



PRODUCER AGREEMENT

PARTIES: _____
Individual/Company Name

Type of Entity (if applicable) (“**Producer**”)
ODS HEALTH PLAN, INC.
An Oregon Business Corporation (“**Insurer**”)
DATE: Effective as of _____ (“**Effective Date**”)

RECITALS:

- A. Insurer is an insurance company licensed to transact insurance in the State of Alaska (the “**State**”) and is engaged in the business of selling individual and group health insurance policies.
- B. Producer is a licensed insurance producer in the State and is engaged in the business of selling individual and group health insurance policies in the State.
- C. Insurer and Producer desire to enter into a business relationship whereby Producer will offer and sell health insurance products of Insurer to individuals and groups located in the State.

The parties agree as follows:

AGREEMENT:

1. DEFINITIONS

1.1 INSURANCE PRODUCTS. For purposes of this Agreement, “Insurance Products” include any insurance policies that Insurer has authorized to be offered and sold to Policyholders or prospective Policyholders in the State.

1.2 POLICYHOLDER. For purposes of this Agreement, “Policyholder” means an individual or group with which Insurer has a contract to provide Insurance Products.

1.3 PRODUCER OF RECORD. For purposes of this Agreement, Insurer will consider Producer to be “Producer of Record” for every Policyholder purchasing Insurance Products sold by Producer under the terms of this Agreement unless and until a Policyholder requests in writing that Insurer change its Producer of Record to a different Producer (“**Letter of Record**”).

2. APPOINTMENT OF PRODUCER

2.1 APPOINTMENT. Insurer, as principal, hereby appoints Producer to a non-exclusive agency relationship with Insurer for the purpose of offering and selling Insurance Products to individuals and groups in the State.

2.2 SERVICES. Producer is an independent contractor of Insurer. Producer shall perform the following services pursuant to any requirements imposed by law upon producers generally, the applicable state insurance code, the terms of this Agreement and the underwriting rules and regulations of Insurer:

(a) Producer shall solicit, receive and submit account specifications of Policyholders and prospective Policyholders to Insurer for quotation release.

(b) Producer shall assist with enrolling, maintaining and renewing Policyholders and prospective Policyholders, and shall provide all usual and customary services of an insurance producer for Policyholders and prospective Policyholders.

(c) Producer shall collect and promptly remit to Insurer the initial premium for a Policyholder.

(d) Producer shall maintain complete records of all transactions and services performed for Insurer under this Agreement, and any other records required by law or regulation. Such records shall be made available to Insurer upon request for the duration of this Agreement and for one (1) year following termination of this Agreement.

(e) Producer shall not make any representations about benefits to be provided by Insurer, except through written material furnished by Insurer.

(f) Producer shall not use any written or oral comparison between coverage offered by Insurer and coverage offered by other companies, unless the comparison is furnished by Insurer or authorized in advance by Insurer.

(g) Producer shall pursue all reasonable marketing initiatives, at its own expense, and opportunities with the Policyholders and prospective Policyholders and shall use its best efforts to sell Insurance Products to the Policyholders and prospective Policyholders.

(h) Producer shall immediately report to Insurer within three (3) business days, but no longer than seven (7) calendar days, any increase in risk, or any hazard of a Policyholder that Producer becomes aware of, which may lead to a loss or exposure that was not contemplated at the time the policy was written.

(i) Producer shall monitor all employees, agents, producers, brokers, independent contractors, and representatives (“**Employees**”) it engages to assist in the offer, sale, and service of Insurance Products. All Employees shall comply with all of the obligations of Producer set forth in this Agreement, and Producer shall be responsible to ensure all Employees comply with the terms of this Agreement.

2.3 AUTHORITY. Producer has no authority to act on Insurer’s behalf except as expressly provided in this Agreement. Producer shall have no authority to: (i) bind insurance coverage, or execute any insurance policy for Policyholders and prospective Policyholders or any other accounts, wherever located; (ii) represent or authorize any claim negotiation or settlement, or to bind Insurer in any way regarding a claim matter; (iii) waive any term or condition of any insurance agreement, either prior to or following issuance of a policy, or to make or bind any changes in an existing policy of insurance; (iv) enter into any agreement on behalf of Insurer, incur any financial obligation on behalf of Insurer or otherwise bind Insurer in any other way; or (v) bill or collect any premium other than the initial premium. Insurer may, at its discretion, quote premium rates with respect to applications solicited by Producer and submitted to Insurer. Insurer reserves the right, in its sole discretion, to accept or reject any applications submitted by Producer.

