



Harvard Pilgrim
HealthCare

Agent Contracting Checklist – HPHC Medicare Advantage

To expedite the contracting process, please follow the steps below:

Step 1: Complete and Sign the Following Items:

- Broker Sell through GA form** *(required)*
- Broker Application**
Be sure to indicate if contracting as an individual or corporation
- W-9**
- HPHConnect for Brokers Authorization Form**
(this includes Online quoting)
- EFT Authorization (optional)** **ORIGINAL EFT** form must to be sent back via U.S. Mail with a Voided check to: Harvard Pilgrim HealthCare, Inc. ATTN: Treasury Department 93 Worcester Street, Wesley, MA 02481
- Broker Agreement & Business Associate Agreement**
- Copy of State License(s)**
- Copy of E&O Certificate – minimum \$1,000,000 coverage**
- AHIP (Mandatory Requirement for Certification)** *If, you have completed this course please provide copy of certificate*

Step 2: Return completed contracting material to us via email or fax:

Email: contracting@garityadvantage.com
Fax: 339-469-8155
Mail: GarityAdvantage Agencies
17 Accord Park Drive, Suite 107
Norwell, MA 02061

Questions? Call 800-234-9488

17 Accord Park Drive Suite 107, Norwell MA 02061
www.garityadvantage.com/ contracting@garityadvantage.com
PH: 800-234-9488 / Fax: 339-469-8155



**Request to Sell through Agency:
Medicare Advantage Products**

I hereby notify Harvard Pilgrim Health Care (“Harvard Pilgrim”) that I will sell Harvard Pilgrim’s Medicare Advantage products as an agent of Garity Associates Brokerage Insurance Agency, INC (“Agency”) effective on _____, 20____ (“Transfer Date”).

I understand and agree to the following:

- Agent level commissions for new Medicare Advantage memberships will continue to be paid directly to me by HPHC.
- This transfer request is specific to Harvard Pilgrim Healthcare’s Medicare Advantage products and shall have no impact on my contract for any other Harvard Pilgrim products.

This request form is not a contract. I agree to abide by the terms of my executed Harvard Pilgrim Broker Agreement and Business Associate Agreement, as amended on occasion.

Agent Name: _____ State: _____
(please print)

Transfer requested by: _____
Agent (signed) Date

Transfer accepted by: _____
Agency Date

Transfer authorized by: _____
For: Harvard Pilgrim Healthcare Date



Checklist and Instructions for Completing Harvard Pilgrim Health Care Broker Agreement and Business Associate Agreement

Broker Agreement, Page One

- Identify the name of the broker, or the contracting party entering into the Agreement with HPHC.
 - If you are an individual broker, **you** are the "Broker" under the Agreement.
 - If you represent a brokerage **firm**, you should name the firm or company as the "Broker" and the Agreement should be signed by a representative with authority to bind your firm or company.
- Please utilize the date of which you are signing the Agreement.

Broker Agreement, Page Six

- Identify the name of your company. If you are an individual broker, your name may be the name of your company.
- A signature is required by a representative with the authority to bind your firm or company.
- Provide your demographic information and License Number.

Business Associate Agreement, Page One

- Identify the name of the broker, or the contracting party entering into the Agreement with HPHC.
 - If you are an individual broker, **you** are the "Broker" under the Agreement.
 - If you represent a brokerage **firm**, you should name the firm or company as the "Broker" and the Agreement should be signed by a representative with authority to bind your firm or company.
- Please utilize the date of which you are signing the Agreement.

Business Associate Agreement, Page Two

- Identify the name of the Business Associate for your group.
 - If you are an individual broker, **you** will be the Associate unless you have delegated this responsibility to another.
 - If you represent a brokerage firm, identify the **Associate** (the person who is signing the document) in your firm responsible for privacy matters.

Business Associate Agreement, Page Thirteen

- Agreement should be signed by a representative with authority to bind your firm or company.
- Print the person's name below the signature, along with title and date.
- Please utilize the date of which you are signing the Agreement.



Harvard Pilgrim Health Care — Broker Application

Please type or print your answers. Use a separate answer sheet if necessary.



- 1. Name of firm: _____
- 2. Principal Address: _____
- 3. Mailing Address (if different from above): _____

- 4. Telephone: _____ Fax: _____
- 5. Email: _____

B. Primary Contacts

Name	Title	NPN	Email

· In order to complete your application in full you must submit a copy of broker license and errors and omissions coverage.

· You must also complete the Harvard Pilgrim Health Care Broker Agreement and Business Associate Agreement contract. Please contact Broker Relations at 1-800-424-7285 for a copy of the contract.

I verify that the information contained herein is true and that I am a licensed health insurance broker in good standing with the regulatory authorities. Please direct any questions to Broker Relations at (800) 424-7285. Mail the completed form to Broker Relations, Harvard Pilgrim Health Care, 93 Worcester Street, Wellesley, Massachusetts 02481 or fax to (617) 509-2515.

Signature: _____ **Date:** _____

Request for Taxpayer Identification Number and Certification

**Give Form to the
 requester. Do not
 send to the IRS.**

▶ Go to www.irs.gov/FormW9 for instructions and the latest information.

Print or type. See Specific Instructions on page 3.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):
	<input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate	Exempt payee code (if any) _____
	<input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____ Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.	Exemption from FATCA reporting code (if any) _____
	<input type="checkbox"/> Other (see instructions) ▶ _____ (Applies to accounts maintained outside the U.S.)	
	5 Address (number, street, and apt. or suite no.) See instructions.	Requester's name and address (optional)
6 City, state, and ZIP code		
7 List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number											
				-			-				
or											
Employer identification number											
				-							

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting*, later, for further information.

Note: If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the instructions for Part II for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code*, later, and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships*, earlier.

What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code*, later, and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note: ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or “doing business as” (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C corporation, or S corporation.** Enter the entity’s name as shown on the entity’s tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a “disregarded entity.” See Regulations section 301.7701-2(c)(2)(iii). Enter the owner’s name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner’s name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity’s name on line 2, “Business name/disregarded entity name.” If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

Line 3

Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

IF the entity/person on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation
• Individual • Sole proprietorship, or • Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.	Individual/sole proprietor or single-member LLC
• LLC treated as a partnership for U.S. federal tax purposes, • LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or • LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes.	Limited liability company and enter the appropriate tax classification. (P= Partnership; C= C corporation; or S= S corporation)
• Partnership	Partnership
• Trust/estate	Trust/estate

Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys’ fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 5 ²
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Note: You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note: See *What Name and Number To Give the Requester*, later, for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at www.SSA.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/Businesses and clicking on Employer Identification Number (EIN) under Starting a Business. Go to www.irs.gov/Forms to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to www.irs.gov/OrderForms to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code*, earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.

You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.

You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions.

