

Broker Agreement

Fallon Health Medicare Products

Independent and agency contracts



Application for Appointment and Medicare Products Broker Agreement

APPLICATION FOR:

Individual
 Individual through Agency
 Company/Agency

AGENT INFORMATION

Last	First	Middle
Social Security Number	Date of Birth	Alias/Other Names
Resident Address (Street, City, State, ZIP code)		
Mailing Address		MA Producer License #
Resident Phone	Business Phone	Fax Number
Languages	Email Address	

COMMISSION PAYABLE TO

(Needs to match W-9)

Broker
 Agency: _____

Company/Agency Information

Corporation Name	Principal Agent
Corporate Tax ID	Business Phone
Business Address (Street, City, State, ZIP code)	
Mailing Address	

ERRORS & OMISSIONS COVERAGE

(\$1,000,000 annual aggregate required)

An active policy is required to be on file with us at all times, with a declaration page showing your name/the agency's name listed as a covered entity.

PRODUCT SELECTION

Fallon Medicare Plus™ Medicare Advantage
 Fallon Medicare Plus™ Medicare Supplement
 NaviCare® HMO SNP and SCO

Please answer the questions below and provide an explanation in the space provided in which "Yes" was a response. Failure to accurately and honestly answer any of the questions may result in Fallon declining your application.

Criminal Background Information		
1. Has your company's leadership or principals / Have you ever been convicted of a felony?	<input type="checkbox"/> No	<input type="checkbox"/> Yes
2. Has your company's leadership or principals / Have you ever been convicted of a misdemeanor (other than traffic), including an alcohol or drug related offense?	<input type="checkbox"/> No	<input type="checkbox"/> Yes
3. Has your company's leadership or principals / Have you ever had your driver's license revoked?	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Credit History		
4. Has your company / Have you filed for bankruptcy and/or had a bankruptcy discharge	<input type="checkbox"/> No	<input type="checkbox"/> Yes
5. Has your company / Have you been reported as delinquent on your state or federal taxes?	<input type="checkbox"/> No	<input type="checkbox"/> Yes
6. Does your company / Do you currently have any federal tax liens?	No	<input type="checkbox"/> Yes
CMS & the Department of Insurance		
7. Is your company / Is your insurance license currently restricted or under investigation?	<input type="checkbox"/> No	<input type="checkbox"/> Yes
8. Has your company / Have you ever had your insurance license revoked and/or suspended by any department of insurance for any reason?	<input type="checkbox"/> No	<input type="checkbox"/> Yes
9. Has your company / Have you ever had to pay a fine related to a consumer complaint, failure to renew your license, or continuing education credit in excess of \$500?	<input type="checkbox"/> No	<input type="checkbox"/> Yes
10. Has your company / Have you ever had a complaint reported against you by a consumer and/or Insurance company for any reason with any department of insurance or other regulatory reporting agency including CMS?	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Other		
11. Has your company / Have you ever been terminated for cause by any insurance carrier?	<input type="checkbox"/> No	<input type="checkbox"/> Yes
12. Has your company / Have you ever been denied an appointment by any insurance carrier?	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Explanation		

I attest to the truth and completeness of the foregoing statements and answers and agree not to solicit business until I am dually appointed:

Applicant Signature

Date

I hereby recommend approval of this appointment:

Deborah Daviau, Director, Medicare Advantage

Date

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Definitions

Defined terms, which are referenced in this Agreement, shall have the following meanings:

“Agreement” is the Medicare Products Broker Agreement between Fallon and the Broker.

“Addendum” is the document executed by Fallon and the Broker, which is incorporated into this Agreement by reference, and sets forth the terms and conditions upon which the Broker and its Sub Agents will solicit and be compensated for placing Business with Fallon, and otherwise amends the Agreement.

“Broker” refers to *either* the Company or individual seeking to enter into a contractual arrangement through this Agreement.

“Broker Account” is a Member whose Contract with Fallon is currently in force and was placed through the Broker or its employees or Sub Agents.

“Application” is the document completed by the Broker for the issuance of a Contract for Medicare Products from Fallon.

“Business” shall be classified as either:

1. “New Business” which are Contracts with individuals that have not previously been covered by Fallon’s Medicare Products; or whose coverage from Fallon’s Medicare Products has lapsed, been canceled, or expired for a period of thirty (30) days or more; or
2. “Renewal Business” which is not New Business.

“Commission” is the compensation paid to the Broker in accordance with the terms of the applicable Addendum.

“Contract” is the Agreement between Fallon and the member.

“Coverage” is the Contract and other documents that describe the covered Medicare benefits that Fallon has agreed to provide to Members.

“Laws” are applicable State or Federal statutes, regulations, instructions and other requirements which include the Compliance Fraud, Waste and Abuse requirements as described in Section 1860D-4(C)(1)(D) of the Social Security Act.

“Member” is an individual who is enrolled for Coverage by Fallon’s Medicare Products.

“Officer” is a person so designated by Fallon’s Board of Directors.

“Premiums” are the periodic payments required to maintain the Contract between a member and Fallon in force.

“Sub Agent” is an individual agent who is employed or otherwise contracted to work under Broker with respect to the sales and marketing of Fallon’s Medicare Products.

Medicare Products Broker Agreement

This Medicare Advantage and Medicare Advantage Prescription Drug Products (hereinafter "Medicare Products") Broker Agreement (hereinafter referred to as the "Agreement") is made by and between Fallon Community Health Plan, Inc. a not-for-profit corporation, and any of its wholly owned subsidiaries or affiliates selling Medicare Products (hereinafter referred to as "Fallon"), and _____, on behalf of itself as an individual broker or broker organization, and if a broker organization, also on behalf of any present and future employees. ("Broker").

Recitals

Whereas, Fallon is an independent corporation; and

Whereas, Fallon is a corporation that serves as a Plan sponsor for certain Medicare products which desires to contract with and appoint the Broker to market, sell and distribute certain Medicare program health insurance products and services of Fallon in accordance with applicable Laws; and

Whereas, the relevant laws require special training, documentation, marketing and other requirements of a Plan utilizing Brokers or Agents in relationship to Medicare Products; and

Whereas, the Broker desires to contract with and be appointed by Fallon to market, sell and distribute through its Sub Agents Medicare Products offerings in accordance with applicable Laws and the terms of this Agreement; and

Whereas, the Broker understands that there are special requirements that Broker and its Sub Agents must maintain in order to market, sell and distribute Medicare Products.

Whereas, the Broker understands that Broker's and its Sub Agents' ability to market, sell and distribute Medicare Products is different and independent of Broker's and its Sub Agents' ability to market, sell and distribute any other Fallon products; and

Now, Therefore, in consideration of the promises and mutual covenants of the parties, the sufficiency of which is hereby acknowledged, the parties have agreed as follows:

Broker Duties and Performance Obligations

A. Appointment. The Broker represents that the information contained in each application for appointment by Fallon, which is incorporated into this Agreement by reference, is and shall remain true and accurate throughout the term of this Agreement. The Broker shall promptly notify Fallon of any: (1) material changes to the information set forth in a Broker application; (2) inquiries or disciplinary actions initiated against a Broker or its Sub Agents by State or Federal regulatory agencies; (3) termination of the Broker's authority to represent other insurers or health maintenance organizations; (4) cancellation, material modification or non-renewal of the Broker's liability insurance coverage or fidelity bonds; (5) loss of Broker's license to sell insurance or loss of license by any officer, employee or Sub Agent who has conducted sales and marketing of Fallon's Medicare products under this

agreement; (6) actions to have the Broker, or any of Broker's officers, employees or Sub Agents who have conducted sales and marketing of Fallon's Medicare products under this agreement excluded, suspended or debarred from doing business with the federal government or from participating in federal healthcare programs; or (7) other matters which adversely affect the Broker's ability to perform Broker's duties pursuant to this Agreement.

