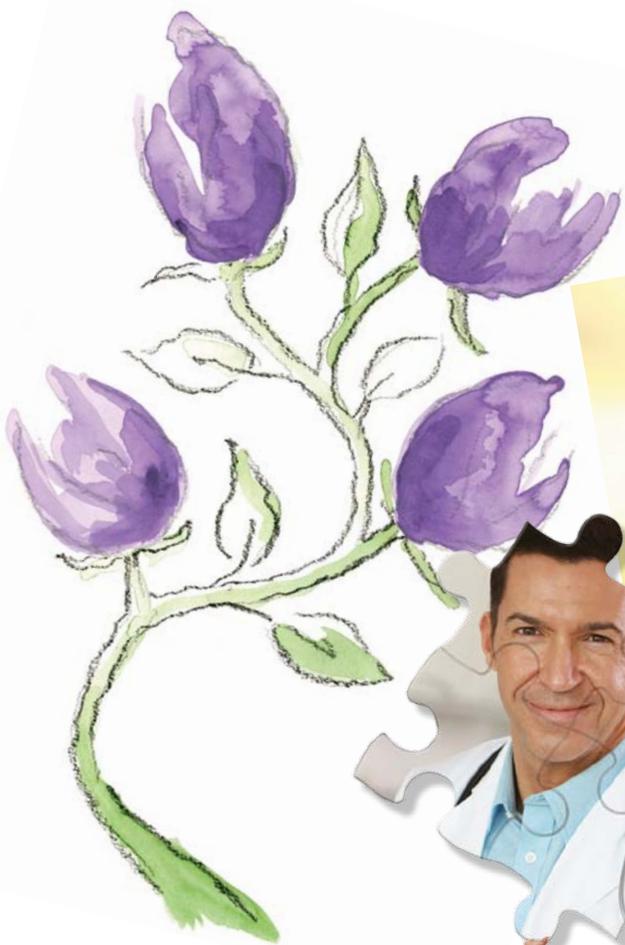


Medicare Products



Karen Boyd
*We translate
expertise into
innovation.*



Health Net[®]
MEDICARE PROGRAMS

HEALTH NET PRODUCER CHECKLIST

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

- STEP 1**
Complete and submit the Producer Agreement Cover Page. Do not sign on behalf of Health Net of Arizona, Inc.
- STEP 2**
Enclose a copy of your current State insurance license(s) for all states in which you intend to sell
- STEP 3**
Enclose a completed W9 tax form.
- STEP 4**
Enclose a completed EFT form (optional).
- STEP 5**
Send the Producer Agreement Cover Page, completed forms and supporting documents to Health Net of Arizona, Inc. Please retain a copy of all documents for your records.

Producer AGREEMENT COVER PAGE

Please check here if contracting for Med Supp products only, if applicable.

PLEASE PRINT: All information is required to process payments properly.)

Health Net Producer ID (If currently contracted):			
Licensed Producer Name:			
DBA:			
Street Address:	City:	State:	Zip Code:
Taxpayer ID:	Or Social Security Number:		
Email Address:			
Business Phone:	Fax:		
State Insurance License Number:	Expiration Date:		

EXHIBITS

- A: CMS requirements
- B: State-Specific requirements
 - B-1: California
 - B-2: Oregon/Washington
- C: Fee Schedules

In witness whereof, the parties have executed and entered into this Agreement through their duly authorized representatives as of the Effective Date below:

PRODUCER	HEALTH NET OF ARIZONA, INC.
Signature:	Signature:
Print Name:	Print Name:
Title:	Title:
Date:	Date:

Agreement Effective Date : _____ (to be completed by Health Net)

HEALTH NET MEDICARE PRODUCTS

This PRODUCER AGREEMENT (the “Agreement”) is effective on the date set forth on the preceding “Cover Page” (the “Effective Date”) by and between Health Net of Arizona, Inc., on behalf of itself and the affiliates and subsidiaries, but only to the extent such affiliate or subsidiary offers a Medicare Product identified in an Exhibit C to this Agreement (collectively and individually “Company” or “Health Net”), and the “Producer” identified on the Cover Page (“Producer”).

1. DEFINITIONS.

- a. “Group” means an employer or union that meets the definition of an eligible group for a Medicare Product under applicable law and Policies and Procedures.
- b. “Individual” means a Medicare beneficiary who meets the eligibility criteria for enrollment in a Medicare Product, which criteria have been approved by the Centers for Medicare and Medicaid Services (“CMS”).
- c. “Medicare Enrollee” means an Individual who is enrolled in a Medicare Product on either a Group or Individual enrollment basis according to CMS’ records and for whom CMS has paid Company the applicable monthly payment amount.
- d. “Medicare Product” means one or more health benefits programs offered by Company to Groups or Individuals. The Medicare Product(s) applicable to this Agreement is set forth in the compensation schedules attached hereto and incorporated herein as Exhibit C (Compensation Schedules). References in this Agreement to CMS are limited to those Medicare Products that Company offers pursuant to one or more contracts with CMS.
- e. “Policies and Procedures” means the policies and procedures implemented by Company and made available to Producer that relate to the Medicare Products and are applicable to the marketing and sale of a Medicare Product in a particular State.