You must sign the certification. You may cross out item 2 of the certification.

4. Other payments.

You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.

You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor ²
5. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
6. Sole proprietorship or disregarded entity owned by an individual	The owner ³
7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	Give name and EIN of:
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity ⁴
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee

For this type of account:	Give name and EIN of:
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships*, earlier.

*Note: The grantor also must provide a Form W-9 to trustee of trust.

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records From Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at spam@uce.gov or report them at www.ftc.gov/complaint. You can contact the FTC at www.ftc.gov/idtheft or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see www.IdentityTheft.gov and Pub. 5027.

Visit www.irs.gov/IdentityTheft to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.



Electronic Funds Transfer (EFT) Form for Brokers

Please choose one of these options:

- Elect EFT payments
 Change EFT information
 Terminate EFT payments

Name of Brokerage Firm: _____

Name of Broker: _____

Business Address: _____

City: _____ State: _____ Zip Code: _____

Phone Number: _____

Please attach a voided check. When providing the Account and Routing/Transit Numbers, please refer to the series of numbers located at the bottom of your check and insert those numbers located between the symbols shown. For your reference, please see the sample check on the reverse side of this form.

Type of Account:
 Business Account or Personal Account *(check one)*
 Checking or Savings *(check one)*

Name(s) on Account: _____
Please list all names that appear on the account

Account Number: ¶ _____ ¶

Name of Financial Institution: _____

City: _____ State: _____

Routing/Transit Number: ¶ ¶

IMPORTANT NOTE: It is the applicant’s responsibility to ensure that the information provided on this form is complete and accurate. Harvard Pilgrim will not be responsible and shall be held harmless for errors made in EFT payments that are a result of inaccurate or incomplete information provided on this form. In no event and under no circumstances will Harvard Pilgrim’s liability exceed the amount of the EFT payments in question.

Signature of Account Owner Date

Signature of Brokerage Firm Authorized Representative Date

Print Name

Print Name

Title

Title

To protect the privacy of your financial information, **please DO NOT fax or e-mail completed forms. Please mail your signed and completed forms to the following address:** Harvard Pilgrim Health Care, Inc., Treasury Department, 93 Worcester Street, Wellesley, MA 02481

For Internal Use Only:	Vendor ID #
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Frequently Asked Questions

When should I expect my first deposit?

Depending on when Harvard Pilgrim receives your completed form, you can expect to receive your first payment by the next payment cycle or the one thereafter. Please call your broker relations assistant if you have any questions.

What happens if my account information changes?

In the event that your account information changes, you will need to submit another signed and completed Harvard Pilgrim EFT form with your updated information and mail it to Harvard Pilgrim.

Please call Harvard Pilgrim's Broker Relations Service Center with any questions at 1-800-424-7285.

* [NAME(S) ON ACCOUNT	SAMPLE	Check No. 10001 _____ 20 ____
Pay to the order of _____ \$ _____		_____ DOLLARS
* [NAME OF FINANCIAL INSTITUTION	Memo _____	
⌈ 1 2 3 4 5 6 7 8 9 ⌋	⌈ 1 2 3 4 5 6 7 8 9 ⌋	⌈ 1 0 0 0 1 ⌋
Routing Number	Account Number	Check Number



BROKER AGREEMENT

This Agreement is made this ____ day of _____ 20____ (the "Effective Date"), by and between Harvard Pilgrim Health Care, Inc., on behalf of itself and all present and future affiliates (hereinafter referred to as "HPHC"), and _____, on behalf of itself as an individual broker or broker organization, and if a broker organization, also on behalf of any present and future employees, ("Broker").

WHEREAS, HPHC is in the business of selling health insurance products in New England;

WHEREAS, Broker is a licensed insurance producer in the business of selling such health insurance products to employer groups in one or more of the states in which HPHC does business; and

WHEREAS, Broker desires to offer HPHC's health insurance products to its employer group clients or to individuals 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.** Broker hereby agrees to perform services as described below, and HPHC agrees to compensate Broker as provided herein.

2. **Duties of Broker.** Broker agrees:

(a) to use reasonable efforts to promote and publicize HPHC's health care insurance product(s) (the "Product(s)"), to procure applications to purchase the Product(s) from Qualified Groups, as herein defined, or from individuals, to assist HPHC personnel in similar activities, and to help serve and renew existing Qualified Groups and individuals. A Qualified Group is an employer group that is (i) either newly enrolling or renewing in an HPHC Product, and (ii) meets HPHC's underwriting guidelines. To the extent permitted under applicable state or federal law, HPHC reserves the right to accept or reject, at its sole discretion, any applications.

(b) to make reasonable efforts to become familiar with HPHC's Product(s) and applicable guidelines, including attendance at HPHC-sponsored training sessions, seminars and other meetings that may be required by HPHC from time to time;

(c) to provide in a manner mutually agreed upon by HPHC and Broker all necessary follow-up and support services to: (1) each Qualified Group whose application to purchase the Product(s) is accepted by HPHC and on whose account Broker has earned commissions ("Commission Group"), and (2) each individual whose application to purchase an individual Product(s) is accepted by HPHC and on whose account Broker has earned commissions ("Individual Commission") ;

(d) to maintain office and staff reasonably adequate for the performance of all services described in this Agreement;

(e) to conform with all applicable HPHC underwriting guidelines and procedural rules related to the performance of Broker's services; and

(f) if any premiums paid by Commission Groups or individuals are adjusted or refunded, to refund to HPHC the entire commission previously paid to Broker on such adjusted or refunded

premiums, as provided herein.

3. Limits of Authority.

(a) The Broker has no authority to do or perform, and expressly agrees not to do or perform the following acts on behalf of HPHC: (1) incur any indebtedness or liability; (2) waive, alter, modify or change any of the terms, rates, provisions or conditions of coverage, (3) modify or extend the amount or time of any premium payment is due HPHC, (4) make, alter or discharge contracts, or (5) quote rates other than those quoted by HPHC or authorized third parties under written agreement with HPHC. For information on the third parties currently under agreement with HPHC, Broker may contact HPHC Broker Relations. Broker will not submit to any Qualified Group or individual any information or material describing or proposing HPHC's benefits or rates without HPHC's prior written consent.

(b) Broker is not an agent for HPHC and shall have no authority to accept or bind coverage on behalf of HPHC or to otherwise make, alter or discharge and contract in the name of HPHC.

(c) Broker shall not submit to HPHC any application that Broker has not reviewed and reasonably believes to be accurate and complete.

4. Non-Exclusivity. HPHC and Broker agree that HPHC may execute contracts with other Brokers for the services described herein, that Broker may render such services for others health plans, and that HPHC's own sales force may render services to Qualified and Commission Groups and individuals.

