**Health New England**

**Medicare Advantage Agent Agreement**

THIS AGREEMENT is made and effective as of the\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, by and between HNE of Connecticut, Inc., a Connecticut nonprofit corporation with its corporate office in Wethersfield, Connecticut, together with its subsidiaries and affiliates, (“HNE”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (herein referred to as “Agent”), with a principal office at\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**WITNESSETH**

WHEREAS, HNE is an health maintenance organization which administers a Medicare Advantage product (hereinafter HNE MA Plan(s)); and

WHEREAS, Agent, Producer or Broker (hereinafter referred to as “Agent”) is an insurance agent licensed to perform such services by the Connecticut Insurance Department (“Insurance Department”) as applicable; and

WHEREAS, Agent desires to provide such services for HNE (as to HNE MA Plan) to help establish a relationship between HNE and various individuals, in exchange for commissions and other compensation as set forth herein;

NOW, WHEREAS, in consideration of the promises and mutual representations herein contained, the parties agree as follows:

**ARTICLE I**

**APPOINTMENT**

* 1. Appointment. Upon the Agent receiving an initial or yearly Appointment Letter (which shall at all times shall be subject to the requirements and limitations in this Agreement and subject to yearly renewal), HNE shall appoint Agent, and Agent shall accept a nonexclusive, nontransferable (without prior written approval of HNE) right to serve as a marketing Agent for HNE, authorized to solicit, negotiate, sell and service HNE’s MA Plan contracts in the designated service area, provided that no such contract will take effect without prior CMS approval. The Appointment is expressly made subject to terms, conditions, limitations, and restrictions of this Agreement and Agent agrees that they are not and will not be the employee of another health plan or captive agent of another insurer during the term of the Appointment. The Appointment may be limited to certain geographical regions in which HNE’s MA Plan is offered, however Agent does not have any exclusive rights with regard to HNE’s MA Plan or services within such area. Likewise, the only HNE plan(s) included under this Agreement is the HNE’s MA Plan(s) as such are designated by HNE in the applicable Appointment Letter.
  2. Agent of Record. Agent will become the agent of record for those enrollees who obtain coverage on HNE’s MA Plan through the assistance of Agent as designated on the enrollment application. In the event that an enrollee expresses interest in updating or changing their agent of record, an agent may submit an agent change of record form signed by the enrollee to HNE for such enrollee(s) one time per year during the annual enrollment period, with a plan change, scope of appointment form, and broker of record change form. Such changes will take effect on the following January 1st and Agent will thereafter be eligible for renewal commissions for such enrollee(s) while Agent is listed as the agent of record. The agent of record for each enrollee may only be updated once per calendar year. However, HNE may initiate and will effect a change action when an agent is involved with fraudulent activities or misrepresentations, or is terminated by HNE for cause, and HNE will not pay an agent involved in these types of activities after such a change.

**ARTICLE II**

**QUALIFICATIONS, DUTIES, RIGHTS, AND LIMITATIONS**

2.1 Qualifications. To qualify as an Agent hereunder maintain the Appointment, Agent must have and at all times maintain a valid and current license (authorizing Agent to sell and service health care service contracts) issued by the Insurance Department of the state in which Agent is operating and is appointed to be selling HNE’s MA Plan. Agent will not act as an Agent for HNE at any time when Agent’s license is terminated, lapsed, or suspended, regardless of the reason, and Agent agrees to immediately report to HNE at any time that Agent’s license is terminated, lapsed, suspended, or otherwise not in effect. All persons required to be individually licensed to provide services through Agent’s office pursuant to this Agreement must be appropriately licensed, and Agent agrees to require and to verify that each such person is appropriately licensed at all times and to immediately terminate from acting under the authority of this Agreement any person who is not appropriately licensed.

Also, Agent understands and agrees that to qualify and maintain the Appointment as an Agent hereunder, Agent must comply with and meet, on an annual basis, HNE’s training and testing requirements, which will include Medicare rules and regulations, fraud, waste and abuse, and compliance, along with HNE’s policies and procedures, and benefit details specific to HNE’s MA Plan(s). To continue as an Agent for HNE’s MA Plan, Agent must receive a passing test score, as determined by HNE. Furthermore, Agent must comply with all policies and procedures which may be changed from time to time, including HNE’s Corporate Code of Conduct and Medicare Agent Code of Conduct, and annual attestation requirements.

2.2 Duties. To qualify for commissions specified in Article III, Agent must continue as the agent of record for each enrollee. Furthermore:

1. Agent agrees to provide a high level of customer service and support to all enrollees and potential enrollees in selling HNE MA Plans and to report to the HNE Medicare Sales Manager on at least a semi-annual basis. Agent agrees to immediately report any dissatisfaction of an enrollee or potential enrollee to HNE.
2. Agent agrees to provide a fourteen (14) day notice prior to any scheduled marketing/sales event to HNE Medicare Sales Manager. All correspondence regarding marketing/sales event should be submitted via email. Upon receipt of marketing/sales event information, HNE will upload to the HPMS system and will send Agent confirmation. Agent must provide 72 hours notice of any cancelled or changed marketing/sales events. Notice should be submitted by email to the HNE Medicare Sales Manager. If less than 72 hours notice, both an email and a phone call to the HNE Medicare Sales Manager is required.
3. Agent agrees at all times to properly document the scope of his/her appointment prior to discussing HNE’s MA Plans. Likewise, a scope of appointment form must be signed by the beneficiary for individual marketing/sales events that aren’t uploaded to HPMS. All scope of appointment forms must be submitted to the HNE Medicare Sales Manager within 5 business days from the date of the appointment.
4. Agent agrees to actively and in good faith at all times, promote HNE’s MA Plan(s) in regard to initial sales, customer support, and renewals. Agent will indemnify HNE in full against any loss of money or of property, including any incurred costs and/or expenses which HNE sustains through any fraudulent or dishonest act or culpable negligence on Agent’s part, or on the part of anyone working for Agent, including but not limited to any acts identified in 2.4 below.
5. Agent will at all times maintain the following insurance types and coverage amounts:
6. Comprehensive general liability insurance: $1,000,000 per claim, $2,000,000 annual aggregate;
7. Privacy and data security breach insurance: $1,000,000 per claim;
8. Errors and omissions insurance coverage: $1,000,000 per claim; and
9. Workers’ Compensation insurance: statutory limits.

Agent will provide evidence of such coverage upon HNE’s request, prior to selling HNE’s MA Plan and will report any changes promptly to HNE. All such coverage will be maintained in force after such date and as long as this Agreement is in effect and until the expiration of the statute of limitations applying to each insured event, and Agent’s authority to act on behalf of HNE will be automatically suspended any time such coverage is not in effect.

