

PRODUCER AGREEMENT
(Commercial)

ROCKY MOUNTAIN HEALTH MAINTENANCE ORGANIZATION, INC., a Colorado corporation d/b/a Rocky Mountain Health Plans (herein "RMHP")	_____ print/type name of contracting entity (herein "Producer")
2775 Crossroads Boulevard Post Office Box 10600 Grand Junction, CO 81502-5600	Physical Address of Producer: _____ _____ Mailing Address of Producer, if different from above: _____ _____ Telephone Number: _____ Alternate Telephone Number: _____ Fax Number: _____ Email Address: _____ Tax I.D. No.: _____ Producer License No.: _____

RMHP is a health maintenance organization, duly licensed in Colorado to sell health care plans.

Producer is experienced in marketing health care plans similar to those available through Rocky Mountain (as hereinafter defined), to employer groups ("Groups") and individuals and their dependents ("Individuals") and desires to market the health care plans available through Rocky Mountain to Groups and Individuals as provided below and submit to Rocky Mountain applications for health care plans.

Producer and RMHP agree to all of the attached Terms and Conditions, along with the Exhibits described below, all of which are incorporated herein by this reference.

This Agreement is dated and shall be effective on the date set forth below by RMHP as the effective date.

ROCKY MOUNTAIN HEALTH MAINTENANCE ORGANIZATION, INC., a Colorado corporation d/b/a Rocky Mountain Health Plans	_____ (print/type name of Producer)
By: _____ Michelle Walker Assoc. VP – Commercial Sales and Service	By: _____ (signature) _____ (print/type name of signatory) Title: _____
Effective Date: _____ (To be completed by RMHP)	

ATTACHMENTS:

- Exhibit A: Commission Schedule
- Exhibit B: Business Associate Agreement
- Exhibit C: Acknowledgement of Producer Relationship

TERMS AND CONDITIONS

1. **Definitions.** The words and terms below shall have the following definitions:

A. “Bundled Dental and Vision Plans” shall mean prepaid dental and vision benefit plans offered by UnitedHealthcare Insurance Company (“UHIC”), when such prepaid dental and vision benefit plans are bundled with Rocky Mountain health care plans.

B. “Exchange” means the Colorado Health Benefit Exchange, also known as Connect for Health Colorado.

C. “Group” shall mean an employer who provides health care coverage for its eligible employees and their dependents.

D. “Rocky Mountain” as used herein shall mean RMHP or any health maintenance organization, insurance company, health service corporation, or third party administrator:

- (1) that is a subsidiary of RMHP;
- (2) whose health care plans are administered or sold by or through RMHP; or
- (3) that has contracted with RMHP or any subsidiary of RMHP for medical or other health care related services.

References to “Rocky Mountain” shall mean the entity on whose behalf Producer sells health care plans.

E. “Rocky Mountain Service Area” shall mean the geographical area in which Rocky Mountain conducts its business and operations and which area has been approved by the Colorado Division of Insurance.

2. **Authorization.** Producer, subject to compliance with all terms of this Agreement, is authorized to submit to Rocky Mountain applications for health care plans for Groups and Individuals. In addition, Producer is authorized to place business through the Exchange with Rocky Mountain contingent on Producer obtaining and maintaining valid Exchange certification. Notwithstanding the above, Producer is not authorized under the terms of this Agreement to submit to Rocky Mountain applications for Medicare health plans for Medicare eligible individuals. All applications shall

comply with all rules, regulations and policies of Rocky Mountain and the Exchange, as applicable. No coverage will be effective until health care plans are issued by Rocky Mountain or the Exchange, as applicable. Producer shall verify information on applications submitted to Rocky Mountain or the Exchange and any change in the information submitted.

3. **Producer’s Compensation.**

A. **Payment.** Rocky Mountain shall pay Producer commissions in accordance with the commission schedule attached as Exhibit A, in the manner and on the terms and conditions hereinafter designated, on premiums paid to Rocky Mountain or to the Exchange for the benefit of Rocky Mountain for health care plans for which Producer is the producer of record. No commissions shall be payable by Rocky Mountain when Producer is being compensated directly by a Group. Producer shall disclose to Rocky Mountain when Producer is being compensated directly by a Group. Commissions shall be payable during the calendar month following the month of receipt by Rocky Mountain of the respective premiums on which the commissions are payable. If Producer is a corporation, partnership or other entity, commissions shall be paid to the entity and not to any persons working for or on behalf of the entity.

