

**DIRIGO HEALTH AGENCY – HARVARD PILGRIM HEALTH CARE**  
**GROUP HEALTH INSURANCE AGREEMENT**

This Group Health Insurance Agreement (hereinafter sometimes referred to as the “Agreement”), effective as of January 1, 2008, is by and between the Dirigo Health Agency, an independent executive agency of the state of Maine and having a place of business located at 211 Water Street, Augusta, Maine 04334 (hereinafter sometimes referred to as the “DHA”) and Harvard Pilgrim Health Care, Inc., a Massachusetts non-profit corporation having a place of business located at 93 Worcester Street, Wellesley, MA 02481, on behalf of itself and its affiliates and subsidiaries, including HPHC Insurance Company, Inc. and Health Plans, Inc., (hereinafter sometimes referred to collectively as “HPHC”).

WHEREAS, Dirigo Health Agency was established by the Maine Legislature pursuant to P.L. 2003, Chapter 469 to arrange for the provision of comprehensive, affordable healthcare coverage to eligible small employers, their employees and dependents, and certain individuals on a voluntary basis; and

WHEREAS, Dirigo Health Agency has been designated as an “Other Group” within the meaning of 24-A M.R.S.A. §2808; and

WHEREAS, Dirigo Health Agency in its capacity as an “Other Group” desires to contract with HPHC to offer affordable group health insurance; and

WHEREAS, HPHC agrees to provide Dirigo Health Agency with affordable group health insurance to make available to Dirigo Health Agency eligible employers and eligible individuals and to provide certain administrative and other services to Dirigo Health Agency.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and undertakings contained in this Agreement, HPHC and DHA (hereinafter sometimes referred to collectively as the “Parties” or individually as the Party) hereby agree as follows:

**ARTICLE 1 - DEFINITIONS**

For purposes of this Agreement and any addenda, attachments or schedules to this Agreement, the following words and terms have the following meanings unless the context or use clearly indicates another meaning or intent.

- a. **AGREEMENT PERIOD.** The period of time from 12:00 a.m. on January 1, 2008 through 11:59 p.m. on December 31, 2008; provided, however, the agreement period may be extended as provided in Article 7.
- b. **AMENDMENT.** An addition, change, correction, or revision to the terms and conditions of the Subscriber’s Certificate.
- c. **APPLICATION FOR DHA EMPLOYER INSURANCE (AGI).** The form on which the DHA Employer applies for coverage.
- d. **BENEFITS.** Payments HPHC makes on the Member’s behalf for Covered Services under the Contract.
- e. **BILLED CHARGES.** The amount which appears on a Member’s Claim form (or other written notification acceptable to HPHC that Covered Services have been provided) as the Provider’s charge for the services rendered to a Member, without any adjustment or reduction and irrespective of any separate reimbursement contract between the Provider and HPHC.
- f. **CERTIFICATE.** The document that specifies the Benefits available to Members under the Contract.
- g. **CLAIM.** Written or electronic notice of a request for Benefits for any hospital, medical, dental, vision, pharmacy or health related service in a format acceptable to HPHC.
- h. **CLAIM INCURRED DATE.** The date of hospital admission if the claim is for inpatient hospital services or the date that the service is provided to a Member if the Claim is for any other services. Only claims incurred

within the Agreement Period are subject to the terms of this Agreement. HPHC shall not be responsible for claims incurred prior to the Effective Date even if not yet paid by the prior carrier.

- i. **CMS.** Centers for Medicare & Medicaid Services.
- j. **COBRA.** Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.
- k. **COINSURANCE.** The percentage HPHC pays toward the cost of certain Covered Services and the percentage Members pay.
- l. **CONTRACT.** This Agreement, schedules, and any amendments thereto, the Certificates of Coverage and any amendments thereto, the DHA Self Employed Employer and DHA Eligible Individual applications and any coverage election forms submitted by the employees of the DHA Employers, the AGI, participation agreements, the Rate Sheet, and the Group Profile.
- m. **COPAYMENT.** A fixed dollar amount or percentage required to be paid by each Member for certain Covered Services under this Contract.
- n. **COVERED SERVICE.** Any hospital, medical, dental, vision, pharmacy or other health related service rendered to Members for which Benefits are available pursuant to the terms of the Certificate.
- o. **DEDUCTIBLE.** The amount the Member may be required to pay each year for certain Covered Services before Contract provides Benefits.
- p. **DHA ELIGIBLE EMPLOYEE.** An employee of a DHA Eligible Business who works at least 20 hours per week for that DHA Eligible Business. DHA Eligible Employee does not include an employee who works on a temporary or substitute basis or who does not work more than 26 weeks annually.
- q. **DHA ELIGIBLE INDIVIDUAL.** An individual who (1) resides in the State of Maine, (2) is not eligible for Medicare as a new enrollee with DirigoChoice, and (3) is (a) an unemployed individual; (b) an individual employed in a DHA Eligible Business that does not offer health insurance and has not provided the individual access to an employer-sponsored benefits plan in the twelve month period immediately preceding the DHA Eligible Individual's application; (c) an employer or employee of a DHA Eligible Business that offered DirigoChoice but that did not meet the 75% participation requirement; (d) an individual who does not work more than 20 hours a week for a single employer and is not self employed; (e) an early retiree (i.e. under age 65) who worked for an eligible business that does not contribute to the early retiree's health insurance coverage; (f) an individual who is employed by a household and works more than 20 hours a week and is not offered health insurance coverage by the household; or (g) an individual who is eligible for the Health Care Coverage Tax Credit (HCTC) program. Individuals and their eligible dependents are required to certify how they meet DHA Eligible Individual eligibility.
- r. **DHA ELIGIBLE BUSINESS.** A business that employs at least two but not more than 50 eligible employees, the majority of whom are employed in the State of Maine, including a municipality that has 50 or fewer employees.
- s. **DHA EMPLOYER.** An employer that has qualified for group health insurance under the DirigoChoice program. These employers may be referred to in the aggregate as DHA Employers.
- t. **DHA SELF EMPLOYED EMPLOYER.** The owner of a business in which the owner is the only employee and from which they derive fifty percent (50%) or more of their income. A Self Employed Employer must work and reside in Maine.
- u. **DIRIGOCHOICE.** The comprehensive health benefits coverage, including wellness programs, offered by the DHA to DHA Employers, DHA Self Employed Employers and DHA Eligible Individuals.
- v. **DOL REGULATIONS.** United States Department of Labor Regulations.
- w. **EFFECTIVE DATE.** This Agreement shall be effective as of 12:00 a.m. on January 1, 2008.
- x. **ERISA.** The Employee Retirement Income Security Act of 1974, as amended.
- y. **EXCLUSION.** Services for which HPHC will not provide Benefits.

