

MEMORANDUM

April 3, 2020

TO: Mayor John P. Kahl and Members of City Council

FROM: City Attorney's Office (Scott A. Brunton)

SUBJECT: Resolution Approving Prescription Benefit Manager Contract for the City's Group Health Insurance Plan

DISCUSSION: The service contract for the Prescription Benefit Manager for the City's self-funded Group Health Care Plan ("Plan") will expire at the end of the current fiscal year on April 30, 2020. The review and negotiation process has been completed with assistance from Consociate, the City's Third Party Administrator for the Plan, and Leaf Health, the Prescription Benefit Manager Consultant for the Plan. During this review process, the City's Insurance & Benefits Committee (the "Committee") has reviewed several options for receiving these required services and potential ways to save costs associated with the prescription drug benefits provided under the Plan.

Consociate, in consultation with Leaf Health, has developed a "master service agreement" arrangement with MedTrak Services LLC, the current Prescription Benefit Manager for the Plan. Under this master service agreement arrangement, Consociate is able to pool several employers' health plans, as a means to achieve larger savings in the prescription drug and Prescription Benefit Manager market. As provided in this master service agreement arrangement, each employer enters into a separate "client agreement" that is tied to and incorporates the master service agreement.

By entering into a master service agreement with MedTrak Services, the Plan and the City will save approximately 8% in prescription drug costs for the upcoming 2021 fiscal year. Additionally, MedTrak Services has provided the City with excellent customer service for many years and provides ongoing efforts to address cost increases in the prescription drug market. Accordingly, the Committee has recommended the approval of this master service agreement and client agreement arrangement with MedTrak Services for the upcoming 2021 Plan year.

Furthermore, due to the current health care and prescription drug environment and the continually evolving and changing landscape with various prescription drugs, including high-cost specialty drugs, the Committee is again recommending that the term of this new contract with MedTrak Services be for just one year with an optional one-year renewal term. By doing so, the Committee and the City will be in a position to capture potential cost savings on a year-to-year basis.

RECOMMENDATION: The Insurance & Benefits Committee, as well as our office, recommends that the Council pass this Resolution.

RESOLUTION NO. 1920-137

East Peoria, Illinois

_____ , 2020

RESOLUTION BY COMMISSIONER _____

**RESOLUTION REGARDING THE
PRESCRIPTION DRUG BENEFIT MANAGER
FOR THE CITY'S GROUP HEALTH INSURANCE PLAN**

WHEREAS, the City of East Peoria maintains a self-insured group health care plan ("Plan") for the benefit of its employees and retirees, and the City's Insurance and Benefits Committee oversees the Plan; and

WHEREAS, as part of the contract renewal process related to the Plan, the Insurance and Benefits Committee reviewed the service received from MedTrak Services LLC as the Plan's pharmacy benefit manager for providing the prescription drug and related benefits under the Plan, determining that the service from MedTrak Services has been excellent and that MedTrak Services continue to assist the Plan with implementation of cost saving measures from time to time; and

WHEREAS, in an effort to address the increasing costs of prescription drugs to the Plan, the Insurance and Benefits Committee has reviewed options for receiving pharmacy benefit manager services for the Plan with the assistance of Consociate, Inc. (the Third Party Administrator for the Plan) and Leaf Health (Prescription Benefits Manager Consultant); and

WHEREAS, as a means to increase the bargaining power of several employers' health plans, Consociate and Leaf Health have negotiated a "master service agreement" with MedTrak under which each employer enters into a separate "client agreement" that incorporates the provisions and group pricing terms under the master service agreement; and

WHEREAS, the Insurance and Benefits Committee has determined that an approximate 8% savings will be achieved for prescription benefits provided under the Plan by entering into the master service agreement and client agreement arrangement with MedTrak, Consociate, and Leaf Health; and

WHEREAS, the Insurance and Benefits Committee has again determined that it remains necessary and in the Plan's and the City's best interest to utilize a shorter term contract for pharmacy benefit manager services due to the constantly and rapidly evolving

health care and prescription drug environment in large part due to a continually changing landscape and high cost of specialty drugs; and

WHEREAS, based on the strong track record of service provided by MedTrak Services, the City's Insurance and Benefits Committee unanimously recommends that the City enter into a new one-year contract with a one-year renewal option, with MedTrak Services LLC, as the pharmacy benefit manager for the City's Plan under the Client Agreement, attached hereto as "Exhibit 1", which incorporates the provisions of the Master Service Agreement, attached hereto as "Exhibit 2";

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF EAST PEORIA, TAZEWELL COUNTY, ILLINOIS, THAT:

Section 1. The City adopts the recommendation made by the Insurance and Benefits Committee, as set forth above, thereby approving the Client Agreement with MedTrak Services LLC, attached as "Exhibit 1", and the Master Service Agreement with MedTrak, Consociate and Leaf Health, attached as "Exhibit 2", which will be effective from May 1, 2020, through April 30, 2021.

Section 2. The Mayor, or his designee, is hereby authorized and directed to execute the Client Agreement, attached as "Exhibit 1", together with such changes therein as the Mayor in his discretion may deem appropriate; provided, however that such Client Agreement shall not be binding upon the City until an executed original thereof has been delivered to MedTrak Services LLC and Consociate Inc.

APPROVED:

Mayor

ATTEST:

City Clerk

EXHIBIT 1

Client Agreement with MedTrak Services LLC

Exhibit E
Client Agreement

This **Client Agreement** (“Client Agreement”) is made and entered into by and between **MedTrak Services, L.L.C.** (“MedTrak”) and **the CITY OF EAST PEORIA**, with an address of __401 West Washington Street, East Peoria, IL 61611_____ and organized under the laws of the State of __Illinois_____ (“Client”). This Client Agreement shall be effective as of the 1 day of __May_____, 2020 (the “Effective Date”).

RECITALS

- A. MedTrak has previously entered into a Master Service Agreement with you TPA, Consociate, Inc. (“TPA”), for the provision of pharmacy benefit management services to employers, health plans and payors who are clients of TPA (the “Master Agreement”);
- B. Client is a current, or prospective and imminently certain future Client of TPA;
- C. Client has received from TPA a copy of the Master Agreement to which this Client Agreement relates, and has had the benefit of a full review and understanding of the Master Agreement prior to Client’s execution of this Client Agreement;
- D. Client acknowledges MedTrak’s execution of the Master Agreement and commitment to be bound hereunder as if MedTrak was a signator to this Client Agreement as well; and
- E. Client has chosen to obtain from MedTrak the PBM services described in the Master Agreement and as applicable to this Client Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in the Master Agreement and this Client Agreement, Client agrees with MedTrak as to the following terms and conditions:

STATEMENT OF AGREEMENT

- 1. **Capitalized Terms.** All capitalized terms not defined herein shall have the meaning ascribed to such terms in the Master Agreement.
- 2. **Term.** Subject to Paragraph 3 below, this Client Agreement will remain in full force and effect for an initial term of one (1) year commencing on the Effective Date hereof (the “Initial Term”). Upon expiration of the Initial Term, this Client Agreement will automatically renew for successive renewal periods of one (1) year each (each a “Renewal Period”), unless either party hereto provides written notice to the other party at least ninety (90) days prior to the expiration of the then-current term of its intent to either terminate or renegotiate this Client Agreement.
- 3. **Termination.** This Agreement may be terminated as provided in Article 6 of the Master Agreement. Neither party hereto may terminate this Client Agreement without cause or for no cause. Termination of the Master Agreement will not cause or be deemed to cause a termination of this Client Agreement, which in such case will continue in full force and effect subject to the provisions of Section 6.5 of the Master Agreement.
- 5. **Consulting Services.**
 - 5.1 **Consulting Fees.** Client has retained TPA and Consultant to provide certain services to Client, including without limitation, the negotiation with MedTrak of the financial terms of the Master Agreement (the “Consulting Services”), which Client has given TPA and Consultant the authority to negotiate. Client desires that MedTrak shall charge Client an additional amount—which amount is included in the pricing charged to Client—to compensate TPA and Consultant for such Consulting Services, and Client hereby directs MedTrak to forward to TPA and Consultant on Client’s behalf the amount of applicable fees as set forth and calculated in Exhibit C to the Master Agreement. Such fees will compensate TPA and Consultant for such Consulting Services performed on behalf of Client.
 - 5.2 **Acknowledgement.** The parties acknowledge and agree that this Paragraph 5 (including its sub-paragraphs), and the payment of the Consulting Fees do not affect the amounts owed by Client (or by TPA on behalf of

Client) to MedTrak under this Client Agreement; provided, however, that MedTrak is authorized to retain for its own benefit and not forward to TPA any amounts described in this Paragraph 5 (including its sub-paragraphs) if TPA (or Client, if and as applicable) fails to make timely payments to MedTrak for services provided by MedTrak hereunder.

