

## **BROKER AGREEMENT**

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between Health New England, Inc. ("HNE") and \_\_\_\_\_ ("Broker").

**WHEREAS**, HNE is a health maintenance organization in the business of selling managed health care products in its service area; and

**WHEREAS**, HNE desires to secure the services of Broker to facilitate the sale of such managed health care products to employer groups in its service area; and

**WHEREAS**, Broker has agreed to provide such services subject to the terms and conditions set forth in this Agreement;

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

- 1) **Scope of Agreement.** HNE hereby agrees to engage Broker, and Broker hereby agrees to perform services as described below.
  
- 2) **Duties of Broker.** Broker agrees:
  - a) to use reasonable efforts to promote and publicize managed care plans offered or administered by HNE (the "Product"), to procure applications to purchase the Product from Qualified Groups, as herein defined, and to assist HNE personnel in similar activities.
    - i) A Qualified Group is a group, as defined in HNE's guidelines, which currently has no contract for insurance with HNE.
    - ii) HNE reserves the right to accept or reject, at its sole discretion, any applications.
  - b) to make reasonable efforts to become familiar with HNE's products and applicable guidelines, including, but not limited to, attendance at HNE-sponsored training sessions, seminars and other meetings that may be scheduled from time to time;
  - c) to provide, in a manner mutually agreed upon by HNE and Broker, all necessary follow-up and support services to each qualified Group whose application to purchase the Product is accepted by HNE and on whose account Broker has earned commissions ("Commission Group");
  - d) to maintain office and staff reasonably adequate for the performance of all services described in this Agreement;
  - e) to conform with all applicable HNE underwriting and procedural rules related to the performance of Broker's Services;
  - f) to refund to HNE the applicable portion of any commission previously paid to Broker if any premiums paid by Commission Groups are adjusted or refunded;
  - g) to comply with standards of conduct and codes of ethics generally prevailing in the brokerage profession, ; and
  - h) to comply with all applicable laws and regulations governing the services described in this Agreement.

- 3) **Non-Exclusivity.** HNE and Broker agree that HNE may execute contracts with other brokers or agents for the services described herein, that Broker may render such services to others, and that HNE's own sales force may render services to Qualified and Commission Groups.
- 4) **Compensation of Broker.** HNE agrees to pay Broker as compensation for services rendered commissions in accordance with the Commission and Payment Schedule attached hereto as Exhibit A and made a part hereof, subject to the following provisions:
  - a) HNE reserves the right to revise such Schedule from time to time upon reasonable prior notice to Broker, which notice shall set forth the terms of the revision and its effective date; such revision may include provisions which terminate any or all of the payment provisions of the Commission and Payment Schedule prospectively.
  - b) Although HNE believes the Commission and Payment Schedule to be fully in compliance with existing applicable law, in addition to the foregoing right of amendment, HNE reserves the right to terminate any provision of the Commission and Payment Schedule which HNE reasonably determines to be contrary to applicable law based upon any change or development in:
    - (1) applicable law;
    - (2) the judicial interpretation of applicable law; or
    - (3) regulatory interpretation or administration of applicable law.
  - c) Broker assumes full responsibility for informing Broker's accounts about compensation arrangements with HNE consistent with all applicable laws and prevailing codes of broker conduct. Broker acknowledges and agrees that HNE reserves the right to provide information to its employer accounts concerning HNE's compensation arrangements with Broker.
- 5) **Compensation of Broker on a Direct Group** In the case where a Broker takes over the account of a Direct Group (i.e., a group for which HNE currently pays no commission to any broker), such takeover Broker shall not be eligible for compensation for services until the next renewal date. In cases where a Broker takes over an account at the time of renewal, then such takeover Broker shall be eligible for compensation immediately. In order to be entitled to compensation, takeover Brokers must satisfy all applicable conditions and terms stated in Section 4 of this Agreement.
- 6) **Licensing.** Broker warrants and represents that Broker, and any employees, agents or contractors of Broker rendering services hereunder, have, where applicable, valid Massachusetts insurance producer licenses, and have obtained all licenses required for the performance of services under this Agreement and will keep such licenses in effect for the duration of this Agreement. Broker shall provide evidence of such licenses to HNE upon request, and will notify HNE within two (2) business days of any suspension or revocation of any such license.
- 7) **Indemnification and Liability.** Each party to this Agreement does hereby defend, indemnify, and hold harmless the other from and against any and all damage, claim, expense or liability (including costs and attorney's fees) arising out of such party's own actions or neglect, providing that neither party shall have an obligation to indemnify the other party unless the party seeking indemnification shall promptly notify the other party in writing of all claims asserted and actions instituted against the party seeking indemnification and the other party is given the opportunity to defend the same at its own cost and expense. Broker's liability in this regard includes, without limitation, the performance of any act or the making of any statement not authorized by HNE, including unauthorized premium quotations. HNE's