- f. “Regulatory Agency” means CMS, a state department of insurance, or any other governmental agency with regulatory authority over a Medicare Product.

2. PRODUCER RESPONSIBILITIES.

- a. **Marketing.** Producer hereby accepts appointment to and shall market and promote Medicare Products 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 Compensation Schedule(s) 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 and the Policies and Procedures to perform the services set forth in this Agreement (the “Services”). Producer shall maintain any such required licensure at no cost or expense to Company. 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 related to the performance of the Services. Producer shall immediately notify Company of a termination, suspension or expiration of any license of Producer issued in connection with the performance of the Services. In addition, Producer shall promptly notify Company of the institution of any regulatory investigation 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) of this Agreement.
 - ii. *Laws, Etc.* In performing the Services, Producer shall, and shall require and ensure that all employees, comply with all Policies and Procedures, applicable state and federal laws, regulations and guidelines, including but not limited to those promulgated by CMS and any other Regulatory Agency governing any aspect of the sale, marketing, and application services of Company. Producer shall also comply with applicable CMS requirements set forth in Exhibit A (CMS Requirements), including, but not limited to, the CMS “Marketing Guidelines,” as they may be amended from time to time. 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. Notwithstanding, Producer agrees that Services performed in connection with Company's Medicare supplement product shall be governed by this Agreement.

- iii. *CMS Action.* Producer understands and agrees that, in the event Producer fails or is unable (for any reason whatsoever) to perform in a satisfactory manner any of the Services, CMS shall have the right to suspend, revoke or terminate this Agreement, institute a corrective action plan, or seek other remedies.
- iv. *Health Net Guidelines.* Producer shall comply with the "Health Net Medicare Sales and Marketing Guidelines" to the extent applicable to the Medicare Product.
- v. *Materials.* Producer shall only use those marketing materials that have been approved by Company and CMS.
- vi. *Goals.* Producer shall comply with any monthly, quarterly and/or annual sales, retention and quality goals established by Company.

c. Education, Training and Oversight.

- i. *Audits.* Producer shall cooperate and comply with (a) Company's audit, monitoring and oversight activities in connection with the Medicare Products, and (b) any CMS audit requirements and requests.
- ii. *Improper Practices.* In the event Producer engages in behavior that is unethical, violates applicable laws, regulations 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.

iii. *Misconduct.* Producer shall cooperate with Company and/or any Regulatory Agency regarding any inquiry or investigation resulting from a Beneficiary, Beneficiary designee, Company, provider or Regulatory Agency's concerns or allegations regarding misconduct, fraud or sales and marketing misrepresentation. Producer shall immediately report to Company any regulatory inquiry, action or sanction of Producer of which it becomes aware. Producer shall investigate and respond to all alleged sales allegations in the timeframe and in the format prescribed by Company and/or Regulatory Agency.

iv. *Producer Overlap.* In the event that more than one Producer claims entitlement to receive compensation on the sale of a Medicare Product, Company shall have the right, in its sole and absolute discretion, to decide and resolve the dispute. The decision of the Company shall be final, binding, conclusive and non-appellable.

v. *Medicare Products.* Company and Producer acknowledge that Medicare Products are highly regulated. Producer shall become and remain knowledgeable about Medicare Product requirements and Producers' obligations, all as promulgated by Regulatory Agencies and Company. Producer shall participate in and cooperate with Company's initial and ongoing education and training programs for all Medicare Products that Company has authorized Producer to market and promote.

d. Application Services.

- i. *Company Forms.* Producer shall use Company's enrollment applications and other forms in connection with the Medicare Products.
- ii. *Applications.* Producer shall solicit and procure applications from interested Individuals. Producer's responsibilities shall include, without limitation, collecting information required by Company and CMS to timely process enrollments and transmit enrollment information to Company in a manner specified by Company and in compliance with standards and requirements established by Company. Producer shall ensure that the facts set forth by an applicant in an enrollment application are true and correct, and shall be responsible for correcting any errors. Producer understands and shall fully inform each applicant that

Company will rely solely upon these representations in rejecting, conditionally accepting or enrolling an applicant, and 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 cancellation of coverage by Company. Producer shall receive all enrollment applications directly from prospective Individuals and Groups. Producer acknowledges that Company must process completed enrollment applications within certain timeframes as defined and required by CMS and Health Net's Policies and Procedures; therefore, Producer shall initially verify any such forms received for completeness and accuracy and Producer shall forward the completed enrollment applications to Company for processing within one (1) calendar day following receipt from the applicant. Producer understands and agrees that coverage under a Medicare Product cannot be effective until CMS receives and approves the enrollment application.