6. **Client Agreement and Master Agreement.**

6.1 **Incorporation.** Client and MedTrak hereby acknowledge and agree that all provisions of the Master Agreement, including any and all attachments, exhibits and riders thereto, are hereby incorporated into this Client Agreement and made binding upon Client and MedTrak to the extent made applicable to such party. In the event of any conflict between this Client Agreement and the Master Agreement, the provisions of this Client Agreement shall prevail and control. Client hereby acknowledges and agrees that, pursuant to the Master Agreement, TPA is obligated to provide Client with a copy of the Master Agreement, and has in fact done so; and, Client agrees to all terms and conditions set forth in the Master Agreement, including without limitation, the financial terms set forth in Exhibit C thereto. MedTrak and Client each shall perform their respective duties, as described in the Master Agreement, as if such duties were made expressly a part of this Client Agreement.

6.2 **Payment.** Without limiting the generality of Paragraph 6.1 above, Client hereby expressly acknowledges and agrees that Client shall be solely, directly and ultimately responsible for the payment to MedTrak of any and all amounts required under Article 5 and Exhibit C of the Master Agreement for MedTrak's services provided hereunder; provided, further, that even if Client elects to make payments through TPA as may be permitted under Section 2.5 of the Master Agreement, Client shall remain jointly and severally liable with TPA for any failure to make any payments to MedTrak as may be required under the Master Agreement and/or this Client Agreement.

6.3 **Amendment.** In the event that the Master Agreement is amended in accordance with its terms, even if such amendment is between MedTrak and TPA, Client will be bound by the terms of any such amendment (including, without limitation, any amendment to the rates set forth in Exhibit C to the Master Agreement), unless Client provides MedTrak with notice of its intention to terminate this Client Agreement in accordance with this paragraph. Any such notice must be provided within fifteen (15) business days of Client's receipt of the notice of amendment and will be effective ninety (90) days following MedTrak's receipt of such notice. Pursuant to the Master Agreement, TPA is responsible for providing Client with notice of any amendment to the Master Agreement. Moreover, Client hereby expressly authorizes TPA to make any amendment to the Master Agreement from time to time, including any amendment to the rates set forth in Exhibit C, and Client agrees to be bound immediately by any such amendment to the extent it relates to any obligation or responsibility of Client under the Master Agreement and/or this Client Agreement.

7. **Miscellaneous.**

7.1 **Independent Contractors.** The parties are independent contracting parties, and nothing in this Client Agreement is intended to nor may anything in this Client Agreement be construed to create an agency, partnership, joint venture, employer/employee relationship, fiduciary relationship, or any other legal relationship between the parties other than or in addition to that of independent contracting parties. In the event an ambiguity or question of intent or interpretation arises, this Client Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Client Agreement. Each party acknowledges that it has been represented, or had the right to seek representation, by legal counsel in the negotiation and/or execution of this Client Agreement.

7.2 **Exclusivity.** Client acknowledges and agrees that MedTrak is and shall be the sole and exclusive provider of pharmacy benefit programs, pharmacy benefit management services, claim processing services, and any other PBM services described in the Master Agreement, to and on behalf of Client and Eligible Members.

7.3 **Notices.** All notices provided for herein must be in writing and sent by U.S. Certified Mail, return receipt requested, postage prepaid, or by overnight delivery service providing proof of receipt, to the other party's respective office or the addresses set forth in the first paragraph of this Client Agreement or below any party's written signature hereto. Each party may designate by notice any future or different addresses to which notices will be sent. Notices will be deemed delivered upon receipt or upon refusal to accept delivery. MedTrak and Client expressly acknowledge and agree that the notice provisions of the Master Agreement shall apply to the provision of notice by either MedTrak or Client pursuant to this Client Agreement.

7.4 **Entire Agreement.** This Client Agreement, including the Master Agreement, as incorporated herein, constitutes the entire agreement between the parties and supersedes any previous contract between the parties. Without limiting the generality of the foregoing, Client acknowledges and agrees that this Client Agreement, including the

Master Agreement, supersedes any other agreement for PBM services that Client may have (or may have had), directly or indirectly, with MedTrak.

8. **Signatory Authority**. Client hereby represents and warrants that the individual signing this Client Agreement on its behalf is duly authorized to bind Client to all terms and conditions of this Client Agreement, including the Master Agreement. Client further acknowledges and agrees that, as consideration for Client's execution of this Client Agreement, Client accepts MedTrak's signature on the Master Agreement as MedTrak's promise and obligation to be bound by all terms and conditions of the Master Agreement, as well as this Client Agreement.

9. **Business Associate Agreement**. As set forth in the Master Agreement, Client acknowledges that MedTrak is a Business Associate of Client and/or its Plan. Accordingly, the Business Associate Addendum between MedTrak and Client, as attached hereto as Attachment E-1, is hereby incorporated herein by reference and made binding upon each of MedTrak and Client respectively.

IN WITNESS WHEREOF, and in consideration of MedTrak's execution of the Master Agreement and commitment to be bound by the provisions thereof and hereof, Client has executed and delivered this Client Agreement by Client's duly authorized representative below.

CLIENT:

By: _____

Name: _____

Title: _____

EXHIBIT 2

**Master Service Agreement with MedTrak Services LLC
and Consociate Inc.**

MASTER SERVICE AGREEMENT

THIS MASTER SERVICE AGREEMENT is made effective as of January 1, 2020 (“Effective Date”), by and between MEDTRAK SERVICES, L.L.C., a Missouri limited liability company with its principal place of business located at 10895 Lowell Ave., Suite 100, Overland Park, Kansas 66210 (“MedTrak”), and CONSOCIATE, INC., an Illinois corporation, with its principal place of business at 2828 N. Monroe Street, Decatur, Illinois 62526 (“TPA”).

WHEREAS, MedTrak provides and administers pharmacy benefit management (“PBM”) services, as described in this Agreement, for Plan Sponsors that include entities such as the clients of TPA;

WHEREAS, TPA’s clients may desire to utilize the PBM Services of MedTrak to administer their respective Plan’s Pharmacy Benefit;

WHEREAS, TPA desires to arrange for MedTrak’s provision of PBM services to various Clients of TPA, and therefore desires to engage MedTrak’s services under the terms and conditions of this Agreement;

WHEREAS, MedTrak is willing to provide its PBM services to Clients of TPA, and therefore accepts such engagement with TPA under the terms and conditions of this Agreement; and

WHEREAS, both parties agree to the terms and conditions hereof.

NOW THEREFORE, in consideration of the mutual promises and agreements contained herein, MedTrak and TPA hereby agree as follows:

1. DEFINITIONS

1.1 “Agreement” shall mean this Master Service Agreement between MedTrak and TPA, as well as all exhibits and attachments hereto, as may be amended and modified from time to time.