3. COMMISSIONS

3.1 COMMISSIONS PAYABLE TO PRODUCER. Insurer shall pay to Producer commissions on premium received and reconciled by Insurer, less collection costs, if any, for new and renewal policies solicited by the Producer under the terms of this Agreement and issued by Insurer. Commissions shall be paid according to the rates shown on the Commission Schedule (the “**Commission Schedule**”), attached as Exhibit A and made a part of this Agreement. Insurer may amend the Commission Schedule upon thirty (30) days prior written notice to Producer. No Amendment, modification, or waiver of any

provision of the Commission Schedule will be valid unless it is in writing and signed by an authorized representative of Insurer. Insurer will pay Producer commissions on Premium received from Policyholders so long as (i) Producer is the Producer of Record, (ii) Producer continues to service such Policyholders, (iii) Producer is continuously and actively engaged as a licensed Producer, (iv) Producer continues to be an appointed Producer of Insurer, and (v) Insurer determines, in its sole discretion, that it may legally pay Producer a commission. Any Letter of Record received in any month will be processed effective beginning the first of the next month.

3.2 PAYMENT. Insurer will compensate Producer with respect to any particular Policyholder within sixty (60) days after Insurer receives payment of that Policyholder's monthly premium. If a premium adjustment shall be made for any period, then a corresponding adjustment shall be made in the Producer's commission in the current period. Insurer shall provide Producer monthly accounting reports listing commissions earned or paid in the period following the previous report. Producer should notify Insurer of any understatement of commissions in writing within ninety (90) days after receipt of a report. If Producer does not notify Insurer, the amount of commission will be deemed accurate. Producer shall immediately notify Insurer of overpayments by Insurer and for payments that Producer is not entitled to receive and shall refund the erroneous payment to Insurer or make arrangement for the erroneous payment to be charged against future commissions that might become due to Producer. Insurer has the right to recover overpayments or commissions paid in error or to offset such amounts against future commissions owed to Producer.

3.3 TAXES AND OTHER EXPENSES. Producer agrees to file all required returns or reports and to pay all taxes or other money required by any governmental entity because of commissions paid under this Agreement. Insurer shall have no liability for any expenses incurred by the Producer in connection with any policy. Any indebtedness of Producer to Insurer shall be a first lien against any commission due Producer under this Commission Schedule, and such commission shall be applied to liquidate such indebtedness.

3.4 ASSIGNMENT. Producer shall not assign, transfer, or dispose of any commission, and Insurer will not pay commission to any other producer, agent, broker, agency, or firm under the terms of this Agreement without prior written authorization from Insurer ("**Compensation Assignment Form**"). Producer agrees to defend, indemnify and hold harmless Insurer if any other producer, agent, broker, agency, or firm makes a claim for commissions under the terms of this Agreement without such prior written authorization.

3.5 MISCELLANEOUS. Insurer shall at their option be responsible for enrolling and servicing the group, and Producer agrees to abide by the election of Insurer, but in either event agrees to render the usual and customary service in this connection. Insurer has the right to discontinue issuing any insurance policy or contract of insurance, and to change the premium rate on any insurance policy or contract of insurance. Insurer reserves the right to develop non-standard commissions as an exception to the standard commissions set forth in the Commission Schedule.

4. TERMINATION

4.1 TERM. The term of this Agreement shall commence on the Effective Date and shall continue in effect until it is terminated pursuant to Section 4.2.

4.2 TERMINATION EVENTS. This Agreement shall terminate upon the occurrence of any of the following events (each, a "**Termination Event**"):

(a) Automatically if Producer's insurance license is terminated, revoked, suspended or restricted or if Producer is unable to renew such insurance license;

(b) Automatically on the effective date of any change in the ownership or control of Producer, whether (i) by sale, transfer or assignment of shares of capital stock of Producer, (ii) by sale, transfer or assignment of Producer's assets or business, (iii) by contract or (iv) otherwise;

(c) Automatically on the effective date of any cessation of Producer's business, whether by Producer's (i) abandonment, (ii) insolvency, (iii) bankruptcy, (iv) dissolution, (v) receivership, (vi) death, or (vii) otherwise.

(d) Upon Insurer giving written notice to Producer, in the event of Producer's (i) failure to perform or observe in any material respect any obligation or covenant under this Agreement, (ii) fraud, (iii) gross or willful misconduct, (iv) breach of fiduciary duties, or (v) commission of any act that could be used to deny, nonrenew, suspend, or revoke Producer's insurance license pursuant to AS 21.27.410. The effective date of termination pursuant to this Section 4.2(d) may be the date of the listed event, or any later date that Insurer specifies in the notice of termination.