iii. *Eligibility.* An enrollment shall 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.

iv. *Distribution of Information.* Producer shall promptly forward to Individuals and Groups any information Company may provide to Producer from time to time for distribution. Producer agrees to 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 all inquiries and other relevant correspondence received by Producer from Individuals, Medicare Enrollees and Groups.

v. *Premium Information.* Producer shall inform all prospective Medicare Enrollees how premium payments for the Medicare Product is to be made, as prescribed by Company and consistent with CMS requirements. Such notice shall be given prior to or at the time application information is accepted from the prospective Medicare Enrollee.

e. **Reports.** Producer shall submit to Company such reports as may be required from time to time by Company pursuant to the Policies and Procedures.

f. **Records.** Producer shall keep complete records of all transactions related to the Services performed under this Agreement, including, but not limited to, any records related to enrollments submitted and accepted hereunder and other records that may be required by any governmental entity or Regulatory Agency in connection with Producer's relationship with Company, its Medicare Enrollees, and Groups. Producer shall preserve all books and records for a period of not less than ten (10) years or such longer period as required by law; the first three (3) years of which shall be in an easily accessible location at Producer's offices. Thereafter, such records may be warehoused or stored, provided they can be made available to the Company and to Regulatory Agencies within five (5) days of receipt of request thereof.

g. **Medicare Enrollee 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 any regulatory requirement. In the event of termination of this Agreement, Producer shall return to Company all unused materials provided by Company under this Agreement that are in Producers' possession.

h. **Representations, Modifications and Amendments.** The parties agree that Producer shall not:

i. Hold himself/herself/itself out as an employee, partner, joint venture or associate of Company;

ii. Hold himself/herself/itself out as an agent of Company in any manner or for any purpose;

iii. Make any representation with respect to Medicare Product except as may be explicitly set forth in materials prepared and provided to Producer by Company;

iv. Make any oral or written amendments, alterations, modifications or waivers of any of the terms or conditions applicable to any of Company's Medicare Products; or

v. Bind or attempt to bind Company in any way.

i. **Litigation.** Producer shall not initiate litigation in any dispute between Producer and any prospective or existing Medicare Enrollee, without the prior written

consent of the Company, which consent may be withheld by the Company for any or no reason.

j. Other Producers. Producer shall not allow any individual producers employed by or under contract with Producer to provide services contemplated by this Agreement on behalf of Producer.

3. COMPANY RESPONSIBILITIES.

a. Appointment. Company hereby appoints Producer for purposes of marketing and selling Medicare Product, and shall appoint Producer in accordance with applicable state laws. Nothing in this Agreement shall preclude Company from appointing others for the purpose of marketing and selling Medicare Products 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 Products. Producer shall not modify or incorporate into other materials such templates 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 prior written approval. Company shall respond to any such requests for marketing material approval as soon as practical after receiving CMS approval.

c. Training. Company shall provide initial training to Producer at times and locations agreed to by Company and Producer. Completion of such training shall be documented in accordance with the Policies and Procedures.

d. Enrollment. Company shall (i) receive enrollment applications from Producer, (ii) review such applications with respect to Company's enrollment criteria, and (iii) submit enrollment data 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.

e. Company's Right to Service Medicare Enrollees. Notwithstanding any other provision of this Agreement, Company may, at any time during the term or following the termination of this Agreement, take any action and make any communication necessary to allow Company to fulfill its obligations to continue to provide coverage to Medicare Enrollees and Groups pursuant to its benefit agreements with such Medicare Enrollees and Groups, and CMS requirements. Producer shall provide any information required by Company to fulfill such obligation and shall facilitate the process as and when requested by Company.

f. Non-Promotional Printed Material. Company shall be responsible for designing, printing and preparing non-promotional printed material used in the enrollment process, including the Medicare Product enrollment forms, identification cards, transmittal and coding forms, etc. Company shall supply such materials to Producer, the Medicare Enrollee or Group, as determined by Company. Company shall cause such materials to be prepared in sufficient quantities to support the projected enrollment.

g. Rights of Company. This Agreement is subject to Company's right to:

- i. Decline acceptance of any application deemed not acceptable by Company or CMS, as Company shall determine in its sole discretion;
- ii. Amend or rescind any benefit agreement and all other rights under the terms of any issued policy;
- iii. Monitor the Services performed by Producers;
- iv. Modify any Company policy;
- v. Establish and amend a compensation schedule for benefit plans not presently offered by Company.

4. COMPENSATION

a. Payment. Company shall pay Producer pursuant to the Compensation Schedule(s) set forth in Exhibit C, attached hereto and incorporated herein, for the applicable Medicare Product for each Medicare Enrollee enrolled by Producer pursuant to a Group or

Individual enrollment application. Compensation shall only be paid for Medicare Enrollees enrolled by Producer in a Medicare Product as confirmed by CMS.