1. Agent agrees to act at all times with honesty and integrity, in accordance with guidelines, policies and procedures that may be promulgated and modified by HNE, and in all other respects according to applicable state and federal laws (including, but not limited to, all false claims acts, fraud and abuse laws, and anti-kickback laws, and all applicable Medicare laws, regulations, and rules including but not limited to the most current Medicare Marketing Guidelines for Medicare Advantage Plans, Medicare Advantage Prescription Drug Plans, Prescription Drug Plans and Section1876 Cost Plans and any and all updates, revisions and additions thereto).
2. Agent agrees to successfully complete any training required by HNE and/or by applicable law within the time frame. Failure to do so may result in termination of this Agreement pursuant to Section 4.1.
3. Agent agrees to report any noncompliance and/or fraud, waste or abuse (“FWA”) to the MA organization. If an agent receives a report of, or becomes aware of, potential noncompliance or FWA related to the provisions of its Agreement with the MA organization, Agent agrees to immediately report such instances to HNE’s Compliance Officer or HNE Compliance Hotline at (800) 453.3959.
4. Agent agrees that Agent meets all the applicable terms of participation in the Medicare program. HNE will review the OIG and GSA sanction or exclusion lists to ensure that Agent is not on such lists. If Agent is found to be on such lists, that Agent shall be immediately removed from any work directly or indirectly related all government programs. Agent understands that it may not employ or subcontract with an individual who is excluded from participation in Medicare under Section 1128 or 1128A of the Social Security Act. Agent agrees to notify HNE immediately upon any changes in its Medicare participation or other status, or the imposition of any sanction or remedial remedy by applicable state or federal authorities. Failure to do so may result in termination of this Agreement pursuant to Section 4.1.

2.3 Rights. Agent will have the right to use sales brochures, rate sheets, applications, certificates, and various other forms provided and approved by HNE. However, Agent will not alter the materials provided by HNE in any way. Agent agrees to strictly abide by the confidentiality requirements set forth in this Agreement and in the Confidentiality and Business Associate Agreement which is attached and incorporated herein, and to not divulge any proprietary or confidential information about HNE or enrollees. Agent agrees to cease using and to return HNE materials upon the termination of this Agreement.

2.4 Limitations. As stated above, Agent’s appointment as an authorized Agent is limited to the geographical region in which HNE’s MA Plan is offered and for which he or she is appointed, but Agent will not have any exclusive rights with regard to HNE’s MA Plan within such area. Agent will have no authority to make, alter, vary, or discharge contracts in the name of HNE or to waive or modify any terms or conditions of the contracts proposed by HNE, including, but not limited to, having no authority to modify or waive any eligibility or enrollment requirements or standard for any enrollee. Agent agrees to indemnify HNE if, solely as the result of representations made by the Agent to the customer, or other conduct forbidden by this paragraph, HNE is required to provide any coverage or to pay any claim or claims that would not otherwise be covered.

2.5 Compliance with Title 18, United States Code, Sec. 1033 and 1034. As an express condition of this Agreement and Agent’s appointment as an Agent for HNE, Agent certifies and agrees that Agent or any of its employees have never been convicted of a felony involving either dishonesty or a breach of trust, or any crime involving the business of insurance. Agent further certifies and agrees that Agent will, at the time of employment and periodically thereafter (not less often than annually), check all employees to determine continued compliance with this paragraph. Agent agrees to immediately notify HNE if at any time any of Agent or its employees is ever charged with or convicted of such a crime. Agent understands that any violation of this paragraph will constitute ground for immediate cancellation of this Agreement by HNE.

2.6 Audit/Monitoring. Notwithstanding anything to the contrary contained in the Agreement, the Department of Health and Human Services (“HHS”), the Comptroller General, or their designees have the right to audit, evaluate, and inspect any pertinent information including books, contracts, computer or other electronic systems, including medical records and documentation related to HNE’s contract with CMS. The foregoing right to inspect, evaluate, and audit any pertinent information exists for ten (10) years from (i) the final date of HNE’s contract period with CMS or (ii) from the date of completion of any audit, whichever is later. Agent shall make available to HNE, government agencies, and their designees, its premises, physical facilities and equipment to accommodate periodic auditing as described in this paragraph and in the Medicare Agent Code of Conduct. In addition, if this Agreement is determined to be subject to the provisions of Section 952 P.L. 96-499, which governs access to books and records of subcontractors of services to Medicare hospitals where the cost or value of such services under the contract exceeds $10,000 over a twelve (12) month period, then Agent agrees to permit representatives of the Secretary of HHS and of the Comptroller General, in accordance with criteria and procedures contained in applicable federal regulations, to have access to its books, documents, and records as necessary to verify the cost of services provided under the Agreement. Agent will immediately notify HNE if Agent receives a request for access to books, documents, and/or records from any of the parties named in this section. Likewise, Agent acknowledges and agrees that HNE will be monitoring and auditing its performance on an ongoing basis as is further set out in the Medicare Agent Code of Conduct and the underlying HNE policy and procedures. HNE may immediately terminate any the Agreement upon Agent failing to satisfactorily perform its obligations hereunder.

2.7 Governmental Reporting Requirements. Agent agrees that HNE is authorized to report to any and all state and/or federal governmental entities, divisions, and/or department(s) information concerning the Agent that is required by any state or federal law, rule or regulation such as a termination for cause.

**ARTICLE III**

**COMPENSATION**

3.1 Commissions. Provided that Agent is in compliance with this Agreement, commissions will be paid by HNE to Agent for sales of HNE’s MA Plan to enrollees. Commissions will only be paid in accordance with Medicare laws, rules, regulations and CMS instructions. Payment of commissions will be made as set forth in Exhibit A, attached hereto and, by this reference, made a part of this Agreement. The methods of determining commissions payable hereunder are further set forth in Exhibit A. The schedule(s) of commissions will be reviewed at least annually and will be viewed to be updated and immediately in compliance at all times in accordance with applicable state and federal laws and CMS rules. Additionally, Exhibit A may otherwise be amended by HNE at any time upon at least thirty (30) days prior written notice to Agent.

Agent agrees to refund to HNE any amounts paid to Agent in error. HNE reserves the right to offset against future amounts payable to Agent any such overpayments that are not repaid by Agent.

3.2 HNE MA Agent Policies and Procedures. Additional information on compensation policies and procedures will be provided by HNE. Agent agrees to review such information and will be bound by such unless Agent objects to it within thirty (30) days of publication.

**ARTICLE IV**

**TERM AND TERMINATION**

4.1 Termination of Agreement and Appointment. This Agreement and Appointment will be for an initial term of one (1) year, and will automatically renew from year to year unless terminated for any of the following:

A. Upon sixty (60) days advance written notice by either party for any reason, with or without cause. The parties agree that it will not be a breach of the implied covenants of good faith/fair dealing for either party to terminate this Agreement either with or without cause.

B. Upon written notice, if either party fails to comply with the terms or conditions of this Agreement and fails to cure the same within thirty (30) days of receipt of written notice to cure, except for those things designated elsewhere as resulting in an immediate termination or suspension of this Agreement; or

C. Either party may terminate this Agreement immediately by giving the other party written notice of such termination for any of the following events:

(1) The adjudication of either party to be bankrupt or insolvent;

(2) The filing by either party for bankruptcy or insolvency;

(3) The filing by either party for reorganization or readjustment under any law relating to insolvency or bankruptcy;

(4) The appointment of a receiver with respect to all or substantially all of the property of either party;

(5) Any assignment by either party of its assets for the benefit of creditors;

(6) The institution by either part of any proceedings for liquidation or the winding up of its business other than for purposes of reorganization, consolidation or merger;

(7) Agent’s failure to obtain and/or maintain errors and omissions liability insurance in force in amounts acceptable to HNE

(8) Agent’s loss or non-renewal of state licensure to sell and service insurance and other service contracts, or the institution of proceedings by any insurance department or commissioner for the cancellation and/or revocation of such license;

(9) Failure to complete Medicare certification and training or failure to comply with applicable laws, rules, regulations, or CMS instructions;

(10) Death of agent or principal of agency; or

(11) Employment of any person in violation of section 2.1 of this Agreement.