- z. **GRACE PERIOD.** The 30 days that begins with and follows the due date of an unpaid Subscription Charge.
- aa. **GROUP IDENTIFICATION NUMBER (GID).** The identifying number assigned to DHA Employers or subgroups of DHA Employers.
- bb. **GROUP PROFILE.** The form that provides details about the DHA Employer. DHA requires that specific portions of the Group Profile must be completed as a precondition to coverage.
- cc. **HIPAA.** Health Insurance Portability and Accountability Act of 1996.
- dd. **HOSPITAL.** A facility which provides medical or surgical care to patients for a continuous period longer than twenty-four (24) hours and which is not primarily providing psychiatric, rehabilitative, drug or alcoholism treatment.
- ee. **HPHC DATA.** Data generated from the HPHC systems relating to HPHC's book of business, including but not limited to, enrollment, billing, terminations, membership changes, claims and service.
- ff. **HPHC DIRIGOCHOICE DATA.** Data generated from the HPHC systems relating specifically to DirigoChoice Members, including but not limited to, enrollment, billing, terminations, membership changes and claims.
- gg. **IDENTIFICATION CARD.** The card HPHC issues showing the Subscriber or Member name and Certificate number.
- hh. **INCREMENTAL CHARGES.** The portion of the Subscription Charge that accounts for reduced deductibles and out of pocket expenses for discount eligible DirigoChoice Members. The Incremental Charges represent the difference between the Group F unsubsidized premium and the Group B, C, D or E premium, as applicable, for the plan in which a Subscriber and his or her eligible dependents are enrolled.
- ii. **LINES OF COVERAGE.** The benefit plans available to Members under this Agreement, as determined by the Certificate.
- jj. **MEDICARE.** Title XVII of the United States Social Security Act, Medical Care for the Aged and Disabled.
- kk. **MEMBER and PLAN MEMBER.** The individuals, including the Subscriber and his/her dependents, as defined in the Certificate, who have satisfied the Plan eligibility requirements of the DHA Employer, applied for coverage, and been enrolled for DirigoChoice Benefits. This term shall include DHA Eligible Employees, DHA Self Employed Employers, DHA Eligible Individuals and their dependents, as defined in the Certificate, who have applied for coverage and have been enrolled for DirigoChoice Benefits.
- ll. **MEMBERSHIP FEE.** The Membership Fee is the annual contribution made by a DHA Employer, DHA Self Employed Employer and DHA Eligible Individual to Dirigo Health Agency in order to participate in DirigoChoice. For DHA Employers, the amount of the fee is based on the number of participating employees in the employer's DirigoChoice program. The Membership Fee provides access to DirigoChoice services, including the Financial Discount Program and enhanced wellness programs. The Membership Fee will be divided over the plan year and added to the monthly invoice from the carrier.
- mm. **OBRA.** Omnibus Budget Reconciliation Act of 1986.
- nn. **PAID CLAIM.** The amount paid to a Provider for Covered Services provided during the term of this Agreement consistent with HPHC's reimbursement policies. Paid Claims shall also include any applicable interest, claim surcharges or other state or government agency assessments, including the Savings Offset Payment, if applicable, and any Claims paid pursuant to pilot or test programs.
- oo. **PARTICIPATING PROVIDER.** A physician, health professional, hospital, pharmacy, or other individual, organization and/or facility that has entered into a contract, either directly or indirectly, with HPHC to provide Covered Services to Members at negotiated fees.
- pp. **PHCS.** Private Health Care Systems. PHCS is an arrangement whereby HPHC can process Claims for Benefits received by Members outside of Massachusetts, Maine and New Hampshire while accessing the

reimbursement arrangement between a Provider and the PHCS network. Members receiving Benefits from a Provider in the PHCS network are generally responsible for cost sharing at the in-network level.

- qq. **PLAN.** The state-sponsored program under which DHA Eligible Individuals, DHA Self Employed Employers and DHA Employers receive comprehensive health benefits coverage, including wellness programs, for themselves or their DHA Eligible Employees, as applicable.
- rr. **PLAN ADMINISTRATOR.** The Plan Administrator is a DHA Employer that maintains an employer-sponsored group health plan which is subject to ERISA.
- ss. **PRODUCER.** An independent contractor licensed to engage in insurance producer activities.
- tt. **PROVIDER.** A duly licensed person, organization or facility that provides health services or supplies within the scope of an applicable license and meets any other requirements set forth in the Certificate.
- uu. **RATE SHEET.** The document that lists the rates for coverage under this Contract.
- vv. **SAVINGS OFFSET PAYMENT (SOP).** In any year in which there is an assessment by the Dirigo Health Board of Directors based on the aggregate measurable cost savings resulting from Dirigo Health initiatives, the Savings Offset Payment is the Plan Year Assessment that HPHC applies based on the aggregate measurable cost savings resulting from the Dirigo Health initiatives and determined by the Dirigo Health Board of Directors, subject to any applicable regulatory approval. For purposes of the SOP assessment, paid claims are those claims, as defined in the Dirigo Health Agency Rules, that are subject to the assessment.
- ww. **SUBSCRIBER or PLAN SUBSCRIBER.** A DHA Eligible Employee, DHA Self Employed Employer or DHA Eligible Individual who is enrolled in DirigoChoice.
- xx. **SUBSCRIPTION CHARGE.** The rates established by HPHC as consideration for Benefits offered in the Contract.
- yy. **SUMMARY OF BENEFITS.** An overview of the Covered Services described in the Certificate.
- zz. **TEFRA.** Tax Equity and Fiscal Responsibility Act of 1982 and Deficit Reduction Act of 1984.
- aaa. **TERMINATION DATE.** The date on which a Member's coverage ends.
- bbb. **VENDOR.** A person or entity other than a Provider or Hospital that provides services pursuant to a contract with HPHC.

## ARTICLE 2 - ADMINISTRATIVE SERVICES PROVIDED BY HPHC

- a. General Scope of Administrative Services:
  - 1. Coverage under DirigoChoice will be underwritten on a fully insured basis by Harvard Pilgrim Health Care's affiliate HPHC Insurance Company, Inc. and will be primarily administered by its subsidiary, Health Plans, Inc. (HPI). HPHC Insurance Company, Inc. will be the sole insurance carrier of DirigoChoice for the Agreement Period.
  - 2. HPHC will underwrite and administer coverage for all current DirigoChoice Members, except for Group A Members, as of the Effective Date. HPHC will offer DirigoChoice plans known as Group B, C, D, E and F coverage. These DirigoChoice plans will be Preferred Provider Organization (PPO) plan designs. DirigoChoice shall not require Members to designate or use a primary care provider (PCP) in order to obtain Benefits.
  - 3. With the exception of the exclusion of the Group A Plan, the Plan will have the same subsidy structure in place for 2008 as it had in place for 2007.
  - 4. HPHC will provide Covered Services to Members as described in the DirigoChoice Certificate at Schedule A of this Agreement, attached hereto and incorporated herein by reference, effective January 1, 2008, subject to finalization and approval of the Certificate by the Bureau of Insurance.