5. Compensation of Broker. HPHC agrees to pay Broker in accordance with the Broker Compensation Plan in place at the time of sale. The applicable current Broker Compensation Plan(s) is/are attached hereto as Exhibit A and incorporated herein. HPHC revises the Broker Compensation Plan(s) annually, and publishes such revisions at least 30 days prior to effective date. Revised Broker Compensation Plan(s) are distributed electronically each year and are available upon request at any time. In addition to annual revisions, HPHC reserves the right to modify the Broker Compensation Plan(s) at any time upon reasonable prior written notice to Broker, which notice shall set forth the terms of the revision and its effective date. HPHC shall provide Broker with notice of revisions by electronic mail or any other reasonable method of communication. For purposes of this section, reasonable prior notice shall mean a minimum of 30 days before the effective date of revision(s). Commissions will be determined earned each month when applicable premiums are paid to HPHC and shall be payable within thirty (30) days after the month in which premium was received, provided that Broker has provided to HPHC satisfactory evidence of the following:

- a) Broker is currently and appropriately licensed in one or more of the states in which HPHC does business and credentialed with HPHC to perform the services described in this Agreement;
- b) Broker has provided substantial services during the premium term in question in (i) obtaining an application to purchase the Product(s) from the premium-paying group or individual, or (ii) obtaining such group's or individual's renewal, and in either case has provided follow-up support services to such group or individual; and
- c) Broker has provided HPHC with a Broker of Record letter from the Commission Group for which commission is requested. A Broker of Record letter is not required for payment of commissions on sales of individual Product(s).

- d) Broker has provided HPHC with all documents necessary to process the Commission Group or individual policy correctly.

Any indebtedness of Broker to HPHC may be set off against such commissions prior to payment. Upon notice by a Broker, any amounts that the Broker believes is owed by HPHC will be promptly investigated by HPHC, including a review of any supporting documentation provided, and reconciled with Broker as appropriate.

6. **Compensation of Broker on a Take-over Account.**

- a) *Non-Brokered Commission Groups.* In the case that a Broker takes over the account of a non-brokered Commission Group, the take-over Broker must submit a new Broker of Record letter to HPHC. Broker of Record takeovers are allowed only at the time of renewal of the account. If Broker takes over the account of a Commission Group at a time other than the renewal of the account, Broker will not be eligible for compensation for services on the take-over account until the next renewal date. In order to be entitled to compensation, take-over Broker must satisfy all applicable conditions and terms of this Agreement and the Broker Compensation Plan in place.
- b) *Brokered Commission Groups.* In the case where a Broker takes over an account from a brokered Commission Group, the take-over Broker must submit a new Broker of Record letter to HPHC. The take-over Broker shall only be entitled to compensation for the takeover account effective on the first month following the month in which HPHC receives the new Broker of Record letter. HPHC will attempt to provide the replaced Broker with notice that a new broker has been engaged by the Commission Group. Notwithstanding the foregoing, HPHC's failure to provide such notice shall not entitle replaced Broker to any commission(s) for services provided after termination.
- c) *Individual Policies.* HPHC will not pay commissions on individual policies written without the services of a Broker, even if the individual produces a Broker of Record letter.

7. **Licensing; Compliance with Law and Policies.** Broker warrants and represents that [he/she/it] has all licenses, and that any employees, agents or contractors rendering services hereunder have obtained all licenses, required for the performances of services under this Agreement and that Broker and all of its employees, agents and contractors will keep such licenses in effect for the duration of this Agreement. Broker shall provide evidence of such licenses to HPHC upon written request, and notify HPHC within two (2) business days of any suspension or revocation of Broker's license by any state regulatory body. Broker shall comply in all respects with all applicable Federal and State laws and regulations (including, without limitation, all disclosure requirements with respect to compensation received pursuant to this Agreement and, as applicable, M.G.L. Ch. 176D with respect to unfair trade practices and the requirement of maintaining complaint handling procedures) and with HPHC's policies and procedures. Broker acknowledges receipt of HPHC's Broker Compensation Plan, as of the Effective Date, and will comply with all applicable policies and procedures of HPHC, as those policies may be amended from time to time. Notwithstanding any terms of this Agreement to the contrary, HPHC shall have the right to terminate this Agreement immediately upon Broker's failure to comply with the terms of this paragraph.

8. **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 HPHC, including unauthorized premium quotations. HPHC's liability hereunder shall be limited to amounts due Broker for commissions earned and payable.

9. Term and Termination. The term of this Agreement will commence on the Effective Date noted above, and will automatically renew on each July 1st following the Effective Date for successive one-year terms unless terminated sooner as set forth herein. This Agreement may be terminated by either party at any time upon thirty (30) days written notice, and as otherwise provided herein.

Notwithstanding any provision to the contrary herein, Broker acknowledges and agrees that HPHC reserves the right to revoke or terminate, at any time upon HPHC's sole discretion, Broker's obligations and rights under this Agreement to offer, sell, or perform any services with respect to any HPHC product(s).

10. Confidentiality. Neither party shall, except as needed in performing its duties under this Agreement, directly or indirectly disclose or use, or enable anyone else to disclose or use, either during the term hereof or any time thereafter, any Confidential Information obtained from the other. "Confidential Information" shall include, without limitation, the following: Information regarding either party, its affiliates, members, personnel, clinicians or any other party with which it has business dealings: rate information, including rate models and rate development; HPHC member lists or Broker client lists and related demographic or other data; products, techniques, methods, systems, price books, or rating tools; corporate information, including financial and contractual arrangements, plans, benefits, strategies, tactics, or policies; marketing information, including sales or product plans, strategies, tactics, methods, customers, prospects, or market research data; financial information; operational information, including trade secrets, health care delivery processes and methods, and suppliers; technical information including computer software programs and any passwords provided to Broker by HPHC; and personnel or clinician information, including personnel or clinician lists.

11. Advertising and Marketing Materials; Use of Name. Broker shall not advertise the Product(s) without the prior written consent of HPHC. When performing its duties hereunder, Broker will only use advertising and marketing materials and other forms provided by HPHC. Materials provided by HPHC may include trade secrets as defined by applicable state or federal laws and all such materials must be returned immediately to HPHC on termination of this Agreement or upon HPHC's request. All marketing materials and forms provided to Broker by HPHC are and shall remain the sole property of HPHC. Broker shall not use (or permit any affiliated company or other third party to use) any name, trademark or other marks of HPHC or any derivation or portion thereof without the prior written approval of HPHC. Any such permitted use by Broker shall be limited to use in such manner as is necessary to perform Broker's obligations under this Agreement. HPHC may rescind or restrict Broker's use of such name, trademarks or other marks at any time.

12. Modification of Product(s). HPHC retains, in its sole discretion and to the extent allowed by applicable law, the right to withdraw Product(s) from sale, add new Product(s) for sale, and to modify the Product(s) at any time.