The parties agree to promptly notify each other upon the occurrence of any of the foregoing grounds for termination. The occurrence of either (7) or (8) or (9) or (10) or (11) above will cause the immediate, automatic suspension of Agent’s appointment under this Agreement.

* 1. Obligations of the Parties Upon Termination. Upon termination of the Appointment and by extension this Agreement, neither party will have any further obligations except as otherwise provided herein. No compensation will be payable following termination if the Agent has engaged in dishonest or fraudulent activities in the sale of such business, when this Agreement has been terminated for cause, or when such compensation would be improper under applicable Medicare and/or insurance laws and regulations.
  2. Continuously and Properly Licensed. Commission will be payable, in accordance with Medicare laws, rules and regulations, only so long as Agent is (a) continuously and properly licensed and appointed, (b) in compliance with this Agreement, and (c) continuously recognized as the agent of record to receive said commissions. Agent may not transfer, assign or dispose of any interest he or she may have under this Agreement without prior written consent of HNE.

**ARTICLE V**

**GENERAL TERMS**

5.1 Applicable Law. This Agreement will be governed by, and construed in accordance with the internal laws of the State of Connecticut and federal laws without reference to any principles of conflicts of law provisions. Any lawsuit related to this Agreement shall be brought in a court of competent jurisdiction in Hartford County, Connecticut.

5.2 Assignment. Agent has neither the power nor the right to assign or transfer this Agreement or Appointment or any right or commission or payment hereunder, or to delegate any duty under this Agreement without the advance written approval of HNE.

5.3 Calendar Days/Years. Unless stated otherwise, all periods of day or year referred to in this Agreement will be measured in calendar days/years.

5.4 Confidentiality. The parties agree that beyond the services set out in this Agreement that they will not divulge, furnish, or make accessible to anyone any trade secrets, or confidential or proprietary information of the other party, without the advance, prior written consent of the other. Likewise, Agent agrees to execute and maintain the standards set out in Exhibit D, “Confidentiality and Business Associate Agreement” which is attached and incorporated herein.

5.5 Exhibits. The following Exhibits are hereby expressly incorporated into this Agreement by reference:

1. Exhibit A entitled, “Medicare Advantage Broker Compensation.”
2. Exhibit B entitled, “Medicare Advantage Requirements.”
3. Exhibit C entitled, “HNE Medicare Agent Code of Conduct.”
4. Exhibit D entitled, “Confidentiality and Business Associate Agreement.”

5.6 Force Majeure. Either party will be excused for failures and delays in performance of its respective obligations under this Agreement caused by declared or undeclared war, riots or insurrections, laws and regulations, strikes or lockouts, floods, fires, explosions, or other catastrophes beyond the control and without the fault of such party. This provision will not, however, release such party from using its best efforts to avoid or remove such cause, and such party will continue performance hereunder with the utmost dispatch whenever such causes are removed. Upon claiming any such excuse or delay for nonperformance, such party will give prompt written notice thereof to the other party. None of the bases for termination specified above may be considered as an excuse for performance under this paragraph.

5.7 Indemnification.

1. Agent will indemnify HNE and hold HNE (including its officers, directors, agents and employees) harmless against any and all liability caused by Agent’s negligence, wrongful acts, omissions, or breach of any of its duties or obligations under this Agreement.
2. HNE will indemnify and hold Agent (including its officers, directors, agents and employees) harmless against any and all liability caused by HNE’s negligence, wrongful acts, omissions, or breach of any of its duties or obligations under this Agreement.
3. The term liability as used in this Section 5 includes, but is not limited to, any of the following: (1) loss, claim for injury, claim for damage, judgment, settlement, fee, penalty, fine, and expense, including reasonable attorneys’ fees; and (2) expenses incurred for breach notification, credit monitoring, failure to mitigate, and mitigation activities stemming from the indemnifying party’s breach.
4. The indemnified party agrees to (1) promptly notify the indemnifying party of any claim arising under this Agreement, (2) provide the indemnifying party with all necessary and appropriate information and assistance to defend or resolve the claim, and (3) allow the indemnifying party to control the defense, disposition, and resolution of the claim (but the indemnified party’s counsel may participate in the defense and settlement discussions). Notwithstanding the foregoing, neither party may resolve a claim without the other party’s written consent if the resolution includes any admission of fault of the other party, imposes or triggers any obligation binding the other party, or involves less than a full release and settlement of all claims against the other party.
5. Even if Agent indemnifies HNE for a liability, HNE will control breach notification, including credit monitoring and all mitigation activities related to breach notification that it performs and considers to be appropriate to the claim.

5.8 Modification of the Agreement. This Agreement contains the entire understanding of the parties with respect to the subject matter contained herein. Except in the circumstances expressly stated in this Agreement, any cancellation, modification, or waiver of rights under this Agreement will be effective only if made in writing, signed by the party against whom enforcement is sought. No waiver of any particular breach or failure of performance of this Agreement will be construed as a waiver of any other rights under this Agreement or of any other similar breaches or failures of performance. No delay in acting with regard to any breach will be construed a waiver of the breach.

5.9 Notices. Any notices will be sufficiently given if sent by registered or certified mail, postage prepaid, addressed or delivered as follows:

To HNE: Jody Gross, VP of Sales

One Monarch Place, Suite 1500

Springfield, MA 01144-1500

To Agent: At the address set forth in the first paragraph of this Agreement, or as subsequently filed with HNE as the address to be noticed.

5.10 Section Headings. The headings on Articles and Sections herein are used for convenience and ease of reference and will not limit the scope or content of the Articles or Sections.

5.11 Severability. In the event that any provision of this Agreement will become or be unenforceable, invalid, void or voidable, the same will be limited, construed or, if necessary eliminated to the extent necessary to remove such defect and the remaining provisions will continue to bind the parties as though the unenforceable, invalid, void or voidable part were not a part of the Agreement.

5.12 State and Federal Laws. The parties recognize that this Agreement at all times is subject to applicable state, local and federal laws. The parties further recognize that this Agreement will be subject to amendments in such laws and regulations as are applicable. Any provisions of law that invalidate, or otherwise are inconsistent with, the terms of this Agreement or that would cause one or both of the parties to be in violation of law, will be deemed to have superseded the terms of this Agreement; provided, however, that the parties will exercise their best efforts to accommodate the terms and the intent of this Agreement to the greatest extent possible consistent with the requirements of law.

5.13 Incorporation of Other Legal Requirements. Any provisions now or hereafter required to be included in the Agreement by any federal or state governmental authority with competent jurisdiction over the subject matter hereof, including, but not limited to, CMS, shall be binding upon and enforceable against the parties hereto and deemed incorporated herein, irrespective of whether or not such provisions are expressly set forth in this Agreement.

5.14 Medicare Advantage Requirements. Agent and HNE agree to be bound by the Medicare Advantage Requirements attached and incorporated herein as Exhibit B, as subject to change from time to time.

5.15 Medicare Advantage Training. Agent agrees to complete and abide by any training and/or obligations required by HNE of its agents, including any training or requirements needed to access or use any HNE programs to administer HNE’s MA Plan.