B. **Payment for Bundled Dental and Vision Plans.** Rocky Mountain shall pay Producer commissions in accordance with the commission schedule attached as Exhibit A, in the manner and on the terms and conditions hereinafter designated, on full monthly premiums paid to Rocky Mountain by Groups for Bundled Dental and Vision Plans for whom Producer is the producer of record. Commissions shall be payable during the calendar month following the month of receipt by Rocky Mountain of the respective premiums for which the commissions are payable. If Producer is a corporation, partnership or other entity, commissions shall be paid to the entity and not to any persons working for or on behalf of the entity.

C. **Compliance.** Except as provided in paragraph 8.F., Producer shall be entitled to such commissions only so long as: (1) Producer complies with all terms of this Agreement;

(2) Producer continues to be designated as the producer of record with respect to the Group or Individual for which or whom the premiums are being paid; (3) Producer is continuously and actively engaged as a producer in the business of selling health care plans; (4) the Group and/or individual for which premiums are being paid continues to pay premiums to Rocky Mountain; and (5) Producer is not employed by any licensed insurance carrier. If Producer disagrees with the amount of commission paid to Producer by Rocky Mountain, Producer shall notify Rocky Mountain of such disagreement within twelve (12) months from the date payment of the commission is made. If Producer does not notify Rocky Mountain of such disagreement within such twelve (12) month period, Producer will have waived any objection to the payment of the commission received from Rocky Mountain.

D. Premium Refunds / Rescinded or Retroactively Terminated Coverage / Payment in Error. Should Rocky Mountain or the Exchange, for any reason, refund any premium or rescind or retroactively terminate coverage with respect to a health care plan, Producer shall repay on demand any commission received on such refunded premium or rescinded or retroactively terminated coverage. Rocky Mountain, at its option, may offset such commissions owed to Rocky Mountain against any commissions owed Producer under this Agreement. Producer shall pay on demand to Rocky Mountain any commissions paid to Producer in error. Rocky Mountain, at its option, may offset such commissions owed to Rocky Mountain against any commission owed Producer under this Agreement.

E. UHIC Premium Refunds / Rescinded or Retroactively Terminated Coverage / Payment in Error. Should UHIC, for any reason, refund any premium or rescind or retroactively terminate coverage with respect to a Bundled Dental and/or Vision Plan, Producer shall repay Rocky Mountain on demand any commission received on such refunded premium or rescinded or retroactively terminated coverage. Rocky Mountain, at its option, may offset such commissions owed to Rocky Mountain against any commissions owed Producer under this Agreement. Producer shall pay on demand to Rocky Mountain any

commissions paid to Producer in error. Rocky Mountain, at its option, may offset such commissions owed to Rocky Mountain against any commission owed Producer under this Agreement.

F. Change of Producer. All Groups may designate a producer of record. A Producer submitting an application for an Individual is assumed to be the producer of record for such Individual. Any change by a Group or Individual which results in Producer being a new producer of record for the Group or Individual will be recognized for the purpose of commission payments on the first day of the month following the month of receipt by Rocky Mountain of a producer of record letter which: (1) for Groups is on letterhead or other appropriate stationery of the Group; (2) is dated; (3) clearly designates Producer as the producer to receive compensation and specifically rescinds all previous producer designations; and (4) is signed by the Individual or an appropriate representative of the Group. Commissions shall be paid on premiums earned and paid after the effective date of the designation of Producer as the new producer of record. Producer shall cooperate with Rocky Mountain in effecting any change of producer requested by a Group or Individual and shall provide to the Group or Individual and Rocky Mountain copies of such records as may be necessary to effect such change, without disruption of service to the Group or Individual. Records, data or information maintained by Rocky Mountain in connection with coverage under any contract issued by Rocky Mountain shall at all times remain the property of Rocky Mountain.