- B. Licensing.** If Fallon elects to contract with the Broker, Broker will ensure that the Broker, Broker's officers, employees or Sub Agents are appropriately licensed to place Medicare Products coverage with Fallon pursuant to applicable Laws. Broker warrants that Broker, its officers, employees and Sub Agents will comply with all applicable Laws, including but not limited to, any and all state and federal privacy and do-not-call laws, when representing Fallon pursuant to this Agreement and that representation of Fallon will not conflict with Broker's obligations to, or interfere with the rights of, any third parties. Broker shall be bound by the terms of this Agreement when representing Fallon and, if there is any conflict between the terms of this Agreement and any agreement between any third party, this Agreement shall be controlling. Broker certifies that it will make routine inquiries during initial or subsequent processing which will provide applicable information concerning its officers, employees' or Sub Agents' character and general reputation. The inquiry should at a minimum demonstrate that the officers', employees' or Sub Agents' past or present conduct as well as any investigations or convictions (including pending convictions and investigations) do not demonstrate a lack of honesty or integrity such as to render the officer, employee or Sub Agent unsuitable to place Fallon's Medicare Products coverage. Broker further agrees to provide to Fallon all information related to its actions under this agreement, including those of its officers, employees and Sub Agents required to develop, compile, evaluate, and report to the Centers for Medicare & Medicaid Services (CMS) and other federal and state agencies, at the times and in the manner required as requested by Fallon.
- C. Agent/Broker Training and Testing.** Broker acknowledges that within ninety days of execution of this Agreement and annually thereafter, Broker/Sub Agents must successfully complete and pass at the required level both a product-specific and Medicare compliance training pursuant to 42 CFR 422.2274(c) and (d), 423.2274(c) and (d). Training must include information on the compliance requirements of the Medicare Products with specific reference to avoiding conflicts of interest, limitations on the marketing of other products to Medicare beneficiaries, security requirements related to Medicare information and information sharing practices and auditing rights between Fallon, the state licensing authorities and CMS or its designated agents. Broker understands that failure to successfully complete and pass all required training will preclude a Sub Agent from selling Medicare Products.
- D. Medicare General Compliance and FWA Training.** Broker acknowledges that, within ninety days of execution of this Agreement and annually thereafter, Broker/Sub Agents must successfully complete and pass at the required level both [Medicare Parts C and D General Compliance Training](#) and [Combatting Medicare Parts C and D Fraud, Waste, and Abuse](#).
- E. Eligibility.** Neither Broker nor its officers or Sub Agents shall be a debarred, suspended, or otherwise excluded from participation in procurement activities under the Federal Acquisition Regulation or from participating in non-procurement activities under regulations issued under Executive Order No. 12549 or under guidelines implementing Executive Order No. 12549.

- F. Neither Broker nor its Sub Agents shall employ or contract with any individual or entity currently excluded, suspended, or otherwise ineligible from participation in Medicare, Medicaid, or other Federal health care programs under Section 1128 or 1128A of the Social Security Act, or with any entity that employs or contracts with such an excluded individual or entity for the provision of services under these Programs. Broker hereby certifies that no such excluded person or entity is employed by or under contract with the Broker relating to the furnishing of services under this Agreement to any of Fallon Community Health Plan's members or individual members enrolled in a Federal or State health care program, including without limitation, the Senior Care Options, Medicare Advantage and/or Medicare Prescription Drug programs. Broker, also, certifies that Broker performs, and shall require vendors and subcontractors to perform excluded individual/entity checks of the HHS OIG List of Excluded Individuals and Entities and the System for Awards Management (formerly the GSA Excluded Parties List System) prior to contracting with any new employee, temporary employee, volunteer, consultant, governing body member, vendor or subcontractor, as applicable, and thereafter, on a monthly basis, per the Office of the Inspector General (OIG) and CMS guidance, and such other lists or databases as may be required by an applicable state or federal law, regulation, or guidance, from time to time. All results shall be documented appropriately and maintained for at least ten (10) years per CMS regulation.
- G. **Solicitation of Eligible Individuals.** The Broker shall exercise best efforts, and shall require officers and Sub Agents to exercise best efforts, to identify and solicit eligible individuals to apply for Medicare Coverage from Fallon during the term of this Agreement. The Broker shall make reasonable efforts, and shall require officers and Sub Agents to make reasonable efforts, to assure that prospective individuals are eligible for Medicare Coverage in accordance with the Senior Care Options, Medicare Advantage and Medicare Prescription Drug program requirements. Fallon shall provide the Broker with a reasonable supply of individual Application forms and other approved solicitation materials necessary to accurately describe the types of Medicare Coverage offered to prospective individuals.
- H. **Solicitation Materials.** The Broker shall not use the name, service marks or symbols or otherwise make reference to Fallon without the express written consent of an Officer of Fallon and shall require the same of its officers and Sub Agents. The Broker shall not use the name, service marks or symbols or otherwise make reference to Fallon on any Agency or Broker Website without the express written consent of an Officer of Fallon and shall require the same of its officers and Sub Agents.
- I. **Modification and use of Materials.** Applications, solicitation materials or proposals provided by Fallon must adhere to the applicable and relevant Medicare Communications and Marketing Guidelines and other requirements established by CMS, therefore they shall not be amended or altered by the Broker or its officers, employees or Sub Agents. They shall only be used in connection with the Broker's activities, and those of its officers and Sub Agents, on behalf of Fallon pursuant to this Agreement, shall remain the property of Fallon, and shall promptly be accounted for or returned to Fallon upon request or upon the termination of this Agreement.
- J. **Submission of Enrollment Applications.** The Broker shall make a good faith effort to submit an Application to Fallon within a reasonable time period prior to the effective date of the Contract. Fallon may postpone the effective date of the Contract if the Broker does not submit a fully completed Application prior to the proposed effective date of a Contract.

- K. Neither the Broker, nor its officers or Sub Agents, shall collect any application fees, deposits, or Premiums unless expressly authorized to do so, in writing, signed by an Officer of Fallon.
- L. **Service Responsibilities.** The Broker, its officers and Sub Agents shall cooperate with representatives of Fallon, upon reasonable request, to assist with the installation of coverage and provision of ongoing support services to Broker Accounts.
- M. **Limitation of Authority.** Neither the Broker nor its officers and Sub Agents shall have authority to bind Fallon to provide Coverage, alter Fallon's established Premiums, or modify the terms, conditions, limitations or exclusions of Fallon's Medicare Product Coverage, without the prior express written consent of an Officer of Fallon. Fallon shall have the sole discretionary authority to either accept or reject an Application and to establish the terms and conditions upon which it will offer Coverage to any prospective individuals consistent with CMS Medicare Part C and Part D program requirements. This Agreement shall not grant the Broker an exclusive or preferential right to represent Fallon, or solicit individuals in a geographical area or to solicit any specified individual or category of individuals, except as otherwise specifically provided in this Agreement or an Addendum.
- N. **Notice of Complaint.** Legal Action or Other Potential Compliance Problems. The Broker shall immediately notify Fallon of receipt of any customer complaint or if Broker is served any paper or has knowledge of any legal or administrative action, investigation or proceeding against Fallon or which involves Fallon, and the Broker shall require its officers and Sub Agents to immediately notify it of same.
- O. **Standards of Conduct and Vendor/Supplier Code of Conduct.** Broker agrees to implement and distribute Fallon's Vendor/Supplier Code of Conduct to all officers and Sub Agents within 90 days of contracting, and annual thereafter. Broker may also implement and distribute their own Standards of Conduct/Code of Conduct upon review and approval of Fallon's Compliance Department.
- P. **Auditing, Monitoring and Oversight.** Broker shall use best efforts to monitor its officers' and Sub Agents' compliance with the state and federal requirements described herein with respect to their efforts made under this Agreement. Broker agrees to comply with all oversight activities required by Fallon, included routine monitoring and auditing in order to assess Broker's compliance with the terms of the Agreement and all applicable laws and regulations. Broker further agrees to comply with all monitoring requests pertaining to FTE's performance under the Agreement, including all reasonable requests for information and documentation. [42 C.F.R. §§ 422.503(b)(4)(vi)(6) and 504(i)(4)(iii)]
- Q. **Offshore PHI.** If Broker offshores any PHI related to this Agreement, or subcontracts to offshore any PHI, Broker must notify Fallon in writing (see Appendix A) within 30 days of entering into or amending any agreement with an Offshore Subcontractor.

Fallon Duties and Performance Obligations

- A. **Medicare Products.** Fallon shall provide the Broker with information about the Medicare Products individual and group offerings available under the Fallon brand. Fallon shall provide underwriting, fulfillment, billing, claims processing, adjudication and customer service.