- b. HPHC shall administer the enrollment of DHA Eligible Employees, DHA Self Employed Employers, and DHA Eligible Individuals and termination of Members applying its enrollment operating procedures subject to the provisions of this Contract.
1. In connection with the transfer of existing DirigoChoice Members to HPHC as of the Effective Date, DHA will provide HPHC with initial eligibility files, which include demographic data, group income eligibility data, and in-force Subscription Charges and Incremental Charges, for all current DirigoChoice Members. Any such files shall further contain sufficient information for HPHC to verify the continued eligibility of all such DirigoChoice Members. All existing DHA Employers and DirigoChoice Members who transfer to HPHC as of the Effective Date shall be bound by the terms and conditions of the Contract, including the Certificate, as of the Effective Date and upon payment of Subscription Charges to HPHC by them or on their behalf, as applicable.
  2. In connection with any subsequent enrollments in DirigoChoice, HPHC shall determine initial eligibility for membership in DirigoChoice, other than subsidy eligibility. HPHC shall, with the assistance of DHA, respond to all direct routine inquiries made to it by DHA Eligible Businesses, DHA Eligible Employees, eligible DHA Self Employed Employers, and DHA Eligible Individuals concerning eligibility in DirigoChoice. Unless otherwise specifically provided in the Certificate, HPHC shall apply its applicable administrative practices and procedures and enrollment policies, which may be revised or modified from time to time, in connection with the performance of its responsibilities hereunder.
- DHA Eligible Employees may enroll in DirigoChoice during the employers' annual open enrollment period. Eligible DHA Self Employed Employers and DHA Eligible Individuals may enroll in DirigoChoice as permitted by the Plan; provided that such Members may only change their coverage option upon their anniversary date unless otherwise agreed to by the Parties. The enrollment of such individuals, other than during open enrollment period, shall take place in accordance with applicable law and the applicable Certificate issued by HPHC. All DHA Eligible Individuals, DHA Self Employed Employers and DHA Employers that re-enroll with DirigoChoice after the Effective Date shall be bound to the terms and conditions of this Contract, including the Certificate, as of their renewal date and upon payment of Subscription Charges to HPHC by them or on their behalf, as applicable.
- c. HPHC shall perform the following Claims administration services:
1. Process Claims, including investigating and reviewing such Claims to determine what amount, if any, is due and payable with respect thereto in accordance with the terms and conditions of the Contract. In processing Claims, HPHC shall perform coordination of benefits ("COB") services in accordance with applicable HPHC policies, procedures and practices, which may be revised or modified from time to time, unless alternative provisions for COB are indicated in the Certificate.
  2. HPHC will utilize its medical policy, utilization management and quality improvement policies, case management and administrative practices and procedures which may be revised or modified from time to time to determine Benefits.
  3. HPHC shall not be responsible for the administration or payment of Claims incurred by Members before the Effective Date.
- d. HPHC agrees to serve as a fiduciary solely to perform the processing of Claims and appeals of Claims. HPHC shall have all the powers necessary and appropriate to enable it to carry out its Claims appeal processing duties. This includes, without limitation, the right and discretion to interpret and construe the terms and conditions of the Benefits described in the Certificate, subject to the Claims review provisions as described in this Agreement, if any. HPHC's interpretation and construction of this Agreement and Certificate in the course of its processing of any appeal of a Claim shall be binding upon the Plan, DHA, DHA Employers and Members. DHA designates HPHC to undertake fiduciary responsibilities exclusively in connection with the processing of Claims and appeals of Claims. HPHC and DHA agree that HPHC shall have no fiduciary responsibility in connection with any other element of the administration of the Plan.
- e. HPHC shall administer complaints and appeals according to HPHC's complaint and appeals policy, unless as otherwise provided in the Certificate. Despite this authority, HPHC may process and pay non-covered Claims on an exception basis if it deems appropriate.

- f. HPHC shall have the authority to build and maintain its Provider network, which shall entail its standard commercial PPO network for Benefits received in Massachusetts, Maine and New Hampshire and PHCS, or other applicable networks, for Benefits received outside of Massachusetts, Maine and New Hampshire. Benefits will be subject to HPHC's applicable provider reimbursement and payment policies. If applicable to Benefits as indicated in Schedule A of this Agreement, HPHC shall administer referral, authorization or certification requirements. HPHC shall also have the authority to waive any such referral, authorization or certification. Additionally, HPHC may utilize and/or make available to Members such other networks as it deems necessary for the benefit of Members and/or for the reasonable administration of DirigoChoice. In addition, HPHC shall have the authority to change its administrative practices and procedures which it deems are necessary or appropriate for the effective utilization and administration of Covered Services, provided, however, changes to the Certificate may only be made as provided in Article 6.
- g. Consistent with the provisions of Schedule A of this Agreement, HPHC shall have the authority to perform case management on an individual basis. Case management is a feature that allows, but does not require, HPHC to customize Benefits by approving otherwise non-Covered Services for the purpose of assuring care is provided in an appropriate and cost effective setting.
- h. Consistent with the provisions of Schedule A of this Agreement, HPHC shall have the authority, in its discretion, to institute from time to time, pilot or test programs regarding case management, disease management or wellness initiatives which may result in the payment of benefits not otherwise specified in the Certificate. HPHC reserves the right to discontinue a pilot or test program at any time with advance notice.
- i. In the event that HPHC determines that it has paid a Claim in an amount less than the amount due under the Certificate, HPHC will promptly adjust the underpayment. If it is determined by HPHC that any Benefits have been provided for an ineligible person, or that an overpayment has been made, HPHC will make reasonable efforts to collect such amounts but shall not be required to initiate or maintain any judicial proceeding to make the recovery as described in Article 20 of this Agreement.
- j. HPHC shall respond to inquiries by Members regarding requests for Benefits under DirigoChoice.
- k. In processing Claims in accordance with the Certificate, HPHC shall provide notice in writing when a Claim for Benefits has been denied, setting forth the reasons for the denial, the right to a full and fair review of the denial under the terms of DirigoChoice, and otherwise satisfying applicable regulatory requirements governing notice of a denied Claim.
- l. HPHC shall issue Identification Cards which will include the DirigoChoice logo to each Member who enrolls in DirigoChoice. Such Identification Cards shall be for the administration of Members' Benefits under DirigoChoice.
- m. HPHC shall provide certificates of creditable coverage as required by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") with respect to Members' participation in DirigoChoice for which HPHC provides services.
- n. HPHC shall provide the DHA Eligible Individuals, DHA Self Employed Employers and DHA Employers the current Directory of Healthcare Providers as well as the appropriate website information in the enrollment packets.
- o. HPHC shall provide the DHA Employers with information necessary to enable Members to effectively access Benefits described in the Certificate, including, but not limited to, Claim forms and Claim filing instructions, and shall periodically update DHA Employers on changes which may affect DirigoChoice.
- p. HPHC reserves the right to pay Benefits to either Providers or Subscribers, but consistent with Maine law regarding assignment of benefits.
- q. HPHC, through MedImpact or other Vendors, shall provide the following prescription drug management services:
  - 1. HPHC shall offer the DHA Employers, DHA Self Employed Employers and DHA Eligible Individuals a network of pharmacies that have entered into or are governed by contractual arrangements with MedImpact under which such pharmacies agree to provide pharmacy services to Members and accept negotiated fees for such services (the "Network Pharmacies"). MedImpact shall determine which

pharmacies shall be Network Pharmacies, and the composition of Network Pharmacies may change at any time. If applicable to the Covered Services and as described in Schedule A of this Agreement, HPHC will furnish a drug formulary for use with DirigoChoice. DHA hereby adopts such formulary, and any changes to the formulary made by HPHC, as part of the design of DirigoChoice. Unless the Parties agree otherwise, on termination of the Agreement, DHA shall cease adoption and use of the drug formulary as part of DirigoChoice.