13. Cancellation of Employer Group or Individual Policy. HPHC reserves the right, in accordance with applicable law and HPHC's policies and procedures, to terminate the contract of any Commission Group or individual policy solicited by Broker. Upon termination of any group or individual policy by HPHC for nonpayment of premium, Broker will only be entitled to the payment of any commission by HPHC for past due payments actually collected by HPHC after the date of the notice of cancellation; *provided*

however, that Broker shall be entitled to payment of commissions during all times for which premiums have been paid. If premiums are retroactively paid, Broker will be entitled to commissions for such coverage period(s) corresponding with the term of retroactive premium payments. Upon termination of a Commission Group or individual policy for any reason other than nonpayment of premium, Broker will be entitled to payment for services provided through the later of the date of termination of the Commission Group's or individual's contract with HPHC or the date of receipt of final premium payment from the terminated account. Thereafter, Broker will not be entitled to any further payment for such account.

14. Error in Payment. Broker will reimburse HPHC for any commissions erroneously paid to Broker for any reason. HPHC will offset such commissions against commissions otherwise due Broker. HPHC will adjust payments to Broker for a period of time not to exceed the 12 months immediately preceding the date upon which HPHC receives notice of any error. HPHC may pay commissions retroactively if a Broker of Record letter is not processed correctly. Notwithstanding the preceding sentence, however, no commissions will be paid retroactively more than 12 months.

15. Insurance. Broker shall maintain comprehensive liability insurance, including errors and omissions insurance, in such form and amount as may be approved by HPHC from time to time. Broker shall, upon the request of HPHC, provide evidence of such insurance coverage. Broker will notify HPHC 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.

16. Agencies. If Broker is a firm or organization, all applications for health insurance products under this Agreement shall be solicited only by individuals representing the Broker who are properly licensed as Brokers under the applicable laws and regulations. If Broker is a firm or organization, Broker agrees to supply to HPHC, upon request, a list of all licensed individual brokers working for the Broker firm organization. If Broker is a firm or organization, Broker further agrees to take appropriate steps to ensure that employees working for the Broker firm or organization are aware of and understand the terms and requirements of this Agreement.

17. 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 HPHC and Broker.

18. Health Insurance Portability and Accountability Act (HIPAA).—Broker agrees to also execute HPHC's Business Associate Agreement, with respect to Broker's access to HPHC's members' "protected health information" (within the meaning of 45 CFR Parts 160-164) ("PHI") while performing its duties under this Agreement.

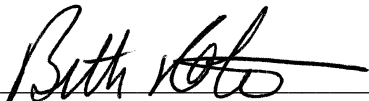
19. Amendments. HPHC may amend this Agreement at any time by providing written notice of such amendment to Broker. This Agreement shall be automatically amended to incorporate the changes set forth in the written notice unless Broker objects to such changes in writing within fifteen (15) days of receipt of such notice. If Broker objects in a timely manner to such amendment, the Parties shall work in good faith to reach agreement on a change to the Agreement. If the Parties are unable to reach agreement on a change to the Agreement within thirty (30) days of the date that HPHC receives written objection from Broker, then either Party may terminate this Agreement upon written notice of such termination.

20. Miscellaneous. Neither HPHC 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 HPHC and Broker and supersedes all prior negotiations, representations or agreements, either

written or oral. 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.

Harvard Pilgrim Health Care, Inc.

By: 
Beth Ann Roberts, SVP Enterprise Sales and Marketing

BROKER: _____
Name of Company

By: _____
(Signature)

(Printed Name and Title)

Address: _____

Telephone Number: _____

E-mail address: _____

Date: _____

Massachusetts License Number: _____

Maine License Number _____

New Hampshire License Number: _____

Other State License Number: _____

EXHIBIT A
BROKER COMPENSATION PLAN(S)
(SEE SEPARATE ATTACHMENT)

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into and is in effect as of _____, by and between **HARVARD PILGRIM HEALTH CARE, INC.**, a Massachusetts non-profit corporation licensed as a health maintenance organization under the laws of the Commonwealth of Massachusetts, on behalf of itself and all present and future affiliates (hereinafter referred to as “Covered Entity”) and _____ **[BROKER]**, on behalf of itself and all present and future affiliates (hereinafter referred to as “Business Associate”) (Business Associate and Covered Entity each sometimes individually referred to herein as a “Party” and collectively referred to herein as the “Parties”).

WHEREAS, the Parties wish to enter into or have entered into an arrangement (“Arrangement”) whereby Business Associate will provide certain services to Covered Entity and, in providing those services, Business Associate may create, receive, maintain or transmit from, or on behalf of, Covered Entity Protected Health Information (“PHI”)(defined below) and may create, receive, maintain, or transmit Electronic Protected Health Information (“EPHI”)(defined below)(PHI and EPHI are collectively referred to herein as PHI or Protected Health Information; EPHI will be used when only EPHI is being referenced);

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and provide for the security of any PHI which shall be disclosed to or created by Business Associate pursuant to the Arrangement, in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), as amended and extended by the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005, the implementing regulations at 45 C.F.R. Parts 160, 162, and 164 promulgated by the United States Department of Health and Human Services (“DHHS”), along with any guidance or regulations issued by DHHS, and other applicable laws;

WHEREAS, as part of the HIPAA Regulations (defined below), Covered Entity is required to enter into a contract containing specific provisions intended to preserve the confidentiality and security of PHI that Business Associate may create, receive, maintain, or transmit from, or on behalf of, Covered Entity, in the course of its business relationship with Covered Entity prior to any disclosure of PHI to Business Associate. The specific provisions are set forth in, but not limited to, Title 45, Sections 164.306, 164.308(b), 164.314(a) and (b), 164.502(e) and 164.504(e) of the Code of Federal Regulations and are applicable to this Agreement; and

WHEREAS, Business Associate agrees to comply with all other applicable federal laws, including, but not limited to state laws for the protection of personal information and the reporting of security breach incidents, including the General Laws of Massachusetts Chapter 93H, and implementing regulations at 201 CMR 17.00, New Hampshire Revised Statutes Chapter 359-C, Maine Revised Statutes Chapter 210-B, and Connecticut General Statutes, Chapters 669 (section 36A-701B) and 743dd (hereinafter “the applicable state laws”).

NOW THEREFORE, in consideration of the mutual promises below, and the exchange of PHI or Personal Information pursuant to the terms of this Agreement, the Parties agree as follows:

1.0 Definitions

As used in this Agreement, the following terms shall have the indicated meaning. Capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Regulations or for Personal Information, the definition found in the applicable state laws. The definitions below which set forth a reference to the Code of Federal Regulations are defined HIPAA terms, and such definitions are incorporated herein as though set forth in full. A change to the HIPAA Regulations that modifies any defined term or that alters the regulatory citation for the definition shall be deemed incorporated into this Agreement.