- b. **Waiver of Objections.** Producer shall waive any objection to a monthly statement provided by Company to Producer unless Producer provides Company written notice of such objection within thirty (30) days after Producer's receipt of the statement.
- c. **Splitting Compensation.** Producer agrees, and shall require each Producer to agree, that under no circumstances shall Producer give any part of compensation received by Producer for the sale of Medicare Products to any Medicare Enrollee 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. Notwithstanding the foregoing, 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. In the event a Medicare Enrollee is retroactively disenrolled or denied enrollment, Producer shall lose all right to compensation for such Medicare Enrollee, and shall pay to Company upon demand any amounts previously received by Producer as compensation for such retroactively disenrolled Medicare Enrollee.
- e. **Expenses.** Company shall not be responsible for any expense(s) incurred by Producer in the performance of this Agreement unless Company provides written notice to Producer in advance of the occurrence of such expense that Company will reimburse Producer, as applicable, for specifically identified expenses.
- f. **Amounts Owed Company.** Company reserves the right to offset against any compensation 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 of 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 this Agreement.

5. TERM AND TERMINATION

- a. **Term.** This Agreement shall commence on the Effective Date and shall continue in full force and effect from the Effective Date for a period of one year. Thereafter, this Agreement shall automatically renew for successive terms of one year each, unless either party provides the other with sixty (60) days prior written notice of non-renewal or otherwise terminates this Agreement as set forth in this Section 5.
- b. **Termination Without Cause.** 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 continuing 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, unless such breach is cured to the non-breaching party's satisfaction within the fifteen (15) day notice period. Notwithstanding the foregoing, Company may terminate or suspend this Agreement immediately upon written 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; (ii) in the event Company receives or becomes aware of a sales allegation against Producer, if Producer fails to provide information requested by Company regarding the allegation within five (5) calendar days of such request; (iii) has its license suspended, terminated or revoked; or (iv) 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 in accordance with Section 5(c), Company's obligation to pay any compensation hereunder shall cease as of the effective date of such termination.
- ii. In the event Company terminates this Agreement in accordance with Section 5(a) or (b), Company shall continue to make payment to Producer until otherwise terminated in accordance with Exhibit C. This Section 5(d) shall survive termination of this Agreement.
- iii. *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 statement or communication to any Group or Medicare Enrollee that disparages or criticizes 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 ("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, Group 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 proprietary 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 to not (i) circulate, otherwise share, distribute or reproduce any of the Confidential Information without Company's prior written consent; (ii) use the information except in the performance of the Agreement, or (iii) 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. Use and Disclosure of Individual Information.

1. In the performance of Producer's services under this Agreement, Producer and its employees and sub-agents (collectively "Business Associate") may create, have access to or receive "Protected Health Information" ("PHI") and "Electronic Protected Health Information" ("ePHI") as such terms are defined under the Health Insurance Portability and Accountability Act of 1996, and its implementing privacy and security regulations codified at 45 C.F.R. parts 160 and 164, Subparts A, C and E ("HIPAA"). Therefore, with respect to Business Associate's creation of, access to or receipt of PHI and/or ePHI, Business Associate agrees to comply with the following requirements:

- a. Business Associate agrees to not use or disclose PHI and/or ePHI other than as permitted or required by this Agreement or as required by law.

- b. *Permitted Uses and Disclosures.* Business Associate may use and disclose PHI and/or ePHI pursuant to this Agreement as follows:

- i. Business Associate may use and disclose PHI and/or ePHI received, created, transmitted or maintained by Business Associate (or its agents and subcontractors) on behalf of Health Net: (1) in the performance of its obligations pursuant to this Agreement and solely in accordance with the specifications set forth in this Agreement; (2) for the proper management and administration of Business Associate, if such use is necessary (x) for the proper management and administration of

Business Associate or (y) to carry out the legal responsibilities of Business Associate.

ii. Business Associate may disclose PHI and/or ePHI created or received in its capacity as a Business Associate of Health Net for the proper management and administration of Business Associate if (1) the disclosure is required by law or (2) Business Associate (x) obtains reasonable assurances from the person to whom the PHI and/or ePHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person and (y) the person agrees to notify Business Associate of any instances of which it becomes aware in which the confidentiality and security of the PHI and/or ePHI has been breached.

c. *Safeguards.* Business Associate shall use appropriate administrative, physical, and technical safeguards, including, among others, policies and procedures regarding the protection of PHI and/or ePHI and the provision of training on such policies and procedures to applicable employees, agents, subcontractors, independent contractors and volunteers, that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI and/or ePHI that Business Associate creates, receives, maintains or transmits on behalf of Health Net.

