

**General Agency Agreement
For
Prominence Health Plan Services, Inc.**

THIS **General Agency** AGREEMENT (the “Agreement”) is made as of the _____ day of _____ 2014 (the “Effective Date”), by and between _____ a Field Marketing Organization (“FMO”), for the entities that own and operate Medicare Advantage (MA) plans and Medicare Advantage and Prescription Drug (MAPD) plans listed on Exhibit A _____ (FMO) (collectively, the “Plans”) and _____ a **Managing General Agency hereafter referred to as GA**. Each individually will be referred to as a “Party” and collectively as the “Parties”.

WHEREAS, Prominence provides administrative services to the aforementioned Plans in accordance with an administrative services agreement and in compliance with the Plans’ contract(s) with the Centers for Medicare and Medicaid Services (“CMS”);

WHEREAS, FMO desires to enter into an agreement with, and delegate certain functions to, GA which provides sales administrative functions for its agents and creates market activities that promote sales; and,

WHEREAS, both Parties agree to conduct business in accordance with 42 CFR Parts 422 and 423 and other applicable laws, rules and regulations.

NOW THEREFORE, in consideration of the mutual covenants herein contained and intending to be legally bound hereby, the Parties hereto agree as follows:

1. **DEFINITIONS**

- 1.1 **Agent(s)**: The GA’s employed or contracted insurance producers who are professional individuals licensed by the applicable state agency to sell health care products and are appointed by Prominence to present for sale its Plans outlined in Exhibit A, and have successfully completed the training and certification process required by Prominence to sell the Plans.
- 1.2 **Centers for Medicare and Medicaid Services (CMS)**: The agency within the Department of Health and Human Services that administers the Medicare program.
- 1.3 **Compensation**: For purposes of this Agreement, Compensation is defined as an amount FMO pays to GA for certain services the GA performs as set forth in this agreement.
- 1.4 **Commissions**: The portion of Compensation paid to the agents of the GA by FMO which is due, in whole, to GA’s Agents for selling and enrolling of eligible individuals in Prominence Plans.
- 1.5 **Completion of Audit**: Completion of audit by the Department of Health and Human Services, the Government Accountability Office, or their designees of the Plan or Plans as determined by such agency.
- 1.6 **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 (MAO) and a first tier entity (i.e. FMO)
- 1.7 **Enrollee**: A Medicare Advantage-eligible individual who has enrolled in or elected coverage through a Medicare Advantage Organization.
- 1.8 **General Agency (GA)**: As defined in the opening paragraph and retained to sell or promote the Plans and employs or contracts with the Agents to sell and promote the Plans.
- 1.9 **Final Contract Period**: The final term of the contract between CMS and a Plan.

- 1.10 **First Tier Entity:** Any party that enters into a written arrangement, acceptable to CMS, with a Medicare Advantage Organization or applicant to provide administrative services or health care services for a Medicare-eligible individual under the MA program.
- 1.11 **Guidance:** Collectively, the guidance put forth in connection with the MMCM and the PDPM including MMG.
- 1.12 **Enrollee Premium(s):** Any and all funds collected from Plan Enrollees, as applicable, which are designated as Enrollee premiums for the Plans sold under the terms and conditions of this Agreement.
- 1.13 **Medicare Advantage (“MA”):** An alternative to the traditional Medicare program in which private plans run by health insurance companies provide health care benefits to eligible beneficiaries who would otherwise receive such benefits directly from the Medicare program.
- 1.14 **MA Organization (MAO):** means Medicare Advantage Organization, which is 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. The Plan entities listed on Exhibit A are MA Organizations.
- 1.15 **MAPD:** Medicare Advantage Prescription Drug Plan as defined in the PDBM.
- 1.16 **Medicare Managed Care Manual (“MMCM”):** Refers to the most recent edition of chapter guidance published by CMS for the management of its MA plans.
- 1.17 **Medicare Marketing Guidelines (“MMG”):** The most recent edition of Chapter three of the Medicare Managed Care Manual and Chapter two of the Prescription Drug Benefit Manual for MA, MAPD Plans, Prescription Drug Plans, and Section 1876 Cost Plans.
- 1.18 **Plan(s):** The MA and MAPD plans offered by Prominence including any authorized optional benefits it may offer. The Plans are listed in Exhibit A.
- 1.19 **Plan Year:** As defined by CMS to be January 1 through December 31, regardless of enrollment effective date.
- 1.20 **Prescription Drug Benefit Manual (“PDBM):** Refers to the most recent edition of chapter guidance published by CMS for the management of its Prescription Drug Benefit plans.
- 1.21 **Prospective Enrollees:** Those Medicare beneficiaries eligible or soon to be eligible to enroll in a Plan.
- 1.22 **Rapid Disenrollment:** As defined by CMS within Chapter 2 of the MMCM, when a beneficiary disenrolls from a plan within the first three months from the effective date of enrollment. Rapid Disenrollment does not apply if death occurs in the first 3 months.
- 1.23 **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 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.
- 1.24 **State:** means the applicable state where the Plan’s insurance entity is domiciled.

2. **AUTHORIZATION TO SELL PROMINENCE PLANS**

- 2.1 **Agents.** Each individual or entity that is employed by or contracted with an authorized Prominence contracted entity and is authorized for appointment by Prominence in the applicable State in which s/he is authorized by the applicable regulating agencies to present and/or sell Plans to Prospective Enrollees.
- 2.2 **Limitation on Authorization.** GA and its Agents shall not have the authority to:
 - 2.2.1 Edit, revise, make or discharge contracts for FMO or Prominence for its Plans;
 - 2.2.2 Reject or accept any Prospective Enrollee;
 - 2.2.3 Quote extra rates based on increased risks;
 - 2.2.4 Make endorsements;
 - 2.2.5 Incur any liability on behalf of Prominence or its Plans;

- 2.2.6 Waive, alter or amend the performance, provisions, terms or conditions of any contract on behalf of FMO or Prominence or its Plans;
- 2.2.7 Accept or collect premiums, (including premiums at the time of enrollment); or
- 2.2.8 Bind FMO or Prominence in any way.

Except as set forth in this Agreement, GA is not authorized to make payment to any party in connection with this Agreement or Plans unless such payment is first authorized by FMO and Prominence.

3. DUTIES OF GA

- 3.1 **Services.** All services and activities set forth herein to be performed by GA, including without limitation, selling Plans, recruitment and management of Agents, training, ensuring compliance, meeting performance standards, marketing, selling, record retention.
- 3.2 **Performance Standards.** Services will be performed in accordance with this written agreement by GA that is consistent and complies with the Plan’s MA Contract and with MA Organization’s contractual obligations as a Part C and Part D sponsor. [42 C.F.R. § 422.504(i)(3)(iii) and 42 C.F.R.§ 423.505 (i)(3)(iii)]
- 3.3 **Expectations.** It is implicit within this agreement that GA and all affiliated Agents will, while acting in such capacity, conduct themselves in a professional manner and one that is consistent with applicable Guidance put forth by CMS and the Prominence Standards of Conduct set forth in Exhibit B.
- 3.4 **Prominence Standards of Conduct.** GA agrees to adhere to, and assure the adherence by any contracted entity affiliated with GA to the Standards of Conduct attached herein as Exhibit B, which may be amended from time to time. It is Prominence’s responsibility to alert either or both GA and FMO of any changes to the Standards of Conduct. In the event that FMO determines in good faith that GA has breached its obligations pursuant to this section, FMO may, upon notice to GA, terminate the Agreement.
- 3.5 **Compliance with State and Federal Law.** GA and any related entity, contractor or subcontractor, will comply with all state and federal law and regulations, including all applicable State, Federal, including all Medicare and CMS, laws, Guidance, regulations and instructions related to Part C and Part D.
- 3.6 **HIPAA.** GA shall be solely responsible for maintaining member confidentiality with respect to any information obtained by GA and or its Agents pursuant to this Agreement in full compliance with all state and federal laws governing the confidentiality of medical records, including without limitation, the Health Insurance Portability and Accountability Act (“HIPAA”). GA agrees that it and Agents will comply with the Business Associate Addendum attached to this Agreement, as Exhibit C.
- 3.7 **Compliance.** GA agrees to train and monitor all Agents, contracted agencies and administrative staff to ensure compliance with all HIPAA and Protected Health Information (“PHI”), as that term is defined in HIPAA, requirements. GA further agrees to include such compliance training and the requirement of such compliance in respective contracts with penalties of a breach for non-compliance. GA employees and contractors, including Agents and administrative staff, must have on file training documents as well as an attestation of willingness to comply. GA shall, and shall require Agents, at all times to comply with state and federal, including CMS’s Guidance, rules, regulations and guidelines with respect to Plans.
- 3.8 **Policy and Procedures.** GA and its Agents shall strictly comply with all FMO and Prominence’s written policies and procedures as outlined herein or communicated independently to GA to communicate to Agent, as amended and updated from time to time throughout the Term, upon notice but without need to amend this Agreement. GA shall create and maintain a policy and procedure manual that it will use as a guide to assist FMO