- 1.1 **Arrangement** means the agreement, either with or without a written contract, between Covered Entity and Business Associate, whereby Business Associate provides or will provide certain services to Covered Entity and, in providing those services, may have access to PHI.
- 1.2 **Authorization** shall have the meaning given to the term under the HIPAA Regulations, including, but not limited to, 45 C.F.R. Section 164.508.
- 1.3 **Breach** shall have the same meaning as the term “breach” in 45 C.F.R. Section 164.402 and shall include the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information. For purposes of Personal Information, the term “Breach of Security” shall have the meaning given in the applicable state laws.
- 1.4 **Business Associate** shall mean _____ [Broker]. Where the term “business associate” appears without initial capital letters, it shall have the meaning given to such term under the HIPAA Regulations, including, but not limited to, 45 C.F.R. Section 160.103.
- 1.5 **Covered Entity** shall mean Harvard Pilgrim Health Care, Inc., as defined. It shall also have the meaning given to the term under the HIPAA Regulations, including, but not limited to, 45 C.F.R. Section 160.103.
- 1.6 **Data Aggregation** shall have the meaning given to the term under the HIPAA Regulations, including, but not limited to, 45 C.F.R. Section 164.501.
- 1.7 **Designated Record Set** shall have the meaning given to the term under the HIPAA Regulations, including, but not limited to, 45 C.F.R. Section 164.501.
- 1.8 **Electronic Protected Health Information (“EPHI”)** shall have the meaning given to the term Electronic Protected Health Care Information under the HIPAA Regulations, including, but not limited to, 45 C.F.R. Section 160.103.
- 1.9 **Encryption** means the use of an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential

process or key, in accordance with standards defined under applicable law or regulation.

- 1.10 **Health Care Operations** shall have the meaning given to the term under the HIPAA Regulations, including, but not limited to, 45 C.F.R. Section 164.501.
- 1.11 **HIPAA Regulations** shall mean the Standards for Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of Electronic Protected Health Information that is codified at 45 C.F.R. Parts 160 and 164, as amended.
- 1.12 **Individual** shall have the meaning given to the term under the HIPAA Regulations, including, but not limited to, 45 C.F.R. Section 160.103. It shall also include a person who qualifies as a personal representative in accordance with 45 C.F.R. Section 164.502(g).
- 1.13 **Personal Information** shall have the meaning given by the applicable state laws in states in which Business Associate receives Personal Information.
- 1.14 **Protected Health Information (“PHI”)** means any information, whether oral or recorded in any form, or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual, and shall have the meaning given to the term under the HIPAA Regulations, including, but not limited to, 45 C.F.R. Section 160.103.
- 1.15 **Required by Law** shall have the meaning given to the term under the HIPAA Regulations, including, but not limited to, 45 C.F.R. Section 164.103.
- 1.16 **Security Incident** shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of EPHI, or interference with system operations in an information system.
- 1.17 **Security Standards** shall mean those security standards promulgated or to be promulgated pursuant to HIPAA and other applicable federal or state regulations or statutes.
- 1.18 **Unsecured Protected Health Information** or Unsecured PHI shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary of DHHS in guidance or as otherwise defined in 45 C.F.R. Section 164.402.

2.0 Obligations of Business Associate

- 2.1 **Permitted Use and Disclosure of Protected Health Information.** Business Associate may use and disclose PHI only as required to satisfy its obligations under the Arrangement or this Agreement, as permitted herein and by HIPAA and the HIPAA Regulations, or as Required by Law, but shall not otherwise use or disclose any PHI. Business Associate shall not, and shall ensure that its directors, officers, employees, contractors and agents do not, use or disclose PHI in any manner that would constitute a violation of the HIPAA Regulations if done by Covered Entity, except that Business Associate may use PHI if necessary (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; or (iii) to provide Data Aggregation services relating to the Health Care Operations of Covered Entity. Business Associate further represents that, to the extent it requests Covered Entity to disclose PHI to Business Associate, such request will only be for the minimum PHI necessary for the accomplishment of Business Associate's purpose.
- 2.2 **Safeguarding PHI and Personal Information.** Business Associate shall use any and all appropriate safeguards to prevent use or disclosure of PHI and/or Personal Information other than as permitted by this Agreement. Business Associate further agrees to use appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of any PHI and/or Personal Information that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity, in accordance with the HIPAA Regulations, and for Personal Information, the applicable state laws in states in which Business Associate receives Personal Information. More specifically, to comply with the HIPAA Security Standards for PHI and with applicable state laws protecting Personal Information, Business Associate agrees that it shall: (i) Develop and implement policies and procedures that meet the HIPAA Regulations; (ii) As also provided for in Section 2.5 below, ensure that any agent, including a subcontractor, to whom it provides such PHI or Personal Information agrees to implement reasonable and appropriate safeguards to protect it; (iii) Report to Covered Entity any Security Incidents or Breaches of Security of which Business Associate becomes aware that result in the unauthorized access, use, disclosure, modification, or destruction of Covered Entity's PHI or Personal Information, (hereinafter referred to as "Successful Security Incidents"). Business Associate shall report Successful Security Incidents to Covered Entity as specified in Section 2.4.3, and upon Covered Entity's request, shall provide access to and copies of documentation regarding Business Associate's safeguards for PHI; (iv) Encrypt all PHI and/or Personal Information stored on laptops or other personal devices, encrypt all transmitted records and files containing PHI and/or Personal Information that will travel across public networks, and encrypt all PHI and/or Personal Information to be transmitted wirelessly; and (v) Business Associate agrees that this Agreement constitutes its representation that it has a written, comprehensive information security program that meets its obligation to safeguard Personal Information in its possession as required by the applicable state laws.

2.3 **Mitigation of Harmful Effects.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI or Personal Information by Business Associate in violation of the requirements of this Agreement.

2.4 **Breach of Privacy or Security Obligations.**

2.4.1 **Notice and Reporting of Violations.** Business Associate shall notify and report to Covered Entity, in the manner described herein, any use or disclosure of PHI or Personal Information in violation of this Agreement by Business Associate or any of its officers, directors, employees, contractors or agents.

2.4.2 **Initial Notice to Covered Entity.** Business Associate will notify Covered Entity following discovery and without unreasonable delay, but in no event later than seven (7) days following discovery, of any Breach of Unsecured Protected Health Information as these terms are defined by HIPAA or the HIPAA Regulations, or any Breach of Security under the applicable state laws. Business Associate shall cooperate with Covered Entity in investigating the Breach and in meeting Covered Entity's obligations under the HIPAA Regulations and any other security breach notification laws. Business Associate shall follow its notification to Covered Entity with a report that meets the requirements outlined immediately below.