- B. Establish Compliance Expectations and Monitor Broker's Adherence to These Expectations.** Fallon shall facilitate Annual Broker Training regarding compliance expectations related to the handling of Fallon's Medicare Products. Fallon shall monitor Broker's performance and take corrective action up to and including termination of this Agreement for non-compliance with laws, regulations or other requirements related to the marketing and delivery of the Medicare Products.
- C. Rights Reserved By Fallon.** Fallon specifically reserves the right, without the approval of the Broker:
1. To cease doing business, or discontinue or withdraw from sale any Fallon product anywhere in the Commonwealth of Massachusetts consistent with applicable state or federal regulations.
 2. To modify, change, or amend any certificate, contract or premium rate issued in conjunction with any of its products consistent with applicable state or federal regulations.
 3. To determine all terms, conditions or limitations of any certificate or contract issued in conjunction with any of its products and to modify or change the terms under which any product may be sold, except as otherwise provided in this Agreement consistent with applicable state or federal regulations.

Record Management, Monitoring and Reporting

- A. Maintenance.** The Broker shall maintain complete and accurate business records concerning activities pursuant to this Agreement, consistent with CMS guidelines and appropriate retention schedules and shall require such compliance of its Sub Agents working under this Agreement.
- B.** Fallon, the Department of Health & Human Services (HHS), the Comptroller General, or their designees, have the right to audit, evaluate and inspect any pertinent information for any particular period of the Agreement, including, but not limited to, any books, contracts, computer or other electronic systems of the Broker or its Sub Agents, through 10 years from the final date of the contract period or the completion of any audit, whichever is later.
- C.** This section shall survive the termination of this Agreement.
- D. Record Ownership.** In the event this Agreement is terminated, the Broker's records shall remain the property of the Broker and left in the Broker's undisputed possession. In the event this Agreement is terminated, then Fallon may continue to service Fallon customers directly.
- E. Purchasers.** Individuals who purchase a Fallon offering from a Broker are neither the property of Fallon nor the property of the Broker. If an individual purchases a Fallon offering, the Broker will be considered to be the agent of such individual for that particular transaction, and the individual shall be a policyholder of Fallon. This Agreement shall not prohibit either the Broker or Fallon from soliciting said individual for other products. The fact that the Broker may have offerings from other carriers shall not be considered to be "solicitation" by the Broker.

- F. Monitoring.** The Broker understands that Fallon shall monitor Brokers' adherence to the compliance requirements related to the Medicare Products and any required periodic reports or evaluations of the Broker's performance as it relates to the products.
- G. Access to Books and Records.** Broker agrees that as it relates to Fallon's Medicare Products, CMS and its agents shall have audit evaluation or review rights related to any materials or activities generated in support of these Medicare Products which remain in the Broker's possession.
- H. Reporting.** Broker shall develop and implement to maintain an effective and well-publicized system for all officers, Sub Agents, and downstream entities to report compliance questions, concerns and potential misconduct or FWA confidentially and anonymously. Broker shall also maintain a non-retaliation/whistleblower policy as required under 42 C.F.R. § 422.503(b)(4)(vi)(D). The Broker shall immediately notify Fallon, but no later than 10 business days from the date of identification, if Broker learns of any compliance problems including but not limited to: marketing violations or breaches in data security relating to its responsibilities under this Agreement and shall contractually pass this responsibility on to its officers and Sub Agents.

Commission Payments

- A. Commissions.** Fallon shall bill and collect all Premiums. Neither the Broker nor its Sub Agents shall bill, charge or collect Premiums, or any other charges from Members, unless expressly authorized in writing to do so by an Officer of Fallon. Commissions shall be payable to the Broker as outlined in Exhibit A. Commissions shall not be due or payable pursuant to this Agreement, until Fallon has received, accepted, and successfully processed the enrollment application from a Medicare beneficiary pursuant to the individual Contract. Commissions payable by Fallon shall be subject to adjustment in accordance with subsection C, below.

In order to be qualified for compensation, Broker/Sub Agents are required to supply the following documents: Completed W-9 form, a copy of current Massachusetts resident broker's license/producer license, and this signed Agreement. Agents representing employer groups must also provide a Broker of Record letter from the employer group, with effective date of Broker of Record designation, the Broker name(s) (and any splits in commission among multiple Brokers) signed by an officer of the account.

- B.** Members will not be held liable for payment of any fees or commissions due to Broker or Broker's Sub Agents that are the legal obligation of Fallon.
- C.** Fallon will not pay broker commissions on a retroactive basis beyond a period of 12 months.
- D. Payment of Commissions.** Commissions payable pursuant to this Agreement shall be calculated and paid in accordance with the applicable Addendum, within forty-five (45) days after Fallon receives confirmation of successful enrollment of the beneficiary into the plan.

- E. If Fallon elects to pay any compensation to Broker prior to receiving confirmation of enrollment for the member from CMS and it is later determined that CMS did not enroll the member in a Medicare Plan, then Broker shall promptly return such compensation to Fallon.
- F. **Adjustment of Commissions.** Fallon may require the Broker to repay the amount of the indebtedness, upon reasonable notice, as an alternative to offsetting the outstanding indebtedness against future Commission payments to the Broker.

Fallon may modify the premium structure with a replacement Commission Addendum, upon providing the Broker sixty (60) days advance written notice of the modification.

- G. **Continuation of Commission.** Fallon shall pay Commissions to the Broker, in accordance with the terms of this Agreement, provided: (1) the Broker Contract remains in effect and the enrollee remains enrolled in a Fallon plan; (2) the Broker remains appointed by Fallon; and (3) such payments are not prohibited by applicable Laws.
- H. **Effect of a Violation.** At Fallon's discretion, Commissions may be withheld or cancelled if it is determined that the enrollment in question was the result of a marketing violation or egregious behavior on behalf of the broker. Commissions will not be made for sales made while the Broker was prohibited from marketing on Fallon's behalf.

Marketing, Advertising and Publicity

- A. **In General.** Fallon and the Broker shall mutually agree on any Fallon Medicare Products offerings portfolio which the Broker markets.
 1. The Broker will be responsible for all advertising and marketing content and materials that are for the express purpose of marketing and/or advertising the Broker ("generic materials").
 2. Advertising and marketing materials that make specific references to Fallon offerings will not be used without the prior written consent of Fallon.
 3. Such materials shall not violate Fallon's guidelines regarding branding or health insurance market conduct or CMS marketing guidelines.
 4. All material, generic and specific, will be fully compliant with all Department of Insurance and other regulatory authority rules and regulations regarding the advertising and marketing of insurance products, via the Internet or in general.
 5. The Broker is responsible for adhering to applicable federal and other health laws related to Broker's activities involving Medicare Products including CMS' Communications and Marketing Guidelines and other CMS policies.
- B. **Announcements or Press Releases.** Except as may be required by law, neither party hereto shall, without the prior consent of the other, which consent shall not be unreasonably withheld or delayed,

make any public announcement or issue any press release with respect to this Agreement. Prior to making any public disclosures required by applicable law, the disclosing party shall consult with the other to the extent feasible, as to the content and timing of such public announcement or press release.

Confidentiality, Proprietary Information, and Technology

- A. Nondisclosure.** The Broker acknowledges that Fallon may furnish information identified as trade secret, proprietary or confidential information (“Confidential Information”) to Broker during the term of this Agreement. The Broker agrees that Broker shall not disclose such Confidential Information to third parties without the written consent of an Officer of Fallon. The Broker agrees to promptly return all originals and copies of such Confidential Information to Fallon upon request or upon the termination of this Agreement. Both parties recognize that certain technologies, innovations, and processes may be considered as proprietary trade secrets and agree to make no disclosures of these technologies, innovations or processes except as required by applicable Laws, regulations, or pursuant to a court order.
- B. Exceptions.** It is understood and agreed between the parties that Confidential Information does not include or encompass information which is generally available to the public other than as a result of breach of this Agreement, nor does it include either of the following: information disclosed pursuant to a court or governmental order; or information required to be disclosed pursuant to applicable Laws.
- C. Use.** The Broker shall only utilize Confidential Information as necessary or appropriate to perform duties pursuant to this Agreement. The Broker shall not otherwise utilize such Confidential Information for Broker’s benefit or the benefit of any third party. The Broker may disclose Confidential Information to its Sub Agents and officers as necessary to permit the Broker to perform duties pursuant to this Agreement, but only after informing those Representatives of their obligation to maintain the confidentiality of such Confidential Information. The Broker shall be responsible if its Representatives breach this section of the Agreement.
- D. Disclosure to Third Parties.** The Broker may disclose Confidential Information to third parties only with the written consent of an Officer of Fallon or if compelled to do so by a subpoena, court order or other legally binding order, but only after providing Fallon with notice of an opportunity to challenge such efforts to compel disclosure of that Confidential Information. This non-disclosure obligation shall not be applicable to any Confidential Information that is or becomes publicly available other than as a result of the Broker’s breach of this non-disclosure obligation.
- E. Damages.** Broker acknowledges that any actual or threatened violation of this section may cause irreparable damages to Fallon that are inadequately compensable by damages or other legal remedies. In the event of any such breach or threatened breach of this section, Fallon may seek and obtain injunctive relief, specific performance, or any other equitable remedies available to it.
- F. Joint Technologies.** Each party may elect, by a separate Attachment, to license technologies, innovations, or processes for use by the other. Technologies, innovations, or processes developed by either party during the course of this Agreement for use in the sale of products offered through this

Agreement shall be considered as joint property of the parties and may not be disclosed to or licensed for use by any third party without the express written consent of both Fallon and the Broker.