in training Agents, employees or independent contractors. This manual is to be maintained and up to date at all times.

- 3.9 **Recruiting and Management of Agents.** GA shall recruit and contract with professional, properly licensed Agents to sell and service Plans to Prospective Enrollees in Plans' approved counties. GA must demonstrate an ability to manage its Agents and to require their compliance with the requirements of this Agreement.
- 3.10 **Training.** GA shall arrange to participate in training programs for Agents to include testing that ensures sufficient knowledge for its Agents to enable them to meet the specified educational requirements for credentialing with Prominence. GA is to ensure new and current Agents are continually training in and using the online Enrollee management system to track and manage Plan Enrollees and sales leads. GA agrees to monitor sales and service activity of each Agent, train and re-train if necessary if Agent does not meet standards of performance and when needed take the necessary corrective actions to ensure compliance and coordinate with FMO all future actions. GA is required to provide and document all ongoing training and educational efforts and to co-ordinate and communicate these activities with FMO. The minimum requirements follow:
- 3.10.1 Specific training and testing on the Plans – Must pass the product & standards test with a score of 85% or higher.
 - 3.10.2 Obtain certification on core Medicare knowledge through either Gorman's Sales Sentinel or America's Health Insurance Plans ("AHIP").
 - 3.10.3 Obtain training on Fraud Waste and Abuse and Protected Health Information ("PHI"). Must pass testing with a score of 85% or higher.
 - 3.10.4 Successfully complete training on new enrollment procedures and policies including online systems training.
 - 3.10.5 Successfully complete Prominence Enrollee management software training.
 - 3.10.6 Document a valid State license applicable to the sale of Plans.
 - 3.10.7 Have a signed Business Associate Agreement ("BAA") with contracted Agents.
 - 3.10.8 Confirm and document that GA, and its employees and its Agents do not have a criminal record and that they have passed the background check. Should questionable results be discovered on any background check of an Agent or its employees, Agent GA agrees to an immediate suspension of sales authority and credentialing of that Agent or employee will occur until such time that a complete investigation can be conducted by FMO and or GA. If unprofessional activity is determined by FMO, GA and or Prominence in its sole discretion, it may terminate the Agent's appointment and all compensation and commission relevant to that Agent's business.
 - 3.10.9 Retain signed attestation pages verifying the Agent has read and understands the Agents Code of Conduct, Medicare requirements for Part C and Part D for sales and marketing and the laws that surround HIPAA and security and privacy.
- 3.11 **Complaints & Corrective Actions.** GA shall report to FMO within 24 hours of receipt of any complaints or inquiries which may indicate non-compliance on behalf of the GA, its Agents, its employees, Prominence, FMO, or a Plan by any Prospective Enrollee, Enrollee, Agent, or any governmental agency related to the sale or servicing Plans or in connection with an Enrollee. GA is required to have a mechanism in place to receive and record complaints on Agents and GA functions. If a GA's Employees, Agent or Agent's employees behavior is found to be non-compliant, GA shall put such Individual(s) employee(s) immediately on a Corrective Action Plan and monitor regularly to ensure continued compliance. Failure to comply with the Corrective Action Plan will result in immediate termination by the GA of the individual authorized for appointment GA and its Agents and or employees and other employees or contractors of GA are encouraged to report compliance

concerns and any suspected or actual misconduct to Prominence directly. The Prominence compliance hotline number is 877-864-2028.

- 3.12 **Credentialing.** Prominence performs the credentialing of Agents, which is the verification process confirming all State and CMS required license and certifications have been obtained and the GA shall ensure credentialing is complete before an Agent performs any Services.
- 3.13. **Appointment.** Upon completion of the above Training and Credentialing requirements by the GA's Agents, Prominence will appoint the FMO and with that their downstream affiliate, of which the GA is part and record the appointment of such with the applicable State agency for the Plan. An Agent shall not perform Services until GA has received written notification of their Agent's appointment.
- 3.14 **Renewal of Appointment.** Each year prior to September 30, FMO on behalf of Prominence may extend an invitation to represent the Plan for the following selling year. Agents who are to be renewed and have not produced sales in the last 12 months may either be denied from participating with Prominence or charged administrative and appointment fees. Requirements for 2015, which may be modified by Prominence for subsequent years with notice and without amendment to this Agreement, are:
- 3.14.1 Agents who have sold one to four new prospects in the last 12 months will be responsible to pay for the OIC appointment fee and all training expenses.
- 3.14.2 Agents who have sold five to ten new prospects in the last 12 months – Prominence will pay the appointment fee and product training expenses and Agent will pay for the core Medicare training with Medicare Sales Sentinel or AHIP.
- 3.14.3 Agents who have sold over ten new prospects in the last 12 months, Prominence will pay for all appointment fees and Prominence-specific product training and the Medicare Sales Sentinel core training. If Agent chooses AHIP, the Agent will pay.
- 3.15 **Non-Renewal of Appointment.** Prominence, at its discretion, may elect not to re-appoint Agents who have been credentialed and appointed with Prominence and for two consecutive years have not sold any Plans to Prospective Enrollees.
- 3.16 **Marketing.** The GA will assist Agents in their efforts to present Prominence MA Plans. GA will establish marketing plans and execute those plans in an attempt to bring Prospective Enrollees and Agent together. GA will keep FMO informed of its marketing plans and will coordinate efforts with FMO where appropriate. GA will provide reports quarterly on established sales and marketing goals and their accomplishments. GA will demonstrate oversight capability and have in place monitoring and corrective/improvement systems to demonstrate accountability for these job functions. Additional job functions include:
- 3.16.1 **Marketing Materials.** GA shall utilize only FMO and Prominence authorized sales and marketing materials in presenting, promoting or otherwise marketing Plans. GA will distribute marketing materials to Agents and agents employees and seek a balance ratio of three to one (3:1) of sales kits used to number of actual enrollments.
- 3.16.2 **Use of Plans and Prominence Name and Advertising Materials.** GA will not use the FMO, Plans', Prominence's or any of their affiliates' name, logo, advertising and marketing materials or supplies, or any other printed or written materials supplied to GA under this Agreement, in any advertising or sales promotion without the express prior written consent of Prominence. The Prominence name will only be approved for use or displayed by third parties, in conjunction with the solicitation and sale of Plans. In the event GA becomes aware of the use of the Prominence name in any advertising or sales promotion by any Agent contracted or not, other than as permitted under this Agreement, GA agrees to promptly notify FMO whom will notify Prominence. Upon termination of this Agreement, all rights and privileges afforded GA under this Agreement regarding the use of the Prominence name shall expire, and GA shall promptly return to Prominence any and all such advertising, sales, enrollment and other materials supplied to GA in connection with this Agreement.