2.4.3 **Additional Notice to Covered Entity.** For Successful Security Incidents and any other use or disclosure of PHI or Personal Information that is not permitted by this Agreement, the Arrangement, by applicable law, or without the prior written approval of Covered Entity, Business Associate, without unreasonable delay, but in no event later than fourteen (14) days after Business Associate learns of such Successful Security Incident or non-permitted use or disclosure, shall provide Covered Entity a report that will: (a) Identify, if known, each individual whose Unsecured Protected Health Information or Personal Information has been, or is reasonably believed by Business Associate to have been accessed, acquired, or disclosed during such Breach; (b) Identify the nature of the non-permitted access, use, or disclosure, including the date of the incident and the date of discovery; (c) Identify the PHI or Personal Information accessed, used, or disclosed (e.g., name, social security number, date of birth); (d) Identify who made the non-permitted access or use, or received the non-permitted disclosure; (e) Identify what corrective action Business Associate took or will take to prevent further non-permitted access, use or disclosure; (f) Identify what Business Associate did or will do to mitigate any deleterious effect of the non-permitted access, use, or disclosure; and (g) Provide such other information, including a written report, as Covered Entity may reasonably request.

- 2.5 **Agreements by Third Parties.** Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides or transmits PHI and/or Personal Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. Without limiting the foregoing, Business Associate further agrees that it shall not itself undertake any function, activity or service related to the Arrangement outside the United States of America, nor contract with any person or entity to undertake any functions, activities or services related to the Arrangement outside of the United States of America without in each case the prior written consent of Covered Entity.
- 2.6 **Access to Information.** Within ten (10) days of a request by Covered Entity for access to PHI about an Individual contained in a Designated Record Set, Business Associate shall make available to Covered Entity such PHI in order to enable Covered Entity to meet the requirements of 45 C.F.R. Section 164.524. In the event any Individual requests access to his or her PHI directly from Business Associate, it shall within five (5) days forward such request to Covered Entity so that Covered Entity can comply with the request. Business Associate shall not provide direct access to any Individual who requests access to his or her PHI. Any denials of access to the PHI requested shall be the responsibility of Covered Entity.
- 2.7 **Availability of Protected Health Information for Amendment.** Within thirty (30) days of receipt of a request from Covered Entity for the amendment of an Individual's PHI or a record regarding an Individual contained in a Designated Record Set, Business Associate shall provide such information to Covered Entity for amendment and shall incorporate any such amendments in the PHI as required by 45 C.F.R. Section 164.526. Any denials of requested amendments shall be the responsibility of Covered Entity.
- 2.8 **Accounting of Disclosures.** Within twenty (20) days of Business Associate's receipt of a request from Covered Entity for an accounting of disclosures of an Individual's PHI pursuant to 45 C.F.R. Section 164.528, other than disclosures excepted under 45 C.F.R. Section 164.528(a), Business Associate shall report such disclosures to Covered Entity in writing as provided for in 45 C.F.R. Section 164.528, the HIPAA Regulations, or any implementing regulations. At a minimum, Business Associate shall provide the following information for each disclosure: (i) the date of the disclosure; (ii) the name of the entity or person who received the PHI and, if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. Such information must be maintained by Business Associate and its agents and subcontractors for a period of six (6) years from the date of each disclosure. In the event that an Individual's request for an accounting is received directly by Business Associate, it shall: (i) within five (5) days forward such request to Covered Entity so that Covered Entity can comply with the request; and

(ii) within twenty (20) days deliver to Covered Entity an accounting of disclosures that are applicable to the Individual's request as described in this Section 2.8.

- 2.9 **Auditing, Inspections and Enforcement.** Upon reasonable notice, Business Associate agrees to make its internal practices, books and records relating to the use or disclosure of PHI available to Covered Entity and the Secretary of DHHS, or the Secretary's designee, for purposes of determining Covered Entity's compliance with the HIPAA Regulations. Business Associate shall provide appropriate training regarding the requirements of this Agreement to any employee accessing, using or disclosing PHI and shall develop and implement a system of sanctions for any employee, agent or subcontractor who violates this Agreement.
- 2.10 **Indemnification.** Business Associate shall indemnify and hold harmless Covered Entity, including any of its affiliates, and their respective trustees, officers, directors, employees, and agents from and against any and all claims, causes of action, liabilities, losses, expenses, damages or injuries as a result of, or relating to; (i) a breach of this Agreement by Business Associate, its agents or subcontractors; or (ii) any unauthorized access, use or disclosure of PHI while such PHI is in the custody of, or under the control of, Business Associate, its agents or subcontractors. The Parties' rights and obligations under this Section 2.10 shall survive termination of this Agreement and the underlying Arrangement.
- 2.11 **Notice of Request for Data.** Business Associate agrees to notify Covered Entity within five (5) days of Business Associate's receipt of any request, subpoena, or judicial or administrative order to disclose PHI. To the extent that Covered Entity decides to assume responsibility for challenging the validity of such request, subpoena or order, Business Associate agrees to cooperate with Covered Entity in such challenge.
- 2.12 **Acknowledgement of Direct Liability.** Business Associate acknowledges that it is directly liable and subject to penalties under HIPAA and the HIPAA Regulations for making uses and disclosures of PHI that are not authorized by this Agreement or required by law, and that it is directly liable and subject to civil penalties for failing to safeguard EPHI in accordance with the HIPAA Regulations.
- 2.13 **Monitoring Compliance.** During the term of this Agreement, Business Associate may be asked to complete a privacy and security assessment survey and/or attestation document(s) designed to assist Covered Entity in understanding and documenting Business Associate's privacy and security procedures and compliance with the requirements contained in this Agreement. In addition, a remote vulnerability scan may be required if Business Associate provides an Internet service and/or presence to support the requirements of Covered Entity, its subcontractors or other third parties Covered Entity may interact with. Business Associate agrees to cooperate with Covered Entity and complete any of the documents and requirements described herein within the reasonable time frame specified by Covered Entity.

2.14 **Substance Use Disorder Information.** Business Associate acknowledges that some PHI may be protected by federal regulations under 42 C.F.R. Part 2 *et. seq.*, which prohibit unauthorized disclosure of certain identifiable substance use disorder information without the express written consent of the individual to whom it pertains or as otherwise permitted by such regulations. Business Associate acknowledges that it and its subcontractors are bound by 42 C.F.R. Part 2, *et. seq.*, upon receipt of such substance use disorder information. Neither Business Associate nor its subcontractor shall re-disclose such information to a third-party unless that third-party is an agent of Business Associate or its subcontractor that is helping provide the services under the Arrangement and this Agreement and provided the agent only further discloses the information back to the entity from which it originated.

2.15 **Representations and Warranties.** Business Associate represents and warrants that all responses provided by Business Associate as part of any privacy or security assessment performed by Covered Entity in anticipation of the Arrangement or during the term of this Agreement are complete and accurate.

