records shall be maintained in a timely and accurate manner and shall, at a minimum, be reasonably sufficient to allow Company to determine whether Producer and its Downstream Entities are performing their obligations under the Agreement consistent with the terms of the Agreement and in accordance with applicable law and to confirm that the data submitted by Producer and its Downstream Entities for reporting and other purposes is accurate.

(c) In addition, to the extent applicable to Producer, Producer, on behalf of itself and any Downstream Entities, agrees to comply with 42 C.F.R. § 422.2480(c) and 42 C.F.R. § 423.2480(c) and to maintain all Records containing data used by Company to calculate Medicare Medical Loss Ratios ("**MLRs**") for Aetna Medicare Products and/or evidence needed by Company and/or federal governmental authorities with jurisdiction to validate MLRs (collectively, "**MLR Records**") for a minimum of ten (10) years from the date such MLRs were reported by Company to CMS.

3. Compliance With Law. Producer shall comply with all applicable Federal and Medicare laws, regulations, and CMS instructions, as well as applicable Company policies. Producer acknowledges that Company, directly or indirectly, receives federal funds and that as a contractor of Company, the payments to Producer under this Agreement are, in whole or in part, from federal funds. In carrying out its duties and obligations under this Agreement, Producer shall follow and adhere to all applicable laws, including, but not limited to Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d et. Seq.); sections 503 and 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §§793 and 794); Title IX of the Education Amendments of 1972, as amended (20 U.S.C. § 1681 et. Seq.); section 654 of the Omnibus Budget Reconciliation Act of 1981, as amended (41 U.S.C. §9849); the Americans with Disabilities Act (42 U.S.C. §12101 et. Seq.); and the Age Discrimination Act of 1975, as amended (42 U.S.C. §6101 et. Seq.); the Vietnam Era Veterans Readjustment Assistance Act (38 U.S.C. § 4212); and applicable sections of the Medicare Modernization Act of 2003, HIPAA and the HITECH Act of 2009, together with all applicable implementing regulations, rules guidelines and standards as from time to time are promulgated thereunder.

4. Exclusion Screening and Related Requirements. Producer understands and agrees that no person or entity that provides services, directly or indirectly, for any Aetna Medicare Products, may be an individual or entity excluded from participation in Medicare under Section 1128 or 1128A of the Social Security Act. Producer hereby certifies that no such excluded person or entity will be employed by or utilized by Producer or by any of Producer's Downstream Entities to directly or indirectly perform services under this Agreement. Producer agrees to review the Department of Health and Human Services ("**HHS**") Office of Inspector General List of Excluded Individuals and Entities and the General Services Administration System for Awards Management (collectively, "**Exclusion Lists**") to ensure that no persons or entities employed by or utilized by Producer or by any of Producer's Downstream Entities are included on such Exclusion Lists. Producer agrees to review the Exclusion Lists prior to initially hiring, appointing or contracting with any new employee, temporary employee or Downstream Entity and at least once per month thereafter to confirm that such persons and entities are not included on such Exclusion Lists. Producer agrees that if any such person or entity utilized by Producer to directly or indirectly to perform services under this Agreement appears on an Exclusion List and/or is excluded from participation in any federally-funded health program, Producer will immediately remove the employee, temporary employee or Downstream Entity from any work related directly or indirectly to Aetna Medicare Products, and take all corrective actions required under applicable laws, rules or regulations. In the event Producer or any employee, temporary employee or Downstream Entity of Producer that directly or indirectly performs services under this Agreement is listed in an Exclusion List after the Effective Date, Company shall have the right, in its sole discretion and judgment, to terminate Producer's provision of services to Aetna Medicare Products in accordance with the Agreement or to disqualify any such person or entity on the Exclusion List from providing any part of the services under this Agreement. In addition, Producer shall, and shall cause each individual or entity with whom it contracts or to whom it delegates any obligations under the

Agreement to review the Specially Designated Nationals and Blocked Persons list published by the Office of Foreign Assets Control of the U.S. Department of Treasury prior to the initial hiring of any employee or engagement of any subcontractor (including any agent) to furnish services to Company, and monthly thereafter, and to promptly notify Company of discovering any employee's or subcontractor's name on such list. Upon such discovery by Producer or Company, Company reserves the right to block payments to Producer, and/or take any other actions which may be required to comply with law. In the case an agent appears on the Specially Designated Nationals and Blocked Persons list, Company, in its sole discretion, may terminate the appointment of such agent and/or any agreement between Company and such agent.