4. Representations and Agreements of Producer.

A. Credentials and Certification of Producer. Producer certifies that:

(1) Producer is, and throughout the term of this Agreement shall continue to be, duly licensed by the State of Colorado to market health care plans available through Rocky Mountain, including lines of authority for all health care plans offered by Rocky Mountain and for Bundled Dental and Vision Plans offered by UHIC;

(2) All information Producer has provided to Rocky Mountain concerning Producer's personal and educational background, license and certificates held and work experience is complete and accurate;

(3) Producer meets, and throughout the term of this Agreement shall continue to meet, the State of Colorado requirements for any license to market health care plans that Producer presently holds;

(4) Producer's license to market health care plans is, and throughout the term of this Agreement shall continue to be, current and in good standing with the State of Colorado;

(5) Producer shall comply with all Colorado and federal statutes, rules and regulations in marketing and selling Rocky Mountain health care plans; and

(6) Producer has not been debarred, suspended or made otherwise ineligible to participate in any federal program. Producer will take no action during the term of this Agreement which would result in Producer being debarred, suspended or made otherwise ineligible to participate in any federal program.

At the request of Rocky Mountain, Producer shall provide to Rocky Mountain any information, including, but not limited to documents and records, concerning Producer's credentials, professional standing, licensing and errors and omission professional liability insurance coverage. If Producer is an entity, the term "Producer" as used in this paragraph shall include all persons who market or sell Rocky Mountain health care plans on behalf of Producer.

B. Agreement to Provide Services. Producer shall use Producer's best efforts on a continuous basis to market Rocky Mountain health care plans to Individuals and Groups which have operations and/or employees in the Rocky Mountain Service Area.

C. Professional Standing. Producer shall maintain any licenses and lines of authority required to act as an accident and health or health maintenance organization producer in good standing throughout the term of this Agreement. Producer shall notify Rocky Mountain promptly,

and in no event later than ten (10) days after the event giving rise to the obligation to notify Rocky Mountain, of any:

(1) changes in Producer's licensure or lines of authority;

(2) inquiries or disciplinary actions initiated by regulatory agencies;

(3) termination of Producer's authority to represent any insurers, health maintenance organizations or nonprofit organizations by reason of Producer's conduct while representing such organizations;

(4) cancellation or non-renewal of Producer's errors and omissions insurance coverage; or

(5) other circumstances which detrimentally affect Producer's ability to perform Producer's obligations pursuant to this Agreement.

At the request of Rocky Mountain, Producer shall provide to Rocky Mountain any information, including, but not limited to documents and records, concerning Producer's credentials, professional standing, licensing and liability. If Producer is an entity, the term "Producer" as used in this paragraph shall include all persons who market or sell Rocky Mountain health care plans on behalf of Producer.

D. Compliance with Laws. Producer shall strictly comply with all applicable state and federal laws, rules, and regulations applicable to insurance producers licensed by the State of Colorado, now in effect or hereafter established, including, without limitation, laws, rules and regulations applicable to disclosure of compensation, fees charged by producers and continuing education.

E. Professional Liability Insurance. Producer shall purchase and maintain errors and omissions professional liability insurance in an amount of not less than \$1,000,000 for any claims arising from or in connection with the provision of Producer's services under this Agreement and the services of any person marketing or selling Rocky Mountain health care plans on behalf of Producer, if Producer is an entity, regardless of the time that the claim is made. If requested by Rocky Mountain, Producer shall furnish to Rocky Mountain a

certificate of insurance with respect to the insurance coverage required hereunder.

F. Indemnity. Producer shall indemnify and hold harmless Rocky Mountain from any loss or liability, including professional liability and costs of legal defense, arising from or in connection with the provision of Producer's services pursuant to this Agreement. Rocky Mountain shall indemnify and hold harmless Producer from any loss or liability, including professional liability and costs of legal defense, arising from or in connection with Rocky Mountain's responsibilities under this Agreement. The terms of this paragraph shall survive termination of this Agreement and shall supersede any oral or written contrary agreement entered into between Producer and any Group or Individual or person acting on behalf of such Group or Individual.

G. Records. Producer shall keep complete and accurate books and records pertaining to health care plans marketed by Producer on behalf of Rocky Mountain. Such books and records shall be available to Rocky Mountain for inspection and audit at the request of Rocky Mountain. Producer shall maintain such books and records for the period of time assigned by law applicable to the business of Rocky Mountain and Producer.

H. Terminating or Altering Coverage. Producer acknowledges that Rocky Mountain shall have the right to rescind, terminate and/or to alter coverage existing under any contract executed between an Individual or a Group and Rocky Mountain.

I. Expectations. Producer agrees to the following:

(1) Producer, or if Producer is an entity, each person marketing or selling Rocky Mountain health care plans on behalf of Producer, must stay current on Rocky Mountain policies, procedures, health care plans and products, by attending events, training seminars, reviewing correspondence and notices, or any combination of the above.