5.16 Successors in Interest. Subject to the foregoing provision on assignability, this Agreement will inure to the benefit and be binding upon the parties, their successor, trustees, assigns, receivers, and legal representatives, and will not inure to the benefit of any other third person, firm or corporation.

5.17 Superseding Effect. This Agreement and its Exhibits supersede all oral or written agreements, if any, between the parties and constitutes the entire agreement between the parties with respect to the matters contained herein.

5.18 Taxes and Duties. The commissions as specified herein are exclusive of any taxes, duties or other tariffs imposed by any governmental agencies upon Agent. Agent is liable for any and all such taxes, duties, or tariffs, including but not limited to, state and local sales, use and property taxes, exclusive of taxes based upon HNE’s income, if any.

5.19 Independent Contractors. Agent and HNE are independent contractors for all purposes. Nothing in this agreement shall be construed to create the relationship of employer and employee, partners or joint venturers between the parties hereto. Agent shall be responsible for paying all wages, benefits, license fees and taxes for itself and its employees or representatives related to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement, which has an effective date as first written above.

HNE: By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Its:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Agent: By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Exhibit A**

**2016 Medicare Advantage Broker Compensation**

**Compensation Applicability**

All compensation requirements contained in these guidelines apply to independent agents/brokers appointed by Health New England (HNE). Employed agents; employed by HNE are exempt from these compensation requirements.

Compensation includes monetary or non-monetary payment of any kind relating to the sale or renewal of a policy, including but not limited to, commissions, bonuses, gifts, prizes, awards, and referral/finder’s fees.

Compensation DOES NOT include:

* The payment of fees to comply with State Appointment laws
* Training
* Testing Costs
* Certification
* Reimbursement for mileage to, and from, appointments with beneficiaries
* Reimbursement for actual costs associated with beneficiary sales appointments such as venue costs, snacks, materials

**Definitions:**

***Initial Compensation:*** Initial compensation is paid at or below the fair market value (FMV) cut-off amounts published by CMS annually.

***Renewal Compensation:*** Renewal Compensation is paid for each enrollment in Year 2 and beyond up to fifty (50) percent of the current FMV, published by CMS annually. HNE will pay the renewal compensation rate for years 2-10 as long as the broker is appointed by HNE.

|  |  |
| --- | --- |
| Initial Compensation – Connecticut  (2016 FMV Rate) | Renewal Compensation – Years 2 -10 Connecticut  (2016 FMV Rate) |
| $483\* | $242\* |

\*These amounts are for external independent brokers, appointed by HNE. These do not apply to internal HNE Medicare Specialists, employed by HNE.

“***Like Plan Type”*** Enrollment includes:

* A PDP to another PDP (not applicable for HNE)
* An MA, MA-PD or MMP to another MA, MA-PD, or MMP plan (applicable for HNE)
* A section 1876 cost plan to another section 1876 cost plan (not applicable for HNE)

“***Unlike Plan Type”*** Enrollment includes:

* An MA or MA-PD plan to a PDP or section 1876 cost plan (not applicable to HNE)
* A PDP to a section 1876 cost plan or an MA or MA-PD plan (applicable to HNE)
* A section 1876 cost plan to an MA or MA-PD plan or PDP (not applicable to HNE, 1876 cost plan is not available in service area)

Note: When ***“Dual”*** enrollments are replaced by an enrollment in a single plan, compensation is paid based on the MA movement (i.e., movement from an MA only plan and a PDP to an MA-PD plan) would be compensated at the renewal compensation amount for the MA to MA-PD “like plan type” move.

**General Rules Regarding Compensation:**

* HNE Medicare Advantage plans will not pay agents/brokers who have not been trained, tested, and appointed by HNE.
  + All training and testing must be complete by September 23rd
  + All agents/brokers will receive a notice from HNE regarding appointment and will be logged in the NIPR system
* HNE Medicare Advantage plans will not pay compensation to agents/brokers not meeting licensure/appointment requirements or those that have been terminated for cause.
* HNE will pay broker compensation for years 1-10. Broker compensation type (Initial or Renewal) will be determined by CMS on the MARx file.
* If an HNE Medicare Advantage independent agent/broker terminates the contract, any future payment of existing business will be governed by the terms of the contract.

**Compensation Payment Requirements:**

* HNE Medicare Advantage must notify CMS of their compensation schedule in HPMS by the date specified each year.
* HNE Medicare Advantage must decide each year whether or not they will use independent agents.
* HNE must establish a compensation structure for new and replacement enrollments and renewals effective in a given plan year.
  + This must be made available to CMS upon request for audits, investigations, and to resolve complaints.
  + HNE must have a documented compensation structure in place by the beginning of the Annual Enrollment Period (AEP), which is October 1st.

**Compensation Year:**

* CMS ***compensation year is January 1 through December 31***of each year.
  + HNE must calculate payments based on the January through December enrollment year.
    - HNE may only pay compensation for the current year of enrollment.
      * Payments may not be paid until January 1st and must be paid in full by December 31st of the enrollment year.
  + HNE may not base payments on enrollment years (rolling basis) other than January through December.
    - ***Example:*** If a beneficiary’s effective date is August 1, then the initial year for that beneficiary ends on December 31, even though the beneficiary has only been in the plan for 5 months.
      * In January of the next year, the plan would begin paying renewal payments to the agent who assisted this beneficiary.

**Compensation Schedule:**

* HNE will use a set schedule for compensation:
  + ***Enrollments/Renewals during the Annual Election Period (AEP: October 15 – December 7).***
    - HNE will make a yearly payment to agents/brokers by February 28th, allowing for the Medicare Advantage Disenrollment Period (MAPD), which runs from January 1 – February 14, to end.
    - HNE will pay based on the CMS designation as listed on the MARx agent/broker compensation report
    - CMS will determine the effective date of the member
    - HNE will pay the “Agent of Record” as designated on the Enrollment Application.
  + ***Enrollments outside of the Annual Election Period***
    - HNE will accept enrollment applications throughout the year as long as they meet CMS standards and guidelines as noted in Chapter 2
    - HNE will make a one-time payment by the 15th of the month following the month in which CMS confirms that the enrollee is an initial or new enrollee, but not before the effective date of the enrollee’s plan.
    - HNE will pay based on the CMS designation – Initial or Renewal
    - CMS will determine the effective date of the member
* HNE will pay the “Agent of Record” as designated on the Enrollment Application.
* HNE will determine compensation payments based on the monthly MARx agent/broker compensation report. This report will provide HNE with the information necessary to determine whether HNE should pay initial year or renewal year payment.
* HNE will only pay compensation for the number of months a beneficiary is enrolled, with the exception of an initial year payment as noted in the 2016 Medicare Marketing Guidelines:
  + When a beneficiary enrolls in a plan and has no prior plan history (as indicated on the MARx agent/broker compensation report), Plans/Part D sponsors may pay the full year initial compensation amount or a pro-rated amount based on the number of months the beneficiary is enrolled.
    - HNE will pay the full year initial compensation in this circumstance.
* HNE will not pay both the Medicare Advantage (MA) and Prescription Drug Plan (PDP) compensation amounts. When a beneficiary enrolls in an MA-PD (Medicare Advantage Prescription Drug Plan), HNE will pay compensation based on the Medicare Advantage compensation amounts as noted.
* ***Initial Compensation: PY 2016 = $483***
  + HNE will pay “Initial Compensation” for the beneficiary’s first year of enrollment
    - First Year of Enrollment = New to Medicare, joining a Medicare Advantage Plan for the 1st time
  + HNE will pay “Initial Compensation” when a beneficiary enrolls in an ***“unlike plan type,”*** if the beneficiary is currently in a renewal year:
  + ***Unlike Plan Type”*** Enrollment includes:
    - An MA or MA-PD plan to a PDP or section 1876 cost plan (not applicable to HNE)
    - A PDP to a section 1876 cost plan or an MA or MA-PD plan (applicable to HNE)
    - A section 1876 cost plan to an MA or MA-PD plan or PDP (does not apply to HNE – no 1876 cost plans in CT)
  + HNE will pay “Initial Compensation” if a Medicare beneficiary moves from an Employer Group Plan (EGWP) to an individual plan (either within the same plan/plan sponsor) or between different plan/plan sponsors).
* ***Renewal Compensation: PY 2016 = $242***
  + HNE will pay “Renewal Compensation” following the initial year compensation and will pay for years 2-10
  + HNE will pay “Renewal Compensation” when a Medicare beneficiary enrolls in a new “like plan type.”
    - “***Like Plan Type”*** Enrollment includes:
      * A PDP to another PDP (not applicable for HNE)
      * An MA, MA-PD or MMP to another MA, MA-PD, or MMP plan (applicable for HNE)
        + Example: A “like plan type” may be a change from one plan to another plan within the same parent organization or between different parent organizations
      * A section 1876 cost plan to another section 1876 cost plan (not applicable for HNE)