(e) Upon Insurer or Producer giving the other party at least sixty (60) days prior written notice of termination, with or without cause;

(f) Upon mutual agreement by an instrument in writing executed by all the parties, which writing must refer to this Agreement.

4.3 EFFECT OF TERMINATION

4.3.1 EFFECT. Upon the occurrence of a Termination Event:

(a) On or before the effective date of termination, Producer shall cease all further activities with respect to the offer and sale of health insurance policies to individuals and groups in the State on behalf of Insurer. Producer shall not solicit, accept or perform any services with respect to any new or renewal policies for Insurer except with Insurer's prior written consent or at Insurer's request. Insurer shall take over all applications that are in process from Producer.

(b) Producer shall not be entitled to receive any commission with respect to premium collected or earned after the occurrence of the Termination Event, including premium collected on a renewal occurring after the effective date of the termination; provided, however, termination shall not affect any rights to commissions that have accrued prior to the effective date of termination.

(c) Producer shall promptly deliver to Insurer all books and records in Producer's possession relating to the subject matter of this Agreement.

4.3.2 COOPERATION. Upon the occurrence of a Termination Event, Insurer and Producer shall each use their respective best efforts to cause the termination of this Agreement to occur in an orderly (but efficient) manner to minimize the disruption to Policyholders and avoid any material adverse effect on the reputation or business relationships of Producer or Insurer.

5. COVENANTS OF PRODUCER

5.1 EXPENSES. Unless otherwise expressly provided in this Agreement, Producer shall bear all expenses incurred by Producer in the performance of its duties and obligations under this Agreement. Insurer shall not be liable for any expense incurred by Producer without the express prior written consent of Insurer.

5.2 LICENSES. Producer shall obtain and maintain all necessary licenses or approvals from the Alaska Division of Insurance or other regulatory agency or body having jurisdiction over the offer and sale of Insurance Products to the Policyholders and prospective Policyholders. Producer warrants that no license issued or maintained in accordance with this Section 5.2 has ever been revoked or suspended. Producer must immediately notify Insurer of any expiration, termination, revocation, suspension, or any other action by the Alaska Division of Insurance or other regulatory agency or body affecting licenses required to perform services under this Agreement. Producer must furnish Insurer with a copy of its

current license upon application for appointment, and must furnish Insurer with a copy of any renewal or updated licenses acquired by Producer during the term of this Agreement.

5.3 COMPLIANCE WITH LAWS. Producer shall conduct activities in compliance with all applicable laws and regulations and all directives, orders or requirements of the Alaska Division of Insurance or other regulatory agencies or bodies having jurisdiction over the offer or sale of Insurance Products to the Policyholders and prospective Policyholders. Producer warrants that it has never been convicted of any crime involving dishonesty or moral depravity. Producer shall promptly notify Insurer of any pending or threatened litigation or regulatory action or proceeding by the Alaska Division of Insurance or other regulatory agency or body relating to Producer's status or activities, including the offer or sale of an Insurance Product to a Policyholder or prospective Policyholder and the servicing of Insurance Products sold to the Policyholders; Producer agrees to consult with Insurer regarding any defense or corrective action that shall be taken in connection with such litigation or regulatory action or proceeding.

5.4 COMPLIANCE WITH INSURER'S POLICIES AND PROCEDURES. Producer shall conduct its activities in compliance with all applicable policies and procedures and written notices provided to Producer.

5.5 LIABILITY; ERRORS AND OMISSIONS INSURANCE. Producer shall be liable for its own acts or omissions. Producer shall procure and maintain an insurance policy covering its acts, errors and omissions, and the acts errors and omissions of its Employees, in the amount of \$500,000 for each occurrence. Such errors and omissions insurance shall cover all risks arising directly or indirectly out of Producer's activities in connection with this Agreement, including the offer or sale of Insurance Products to the Policyholders and prospective Policyholders and the servicing of Insurance Products sold to the Policyholders. Producer shall provide Insurer certificates evidencing such insurance upon Insurer's request, and shall immediately notify Insurer in writing of any change, suspension, or cancellation.

5.6 INDEMNIFICATION.

5.6.1 Producer. Producer shall indemnify and hold harmless Insurer and its employees, representatives, parents, affiliates, Policyholders, shareholders, directors, officers, successors and assigns against any and all liabilities, losses, damages, penalties, fines, claims, demands, causes of action, proceedings and expenses (including reasonable attorneys' fees) asserted against, or suffered or incurred by Insurer, that result from or arise out of (i) Producer's negligent, recklessness or willful misconduct, (ii) Producer's failure to perform any of its duties or obligations under this Agreement or (iii) Producer's breach of any covenant under this Agreement.