2. MedImpact shall arrange for the processing of prescription drug Claims in accordance with the Certificate.
  3. HPHC shall offer the DHA Employers, DHA Self Employed Employers and DHA Eligible Individuals, through its Vendor, a mail order pharmacy program, through which Members may receive mail order prescription drug services. HPHC shall also provide all necessary forms and procedural information to Members to obtain such services.
- r. On behalf of DHA, HPHC shall produce and maintain a master copy of the Certificate and make Amendments to the master copy of the Certificate and incorporate the approved Amendments.
  - s. HPHC agrees to provide Members and Subscribers with a dedicated toll free telephone number that will direct Members and Subscribers to the designated customer service team for DirigoChoice.
  - t. HPHC agrees to provide Members and Subscribers with an experienced claims team (DHA Claims Team) and an experienced service team (DHA Service Team).
  - u. HPHC agrees to produce and distribute all standard communication material and collateral necessary for communication to DirigoChoice Members, applicants, Participating Providers and producers for the normal operation of the DirigoChoice program. HPHC and DHA will work together to develop the content and layout of these standard documents.

### **ARTICLE 3 - OBLIGATIONS OF DIRIGO HEALTH AGENCY**

- a. The DHA shall furnish to HPHC initial information regarding eligible groups and Members and paperwork relating to the HPHC compliance and enrollment process. DHA is responsible for determining the specific subsidy eligibility of persons and advising HPHC in a timely manner, through a method agreed upon by HPHC and DHA.

Members who are determined to be ineligible for Benefits under DirigoChoice shall be terminated from DirigoChoice. The Benefits of such Members shall terminate as of the date he or she became ineligible. HPHC will have no obligation to pay Benefits for persons no longer eligible for coverage. Further, if HPHC has paid Benefits for persons no longer eligible because HPHC was provided inaccurate eligibility information, HPHC did not receive timely notification of termination, or HPHC received notice of a retroactive change to enrollment, then HPHC shall take back from Providers the amount it has provided in Benefits. In no event shall HPHC be obligated to implement a request for a retroactive enrollment or termination with an effective date more than sixty (60) days prior to the date of receipt of such request. Acceptance of payment of Subscription Charges from the DHA or the provision of Benefits to persons no longer eligible will not obligate HPHC to continue to provide Benefits unless mutually agreed upon by HPHC and DHA.

- b. In determining any Member's right to Benefits under the Certificate, and in performing its other obligations as set forth in Article 2, HPHC shall rely on subsidy eligibility information furnished by the DHA. It is mutually understood that the effective performance of this Agreement by HPHC will require that it be advised on a timely basis by the DHA during the term of this Agreement of the identity of the Members eligible for Benefits under DirigoChoice. Such information shall identify the effective date of eligibility.
- c. DHA acknowledges that a DHA Employer that maintains an employer-sponsored group health plan serves as Plan Administrator and named fiduciary with respect to that employer's member employees and shall have all discretionary authority and control over the management of such plan, and all discretionary authority and responsibility for the administration of such plan except as provided in Article 2(d) of this Agreement. HPHC does not serve either as Plan Administrator or as a named fiduciary of the Plan or a DHA Employer's employer-sponsored group health plan other than as a fiduciary for processing Claims and appeals of Claims. All functions, duties and responsibilities of HPHC are governed exclusively by the Contract. DHA and HPHC acknowledge that if an employer's plan is not governed by the provisions of ERISA as provided

under law, then to that extent, the provisions of this Agreement that assume or require the application of ERISA shall be null and void.

- d. It is understood and agreed that any notice, election form, collection of fees, or communication regarding Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), or any other applicable law governing continuation of health care coverage shall be the sole responsibility of a DHA Employer subject to such laws and not HPHC.
- e. DHA acknowledges that it is the DHA Employer's sole responsibility, and not HPHC's, to comply with the federal Family and Medical Leave Act ("FMLA") and the State Family Medical Leave Act in connection with certain Subscribers on leave. The DHA authorizes HPHC to request evidence satisfactory to HPHC of the applicability of the FMLA to DHA Employer's Members.
- f. DHA Employer agrees to and shall notify Subscribers of their right to apply for Benefits and make available to them Claim forms and Claim filing instructions. Claim forms and Claim filing instructions shall also be supplied to the Members by HPHC upon request.
- g. DHA agrees to and shall notify all Subscribers in the event of termination of this Agreement.
- h. DHA agrees to and shall collect those contributions from DHA Employers, DHA Self Employed Employers, and DHA Eligible Individuals that are required by DHA for participation in the Plan.
- i. DHA Employers shall have the sole responsibility to develop procedures and determine if a medical child support order is a "qualified" medical child support order and shall perform all administration relating to such determinations, including providing all appropriate notification to HPHC.
- k. DHA Employers shall abide by HPHC's and DHA's Participation and Contribution Guidelines, as defined by HPHC and DHA and as permitted by applicable law.
- l. DHA will work with HPHC to develop an appropriate plan to transition accounts from Anthem Blue Cross Blue Shield to HPHC, and DHA shall use its best efforts to obtain information and data from Anthem Blue Cross Blue Shield necessary for HPHC to fulfill its responsibilities under this Agreement.

#### **ARTICLE 4 – FINANCIAL TERMS AND PAYMENT PROCEDURES**

- a. In mutual consideration of the respective responsibilities set forth in this Agreement, DHA and HPHC have agreed to the financial terms set forth in Schedule B, attached hereto and incorporated herein by reference.
- b. DHA Employers shall be solely responsible for the payment of the Group F Subscription Charges described in Schedule B to HPHC for all Members covered under DirigoChoice. DHA shall be responsible for the Incremental Charges payments due consistent with Schedule B.
- c. DHA Eligible Individuals and DHA Self Employed Employers shall be solely responsible for the Group F Subscription Charges less any applicable discount as determined by DHA. DHA shall be responsible for payment to HPHC of the discount and Incremental Charges.
- d. HPHC will generate and distribute monthly the DHA Employer (list bill) and individual invoices as mutually agreed upon by the Parties.
- e. The Parties will adhere to the payment procedures set forth in Schedule D, attached hereto and incorporated by reference.



## **ARTICLE 5 - NOTICES**

- a. Any notice or demand under this Agreement shall be deemed sufficient when made in writing as follows: to DHA, by first class mail, personal delivery, or overnight delivery with confirmation capability, to the Executive Director; to HPHC, by first class mail, personal delivery, or overnight delivery with confirmation capability, to the Chief Operating Officer of HPHC.
- b. A notice or demand shall be deemed to have been given as of the date of mailing or, in the case of personal delivery, as of the date it is placed into the hands of any agent, officer, or employee of the Party to who such notice or demand is directed. For purposes of this paragraph, HPHC shall not be deemed to be an agent of the DHA nor shall the DHA be deemed an agent of HPHC.
- c. DHA will timely distribute to Subscribers any notices of changes or other information relating to this Agreement that may be addressed or directed to the Members enrolled under DirigoChoice.
- d. DHA shall be obligated to provide all notices to Members as necessary to effectuate any change in or termination of the Agreement.