1.2 “Cardholder” shall mean an Eligible Member to whom Client (or its TPA) or MedTrak has issued an identification card (or form), whose name and identification number appear on the identification card (or form), and whose identification card (or form) is valid.

1.3 “Claim” shall mean a request from a Participating Pharmacy or a Cardholder to process and adjudicate a Covered Medication for an Eligible Member.

1.4 “Client(s)” shall mean any Plan Sponsor that, through its relationship with TPA, executes a Client Agreement evidencing such Client’s desire to provide a Pharmacy Benefit to its Eligible Members as administered by MedTrak hereunder. Any reference to Client in the singular shall apply to all Clients hereunder as context dictates.

1.5 “Client Agreement” shall mean the contract to be executed by each Client for the benefit of MedTrak, in the form (or substantially the form) of Exhibit E, attached hereto and incorporated herein by reference, and which, explicitly or indirectly, shall incorporate all terms and conditions of this Agreement applicable to MedTrak’s performance of PBM services with respect to such Client.

1.6 “Covered Medication” shall mean any Drug Product prescribed by a Physician for an Eligible Member that meets the requirements for coverage as set forth in the Plan.

1.7 “Dependent” shall mean an Eligible Member who is related to a Cardholder, as identified by Client (or TPA).

1.8 “Drug Product” shall mean a drug whose active ingredient(s), strength(s), and dosage form are listed in the “Approved Drug Products with Therapeutic Equivalence Evaluations” (commonly known as the “Orange Book”), which is an official publication of the U.S. Food and Drug Administration (“FDA”).

1.9 “Eligible Member” shall mean an individual who is enrolled in a Plan and who is entitled to receive reimbursement for, or payment of, Covered Medications under the Pharmacy Benefit for the Plan in which the individual is enrolled.

1.10 “Formulary” shall mean a standard preferred list of Covered Medications, as determined by the MedTrak Pharmacy & Therapeutics Committee (or such other Pharmacy & Therapeutics Committee as designated by MedTrak and agreed to by Client or TPA), and provided, as necessary, to Physicians, Participating Pharmacies and/or Eligible Members as a guide to the prescribing, dispensing, and purchasing of Covered Medications.

1.11 “Participating Pharmacy” shall mean a duly licensed pharmacy that has signed a Pharmacy Services Agreement (or similarly named agreement) with MedTrak to provide Pharmacy Services to Eligible Members in accordance with the requirements in such agreement.

1.12 “Pharmacy Benefit(s)” shall mean the inclusions, limitations, and exclusions in coverage of Eligible Members, Participating Pharmacies, Physicians, and Covered Medications as set forth in the Plan and as may be amended from time to time by the Plan Sponsor.

1.13 “Pharmacy Services” shall include the dispensing of a Drug Product by a Participating Pharmacy, in accordance with all applicable state and federal laws governing the practice of pharmacy and in accordance with the standards of practice in the communities in which the Participating Pharmacy operates.

1.14 “Physician” shall mean any Doctor of Medicine or other health care practitioner who is legally authorized to prescribe Drug Products in the state(s) in which he/she is licensed.

1.15 “Plan” shall mean the agreement or other arrangement between an Eligible Member and his/her Plan Sponsor that entitles the Eligible Member to receive reimbursement for, or payment of, medical expenses, including, without limitation, Covered Medications.

1.16 “Plan Sponsor” shall mean an employer, employer coalition, health insurer, managed care organization, association, union health and welfare trust, government agency, third party administrator, or other such organization that is obligated to pay for Covered Medications dispensed to Eligible Members.

1.17 “Point-of-Sale” or “POS” shall mean the on-line, real-time telecommunication system used by MedTrak to communicate information regarding eligibility, Claims, drug utilization, and other information to a Participating Pharmacy.

1.18 “Start Date” shall mean, with respect to each Client Agreement, the effective date of each such Client Agreement.

1.19 “System” shall mean the hardware and the software used to process Claims.

2. DUTIES OF TPA

2.1 TPA agrees to inform Clients and potential clients, on a non-exclusive basis and in TPA’s sole discretion, about the PBM services of MedTrak made available under this Agreement; provided, that all such information shall be consistent with the rates, terms and conditions of this Agreement as applicable to Clients, and shall otherwise be consistent with MedTrak’s own informational and marketing materials, which may be made available by MedTrak to TPA from time to time upon request.

2.2 Prior to the commencement of PBM services to any Client, TPA shall use best efforts to ensure its Client executes a Client Agreement, and to deliver such executed Client Agreement to MedTrak. TPA further acknowledges and agrees to provide its Clients with a copy of this Agreement (including, without limitation, Exhibit C hereto) prior to, or no later than simultaneously with, such Client’s execution of a Client Agreement; and, provided further, upon any amendment to this Agreement (including, without limitation, any amendment to any rates set forth in Exhibit C), TPA shall immediately provide all its Clients with a copy of such amendment. MedTrak may refuse or delay its performance of PBM services hereunder with respect to any Client from whom MedTrak has not received an executed Client Agreement.

2.3 TPA shall provide to MedTrak electronic files reflecting an initial listing of all Eligible Members for any and all its new Clients with MedTrak. TPA shall also be responsible for updating the Eligible Member list to reflect all additions and terminations of Eligible Members from time to time. Such Eligible Member list must be provided to MedTrak at least thirty (30) days prior to implementation of a Client or upon such other timeframe as may be agreed between the parties in writing. The Eligible Member list shall contain such minimum information as MedTrak may reasonably request from time to time.

2.4 In the event MedTrak provides standard identification cards to TPA for delivery to Eligible Members, MedTrak shall not be responsible for any delay or lapse in services related to the delivery of cards to Eligible Members. The identification cards must conform to either applicable state requirements or National Council for Prescription Drug Programs (NCPDP) recommended guidelines and contain, without limitation, the Eligible Member's identification number and full name. Each TPA will ensure that such identification cards are distributed to their applicable Eligible Members at least five (5) business days prior to MedTrak's performance of PBM services for the applicable Client.

2.5 TPA acknowledges and agrees (and MedTrak acknowledges and agrees) that each Client shall be directly and solely responsible for payment of all applicable fees and charges due and owing to MedTrak from time to time pursuant to this Agreement and the Client Agreement; provided, however, TPA shall use its best efforts to reasonably assist MedTrak in the collection of any amounts due and owing from its Clients, as specified in Article 5 of this Agreement, that may be delinquent from time to time. Upon TPA's receipt from Client of any payment due and owing to MedTrak hereunder, TPA will remit such payment to MedTrak without withholding or offset by TPA for any reason, in accordance with Section 5 of the Agreement. The parties further acknowledge and agree that while Client has the ultimate responsibility to pay all applicable fees and charges due and owing to MedTrak from time to time hereunder, Client may elect to make such payments either: (a) directly to MedTrak; or, (b) to MedTrak through TPA. If Client elects to make such payments through TPA, then the following conditions shall apply: (w) Client and/or TPA shall give MedTrak notice in writing of Client's election to make such payments through TPA; (x) TPA shall have the obligation to make timely payments to MedTrak as set forth in Section 5.1 of this Agreement, where the same has been timely received from the Client; (y) TPA's failure to make any required payments to MedTrak hereunder on behalf of Client shall be deemed a material breach of this Agreement by TPA, subject to TPA having received the necessary funds from Client in order to make the required payment to MedTrak; and (z) notwithstanding anything in the foregoing to the contrary, Client shall remain ultimately liable for the payment to MedTrak of any fees and charges that may be due and owing from time to time. TPA shall only be liable for the payment to MedTrak of any fees and charges remitted by the Client for submission to MedTrak.

2.6 TPA acknowledges and agrees that MedTrak has no obligation whatsoever to pay Claims for Pharmacy Services provided by Participating Pharmacies to Eligible Members until TPA or Client makes such funds available to MedTrak for the payment of such Claims.