**Referral/Finder’s Fee:**

* HNE will not pay a referral/finder’s fee to agents or brokers.
  + Agents will only get paid the Initial or Renewal Compensation as designated by CMS when they are listed as the ‘Agent of Record” for the Medicare Beneficiary.

**Compensation Recovery Requirements (Charge-backs)**

* HNE must recover compensation payments from agents/brokers if:
  + A beneficiary disenrolls from a plan within the first three months of enrollment (rapid disenrollment)
  + Any other time a beneficiary is not enrolled in the plan
    - Example: Medicare beneficiary enrolls for April 1st, beneficiary disenrolls for August 1st. HNE would retract payment for all uncovered months that the beneficiary wasn’t enrolled: i.e., January, February, March, August, September, October, November, December. Broker should only be paid for 6/12ths months.
* **Rapid Disenrollment:**
  + Rapid Disenrollmentis when a beneficiary disenrolls from a plan within the first three months of enrollment
  + Rapid Disenrollment applies when an enrollee moves from one Parent Organization to another Parent Organization, or when an enrollee moves from one plan to another plan within the same Parent Organization.
* **Rapid Disenrollment Compensation Recovery:**
  + HNE ***must recover*** a pro-rated amount of initial compensation ($483) when an enrollee disenrolls from a plan. The amount HNE must recover must be equal to the number of months not enrolled.
    - Example: An enrollee ages in effective April 1st. The enrollee then disenrolls effective September 30th of the same year. HNE initially paid a full initial compensation amount of $483. Since the enrollee disenrolled (and this wasn’t a rapid disenrollment) HNE must recover 6/12ths of the initial compensation (January through March and October through December) = $241.50
  + HNE ***must recover*** a pro-rated amount of renewal compensation ($242) when an enrollee disenrolls from the HNE Medicare Advantage plan. This amount must be equal to the number of months the enrollee is not enrolled in the plan.
    - Example: A renewal enrollee disenrolls effective February 28th. HNE must recover 10/12th of the renewal payment = $201.60.
  + ***Does not apply*** when a beneficiary enrolls in a plan effective October 1, November 1, or December 1, and subsequently changes plans effective January 1 of the following year. However, if a beneficiary enrolls in October and disenrolls in December, HNE will recover compensation based on the rapid disenrollment.
  + ***Does not apply*** when a beneficiary disenrolls within the first three months for any of the following reasons:
    - Other credible coverage
    - Moving into or out of an institution
    - Gains/drops employer/union sponsored coverage
    - CMS sanction against the plan/contract violation
    - Plan terminations and non-renewals
    - In order to coordinate with a Part D enrollment periods
    - In order to coordinate with an SPAP
    - Becoming dually eligible for both Medicare and Medicaid
    - Qualifying for another plan based on special needs
    - Becoming LIS eligible
    - Qualifying for another plan based on a chronic condition
    - Due to an auto or facilitated enrollment
    - Death
    - Moves out of the service area
    - Non-payment of premium
    - Loss of entitlement
    - Retroactive notice of Medicare entitlement
    - When moving to a plan with a 5-star rating or out of a low performing plan

**Exhibit B**

**Medicare Advantage Requirements**

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

WHEREAS, except as provided herein, all other provisions of the Agreement between HNE, as a Medicare Advantage organization, and Agent, as a First Tier or Downstream Entity, not inconsistent herein shall remain in full force and effect. This amendment shall supersede and replace any inconsistent provisions to such Agreement; to ensure compliance with required CMS provisions, and shall continue concurrently with the term of such Agreement.

NOW, THEREFORE, the parties agree as follows:

**Definitions:**

Centers for Medicare and Medicaid Services (“CMS”): the agency within the Department of Health and Human Services that administers the Medicare program.

Completion of Audit: completion of audit by the Department of Health and Human Services, the Government Accountability Office, or their designees of a Medicare Advantage Organization, Medicare Advantage Organization contractor or related entity.

Downstream Entity: any party that enters into a written arrangement, acceptable to CMS, with persons or entities involved with the MA benefit, below the level of the arrangement between an MA organization (or applicant) and a first tier entity. These written arrangements continue down to the level of the ultimate provider of both health and administrative services.

Final Contract Period: the final term of the contract between CMS and the Medicare Advantage Organization.

First Tier Entity: any party that enters into a written arrangement, acceptable to CMS, with an MA organization or applicant to provide administrative services or health care services for a Medicare eligible individual under the MA program.

Medicare Advantage (“MA”): an alternative to the traditional Medicare program in which private plans run by health insurance companies provide health care benefits that eligible beneficiaries would otherwise receive directly from the Medicare program.

Medicare Advantage Organization (“MA Organization”): a public or private entity organized and licensed by a State as a risk-bearing entity (with the exception of provider-sponsored organizations receiving waivers) that is certified by CMS as meeting the MA contract requirements.

Member or Enrollee: a Medicare Advantage eligible individual who has enrolled in or elected coverage through a Medicare Advantage Organization.

Provider: (1) any individual who is engaged in the delivery of health care services in a State and is licensed or certified by the State to engage in that activity in the State; and (2) any entity that is engaged in the delivery of health care services in a State and is licensed or certified to deliver those services if such licensing or certification is required by State law or regulation.

Related entity: any entity that is related to the MA organization by common ownership or control and (1) performs some of the MA organization's management functions under contract or delegation; (2) furnishes services to Medicare enrollees under an oral or written agreement; or (3) leases real property or sells materials to the MA organization at a cost of more than $2,500 during a contract period.