## **ARTICLE 6 - CHANGES IN THE CERTIFICATE AND AGREEMENT**

- a. In the event DHA seeks to change the provisions of the Certificate, the request must be made in writing to HPHC not less than ninety (90) days prior to the requested effective date of such change. If HPHC does not agree to administer Benefits consistent with such change, HPHC will notify DHA within thirty (30) days. After receipt of HPHC's notification of its refusal to change the provisions of the Certificate, the Parties shall use their best efforts to resolve any disagreement over such changes informally within thirty (30) days of such notice. If such informal discussions are unsuccessful, DHA may request that the parties submit to dispute resolution. If, after participation in dispute resolution, no mutually agreeable resolution is reached, HPHC shall have the right to terminate this Agreement by giving thirty (30) days written notice, unless DHA withdraws such request. HPHC's incorporation of the changes into the Certificate shall constitute acceptance of the change by HPHC.
- b. No waiver, modification or change in any provision of this Agreement, including but not limited to changes at renewal or changes to the Certificate, shall be effective unless and until approved in writing by a representative of both HPHC and the DHA evidenced by an amendment or new schedule attached to this Agreement. In the event changes to the provisions of the Certificate are mandated as a result of a change to any state and/or federal law, HPHC shall have the right to make such changes to the Certificate to comply with the law without prior notice to DHA, but shall provide timely notice to DHA of any such changes.

## **ARTICLE 7 – AGREEMENT PERIOD; TERMINATION AND/OR SUSPENSION OF PERFORMANCE**

- a. This Agreement shall terminate, without any notice to the other Party or action required by any Party, at the end of the Agreement Period, unless the requirements in subsection (1) below are met.
  - 1. Notwithstanding the foregoing, the Agreement shall automatically renew for a successive one-year period from 12:00 a.m. on January 1, 2009 through 11:59 p.m. on December 31, 2009, if and only if, by August 31, 2008 the provisions of both (a) and (b) are met:
    - (a) One of the following provisions are met:
      - (i) The DHA certifies in writing to HPHC that the DirigoChoice program has sufficient funds to operate the Dirigo program for all of calendar year 2009 with the same subsidy structure as in 2008; or
      - (ii) The DHA proposes and certifies in writing to HPHC an alternative subsidy structure for the DirigoChoice program consistent with available funding and HPHC, in its sole discretion, agrees to extend the Agreement through 2009 under such alternative subsidy structure. The DHA shall offer HPHC an exclusive right of first refusal with respect to administering DirigoChoice in 2009 under such alternative subsidy structure and shall also discuss such structure and consider any comments of HPHC about it before making a formal proposal to HPHC; and

(b) The rates for 2009 have been agreed to by the Parties and, if required, approved by the Bureau of Insurance.

Unless the Agreement Period is extended as set forth in this Article 7, this Agreement shall terminate as of 12:00 a.m. on January 1, 2009. Upon termination of this Agreement under this overall section (a), DHA Employers, DHA Self Employed Employers and DHA Eligible Individuals shall remain liable for all Subscription Charges due to HPHC for coverage up to the effective date of termination, and DHA shall remain liable for any Subscription Charges received by DHA and for any applicable discounts or Incremental Charges related to payments up to the Termination Date. HPHC will provide DHA, or its then current carrier or third party administrator, with eligibility and claim files, as well as any other data deemed necessary to administer the Plan within HPHC's reasonable systems capabilities and consistent with all applicable privacy laws, rules and regulations.

- b. Notwithstanding any other provision of this Agreement, if DHA fails to make any timely payment due under this Agreement or pays only a portion of the payment due under this Agreement, HPHC shall have the right to (1) terminate this Agreement, effective at the end of the last period for which full payment was made, or (2) suspend performance of its obligations under this Agreement, and DHA acknowledges and agrees that in such event HPHC shall have no liability to any Member or DHA Employer. Notwithstanding such termination or suspension of Claims payment under this Agreement, HPHC may, in its sole discretion accept late payment of delinquent amounts and, upon acceptance, this Agreement may be reinstated. Any such acceptance of a delinquent payment by HPHC shall not be deemed a waiver of the provisions of this Article 7(b) in the event of any future failure of the DHA to make timely payment of the amounts due under this Agreement. In no event shall HPHC have any obligation to pay any Benefits under the Agreement unless and until all required payments have been and are paid in full when due. This Article 7(b) is subject to the provisions of any applicable grace period and to any applicable provision of the Maine Insurance Code. Payment shall be considered not timely if made more than thirty (30) days after its due date.
- c. Notwithstanding any other provisions of this Agreement, if DHA fails to substantially comply with any of its other duties and obligations under this Agreement, HPHC shall have the right (1) to terminate this Agreement by giving DHA at least thirty (30) days prior written notice of termination, or (2) upon at least thirty (30) days written notice to DHA to suspend performance of its obligations under this Agreement; provided, however, nothing in this Article 7(c) shall relieve HPHC of any liability it may have to any Member or Subscriber prescribed by the Maine Insurance Code. The Parties agree that DHA shall have a reasonable period of time, not to exceed sixty (60) days to cure a breach of this Agreement and, upon acceptance in writing by HPHC that a breach is cured, this Agreement may be reinstated retroactive to the date of the breach or suspension of performance; provided that such cure opportunity shall not apply to DHA's failure to certify the funding and program structure for 2009 as set forth in section (a), above.
- d. Notwithstanding any other provisions of this Agreement, if HPHC fails to substantially comply with its duties and obligations under this Agreement, DHA shall have the right to (1) terminate this Agreement by giving HPHC at least thirty (30) days prior written notice of termination, or (2) upon at least thirty (30) days written notice to HPHC to suspend performance of its obligations under this Agreement. The parties agree that HPHC shall have a reasonable period of time, not to exceed sixty (60) days to cure a breach of this Agreement and, upon acceptance in writing by DHA that a breach is cured, this Agreement may be reinstated retroactive to the date of the breach or suspension of performance.

#### **ARTICLE 8 – PHCS**

HPHC will make available its arrangement with PHCS to Members under their Certificate. PHCS is an arrangement whereby HPHC can process Claims for Benefits received by Members outside of Massachusetts, Maine and New Hampshire while accessing the reimbursement arrangement between a Provider and the PHCS network. Members receiving Benefits from a Provider in the PHCS network are generally responsible for cost sharing at the in-network level. HPHC in its sole discretion may substitute another vendor for the provision of this out-of-area network access.

#### **ARTICLE 9 – NO LIABILITY**

It is expressly understood and agreed by DHA that in performing its obligations under this Agreement, HPHC is not engaged in the practice of medicine and that no Hospital, Provider or Vendor acts as agent for or on behalf of HPHC. HPHC shall be responsible only for performing the services described in this Agreement consistent with applicable

requirements of state and federal law. DHA acknowledges and agrees that nothing contained in this Agreement shall confer upon DHA, the Plan, or Members any right or cause of action, either at law or in equity, against HPHC for acts or omissions of any Hospitals, Providers or Vendors from which any Members receive services.