- 3.17 **Selling.** GA agrees to represent FMO and Prominence as an independent contractor and to assist its Agents in the process of soliciting new enrollment of Prospective Enrollees and renewing Enrollees in Prominence Plans. GA agrees that it will ensure and require trained Agents to present Plans to appropriate Prospective Enrollees using professional discretion based on the needs of the individual. Agents shall present Plans to individuals only in a factually accurate manner. Agents shall not present Prominence Plans to individuals that the Agent knows, or should know, are not qualified to enroll in such Prominence Plans.
- 3.18 **Service of Plans.** GA further agrees to deliver and service any Plan policies or health care products issued by Plans based on applications for coverage procured by GA's Agents. GA will ensure and require that each Agent and Agents employees understands and agrees that he/she is not authorized to make any oral or written changes to any form, application, coverage contract, health plan product or other materials furnished to GA or GA's Agents or GA's employees by Prominence.
- 3.19 **Maintenance of Agent and Enrollee Records.** GA shall maintain or ensure the maintenance of complete and accurate records with respect to Agent affiliation and any business produced by such Agent. Agent records shall include current and updated records such as, but not limited to, those items required for credentialing for example the insurance license, appointment(s), E&O declaration page, W-9 or W-4 whichever is applicable, and Agent agreement(s). Also maintain records or reports documenting general office and contact information, course training and completion documents, copies of attestation forms, client enrollment and disenrollment associated with an Agent or employee per year, Enrollee's the Agent is servicing and being compensated for. Assure that the information is available upon request and updated information is shared with Prominence.
- 3.20 **Record Retention.** GA, its agents and its employees must retain all records related to soliciting new enrollment and renewing Enrollees in Plans for a period of ten years, including but not limited to Enrollee applications, proof of Agent training, licensure, and any and all documents related to the Services.
- 3.21 **Ensure Accurate Applications and Electronic Submissions.** GA is responsible for the accurate and timely submission and follow up on all applications submitted to Prominence. GA is to ensure those submissions are performed through the Prominence online enrollment portal. GA further agrees to ensure that all applications are being submitted within twenty-four hours from receipt date. Incomplete or inaccurate applications will be considered incomplete. GA has twenty-four hours to identify and contact the Agent to correct inaccuracies. If Prominence has not received corrected information within forty-eight hours a Prominence-employed agent will be assigned as the Agent of Record (AOR) and Commission will follow.
- 3.22 **Additional Requirements:** GA is required to meet these standards: Ninety percent of all applications must be submitted electronically, 100% of all applications must be complete when submitted. There should be less than a 1% error rate on the information entered in an application that is controllable by the Agent.
- 3.23 **Communications.** Prominence expects GA to read and share "FMO Notes", its monthly Prominence newsletter, and other communications sent to the GA by FMO within ten business days of GA's receipt of these materials.
- 3.24 **Liability Coverage.** GA agrees to maintain and enforce an Errors and Omissions (E&O) policy and ensure that each Agent maintains an in force E&O policy for the duration of this Agreement. Agent E&O policy limit of at least one million dollars. GA limit should be one to two million dollars. The declaration page for the E&O must contain the name of the insured, termination date and amount of coverage. GA has seven days prior to the expiration date to forward a copy of the new license or renewing Errors and Omissions (E&O) to Prominence.
- 3.25 **Governmental Audit.** HHS and the Comptroller General, 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 and Downstream Entities, and entities related to CMS' contract with the Plan(s) through ten years from the final date of the Final Contract Period of the contract entered into between CMS and the Plan(s) or from the date of completion of any audit, whichever is later. [42 C.F.R. §§ 422.504(i)(2)(i) and (ii).]

- 3.26 **Prominence Audit.** FMO and Prominence or their designees shall have the right to audit, copy, evaluate or inspect any materials, contracts, and other records of GA and affiliated employees that pertain to verification of compliance. This right shall extend through ten years from the final date of the applicable CMS contract period or Completion of Audit, whichever is later provided, however, that such access may be required for a longer time period if: (1) CMS determines that there is a special need to retain a particular record or group of records for a longer period; (2) CMS determines that there has been a termination, dispute, fraud or similar fault, in which case the retention may be extended to ten years from the date of any resulting final resolution of the matter; or (3) CMS or its designee determines that there is a reasonable possibility of fraud, in which case it may inspect, evaluate and audit at any time. For the purpose of conducting the above activities, GA and Agent's and employees shall make available their premises, physical facilities and equipment as well as any records relating to the sale of Prominence products to Medicare beneficiaries and any additional relevant information that CMS may require. Upon signature of this Agreement, and annually upon request, GA will provide to FMO and or Prominence a copy of their compliance program, risk assessment (to include areas previously identified as requiring corrective action plans) and auditing and monitoring work plan. [42 C.F.R. §§ 422.504(i)(2)(i) and (ii) and 42 C.F.R. § 423.505]

4 **COMPENSATION & COMMISSION**

- 4.1 **Compensation and Commission paid to GA.** FMO will pay the GA Compensation as set forth in Exhibit D for GA satisfactorily performing the Services in accordance with the terms of this Agreement. Such Compensation shall be payment in full. The Commission, set forth in Exhibit D, paid to the FMO, shall be solely for payment to the GA's Agents and is payment in full for all Services they performed. Agent's commissions will be paid directly to the Agents by the FMO. Compensation and Commission will be subject to chargeback (returned to Prominence) for Enrollees who terminate for any reason. GA or its agents shall not accept payment that differs from that set forth herein in Exhibit D. Agents Commission will be paid directly by FMO to the agents within ten working days from the FMO's receipt of the funds. GA agrees that the Compensation and Commission set forth in Exhibit D is contingent upon the Plans being approved by CMS.
- 4.2 **GA Employed Agents.** GA shall notify FMO in writing of the amount and type of compensation it pays its Employed Agents. Prominence recognizes this may be in the form of benefits, salary and bonus/commission payments in lieu of direct Commission. GA understands and FMO agrees that the employed Agent's commission in whatever form must be equivalent to that amount set forth in Exhibit D. GA shall notify FMO in writing whether the business generated by Agent is assignable or owned by either GA or FMO. GA shall provide to FMO documentation on Commission and assignability within 30 days of employing Agent for approval.
- 4.3 **Agent Activity.**
- 4.3.1 **Agents Changing GA's or FMO's.** GA and FMO and Agents shall comply with Prominence policies and procedures with respect to Agents changing or moving from GA or FMO as such policies may be amended by Prominence from time to time by written notice to GA, FMO and Agent and without amendment to this Agreement.
- 4.3.2 **Non-Appointed Agents.** Agents that have not completed the Prominence credentialing process will not be authorized for appointment by the FMO and shall

not receive Commissions, in accordance with CMS Guidelines. If Prominence has not approved and appoint for an Agent (whether new or renewal) by September 30th of each year, the Enrollees written by Agent will revert to Prominence and no Commissions will be paid to the Agent who is not appointed. This is to ensure the Enrollee is receiving proper service for the Annual Enrollment Period. If such Agent subsequently is appointed by Prominence after September 30th, such Agent shall be paid the Commissions earned subsequent to the date of appointment.

4.3.3 **Agent of Record (AOR).** Enrollees may select an Agent to provide them education and support on Plan and enrollment information and facilitate the enrollment process. Enrollee may also choose to:

4.3.3.1 **Change Agent by Notice.** Once an Enrollee has been provided services from an Agent they may choose to change Agents or use a Prominence Plan Agent. To change Agents the Enrollee must select another Prominence-appointed Agent. This request must be documented on the AOR change form with the Enrollee's signature and occur during an approved CMS enrollment period. Any AOR change form which is received either outside the open enrollment period or after 30 days from the date of signature will not be recognized. The Commission and Compensation payment is made to the FMO managing the Agent at the time of payment.