(i) With respect to ePHI, Business Associate shall implement and comply with (and ensure that its subcontractors implement and comply with) the administrative safeguards set forth at 45 C.F.R. 164.308, the physical safeguards set forth at 45 C.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 ePHI that it creates, receives, maintains, or transmits on behalf of Health Net.

d. *Reporting of Breaches.* Business Associate agrees to report to Health Net any “Breach” of PHI within five (5) days after discovery of a Breach. Such notice shall include the identification of each individual whose PHI has been, or is reasonably believed by Business Associate, to have been, accessed, acquired, or disclosed in connection with such Breach. Notifications should be sent to privacy@healthnet.com. In addition, Business Associate shall provide any additional information reasonably requested by Health Net for purposes of investigating and responding to the Breach. As used herein “*Breach*” means the unauthorized acquisition, access, use or disclosure of PHI without regard to whether such access, use or disclosure compromises the security of the PHI such that the Breach poses a significant risk of financial, reputational, or other harm to the individual, as provided in 45 C.F.R. § 164.402. Business Associate further agrees to mitigate, to the extent practicable, any harmful effect that becomes known to Business Associate of a Breach or a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

e. *Use of Agents and Subcontractors.* Business Associate shall ensure that any of its agents and subcontractors to whom it provides PHI and/or ePHI created, received, maintained or transmitted pursuant to this Agreement agree to the same restrictions, conditions and safeguards that apply to Business Associate pursuant to this Agreement with respect to such PHI and/or ePHI.

f. *Availability of Information to Health Net.* Within five (5) business days of receipt of a request from Health Net, Business Associate shall make available to Health Net such information as Health Net may require to fulfill Health Net’s obligations to provide access to, and a copy of, PHI and/or ePHI pursuant to the Privacy Rule, including but not limited to 45 C.F.R. § 164.524.

g. *Accounting of PHI.* Within (5) business days of notice by Health Net of a request for an accounting of disclosures of PHI, Business Associate shall make available the PHI, including ePHI, to Health Net as required for Health Net to fulfill its obligations to provide an *accounting* pursuant to the Privacy Rule, including but not limited to, 45 C.F.R. § 164.528. Business Associate shall maintain records sufficient to meet this provision for a period of six years in order to ensure compliance with the Privacy Rule.

h. *Availability of Books and Records.* Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI, including ePHI, created or received pursuant to this Agreement available to the Secretary of the United States Department of Health and Human Services, for the purpose of determining Health Net's compliance with the Privacy and Security Rules as set forth in 45 C.F.R. § 160.310.

i. *Record Retention.* Subject to section "n" below, Business Associate shall retain all PHI and/or ePHI received from Health Net, or created, received, maintained or transmitted in the course of performing its obligations, for the duration of the term of this Agreement. Health Net, after providing ten (10) business days' written notice, may inspect the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of PHI pursuant to this Agreement for the purpose of determining whether the Business Associate has complied with this Agreement.

j. *Minimum Necessary Amount of PHI.* Business Associate acknowledges that it shall request from Health Net and so disclose to its affiliates, agents and subcontractors or other authorized *third parties*, only (i) the information contained in a "limited data set," as such term is defined at 45 C.F.R. 164.514(e)(2), or, (ii) if needed by Business Associate or its affiliates, agents, subcontractors or other authorized *third parties*, the minimum necessary data to accomplish the intended purpose of such requests or disclosures. In all cases, Business Associate shall request and disclose PHI only in a manner that is consistent with guidance issued by the Secretary from time to time.

k. *Data Ownership.* Business Associate acknowledges that Health Net is the owner of all PHI and/or ePHI.

l. *State Law Requirements.* To the extent that state law is more stringent than the HIPAA Regulations, any safeguard, use or disclosure of PHI by Business Associate shall be made in accordance with state law.

m. *Termination by Health Net for Breach.* Health Net may terminate this Agreement immediately if Health Net determines that Business Associate has acted or failed to act in a manner that constitutes a breach. Business Associate acknowledges that any breach would result in irreparable harm to Covered Entity and that Covered Entity has the right to seek an injunction and other legal and equitable rights and remedies available under the law.

n. *Effect of Termination.* Upon termination or expiration of this Agreement for any reason, Business Associate shall return and/or destroy all PHI and/or ePHI received or created pursuant to this Agreement that Business Associate maintains in any form, and shall retain no copies of such PHI and/or ePHI; or if return or destruction is not feasible, Business Associate shall continue to extend protections of this Agreement to such information, and limit further use of such PHI and/or ePHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI and/or ePHI.

2. The parties acknowledge that their responsibilities under this Agreement may be affected and governed by the requirements of HIPAA and/or the HITECH Act, to the extent that regulations implementing HIPAA and/or the HITECH Act (the "Regulations") become effective during the Term of this Agreement or any renewal thereof. Both parties agree that, upon the effective date of any such Regulations, this Agreement shall be deemed to incorporate, and impose on the parties, any obligations applicable to each of them under such Regulations, and such Regulations shall be automatically included herein to ensure that this Agreement remains in compliance with any such amendments.

d. Survival. This Section 6 shall survive the termination of this Agreement for any reason.