5. **Reporting and Disclosure; Submission of Information.** Upon request by Company, Producer shall certify, and cause its Downstream Entities to certify, that any information submitted to Company are accurate, complete and truthful based on best knowledge, information and belief. Producer shall provide reasonable cooperation and assistance with Company's requests for information as requested by Company to allow Company to respond in a timely manner to any requests for information by CMS. Producer agrees to immediately notify Company if any information that Producer submitted to Company is inaccurate, incomplete or erroneous, and cooperate with Company to correct such information to ensure Company's compliance with Medicare laws, rules and regulations and CMS instructions. This paragraph 5 shall survive termination of the Agreement, regardless of the cause giving rise to termination.
6. **Offshore Services.** Unless otherwise authorized by Company in writing, all services provided by Producer and all services performed by any Downstream Entity that is performing Medicare-related work and/or receiving, processing, transferring, handling, storing, or accessing Medicare Member Protected Health Information under this Agreement must be performed within the United States, the District of Columbia, or the United States territories.
7. **Compliance Program and Anti-Fraud Initiatives.** Producer shall (and shall cause its Downstream Entities to) institute, operate, and maintain an effective compliance program to detect, correct and prevent the incidence of non-compliance with CMS requirements and the incidence of fraud, waste and abuse (FWA) relating to the operation of Company's Medicare Program. Such compliance program shall be appropriate to Producer or Downstream Entity's organization and operations and shall include:
 - (a) written compliance policies and standards of conduct that are comparable to Company's compliance policies/Company's Code of Conduct and articulate the entity's commitment to comply with federal and state laws, ethical behavior and compliance program operations. Producer will disseminate either Company's compliance policies/Company's Code of Conduct or comparable versions to Producer's employees, officers, and Downstream Entities within 90 days of hire/contracting, when updates are made, and annually thereafter;
 - (b) reporting mechanisms communicated to Producer's employees and Downstream Entities for their use in adhering to the expectation that Producer, its employees and its Downstream Entities report potential non-compliance or FWA issues (internally and to Company, as applicable) and understand their obligation to report. Producer must publicize the reporting methods to Producer's employees and Downstream Entities along with a no-tolerance policy for retaliation or retribution for good faith reporting;
 - (c) completion of CMS' Medicare Learning Network® "Medicare Parts C and D Fraud, Waste, and Abuse Training and Medicare Parts C and D General Compliance Training" by Producer's employees, officers, and Downstream Entities initially within ninety (90) days of hire/contracting and at least annually thereafter, unless exempt from Fraud, Waste, and Abuse training under relevant CMS regulations. Training may be completed in one of two ways: (1) by completing the general compliance and FWA training modules located on the CMS Medicare Learning Network; or (2) by downloading, viewing or printing the content of the then current CMS standardized training modules from the CMS website to incorporate into Producer's and/or Downstream Entity's organization's existing compliance training materials/systems. The CMS training content may not be changed but Producer and/or its Downstream Entities may add to it to cover topics specific to its organization;

- (d) processes to oversee and ensure that Producer and Producer's Downstream Entities maintain compliance with processes to oversee and ensure that: (1) Producer and Producer's Downstream Entities maintain compliance with CMS compliance program requirements, and (2) Producer's Downstream Entities perform the services to be provided under this Agreement consistent with this Agreement and the agreement between Producer and such Downstream Entities. Producer's oversight under this Agreement shall include: (1) imposition of disciplinary actions, as needed, to ensure employee compliance with CMS compliance program requirements, and (2) implementation of corrective actions (up to and including contract termination), as needed, with respect to its Downstream Entities to ensure Downstream Entity compliance with applicable CMS requirements, including the CMS compliance program requirements, this Agreement and Producer's contract with the Downstream Entity; and
 - (e) retention of evidence showing that Producer and Producer's Downstream Entities complied with the requirements set forth in this Section 8(e). Such evidence must be maintained for at least the period of time specified in Section 2 of this **Addendum B** and shall be made available to Company and CMS, upon request. Producer shall complete attestations in the form and manner requested by Company to confirm its compliance with this Section on an annual basis.
8. **Exhibit 1.** Producer agrees to comply with all the provisions set forth in **Exhibit 1** to this **Addendum B**. All obligations set forth in **Exhibit 1** apply equally to the Medicare Advantage Plans and Part D Plans, even if **Exhibit 1** only refers to Medicare Advantage Plans.