4.3.3.2 **Change of Agent by Application.** The Agent on the latest application regardless of whether a new enrollment or Plan change will be considered the AOR replacing the previous Agent. There will be no retroactive Commission, Compensation or take-backs due to change of AOR on a new application except in the event of a Prominence error, as determined by Prominence. Depending on when notice is given, the change may not be visible in the Prominence online systems for up to 60 days.

4.3.4 **Sale or Assignment of an Agent's Book of Business (BOB).** Agents who retire or move may assign or sell their book of business to assure a continuation of a high level of service for those Enrollees. Thirty days' notice is required to make this change. Based on when that notice is given during the month, change may not be visible for 60 days in the Prominence online system. Commission and Compensation will be determined based on the date of the notification. The Commission and Compensation payment is made to the GA managing the Agent at the time of payment. If Compensation and Commission has been paid to another GA, any new Compensation and Commission will begin at the next annual renewal. If Commission and Compensation has already been paid Prominence will not retroactively adjust for Commission and Compensation. Prominence will not adjust or pay GA or FMO for any business it has already paid another GA or FMO unless Prominence determines it made an error in such payment.

4.3.5 **Prominence-Employed Agents.** If a GA's Agent applies for employment with Prominence, the Agent's business follows the Agent. The Agent will be compensated for business under his or her employment agreement (not broker contract) during the time he/she is employed by Prominence and therefore no Commission will be rendered to GA. If the Agent later resigns and becomes an appointed independent Agent of GA or FMO the business the Agent brought to Prominence can follow the Agent (however, not the Prominence sales made while employed) and Compensation and Commission would resume to GA and FMO under this Agreement.

4.4 **Taxes, Fees, Other Costs.** GA agrees to pay all costs, taxes, fees and other incidental costs incurred by GA and its Agents in the performance of this Agreement. No payroll or employment taxes of any kind shall be withheld or paid by Prominence with respect to any Compensation or Commission paid to GA, FMO or Agent as a result of this Agreement.

Payroll and employment taxes are the sole responsibility of GA. For the purposes of this section, payroll and employment taxes include, but are not limited to, FICA, FUTA, Federal Personal Income Tax and any applicable State Personal Income, disability insurance and/or unemployment taxes. The FMO shall be responsible for withholding any Agent garnishments and Prominence shall have no obligation to such withhold(s).

- 4.5 **Compensation & Commission Paid in Error.** In the event Compensation and/or Commissions are not paid or paid in error, each Party agrees it shall correct the error. GA shall reconcile payments each month and provide written notice of any discrepancy to Agent and FMO. GA will evaluate monthly application reports it receives from FMO. GA will file discrepancies with FMO within 90 days from the effective date or in the case of renewal notification by March 31st. Discrepancies will be submitted once-a-month. GA waives any and all rights to request additional payment for requests that are not made within the required timeframe.
- 4.6 **Rejection or Termination of an Enrollee or Plan.** Prominence, GA, FMO and Agents shall operate in accordance with applicable laws, regulations and CMS Guidance put forth within the MMCM and PDBM. As such, Prominence shall have the sole right at all times to reject applications. In addition, Enrollees may terminate their policy. In the event any application for a Plan is rejected or an Enrollee's coverage is terminated, premiums related to the period of time that a Plan was in effect shall be retained and premiums for the period of time that such Plan was not in effect shall be refunded. Notwithstanding the foregoing, retroactive terminations of Enrollee coverage will be handled in accordance with the regulatory requirements and the law. If premiums are refunded to CMS or individuals, for any reason whatsoever, GA shall promptly reimburse FMO for any and all Compensation and Commission paid to GA, or Prominence may exercise its right to offset all future payments to the FMO on behalf of the GA without notice to GA.
- 4.7 **Sales.** Compensation and Commission will only be paid to a GA for those Enrollees for which GA's Agents are designated as the AOR at the time payment is made.
- 4.8 **Rapid Disenrollment.** If an Enrollee in a Plan disenrolls or is disenrolled from a Plan within three months of his or her enrollment, no Compensation or Commission shall be paid or owed by FMO or Prominence to GA or Agent. GA shall refund any amount paid by FMO related to Rapid Disenrollment. Furthermore, such a Rapid Disenrollment Enrollee shall not count towards GA's Enrollee production totals. This policy will not apply to those Enrollees who pass away within the first three months of enrollment. Rapid Disenrollment does not include when a beneficiary enrolls in a plan effective October 1, November 1 or December 1, and then subsequently changes plans effective January 1 of the following year.
- 4.9 **Enrollee Plan Changes.** In the event that an Enrollee changes Plans without a break in coverage, such changes by the Enrollee shall not be considered a new sale.
- 4.10 **Offsets.** FMO shall have the right to offset, without notice, any amounts due from GA to FMO under this Agreement against any amounts payable to GA by Prominence. This right is in addition to any other rights or remedies Prominence may have under this Agreement or otherwise.
- 4.11 **No Additional Payment.** GA's only form of Compensation and commissions under this Agreement shall be the Compensation and Commission set forth in Exhibit D. 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), and 423.505(i)(3)], and GA is prohibited from charging any Prospective Enrollee or Enrollee any fee or charge whatsoever.
- 4.12 **Record Request.** GA is to maintain financial records of all Compensation and Commission payments and be prepared to provide to FMO without charge, within seven days any reports regarding Commission payment that may be requested for review or audit. 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)].

5 CONFIDENTIALITY OF INFORMATION

5.1 **Confidential and Proprietary Information of Each Party.** GA shall, and shall require its employees and or subcontractors to, (a) abide by all federal and state laws regarding confidentiality and disclosure of medical records or other health and enrollment information; (b) safeguard the privacy of any information that identifies a particular Enrollee and have procedures that specify (i) for what purposes the information will be used within the organization and (ii) to whom and for what purposes it will disclose the information outside the organization; (c) ensure that medical information is released only in accordance with applicable federal or state laws, or pursuant to court orders or subpoenas; (d) maintain the records and information in an accurate and timely manner; and (e) ensure timely access by Enrollees to the records and information that pertain to them. [42 CFR § 422.118 & § 423.136; Manual Ch. 11 § 100.4].

FMO and GA shall take all appropriate steps during the term of this Agreement and at all times thereafter to protect and safeguard the confidential information and proprietary information of the other Party to the same extent they would protect and safeguard their own such information of a similar nature. Neither Party will utilize or disclose any of the other's confidential or proprietary information, without prior written approval.

For purposes of this Agreement, confidential information shall include, but is not limited to, all information, oral or written, data, reports, documents, or records containing or relating to procedures for claims payment, accounting, data processing, claims records, business practices and patient records, and anything else that is not publicly known. Proprietary information shall include, but not be limited to, all information, data, reports, information, or records containing or relating to lists of Prominence Plans, Prominence, or any of their affiliates' sales, marketing, advertising, business practices or other documents. In addition, the following information shall not be considered confidential or proprietary information for the purposes of this Agreement; information already previously known by a Party when disclosed by the other Party; information available in the general public; information which becomes known by the other Party, other than by a breach of confidentiality; information which is developed by one Party independently of any disclosures made by the other Party of such information. In the event a Party is required to disclose confidential information of the other Party pursuant to an order or requirement of a court or judicial body, administrative agency, or other governmental body, or as otherwise required by law, such Party shall provide notice to the other party in advance of disclosing any confidential information. If a Party must disclose confidential information it shall limit its disclosure to only what is required.