- G. Health Insurance Portability and Accountability Act ("HIPAA").** Broker agrees to comply with applicable provisions of the Health Insurance Portability and Accountability Act ("HIPAA"), including the HIPAA privacy regulation, 45 CFR 160 – 164 and the Business Associate Addendum of this Agreement and agrees to contractually require its officers and Sub Agents to comply with these same provisions with respect to activities under this Agreement. The Business Associate Addendum shall supersede this subsection if it is determined that there is a conflict between the Business Associate Addendum and any provision of this section.

The Business Associate Addendum shall survive the termination of this Agreement.

- H. Survival.** This section shall survive the termination of this Agreement.

Independent Contractor Relationship

- A. No Employer-Employee Relationship.** The Broker, its officers and Sub Agents are independent contractors of Fallon. This Agreement shall not be construed to create an employer-employee or joint venture relationship among those parties.
- B. Insurance Coverage.** The Broker shall obtain and maintain all insurance coverage, including but not limited to errors and omissions, workers' compensation and comprehensive general liability coverage, in amounts that are reasonably acceptable to Fallon, and that are necessary or appropriate to insure the Broker against liability or to comply with applicable Laws. Broker shall supply a copy of the declaration page of their E&O policy showing coverage of at least \$1,000,000 when first contracting with Fallon, and also upon request. The Broker agrees to submit evidence of other coverage to Fallon upon request.
- C. Wages, Benefits and Other Costs.** The Broker shall be responsible for paying all wages, benefits, license fees and taxes for itself, its officers and employees related to the provision of services to Fallon pursuant to this Agreement. Nothing in this Agreement renders Fallon responsible for payment of wages, benefits, license fees or taxes for Broker, its officers, employees, or Sub Agents.
- D. No Liability for Acts of Other Party.** Neither party shall have imputed, constructive or vicarious liability for any loss or expense, including attorneys' fees, incurred in the settlement or satisfaction of any claim, action or judgment proximately resulting from any action or failure to act by the other party, its directors, officers, employees, agents or contractors. The responsible party shall indemnify and hold the other party harmless against any and all vicarious losses or expenses related to such claims, actions or judgments; provided the indemnifying party has received timely notice of and been given the opportunity to defend against such actions.

Broker may be liable to Fallon for fines and or penalties caused by its non-compliance with requirements related to the Medicare Products.

E. **Survival.** This section shall survive the termination of this Agreement.

Miscellaneous

- A. **Term of Agreement:** The initial term of this Agreement is one (1) year from the date as of which this Agreement is executed. This Agreement shall automatically renew at the end of the initial term and continue in effect from year to year thereafter until terminated.
- B. **Binding Nature of Agreement.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.
- C. **Entire Agreement.** This Agreement and its Addenda incorporated by reference represent the entire Agreement between the parties related to its subject matter. All prior agreements, negotiations, understandings, conversations, and communications, if any, that relate to the sale of Medicare Products by the Broker on behalf of Fallon are merged into this Agreement and shall be of no force and effect other than as expressly set forth in this Agreement.
- D. **Severability.** The provisions of this Agreement are severable. If any provision or part of this Agreement is held by any court or other official body of competent jurisdiction to be invalid or unenforceable for any reason, the remaining provisions or parts hereof shall continue to be given effect and shall bind the parties hereto unless the unenforceability or illegality has the consequence of substantially altering the respective rights and obligations of the parties.
- E. **Governing Law.** This Agreement shall be governed by and construed in accordance with applicable Commonwealth of Massachusetts Laws.
- F. **Execution in Counterparts.** This Agreement may be executed by the parties hereto signing the same instrument, or by each party hereto signing a separate counterpart, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The parties agree that documents executed by facsimile shall be acceptable in this transaction, and the signatures thereof shall have the same force and effect as original signatures.
- G. **Amendments.** This Agreement may only be amended with the prior written consent of the parties.
- H. **Captions.** The captions appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such paragraph(s).
- I. **Construction.** This Agreement shall be constructed without regard to the party that drafted it. Any ambiguity shall not be interpreted against either party but shall, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.
- J. **Assignment.** The Broker shall not assign rights or delegate obligations pursuant to this Agreement to a third party without the prior written consent of Fallon.
- K. **Notices.** Any notice required pursuant to the terms of this Agreement shall either be hand delivered or given in writing, sent by certified or overnight mail, return receipt requested, to the address listed on

the signature page of this Agreement or such other address as a party may designate, in writing, during the term of this Agreement.

- L. Other Acceptable Forms of this Document.** The following shall have the same legal effect as an original: facsimile copy, imaged copy, scanned copy, and/or an electronic version.
- M. Signature.** A scanned, imaged, electronic, photocopy or stamp of the signatures hereunder shall have the same force and effect as an originally executed signature.
- N. Equal Opportunity.** The equal opportunity clauses at 41 CFR 60-1.4, 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) are hereby incorporated by reference into this Agreement. These regulations prohibit discrimination against qualified individuals on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, and status as a protected veteran, and require covered prime contractors and subcontractors to take affirmative action to employ and advance in employment qualified individuals without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, disability and protected veteran status.

Termination

- A.** This Agreement may be terminated:
 - 1. Immediately upon written notice if either party loses any license which is required to perform duties pursuant to this Agreement or an Addendum, or becomes insolvent, or is charged with an act of moral turpitude;
 - 2. Immediately if based upon CMS guidelines or direction, or if Broker is unable to continue marketing Fallon's Medicare Products;
 - 3. Upon thirty (30) days advance written notice if either party otherwise breaches this Agreement and does not cure that breach within thirty (30) days of being notified of such alleged breach by the nonbreaching party; or
 - 4. Without cause upon sixty (60) days advance written notice to the other party.
- B.** Upon the termination of this Agreement, the Commissions payable to the Broker shall be limited to the Commissions due to the broker on business transacted on behalf of Fallon up to and including the date of the termination of the Agreement.
- C.** The parties agree to cooperate in good faith to promptly resolve any outstanding administrative or payment issues following the termination of this Agreement.
- D.** The parties acknowledge that they each have a valuable interest in their relationship with Broker Accounts and Members. Fallon reserves the right to solicit Broker Accounts and Members to continue coverage after termination of this Agreement.

- E.** This Agreement may also be terminated immediately and at any time if:
1. It is determined that Broker, while conducting business on Fallon's behalf, or related to the sale of any Medicare product, fails to comply with the laws or regulations governing the insurance business in Massachusetts or federal requirements related to Medicare products;
 2. The Broker, its officers or Sub Agents make false or misleading statements about Fallon or Medicare Products;
 3. The Broker induces any Fallon policyholder or Fallon Member to discontinue payments, cancel, or fail to renew that individual's Fallon policy;
 4. If the Broker fails to remit Fallon funds to Fallon or subjects Fallon to any liability (except for that incurred by Fallon under a properly issued policy or contract) or commits any fraud hereunder.

Termination pursuant to subsections E 1-4 voids any obligation by Fallon to provide future compensation under the terms of this Agreement.