**Required Provisions:**

Agent agrees to the following:

1. HHS, the Comptroller General, or their designees have the right to audit, evaluate, and inspect any pertinent information for any particular contract period, including, but not limited to, any books, contracts, computer or other electronic systems (including medical records and documentation of the first tier, downstream, and entities related to CMS’ contract with HNE, (hereinafter, “MA organization”) through 10 years from the final date of the final contract period of the contract entered into between CMS and the MA organization or from the date of completion of any audit, whichever is later. [42 C.F.R. §§ 422.504(i)(2)(i) and (ii)]
2. Agent will comply with the confidentiality and enrollee record accuracy requirements, including: (1) abiding by all Federal and State laws regarding confidentiality and disclosure of medical records, or other health and enrollment information, (2) ensuring that medical information is released only in accordance with applicable Federal or State law, or pursuant to court orders or subpoenas, (3) maintaining the records and information in an accurate and timely manner, and (4) ensuring timely access by enrollees to the records and information that pertain to them. [42 C.F.R. §§ 422.504(a)(13) and 422.118]
3. Enrollees will not be held liable for payment of any fees that are the legal obligation of the MA organization. [42 C.F.R. §§ 422.504(i)(3)(i) and 422.504(g)(1)(i)]
4. Any services or other activity performed in accordance with a contract or written agreement by Agent are consistent and comply with the MA organization's contractual obligations. [42 C.F.R. § 422.504(i)(3)(iii)]
5. HNE and any related entity, contractor or subcontractor will comply with all applicable Medicare laws, regulations, and CMS instructions. [42 C.F.R. §§ 422.504(i)(4)(v)]

1. If any of the MA organization’s activities or responsibilities under its contract with CMS are delegated to any first tier, downstream and related entity:
2. The delegated activities and reporting responsibilities are specified in Articles I and II of the Agreement.
3. CMS and the MA organization reserve the right to revoke the delegation activities and reporting requirements or to specify other remedies in instances where CMS or the MA organization determine that such parties have not performed satisfactorily.
4. The MA organization will monitor the performance of the parties on an ongoing basis. The monitoring process is outlined in Section 2.6 of the Agreement.
5. The credentials of medical professionals affiliated with the party or parties will be either reviewed by the MA organization or the credentialing process will be reviewed and approved by the MA organization and the MA organization must audit the credentialing process on an ongoing basis.
6. If the MA organization delegates the selection of providers, contractors, or subcontractor, the MA organization retains the right to approve, suspend, or terminate any such arrangement.

[42 C.F.R. §§ 422.504(i)(4) and (5)]

**Relation of Exhibit to Agreement:**

1. Except where explicitly provided otherwise herein, the terms and conditions of the underlying Agreement between the parties shall remain in full force and effect.
2. Nothing herein shall be construed to be in derogation of any obligation of the Parties to comply with the requirements of applicable state law, except where and to the extent such law is preempted by applicable federal law.

**Miscellaneous:**

1. Plan may amend the CMS required provisions of this Addendum at any time by reasonable notice, which amended terms and conditions shall supersede and replace any inconsistent provisions in the underlying Agreement as amended.
2. The provisions of this Addendum shall be separate and severable each from the other to the extent that if any portion or any one provision or portion thereof is held to be inoperative or unenforceable in any jurisdiction then the remainder of this Addendum shall remain binding upon and enforceable by the parties hereto and shall be construed as if the Addendum had been executed without such inoperative or unenforceable provision or portion thereof, provided that the provision or portion so severed shall not materially affect the remainder of this Addendum.
3. In the event of a conflict between the terms and conditions above and the terms of a related agreement, the terms above control.

**Exhibit C**

**HNE Medicare Agent Code of Conduct**

In an effort to ensure all Agents contracted with HNE are representing our plans with the highest degree of integrity, every Agent must abide by the HNE Medicare Agent Code of Conduct as follows:

1. **Respect the Enrollee:**

Provide guidance with the enrollee’s best interest in mind at all times. It is important to be respectful of the enrollee’s wishes and to understand their unique health care needs. Agents should be available for any questions or concerns before and after the sale.

1. **Provide full disclosure:**

Present all plan options completely, with full disclosure of any plan rules and limitations. Always compare HNE MA Plan(s) to the enrollee’s current coverage to ensure they understand differences in features, benefits, costs and access to providers.

1. **Follow proper marketing guidelines:**

Follow approved marketing methods for setting appointments and conducting sales presentations as outlined by CMS regulations. Do not market to enrollees through unsolicited contact. This includes door-to-door solicitation, approaching enrollees in common areas (e.g., parking lots, sidewalks, hallways, lobbies), and unsolicited telephone or email contact. Do not solicit enrollees, conduct sales presentations, or distribute or accept enrollment applications in areas where patients primarily intend to receive health care services (e.g., waiting rooms, exam rooms, hospital patient rooms, dialysis center treatment areas, pharmacy counter areas).

1. **Use approved materials:**

Use only HNE and CMS approved materials. Do not alter the materials in any way. HNE has developed all the sales and marketing material needed to present plan information to the enrollee.

1. **Proper use of sales tactics:**

Never use high pressure sales tactics to influence an enrollee’s decision to enroll. Allow the enrollee time to review and understand the information. Offer them independent sources of information such as the Medicare web site: [www.medicare.gov](http://www.medicare.gov).

1. **Representation:**

Always represent yourself appropriately. Make sure that the enrollee understands you represent HNE, but are not an employee of HNE. Be clear that you do **not** represent CMS, Medicare, Social Security or any other government entity.

1. **Use enrollment forms correctly:**

Do not back-date, falsify or alter any enrollment document or form. Applications must be submitted so that information on the original copy matches exactly with the copy that was left with the prospective member. Completed enrollment applications must be received by HNE within forty-eight (48) hours of the date the Agent received the signed application.

1. **Do not discriminate:**

To ensure fairness, do not discriminate against prospective members on the basis of health status, race, ethnicity, religion, gender, sexual orientation, geographic location within the service area, or any other improper criteria. If you believe an enrollee lacks understanding of the program or is of questionable competence, you must observe proper procedure by having the enrollee’s chosen authorized representative present at the time of enrollment and approved the member’s decision.

1. **Comply with oversight standards:**

HNE has rigorous compliance standards for all Agents selling its MA Plans. Agents must know and understand the importance of these standards. They include:

* Licensing and background information of Agents
* Training on products, CMS regulations and marketing practices, and procedural workflows. This includes an emphasis on product knowledge regarding benefit design, features and limitations
* Full compliance with the HNE Corporate Code of Conduct

To ensure compliance with all marketing guidelines and both the HNE Corporate Code of Conduct and the Medicare Agent Code of Conduct, all Agents should understand that HNE undertakes the following initiatives:

* Deployment of a secret shopper service to pose as prospective members to experience the sales process/ presentation
* Completion of mandatory training and testing for all Agents
* Revocation of selling privileges for Agents who do not complete training and obtain and passing score on the required testing
* Mandatory outbound education and verification calls to enrollees requesting enrollment to confirm that their sales experience was positive, that they intend to enroll, and that they understand the plan rules and benefits
* Follow-up calls to all enrollees enrolled by any terminated Agent to confirm their enrollment decision or facilitate disenrollment
* Monitors sales data for potential issues and to educate or even terminate Agents based on HNE findings, with emphasis on proactive immediate resolution of issues

**HNE and Agent will ensure full compliance with CMS Marketing Guidelines and HNE has a zero tolerance policy for non-compliance. HNE will promptly terminate any contracts of non-compliant Agents or their sales management personnel.**

**Exhibit D**

**Confidentiality and Business Associate Agreement**

**between HNE and Agent**

This Confidentiality and Business Associate Agreement (the “Agreement”), dated \_\_\_\_, 2014 is between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with a principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Agent” or “Business Associate”), and **Health New England, Inc.** a non-profit corporation with a principal place of business at One Monarch Place, Suite 1500, Springfield, Massachusetts 01144, along with its affiliates (“HNE” or “Covered Entity”).