6 TERM AND TERMINATION

6.1 **Term of Agreement.** This Agreement shall have a term of one year from September 1 to August 31 of the following year (the "Term"), regardless of signature date on the Agreement. Thereafter, this Agreement may be renewed for subsequent periods only upon written agreement by both Parties.

6.2 **Without Cause Termination.** At any time during the Term, either Party may terminate this Agreement, without cause, upon 30 days' prior written notice to the other Party. However, terminations will only be made effective on the last day of the month. If termination notice is received on the 1st of the month, the termination will be effective on the last day of that same month. If termination notice is received at any other time during the month, the termination will be made effective on the last day of the following month.

6.3 **Immediate Termination by Prominence.** This Agreement may be terminated by FMO or Prominence for cause immediately upon the occurrence of any of the following:

- 6.3.1 GA's insolvency, bankruptcy, or similar condition as dictated by the regulating state agency.
- 6.3.2 GA's criminal conduct (including being charged with a felony).
- 6.3.3 Any change in status after entering into this Agreement that causes the GA to be an Excluded Party per section 7.7.
- 6.3.4 Any act of embezzlement, theft, fraud or dishonesty on the part of GA.
- 6.3.5 Any material violation of any law, regulation or CMS Guidance by GA in the sole discretion of FMO or Prominence regarding the marketing or distribution of Plans.
- 6.3.6 Discovery of alteration or deviation from the Compensation and/or Commission schedule.
- 6.3.7 Discovery that GA has acted in a manner that is detrimental to FMO or Prominence. These actions by the GA could include, but are not limited to, making false accusation, disseminating falsehoods or half-truths and/or comments that would or could, in the sole discretion of the FMO or Prominence, be determined to adversely impact the FMO's or Prominence's business and reputation.

GA agrees that it will immediately terminate for cause any Agent for any of the reasons stated above.

- 6.4 **Termination for Breach.** If any Party defaults in the performance of any of its duties or obligations hereunder, and such default has not been cured within 30 days of receipt of the non-defaulting Party's written notice of such default, specifying the nature of the alleged default or breach, the non-defaulting Party may give notice of intent to terminate this Agreement to the defaulting Party. This Agreement shall terminate with regard to all Parties on the last day of the month in which the notice was given.

6.5 **Effect of Termination of Agreement on Compensation and Commissions.**

- 6.5.1 GA. In the event this Agreement is terminated with or without cause, GA shall have no right to further Compensation or Commissions on or after the termination date. Payment of Compensation, including Commissions will only be made to the GA who is managing the Agent as determined on the date the payment is made.
- 6.5.2 **Agents.** An Agent, who is terminated, will cease to be an appointed Agent recognized by Prominence and as such no longer eligible to receive Commission. A terminated Agent's book of business will be reassigned at Prominence's sole discretion.

- 6.6 **Reporting of Terminated Agents.** GA agrees that it will immediately, and in no event later than two business days, notify Prominence in writing if it terminates any Agent and shall state in writing the reasons for the termination, and shall cooperate with Prominence in reporting any such termination to any state or federal regulatory Agencies if applicable.

7 MISCELLANEOUS

- 7.1 **Conflict.** In the event of a conflict between the terms and conditions above and the terms of a related agreement, the terms herein control.
- 7.2 **Independent Contractor.** Nothing contained herein shall be construed to create the relationship of employer and employee, a partnership or joint venture between the parties hereto. GA shall be free to exercise its independent judgment in the performance of this Agreement, subject only to the terms contained herein, and the written rules that may be established by Prominence.
- 7.3 **Telephone Enrollments.** FMO and GA will ensure that any and all telephone enrollments are conducted in compliance with CMS's Guidance, including the MMG currently in effect at the time of any telephone enrollment, and Prominence's standards and policies. FMO shall, and shall require GA and its Agents to use a CMS and Prominence-approved script. GA shall maintain documentation of recorded calls for ten years and upon request, make available to FMO and Prominence documentation of the recorded calls. GA agrees that it will NOT participate in any prohibited telephonic activities as set forth in the Guidance. GA

agrees that it will assist FMO and Prominence in meeting any and all outbound enrollment and verification requirements as set forth in the regulations and the Guidance. GA understands that all scripts require CMS approval, and if GA seeks to use a script other than the Prominence and CMS-approved script, it may take up to 60 days for notice of approval or denial.

- 7.4 **Non-Waiver of Covenants.** Should FMO or GA not insist on strict performance of any provision(s) of this Agreement, such event shall not be construed as a waiver of the Party's right to strict performance of all other terms and provisions of this Agreement.
- 7.5 **Assignment/Subcontracting.** FMO and or GA may only assign or subcontract this Agreement based on Prominence policies or with the written consent of Prominence. Prominence reserves the right to deny any Agent its appointment status for any reason. GA shall ensure that all of the requirements set forth in this Agreement shall be applicable and enforceable against any subcontractors or employee with which FMO or GA employs or contracts or any entity to which FMO or GA delegates any of its obligations under this Agreement. GA has the right to contract with other Agencies based on the contract terms indicted herein and shall provide Prominence copies of each subcontract into which it enters.
- 7.6 **Contract Interpretation.** If any section, clause, paragraph, term or provision of this Agreement shall be found to be void and unenforceable by any court of competent jurisdiction, such finding shall have no effect upon any other section, clause, paragraph, term or provision of this Agreement, which shall remain in full force and effect.
- 7.7 **Exclusion or Debarment from Medicare Participation or Government Contracting.** GA represents and warrants that it, is not excluded or barred from participation in Medicare and or under any section of the Social Security Act, ineligible for participation in federal health care programs, or listed on the OIC, GSA or OIG Excluded Parties List (EPLS). GA further represents and warrants that it shall not employ or contract with any such excluded or barred individual(s) and that no such known excluded or barred individual(s) is currently employed or contracted by GA. GA shall immediately notify FMO and Prominence if GA becomes aware of any change, whether threatened or imposed, in its, its employees' eligibility to participate in Medicare or any other Federal health care program, or appearance on the OIC, GSA or OIG Excluded Parties List (EPLS).
- 7.8 **Indemnification.** GA shall indemnify, defend, and hold FMO and Prominence harmless from and against any and all claims, damages, costs, losses, and expenses, including, without limitation, reasonable attorney's fees and costs of investigation, defense, litigation, settlement or appeal, arising out of or relating to GA's failure, or any Agent's failure to comply with the terms of this Agreement, garnishment, and the negligent and/or intentional acts or omissions of GA or Agents with respect to its obligations under this Agreement.
- 7.9 **Dispute Resolution.** Any and all disputes, controversies or claims arising out of, in connection with, or relating to this Agreement, shall be settled as outlined below:
- 7.9.1 First, by the Parties trying in good faith to settle the dispute by negotiation for at least 30 days. To initiate the negotiation a Party must send written notice of the dispute to the other Party specifying the dispute and provide supporting documentation. Each Party agrees to meet within 10 business days of receipt of any notice. Each party shall send representatives to the meeting with authority to resolve the dispute.
- 7.9.2 In the event such measures are not successful either Party may pursue negotiation under the Commercial Mediation Rules of the American Health Lawyers Association ("AHLA"). Such mediation shall commence within 30 calendar days of the appointment of the mediator. The appointment of a mediator shall be agreed upon by the Parties. The costs for such mediator and mediation shall be borne equally by the Parties.
- 7.9.3 If the controversy, claim or dispute cannot be settled by mediation within 3 months of the date the initial dispute letter was received by a Party, then the Parties agree to

arbitration by a single arbitrator appointed by the Parties. The arbitrator may award the prevailing Party the costs of the arbitration and reasonable attorney's fees.