Medicare Supplement Broker Agreement

This Medicare Supplement Broker Agreement is made between Fallon Community Health Plan, Inc. ("FCHP"), a Massachusetts health maintenance organization ("HMO"), Fallon Health & Life Assurance Company, Inc. ("FHLAC") (collectively "FCHP/ FHLAC"), and the Company or Individual listed on the signature page of this Agreement:

Whereas, FCHP and FHLAC are both duly licensed and operating health care services organizations selling prepaid health care plans in the Commonwealth of Massachusetts,

Whereas, Broker is licensed by the Massachusetts Division of Insurance to sell FCHP/FHLAC's plans and its license is current and in full force and effect, and

Whereas, Broker is not an employee of FCHP/FHLAC,

Whereas, Broker has been designated as the Broker of Record by the employer group offering the plan, and

Whereas, FCHP and Broker desire to enter into an agreement whereby FCHP/FHLAC compensates Broker for Broker's services in marketing FCHP's fully insured commercial HMO plan(s) and FHLAC's fully insured POS and PPO plan(s) ("FCHP/FHLAC's Plans").

Now, Therefore, in consideration of the promises and mutual covenants herein contained, it is mutually agreed by and between the parties hereto as follows:

1. Broker shall provide sales and marketing services for FCHP/FHLAC in the marketing of FCHP/FHLAC's Plans to employer groups in the Commonwealth of Massachusetts. Broker shall at all times be licensed by the Massachusetts Division of Insurance as a broker in good standing and will remain in strict compliance with all applicable state laws, federal laws, and FCHP/FHLAC sales, marketing and broker policies and procedures, including adherence to FCHP/FHLAC's underwriting guidelines, and this Agreement. Broker shall notify FCHP/FHLAC in writing within 15 days of the termination, expiration, surrender, suspension, revocation, or disciplinary proceedings relating to Broker's license. It is the responsibility of any brokerage agency to ensure that all of its Brokers are licensed.
2. In order to be qualified for FCHP/FHLAC Broker compensation, the Broker is required to supply the following documents: Completed W- 9 form, a copy of current Massachusetts resident broker's license/producer license, FCHP/FHLAC Brokerage Agreement signed by licensed agents and the FCHP/FHLAC Manager of Broker Relations, and a Broker of Record letter from the employer group, with effective date of Broker of Record designation, the Broker name(s) (and any splits in commission among multiple Brokers) and signed by an officer of the account. A Broker of Record letter may not be required for newly contracting brokers.
3. Broker shall provide to FCHP/FHLAC evidence of general liability and other insurance coverage in an amount satisfactory to FCHP/FHLAC and shall maintain said coverage during the term of this

Agreement. Broker agrees to indemnify and hold FCHP/FHLAC harmless as to any suit, damages, or loss resulting from negligence of Broker and arising out of or in connection with Broker's duties hereunder. Broker shall supply a copy of the declaration page of their E&O policy showing coverage of at least \$1,000,000 when first contracting with FCHP/FHLAC, and also upon request. The Broker is responsible for maintaining E&O coverage in full form.

4. FCHP/FHLAC shall not pay to Broker commission paid by employer and procured by Broker until Broker provides FCHP/FHLAC a written letter of confirmation from such employer designating Broker as "Broker of Record."
5. FCHP will not pay broker commissions on a retroactive basis beyond a period of 12 months.
6. Broker agrees to use its best efforts to maintain the relationship between FCHP/FHLAC and the employer, and to maintain full cooperation by the employer and its group of employees with FCHP/FHLAC, in compliance with FCHP/FHLAC's underwriting guidelines.
7. FCHP/FHLAC reserves the right to review and approve all applications for contracts with prospective groups identified by Broker. Further, FCHP/FHLAC reserves the right to approve all Broker's proposals to ensure that all proposals are in conformance with FCHP/FHLAC's policies and procedures. FCHP/FHLAC's right of prior approval of all employer group contracts shall be clearly stated in all proposals prepared by Broker. All enrollments shall take the form of a contract between the employer group and FCHP/FHLAC.
8. In representing FCHP/FHLAC in the marketing of FCHP/FHLAC's Plans, Broker shall utilize only sales material authorized by FCHP/FHLAC, shall adhere to all policies, rules and regulations provided by FCHP/FHLAC to Broker in writing with regard to sales, and shall in no way misrepresent FCHP/FHLAC.
9. Broker acknowledges that the Patient Protection and Affordable Care Act (PPACA) requires insurers and employers to provide a Summary of Benefits and Coverage (SBC) to all eligible employees during the first open enrollment period beginning on or after September 23, 2012. Broker shall provide SBCs created by FCHP/FHLAC to all employer groups that have designated Broker as the Broker of Record. Broker shall instruct the employer group of the PPACA requirement to provide all eligible employees with a SBC for each plan design for which they are eligible to enroll during the employer group's open enrollment period. Broker shall confirm the employer group has distributed the FCHP/FHLAC SBCs to all eligible employees.
10. FCHP/FHLAC shall submit an invoice for premiums to each employer group. In the event that Broker receives funds on behalf of FCHP/ FHLAC from any person, Broker shall accept such funds from employer groups only in the form of checks made payable to "Fallon Community Health Plan" and shall forward such checks to FCHP/FHLAC by the close of the business day following receipt thereof.
11. In consideration for Broker's services in marketing FCHP/FHLAC's Plans, FCHP/FHLAC shall pay Broker a commission in accordance with the compensation schedule attached hereto on a monthly

basis. The records of the employer group as to enrollment shall be conclusive. Such compensation shall be payable only so long as this Agreement is in effect and Broker is recognized by the employer as the Broker of Record to receive said compensation. FCHP/FHLAC reserves the right to modify compensation rates and/or bonuses from time to time.

12. In the event FCHP/FHLAC pays a commission to Broker due to error, whether Broker or FCHP/FHLAC error, including, but not limited to, payment of commission for premiums that the employer fails to pay to FCHP/FHLAC, FCHP/FHLAC may offset any future commissions payable against such amount or collect such amount thereof directly from Broker. If collected directly from the Broker, the Broker shall promptly refund all such commissions to FCHP/FHLAC, within thirty (30) days of FCHP/FHLAC's written request for such refund.
13. A Broker shall notify FCHP in writing and provide supporting legal documentation of any acquisition or merger (hereinafter an "Acquisition") of/with any other broker. For the purpose of measuring and paying any earned broker bonus, FCHP will deem such Acquisition as having occurred at the beginning of the year following the date of the Acquisition.
14. The initial term of this Agreement is one (1) year from the date as of which this Agreement is executed. This Agreement shall automatically renew at the end of the initial term and continue in effect from year to year thereafter until terminated. If any party defaults in the performance of any of its duties or obligations hereunder, and such default has not been cured within thirty (30) days of the non-defaulting party's giving of 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, and this Agreement shall terminate with regard to all parties on the last day of the month in which the thirtieth (30th) day following the date of the initial written notice of default occurs. Instances of default under the Agreement shall include, but not be limited to: (i) Broker's license being suspended, revoked or not renewed by the Commonwealth of Massachusetts; (ii) Broker acting in a manner that is injurious to FCHP/FHLAC; (iii) Broker acting in a manner that constitutes fraud and/or misrepresentation.
15. If FCHP/FHLAC determines that fraud and/or misrepresentation has occurred on any of the Broker of Record letters, credentials, quote requests, authorizations to quote, forms, remittances, membership applications and/or any other transactions submitted by the Broker to FCHP/FHLAC, FCHP/FHLAC may terminate this Agreement retroactive to the date of the fraud or misrepresentation at its sole discretion. The Broker will be responsible for reimbursing FCHP/FHLAC for any commission and/or bonus paid to the Broker by FCHP/FHLAC from the point of the fraud and/or misrepresentation to the termination date.
16. Broker acknowledges that FCHP/FHLAC has developed certain symbols, trademarks, service marks, data, processes, plans, procedures and information, including but not limited to broker commission and bonus, rates, quotes, and online tools, which are proprietary information and trade secrets of FCHP/FHLAC (the "Proprietary Information"). At all times, both during Broker's performance of services pursuant to this Agreement and after the termination of this Agreement, Broker agrees not to use or permit the use of the Proprietary Information, except as expressly contemplated by this Agreement, without the prior written consent of FCHP/FHLAC and Broker shall cease or cause the

cessation of any and all usage of the Proprietary Information and shall return copies thereof, including all sales materials for the Plan, to FCHP/FHLAC immediately upon the termination of this Agreement.