(2) Group and individual health insurance must be a significant portion of the business of Producer, or if Producer is an entity, of each person who markets or sells Rocky Mountain health care plans on behalf of Producer.

(3) Producer must intend to, and strongly attempt to, present to a Group every quote received from Rocky Mountain for the Group.

(4) Producer may request the involvement of a Rocky Mountain sales representative in presentations.

(5) A Rocky Mountain sales or service representative may be asked to assist Producer in conducting all enrollment meetings for groups of twenty (20) or more employees.

(6) Producer shall provide complete and accurate information for the quote request and application process within any applicable time frames required by law.

(7) If Producer is an entity, Rocky Mountain reserves the right at its option to refuse to allow persons employed by Producer to market or sell Rocky Mountain health care plans.

(8) Producer must support Rocky Mountain's philosophy of managed care.

J. Business Associate Agreement. By signing this Agreement, Producer is agreeing to comply with the terms and conditions of the attached Exhibit B, entitled "Business Associate Agreement for Protection of Information."

5. No Recourse Against Groups or Individuals. In no event shall any Group or Individual be liable for any remuneration due Producer for Producer's services provided hereunder unless Producer is being directly compensated by a Group, in which event Producer may seek such compensation only from the Group and not Individuals. No action may be maintained against any Group or Individual for sums owed to Producer by Rocky Mountain or UHIC. Except as provided above, Producer shall receive no money or other things of value from any Group or Individual for the provision of Producer's services provided hereunder. The terms of this paragraph shall survive termination of this Agreement and shall supersede any oral or written contrary agreement entered into between Producer and any Group or Individual or person acting on behalf of such Group or Individual.

6. Prohibitions and Unauthorized Acts.

A. Prohibitions. Producer shall not:

(1) receive any monies due or to become due to Rocky Mountain except the initial premium on benefit coverages solicited by Producer for group or individual health care plans;

(2) pay or offer to pay or allow any rebate of premium in any manner whatsoever, directly or indirectly, on behalf of a Group or Individual;

(3) use the trade name or trademark of Rocky Mountain or advertise or broadcast in any way Producer's association with or relationship to Rocky Mountain, including, without limitation by enumeration, newspapers, radio, television, signs, handout items and mailed items without the prior written approval of Rocky Mountain. This prohibition shall not apply to the distribution of marketing materials provided by Rocky Mountain to Producer;

(4) violate any insurance laws in the State of Colorado;

(5) refuse to return, upon request, any printed matter, applications, sales literature or other written material which Rocky Mountain may furnish to Producer, which shall remain the property of Rocky Mountain, subject at all times to its control and returnable upon demand; or

(6) for the period of this Agreement and after termination of this Agreement, divulge any information which Rocky Mountain considers to be proprietary and which Producer has obtained by reason of Producer's association with Rocky Mountain.

B. Authority. Producer shall only have the authority regarding Rocky Mountain health care plans as expressly set forth herein. Producer is without authority to perform and expressly agrees not to perform the following acts on behalf of Rocky Mountain:

(1) bind Rocky Mountain to provide coverage;

(2) alter Rocky Mountain's premiums or premium payment schedule;

(3) determine when or whether Rocky Mountain will accept an application for coverage;

(4) determine the terms or conditions upon which Rocky Mountain will offer coverage to any prospective Group or Individual; or

(5) incur indebtedness or liability.

C. Receipt of Monies. Producer shall not receive any monies due or to become due to Rocky Mountain or UHIC, except the initial premium on benefit coverages solicited by Producer for Bundled Dental and Vision Plans.

7. Presentations by Rocky Mountain. Producer shall permit Rocky Mountain's representatives to make presentations to a Group's representatives to explain Rocky Mountain's procedures relating to the servicing of the Group. Producer shall permit Rocky Mountain's representatives to make presentations to eligible employees to explain coverage and enrollment procedures.

8. Termination.

A. Term. This Agreement shall commence on the date set forth below, and shall continue in effect from year to year after such date unless otherwise terminated in accordance with the provisions of this Agreement.

B. Termination for Breach. If either party to this Agreement fails to comply with any term, covenant or condition of this Agreement and does not cure such failure within ten (10) days following receipt of written notice from the other party specifying the failure to comply and requesting that it be cured, then the non-breaching party may terminate this Agreement.

