



**PATRIOT HEALTH INSURANCE COMPANY
PRODUCER AGREEMENT**

This agreement is by and between Patriot Health Insurance Company, Inc. (“Patriot”) and _____ (“Producer”). In consideration of the mutual promises herein, and other good and valuable consideration, the parties agree as follows:

1. DEFINITIONS

- 1.1. “Agreement” means this Producer Agreement.
- 1.2. “Group” means the employer group purchasing group health benefits from Patriot.
- 1.3. “Patriot Plan” means a group health product offered by Patriot.

2. APPOINTMENT OF PRODUCER – GENERAL POWERS AND DUTIES

- 2.1. Patriot hereby authorizes Producer to solicit applications for issuance of any Patriot Plan in the State of New Hampshire, subject to the completion of any documentation required by Patriot.
- 2.2. Producer agrees to keep in full force and effect, throughout the term of this Agreement, professional liability insurance coverage of at least \$1 million per occurrence, and to the extent such coverage is made on a claims made basis, to secure any tail coverage necessary to cover claims arising out of any errors or omissions occurring during the term of this Agreement.
- 2.3. Producer will immediately notify Patriot of any termination, suspension or expiration of its license from the New Hampshire Commissioner of Insurance, or from any other state licensing authority.
- 2.4. Producer will comply with Patriot’s underwriting guidelines and other pertinent rules and regulations as may be provided by Patriot to Producer.
- 2.5. Unless expressly authorized by Patriot in advance, Producer shall make no representations or claims relative to Patriot Plans except as may be contained in written materials prepared or approved by Patriot and furnished to Producer, or as may be consistent with such materials, including any modifications thereof.
- 2.6. Producer agrees that all printed materials, applications, sales literature and other written materials furnished by Patriot shall remain the exclusive property of Patriot, subject at all times to its control, and shall be returned to Patriot upon demand.
- 2.7. Producer shall not make use of any advertisement or marketing materials containing Patriot’s name, logo, or trademarks, without Patriots prior consent.
- 2.8. Throughout the term of this Agreement and for two years thereafter, all information designated as confidential by Patriot and obtained by Producer shall be treated as confidential and shall not be used or disclosed without Patriot’s express consent.

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- 2.9. Producer will exercise its duties and authority under this agreement directly, and shall not appoint any sub-brokers other agents or representatives without the express written consent of Patriot.
 - 2.10. Producer agrees that all Groups enrolled under this Agreement shall be billed directly by Patriot, and not through an intermediary, including the Producer, unless specifically authorized in writing by Patriot.
 - 2.11. Producer will comply with all applicable state and federal laws, including but not limited to those relating to employee benefit plans and health information privacy laws.
 - 2.12. Producer shall immediately notify Patriot upon receipt of any complaints or investigations relating to Patriot or the Patriot Plan.
 - 2.13. Producer shall retain for a period of at least six years such records and data that may reasonably be required by Patriot or by applicable law, including but not limited to complete records of all transactions pertaining to Groups, correspondence to and from Groups. Producer's duty to retain such records shall survive the termination or non-renewal of this Agreement for any reason.
3. **LIMITATIONS ON PRODUCER'S AUTHORITY:** Producer is not authorized to, and shall not, perform any of the following acts on Patriot's behalf or with respect to any Patriot Plan or Group without the express written consent of Patriot:
- 3.1. waive, modify or change any terms, conditions, rates, proposals or limitation of any Group contract;
 - 3.2. bind or commit Patriot in any way;
 - 3.3. receive any money for or on behalf of Patriot;
 - 3.4. extend time for any premium payment;
 - 3.5. reinstate any coverage terminated;
 - 3.6. adjust, settle, or admit liability on any claim;
 - 3.7. solicit applications or enrollment information for any Group outside of the State of New Hampshire;
 - 3.8. sign an application for a Patriot Plan for or on behalf of a Group; or
 - 3.9. pay, allow, or offer to pay or allow any rebate of premium or other form of consideration as an inducement to any person or Group;
4. **GROUP ELIGIBILITY REQUIREMENTS**
- 4.1. In order to be eligible for a Patriot Plan, a Group must comply with Patriot's underwriting standards and guidelines, including any changes thereto as may be made by Patriot from time to time.
 - 4.2. No Group coverage shall be effective without Patriot's express authorization.