7. MISCELLANEOUS.

- a. **Relationship of Parties.** Company and Producer are independent legal entities. Nothing in this Agreement shall be construed or be deemed to create a relationship of joint venturer or of employer and employee between Company and Producer. 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 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 or otherwise transfer any of the rights, duties or obligations under this Agreement without the prior written consent of Company, such consent not to be unreasonably withheld.
- 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.** No amendment or modification of this Agreement shall be effective unless agreed to in writing by Company and Producer; provided:

(i) Company may amend this Agreement, including the Fee Schedule, upon thirty (30) days prior written notice to Producer. Such amendment shall become effective at the end of the thirty (30) day notice period unless a later effective date is specified in the notice or Producer provides Company with ten (10) days prior written notice of termination of this Agreement by Producer. An amended Fee Schedule shall apply prospectively only to new Individual and Group policy applications submitted to the Company by Producer on or after the effective date of the amendment. Payment for Individual and Group policies issued prior to the effective date of any amended Fee Schedule shall be governed by

the Fee Schedule in effect at the time of issuance of such Individual or Group policy.

(ii) Company may amend this Agreement at any time as a result of legislative, regulatory or legal requirements, without consent of Producer. Any such amendment will be effective immediately on the effective date of the requirement.

- 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 received 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 in the Cover Sheet.

If to Company:
Health Net of Arizona, Inc.
Attn: Medicare Officer
1230 W. Washington St., Ste 401
Tempe, AZ 85281

Either party may change the address or person designated to receive such written notice by notifying the other party in accordance with this Section 7(g).

- h. **Indemnification.**
- i. *Company.* Company agrees to indemnify and hold harmless Producer against any or all liability, losses, damages, expenses, court costs and attorneys' fees arising from any acts, omissions or negligence of Company, its employees or legal representatives in connection with its performance under this Agreement. The obligations of Company to indemnify Producer shall survive the termination of the Agreement.
- ii. *Producer.* Producer agrees to indemnify and hold harmless Company against any or all liability, losses, damages, expenses, court costs and attorneys' fees

arising from any acts, omissions or negligence of Producer, Producer employees, or legal representatives in connection with its performance under this Agreement. Furthermore, Producer specifically agrees to indemnify Company for any costs, fees, fines, penalties or damages incurred or suffered by Company as a result of the failure of Producer to comply with any Regulatory Agency requirements and/or Marketing Guidelines as they may be amended from time to time, or as a result of the failure of Producer to properly and accurately rate a Medicare Product, or as a result of Producer's misrepresentation of Company and/or its Medicare Products to Individuals, Groups or Medicare Enrollees, or as a result of Company's compliance with any compensation payment instructions that Producer may provide Company pursuant to this Agreement. The obligations of Producer to indemnify the Company shall survive the termination of the Agreement.

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.

- i. **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. A single neutral arbitrator who is licensed to practice law shall conduct the arbitration in Sacramento, Los Angeles or San Francisco, California. 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 that 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.

- j. **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.

- k. **Governing Law.** This Agreement shall be governed by and construed according to federal law to the extent federal applies, and otherwise by the laws of the state where the Health Net affiliate or subsidiary accessing the Services pursuant to this Agreement is situated.
- l. **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 with respect to the subject matter hereof that are not contained in this Agreement are of no force or effect.
- m. **Subcontracts.** To the extent that Producer performs its obligations through subcontracts, such subcontractors shall be subject to the prior written approval of Company and shall require such subcontractors to abide by the terms of this Agreement. Producer agrees to incorporate the entire Exhibit A into its contractual arrangements with subcontractors.
- n. **State-Specific Requirements.** The parties agree to comply with the provisions set forth in Exhibit B, State-Specific Requirements, to the extent applicable to Producer's operations. In the event of a conflict between the terms and conditions of this Agreement and Exhibit B, the terms and conditions of Exhibit B shall control.

EXHIBIT A
MEDICARE REGULATORY
ADDENDUM

Producer shall comply with the following regulatory requirements with respect to this Agreement and the Medicare Products. To the extent the terms and conditions of the Agreement conflict with or contradict those of this Exhibit, the terms and conditions of this Exhibit shall control. For clarity, where the term Producer is used throughout this Exhibit A, it shall be deemed to include Producer and its employees.