liability hereunder shall be limited to amounts due Broker for commissions earned and payable.

- 8) **Term and Termination.** This Agreement will be effective on January 1, 2007 and will remain in effect for one year. Unless terminated, this Agreement will automatically renew for additional one year terms. This Agreement may be terminated by either party at any time upon thirty (30) days written notice.
- 9) **Confidentiality.** Each party agrees that it will not, without prior written consent from the other party, disclose any confidential business or financial information of the other party, including, but not limited to, HNE's rate setting policies, formulas or procedures. Premium rates or quotations for individual groups will be disclosed only to the group for which the quotation or rate was developed. In addition, Broker hereby acknowledges that they have adopted policies for the protection of any confidential information within their respective possession or control that is identifiable to members of HNE. At a minimum, such policies shall prohibit the disclosure of confidential information that is identifiable to a member to that member's employer.

Broker understands and agrees that HNE will not disclose to or discuss with Broker any information specific to a particular member unless the member has signed an HNE Authorization Form authorizing HNE to speak with Broker. If Broker is engaged by a group to conduct an audit or perform other services on behalf of the group that requires the review of member-identifiable information, Broker will enter into a business associate agreement with the group and submit a copy to HNE. However, in all cases, HNE will only release such information in accordance with the terms of HNE's confidentiality policies and procedures and the provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

- 10) **Advertising.** Broker shall not advertise the Product without the prior written consent of HNE.
- 11) **Modification of Product.** HNE retains, in its sole discretion, the right to withdraw from the sale of the Product and to modify the Product at any time.
- 12) **Insurance.** Broker shall maintain comprehensive public liability insurance, including errors and omissions insurance, in such form and amount as may be approved by HNE from time to time. Broker shall, upon the request of HNE, provide evidence of such insurance coverage. Broker will notify HNE within 10 days of any change in the amounts, levels or types of insurance purchased or the loss of any coverage required under this provision.
- 13) **Agencies.** If Broker is a firm or organization, all applications for managed health care products under this Agreement shall be solicited only by individuals representing the Broker who are licensed as producers and who indicate on such application that it has been solicited on behalf of the Broker. If Broker is a firm or organization, Broker agrees to supply to HNE, upon request, a list of all licensed individuals.
- 14) **Relationship Between the Parties.** The parties agree that Broker is acting as an independent contractor, and nothing contained herein is intended to create the relationship of employer and employee between the Broker and HNE.
- 15) **Miscellaneous.** Neither HNE nor Broker shall assign or transfer any interest in this Agreement without written consent of both parties. This Agreement represents the entire and

integrated agreement between HNE and Broker and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both HNE and Broker. The provisions of this Agreement will be governed and construed in accordance with the laws of the Commonwealth of Massachusetts.

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

**Health New England:**

By \_\_\_\_\_  
Name/Title

**Broker:** \_\_\_\_\_  
Name of Company

By: \_\_\_\_\_  
Name/Title

Massachusetts License Number \_\_\_\_\_

Tax Identification Number \_\_\_\_\_