C. Right to Immediate Termination. RMHP may terminate this Agreement immediately without any prior notice for any of the following causes:

(1) Producer's failure to comply with the terms of this Agreement;

(2) for Producers who are individuals, Producer dying, becoming incompetent or otherwise unable to perform Producer's obligations under this Agreement;

(3) Producer's conviction of a felony (a plea of "no contest" or acceptance of a deferred judgment or any similar arrangement concerning such an offense shall be deemed a conviction); or

(4) fraud or intentional misrepresentation of any material facts by Producer, or fraud or abuse in connection with the marketing of Rocky Mountain health care plans.

D. Unilateral Termination. Notwithstanding the foregoing, this Agreement may be terminated by either party with or without cause on at least thirty (30) days' prior written notice to the other party.

E. Partial Termination/Continuing Agreement with Groups or Individuals for which Producer is Producer of Record. RMHP shall have the right upon giving notice to Producer to terminate all of Producer's rights under this Agreement to solicit and obtain applications to enroll Individuals or Groups for which Producer is not the producer of record on the date such termination is effective, while continuing the Agreement only with regard to Individuals and Groups for which Producer is the producer of record as of the date the termination is effective.

F. Obligations Subsequent to Termination. Except as set forth below, upon termination of this Agreement, any commission due and payable to Producer shall be limited to the commission owed on premiums which have been paid to Rocky Mountain up to the period ending on effective date of termination. Such commission shall be paid to Producer within thirty (30) days after the date of termination. As to any Group or Individual for which Producer is the producer of record when termination occurs, Producer agrees that Producer will not attempt to prevent the Group or Individual from continuing to offer health care plans of Rocky Mountain. Rocky Mountain may request that a Group or Individual continue to offer health care plans of Rocky Mountain following the termination of this Agreement as to such Group or Individual. If this Agreement is terminated by RMHP as a result of RMHP exercising its right to terminate the Agreement pursuant to paragraph 8.D., payment of commissions to Producer will continue for Groups and Individuals for which Producer is the producer of record as of the date of termination until the date on which the first of the following events occurs: (1) annual renewal of the Group's or Individual's health care plan; (2) the date Producer is no longer the producer of record for the Group or Individual; (3) the date another

individual or entity is designated as producer of record for the Group or Individual; (4) the date on which the Group or Individual terminates coverage with Rocky Mountain; (5) date the Producer no longer is duly licensed by the State of Colorado to market health care plans; or (6) ninety (90) days from the effective date of termination.

G. Death of Producer. If this Agreement terminates due to Producer's death and Producer's spouse or adult child is a licensed producer who meets RMHP's contractual specifications and requirements, RMHP will enter into a Producer Agreement with Producer's spouse or adult child which agreement will have the same terms as this Agreement, but shall only apply to Groups and Individuals for which Producer was receiving commissions under this Agreement as of the date of death.

9. Arbitration.

A. Agreement to Arbitrate. Except as provided in paragraph 11.G(5), any controversy arising out of or in any way related to the rights, duties and obligations described in this Agreement shall be submitted to final and binding arbitration in accordance with this paragraph, and such claim shall be submitted to arbitration within one (1) year of the event on which the claim is based. Any such claim not submitted within one (1) year of the event on which the claim is based shall be time barred.

B. Arbitration Procedures. The arbitration shall be administered by the American Arbitration Association, and shall proceed under the Commercial Arbitration Rules then in effect and adopted and applied by the American Arbitration Association. The panel of arbitrators shall consist of three arbitrators. One arbitrator shall be selected by one party, one arbitrator shall be selected by the other party, and the third arbitrator shall be selected by the two arbitrators that have been chosen. If the two arbitrators are unable to agree to the selection of a third arbitrator, the third arbitrator shall be selected by the American Arbitration Association in accordance with the Commercial Arbitration Rules. In addition to complying with all of the Commercial Arbitration Rules, each party shall be required to make "Disclosures" as set forth in Colorado Rule of

Civil Procedure (C.R.C.P.) 26(a)(1), which disclosures shall be made within ten (10) days after a date is selected for the arbitration hearing. In addition to such disclosures, each party shall disclose to the other party the "Disclosure of Expert Testimony" as set forth in C.R.C.P. 26(a)(2)(A) and 26(a)(2)(B), which disclosures shall be made at least twenty (20) days prior to the date of the arbitration hearing. The arbitration shall be conducted in Mesa County, Colorado. The arbitrators shall follow Colorado law in making an award. Written findings of fact and conclusions of law shall be issued by the arbitrators.