1. Producer shall allow the U.S. Department of Health and Human Services, the Centers for Medicare and Medicaid Services (“CMS”), the U.S. Comptroller General, or their designees the right to inspect evaluate and audit any pertinent information, including contracts, books, documents, papers, records, computers or other electronic systems, including medical records and documentation of Producer related to Health Net’s contract with CMS for a period of ten (10) years from the final date of the Contract Period or the date of completion of any audit, whichever is later. For purposes of this definition, the “Contract Period” means the annual term of the contract between Health Net and CMS.
2. Producer shall maintain all records relating to this contract for a minimum of ten (10) years from the final date of the Contract Period or the date of the completion date of any audit, whichever is later.
3. Producer shall cooperate in, assist in, and provide information as requested for audits, evaluations and inspections performed under Section 1 above and Health Net’s audit, monitoring and oversight activities.
4. Producer shall safeguard each Medicare Member’s privacy and confidentiality and comply with all state and federal confidentiality and security requirements.
5. Producer shall hold each Member harmless for payment of any fees that are the legal obligation of Health Net in the event of, but not limited to, insolvency of, breach by or billing of Producer by Health Net.
6. Producer shall comply with all applicable state and

federal laws, regulations, and instructions, including Medicare laws, regulations and CMS instructions.

7. Producer shall perform each service or other activity under this Agreement in a manner consistent and in compliance with Health Net’s contractual obligations to CMS.
8. Producer acknowledges that Health Net oversees and is ultimately responsible to CMS for any functions and responsibilities described in the Medicare Advantage regulations. Producer understands that this accountability provision also applies to this Agreement.
9. Producer shall comply with Health Net Policies and Procedures.
10. Producer agrees that, to the extent Producer performs its obligations through subcontracts, such subcontractors shall be subject to the prior approval of Health Net. Producer shall incorporate the terms of this Exhibit A into its contractual arrangements with subcontractors.
11. Producer understands and agrees that, in the event Producer fails or is unable (for any reason whatsoever) to perform in a satisfactory manner any of the Services, CMS and/or Health Net shall have the right to suspend, revoke or terminate this Agreement, institute a corrective action plan, or seek other remedies.
12. 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 applies only to the performance of Company and Producer's respective obligations under the Agreement performed in or for Individuals covered in the State of California. Producer shall comply with the following provisions of the Knox Keene Health Care Services Plan Act ("Act"):

1. 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.
2. 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.
3. Producer shall comply and shall cause its principal persons and employees to comply with all applicable provisions of the Act and the rules thereunder.
4. 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.
5. 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.
6. 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 that is in the name of and under the control of Producer.

7. 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.

EXHIBIT B-2

OREGON

This Exhibit B-2 applies only to the performance of Company and Producer's respective obligations under the Agreement that are performed in or for Individuals covered in the State of Oregon by Health Net Health Plan of Oregon, Inc. or Health Net Life Insurance Company. The following Sections (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 [date] ("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.
- b) *Termination without Cause.* After the Initial Term, either party may terminate this Agreement without cause as set forth in this subsection. Company may terminate this Agreement upon no less than ninety (90) days prior written notice to Producer. Notwithstanding the foregoing, Producer 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 COMPENSATION SCHEDULES

[see sub-exhibits attached hereto]

**AMENDMENT TO THE
PRODUCER AGREEMENT**

This Amendment ("Amendment") is made as of this 1st day of September 2012, to the Producer Agreement between Health Net of Arizona, Inc. ("Health Net") and Producer, as amended (collectively, the "Agreement"). This Amendment is an integral part of the Agreement and shall supersede any contractual provisions therein to the contrary for all enrollments effective on or after January 1, 2013 (the "Effective Date"). Defined terms used herein shall have the same meaning as in the Agreement unless otherwise specifically defined herein.

WHEREAS, the Amendment incorporates changes to the Agreement for the 2013 plan year.

NOW THEREFORE, in accordance with Section 7.f. of the Agreement, and in consideration of the mutual considerations contained in the Agreement and this Amendment, the Agreement is hereby amended as follows:

1. **Exhibit A –Medicare Regulatory Addendum-** to the Agreement is replaced with the attached Exhibit A – Medicare Regulatory Addendum.

2. **Exhibit C** to the Agreement is replaced with the attached Exhibit C. Except for the specific compensation amounts listed under the Administrative Fee (Override) and Producer Compensation headings that are set out in any Exhibit C issued under this Agreement prior to January 1, 2013, the terms and conditions of the Exhibit C attached hereto and incorporated herein by this reference shall supersede all of the terms and conditions of any other Exhibit C issued under the Agreement.

Except as specifically amended herein, all other terms and conditions of the Agreement remain in full force and effect.

HEALTH NET OF ARIZONA, INC.

Signed: 
By: Arthur Kummer
Title: Vice President Medicare Programs
Date: September 12, 2012

EXHIBIT A
MEDICARE REGULATORY ADDENDUM

Producer acknowledges that it is contracting with Health Net as a first tier entity under Medicare Part C (Medicare Advantage) and/or Medicare Part C and D (Voluntary Prescription Drug Plan) and that Health Net is required by CMS to include certain terms and conditions in its contract with Producer. Producer shall, and shall require each employee to, comply with the following regulatory requirements with respect to this Agreement and the Medicare Products. To the extent the terms and conditions of the Agreement conflict with or contradict those of this Exhibit, the terms and conditions of this Exhibit shall control. For clarity, where the term Producer is used throughout this Exhibit A, it shall be deemed to include Producer and its employees.