3.0 Covered Entity's Obligations

3.1 **Revocation of Authorization by Individual.** Covered Entity agrees to inform Business Associate of any change to, or revocation of, an Individual's Authorization to use or disclose PHI to the extent that such change may affect Business Associate's use or disclosure of PHI, within a reasonable period of time after Covered Entity becomes aware of such change.

3.2 **Notice of Privacy Practices; Restrictions on Use and Disclosure.** Business Associate shall not distribute its own notice of privacy practices that it produces in accordance with 45 C.F.R. 164.520, if any, to Individuals without the prior written consent of Covered Entity. Covered Entity agrees to notify Business Associate of any restrictions to the use or disclosure of PHI agreed to by Covered Entity in accordance with 45 C.F.R. Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

3.3 **Permissible Requests.** Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Regulations if done by Covered Entity.

3.4 **Safeguards.** Covered Entity shall use appropriate safeguards in accordance with 45 C.F.R. Section 164.306 and any related implementing regulations to ensure the security of PHI provided to Business Associate pursuant to the Arrangement and this Agreement, until such PHI is received by Business Associate.

4.0 Termination of Agreement

4.1 **Term.** This Agreement shall be effective from the Effective Date until all PHI provided by, or received or created for, Covered Entity is destroyed or returned to

Covered Entity, or if it is infeasible to return or destroy PHI, protections are extended to such PHI in accordance with the terms of this Agreement. The term of this Agreement shall also end upon termination of the underlying Arrangement, subject, however, to the requirements of this Section 4.0 for return or destruction of all PHI.

4.2 Termination Upon Breach of Provisions Applicable to Protected Health

Information or Personal Information. Any other provision of this Agreement notwithstanding, this Agreement and the Arrangement may be terminated by Covered Entity upon fifteen (15) days prior written notice to Business Associate in the event that Business Associate materially breaches any obligation of this Agreement and fails to cure the breach within such fifteen (15) day period to the reasonable satisfaction of Covered Entity.

4.3 Return or Destruction of Protected Health Information and Personal Information Upon Termination.

Upon termination of this Agreement and the Arrangement, Business Associate shall either return to Covered Entity or destroy all PHI and Personal Information in Business Associate's possession or in the possession of its agents or subcontractors. Business Associate shall not retain any copies of PHI or Personal Information. Notwithstanding the foregoing, if Business Associate determines that returning or destroying PHI and/or Personal Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI and/or Personal Information is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and/or Personal Information and limit further uses and disclosures of such PHI and/or Personal Information to those purposes that make return or destruction infeasible, for so long as Business Associate maintains such PHI and/or Personal Information. If Business Associate elects to destroy all PHI and/or Personal Information, it shall certify in writing to Covered Entity that such PHI and/or Personal Information has been destroyed within thirty (30) days of such destruction.

4.4 Judicial or Administrative Proceedings.

Either Party may terminate this Agreement, effective immediately, if (i) the other Party is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Regulations, or other security or privacy laws; or (ii) a finding or stipulation that the other party has violated any standard or requirement of HIPAA, the HIPAA Regulations, or other security or privacy laws is made in any administrative or civil proceeding in which the Party has been joined.

5.0 Miscellaneous

5.1 Relationship of the Parties.

None of the provisions of this Agreement are intended to create or shall be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement, the Arrangement, and any other arrangement between the Parties.

- 5.2 **Ownership of Protected Health Information and Personal Information.** As between Covered Entity and Business Associate, Covered Entity holds all right, title and interest in and to any and all PHI and/or Personal Information received by Business Associate from, or created or received by Business Associate on behalf of, Covered Entity, and Business Associate does not hold, and will not acquire by virtue of this Agreement or by virtue of providing any services or goods to Covered Entity in the course of fulfilling its obligations pursuant to the Arrangement, any right, title or interest in or to such PHI and/or Personal Information. Except as specified in Section 2.1 of this Agreement, Business Associate shall have no right to compile or distribute any statistical analysis or report utilizing such PHI and/or Personal Information derived from such PHI and/or Personal Information, any aggregate information derived from such PHI and/or Personal Information, or any other health and medical information obtained from Covered Entity.
- 5.3 **No Third Party Beneficiaries.** Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person or entity, other than Covered Entity, Business Associate and their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever.
- 5.4 **Amendment to Comply With Law.** Business Associate and Covered Entity agree to amend this Agreement to the extent necessary to allow either Party to comply with the standards and requirements of HIPAA, the HIPAA Regulations and other applicable state and federal laws relating to the security or confidentiality of PHI and/or Personal Information. Business Associate and Covered Entity will fully comply with all applicable standards and requirements of such federal or state regulations or statutes. To the extent that any amendment of such laws requires changes to this Agreement, Covered Entity shall provide written notice to Business Associate of such changes and this Agreement shall be automatically amended to incorporate the changes set forth in the written notice provided by Covered Entity to Business Associate unless Business Associate objects to such changes in writing within fifteen (15) days of receipt of such notice. If Business Associate objects in a timely manner to such amendment, the Parties shall work in good faith to reach agreement on a change to the Agreement that complies with the amendment of such laws. If the Parties are unable to reach agreement on a change to the Agreement within forty-five (45) days of the date that Covered Entity receives written objection from Business Associate, then either Party may terminate this Agreement upon written notice of such termination.
- 5.5 **Other Amendments.** Any other amendment to this Agreement unrelated to compliance with applicable law and regulations shall be effective only upon execution of a written agreement between the Parties.
- 5.6 **Waiver.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any

continuing or other obligation, or shall prohibit enforcement of any obligation on any other occasion.

- 5.7 **Survival.** The respective rights and obligations of Business Associate under this Agreement shall survive the termination of this Agreement and the underlying Arrangement.
- 5.8 **Notice.** Any notice to the other party pursuant to this Agreement shall be deemed provided without confirmation of receipt from such other party: (i) when delivered in person, (ii) the next day if delivered by overnight courier, or (iii) four (4) days after being mailed by certified or registered mail postage prepaid return receipt requested, to the other party at the following address:

To Covered Entity Privacy Officer
Harvard Pilgrim Health Care, Inc.
93 Worcester Street
Wellesley, MA 02481

With a copy to Information Security Officer
Harvard Pilgrim Health Care, Inc.
93 Worcester Street
Wellesley, MA 02481

To Business Associate Broker's address on file

The above addresses may be changed by either Party, by such Party giving notice of the change in the manner provided above for giving notice or by email communication acknowledged by an authorized representative of the other Party.