WHEREAS, the parties hereto desire to explore and conduct a business relationship between HNE and Agent whereby Agent will sell Medicare Advantage Plans for HNE which includes educating, enrolling and providing service to beneficiaries (the “Transaction”).

WHEREAS, the federal law known as the Health Insurance Portability and Accountability Act of 1996 (collectively, “HIPAA” or the “Privacy Rule”) imposes obligations on certain entities, including group health plans and HMOs (“Covered Entities”) to protect the privacy of members’ protected health information (“PHI”), including the obligation to enter into contracts with any person who performs or assists in the performance of any function or activity involving the use or disclosure of PHI; and

WHEREAS, Agent may need to access PHI relating to HNE members to perform or assist in the performance of such functions and activities and is, therefore, HNE’s Business Associate as that term is defined in 45 CFR 160.103; and

WHEREAS, Agent also may need or have access to certain proprietary information, trade secrets, or other confidential information and analysis which is the property of HNE (“Confidential Information”).

NOW, THEREFORE, the parties agree as follows:

1. **Definitions**

Unless otherwise defined, terms used in this Agreement shall have the meaning ascribed to them under HIPAA and its implementing regulations and the Health Information Technology for Economic and Clinical Health Act (“HITECH”) provisions of the American Recovery and Reinvestment Act of 2009 (“ARRA”), 42 U.S.C. §§17921-17954.

As used in this Agreement, “Confidential Information” shall include, but not be limited to, marketing information and materials, information concerning: HNE’s health services fund; inpatient/outpatient utilization; cost and clinical appropriateness; clinical initiative review; pharmacy utilization, cost, formulary compliance, and clinical appropriateness; quality management; physician profiling; and any combination of the above.

1. **Permitted Uses and Disclosures by Agent**

Except as otherwise limited in this Agreement, Agent may use or disclose Confidential Information and PHI solely to conduct the Transaction.

1. **Obligations and Activities of Agent as Business Associate**
2. Business Associate agrees to use Confidential Information obtained from HNE only for the purposes for which they have been engaged. Business Associate agrees not to use or disclose Confidential Information for any other purpose except as described herein or where required by law. Disclosure of Confidential Information is deemed by the parties to constitute irreparable harm which may be restrained by injunctive relief by any court with appropriate jurisdiction
3. Business Associate shall use PHI obtained from HNE only for the purposes for which they have been engaged. Business Associate shall not use or disclose PHI for any other purpose except as described herein, and in compliance with each applicable requirement pursuant to HIPAA or HITECH or as otherwise required by law.
4. Business Associate shall implement and use appropriate administrative, physical, and technical safeguards to (i) prevent use or disclosure of PHI other than as permitted or required by this Agreement; (ii) reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that Business Associate creates, receives, maintains, or transmits on behalf of HNE; and (iii) comply with the Security Rule requirements set forth in Subpart C of 45 C.F.R. Part 164.
5. Business Associate shall, without unreasonable delay, report to HNE (i) any use or disclosure of PHI not provided for by this Agreement of which it becomes aware in accordance with 45 C.F.R. § 164.504(e)(2)(ii)(C); and/or (ii) any Security Incident of which Business Associate becomes aware in accordance with 45 C.F.R. § 164.314(a)(2)(C).
6. With respect to any Breach of Unsecured PHI, Business Associate shall provide HNE with a written notification to HNE’s Privacy Official without unreasonable delay and not more than two (2) business days after the Business Associate learns of such non-permitted disclosure. Business Associate will treat the Breach as being discovered in accordance with 45 CFR § 164.410. If a delay is requested by a law enforcement official in accordance with 45 CFR § 164.412, Business Associate may delay notifying HNE for the applicable time period. Business Associate’s report will at least:
7. Identify the nature of the Breach, which will include a brief description of what happened, including the date of the Breach and the date of the discovery of the Breach;
8. Identify HNE’s PHI that was the subject of the Breach (such as whether full name, social security number, date of birth, home address, account number of other information were involved) on an individual basis;
9. Identify what corrective or investigational action Business Associate took or will take to mitigate harmful effects and to protect against any further Breaches;
10. Identify what steps the individuals who were subject to the Breach should take to protect themselves;
11. Provide such other information as HNE may reasonably request.

HNE and Business Associate shall both be responsible for determining when any such incident is a Breach and for providing all legally required notifications to Individuals, HHS, and the media, on behalf of HNE. Business Associate shall coordinate with HNE to provide these notifications in accordance with the data breach notification requirements set forth in 42 U.S.C. §17932 and 45 C.F.R. Parts 160 & 164 subparts A, D & E as of their respective Compliance Dates, and shall pay for the reasonable and actual costs associated with such notifications. Business Associate shall obtain HNE’s approval of all breach notifications prior to sending the notifications to Individuals, HHS, and the media so long as receiving said approval would not cause unreasonable delay in Business Associate fulfilling its obligations hereunder.