Addendum B – Exhibit 1

CMS Medicare Required Terms and Conditions

CMS requires that specific terms and conditions be incorporated into the Agreement between a Medicare Advantage Organization or First Tier Entity and a First Tier Entity or Downstream Entity to comply with the Medicare laws, regulations, and CMS instructions, including, but not limited to, the Medicare Prescription Drug, Improvement and Modernization Act of 2003, Pub. L. No. 108-173, 117 Stat. 2066 (“MMA”); and

Except as provided herein, all other provisions of the Agreement between Company and Producer not inconsistent herein shall remain in full force and effect. This Exhibit shall supersede and replace any inconsistent provisions to such Agreement, to ensure compliance with required CMS provisions, and shall continue concurrently with the term of such Agreement.

NOW, THEREFORE, the parties agree as follows:

A. Definitions:

1. Centers for Medicare and Medicaid Services (“CMS”): the agency within the Department of Health and Human Services that administers the Medicare program.
2. Completion of Audit: completion of audit by the Department of Health and Human Services, the Government Accountability Office, or their designees of a Medicare Advantage Organization, Medicare Advantage Organization contractor or related entity.
3. Downstream Entity: any party that enters into a written arrangement, acceptable to CMS, with persons or entities involved with the MA benefit, below the level of the arrangement between an MA organization (or applicant) and a first tier entity. These written arrangements continue down to the level of the ultimate provider of both health and administrative services.
4. Final Contract Period: the final term of the contract between CMS and the Medicare Advantage Organization.
5. First Tier Entity: any party that enters into a written arrangement, acceptable to CMS, with an MA organization or applicant to provide administrative services or health care services for a Medicare eligible individual under the MA program.
6. Medicare Advantage (“MA”): an alternative to the traditional Medicare program in which private plans run by health insurance companies provide health care benefits that eligible beneficiaries would otherwise receive directly from the Medicare program.
7. Medicare Advantage Organization (“MA organization”): a public or private entity organized and licensed by a State as a risk-bearing entity (with the exception of provider-sponsored organizations receiving waivers) that is certified by CMS as meeting the MA contract requirements.
8. Member or Enrollee: a Medicare Advantage eligible individual who has enrolled in or elected coverage through a Medicare Advantage Organization.
9. Provider: (1) any individual who is engaged in the delivery of health care services in a State and is licensed or certified by the State to engage in that activity in the State; and (2) any entity that is engaged in the delivery of health care services in a State and is licensed or certified to deliver those services if such licensing or certification is required by State law or regulation.
10. Related entity: any entity that is related to the MA organization by common ownership or control and (1) performs some of the MA organization's management functions under contract or delegation; (2) furnishes services to Medicare enrollees under an oral or written agreement; or (3) leases real property or sells materials to the MA organization at a cost of more than \$2,500 during a contract period.

B. **Required Provisions:**

Producer agrees to the following:

1. HHS, the Comptroller General, or their designees have the right to audit, evaluate, and inspect any pertinent information for any particular contract period, including, but not limited to, any books, contracts, computer or other electronic systems (including medical records and documentation of the first tier, downstream, and entities related to CMS' contract with Aetna's Affiliates included in this Agreement, (hereinafter, "MA organization") through 10 years from the final date of the final contract period of the contract entered into between CMS and the MA organization or from the date of completion of any audit, whichever is later. [42 C.F.R. §§ 422.504(i)(2)(i) and (ii)] and [42 CFR §423.505]
2. HHS, the Comptroller General, or their designees have the right to audit, evaluate, collect, and inspect any records under paragraph 1 of this amendment directly from any first tier, downstream, or related entity. For records subject to review under paragraph 1, except in exceptional circumstances, CMS will provide notification to the MA organization that a direct request for information has been initiated. [42 C.F.R. §§ 422.504(i)(2)(ii) and (iii)] and [42 C.F.R. §423.505]
3. Producer will comply with the confidentiality and enrollee record accuracy requirements, including: (1) abiding by all Federal and State laws regarding confidentiality and disclosure of medical records, or other health and enrollment information, (2) ensuring that medical information is released only in accordance with applicable Federal or State law, or pursuant to court orders or subpoenas, (3) maintaining the records and information in an accurate and timely manner, and (4) ensuring timely access by enrollees to the records and information that pertain to them. [42 C.F.R. §§ 422.504(a)(13) and 422.118] and [42 CFR §423.136]
4. Enrollees will not be held liable for payment of any fees that are the legal obligation of the MA organization. [42 C.F.R. §§ 422.504(i)(3)(i) and 422.504(g)(1)(i)] and [42 CFR §423.505(i)(3)(i)]
5. Any services or other activity performed in accordance with a contract or written agreement by Upline are consistent and comply with the MA organization's contractual obligations. [42 C.F.R. § 422.504(i)(3)(iii)] and [42 CFR §423.505(i)(3)(iii)]
6. Producer and any related entity, contractor or subcontractor will comply with all applicable Federal and Medicare laws, regulations, and CMS instructions. [42 C.F.R. §§ 422.504(i)(4)(v)] and [42 CFR §423.505(i)(4)(iv)]
7. If any of the MA organization's activities or responsibilities under its contract with CMS are delegated to any first tier, downstream and related entity:
 - (i) The delegated activities and reporting responsibilities are specified as follows:

Producer shall (a) solicit, procure and transmit enrollment applications for sales to eligible Medicare beneficiaries; (b) market Aetna Medicare Products; and (c) refer Medicare beneficiaries to Aetna. Please see Section A of the Agreement.

- (ii) CMS and the MA organization reserve the right to revoke the delegation activities and reporting requirements or to specify other remedies in instances where CMS or the MA organization determine that such parties have not performed satisfactorily.
- (iii) The MA organization will monitor the performance of the parties on an ongoing basis. Please see Section A and **Addendum B**.
- (iv) If the MA organization delegates the selection of providers, contractors, or subcontractor, the MA organization retains the right to approve, suspend, or terminate any such arrangement.

[42 C.F.R. §§ 422.504(i)(4) and (5)]

In the event of a conflict between the terms and conditions above and the terms of a related agreement, the terms above control.

Addendum C – California Requirements

The following requirements shall apply to Company Products that are subject to the jurisdiction of the California Health and Safety Code Sections 1340 et seq. and the regulations promulgated by the California Department of Managed Health Care (Department).

Section 6 of the Agreement shall be revised and replaced as follows:

Producer is not authorized to receive any Company funds except the initial premiums for Company Products if expressly permitted by Company in writing, and Producer is not authorized to deduct compensation, service fees or allowances from any initial premiums Producer may be permitted to collect. Any funds that Producer does receive for or on behalf of Company shall be received and held by Producer in a fiduciary capacity, shall be separately accounted for, shall not be commingled by Producer with personal funds of Producer or other business accounts managed or owned by Producer, shall be deposited the next business day to a trust account in a state or federal bank authorized to do business in the appropriate state and insured by an appropriate federal insuring agency, and shall be remitted to Company promptly but in no event later than five (5) calendar days from the date of receipt. Nothing in this Agreement shall preclude Producer from collecting any fees from Insureds other than those amounts that are due and owing to Company by Insureds. Such fees can include an application fee so long as the Producer provides value-added services to the Insured during the Insured's application process that are in addition to the services that a producer typically provides during the application process.

Section 8 of the Agreement shall be revised and replaced as follows:

Producer agrees to maintain complete and separate records for Company for a period of at least ten (10) years of all transactions pertaining to applications submitted to and accepted by Company, and any other documents as may be required by the applicable Department of Insurance or other governmental agency. Any and all records described above or as may otherwise relate to Producer's activities in connection with Company business shall be accessible and available, within five (5) days of request, to representatives of Company, and to federal, state and local governmental authorities having jurisdiction over Company, or their respective designees, each of whom may audit such records at any time upon reasonable prior notice while this Agreement is in effect or within ten (10) years after termination thereof and the most recent two (2) years of the books and records shall be easily accessible to the Company and such governmental authorities.