2.7 TPA represents and warrants that it has obtained any and all required state licenses, registrations and/or authorizations to perform the duties of a third party administrator on behalf of each Client.

2.8 TPA will accurately describe and represent, as the same has been provided to TPA by MedTrak, MedTrak's PBM services hereunder in all communications, including marketing and advertising materials to actual and potential Clients and/or their Eligible Members. TPA shall have no liability relating to or arising from the use of any information TPA receives from MedTrak.

2.9 TPA will reasonably cooperate with MedTrak on Client service and management issues and provide the following:

2.9.1 Assist in implementing MedTrak's PBM services by attending implementation meetings with Clients and performing other implementation activities as established and agreed to with MedTrak;

2.9.2 Promptly respond to questions raised by MedTrak or Clients in connection with MedTrak's PBM services that are being or will be provided under any Client Agreement; and

2.9.3 Perform other services as reasonably required to deliver the agreed upon services to Clients.

2.10 TPA will perform its obligations under this Agreement in accordance with any and all applicable laws, regulations, and rules.

2.11 TPA's authority to act on behalf of MedTrak is limited strictly to the express authority granted under this Agreement. TPA has no authority to bind or commit MedTrak to any obligation or to collect any payment on behalf of MedTrak (other than as set forth in this Agreement) and may make no representation, express or implied, that TPA has the authority to act on behalf of MedTrak.

2.12 TPA acknowledges and agrees that MedTrak owes no compensation to TPA except as may be set forth in Exhibit C or in any specific Client Agreement as may be directed by a Client. TPA further represents and warrants to MedTrak that TPA has disclosed, or will disclose to any Client prior to such Client executing a Client Agreement, the nature and amount (or if the exact amount is not known, then the calculation to be used to compute any such amount) of any compensation, fees, allowances or other payments that TPA, or any other broker, consultant or other third party with a relationship with TPA, may receive from MedTrak in connection with the Client and/or this Agreement.

2.13 All parties will maintain the confidentiality of all medical, prescription, and other healthcare information relating to Eligible Members, at all times in accordance with applicable federal and state laws and regulations. In performing its obligations hereunder, each party acknowledges that it may be required to receive and/or disclose individually identifiable "protected health information" as such term is defined in the Health Insurance Portability and Accountability Act of 1996, and the implementation regulations governing privacy and security of certain information thereunder ("HIPAA"). Accordingly, TPA acknowledges that it is a "Business Associate" of each of its Clients, as such term is defined in Section 160.103 of the HIPAA privacy regulations, and TPA further represents and warrants that it has executed a Business Associate agreement with each of its Client as required by HIPAA. Further, TPA acknowledges that MedTrak has warranted that it also is a Business Associate of Clients, and therefore, each Client will agree to a Business Associate Addendum in the form of Attachment E-1 to Exhibit E hereto, which shall be an addendum to each Client Agreement presented by TPA to its Clients for execution.

2.14 TPA shall provide written notice to each of its Clients of any amendment to this Agreement as soon as reasonably possible. Such notice shall include a copy of the amendment itself and, if necessary, a copy of this Agreement, as amended. Any such amendment, to the extent applicable to Client (including, without limitation, any amendment to any rates set forth in Exhibit C), shall become immediately binding upon both TPA and Client.

2.15 TPA shall provide MedTrak with notice of any of its Client's Pharmacy Benefit changes within one (1) month of the date when such changes will become effective (the "Benefit Change Date"), or if TPA seeks an earlier date, by a date mutually agreed upon in writing by the parties. Failure to provide MedTrak with notice of any such change within said period may result in postponement of the proposed Benefit Change Date at MedTrak's election.

3. DUTIES OF MEDTRAK

3.1 MedTrak agrees to provide, through its Participating Pharmacies, Covered Medications to Eligible Members in accordance with the terms of this Agreement, if such Eligible Members present a prescription order or refill from a Physician and a valid identification card (or form) at Participating Pharmacies signifying their entitlement to such Covered Medications.

3.2 MedTrak agrees to provide "Administration Services", as described in Exhibit A, including, but not limited to, the processing and adjudication of Claims for Covered Medications submitted by Participating Pharmacies for Eligible Members.

3.3 MedTrak shall allow Client (and TPA) to use the name of MedTrak for purposes of marketing, informing Eligible Members and others of the identity of Participating Pharmacies, and as otherwise necessary to carry out the terms of this Agreement. Notwithstanding the foregoing, MedTrak hereby reserves the right, in its sole discretion, to require Client (and/or TPA) to cease using the name of MedTrak for any reason whatsoever.

3.4 MedTrak shall use reasonable efforts to provide Client with assistance in coordinating and responding to formal complaints or appeals from Eligible Members under the Plan; however, MedTrak will not be responsible or liable in any manner for Client's compliance or non-compliance with the terms and conditions of the Plan or applicable laws or regulations regarding responding to Eligible Members' complaints or appeals. Client (or TPA) is solely responsible for the

review and final resolution of complaints from Eligible Members. MedTrak shall review the appeal of eligible denied claims pursuant to the process set forth on Exhibit B.

3.5 MedTrak acknowledges that in administering Client's Pharmacy Benefit, MedTrak will receive health information from Client and/or TPA such that MedTrak will be considered to be Client's "Business Associate," as that term is defined by the Health Insurance Portability and Accountability Act of 1996, and the implementation regulations governing privacy and security of certain information thereunder ("HIPAA"). Specifically, with respect to protected health information ("PHI") as that term is defined by HIPAA, MedTrak agrees to comply with the provisions in the Business Associate Addendum set forth on as Attachment E-1 to Exhibit E, attached hereto and incorporated by this reference.

3.6 MedTrak may, at its sole discretion, audit Participating Pharmacies to ensure the Participating Pharmacies' compliance with their contracts with MedTrak. Selection of Participating Pharmacies and the method of audit shall be determined solely by MedTrak. MedTrak, in its discretion, may perform the audit or select an outside firm to perform the audit. To compensate MedTrak for the cost of conducting such audits, MedTrak shall be entitled to retain twenty percent (20%) of any overpayment to any Participating Pharmacy that is detected and recovered as a result of any such audit, and which is attributable to a Plan or its Eligible Members; provided that MedTrak shall pay the balance of any such recovered overpayment to Client (or to the applicable TPA on behalf of Client as may be directed by Client), prorated to the amount attributable to Client's Plan or Eligible Members.

3.7 With respect to all services and programs provided under this Agreement, MedTrak shall not be liable in the event any such services or programs do not provide the intended savings to any Client, unless such savings amounts are explicitly stated in this Agreement.

4. DUTIES OF CLIENT

4.1 Client agrees and expressly acknowledges that MedTrak may deal directly with TPA, on Client's behalf, in all respects as if TPA were the Client for purposes of this Agreement, and Client waives any right to the contrary. Client further expressly acknowledges any act or omission by TPA shall be within the scope and authority of TPA and binding upon Client and that any agreement Client shall have with TPA shall have no bearing or effect on this Agreement.

4.2 Client (either directly or through TPA) shall provide MedTrak, thirty (30) days prior to the Start Date and as necessary thereafter, Eligible Member information, including, but not limited to, Cardholder name, Cardholder identification number, Cardholder address, Cardholder birth date, Cardholder eligibility begin date, Cardholder eligibility end date, Dependent name(s), Dependent birth date(s), Dependent eligibility begin date, and Dependent eligibility end date. Client (or TPA) shall provide such information in a format agreeable to MedTrak. Client agrees that MedTrak may act in reliance upon the accuracy of all Eligible Member information received from Client (or TPA).

4.3 Client (either directly or through TPA) shall distribute, or pay MedTrak to distribute in accordance with Exhibit C, the "Cardholder Information" described in Exhibit A to Cardholders upon receipt from MedTrak or TPA.

4.4 Client (and TPA) agrees to grant Participating Pharmacies the status of "Client Participating Pharmacies" and to identify such Participating Pharmacies as "Preferred Pharmacies", or other language of like import, on informational materials distributed to Eligible Members and others.