#### **ARTICLE 10 - DATA REPORTS**

HPHC agrees to produce standard reports on the DirigoChoice program. HPHC and DHA will work together to determine the content, layout and periodicity of these reports.

#### **ARTICLE 11 - CLAIMS AUDIT**

HPHC shall adhere to the requirements of the Maine Uniform Accounting and Auditing Practices for Community Agencies Act, 5 M.R.S.A. § 1660-C et seq., as required by such law.

#### **ARTICLE 12 – PROPRIETARY INFORMATION**

- a. Each Party agrees to treat all proprietary information concerning DHA's operations, the Plan's operations and HPHC's operations in a confidential manner.
- b. HPHC owns and shall continue to own all rights, title and interest in and to the systems, procedures, methodologies and practices used by it in connection with the Claims processing, Claims payment and utilization monitoring functions of the Plan, together with the Participating Provider network, the negotiated fees, terms and discounts with Providers, billing and enrollment systems, Claims processing, Claims history and utilization data and information (collectively, the "HPHC Proprietary Information"), all of which is proprietary, confidential and a trade secret of HPHC. DHA shall have no right, title or interest in or to HPHC Proprietary Information. DHA agrees that it and any of its agents will treat all HPHC Proprietary Information in a confidential manner.
- c. Neither Party shall disclose proprietary information (whether that of the DHA or HPHC Proprietary Information) to any other person without the prior written consent of the Party that holds the right, title and interest in the information. Nothing in this Article 12 shall prohibit the disclosure of any information required by law, but in the event of any such disclosure, the disclosing Party shall immediately notify the other Party in writing, describing the circumstances of and extent of the disclosure.
- d. HPHC acknowledges and agrees to perform its reporting obligations to the Maine Health Data Organization (MHDO) consistent with state and federal regulations.
- e. This Article shall survive termination of this Agreement.

#### **ARTICLE 13 - LIMITATION ON ACTIONS**

No lawsuit may be filed on a claim made in connection with this Agreement after the expiration of three (3) years from the date on which the claim arose. Any disputes between the Parties in connection with this Agreement shall be resolved pursuant to Article 22.

#### **ARTICLE 14 - NO WAIVER**

- a. The failure of either Party to enforce or insist upon compliance with any provision of this Agreement, in any instance, shall not be construed as or constitute a waiver of the right to enforce or insist upon compliance with such provision in the future.
- b. No failure or delay by HPHC to exercise any right or to enforce any obligation herein, and no course of dealing between DHA and HPHC, shall operate as a waiver thereof. No single or partial exercise of any right or failure to enforce any obligation hereunder shall preclude any other or further exercise thereof or the right to exercise any other right or enforce any other obligation. No notice to or demand on DHA will entitle it

to any other or further notice or demand in other circumstances, or constitute a waiver of HPHC's right to any other or further action in any circumstance without notice or demand.

#### **ARTICLE 15 – SEVERABILITY**

In the event that any provision of this Agreement or the applicability thereof to any person or circumstance is held invalid by competent judiciary or regulatory authority, it shall not affect the validity or enforceability of any other provision of this Agreement. In the event a provision of this Agreement is severed by a judiciary or regulatory authority, the Parties will negotiate in good faith an amendment to this Agreement that addresses the consequences of any such severance.

#### **ARTICLE 16 – ASSIGNMENT**

Unless it has first obtained the written consent of a representative of the other Party, neither Party may assign this Agreement, in whole or in part, to any other person. HPHC may, however, without the consent of or notice to DHA, assign or otherwise transfer its rights and obligations hereunder, in whole or in part, to: (i) any affiliate of HPHC; or (ii) any entity surviving a transaction involving the merger, acquisition, consolidation, or reorganization of HPHC, or in which all or substantially all of HPHC's assets are sold. Any assignee of rights, obligations or benefits under this Agreement shall be subject to all of the terms and provisions of this Agreement.

#### **ARTICLE 17– GOVERNING LAW**

Except to the extent preempted by applicable federal law, this Agreement shall be governed by, and shall be construed in accordance with, the laws of the state of Maine but without giving effect to its rules governing conflict of laws.

#### **ARTICLE 18– SERVICE MARKS**

DHA, on behalf of itself and its Members acknowledges its understanding that this Agreement constitutes a contract solely between DHA and HPHC, that HPHC is an independent corporation, and that DHA further acknowledges and agrees that it has not entered into this Agreement based upon representations by any person other than HPHC and that no person, entity or organization other than HPHC shall be held accountable or liable to it for any of HPHC's obligations to DHA created under this Agreement. This paragraph shall not create any additional obligations whatsoever on the part of HPHC other than those obligations created under other provisions of this Agreement.

HPHC acknowledges that DIRIGOCHOICE and the DIRIGOCHOICE logo (hereafter "the marks") are service marks of the Dirigo Health Agency, an agency of the State of Maine, that the Dirigo Health Agency has the exclusive right to use, and to license use of, the marks to identify the services of procuring, organizing and administering health insurance and associated preventive care plans, and that such use will not conflict with any service marks of HPHC. HPHC is hereby granted a license to use the marks during the term of this Agreement solely for the purpose of identifying services it is providing to eligible members of the general public pursuant to this agreement and the DIRIGOCHOICE services provided by the Dirigo Health Agency. It is a condition of this license that HPHC's use of the marks not bring disrepute on the Dirigo Health Agency or any other agency of the State of Maine. DHA shall not utilize HPHC's service or trade names or service or trade marks without HPHC's prior written consent.

#### **ARTICLE 19 – RELATIONSHIP OF THE PARTIES**

- a. DHA and HPHC are separate legal entities. Nothing contained in this Agreement shall be deemed to constitute them as partners, members, agents or representatives of the other, nor shall either Party have the expressed or implied right or authority to assume or create any obligation on behalf of or in the name of the other Party through its actions, omissions or representations.
- b. DHA is not responsible for the services and Benefits provided by HPHC, but is simply agreeing that DHA Eligible Employees, DHA Self Employed Employers and DHA Eligible Individuals and their dependents have the option of enrolling in DirigoChoice as underwritten and administered by HPHC. In holding itself out to administer the services specified under this Agreement, HPHC does not act for the benefit of DHA.

- c. DHA acknowledges and agrees that HPHC is obligated to provide Benefits for a Member only so long as it receives the appropriate payments described in this Agreement and so long as DHA is in full compliance with the terms, conditions, covenants and obligations found in this Agreement.

#### **ARTICLE 20 - HPHC AS RECOVERY AGENT**

HPHC retains the sole right, but not the obligation, to pursue recovery of Paid Claims administered on behalf of Members under this Agreement. HPHC shall establish recovery policies, determine which recoveries are to be pursued, initiate and pursue litigation when it deems this appropriate, incur costs and expenses and settle or compromise recovery amounts. DHA and HPHC agree that HPHC shall not initiate overpayment recovery efforts more than 12 months after a payment was received by a physician, except where otherwise permitted by law.