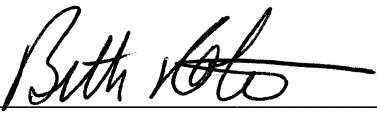
- 5.9 **Effect on Arrangement.** The provisions of this Agreement shall prevail over any provisions of the Arrangement that conflict with or are inconsistent with any provision of this Agreement. All other terms of the Arrangement shall remain in full force and effect.
- 5.10 **Interpretation.** This Agreement and the Arrangement shall be interpreted as broadly as necessary to implement and comply with the HIPAA Regulations. The Parties agree that any ambiguity in this Agreement or the Arrangement shall be resolved in favor of a meaning that complies with and is consistent with the HIPAA Regulations.
- 5.11 **Costs.** Each Party, at its own expense, shall provide and maintain the personnel, equipment, hardware, software, services (including without limitation telecommunications services) and testing necessary to comply with the privacy and security provisions of this Agreement.
- 5.12 **Best Practices.** Attached hereto for Business Associate's use is Covered Entity's Practices for Information Security.

5.13 **Remedies.** Notwithstanding any rights or remedies set forth in this Agreement or provided by law, Covered Entity retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of PHI and/or Personal Information by Business Associate, any of its agents or subcontractors, or any third party who has received PHI and/or Personal Information from Business Associate.

IN WITNESS WHEREOF, the Parties hereto have duly executed the Agreement.

Harvard Pilgrim Health Care, Inc.

Business Associate

By: 

By: _____

Name: Beth Ann Roberts

Name: _____

Title: SVP Commercial Business

Title: _____

Date: _____

Date: _____

ATTACHMENT

Harvard Pilgrim Health Care Practices for Information Security

Harvard Pilgrim Health Care is committed to the security of our members' Electronic Protected Health Information (EPHI) and Personal Information (PI). We adhere to the following security safeguards, and present these baseline practices to our Business Associates and other business partners and third parties as examples of good security practice. Our commitment to security is not only good for our healthcare members and our workforce, but makes a statement that effective, ongoing processes for maintaining information security are vital for the entire healthcare industry. We encourage our Business Associates, third parties and other business partners to join Harvard Pilgrim in following our recommendations to promote a secure information technology environment.

1. **Security Management** encompasses the policies and procedures to safeguard the confidentiality, integrity, and availability of EPHI and PI, the use of tools to identify threats and vulnerabilities, escalation of security incidents that threaten the privacy of EPHI and PI, notification when a breach of privacy occurs, and ensuring compliance with the following standards:
 - 1.1. Complete a thorough assessment of the potential risk and vulnerabilities to the confidentiality, integrity, and availability of EPHI and PI. Implement processes, procedures, and other security measures sufficient to reduce risks and vulnerabilities to a reasonable and appropriate level.
 - 1.2. Perform a regular records review of information system activity (e.g., audit logs, access reports and security incident tracking reports).
 - 1.3. Identify a security official who is responsible for the development and implementation of the policies and procedures in place to protect the security of EPHI and PI. Harvard Pilgrim's Chief Information Security Officer is Mark Teehan. For questions about Harvard Pilgrim's security policies or any of the best practices outlined in this document, please contact Mark at (617) 509-3072.
 - 1.4. Implement policies, processes, and procedures to ensure that all members of the workforce have appropriate access to EPHI and PI, and to prevent those workforce members who should not have access from obtaining access to EPHI. Implement policies and procedures for authorizing access to EPHI and PI.
 - 1.5. Implement procedures for the authorization and/or supervision of workforce members who will work with EPHI and PI, or in a location where EPHI or PI might be accessed.
 - 1.6. Implement procedures for terminating access to EPHI and PI when the employment of a workforce member ends or when there is a job change.

- 1.7. Implement procedures to corroborate the identity of an individual before granting access to EPHI or PI.
- 1.8. Implement procedures for creating, changing, and safeguarding passwords. Implement a password policy that includes: password minimum length, password composition, handling of unsuccessful password attempts, password re-use, preventing use of easily guessed passwords, password storage and password transmission. It is important that the password policy is documented and communicated throughout the organization.
- 1.9. Protect against malicious code, whereby hosts are updated with service packs, security vulnerability patches, virus protection, etc., in a manner appropriate to risk.
- 1.10. Have a security incident response plan in place that addresses the handling of a security breach, event escalation, notification, and management process, and perform a periodic test of the plan.
- 1.11. In the case of a security incident where the privacy of EPHI or PI is breached, notification to the covered entity or other applicable business partners or third parties should be made as soon as possible but in no event later than seven (7) days after discovery. Notification should include as much information about the cause and remedial steps taken to resolve the incident as is available at the time.
- 1.12. Conduct criminal background checks on workforce members who have access to EPHI or PI.
- 1.13. Implement sanctions for non-compliance with security policies and procedures.
- 1.14. Implement monitoring to perform security patch assessment, network and database security, and the review of firewall logs.
- 1.15. Secure all EPHI and PI transmitted via a public network or transmitted wirelessly against unauthorized access through encryption. Encrypt all PHI and PI stored on laptops or other portable devices.
- 1.16. Establish (and implement as needed) policies and procedures for responding to an emergency or other occurrence (for example fire, vandalism, system failure and natural disaster) that damages systems containing EPHI or PI.
- 1.17. Implement security awareness and training program for all workforce members, including management. At a minimum, conduct formal security training every two (2) years.
- 1.18. Take reasonable steps to verify that business associates and third-party service providers with access to EPHI or PI have the capacity to protect such information and contractually require business associates and third-party service providers to maintain such safeguards.
- 1.19. Document a Written Information Security Program (WISP) and update the WISP at least annually or when a change to the security program occurs.

2. **Physical Security** encompasses the policies and procedures designed to limit the physical access to EPHI, PI, and the facilities in which it is housed, the tools to identify vulnerabilities and ensure compliance to standards, and staffing to review reports and logs.
 - 2.1. Take steps to ensure physical access controls are in place to secure access to the location, computer room(s), computer equipment, data, and paper files.
 - 2.2. Implement physical safeguards for all workstations that access EPHI or PI, and restrict access to authorized users.
 - 2.3. Implement procedures that document the following areas of physical security: granting access to authorized personnel, revocation of terminated workforce member's access, the escort of non-workforce members in areas where EPHI or PI is created, received, maintained or transmitted, and safeguarding the storage of paper files.
 - 2.4. Implement procedures to safeguard the storage of tape backups, logs, mail messages and other electronic media containing EPHI or PI.
 - 2.5. Implement policies and procedures to address the final disposition of EPHI, PI, and/or the hardware of electronic media on which it is stored.
3. **Network and Audit Security Vulnerability Assessment** is performed as a safeguard to help verify that software patch and network configurations are secure against known threats. Security of network configuration should be verified through the following:
 - 3.1. Contract with an independent third party to perform a network security assessment on server(s) and network perimeter.
 - 3.2. Review the scope of the security measures at least annually or whenever there is a material change in business practices that may reasonably implicate the security or integrity of records containing EPHI or PI.