4.5 Client (and TPA) understands and agrees that MedTrak shall have the right to collect and use aggregate data on Covered Medications and that MedTrak shall have ownership rights to all such data and statistics. Client (and TPA) further understands and agrees that, in order to provide services hereunder, MedTrak may be required to submit data on Covered Medications to pharmaceutical manufacturers pursuant to the terms of agreements with those pharmaceutical manufacturers; provided, however, that such information furnished to pharmaceutical manufacturers shall not identify Eligible Members by name or otherwise, except in connection with any audit required by such pharmaceutical manufacturers.

4.6 Client (and/or TPA) shall not constrain MedTrak from communicating with Eligible Members and/or their Physicians, when necessary, to carry out MedTrak's obligations as set forth in this Agreement.

4.7 Client shall comply with the HIPAA provisions included in the Business Associate Addendum set forth on Attachment E-1 to Exhibit E, attached hereto and incorporated by this reference.

4.8 Client acknowledges and agrees that although Client may have delegated to TPA certain of Client's obligations or responsibilities related to this Agreement, Client is ultimately responsible for discharging all of the duties and obligations of the "Client" under this Agreement.

5. MEDTRAK COMPENSATION

5.1 In addition to its other obligations set forth in this Agreement and the Client Agreement, Client shall be directly responsible and obligated to pay MedTrak, by ACH, EFT, or other electronic form of payment acceptable to MedTrak (including payment through its TPA as may be permitted under Section 2.5 above), in either case in accordance with the reasonable payment instructions provided by MedTrak, the "Paid Claim Charges", "Miscellaneous Charges", "Program Charges", and all other applicable charges, which Client is obligated to pay, as defined and described in Exhibit D, and further elected in the applicable Client Agreement. Payment of Paid Claim Charges, Administration Charges, and all other applicable charges, shall be made twice a month within ten (10) days of the invoice statement date. Any and all payments due and owing to MedTrak hereunder shall be paid at the full amount specified in MedTrak's invoice, and may not be paid on a "claims adjudication" or similar claim-by-claim basis; provided, however, that in the event of any dispute that Client or TPA may have with respect to the invoiced amount, Client or TPA may withhold only such amount that is actually disputed, and for no longer than a period of thirty (30) days, during which time all parties shall cooperate in good faith to resolve the dispute; and, provided further, that if such dispute is not resolved within thirty (30) days, then Client or its TPA shall pay the full invoiced amount to MedTrak so that Participating Pharmacies may be paid, but the parties shall continue to cooperate in good faith to resolve the dispute, and if such resolution concludes that MedTrak was overpaid by Client or TPA, then MedTrak shall promptly refund such overpayment or issue an invoice credit for the immediate next invoice cycle. With respect to any non-payment to MedTrak lasting longer than the thirty (30) day period set forth above, Client shall pay interest at a rate of one and one-half percent per month on any balance due at the time of the next billing; however, in no event shall such interest rate be greater than the rate permitted by law. Client and TPA acknowledge that, in the event Client fails to pay any Paid Claim Charges, Miscellaneous Charges, Program Charges, other applicable charges, or interest due within thirty (30) days of the invoice statement date, MedTrak reserves the right (i) to immediately suspend all POS system activity and Pharmacy Services until Client makes payment to MedTrak in full and/or (ii) to offset any amounts owed by MedTrak to Client pursuant to this Agreement.

5.2 Client and TPA acknowledge that, in the event either Client or TPA requests MedTrak to provide services that are not defined in this Agreement, Client shall pay additional charges, which shall be mutually agreed upon by MedTrak and TPA in writing.

5.3 MedTrak uses Average Wholesale Price (often referred to as AWP, and as defined on Exhibit D) as its Drug Product pricing statistic to calculate "Paid Claim Charges," as defined and described in Exhibit D. If, for any reason, MedTrak decides to change its Drug Product pricing statistic ("Change Event"), then MedTrak shall notify TPA at least sixty (60) days prior to the implementation date of such change ("Change Date"). If the methodology for calculating Paid Claim Charges using the new Drug Product pricing source would result in a material increase or decrease in Paid Claim Charges, then the parties shall mutually agree on an adjustment factor to be applied to the Paid Claim Charges incurred on and after the Change Date that is equivalent to the Paid Claim Charges increase or decrease experienced Clients due to the Change Event. If the parties cannot mutually agree to an adjustment factor by the Change Date, then any party hereto may terminate this Agreement or the applicable Client Agreement upon thirty (30) days' prior written notice.

6. TERM

6.1 The term of this Agreement shall commence on the Effective Date and continue for a period of three (3) years (the "Initial Term"). At the end of the Initial Term, this Agreement shall automatically renew for successive one (1) year periods (each, a "Renewal Term"), unless either party hereto provides written notice to the other party at least ninety (90) days prior to the expiration of the then-current term of its intent to either terminate or renegotiate this Agreement. Notwithstanding the foregoing, TPA may terminate this Agreement for convenience by giving ninety (90) days' prior written notice.

6.2 Any party to this Agreement or Client Agreement may terminate such Agreement or Client Agreement, as applicable, if the other party materially breaches its obligations. The termination must be by written notice specifically identifying the breach, and such termination shall become effective thirty (30) days after the notice, unless the breach is corrected during the thirty (30)-day period (the "Cure Period"). MedTrak shall provide Pharmacy Benefit Administration

Services on all Covered Medications submitted prior to the termination date, but MedTrak shall have no other obligations to Client following the date of termination.

6.3 Client and TPA acknowledge and agree that during the term of any Client Agreement, MedTrak shall be the exclusive provider to each Client (not to include TPA) of the PBM services as set forth herein. During the term of any Client Agreement, no Client may engage directly or indirectly the services of any individual, proprietorship, partnership or corporation operating the same or similar business as MedTrak, including, without limitation, Pharmacy Services provided through the mail or other similar delivery system, to provide services with respect to each particular Client.

6.4 A breach by MedTrak of any material provision of this Agreement shall constitute a material breach of the Agreement and shall provide grounds for termination of the Agreement by TPA; provided MedTrak is unable to cure such breach within the applicable cure period provided in the Agreement. Notwithstanding the foregoing, TPA may terminate the Agreement, without penalty, effective immediately, if (i) MedTrak is named as a defendant in a criminal proceeding for a material violation under HIPAA; or (ii) a finding or stipulation that MedTrak violated any standard or requirement of HIPAA or any other applicable laws relating to the security or privacy of PHI, or which is entered against MedTrak in any administrative or civil proceeding in which MedTrak has joined.

6.5 Notwithstanding any other provision of this Agreement to the contrary, termination of this Agreement will not automatically cause or be deemed to cause a termination of any related Client Agreement, and, absent any permitted termination as may be provided below, all such Client Agreements shall continue in full force and effect in accordance with their terms and the terms of this Agreement as applicable to each such Client; provided, further, that following such termination of this Agreement, MedTrak may contact Clients in order to: (a) notify Clients of the termination of this Agreement and the continuation of their Client Agreements under the terms and conditions hereof; and (b) attempt in good faith to enter into direct agreements with each such Client, without TPA's involvement therein, under substantially similar terms and conditions as are set forth herein. In the event this Agreement is terminated, then with respect to any Client Agreement remaining in effect thereafter, each Client shall assume any and all of TPA's payment obligations hereunder as specifically applicable to Client (but not any other customers or clients of MedTrak except Client). Notwithstanding the foregoing provisions of this paragraph to the contrary, upon the termination of this Agreement and for a limited period of ninety (90) days thereafter, any Client shall have the unilateral right (but not the obligation), in its sole discretion, to terminate its Client Agreement by providing at least thirty (30) days' prior written notice to MedTrak.