C. Powers of Arbitrators -- Enforcement of Award. The arbitrators shall have all powers as set forth in section 13-22-201, et seq., C.R.S., and C.R.C.P. 109, and such other powers as are authorized in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Unless an application is timely filed to vacate, modify or correct the award, the party in whose favor any award shall be made may file the same with the Clerk of a Colorado District Court, which Court may enter a judgment thereon, and if such award requires the payment of money, the Clerk may issue execution therefor. Each party, however, shall pay its own attorneys' fees and costs of arbitration, including filing fees, arbitration fees, and other costs. Fees and expenses incurred by the arbitrator that each party chooses shall be paid by that party. Each party shall pay one-half of the fees and expenses incurred by the third arbitrator.

10. **Agency Responsibilities.** To the extent Producer is an Agency which contracts with or employs individual producers to market and sell Rocky Mountain health care plans, the Agency must register those producers and those producers must comply with the terms of this Agreement. The Agency shall:

- A. Register producers with the Colorado Division of Insurance as producers for the Agency;
- B. Notify RMHP that the producer will be marketing health care plans on behalf of Producer.
- C. Have the individual producers sign an Acknowledgement of Producer Relationship substantially in the form of attached Exhibit C

naming Producer as the entity entitled to be paid commissions under this Agreement, and provide a copy of such Acknowledgement of Producer Relationship to RMHP;

D. Insure that the producers' credentials comply with paragraphs 4.A. and 4.C. of this Agreement; and

E. Ensure that the producers otherwise comply with the terms of this Agreement.

11. General Provisions.

A. **Self Funded Plans.** This Agreement shall not apply to self funded plans for which a Rocky Mountain entity is the third party administrator unless RMHP provides Producer written notice to add such plans.

B. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Colorado. Venue of all matters shall be in Mesa County, Colorado.

C. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall continue in full force and effect, unless the invalid or unenforceable provisions are material to this Agreement and its invalidity or unenforceability results in substantial economic detriment to either party to this Agreement.

D. **Assignment.** Producer's rights, duties and responsibilities pursuant to this Agreement may not be assigned or delegated by Producer without the prior written consent of RMHP.

E. **Non-Exclusive Agreement.** Producer acknowledges that Rocky Mountain may enter into other agreements with other producers to market health care plans of Rocky Mountain in any Rocky Mountain Service Area. Rocky Mountain may also enter into exclusive agreements with select producers concerning special situations such as association, groups and other groups for which those producers are deemed to represent.

F. **Relationship of Parties.** This Agreement is intended to create the relationship of independent contractor on the part of Producer as to the performance of the duties and obligations under this Agreement. Nothing contained in this Agreement shall be construed as creating the

relationship of employer/employee nor shall it be construed as the Producer being an agent for Rocky Mountain. Neither party shall represent nor hold itself out to any person or entity other than is consistent with the relationship of Producer as an independent contractor. Money or other settlements received by Producer for or on behalf of Rocky Mountain shall be received by Producer in a fiduciary capacity and shall immediately be paid to Rocky Mountain. None of the benefits provided by Rocky Mountain to its employees, including, but not limited to, workers' compensation insurance and unemployment insurance, are available from Rocky Mountain to Producer. Producer shall be solely and entirely responsible for Producer's acts during the performance of the terms and conditions of this Agreement.

G. Confidentiality. Producer agrees to comply with the following confidentiality provisions.

(1) Confidential Information. This Confidential Information provision shall apply to all "Confidential Information" to which Producer or Producer's personnel may be exposed. For purposes of this Agreement, "Confidential Information" shall include any Protected Health Information (PHI) pertaining to Rocky Mountain members (prospective, current, cancelled or deceased), medical, business, scientific or technical information, trade secret, design, process, procedure, formula, intellectual property (software), or improvement and any data or information that is important, competitively sensitive, and not generally known by the public, such as policies and procedures, marketing strategies and business methods, techniques and strategies, pricing policies, financial information, referral sources, member lists and addresses, provider lists, provider contract information, rating methods, accounts payable and receivable, information concerning employees, physical plant and internal performance results. For the purposes of this Agreement, PHI shall consist of all individually identifiable health information transmitted or maintained by Rocky Mountain, regardless of form.