17. Broker covenants and agrees that the contract between FCHP/FHLAC and the employer is the exclusive property of FCHP/FHLAC, and Broker has no property or other interest whatsoever in such contract.
18. This Agreement and all exhibits and other documents furnished pursuant to this Agreement and expressly made a part hereof shall constitute the entire agreement relating to the subject matter hereof between the parties hereto. Each party acknowledges that no representation, inducement, promise or agreement has been made, orally or otherwise, by the other party, or anyone acting on behalf of the other party, unless such representation, inducement, promise or agreement is embodied in this Agreement, expressly or by incorporation.
19. Except as otherwise provided in this Agreement, no amendment to this Agreement shall be valid unless it is in writing and signed by the parties. Broker agrees that FCHP/FHLAC has the right to alter the broker compensation schedule as necessary, that that this shall not constitute an amendment to this Agreement.
20. The validity and interpretation of this Agreement, and the rights and obligations of the parties hereunder, shall be governed by the laws of the Commonwealth of Massachusetts from time to time in force.
21. If any provision of this Agreement is held to be invalid, void or unenforceable, such part will be treated as severable and the remaining provisions shall nevertheless continue in full force and effect.
22. The obligations of each party to this Agreement shall inure solely to the benefit of the other party, and no person or entity shall be a third-party beneficiary of this Agreement.

Declaration

Check here if you are making a declaration on behalf of a company.

I declare that, if the company is appointed, all premiums or monies for policies/coverage issued by Fallon Community Health Plan that are paid to the company or its Sub Agents shall be held in a fiduciary capacity and shall not be misappropriated or converted to company's use or illegally withheld. Furthermore, I agree, on behalf of company, not to solicit business until company is duly appointed. I understand and agree that all commissions due on business produced by the company or by Sub Agents under the company will be disbursed by Fallon Community Health Plan to the company and it the company's sole responsibility to ensure proper payment is made to Sub Agents in the amount provided for in the Addendum, as modified from time to time. **I attest to the truth and completeness of the foregoing statements and answers. I certify that I have read, understand and agree to be bound by the conditions identified on this Application for Appointment and the attached Medicare Advantage Products Broker Agreement.**

Authorized Signature: _____

On Behalf of: _____ Date: _____
[Name of Company]

A photocopy or facsimile of this Authorization shall be as valid as the original.

Check here if you are making a declaration on behalf of yourself.

I declare that, if I am appointed, all premiums or monies for policies/coverage issued by Fallon Community Health Plan that are paid to Broker or its Sub Agents shall be held in a fiduciary capacity and shall not be misappropriated or converted to my own use or illegally withheld. Furthermore, I agree not to solicit business until I am duly appointed. I understand and agree that all commissions due on business produced by me or my Sub Agents will be disbursed by Fallon Community Health Plan to me and it is my sole responsibility to ensure proper payment is made to Sub Agents in the amount provided for in the Addendum, as modified from time to time. **I attest to the truth and completeness of the foregoing statements and answers. I certify that I have read, understand and agree to be bound by the conditions identified on this Application for Appointment and the attached Medicare Advantage Products Broker Agreement.**

Applicant Signature: _____ Date: _____

A photocopy or facsimile of this Authorization shall be as valid as the original.

In Witness Where of, the parties have executed this Agreement intending to be bound on and after the _____ day of _____, _____.

(to be completed by Fallon)

Fallon Community Health Plan, Inc. By: _____ Printed Name: Deborah Daviau Title: Director, Medicare Advantage Tax I.D. #: 23-7442369 10 Chestnut Street Worcester, MA 01608	Broker By: _____ Printed Name: _____ Title: _____ Company Name: _____ SS/Tax I.D. #: _____ Address: _____ _____
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Business Associate Addendum

This addendum ("Addendum") is by and between Fallon Community Health Plan, Inc. (hereinafter referred to as "FCHP"), a Massachusetts corporation and _____ (hereinafter referred to as "Contractor") a _____ corporation. The Parties agree that the following clauses set forth in this Addendum shall be part of the _____ dated _____ between FCHP and Contractor ("Service Agreement"). The parties agree that the following clauses set forth in this Addendum shall govern Contractor's duties and responsibilities as it performs services for FCHP. The parties agree that as of the date of execution of this Addendum, this Addendum shall supersede and render null and void any previous agreements/addendums between the parties governing the use and disclosure of Protected Health Information ("PHI"). Any conflicts or inconsistencies between any other agreement, and other parts of the Service Agreement and this Addendum shall be read and resolved in favor of this Addendum as to any issue involving PHI.

WITNESSETH:

WHEREAS, pursuant to the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Secretary of Health and Human Services has issued the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164 (the "Privacy Rule"), the Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Parts 160, 162 and 164 (the "Security Rule"); and the Breach Notification Rule 45 C.F.R. Parts 160 and 164; and

WHEREAS the requirements governing the treatment of Protected Health Information and the Privacy Rule, the Security Rule, and the Breach Notification Rule have been modified and/or

established by the enactment of the American Recovery and Reinvestment Act of 2009 and its implementing regulations ("ARRA"); and

WHEREAS, the Commonwealth of Massachusetts enacted 201 CMR 17.00 Standards for the Protection of Personal Information of Residents of the Commonwealth ("MA Security Regulations"); and

WHEREAS, Contractor wishes to provide _____

("Services") for FCHP that involves the Use and Disclosure of Protected Health Information ("PHI"), electronic Protected Health Information ("ePHI"), and Personal Information ("PI"); and

WHEREAS, both PHI and ePHI are protected under the Privacy Rule and ARRA, and ePHI is protected under the Security Rule and ARRA; and

WHEREAS, PI is protected under the MA Security Regulations; and

WHEREAS, Contractor and FCHP wish to enter into this Addendum in order to ensure the protection of PHI, ePHI, and Personal Information and to allow FCHP and Contractor to comply with the requirements set forth in the Privacy Rule, the Security Rule, ARRA, and the MA Security Regulations.

NOW, THEREFORE, in consideration of the mutual agreements, covenants, terms and conditions herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in this Addendum shall have the definitions set forth in the Privacy and Security Rules and ARRA (and any implementing regulations thereof) as currently drafted and as are subsequently updated, amended, or revised.

Breach. As currently defined by ARRA, and subject to being subsequently, updated amended or revised, Breach means the unauthorized acquisition, access, use, or disclosure of PHI which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information. The term does not include any unintentional acquisition, access, or use of PHI by an employee or individual acting under the authority of Contractor if such acquisition, access, or use was made in good faith and within the course and scope of employment or other professional relationship of such employee or individual and such information is not further accessed, acquired, used or disclosed by any person. The term also does not include any inadvertent disclosure from an individual who is otherwise authorized at Contractor's facility to access such information to another similarly situated individual at the same facility, provided that information received as a result of the inadvertent disclosure is not further acquired, accessed, used, or disclosed without authorization from the Individual.

Business Associate. As currently defined by 45 C.F.R. §160.103, and subject to being subsequently updated, amended, or revised, Business Associate means an entity who on behalf of FCHP

performs, or assists in the performance of, a function or activity involving the use or disclosure of PHI.

Disclosure. As currently defined by 45 C.F.R. §160.103, and subject to being subsequently updated, amended, or revised, Disclosure means the release, transfer, provision of, access to, or divulging in any other manner of information outside the entity holding the information.

Electronic PHI ("ePHI"). As currently defined by 45 C.F.R. §160.103, and subject to being subsequently updated, amended, or revised, ePHI is PHI in electronic form and that is created, received, stored, or otherwise used by Contractor on behalf of FCHP.

Individual. As currently defined by 45 C.F.R. §160.103, and subject to being subsequently updated, amended, or revised, Individual is the person who is the subject of the PHI and shall include a person who qualifies as a Personal Representative in accordance with 45 C.F.R. § 164.502(g).

Individually Identifiable Health Information. As currently defined by 45 C.F.R. §160.103, and subject to being subsequently updated, amended, or revised, Individually Identifiable Health Information is information, including demographic information, created or received by a health care provider, health plan, employer, or health care clearinghouse; and 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 payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Personal Information (PI). As currently defined by 201 CMR 17.02, and subject to being subsequently updated, amended, or revised, PI is a subset of Individually Identifiable Health Information and includes a Massachusetts resident's first name and last name or first initial and last name in combination with any one or more of the following data elements that relate to such resident:

- (a) Social Security number;
- (b) Driver's license number or state-issued identification card number; or
- (c) Financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a resident's financial account; provided, however, that "Personal Information" shall not include information that is lawfully obtained from publicly available information, or from federal, state or local government records lawfully made available to the general public.