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- 4.3. No Group coverage shall be effective until the date determined by Patriot and until after Patriot has accepted the following:
 - 4.3.1. completed and signed application, including all required employee data;
 - 4.3.2. a group coverage agreement signed by a duly authorized representative of the Group; and
 - 4.3.3. payment of the Group's first premium installment.
5. **PRIVACY, SECURITY AND HIPAA COMPLIANCE:** Producer and Patriot agree to maintain the privacy and security of all private health and financial information pertaining to Groups and individuals covered or seeking coverage under a Patriot Plan in accordance with the terms of Appendix A of this Agreement. The parties further agree that Producer serves as a "business associate" of Patriot pursuant to 45 C.F.R. Parts 160 and 164 (the "HIPAA Privacy Rule") and that Producer shall satisfy all terms and conditions set forth in Appendix A of this Agreement.
6. **COMPENSATION**
 - 6.1. Patriot shall pay Producer commissions on premium received from Groups purchasing Patriot Plan coverage from Producer. The rate of such commissions shall be 4% of received premium.
 - 6.2. No commission shall be paid to Producer for a Group unless such Group has designated Producer as its broker of record. Confirmation of this relationship shall be submitted by the Producer or Group and delivered to Patriot before commissions are paid. Confirmation shall be recorded on the Group's letterhead, dated and signed by a person who has legal binding authority to enter into a contract on behalf of the Group.
 - 6.3. Commissions payable under this Agreement shall terminate upon the occurrence of any one of the following:
 - 6.3.1. the Group's coverage is terminated for any reason;
 - 6.3.2. this Agreement is terminated for any reason;
 - 6.3.3. the Producer is no longer the Group's broker of record.
 - 6.4. In the event Group coverage is terminated and Patriot issues a refund of prepaid premium for the Group, the commission applicable to the refunded premium shall be deducted from any amounts then or subsequently due from Patriot to Producer. If such deductions do not result in recoupment of the amount due Patriot, Producer shall refund any amount still owing within 90 days.
7. **RELATIONSHIP OF THE PARTIES:**
 - 7.1. The relationship of the parties to this Agreement shall be that of independent contractors. As such, each party is responsible for its own expenses, liabilities, and responsibilities incurred hereunder.
 - 7.2. Nothing herein shall be construed as creating a relationship of employment or agency between the parties.

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8. INDEMNIFICATION: Both parties agree to indemnify and hold harmless the other party from any damage and against any liability for loss, cost, expenses, fines, penalties resulting from (a) any act, error or omission, whether intentional or unintentional, by the other party (b) any obligation, act, transaction in violation of this Agreement. For the purposes of this subparagraph, the term “party” or “parties” shall include Producer and Patriot and their respective officers, directors, employees, agents, affiliates and subsidiaries.
9. REPORTS AND AUDITS:
 - 9.1. Patriot agrees to submit to Producer a monthly statement of (a) premiums collected from Groups for which Producer is the broker of record, and (b) commissions due to Producer on such collected premiums.
 - 9.2. Producer will submit to Patriot periodic reports of its activities related to the marketing and distribution of Patriot Plans in such form as Patriot may request from time to time.
 - 9.3. Patriot will have the right to audit Producer’s records relative to any activities contemplated hereunder, and Producer shall have the right to audit Patriot’s billing and collection of accounts for which Producer is broker of record. In both cases, the parties shall use best efforts to reach agreement on the reasonable scope and procedures applicable to the audit. Such audits shall be conducted at the sole expense of the auditing party, except in the event of intentional fraud or misconduct, in which case cost of the audit shall be paid by the party responsible for the fraud or misconduct.
10. TERM AND TERMINATION:
 - 10.1. This Agreement may be terminated by either party at any time by giving at least thirty (30) days written notice of termination.
 - 10.2. Patriot may terminate this Agreement for cause upon the occurrence of any of the following:
 - 10.2.1. termination is required to comply with any state or federal law or regulation, or the order of any court or other government authority;
 - 10.2.2. termination of the Producer’s license;
 - 10.2.3. Producer’s commission of any illegal act or fraud in the performance of any duties contemplated hereunder;
 - 10.2.4. Producer’s material breach of the terms of this Agreement; or
 - 10.2.5. Producer’s conviction, entry of a plea of *nolo contendere*, or the imposition of probation without verdict for any felony or a misdemeanor related to the business of insurance, including but not limited to fraud, theft, embezzlement, or any other offense related to the misuse or taking of funds.
 - 10.3. In the even of termination of this Agreement other than for cause, commissions payable hereunder, if any, shall continue to be paid for so long as the Producer remains the broker of record for the Group, provided that the Producer furnishes Patriot a current broker of record designation signed by the Group at least 30 day prior to each subsequent anniversary date of the Group.