- 7.9.4 This arbitration shall be the sole and exclusive method of handling any and all disputes, claims and controversies arising out of this Agreement and the award of the arbitrator shall be final and binding on the Parties and judgment upon such award may be entered in any court having jurisdiction thereof. The Arbitration shall be in accordance with the AHLA rules.
- 7.10 **Notice.** Unless otherwise specified in this Agreement, any notice or other communication required or permitted shall be in writing. All written notices or communication shall be deemed to have been given when delivered in person or, if delivered by first-class United States mail, on the date mailed, proper postage prepaid and properly addressed to the appropriate Party at the address set forth in the signature portion of this Agreement or to another more recent address of which the sending Party has received written notice. Electronic communications will be an acceptable method of Notice upon receipt of notice and the date the electronic notification is sent is the starting date for purposes of any time requirements indicated herein.
- 7.11 **Governing Law.** To the extent not preempted by federal law, this Agreement shall be governed by and construed in accordance with Colorado law.
- 7.12 **Titles and Headings.** Titles and headings of the paragraphs, subparagraphs or sections herein are for convenience only, are not part of this Agreement, and shall not define or limit any of this Agreement's terms.
- 7.13 **Survival.** The following sections of this Agreement shall survive the termination of this Agreement: Articles, 3, 4, 5, and 8
- 7.14 **Legal Actions against Enrollees.** GA shall not institute legal proceedings against any Prospective Enrollee, or Enrollee of any Plan, for any cause arising out of the business transacted under this Agreement. In no event shall GA or its Agents take any action against an Enrollee in a Plan, or in any way hold an Enrollee in a Plan responsible for any Compensation due to GA or Commission due to the Agent. GA shall include a provision in any agreements with Agents in connection with this Agreement that require such Agents to comply with the requirement of this Section.
- 7.15 **Delegation and Monitoring.** To the extent that FMO has delegated certain functions to GA, GA shall perform the services described in this Agreement in compliance with all applicable Medicare and other Federal and State laws, regulations and governmental pronouncements and make periodic reports as reasonably required by FMO. FMO shall, at all times, retain the right to monitor GA's performance hereunder. Such monitoring shall be conducted on an ongoing basis and may include, but is not limited to, observing GA education and training processes as well as Agent presentations to Medicare beneficiaries. FMO, CMS or Prominence reserves the right to revoke the delegation activities and reporting requirements or to specify other remedies in instances where FMO, CMS or Prominence determine that GA has not performed satisfactorily.
- 7.16 **Amendment.** This Agreement may be unilaterally amended by Prominence only, except with regard to Commission and Compensation rates. Commission and Compensation rates may only be amended upon the written agreement with FMO tier one entities unless Prominence is complying with the current regulations and or law. Policy and procedures including but not limited to the handling and payment of Compensation and Commissions and to whom Compensation and Commissions is given, may be amended in this Agreement with written notice. Amendments may be offered by Prominence on any aspect of the Agreement and would include any Exhibit(s) and Compensation payment schedules, at any time and specifically to the extent necessary to comply with applicable Federal or State law, regulatory requirements, guidelines or rules ("Regulatory Amendments"). To the extent practical, Prominence shall give advance written notice to GA and the FMO of such Regulatory Amendments and their effective date.

- 7.17 **Entire Agreement.** This Agreement and the Addendums and Exhibits attached hereto constitute the entire contract between the Parties with respect to the subject matter hereof and supersede all prior and contemporaneous agreements, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. All prior Agreements are terminated and of no further force and effect, and all prior payments previously due under the prior agreements shall be paid under this Agreement. The express terms hereof control and supersede any course of performance or usage.
- 7.18 **Payment and Federal Funds.** Plans receives payments in whole or in part from federal funds and as a result, contractors and subcontractors including FMO and GA are subject to certain laws that are applicable to individuals and entities receiving federal funds. GA agrees that any services or activity performed in connection with this Agreement and its attachments, exhibits and amendments will be consistent with and comply with Plans' contractual obligations to CMS and other applicable state and federal laws and regulations.

[Signatures Next Page]

INTENDING TO BE BOUND, the parties hereto have executed this Agreement effective as of the day set forth in the first paragraph of this Agreement.

	FMO	(GA)
Signature		X
Printed Name		
Title		
Date		
Street Address		
City, State, Zip		

EXHIBITS

The following are attached hereto and the terms and conditions incorporated herein.

- Exhibit A:** List of Plans
- Exhibit B:** Standards of Conduct
- Exhibit C:** Business Associate Addendum
- Exhibit D:** Compensation

EXHIBIT A

LIST OF PLANS

A checkmark next to the Prominence Plan(s) below represents the specific Plans that the GA will support in terms of this Agreement.

Plan Name	Insurance Entity	State
<input type="checkbox"/> ClearRiver Health H7903	ClearRiver Health	Tennessee
<input type="checkbox"/> HeartlandPlains Health H3765	HeartlandPlains Health	Nebraska
<input type="checkbox"/> RiverLink Health H9208	RiverLink Health RiverLink Health of Kentucky, Inc.	Ohio Kentucky
<input type="checkbox"/> Soundpath Health H9302	Soundpath Health	Washington
<input type="checkbox"/> StableView Health H9492	StableView Health, Inc.	Kentucky

Prominence will provide FMO with a listing of the applicable counties in the States where the Plans are located for which FMO and GA Agents will provide Services.

EXHIBIT B

PROMINENCE STANDARDS OF CONDUCT

All the Plans' and Prominence's board and committee members, officers, employees (to include temporary, volunteers or independent contractors), and contracted vendors defined by CMS as FDRs, are responsible for complying with all laws, regulations, rules and/or guidance applying to our business as a Medicare Advantage Organization ("MAO"), as defined by CMS and as an insurance company as defined by the applicable State agencies.

It is also the expectation of Prominence and Plan that the aforementioned parties are responsible for complying with the requirements of ethical behavior and standards of conduct as delineated below:

- Exercise good faith and honesty in all dealings and transactions.
- Create a work place that fosters community, honors and cares for the dignity, safety and wellbeing of all persons in mind, body and spirit.
- Maintain a high level of knowledge and skill among all who serve in order to provide high quality service.
- Observe all laws, regulations and policies that govern what we do.
- Maintain the integrity and protect the confidentiality of member, employee and organizational information.
- Avoid conflicts of interest and/or the appearance of conflicts.
- Use our resources responsibly.

Prominence and Plans promote an environment that encourages all of us to seek clarification of issues and ask questions and report concerns. It is everyone's duty and responsibility to report possible violations of our standards, guidelines or policies. Reports of suspected compliance issues will be protected from retaliation if the reporter makes a good-faith report, complaint or inquiry. A person who retaliates against a good-faith reporter is subject to discipline, up to and including termination from employment or termination of a business relationship with Prominence or Plan. Non-retaliation policies do not protect individuals whose actions violate Prominence's or Plans' policies or applicable laws.

Failure to comply with the Standards of Conduct or failure to report any potential violation may result in disciplinary action, up to and including, termination of employment or business relationship with Prominence or Plans, as applicable.

EXHIBIT C

BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (this “**Addendum**”) is incorporated into the General Agency Agreement by and between **FMO** and **General Agency (GA)**. GA is referred to in this Addendum as the Business Associate.

RECITALS

WHEREAS, pursuant to an administrative services agreement, FMO controls and/or manages certain entities considered to be covered entities (each a “*Covered Entity*”) as defined by the Health Insurance Portability and Accountability Act of 1996 (“*HIPAA*”);

WHEREAS, FMO intends to protect the privacy and provide for the security of the protected health information of the Covered Entity disclosed to Business Associate in compliance with HIPAA and the Health Information Technology for Economic and Clinical Health Act (the “*HITECH Act*”), and regulations promulgated thereunder, and as may be amended from time to time (collectively, the “*Privacy and Security Regulations*”), and other related laws;

WHEREAS, the parties intend to enter into a business relationship whether by contract, commercial course of dealing, or otherwise, whereby Business Associate provides services to FMO and Business Associate has access to, creates, maintains, or transmits protected health information to provide those services; and

WHEREAS, in accordance with the Privacy and Security Regulations, FMO and Business Associate enter into this contract to address specific requirements set forth in the Privacy and Security Regulations.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1.0 Definitions

1.1 “***Breach***” means the unauthorized acquisition, access, use, or disclosure of protected health information which compromises the security or privacy of protected health information as described in the Privacy and Security Regulations.