5.6.2 Insurer. Insurer shall indemnify and hold harmless Producer and its Employees, parents, affiliates, shareholders, directors, officers, successors and assigns against any and all liabilities, losses, damages, penalties, fines, claims, demands, causes of action, proceedings and expenses (including reasonable attorneys' fees) asserted against, or suffered or incurred by Producer, that result from or arise out of (i) Insurer's recklessness or willful misconduct, (ii) Insurer's failure to perform any of its duties or obligations under this Agreement or (iii) Insurer's breach of any covenant under this Agreement.

5.7 CONFIDENTIALITY. As used in this Section 5.7, "**Confidential Information**" shall mean any lists of the Policyholders and prospective Policyholders, any nonpublic information given by Insurer to Producer relating to the Policyholders and prospective Policyholders and all nonpublic information designated as "confidential" by Insurer. Producer, and its Employees agree to hold the Confidential Information in strictest confidence and agree not to copy, disclose, distribute, disseminate or communicate in any way or form the Confidential Information to any person or entity. Producer, and its Employees, agree not to use the Confidential Information, whether for their own benefit or for the benefit of any other person or entity, except to the extent necessary to perform the duties and obligations provided for or contemplated by this Agreement or for any other purpose that Insurer may authorize in writing. Producer shall advise its Employees of the obligations of confidentiality, nondisclosure and nonuse of the Confidential Information under this Agreement and shall require such Employees and

employees to comply with such obligations. The obligations under this Section 5.7 shall remain in effect for a period of three (3) years following the termination of this Agreement. In addition to any obligations of Producer under Section 4.3, upon the termination of this Agreement, Producer shall promptly return to Insurer all correspondence, letters, documents, computer data and other tangible materials and copies thereof in its possession relating in any way to the Confidential Information, whether or not such documents or other tangible materials were generated by Producer. Producer acknowledges and agrees that all Confidential Information shall be and remain the sole and exclusive property of Insurer. This Section shall survive any termination of this Agreement.

5.8 ADVERTISING MATERIAL AND INTELLECTUAL PROPERTY. Producer shall not use in any manner any name, service mark, trademark, logo or any other intellectual property (collectively the “IP”) owned or used by Insurer, any affiliate of Insurer, or any successor entity of any of the foregoing without the specific prior written consent of Insurer, such affiliate, or such successor entity, as the case may be. Producer shall not have the right to modify or remove any copyright, trademark, or service mark notice placed upon IP materials. Producer agrees not to translate, adapt, vary, modify, distribute, sell, assign, exchange or license any IP, in whole or in part, whether in hardcopy or in electronic format, and that Insurer reserves all rights not expressly granted herein. Producer shall promptly deliver to Insurer all IP in Producer’s possession upon the occurrence of a Termination Event. This Section shall survive any termination of this Agreement.

6. MISCELLANEOUS PROVISIONS

6.1 BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

6.2 ASSIGNMENT. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned by any party without the prior written consent of the other party.

6.3 AMENDMENTS. Insurer may amend the Commission Schedule pursuant to Section 3.1; otherwise, this Agreement may be amended only by an instrument in writing executed by all the parties, which writing must refer to this Agreement.

6.4 NO THIRD-PARTY BENEFICIARIES. Nothing in this Agreement, express or implied, is intended or shall be construed to confer on any person or entity, other than the parties to this Agreement, any right, remedy or claim under or with respect to this Agreement.

6.5 NOTICES. All notices and other communications under this Agreement must be in writing and shall be deemed to have been given if delivered personally, mailed by certified mail, return receipt requested, or sent by facsimile (with confirmation) to a party at the following address or facsimile number (or at such other address or facsimile number as a party may designate by like notice to the other party):

If to Producer:
Name: _____
Attention: _____
Address: _____

Facsimile: (_____) _____ - _____
Phone: (_____) _____ - _____

If to Insurer:
ODS Health Plan, Inc.
Attention: Marketing Department
601 W. 5th Avenue Suite 305
Anchorage, Alaska 99501
Facsimile: 907-278-2900
Phone: 907-278-2626

Any notice or other communication shall be deemed to be given (i) on the date of personal delivery, (ii) at the expiration of the third (3rd) day after the date of deposit in the United States mail, or (iii) on the date of confirmed delivery by facsimile.

6.6 CONSTRUCTION. The captions used in this Agreement are provided for convenience only and shall not affect the meaning or interpretation of any provision of this Agreement. All references in this Agreement to “Section” or “Sections” without additional identification refer to the Section or Sections of this Agreement. All words used in this Agreement shall be construed to be of such gender or number

as the circumstances require. Whenever the words “include” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.”