11. MISCELLANEOUS

- 11.1. This Agreement shall not be assigned by Producer without the prior written consent of Patriot.
- 11.2. All notices required under this Agreement shall be in writing and delivered to the following individuals:

- 11.2.1. To Patriot: Attn: President
Patriot Health Insurance Company
33 South Commercial Street
Manchester, NH 03101

- 11.2.2. To Producer: Attn: _____

IN WITNESS WHEREOF, the parties have executed this Agreement effective on
_____, 2007.

PATRIOT HEALTH INSURANCE CO.

PRODUCER

Signature

Signature

Print Name

Print Name

Title

Title

**APPENDIX A TO PRODUCER AGREEMENT
PRIVACY OF GROUP MEMBERS' HEALTH AND FINANCIAL INFORMATION**

1. DEFINITIONS

The following definitions shall apply to this Appendix A:

"Protected Health Information" shall mean Individually Identifiable Health Information (as defined below) that is transmitted or maintained in any form or medium. However, it does not include Individually Identifiable Health Information in education records covered by the Family Educational Right and Privacy Act, as amended (20 U.S.C. § I 232g), records described at 20 U.S.C. § 1232g(a)(4)(B)(iv), and employment records held by a HIPAA covered entity in its role as an employer.

"Individually Identifiable Health Information" shall mean health information, including demographic information collected from an individual, that:

- (a) is created or received by a health care provider, health plan (including Patriot), employer or health care clearinghouse; and
- (b) relates to the past, present or future physical or mental health or 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 that: (1) identifies the individual or (2) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

"Financial Information" shall mean personally identifiable financial information and any list description or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information other than publicly available information. For purposes of this definition, "personally identifiable financial information" means any information other than Protected Health Information:

- (a) a consumer provides to Patriot, or to Producer on behalf of Patriot, to obtain an insurance product or service from Patriot;
- (b) about a consumer resulting from a transaction involving an insurance product or service between Patriot, or Producer on behalf of Patriot, and a consumer; or
- (c) Patriot, or Producer on behalf of Patriot, otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.

"Required by Law" shall mean a mandate contained in law that compels the use or disclosure of Protected Health Information and that is enforceable in a court of law. It includes, but is not limited to: court orders and court ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

2. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION

Producer may use or disclose Protected Health Information received or created by Producer pursuant to this Agreement solely for the following purposes:

- A. Producer may use or disclose Protected Health Information as necessary to carry out its responsibilities and duties under this Agreement.

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- B. Producer may use or disclose Protected Health Information for its proper management and administration or to fulfill any present or future legal responsibilities of Producer; provided, however, that if Producer discloses Protected Health Information to a third party under this Paragraph 2(B), Producer shall:
- (i) in advance of the disclosure, notify the Patriot in writing of the disclosure and supply to Patriot such information as may be requested by the Patriot to enable Patriot to account for the disclosure in accordance with 45 C.F.R. § 164.528;
 - (ii) obtain reasonable assurances from the person to whom the Protected Health Information is disclosed that it will be held confidentially and used or further disclosed only as Required by Law or for the purpose for which it was disclosed; and
 - (iii) obligate such person to notify Producer of any instances of which it is aware in which the confidentiality of the Protected Health Information has been breached.
- C. Producer may use or disclose Protected Health Information as Required By Law provided that Producer, in advance of the disclosure, notifies the Patriot in writing of the disclosure and supplies to Patriot such information as may be requested by the Patriot to enable Patriot to account for the disclosure in accordance with 45 C.F.R. § 164.528. Disclosures "Require by Law," include, but are not limited to disclosures pursuant to: court orders and court ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

Producer agrees that it will comply with all applicable state and federal laws regarding the use and disclosure of Protected Health Information to the extent that such laws are not pre-empted by the HIP AA Privacy Rule when using or disclosing Protected Health Information pursuant to this Agreement.

Producer shall not use Protected Health Information received or created by Producer pursuant to this Agreement for data aggregation services. Data aggregation services means the combining of Protected Health Information by Producer with the protected health information received by Producer in its capacity as a business associate of another HIPAA covered entity, to permit data analyses that relate to the health care operations of Patriot and the other entity. Producer shall also not de-identify Protected Health Information received or created by Producer pursuant to this Agreement or use such de-identified Protected Health Information for any purpose.

3. DISCLOSURE TO AGENTS

In the event that Producer discloses to any agent, including a subcontractor, Protected Health Information received from, or created or received by Producer on behalf of, Patriot, Producer shall obligate each such agent to agree to the same restrictions and conditions regarding the use and disclosure of Protected Health Information as are applicable to Producer under this Appendix.

4. SAFEGUARDS

Producer shall use appropriate administrative, technical and physical safeguards, consistent with the size and complexity of Producer's operations, to prevent the use or disclosure of Protected Health Information in any manner inconsistent with the terms of this Appendix A. Producer shall maintain a written security program describing such safeguards, a copy of which shall be available to Patriot upon request.