1. Producer shall allow the U.S. Department of Health and Human Services, the Centers for Medicare and Medicaid Services (“CMS”), the U.S. Comptroller General, or their designees the right to inspect evaluate and audit any pertinent information, including contracts, books, documents, papers, records, computers or other electronic systems, including medical records and documentation of Producer related to Health Net’s contract with CMS for a period of ten (10) years from the final date of the Contract Period or the date of completion of any audit, whichever is later. For purposes of this definition, the “Contract Period” means the annual term of the contract between Health Net and CMS.
2. Producer shall maintain all records relating to this contract for a minimum of ten (10) years from the final date of the Contract Period or the date of the completion date of any audit, whichever is later.
3. Producer shall cooperate in, assist in, and provide information as requested for audits, evaluations and inspections performed under Section 1 above and Health Net’s audit, monitoring and oversight activities.
4. Producer shall safeguard each Medicare Member’s privacy and confidentiality and comply with all state and federal confidentiality and security requirements.
5. Producer shall hold each Member harmless for payment of any fees that are the legal obligation of Health Net in the event of, but not limited to, insolvency of, breach by or billing of Producer by Health Net.
6. Producer shall comply with all applicable state and federal laws, regulations, and instructions, including Medicare laws, regulations and CMS instructions, and without limiting the foregoing, specifically the applicable requirements related to Medicare Part D Sponsor subcontractors set forth at 42 CFR 423.505(i) CMS marketing guidance and, to the extent applicable, the laws of the states in which the Health Net Medicare Products are marketed by the Producer.
7. Producer shall perform each service or other activity under this Agreement in a manner consistent and in compliance with Health Net’s contractual obligations to CMS.
8. Producer acknowledges that Health Net oversees and is ultimately responsible to CMS for any functions and responsibilities described in the Medicare Advantage regulations. Producer understands that this accountability provision also applies to this Agreement.
9. Producer shall comply with Health Net Policies and Procedures.
10. Producer agrees that, to the extent Producer performs its obligations through subcontracts, such subcontractors shall be subject to the prior approval of Health Net. Producer shall incorporate the terms of this Exhibit A into its contractual arrangements with subcontractors.
11. Producer understands and agrees that, in the event Producer fails or is unable (for any reason

whatsoever) to perform in a satisfactory manner any of the Services, CMS shall have the right to suspend, revoke or terminate this Agreement, institute a corrective action plan, or seek other remedies.

12. 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.”

Certain Compliance Restrictions. In connection with the marketing and sale of Medicare Products hereunder, Producer shall not, and shall ensure that its employees do not:

- (i) claim recommendation or endorsement by CMS or that CMS recommends that Medicare beneficiaries enroll in Health Net’s Medicare Products;
- (ii) make any statement, claim, or promise that conflicts with, materially alters, or erroneously expands upon the information contained in CMS or approved marketing materials;
- (iii) use providers or provider groups to distribute printed information comparing benefits of different health plans, unless providers, provider groups or pharmacies accept and display materials from all Part D plan sponsors with which the providers, provider groups, or pharmacies contract;
- (iv) not accept enrollee applications in provider offices or other places where health care is delivered;
- (v) offer gifts or payments to any employer plan sponsor or any of its employees, representatives, agents, contractors or beneficiaries as an inducement to contract with Health Net;
- (vi) ask for personal information from enrollees or prospective Enrollees (i.e. Medicare number, bank account or credit card numbers) during sales presentations;
- (vii) engage in any discriminatory activity such as, for example, attempts to recruit Medicare beneficiaries from higher income areas without making comparable efforts to enroll Medicare beneficiaries from lower income areas;
- (viii) engage in activities that could mislead or confuse an employer plan sponsor or its employees, representatives, agents, contractors or Medicare beneficiaries, or misrepresent Health Net;
- (ix) conduct sales presentations or distribute and accept enrollment forms in provider offices, pharmacies, or other areas where health care is delivered to individuals, except as permitted by CMS in the case where such activities are conducted in common areas in health care settings;
- (x) alter, modify, waive, or change any of the terms, rates or conditions of any advertisement, marketing materials, scripts, receipts, policies or contracts of Health Net, in any respect;
- (xi) discriminate based on race, ethnicity, religion, gender, sexual orientation, health status or geographic location; or
- (xii) engage in any other marketing activity prohibited by CMS.

**EXHIBIT C
FEE SCHEDULE**

Please contact your Accountant Executive for a copy of current Fee Schedule.