Protected Health Information (PHI). As currently defined by 45 C.F.R. §160.103, and subject to being subsequently updated, amended, or revised, PHI is Individually Identifiable Health Information that is transmitted or maintained in any form, including as ePHI, and that is created, received, stored, or otherwise used by Contractor on behalf of FCHP.

Use. As currently defined by 45 C.F.R. §160.103, and subject to being subsequently updated, amended, or revised, Use means, with respect to Individually Identifiable Health Information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

II. PERMITTED USES AND DISCLOSURES OF PHI

- (A) Both parties agree that the PHI will remain the property of FCHP notwithstanding the Disclosure to Contractor.
- (B) Contractor agrees, except as otherwise provided herein, only to Use or Disclose PHI as necessary to perform the Services.
- (C) Contractor agrees it will not perform any Services that involve the Use or Disclosure of PHI outside of the United States without the prior written approval of FCHP.

III. CONTRACTOR RESPONSIBILITIES

- (A) Contractor agrees to not Use or Disclose PHI other than as permitted under this Addendum or as required by law. At all times after the effective date of Section 13405 of ARRA, Contractor's uses, disclosures, or requests for PHI described herein shall be, to the extent practicable, limited to a Limited Data Set or the Minimum Necessary (as may be described by the Secretary of Health and Human Services in guidance under Sections 13405 and 13424(c) of ARRA) to accomplish the intended purpose of such use, disclosure, or request.
- (B) To the extent applicable to the Services to be performed by Contractor, Contractor agrees to provide copies of PHI to FCHP within ten (10) days of a request by FCHP in order to permit FCHP to respond to an Individual's request pursuant to 45 C.F.R. §164.524. Any denial and/or approval of a request by an Individual to access PHI shall be the responsibility of FCHP. Accordingly, in the event an Individual requests access to PHI directly from Contractor, Contractor shall direct the Individual to contact FCHP directly;
- (C) To the extent applicable to the Services to be performed by Contractor, Contractor agrees to make PHI available for amendment and shall incorporate any amendments to the PHI requested by FCHP in accordance with 45 C.F.R §164.526. Any denial and/or approval of a request by an Individual to amend PHI shall be the responsibility of FCHP. Accordingly, in the event an Individual requests amendment of PHI directly from Contractor, Contractor shall direct the Individual to contact FCHP directly;
- (D) To the extent applicable to the Services to be performed by Contractor, Contractor agrees to keep an accounting of all Disclosures necessary to allow FCHP to respond to an Individual's request for an accounting of Disclosures pursuant to 45 C.F.R. §164.528. Contractor agrees to provide such accounting of Disclosures, if any, within ten (10) days of a request by FCHP. Any denial and/or approval of a request by an Individual for an accounting of Disclosures shall be the responsibility of FCHP. Accordingly, in the event an Individual requests an accounting of Disclosures directly from Contractor, Contractor shall direct the Individual to contact FCHP directly;
- (E) To the extent applicable to the Services to be performed by Contractor, Contractor agrees to communicate with the member by alternative means or at alternative locations (e.g. address other than the subscriber's) if so directed by FCHP;

- (F) To the extent applicable to the Services to be performed by Contractor, upon notification by FCHP, Contractor agrees to treat as a personal representative any person so designated by an Individual and communicated to the Contractor by FCHP;
- (G) Contractor agrees to comply with all applicable state and federal laws and regulations that govern the privacy and security of PHI;
- (H) Contractor agrees to implement Administrative, Physical and Technical safeguards as defined by 45 C.F.R. §164.304 and in a manner as described by the Security Rule in order to reasonably and appropriately protect the confidentiality, integrity and availability of ePHI and to implement appropriate safeguards to prevent the Use or Disclosure of PHI other than as provided for in this Addendum. Contractor will document and keep these safeguards current and will, upon request by FCHP, provide FCHP with copies of such documentation; Contractor agrees that as a Business Associate and, pursuant to ARRA, it must comply with 45 C.F.R. §§ 164.308, 164.310, 164.312, 164.314, and 164.316 of the Security Rule. Contractor represents that it is in compliance with these sections of the Security Rule as of the effective date of Section 13401 of ARRA. The safeguards Contractor agrees to have in place include, but are not limited to, the following:
- i. Contractor agrees that it will maintain, at a minimum, the privacy and security safeguards and practices as described by Contractor in the Fallon Community Health Plan Third Party Privacy and Security Questionnaires that Contractor completed and submitted to FCHP on _____;
 - ii. All security safeguards that meet or exceed those recommended by the Department of Health and Human Services or as indicated by the Department of Health and Human Services as being in compliance with the HIPAA Security Rule;
 - iii. Contractor agrees to establish a secure connection for email exchanges between Contractor's email system and FCHP's email system if such exchanges will include PI and/or PHI. Contractor agrees to use Transport Layer Security (TLS) to maintain the secure connection. Contractor further agrees to use a secure connection (such as SFTP) for all file transfers between Contractor and FCHP;
 - iv. If Contractor will communicate with FCHP members using email, Contractor agrees to utilize a secure email service/product with a minimum encryption of 128 bits or another method that meets or exceeds the methods recommended by the Department of Health and Human Services;
 - v. Contractor agrees it will not store PHI and/or PI on portable media that is not encrypted using a method of encryption that meets or exceeds those defined by the Department of Health and Human Services as properly encrypted;
 - vi. Contractor agrees it will not store PHI and/or PI on equipment or systems not owned by Contractor or a subcontractor approved pursuant to Section III(K) of this Addendum

- (I) Contractor agrees that if it maintains and/or stores PI as part of the Services hereunder, then Contractor will be required to comply with and maintain security measures outlined in 201 CMR 17.00 to protect with respect to PI.
- (J) Contractor agrees to have controls in place to identify and provide FCHP with a report of any Use or Disclosure of PHI or PI not permitted by this Addendum (an "Unauthorized Use or Disclosure") and/or Breach (as defined by 45 C.F.R. §164.402) of which it becomes aware or reasonably should have become aware, and to report any Security Incident as defined by 45 C.F.R. §164.304. Such reports will be made within three (3) days of the Contractor becoming aware of such Unauthorized Use or Disclosure, Security Incident and/or Breach. Should the time frames set forth in this section be longer than the time frames set forth in any applicable statute or regulation, the time frames above shall be disregarded and the shorter time frames set such statute or regulation shall govern the reporting of a Security Incident, Breach and/or Unauthorized Use or Disclosure of PHI or PI. Contractor's report will include at least the following:
 - i. Identify the nature of the Unauthorized Use or Disclosure, Breach or Security Incident;
 - ii. Identify the PHI involved in the Unauthorized Use or Disclosure, Breach or Security Incident;
 - iii. Identify and provide FCHP with a list of the Individuals whose PHI was the subject of the Unauthorized Use or Disclosure, Breach or Security Incident;
 - iv. Identify who is responsible for the Unauthorized Use or Disclosure, Breach or Security Incident and who gained unauthorized access to PHI;
 - v. Identify what corrective action Contractor took or will take to prevent further Unauthorized Uses or Disclosures, Breaches or Security Incidents;
 - vi. Identify what Contractor did or will do to mitigate any harmful effect of the Unauthorized Use or Disclosure, Breach or Security Incident; and
 - vii. Provide such other information, including a written report, as FCHP requests.

Contractor further agrees to cooperate fully with FCHP's investigation into such Unauthorized Use or Disclosure of PHI or PI, Breach, and/or Security Incident, with FCHP's efforts to reclaim all access to the PHI, and with FCHP's efforts to report and/or notify third parties of such Unauthorized Use or Disclosure of PHI as FCHP deems necessary or as required by state and/or federal law. Notwithstanding the foregoing, the Parties agree that some unsuccessful attempts on electronic systems occur on a routine basis and that this Section constitutes notice by Contractor of the ongoing existence and occurrence of the following unsuccessful attempts for which no additional notice to FCHP shall be required: pings on its firewall; port scans; attempts to log on to a system or enter a database with an invalid password or username; denial-of-service attacks that do not result in a server being taken off-line; and malware (e.g. worms, viruses) that is detected and neutralized by Contractor's anti-virus and other defensive software measures;

- (K) Contractor agrees to provide FCHP with notification prior to disclosing PHI and/or PI to any subcontractors and/or agents. Contractor further agrees to obtain FCHP's written consent prior to disclosing PHI and/or PI to any subcontractors and/or agents located outside the

United States. Notwithstanding such notification to or consent from FCHP, Contractor will remain fully responsible for its subcontractors' and/or agents' actions;

- (L) Contractor agrees to ensure that any subcontractors or agents to whom it provides PHI and/or PI as permitted under this Addendum agree in writing to 1) the same restrictions and conditions that apply herein to the Contractor with respect to such information and 2) implement the security safeguards that apply to Contractor herein to protect the PHI and/or PI; and
- (M) The Contractor will make its internal practices, books, and records relating to the Use and Disclosure of PHI available, as requested, to the Secretary of the federal Department of Health and Human Services for purposes of determining FCHP's compliance with the Privacy Rule and/or ARRA.