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5. REPORTING OF IMPROPER DISCLOSURES

Producer shall report to Patriot any unauthorized or improper use or disclosure of Protected Health Information within one (1) business day of the date on which Producer becomes aware of such use or disclosure. Producer shall report such uses or disclosures to Patriot by telephone by calling (603) 296-0312 and in writing to: Patriot Health Insurance Company, 11 Washington Place, Bedford, NH 03110. In the event that the telephone notice is received by Patriot through an automated recording device, the notice must include the name and telephone number of the appropriate contact person of the Producer and the reason for the call.

Producer shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of this Agreement.

6. ACCESS TO PROTECTED HEALTH INFORMATION BY PATRIOT

- A. Within ten (10) days of a request by PATRIOT, Producer shall provide to PATRIOT all Protected Health Information in Producer's possession necessary for PATRIOT to provide PATRIOT members or their representatives with access to or copies thereof in accordance with 45 C.F.R. § 164.524.
- B. In advance of any disclosure of Protected Health Information that is not for a purpose necessary to carry out Producer's responsibilities and duties under this Agreement, Producer shall notify the Patriot in writing of the disclosure and supply to Patriot such information as may be requested by the Patriot regarding the disclosure to enable Patriot to maintain an accounting of disclosures in accordance with 45 C.F.R. § 164.528. In addition, within ten (10) days of any request by Patriot, Producer shall provide to Patriot all information and records in Producer's possession necessary for Patriot to provide members or their representatives with an accounting of disclosures thereof in accordance with 45 C.F.R. § 164.528.
- C. Within ten (10) days of a request by PATRIOT, Producer shall provide to PATRIOT all Protected Health Information in Producer's possession necessary for PATRIOT to respond to a request by a PATRIOT member to amend such Protected Health Information in accordance with 45 C.F.R. § 164.526. At Patriot's direction, Producer shall incorporate any amendments to a PATRIOT member's Protected Health Information made by PATRIOT into the copies of such information maintained by Producer.

7. ACCESS TO HHS

Producer shall make its internal practices, books and records relating to the use and disclosure of Protected Health Information received from Patriot, or created or received by Producer on behalf of Patriot, Patriot or to the United States Department of Health and Human Services in accordance with the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder.

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8. SECURITY STANDARDS

Business Associate agrees to comply with the requirements of 45 C.F.R. Parts 160 and 164 pertaining to the standards for the security of electronic Protected Health Information (the "HIPAA Security Rule"). Accordingly, Business Associate shall:

- A. Implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Patriot;
- B. Ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect such Electronic Protected Health Information;
- C. Report to PATRIOT any Security Incident involving Electronic Protected Health Information of which it becomes aware; and
- D. Comply with any other requirements that the Secretary of Health and Human Services may require from time to time with respect to Electronic Protected Health Information by the issuance of additional guidance or regulations pursuant to HIPAA.

Any capitalized terms not specifically defined in this Paragraph 9 or Paragraph 1 of this Appendix shall have the same meaning as set forth in 45 C.F.R. § 160.103 or 45 C.F.R. § 164.304, where applicable.

9. ELECTRONIC DATA INTERCHANGE

Producer shall satisfy all applicable provisions of the HIPAA standards for electronic transactions and code sets, also known as the Electronic Data Interchange (EDI) Standards, at 45 C.F.R. Part 162. Producer further agrees to ensure that any agent, including a subcontractor, that conducts standard transactions, as such term is defined at 45 C.F.R. § 162.103, on its behalf will comply with the EDI standards.

10. TERMINATION

If Patriot reasonably determines that Producer has breached a material term of this Appendix A, including, without limitation, any provision governing the use and disclosure of Protected Health Information, Patriot may immediately terminate this Agreement. In the alternative, Patriot at its option, may provide Producer with written notice specifying the nature of the breach and allow Producer the opportunity to cure the breach. If Producer fails to cure such breach within thirty (30) days of Patriot's written notice, Patriot may immediately terminate this Agreement.

11. RETURN OF PROTECTED HEALTH INFORMATION UPON TERMINATION

Upon termination of this Agreement, Producer shall:

- A. if feasible, return or destroy all Protected Health Information received from, or created or received by Producer on behalf of Patriot that Producer still maintains in any form, and Producer shall retain no copies of such information; or
- B. if Producer and Patriot reasonably determine that such return or destruction is not feasible, extend the protections of this Appendix A to such information and limit further uses and disclosures to those purposes that make the return or destruction of the Protected Health Information infeasible.