1. Business Associate shall ensure that any agent, including a subcontractor, to whom it provides PHI received from Business Associate on behalf of HNE, agrees to the same restrictions and conditions that apply to Business Associate under this Agreement with respect to such information. Business Associate also shall ensure that any agent, including a subcontractor, to whom it provides ePHI agrees in writing to implement reasonable and appropriate safeguards to protect such ePHI.
2. If an Individual requests that Business Associate restrict the disclosure of the Individual’s protected health information to carry out treatment, payment, or health care operations, Business Associate agrees that it will comply with the requested restriction if, except as otherwise required by law, (i) the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment), and (ii) the Protected Health Information pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full. Business Associate shall promptly notify Covered Entity of any request by an Individual to restrict the disclosure of the Individual’s protected health information as described above.
3. Business Associate will make internal practices, books, and records relating to the use and disclosure of PHI under this Agreement available to HNE, or at the request of HNE to the Secretary of the Department of Health and Human Services, in a time and manner designated by HNE or the Secretary, for purposes of determining compliance with HIPAA.
4. Business Associate will provide access, at the request of HNE, and in the time and manner designated by HNE, to PHI in a Designated Record Set, to HNE or, as directed by HNE, to an Individual in order to meet the requirements under 45 CFR 164.524.
5. Notwithstanding subsection (h) immediately above, in the event that Business Associate in connection with the services for which they have been engaged uses or maintains ePHI of or about an Individual, then Business Associate shall provide an electronic copy of the ePHI within thirty (30)days to HNE sufficient to allow HNE to comply with 42 U.S.C. § 17935(e).
6. Business Associate will make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.
7. Business Associate will document such disclosures of PHI and information related to such disclosures as would be required for HNE to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
8. Notwithstanding subsection (k) immediately above, in the event that Business Associate, in connection with the services for which they have been engaged, uses or maintains ePHI of or about an Individual, then Business Associate shall, when and as directed by HNE, make an accounting of disclosures of ePHI directly to an Individual within thirty (30)days in accordance with the requirements for accounting for disclosures made through an Electronic Health Record in 42 U.S.C. 17935(c).
9. Business Associate shall comply with all applicable requirements of 45 CFR Part 162.
10. Business Associate shall require its agents and subcontractors to comply with all applicable requirements of 45 CFR Part 162.
11. Business Associate shall request, use, and disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, use, or disclosure; provided, that Business Associate shall comply with 42 U.S.C. § 17935(b).
12. Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI as prohibited by 42 U.S.C. § 17935(d).
13. Business Associate shall not make or cause to be made any communication about a product or service that is prohibited by 42 U.S.C. § 17936(a).
14. Business Associate shall not make or cause to be made any written fundraising communication that is prohibited by 42 U.S.C. § 17936(b).
15. In the event that Business Associate knows or has reason to know of a breach of security (as defined by M.G.L. c. 93H) involving individually-identifiable information and/or PHI received from HNE under this Agreement that occurred while such information was in Business Associate’s custody or control, then Business Associate shall as soon as practicable and not more than two (2) business days after the Business Associate learns of such non-permitted disclosure, provide notice of such occurrence to HNE and shall provide any further notice and take steps to mitigate as are required by the applicable law.
16. **Obligations and Activities of Business Associate with Respect to Confidential Information**
17. In consideration of such disclosure, Business Associate shall maintain Confidential Information received from HNE or its representatives in confidence and shall refrain from using the same or disclosing any part thereof (or any terms, conditions, or other facts relating to the relationship) to any third party, except as permitted by this Agreement or as otherwise required by law. Business Associate shall use Confidential Information only to the extent required under the Transaction and shall not use Confidential Information for any other purpose or in any manner that would constitute a violation of any applicable laws or regulations.
18. Business Associate shall limit dissemination of and access to Confidential Information received only to such of its representatives as are directly concerned with the relationship and who have signed appropriate confidentiality agreements with Business Associate in connection with their employment or before receipt of the Confidential Information. Business Associate shall advise such persons of the confidential nature of the Confidential Information and the relationship; shall use its best efforts to prevent disclosure of the same in violation of this Agreement; shall be liable for any breach hereunder by any such person acting within the scope of his/her employment; and shall cooperate fully with HNE to recover HNE’s damages from, and exercise any other legal recourse HNE may have against, any such person whose conduct outside the scope of his/her employment causes a breach hereunder.
19. HNE may identify in writing Confidential Information that is to be returned to HNE. Upon the request of HNE, or when Business Associate has completed its evaluation of such Confidential Information, Business Associate shall immediately return to HNE any such Confidential Information in written or other tangible form received. Business Associate shall not retain any copies or summaries of such Confidential Information unless expressly approved in writing by HNE.
20. The confidentiality and non-use obligations of Business Associate shall not apply to Confidential Information which is:
    1. In or hereafter enters the public domain through no fault of Business Associate (or by any officer, director, employee, agent, representative or affiliate of Business Associate, or any other person acting, directly, or indirectly, in concert or participation with Business Associate)
    2. Obtained by Business Associate from a third party having the legal right to use and disclose the same
    3. In the possession of Business Associate prior to receipt from HNE, as evidenced by Business Associate’s records pre-dating such receipt
    4. Independently developed by Business Associate as evidenced by records proving such independence

Specific Confidential Information shall not be deemed to be within the exceptions merely because it is incorporated within more general information within the exceptions. Further, any combination of Confidential Information shall not be deemed to be within the exceptions merely because individual items are within the exceptions.

1. No right or license to any patent or other intellectual property right is granted to Business Associate by this Agreement. In providing such Confidential Information, HNE is making no representation as to the accuracy or completeness of the information.
2. Business Associate recognizes and acknowledges that HNE and its affiliates will suffer immediate and irreparable harm to their goodwill and business which will not be compensable by damages alone in the event that Business Associate breaches or threatens to breach this Agreement. Accordingly, in the event of any breach or threatened breach of this Agreement, in addition to and not in limitation of any other rights, remedies or damages available to HNE, HNE shall be entitled to obtain a temporary, preliminary and/or permanent injunction in order to prevent or restrain any such breach by Business Associate (or by any officer, director, employee, agent, representative or affiliate of Business Associate, or any other person acting, directly or indirectly, in concert or participation with Business Associate). Business Associate shall notify HNE of any such breach or threatened breach immediately upon discovery thereof.

# Term and Termination

1. This Agreement is effective on the date it is executed by the Business Associate and will remain effective until terminated. Either party may terminate this Agreement upon sixty (60) days prior written notice. Notwithstanding the foregoing, this Agreement shall terminate automatically after one (1) year of inactivity between the parties, and all obligations of the parties upon termination under this Agreement shall apply.
2. If either Party knows of a pattern of activity or practice of the other Party that constitutes a material breach or violation of the Agreement then the non-breaching Party shall provide written notice of the breach or violation to the other Party that specifies the nature of the breach or violation. The breaching Party must cure the breach or end the violation on or before thirty (30) days after receipt of the written notice, unless a shorter time is required by law. In the absence of a cure reasonably satisfactory to the non-breaching Party within the specified timeframe, or in the event the breach is reasonably incapable of cure, then the non-breaching Party may do the following:

(i) if feasible, terminate the Agreement; or

(ii) if termination of the Agreement is infeasible, report the issue to HHS.

1. Effect of Termination.
2. Except as provided in subparagraph (2) of this section, upon termination of the business relationship between the parties for any reason, Business Associate shall return or destroy all PHI received from HNE, or created or received by Business Associate on behalf of HNE. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of PHI.
3. In the event that Business Associate determines that returning or destroying all PHI is infeasible, Business Associate shall provide HNE notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible; Business Associate shall extend the protections of the Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

# Indemnification and Hold Harmless

Business Associate shall indemnify and hold harmless HNE, including its successors, and affiliated, related and subsidiary entities, and the officers, directors, employees and agents of HNE, from and against any and all claims, actions, causes of action, demands, or liabilities of whatsoever kind and nature, including judgments, interest, reasonable attorneys’ fees, and all other costs, fees, expenses, and charges (collectively, “Claims”) to the extent that such Claims arise out of or were caused by the negligence, gross negligence, or willful misconduct of the Business Associate or from any material breach of the Agreement by the Business Associate.

1. **Miscellaneous**
2. The Parties agree that Covered Entity may amend this Agreement from time to time by providing notice of changes necessary for Covered Entity or Business Associate to comply with the rules and requirements of applicable law protecting the privacy, security, and confidentiality of PHI, including, but not limited to, HIPAA, HIPAA Regulations and any regulations later promulgated pursuant to HIPAA. Such Amendment shall be effective upon the giving of such notice without the need for an amendment signed by Business Associate.
3. The respective rights and obligations of Business Associate of this Agreement shall survive the termination of this Agreement.
4. Any ambiguity in this Agreement shall be resolved to permit Covered Entity and Business Associate to comply with the rules and requirements of applicable law protecting the privacy, security, and confidentiality of PHI including, but not limited to, HIPAA, HIPAA Regulations and HITECH.
5. This Agreement shall supersede any prior or pre-existing Business Associate Agreement between HNE and Business Associate and all such prior or pre-existing agreements, if any, are hereby terminated.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below

## Health New England, Inc. Agent

By:\_\_\_­­­­­­­­­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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