IV. FCHP RESPONSIBILITIES

- (A) FCHP agrees to notify Contractor of any limitation(s) in its Notice of Privacy Practices to the extent that such limitation may affect Contractor's Use or Disclosure of PHI and/or PI;
- (B) FCHP agrees to notify Contractor of any changes in, or revocation of, permission by an Individual to Use or Disclose PHI and/or PI, to the extent that such changes may affect Contractor's Use or Disclosure of PHI and/or PI; and
- (C) FCHP agrees to notify Contractor of any restriction to the Use or Disclosure of PHI and/or PI that FCHP has agreed to in accordance with 45 C.F.R. §164.522, to the extent that such restriction may affect Contractor's Use or Disclosure of PHI and/or PI.

V. GENERAL TERMS

(A) Term and Termination.

- i. Term. This Addendum will automatically terminate without any further action of the Parties upon receipt of written certification pursuant to Section V(A)iv of this Addendum from Contractor that all PHI and/or PI in Contractor's and/or its subcontractors' and agents' possession has been returned and/or destroyed and is no longer in Contractor's possession or the possession any of its subcontractors and/or agents.
- ii. Termination for Cause by FCHP. If FCHP determines that Contractor has engaged in a pattern of activity that constitutes a material breach of this Addendum, then FCHP shall provide Contractor with written notice of the existence of the alleged breach and shall provide Contractor with ten (10) calendar days to cure said breach. Failure by Contractor to cure said breach shall be grounds for immediate termination of any services arrangement and this Addendum by FCHP. Alternatively, if Contractor fails to cure said breach and FCHP determines that termination of the services arrangement and this Addendum is not feasible, FCHP will report the violation to the Secretary of Health and Human Services.
- iii. Termination for Cause by Contractor. If Contractor determines that FCHP has engaged in a pattern of activity that constitutes a material breach of this Addendum, then Contractor shall provide FCHP with written notice of the existence of the alleged breach and shall

provide FCHP with ten (10) calendar days to cure said breach. Failure by FCHP to cure said breach shall be grounds for immediate termination of any services arrangement and this Addendum by Contractor. Alternatively, if FCHP fails to cure said breach and Contractor determines that termination of the services arrangement and this Addendum is not feasible, Contractor will report the violation to the Secretary of Health and Human Services.

iv. Effect of Termination.

(a.) Except as provided in subsection (b.) of this Section (V)(A)(iv), upon termination of this Addendum for any reason, Contractor will maintain no copies of PHI and PI and agrees to:

1. Return to FCHP any and all PHI and PI that FCHP requests the return of; and
2. Shred or destroy all PHI and PI in paper form so that it cannot be read or otherwise reconstructed; and
3. Clear, purge, or destroy from its systems all ePHI and electronic PI consistent with NIST Special Publication 800–88, *Guidelines for Media Sanitization* such that the PHI cannot be retrieved.

This provision shall also apply to PHI and/or PI that is in the possession of subcontractors or agents of Contractor. Upon destruction of the PHI and/or PI, Contractor agrees to provide FCHP with written certification that such PHI and/or PI was completely removed from its, and its subcontractor's and/or agent's, systems and/or possession as well as a written detailed description of the removal method used. Contractor will, at FCHP's request, employ other destruction methods if FCHP, in its sole discretion, determines that the destruction method used is not adequate.

(b.) Upon termination of this Addendum, in the event that Contractor believes that returning or destroying the PHI and/or PI is infeasible, Contractor shall provide to FCHP written notification of the conditions that make return or destruction infeasible. Upon FCHP's written agreement that return or destruction is infeasible, Contractor shall extend the protections of this Addendum to such PHI and/or PI and limit further Uses and Disclosures of such PHI and/or PI to those purposes that make the return or destruction infeasible for so long as Contractor maintains such PHI.

- (B) Third Party Beneficiaries. Nothing in this Addendum shall be construed to create any third party beneficiary rights in any person, including any provider, member or other individual covered by any FCHP plan.
- (C) Conflicts and Interpretation. Any ambiguities in this Addendum or conflicts or inconsistencies between the Service Agreement or any other agreement and this Addendum shall be read and resolved to permit FCHP to comply with the Privacy Rule, the Security Rule, the MA Security Regulations, and ARRA.
- (D) Amendments. The Parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for FCHP and Contractor to comply with the requirements of the Privacy Rule, Security Rule, MA Security Regulations, ARRA and any other laws and

regulations governing the privacy and security of PHI and/or PI. The Parties agree to comply with all new applicable obligations required by any change in the Privacy Rule, Security Rule, MA Security Regulations, ARRA and any other laws and regulations governing the privacy and security of PHI and/ or PI on the respective effective dates of those changes even if this Addendum has not been amended in the manner described above.

- (E) Regulatory References. A reference in this Addendum to a section in the Privacy Rule, the Security Rule, the MA Security Regulations, or ARRA means the section as in effect or as amended.
- (F) Indemnification. Contractor will indemnify, defend and hold harmless FCHP and its parents, subsidiaries, successors, assigns, affiliates, officers, and employees from liability for any suit, action or claims, including judgments, awards, settlements or compromise costs, and reasonable attorneys' fees, arising from or relating to FCHP's disclosure of PHI and/or PI to Contractor and Contractor's, and its agents and/or subcontractors, Unauthorized Use and/or Disclosure of such PHI and/or PI.
- (G) Damages/Specific Performance. FCHP and Contractor agree that money damages would not be a sufficient remedy for any breach or threatened breach of this Addendum and that FCHP shall be entitled to seek specific performance and injunctive or other equitable relief as a remedy for any such breach or threatened breach. Such remedy shall not be deemed an exclusive remedy for any such breach or threatened breach of this Addendum but shall be in addition to all other remedies available at law to FCHP. In the event of litigation relating to this Addendum if a court of competent jurisdiction determines that Contractor has breached this Addendum, the Contractor shall reimburse FCHP for all reasonable expenses, including legal fees and costs, incurred by FCHP in connection with mitigation of the breach and any subsequent litigation including any appeals therefrom.
- (H) Insurance. Contractor shall procure and maintain, at its expense and uninterrupted at all times during the term of this Addendum, an errors and omissions insurance policy with coverage of at least \$1,000,000 per claim or occurrence that will cover damages incurred, including but not limited to the costs associated with notification under ARRA, by FCHP and/or other third parties as a result of Contractor's Unauthorized Use or Disclosure of PHI and/or PI, Breach, or Security Incident. As evidence of such insurance coverage, Contractor will provide to FCHP a copy of its certificate of insurance upon request by FCHP. Contractor shall provide FCHP with written notice of any cancellation, non-renewal, or material modification of such coverage within five (5) business days of receiving notice of any such cancellation, non-renewal, or material modification.
- (I) Waiver of Rights. No delay or failure at any time on the part of FCHP or Contractor in exercising any right, power or privilege under this Addendum shall impair any such right, power, or privilege, or be construed as a waiver of such provisions, or be construed as a waiver of any default or as any acquiescence therein, or shall affect the right of such party thereafter to enforce each and every provision of this Addendum in accordance with its terms. The invalidity or unenforceability of any provision of the Addendum shall not affect the validity or enforceability of the remaining provisions of this Addendum.
- (J) Assignment. No Party may assign its respective rights and obligations under this Addendum without the prior written consent of the other Party.

(K) Independent Contractor. None of the provisions of this Addendum are intended to create, nor will they be deemed to create, any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Addendum and any other agreements between the Parties evidencing their business relationship.

(L) Governing Law. This Addendum will be governed by the laws of the Commonwealth of Massachusetts.

INTENDING TO BE LEGALLY BOUND, the Parties hereto have duly executed this Addendum.

FALLON COMMUNITY HEALTH PLAN
One Chestnut Place
10 Chestnut St.
Worcester, MA 01608

Contractor name:

Contractor address:

Signed: _____

Signed: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