7. CONFIDENTIALITY

7.1 MedTrak retains the exclusive rights to the names MedTrak Services, LLC, MedTrak Services, MedTrakRx, and MedTrak, together with any distinctive trademark and/or service mark that may hereinafter be adopted.

7.2 All confidential and proprietary information of MedTrak ("MedTrak Confidential Information") includes, but is not limited to, MedTrak's System information, reporting packages, proprietary software and user documentation, manuals, Formulary documents, Participating Pharmacy agreements, any information about MedTrak's rates, fees or charges, this Agreement and its terms and conditions, and any additional information typically considered confidential and proprietary. Neither Client nor TPA shall use any MedTrak Confidential Information or disclose it to any third party, at any time during or after termination of this Agreement, except as specifically contemplated in this Agreement or upon MedTrak's prior written consent. Upon termination of this Agreement, each Client and TPA shall cease using all MedTrak Confidential Information provided to such Client or TPA by MedTrak and shall return the same to MedTrak immediately upon MedTrak's request.

7.3 The parties shall maintain the confidentiality of any information relating to Eligible Members in accordance with any applicable laws and regulations. However, the parties acknowledge that—in providing services under this Agreement—MedTrak shall obtain confidential information about Eligible Members and may distribute such confidential information to Client, TPA, Participating Pharmacies, and Physicians. TPA shall ensure that there is adequate release and authorization from Eligible Members, or that release of confidential information relating to Eligible Members is otherwise proper, in regard to any information about Eligible Members provided to MedTrak or by MedTrak to Client, TPA, Participating Pharmacies, or Physicians. TPA shall also ensure that its use of Eligible Member information is in compliance at all times with applicable laws and regulations.

7.4 The parties hereto shall maintain appropriate records relating to their responsibilities under this Agreement. Annually during the term of this Agreement and once during the year immediately following termination of this Agreement

upon reasonable prior notice and during normal business hours, each party hereto may have reasonable access to the records of the other party directly relating to such other party's responsibilities and performance under this Agreement. The scope of such audit will be limited to Eligible Member Claims adjudicated in the Agreement year immediately preceding the year in which the audit is conducted. The requesting party shall pay the reasonable cost of copying records requested from the other party during an audit hereunder, and any other reasonable reproduction costs incurred by the other party in complying with the audit request. A third party may be allowed or designated by the auditing party hereunder to conduct an audit with the prior written consent of the party hereto whose records are to be audited, which consent shall not be unreasonably withheld; provided, however, that the audited party shall have the right to refuse the auditing party's auditor if the proposed auditor reasonably may acquire a competitive advantage by gaining access to the audited party's confidential information as described in this Article 7. In addition, the third party auditor shall enter into a reasonable confidentiality agreement with the audited party prior to conducting any audit hereunder.

8. RELATIONSHIP OF THE PARTIES; INDEMNIFICATION

8.1 MedTrak, TPA, and Clients are all separate and independent entities. They recognize that they are neither partners nor joint venturers and that they are not liable for the debts and obligations of each other. Client specifically acknowledges that MedTrak shall have no fiduciary duties whatsoever to Client or any Eligible Member either arising under this Agreement or under any Plan. Client further acknowledges and agrees that MedTrak has no discretionary authority or discretionary control to negotiate on behalf of Client, TPA, any Plan or Plan Sponsor, any prices, rates, rebates, discounts or other terms for Pharmacy Services or otherwise relating to the Formulary Program. Client acknowledges that it, or Plan Sponsor or TPA, will retain at all times sole authority to control and administer its Plan and its Pharmacy Benefit, including without limitation any Eligible Member complaints or appeals under such Plan, and to choose whether or not to participate in the Formulary Program. It is also understood and agreed by all the parties that they are not assuming nor guaranteeing any debts or obligations of any other party.

8.2 MedTrak shall indemnify and hold harmless TPA and Client, and their respective officers, affiliates, directors, shareholders, employees, successors, other agents and permitted assigns (respectively, "TPA Indemnitees" and "Client Indemnitees," as the case may be), from and against any claims, liabilities, damages, judgments or other losses (including attorneys' fees) imposed upon or incurred by TPA, Client, TPA Indemnitees, and Client Indemnitees to the extent caused by any breach, obligation, or warranty of this Agreement by MedTrak, MedTrak's violation of any law, or the negligence or willful misconduct of MedTrak, or its officers, directors, employees or other agents, or its successors and assigns, in connection with the performance of any of their respective obligations under this Agreement.

8.3 TPA shall indemnify and hold harmless MedTrak, and its officers, affiliates, members, shareholders, employees, successors, other agents and permitted assigns (collectively, "MedTrak Indemnitees") from and against any claims, liabilities, damages, judgments or other losses (including attorneys' fees) imposed upon or incurred by MedTrak and/or MedTrak Indemnitees to the extent caused by any breach, obligation, or warranty of this Agreement by TPA, TPA's violation of any law, or the negligence or willful misconduct of TPA, or its officers, directors, employees or other agents, or its successors and assigns, in connection with the performance of any of their respective obligations under this Agreement.

8.4 Client shall indemnify and hold harmless MedTrak and MedTrak Indemnitees, from and against any claims, liabilities, damages, judgments or other losses (including attorneys' fees) imposed upon or incurred by MedTrak and/or MedTrak Indemnitees to the extent caused by (i) the breach of Client's Client Agreement; (ii) the negligence of Client, or its officers, directors, employees or other agents, or its successors and assigns, in connection any of their respective obligations under the Client Agreement; (iii) any legal defects in the design of the Plan or the Pharmacy Benefit thereunder; (iv) the implementation of the Plan's Pharmacy Benefit design (e.g., any provision or denial of treatment or coverage whether by omission, decision, or design, etc.); (v) the payment of fraudulent claims or filing of fraudulent prescriptions if the fraud is committed by an Eligible Member or any other third party other than MedTrak; and, (vi) Client's denial of treatment or coverage whether by omission, decision or design.

8.5 The Party seeking indemnification under the provisions above must notify the indemnifying Party within 30 days, or as soon as is reasonably possible, in writing of any actual or threatened action, suit or proceeding to which it claims such indemnification applies. Failure to so notify the indemnifying Party shall not be deemed a waiver of the right to seek indemnification, unless the actions of the indemnifying Party have been prejudiced by the failure of the other Party to provide notice within the required time period.

8.5.1 The indemnifying Party may then take steps to be joined as a Party to such proceeding, and the Party seeking indemnification shall not oppose any such joinder. Whether or not such joinder takes place, the indemnifying Party shall provide the defense with respect to claims to which this Section applies and in doing so shall have the right to control the defense and settlement with respect to such claims.

8.5.2 The Party seeking indemnification may assume responsibility for the direction of its own defense at any time, including the right to settle or compromise any claim against it without the consent of the indemnifying Party, provided that in doing so it shall be deemed to have waived its right to indemnification except in cases where the indemnifying Party has declined to defend against the claim.

8.6 TPA and Client acknowledge and agree that MedTrak does not have any liability whatsoever to TPA, Client, or Eligible Members for the acts or omissions of any Participating Pharmacy or for the provision of Pharmacy Services, including, but not necessarily limited to, any of the following: (i) any actual or alleged malpractice, negligence or misconduct of any Participating Pharmacy; or (ii) the sale, compounding, dispensing, failure to sell, manufacture or use of any Drug Product dispensed to an Eligible Member under this Agreement.

8.7 No provision of this Agreement is intended to create, nor shall be deemed or construed to create, any relationship between MedTrak, TPA, or Client other than that of independent entities contracting with each other solely for the purpose of fulfilling the provisions of this Agreement. No party hereto, nor any of their respective representatives, shall be construed to be the agent, the employer, or the representative of any other party except for the limited purpose stated in Section 8.10 below.

8.8 Nothing expressed or implied in this Agreement is intended to confer—nor shall anything herein confer—any rights, remedies, obligation, or liabilities whatsoever upon any person other than the Client, MedTrak, and their respective successors and assigns.