(2) Restrictions On Use And Disclosure. Except for work performed under this Agreement, Producer shall not use, copy, transfer, disclose, or permit any unauthorized person to obtain any such Confidential Information (whether or not the Confidential Information is in written or tangible form). Producer shall instruct all such personnel not to use, copy, transfer or disclose such Confidential Information except to the extent so required to perform the services they have been hired to perform and within the limitations imposed under this Agreement. The provisions of this paragraph shall survive termination of this Agreement.

(3) Security Measures. Producer shall use reasonable business efforts, including the use of confidentiality agreements with its employees and consultants to protect Confidential Information. The provisions of this paragraph shall survive the termination of this Agreement.

(4) Term and Return Of Information. Upon termination of this Agreement, Producer shall immediately return to Rocky Mountain all documents, records, notes and similar repositories containing Confidential Information in Producer's possession or under Producer's control, whether prepared by Producer or others that reflect Confidential Information.

(5) Injunction. The unauthorized disclosure or use of any Confidential Information by Producer could cause irreparable harm and significant injury to Rocky Mountain, which may be difficult to measure with certainty or compensate through damages. Accordingly, any Rocky Mountain shall have the right to seek and obtain an immediate injunction enjoining any breach by Producer of this Agreement upon application to a court of competent jurisdiction, and Producer shall not plead as a defense to any such action that Rocky Mountain has an adequate remedy at law. Rocky Mountain shall have the right to be reimbursed by Producer for all costs, including attorney's fees, incurred in enforcing this Agreement.

H. Indebtedness of Producer. Rocky Mountain shall have a first lien on all commissions payable to Producer for any obligation owed by Producer to Rocky Mountain. Rocky Mountain may deduct or set off from commissions or other monies owed to Producer hereunder all obligations owed by Producer to Rocky Mountain. This lien shall not be extinguished by termination of this Agreement.

I. Legal Actions. Producer shall pay Rocky Mountain, upon demand, for any costs, including attorneys' fees, incurred by Rocky Mountain to answer or defend any: (1) attachments or garnishments involving Producer for which a judgment has been entered against Producer or a judgment is sought by a third party against Producer; or (2) legal proceedings brought by a third party against Producer.

J. Entire Agreement. This Agreement, and the Exhibits attached to this Agreement, constitute the entire understanding and agreement of the parties, and shall supersede all prior understandings and agreements of the parties on the subject matter of this Agreement.

K. Amendments. This Agreement shall not be changed, modified or altered except by amendment, which, to be valid and enforceable, shall be in writing and signed by the parties; provided, however, RMHP shall have the right to prospectively change any provision of this Agreement on thirty (30) days' notice to Producer, including the commission structure for individual products and for new and existing Groups. Further, RMHP may unilaterally amend this Agreement in order to comply with any applicable federal or state laws or regulations. Any such amendment shall become effective thirty (30) days following RMHP's notice to Producer of the amendment, except that the amendment may become effective on an earlier date if any applicable state or federal law, statute or regulation that was the basis of the amendment requires a specific date of compliance, which date is less than thirty (30) days following RMHP's notice. Within such thirty (30) day period, as set forth above, Producer shall have the right to terminate this Agreement, effective at the end of such thirty (30) day period, by giving RMHP fifteen (15) days' prior written notice of intent to terminate.

L. Notices. Except as provided in this paragraph, all notices required by this Agreement shall be deemed sufficiently given if made in writing, upon mailing, United States First Class Mail, postage prepaid, to the addresses of the parties set forth on the signature page of this Agreement. All notices regarding the termination of this Agreement shall be deemed sufficiently given if made in writing, upon mailing, United States Mail, postage prepaid, certified mail, return receipt requested, to the addresses of the parties set forth on the signature page of this Agreement. The address to which notices are given may be changed by notice of change of address given in the method and manner for notice of termination provided herein.

M. Benefit. The terms and provisions of this Agreement shall bind and benefit the respective parties, their agents, employees, representatives, successors and permitted assigns. A Rocky Mountain entity other than RMHP shall be a third party beneficiary of this Agreement. To the extent a Rocky Mountain entity other than RMHP is a third party beneficiary of this Agreement, such Rocky Mountain entity shall also have the obligations of RMHP under this Agreement as set forth herein. Each Rocky Mountain entity shall only have obligations under this Agreement for those health care plans of that Rocky Mountain entity that the Producer sells under the terms of this Agreement.