1.2 “***Designated Record Set***” means a group of records maintained by or for a Covered Entity that is: (i) the medical records and billing records about individuals maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for a health plan or health care provider to make decisions about individuals. For purposes of this definition, the term “record” means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a Covered Entity.

1.3 “***Disclose***” and “***Disclosure***” mean, with respect to protected health information, the release, transfer, provision of access to, or divulging in any other manner of protected health information outside Business Associate’s internal operations.

1.4 “**Electronic Protected Health Information**” means protected health information that is transmitted by electronic media (as defined by the Privacy and Security Regulations) or is maintained in electronic media. By example, Electronic Protected Health Information may be transmitted and maintained on devices such as cell phones, PDAs, text pagers, and USB static discs.

1.5 When this Addendum makes reference to an “individual” such reference will include and be limited to that person who’s Protected Health Information is being protected hereunder.

1.6 “**Protected Health Information**” or “**PHI**” means protected health information, including demographic information, that (i) 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; (ii) identifies the individual (or for which there is a reasonable basis for believing that the information can be used to identify the individual); and (iii) is received by Business Associate from FMO on behalf of a Covered Entity, or is created by Business Associate, or is made accessible to Business Associate by Prominence. PHI includes, without limitation, Electronic Protected Health Information.

1.7 “**Privacy Officer**” means the person designated by FMO to be responsible for the administration of the development and implementation of the policies and procedures necessary for compliance with HIPAA.

1.8 “**Privacy Rule**” means the Standards of Privacy of Individually Identifiable Health Information at 45 C.F.R. Subparts 160 and 164, A and E.

1.9 “**Security Rule**” means the Standards for the Security of Electronic Protected Health Information at 45C.F.R. part 164, Subparts A and C.

1.10 “**Secretary**” means the Secretary of the U. S. Department of Health and Human Services or his or her designee.

1.11 “**Services**” means those activities, functions, or services that Business Associate provides to FMO on behalf, of Covered Entity.

1.12 “**Subcontractor**” means a person to whom a business associate delegates a function, activity, or service, other than in the capacity of member of the workforce of such business associate.

1.13 “**Unsecured PHI**” means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through use of a technology or methodology specified in guidance by the Secretary in guidance issued under Section 13402(h)(2) of the HITECH Act.

1.14 “**Use**” or “**Uses**” means, with respect to PHI, the sharing, employment, application, utilization, examination, or analysis of such PHI within Business Associate’s internal operations.

1.15 Terms used, but not otherwise defined in this Addendum shall have the same meaning as those terms in the Privacy and Security Regulations.

2.0. Assurances by Business Associate Regarding PHI. Business Associate warrants that it shall comply with relevant portions of the Privacy and Security Regulations as those regulations apply to Business Associate and Business Associate’s Subcontractors. More specifically, and insofar that Business Associate will have access to, will be provided with, will maintain, transmit, or create PHI regarding Covered Entity’s members, Business Associate warrants and agrees as follows:

2.1 Permitted Uses and Disclosures of PHI. Business Associate shall Use and Disclose PHI in the minimum amount necessary to perform the Services, provided that such Use or Disclosure will not violate the Privacy and Security Regulations. Further, Business Associate:

2.1.1 Shall Disclose PHI to FMO upon request;

2.1.2 May Use PHI as necessary for the proper management and administration of its business and to carry out its legal responsibilities;

2.1.3 May Disclose PHI if the Disclosure is required by law; and

2.1.4 may Disclose PHI if Business Associate obtains from the person to whom the PHI is Disclosed reasonable assurance that the PHI will be held confidentially and Used or further Disclosed only as required by law or for the purpose for which it was Disclosed to the person, and the person agrees to notify Business Associate of any instances of which the person is aware in which the confidentiality of the PHI has been breached.

2.1.5 Shall not Use or Disclose PHI for any other purpose.

2.2 Prohibition on the Sale of PHI. Except as otherwise permitted by the Privacy and Security Regulations, Business Associate shall not directly or indirectly receive remuneration in exchange for Covered Entity's PHI, unless Business Associate obtains a valid, signed authorization from the individual whose PHI is at issue that specifies whether the PHI can be further exchanged for remuneration by the entity receiving the PHI.

2.3 Adequate Safeguards for PHI.

2.3.1 Business Associate shall implement and maintain appropriate safeguards to prevent the Use or Disclosure of PHI in any manner other than permitted by this Addendum.

2.3.2 Business Associate shall implement administrative, physical, and technical safeguards set forth in the Security Regulations 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 FMO.

2.3.3 Business Associate shall maintain policies and procedures, conduct ongoing risk assessment and risk management of its security program, identify a security official, and train and discipline its work force in compliance with the relevant portions of the Privacy and Security Regulations. Business Associate agrees to make its policies and procedures, risk assessments, and training and education documents available to FMO if requested. .

2.4 Availability of Internal Practices, Books and Records to Government Agencies. Business Associate agrees to make its internal practices, policies and procedures, books, and records relating to the Use and Disclosure of PHI available to the Secretary for purposes of determining Prominence's compliance with the Privacy and Security Regulations. Business Associate shall immediately notify FMO of any requests made by the Secretary and provide FMO with copies of any documents produced in response to such request.

2.5 Access to PHI.

2.5.1. Business Associate shall maintain the Designated Record Set in a form as Business Associate and FMO shall agree. Within a reasonable period of time following a request by FMO, Business Associate shall deliver the PHI contained within the Designated Record Set to FMO or its written designee.

2.5.2 If Electronic Protected Health Information is maintained by Business Associate, it shall be available in a producible format as Business Associate and FMO shall agree. Within a reasonable period of time following a request by FMO, Business Associate shall deliver the PHI contained within the Electronic Protected Health Information to FMO or its written designee in the format agreed.

2.6 Amendment of PHI. PHI maintained by Business Associate shall, in a Designated Record Set be made available to FMO for the purpose of amendment and incorporating such amendments into PHI as reasonably requested by FMO from time to time.

2.7 Accounting of Disclosures. Within a reasonable period of time following FMO's request, Business Associate shall provide to FMO an accounting of each Disclosure of PHI made by Business Associate or its employees, agents, representatives, or Subcontractors.

2.7.1 Business Associate shall implement a process that allows for an accounting to be collected and maintained for any Disclosure of PHI for which FMO is required to maintain. Business Associate shall include in the accounting: (a) the date of the Disclosure; (b) the name, and address if known, of the entity or person who received the PHI; (c) a brief description of the PHI disclosed; and (d) a brief statement of the purpose of the Disclosure. For each Disclosure that requires an accounting under this section, Business Associate shall document the information specified in (a) through (d), above, and shall securely retain this documentation for the period ending on the earlier to occur of the termination of this Agreement or six (6) years from the date of the Disclosure. If this Agreement terminates within the six year disclosure period, Business Associate and FMO agree to negotiate in good faith, the delivery of the relevant records to FMO to permit FMO to satisfy its HIPAA accounting requirements.

2.7.2 For repetitive Disclosures of Covered Entity's PHI that Business Associate makes for a single purpose that relates to the same individual, the Disclosure information that Business Associate must record is either the Disclosure information specified above for each accountable Disclosure, or (a) the Disclosure information specified above for the first of the repetitive accountable Disclosures; (b) the frequency, periodicity, or number of the repetitive accountable Disclosures; and (c) the date of the last of the repetitive accountable Disclosures.