8.9 No party (nor their respective employees, directors, affiliates, or agents) shall be liable to the other for any special, consequential, incidental, indirect, punitive, or exemplary damages. Except as set forth in Sections 8.2, 8.3, and 8.4, no party's liability to any other shall exceed the direct, actual Losses related to a breach of this Agreement.

9. MISCELLANEOUS

9.1 The terms of this Agreement shall be governed by the laws of the state of Missouri.

9.2 This Agreement may not be amended, supplemented or changed in any manner except by a written instrument executed by the parties.

9.3 This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, personal representatives, executors, administrators, successors and assigns. Any party hereto may assign its respective rights hereunder to any successor or assign as long as such successor or assign also assumes all of the obligations of the party making such assignment. TPA and Client acknowledge that persons and entities under contract with MedTrak may perform certain administrative services pursuant to this Agreement, provided that MedTrak (or its assignee) shall remain responsible for the proper performance of its obligations in accordance with the terms of this Agreement. The respective obligations of TPA and Client hereunder may not be assigned nor any portions of their respective duties subcontracted without the prior written consent of MedTrak, which shall not be unreasonably withheld.

9.4 This Agreement and any schedules, exhibits, and/or addenda referred to herein or attached hereto constitute the entire contract between the Parties with regard to the subject matter hereof, and supersede all prior agreements and understandings between the Parties, both written and oral, relating to the subject matter hereof. Any waiver of any breach of any provision of this Agreement shall not be a waiver of any subsequent breach of any provision of this Agreement. The terms and conditions of this Agreement are the result of an arm's length negotiations between the Parties and each Party has had the opportunity to obtain the advice of legal counsel regarding the negotiations and execution of this Agreement.

9.5 The use of the masculine, feminine or neuter gender and the use of the singular and plural shall not be to give the effect of any exclusion or limitation herein.

9.6 Any notices required to be given pursuant to this Agreement shall be sent by certified mail, return receipt requested, postage prepaid. Any such notice from TPA or Client shall be sent to the office of MedTrak. Any such notice from MedTrak shall be sent to the office of TPA or Client, respectively.

9.7 In the event of the unenforceability or invalidity of any section or provision of this Agreement, such section or provision shall be enforceable in part to the fullest extent permitted by law, and such invalidity or unenforceability shall not otherwise affect any other section or provision of this Agreement, and this Agreement shall otherwise remain in full force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the date first set forth above.

CONSOCIATE, INC.:

By:  _____

Name: Terry Lovekamp

Title: Chief Financial Officer

MEDTRAK SERVICES, LLC:

By: Laurie A. Stowe

Name: Dan Robson

Title: President

Exhibit A
Administration Services

MedTrak will:

1. Maintain a network of independently contracted Participating Pharmacies to provide Covered Medications to Eligible Members.
2. Design the Pharmacy Benefit for each Client in the System and activate the POS system on the respective Start Date.
3. Load and test Eligible Member information in the System. MedTrak requires a minimum of two weeks to test the accuracy of the initial Eligible Member information provided. MedTrak is not responsible for inaccuracies in initial Eligible Member information in the System until such time as MedTrak has tested it.
4. Process and adjudicate Claims for Covered Medications submitted by Participating Pharmacies for Eligible Members, including:
 - a. Verification that the Eligible Member is eligible on the date the Drug Product is dispensed.
 - b. Verification that the Drug Product dispensed is a Covered Medication.
 - c. Verification that the supply of the Drug Product dispensed is in the quantity permitted under the Plan Sponsor's Plan.
 - d. Pricing of the Claim.
 - e. Production and issuance of explanations of benefits (EOBs) for out-of-network Claims.
 - f. Production and issuance of Claims checks.
 - g. Tracking or application of any Eligible Member Deductible (as defined on Exhibit D), Copayment (as defined on Exhibit D), or Pharmacy Benefit maximum.
5. Maintain the Claims data supporting the invoice statements for Covered Medications dispensed by Participating Pharmacies and by non-Participating Pharmacies.
6. Provide Plan Sponsor with access to standard management reports.
7. Produce and distribute Cardholder Information, which includes:
 - a. Identification Cards (or Forms)
 - b. Plan information
 - c. Participating Pharmacy directory
 - d. Formulary (if necessary)
8. Conduct retrospective and concurrent drug utilization review and coordinate with Physicians to identify instances of misuse and abuse and prevent future misuse and abuse.
9. When specifically requested by Client, implement a Therapeutic Intervention Program, which is a proprietary program created by MedTrak to educate Eligible Members and their Physicians about preferred Drug Products on the Formulary and encourage Physicians to prescribe, and Eligible Members to use, said Drug Products.
10. Conduct an annual member satisfaction survey and report results to Client if Client agrees to distribute the survey instrument through Client's internal email system.
11. Provide prior authorization ("Prior Authorization") services as set forth and directed by the Client for the Drug Products designated in Pharmacy Benefit implementation documents, as may be updated by the Client from time to time. Drug Products subject to Prior Authorization must meet Client-approved coverage criteria for any such Drug Product to qualify as a Covered Medication. To determine whether any Drug Product should be authorized for coverage under the Plan, MedTrak will apply the applicable coverage criteria and rely on information provided by the Eligible Member's prescriber. MedTrak will not attempt to make a determination of medical necessity and shall rely on the medical determination made by the prescriber to make a coverage determination.

Exhibit B Appeals Process

The following is a summary of MedTrak's appeals process related to the Pharmacy Benefit for Eligible Members, which may be updated from time to time at the discretion of MedTrak or as required by applicable law. The most current version of MedTrak's appeals process is available upon request.

1. Appealing a Denied Claim

If a claim for benefits is denied, you may call MedTrak toll free at (800)771-4648 to resolve your issue over the phone. If MedTrak is unable to resolve your issue, you have the right to file a formal appeal as described below. If you wish to appeal a denied request for benefits or a rescission of coverage, you or your authorized representative must submit your appeal in writing as described below within 180 days of receiving the adverse benefit determination.

This written request should include:

1. the participant's name and ID number as shown on the prescription benefits card;
2. the provider's name;
3. the date of service;
4. the reason you disagree with the denial or coverage decision; and
5. any documentation or other written information to support your appeal.

You or your authorized representative may send a written appeal to: MedTrak Services, Clinical Care Center, 7101 College Blvd, Suite 1000, Overland Park, KS 66210; or fax your request to: (866)552-8939.

For denied urgent claims for benefits, your provider may submit a written appeal as described above or call MedTrak toll free at (800)771-4648 to request an appeal.

Note: You may designate an authorized representative who has the authority to represent you in all matters concerning your claim or appeal of a claim determination. If you have an authorized representative, any references to "you" or "participant" herein will also refer to the authorized representative.

2. Internal Appeal

MedTrak will conduct a full and fair review of your appeal. The appeal may be reviewed by two pharmacists who did not make the initial benefit determination. If MedTrak upholds the denial, you will receive a written explanation of the facts and basis for the denial and a description of additional appeal procedures, if applicable. If MedTrak overturns the denial and approves the Claim, you will receive notification and Benefits will be paid, as appropriate.

If your urgent care claim was denied, you may request an expedited external review at the same time that you request an expedited internal appeal to MedTrak. Immediately upon receipt of your request for an expedited external review, MedTrak will determine whether the request meets the reviewability requirements for an external review. Immediately upon completing this review, MedTrak will (i) submit the request to an independent review organization for external review; (ii) notify you or your provider that the request is not complete, and additional information is needed (along with a list of the information needed to complete the request); or (iii) notify you and/or your provider that the request is complete, but not eligible for review.