#### **ARTICLE 21 - ENTIRE AGREEMENT**

- a. The following documents will constitute the entire Agreement between the Parties: this Agreement, schedules and any amendments thereto, the Certificate of Coverage and any Amendments thereto, the DHA Self Employed Employer and DHA Eligible Individual applications, any coverage election forms submitted by employees of DHA Employers, participation agreements, the AGI, the Group Profile, and the Rate Sheet.
- b. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- c. This Agreement supersedes any and all agreements regarding this subject matter, including any and all amendments thereto, whether written or oral, previously entered into between HPHC and DHA.

#### **ARTICLE 22 – DISPUTE RESOLUTION**

- a. The Parties agree to attempt to resolve any dispute, claim or controversy relating to this Agreement in accordance with this Article 22.
- b. The Parties shall attempt in good faith to dispose of any dispute by mutual agreement within twenty (20) days of written notice of the dispute being given to the other Party by the Party aggrieved.
- c. Any dispute, claim or controversy that cannot be resolved by mutual agreement shall be subject to mediation by a single mediator selected by the Parties by agreement.
- d. If a dispute, claim or controversy is not resolved through mediation, then either Party may pursue whatever legal remedies that may be available.
- e. This Article 22 shall survive the termination or expiration of this Agreement.

#### **ARTICLE 23 - HIPAA**

- a. The DHA agrees that it will be in compliance with all requirements involving the use or disclosure of protected health information as provided for in 45 C.F.R. Part 164. Each Party's duties and responsibilities in connection with the requirements imposed by HIPAA and regulations promulgated thereunder are set forth in a separate Business Associate Agreement between the Parties at Schedule C, attached hereto and incorporated herein by reference.
- b. In the event that the Plan submits claims or eligibility inquiries or any other HIPAA Covered Transaction as defined in 45 CFR Part 160 and 162 to HPHC through electronic means, the Plan and HPHC shall comply with all applicable requirements of HIPAA, and Plan and HPHC shall require any of their respective agents or subcontractors to comply with all applicable requirements of HIPAA.

## ARTICLE 24 - MISCELLANEOUS

- a. The headings and subsections of this Agreement shall be disregarded in its interpretation.
- b. Neither DHA nor HPHC shall be required to perform any term, condition, or covenant in this Agreement as long as such performance is delayed or prevented by any acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, acts of terrorists, acts of war or terrorism, or any other cause not reasonably within the control of DHA or HPHC and which by the exercise of due diligence DHA or HPHC is unable, wholly or in part, to prevent or overcome.
- c. Nothing contained herein shall be deemed to constitute HPHC as an agent for service of legal process for the Plan or the DHA.
- d. HPHC shall not use DHA's name and DHA shall not use HPHC's name in any release or printed forms making material representations about the other Party's processes or obligations hereunder without the prior written approval of the other Party.
- e. The Parties acknowledge that HPHC is not engaged in the practice of medicine; it merely makes decisions regarding the coverage of services for Benefits under the terms of DirigoChoice. The DHA acknowledges that under HPHC's contracts with Providers, such Participating Providers acknowledge that they are responsible for all medical judgments regarding the treatment of their patients, regardless of HPHC's coverage determinations, and such Participating Providers further acknowledge that they must exercise independent medical judgment regarding the treatment of their patients, regardless of HPHC's coverage determinations. In exercising medical judgment, physicians and other Providers under contract with HPHC act on their own and not on behalf of or as agents for HPHC or the Plan.
- f. In addition to any other provision providing for survival upon termination of this Agreement, the Parties' rights and obligations under Articles 7 and 12 shall survive the termination of this Agreement.
- g. Equal Employment Opportunity: During the performance of this Agreement, HPHC agrees as follows:
  1. HPHC shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation unless related to a bona fide occupational qualification. HPHC shall take affirmative action to ensure that applicants are employed and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, or physical or mental disability, or sexual orientation.
  2. Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship.
  3. HPHC shall, in all solicitations or advertising for employees placed by or on behalf of HPHC relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, or physical or mental disability, or sexual orientation.
  4. HPHC shall send to each labor union or representative of the workers with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement a notice to be provided by the contracting agency, advising the said labor union or workers' representative of HPHC's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  5. HPHC shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of service to include accessibility and reasonable accommodations for employees and clients.
  6. Contractors and subcontractors with contracts in excess of \$50,000 and directly involved with the services to be provided under this Agreement shall also pursue in good faith affirmative action programs to be evidenced by applicable compliance with law provisions in their contracts.
  7. HPHC shall cause the provisions in subsections (1) through (4) above, or a general compliance with law provision, to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not

apply to contracts or subcontracts for standard commercial supplies or raw materials or other materials or services not related to the services covered by this Agreement.

- h. **Employment and Personnel:** HPHC shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. HPHC shall not engage on a full-time, part-time or other basis during the period of this Agreement, any other personnel who are or have been at any time during the period of this Agreement in the employ of any State Department or Agency, except regularly retired employees, without the written consent of the State Purchases Review Committee. Further, HPHC shall not engage on this project on a full-time, part-time or other basis during the period of this Agreement any retired employee of the Department who has not been retired for at least one year, without the written consent of the State Purchases Review Committee. HPHC shall cause the foregoing provisions or a general compliance with law provision to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials or other materials or services not related to the services covered by this Agreement.
- i. **State Employees Not To Benefit:** No individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise there from directly or indirectly that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise there from directly or indirectly due to his employment by or financial interest in HPHC or any affiliate of HPHC, without the written consent of the State Purchases Review Committee. HPHC shall cause the foregoing provisions or a general compliance with law provision to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials or other materials or services not related to the services covered by this Agreement.
- j. **Warranty:** HPHC warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for HPHC, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Department shall have the right to annul this Agreement without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
- k. **Governmental Requirements:** HPHC warrants and represents that it will comply with all relevant governmental ordinances, laws and regulations.
- l. **Notice Of Claims:** HPHC shall give the DHA immediate notice in writing of any legal action or suit filed related in any way to the Agreement or which may affect the performance of duties under the Agreement, and prompt notice of any claim made against HPHC by any subcontractor which may result in litigation related in any way to the Agreement or which may affect the performance of duties under the Agreement.
- m. **Approval:** The Parties acknowledge that this Agreement must have the approval of the State Controller and the State Purchases Review Committee before it can be considered a valid, enforceable document.
- n. **Non-Appropriation:** Notwithstanding any other provision of this Agreement, if the DHA does not receive sufficient funds to fund this Agreement and other obligations of the DHA, if funds are de-appropriated, or if the DHA does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the DHA is not obligated to make payments under this Agreement. The occurrence of any of the foregoing eventualities may be deemed by HPHC to be a default of the DHA, in which event, HPHC may terminate this Agreement without penalty and pursue any remedy available to it either at law or in equity.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by affixing the signatures of duly authorized representatives.

Dirigo Health Agency

Title: Chairman of the Board

Date: \_\_\_\_\_

Title: Executive Director

Date: \_\_\_\_\_

Harvard Pilgrim Health Care, Inc.