2.8 Reporting Breaches and Unauthorized Use or Disclosure of PHI and Security Incidents.

2.8.1 Business Associate shall report to FMO:

2.8.1.1 A Breach of PHI;

2.8.1.2 Each access, acquisition, Use, or Disclosure of PHI that is made by Business Associate, its employees, representatives, agents, or Subcontractors that is not specifically permitted by this Addendum; or

2.8.1.3 Any security incident of which it becomes aware. A security incident means the attempted, or successful unauthorized access, acquisition, Use, Disclosure, modification, or destruction of information, or interference with the system operation of an information system.

2.8.2 Business Associate's Notice to FMO:

2.8.2.1 Business Associate shall notify FMO’s Privacy Official by telephone call within three (3) business days following the day Business Associate first knows, or would have known by exercising reasonable diligence, of such Breach, Unauthorized Use or Disclosure, or Security Incident. Business Associate shall notify FMO of all Breaches, even if Business Associate determines there is a low probability that the PHI has been compromised based on its risk assessment.

2.8.2.2 Business Associate shall provide a full written report to FMO’s Privacy Official within five (5) business days of verbal notice:

2.8.2.2.1 Describing the nature of the Breach, which will include a description of what occurred, including the date of any Breach and the date of the discovery of the Breach and whether the PHI was actually acquired or reviewed;

2.8.2.2.2 Identifying the PHI that was subject to the non-permitted Use or Disclosure or Breach including name, demographic information, social security number, and other information involved including types of identifiers and likelihood of re-identification;

2.8.2.2.3 Identifying who made the non-permitted Use or Disclosure and who received the non-permitted Use or Disclosure;

2.8.2.2.4 Describing what corrective action the Business Associate took or will take to prevent further non-permitted Uses or Disclosures, to mitigate harmful effects, and to protect against any further Breaches;

2.8.2.2.5 Identifying the steps the individuals who are the subject of a Breach should take to protect themselves; and

2.8.2.2.6 Providing such other information as FMO shall have reasonably set forth in its written notice to Business Associate.

3.0 Notices. Any notice required under this Addendum to be given to a party shall be made to:

If to FMO:

GA Name

Street Address

City, State Zip Code

Attention:

Phone No.:

Facsimile No.:

E-Mail:

If to Business Associate:

Street Address

City, State Zip Code

Attention:

Phone No.:

Facsimile No.:

E-Mail:

4.0 Mitigation and Cooperation. Business Associate shall mitigate, at Business Associate’s sole cost and expense, any harmful effect that is known to it for its Breach, or Use, or Disclosure of PHI in violation of this Addendum. FMO shall be solely responsible to conduct a Breach risk assessment to determine whether PHI has been compromised and notification to individuals is required. Business Associate shall cooperate with FMO in the notification of individuals as required and in the manner as set forth in the Privacy and Security Regulations.

5.0 Remedies in Event of Breach of PHI. In the event of a Breach of PHI, FMO shall be entitled to enjoin and restrain Business Associate from any continued violation of this Addendum.

5.1 Notification Costs Related to Breach of PHI. In the event of a Breach of PHI caused by Business Associate, the costs related to notifying the affected individuals shall be borne by Business Associate. Such costs, if appropriate and reasonable under the circumstances, may include the actual cost of notification, setting-up and managing a toll-free number, and credit monitoring, as applicable.

5.2 Indemnification. Each party shall indemnify, defend, and hold harmless the other party, its directors, officers, employees, and agents from and against any and all claims, actions, demands, liabilities, judgments, losses, damages, penalties, fines, costs, fees, expenses, and reasonable attorney's fees (collectively, the "Losses") that are attributable or allegedly attributable to the acts or omissions of the indemnifying party or indemnifying party's material breach of this Addendum.

5.3 Limited Liability. In no event shall either party be liable to the other party for loss of profits or for incidental, indirect, special or consequential damages arising out of any breach of this Addendum, regardless of whether the possibility of such damages has been communicated to such party or such party has or gains knowledge of the existence of such damages.

6.0 FMO Obligations. FMO shall notify Business Associate promptly, in writing, of:

6.1 Any limitations in FMO's notice of privacy practices to the extent that such limitation may affect Business Associate's Use or Disclosure of PHI;

6.2 Any changes in, or revocation of, permission by the individual to Use or Disclose PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI; and

6.3 Any restriction to the Use or Disclosure of PHI that FMO has agreed to provide to an individual, to the extent that such restriction may affect the Business Associate's Use or Disclosure of PHI.

7.0 Disposition of PHI upon Termination or Expiration. Upon termination or expiration of this Addendum, Business Associate shall either return or destroy, in FMO's sole discretion and in accordance with the reasonable instructions by FMO, all PHI in the possession or control of Business Associate and/its Subcontractors and agents. However, if either return or destruction of PHI is not feasible, Business Associate may retain PHI provided that Business Associate (a) continues to comply with the provisions of this Addendum for as long as it retains PHI, and (b) limits further Uses and Disclosures of PHI to those purposes that make the return or destruction of PHI not feasible.

8.0 Document Retention. Business Associate shall maintain all documentation required by the Privacy and Security Regulations for a period of six (6) years.

9.0 Conflict. In the event there is a conflict between the language of this Addendum and the underlying services agreement between the parties, the terms and conditions of this Addendum shall control.

10.0 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Addendum.

11.0 Independent Contractor. FMO and Business Associate expressly acknowledge and agree that Business Associate is an independent contractor and shall not for any purpose be deemed to be an agent, employee, servant, partner, or joint venturer of FMO.

12.0 Use of Subcontractors and Agents. Business Associate agrees to ensure that its Subcontractors and agents shall implement reasonable and appropriate safeguards to protect Covered Entity's PHI. Business

Associate agrees to ensure that any subcontractors and agents that create, receive, maintain, or transmit PHI on behalf of Business Associate agree in writing to the same restrictions and conditions that apply through this Addendum to Business Associate with respect to such information. Moreover, Business Associate agrees to ensure any such Subcontractor or agent agrees to implement reasonable and appropriate safeguards to protect Covered Entity's Electronic Protected Health Information.

13.0 Term and Termination. The term of this Addendum shall be the same as the term of the underlying services agreement. In addition to and notwithstanding the termination provisions set forth in the underlying services agreement, both this Addendum and the underlying services agreement may be terminated by FMO immediately and without penalty upon written notice by FMO to Business Associate if FMO determines, in its sole discretion, that Business Associate has violated any material term of this Addendum.

14.0 Survival. The terms and conditions of this Addendum shall survive the expiration or termination of any underlying agreement for Services.

15.0 Interpretation. Any ambiguity in this Addendum shall be resolved to permit the parties to comply with the Privacy and Security Regulations.

16.0 Enforcement. Business Associate acknowledges that, in the event it, or its subcontractors, violates any applicable provision of the Security Regulation or any term of this Addendum that would constitute a violation of the Privacy Rule, Business Associate will be subject to and will be directly liable for any and all civil and criminal penalties that may result from Business Associate or its subcontractors' violation.

I, _____ confirm and expressly approve, Eldercare Insurance Services, Inc., its affiliates and/or assigns, to electronically submit my paper producer agreement, appointment and/or contract to **Prominence Health** it's affiliates and/or assigns. Said producer agreement, appointment and/or contract is legally binding and enforceable.

Agent/Agency Name _____

Signature _____

Date _____

*DON'T FORGET YOUR
LICENSE!!*

**Please attach a copy of any
resident or non-resident
license in which you would
like appointed**

NOTE: IF LICENSING A CORPORATION,
PLEASE INCLUDE BOTH INDIVIDUAL &
CORPORATION LICENSES