6.7 COUNTERPARTS. This Agreement may be executed in counterparts, each of which will be considered an original and all of which together will constitute one and the same agreement.

6.8 FURTHER ASSURANCES. Each party agrees (i) to execute and deliver such other documents and (ii) to do and perform such other acts and things, as any other party may reasonably request, in order to carry out the intent and accomplish the purposes of this Agreement.

6.9 WAIVER. Any provision or condition of this Agreement may be waived at any time, in writing, by the party entitled to the benefit of such provision or condition. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

6.10 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska, without regard to conflict of laws principles.

6.11 ATTORNEYS’ FEES. If any arbitration, suit or action is instituted to interpret or enforce the provisions of this Agreement, to rescind this Agreement or otherwise with respect to the subject matter of this Agreement, the party prevailing on an issue shall be entitled to recover with respect to such issue, in addition to costs, reasonable attorneys’ fees incurred in preparation or in prosecution or defense of such arbitration, suit or action as determined by the arbitrator or trial court, and if any appeal is taken from such decision, reasonable attorneys’ fees as determined on appeal.

6.12 ARBITRATION. Any dispute, controversy or claim arising out of or relating to this Agreement shall be settled by arbitration. Unless the parties otherwise agree, the arbitration shall be administered by the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in the circuit court in the county in which the arbitration occurs, and the resolution of the disputed matter as determined by the arbitrator shall be binding on the parties. There shall be one arbitrator who shall be a retired Federal or state court judge with a minimum of three years of judicial experience or shall have such alternate qualifications which are mutually agreeable to the parties. If the parties fail to mutually agree upon an arbitrator within twenty (20) days after a written demand for arbitration, the arbitrator shall be selected in accordance with the applicable rules of the American Arbitration Association. Any arbitration shall be conducted in Anchorage, Alaska, in accordance with the following provisions:

(a) Except as otherwise provided in this Section 6.12, the arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

(b) Arbitration proceedings under this Agreement may be consolidated with arbitration proceedings pending between other parties if the arbitration proceedings arise out of the same transaction or relate to the same subject matter. Consolidation will be by order of the arbitrator in any of the pending cases, or if the arbitrator fails to make such an order, the parties may apply to any court of competent jurisdiction for such an order.

(c) A party may, without inconsistency with this Agreement, seek from a court any interim or provisional relief that may be necessary to protect the rights or property of that party pending the establishment of the arbitration (or pending the arbitrator’s determination of the merits of the dispute, controversy or claim).

(d) The arbitrator shall have authority to issue preliminary and other equitable relief.

(e) Discovery proceedings of the type provided by the Federal Rules of Civil Procedure shall be permitted both in advance of, and during recesses of, the arbitration hearings. Any dispute relating to such discovery shall be resolved by the arbitrator.

(f) The arbitrator shall have the discretion to order a pre-hearing exchange of information by the parties and an exchange of summaries of testimony of proposed witnesses.

(g) The arbitrator shall have the authority to award any remedy or relief that an Alaska court could order or grant, including, without limitation, specific performance of any obligation created under this Agreement, the issuance of an injunction, or the imposition of sanctions for abuse or frustration of the arbitration process, except that the arbitrator shall not have authority to award punitive damages or any other amount for the purpose of imposing a penalty as opposed to compensating for actual damage suffered or loss incurred.

(h) The award shall be in writing, shall be signed by the arbitrator and shall include a statement regarding the disposition of any claim. The award shall be kept confidential to the fullest extent permitted by law.

6.13 INJUNCTIVE AND OTHER EQUITABLE RELIEF. The parties agree that the remedy at law for any breach or threatened breach by a party may, by its nature, be inadequate, and that the other parties shall be entitled, in addition to damages, to a restraining order, temporary and permanent injunctive relief, specific performance and other appropriate equitable relief, without showing or proving that any monetary damage has been sustained.

6.14 EXHIBITS. The exhibits referenced in this Agreement are a part of this Agreement as if fully set forth in this Agreement.

6.15 SEVERABILITY. If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired.

6.16 ENTIRE AGREEMENT. This Agreement (including any exhibits referred to in this Agreement) constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter. Each party certifies that it has not modified, changed or altered, in any way, any provision of this Agreement prior to the execution hereof.

6.17 SIGNATORY AUTHORITY. Producer represents and warrants that the person signing this Agreement has the authority to do so, and is entering into this Agreement on behalf of Producer and all existing and future Employees.

PRODUCER:

Individual/Company Name

By: _____
Signature

Printed Name

Title (if signing on agency's behalf)

INSURER:

ODS HEALTH PLAN, INC.

By: _____
Signature

Printed Name

Title