Title: Chief Operating Officer

Date: \_\_\_\_\_



**SCHEDULE A  
TO  
DIRIGO HEALTH AGENCY – HARVARD PILGRIM HEALTH CARE  
GROUP HEALTH INSURANCE AGREEMENT  
CERTIFICATE**

**SCHEDULE B  
TO  
DIRIGO HEALTH AGENCY – HARVARD PILGRIM HEALTH CARE  
GROUP HEALTH INSURANCE AGREEMENT  
FINANCIAL TERMS**

This Schedule supplements and amends the Agreement between DHA and HPHC by providing certain financial terms. If there are any inconsistencies between the terms of the Agreement and this Schedule B, the terms of this Schedule B shall control.

Section 1.        General Conditions

The following general financial conditions apply to the Agreement between DHA and HPHC:

- A. HPHC will provide coverage under DirigoChoice on a fully insured basis. There will be no risk sharing between HPHC and DHA.
- B. HPHC will develop two sets of rates for DirigoChoice -- one for DHA Eligible Individuals and DHA Self Employed Employers and another for DHA Employers. Rates may be developed separately from HPHC's commercial individual and small group business, i.e. rates may be developed based solely on the experience of the DirigoChoice membership.
- C. In response to DHA's request that that HPHC administer coverage for all DirigoChoice Members effective January 1, 2008, HPHC will use its best efforts to replicate the current 2007 DirigoChoice premium rates for the period between January 1, 2008 and each DHA Employers or DHA Eligible Individual or DHA Self Employed Employer account's renewal date in 2008, subject to DHA providing HPHC with the in-force premium rates for DirigoChoice DHA Employer, DHA Eligible Individual or DHA Self Employed Employer Subscribers. Accounts with a January 1, 2008 renewal date will be charged and billed HPHC's rates effective January 1, 2008. Accounts with a renewal date after January 1, 2008 will be billed at HPHC's premium rates in effect for the quarter in which the account renews in 2008 or, if applicable, 2009.
- D. DHA Eligible Individual membership (excluding self-employed of one) in DirigoChoice will remain capped at fifty percent (50%) of total DirigoChoice membership for the duration of the Agreement. In the event that, due to a loss in small group and/or sole proprietor membership, DHA Eligible Individual membership exceeds fifty percent (50%) of total membership, HPHC may revise premium rates.
- E. HPHC may adjust rates quarterly. A DHA Employer rate and DHA Eligible Individual or DHA Self Employed Employer rates will remain in effect for a twelve-month period for the Subscribers who purchase coverage during any given month when the rates are in effect; provided that HPHC may revise such rates during a twelve-month policy period if there is a change in law or regulation increasing HPHC's cost of providing DirigoChoice, including, but not limited to, the addition of any benefit or the imposition of any tax or surcharge that is effective prior to the next anniversary date of the DirigoChoice policy for the DHA Eligible Individual, DHA Self Employed Employer or DHA Employer. HPHC will provide the DHA with a copy of any quarterly rates developed by HPHC, which shall be incorporated into this Agreement by reference as a material obligation.

Section 2.        Rates

The unadjusted community rates for DHA Employers, DHA Self Employed Employers and DHA Eligible Individuals for 2008 are:

- A. For DHA Employers for 2008, the rates set forth in Schedule B-1, attached hereto and incorporated herein by reference.
- B. For DHA Self Employed Employers and DHA Eligible Individuals for 2008, the rates set forth in Schedule B-2, attached hereto and incorporated herein by reference.

**SCHEDULE C  
TO  
DIRIGO HEALTH AGENCY – HARVARD PILGRIM HEALTH CARE  
GROUP HEALTH INSURANCE AGREEMENT  
BUSINESS ASSOCIATE AGREEMENT**

**SCHEDULE D  
TO  
DIRIGO HEALTH AGENCY – HARVARD PILGRIM HEALTH CARE  
GROUP HEALTH INSURANCE AGREEMENT  
PAYMENT PROCEDURES**

1. HPHC will bill DHA Employers the prorated amount of the Subscription Charge, based on Group F charges for all enrolled DHA Eligible Employees and COBRA enrollees of the DHA Eligible Employer
2. HPHC will bill DHA Eligible Individuals and DHA Self Employed Employers the prorated amount of the Subscription Charge, based on the discount determined by DHA and the discount calculations methods supplied by DHA.
3. HPHC and DHA will work together to develop the content and layout of these bills.
4. HPHC will generate and mail bills on or after the twentieth (20<sup>th</sup>) of the month prior to the month for which coverage is being billed. The due date is the first day of the month for which coverage is being billed.
5. DHA Employers, DHA Eligible Individuals, and DHA Self Employed Employers must remit their Subscription Charges to a DHA lock box. HPHC will have access to the information pertaining to payments in the DHA lock box. Funds will be deposited in a DHA account.
6. If Subscription Charge payments are not received within seven (7) days of the due date, HPHC will send a reminder to each DHA Employer, DHA Eligible Individual, and DHA Eligible Self Employed Employer whose payment has not been received. If payment of the Subscription Charges is not received within fourteen (14) days of the due date, DHA Eligible Employees, the Bureau of Insurance, DHA Eligible Employers, DHA Eligible Individuals, and DHA Self Employed Employers will be notified that HPHC will cancel coverage and the effective date of cancellation. If payment in full is not received within thirty (30) days of the due date, coverage will be cancelled as of the end of the month prior to the due date, unless otherwise agreed to by DHA and HPHC.
7. At the same time HPHC sends bills to DirigoChoice Members, HPHC will generate an invoice, broken out by DHA Employer, DHA Self Employed Employer and DHA Eligible Individual and send it to DHA. This invoice will include the past balance due from each DHA Employer, DHA Self Employed Employer, and DHA Eligible Individual and from DHA, and the current charges to the each DHA Employer, DHA Self Employed Employer and DHA Eligible Individual and to DHA, as well as any adjustments. DHA and HPHC will work together to develop the content and layout of this invoice.
8. DHA will remit the total due, including incremental costs and discount owed, to HPHC. DHA will remit to HPHC on a daily basis any payments received from DHA Employers, DHA Self Employed Employers and DHA Eligible Individuals. At the same time as it remits such payments, the DHA shall also remit to HPHC any corresponding Incremental Charges and discounts. Such Incremental Charges and discounts shall be due at the time the DHA receives payment from DHA Employers, DHA Self Employed Employers and DHA Eligible Individuals. DHA will not pay Incremental Charges or discounts for DHA Employers, DHA Self Employed Employers and DHA Eligible Individuals who have not paid for their portion of the Subscription Charges.
9. HPHC will include membership fees in the bills to DHA Employers, DHA Self Employed Employers and DHA Eligible Individuals. HPHC will collect membership fees and then remit them to DHA. Payments are applied to membership fees only after all outstanding coverage charges have been paid.
10. DHA and HPHC agree to work together in good faith to implement changes to the Billing Process in a timeframe and manner to successfully implement the interests of all of the Parties.
11. DHA is subject to a financial audit that includes the review of payments received by Members. HPHC agrees to provide the necessary historical data associated with an invoice given at least 10 days notice.