3. Reconsideration – Failure to Meet Coverage Criteria

MedTrak applies a review process to certain drugs to define the conditions ("Coverage Criteria") under which such drugs will be covered under your pharmacy benefits. These Coverage Criteria are developed by the MedTrak Clinical Care Center and are subject to review and revision from time to time. In the event such Coverage Criteria are not met, the benefit or claim is not a covered benefit, and therefore not eligible for the other appeal rights provided herein. However, you or your provider may request that MedTrak reconsider the application of the Coverage Criteria. Upon receipt of such request, two pharmacists not involved in the initial review will reconsider the Coverage Criteria denial and provide notice to you of the outcome of such reconsideration.

4. External Review

If you are not satisfied with the determination made during the internal review, or if MedTrak fails to respond to your appeal within the applicable time, you may be entitled to request an immediate external review of the determination made by MedTrak. If one of the above applies, you may request a free external review of an adverse benefit determination if (i) the determination involves a question of medical judgment; (ii) coverage was terminated retroactively; or (iii) if it is otherwise required by applicable law. You may also have the right to pursue external review in the event that MedTrak has failed to

comply with the internal claims and appeals process, except if such failure is related to minor violations that did not cause, and are not likely to cause, you harm.

You may request (i) a standard external review by sending a written request to the address set out in the determination letter or (ii) an expedited external review, in urgent situations as detailed below, by calling MedTrak toll free at (800)771-4648 or by sending a written request to the address set out in the determination letter. A request must be made within 120 days from the date of the final internal determination from MedTrak. An external review request should include (i) a specific request for an external review; (ii) the participant's name, address, and insurance ID number; (iii) your authorized representative's name and address, when applicable; (iv) the service that was denied, the date of service, the provider's name; and (v) any new, relevant information that was not provided during the internal appeal. An external review will be performed by an Independent Review Organization (IRO). MedTrak has entered into agreements with three or more IROs that have agreed to perform such reviews. There are two types of external reviews available, a standard external review and an expedited external review.

5. Standard External Review

Within the applicable time frame, MedTrak will review the external review request to determine whether (i) the applicable member was covered under the Plan at the time the prescription drug product or service at issue in the request was provided or requested; (ii) the applicable internal appeals have been exhausted; and (iii) all the information and forms required to process the request have been provided. Following review, MedTrak will forward the information to the appropriate IRO, which is determined by rotating review assignments among the IROs. MedTrak will provide the assigned IRO with the documents and information considered in making the determination. The documents include (a) all relevant medical records; (b) all other documents relied upon by MedTrak; (c) all other information or evidence that you or your provider submitted regarding the claim; and (d) all other information or evidence that you or your provider wish to submit regarding the claim, including, as explained below, any information or evidence that was not previously provided. If your claim involves an issue of medical judgment or rescission that is subject to external review, you may submit in writing to the IRO within ten (10) business days following the date you receive notice from the IRO, any additional information that you want the IRO to consider when conducting the external review. In reaching a decision, the IRO will review the claim without regard to any decisions or conclusions reached by MedTrak. The IRO will provide written notice of its determination (the "Final External Review Decision") within 45 days after it receives the request for the external review (unless the IRO requests additional time and you agree). The IRO will deliver the notice of Final External Review Decision to you and MedTrak, including the basis for its determination. Upon receipt of a Final External Review Decision reversing the determination by MedTrak, MedTrak will notify you within 48 hours of receiving the IRO's decision. The Plan will immediately provide coverage or payment of the Benefits at issue in accordance with the terms and conditions of the Plan. If the Final External Review Decision is that payment or referral will not be made, the Plan will not be obligated to provide benefits for the prescription drug product or service and you will have exhausted your appeal rights. All Final External Review Decisions by an IRO are final and binding on all parties and not subject to further appeal rights.

6. Expedited External Review

An expedited external review is similar to a standard external review, except with certain shorter time periods, and the timeframe for you or your provider to submit additional information to the IRO is eliminated. In some instances you may file an expedited external review before completing the internal appeals process. You may make a written or verbal request for an expedited external review if you receive either (i) an adverse benefit determination of a claim or appeal if the adverse benefit determination involves a medical condition for which, in the opinion of your prescriber, the time frame for completion of an expedited internal appeal would seriously jeopardize the life or health of the participant or would jeopardize the participant's ability to regain maximum function and you have filed a request for an expedited internal appeal; or (ii) a final appeal decision, if the determination, in the opinion of your prescriber, involves a medical condition where the time frame for completion of a standard external review would seriously jeopardize the life or health of the participant or would jeopardize the participant's ability to regain maximum function, or if the final appeal decision concerns an admission, availability of care, continued stay, or prescription drug product or service for which the participant received emergency services, but has not been discharged from a facility. Immediately upon receipt of the request, MedTrak will determine whether the participant (i) was covered under the Plan at the time the prescription drug product or service that is at issue in the request was provided; and (ii) has provided all the information and forms required so that MedTrak may process the request. After completing the review, MedTrak will immediately assign an IRO in the same manner MedTrak utilizes to assign standard external reviews to IROs. The IRO will determine if the matter contains an issue involving medical judgment and, upon a determination that a request is eligible for expedited external review. MedTrak will provide all necessary documents and information considered in making the determination to the assigned IRO. The IRO, to the extent the information or documents are available and the IRO considers them appropriate, must consider the same type of information

and documents considered in a standard external review. In reaching a decision, the IRO will review the claim without regard to any decisions or conclusions reached by MedTrak. The IRO will provide notice of the Final External Review Decision for an expedited external review as expeditiously as the participant's medical condition or circumstances require, but in no event more than 72 hours after the IRO receives the request. If the IRO's notice of the Final External Review Decision is not in writing, within 48 hours of providing such notice, the assigned IRO will provide written confirmation of the decision to you and to MedTrak. All Final External Review Decisions by an IRO are final and binding on all parties and not subject to further appeal rights.

7. Time Frames

The following list provides the required timing for the corresponding actions. The timing is based on when the request is received, unless otherwise noted below.

- a. **Urgent Care Claims**
 - i. If your Request is complete, MedTrak must notify you and your provider of the benefit determination within 72 hours.
 - ii. If your request is incomplete, MedTrak must notify you that it is incomplete within 24 hours.
 1. You must then provide the completed request to MedTrak within 48 hours after receiving the notice requiring additional information.
 2. MedTrak must notify you and your provider of the benefit determination within 48 hours after receiving the additional information.
 - iii. If MedTrak denies your request for benefits, you must appeal an adverse benefit determination no later than 180 days after receiving such determination.
 - iv. MedTrak must notify you of the internal appeal decision within 72 hours of receiving the appeal.
- b. **Pre-Service Claims** (a Claim submitted prior to receiving the benefit)
 - i. If your request for benefits is filed improperly, MedTrak must notify you within 5 days.
 - ii. If your request for benefits is incomplete, MedTrak must notify you within 15 days.
 - iii. You must then provide completed request for benefits information to MedTrak within 45 days.
 - iv. MedTrak must notify you of the benefit determination within 15 days of a completed request or upon the receipt of all additional required information if your initial request was incomplete.
 - v. You must appeal an adverse benefit determination no later than 180 days after receiving such determination.
 - vi. MedTrak must notify you of the internal appeal decision within 15 days of receiving such appeal.
- c. **Post-Service Claims** – a claim submitted after receiving the benefit
 - i. If your claim is incomplete, MedTrak must notify you within 30 days.
 - ii. You must then provide completed claim information to MedTrak within 45 days.
 - iii. MedTrak must notify you of the benefit determination 30 days of a completed claim filing or upon the receipt of all additional required information if your initial claim was incomplete.
 - iv. You must appeal an adverse benefit determination no later than 180 days after receiving such determination.
 - v. MedTrak must notify you of the internal appeal decision within 15 days of receiving such appeal.
- d. **External Review**
 - i. You must submit a request for external review to MedTrak within 120 days after receiving the internal appeal determination.
 - ii. For an expedited external review, the IRO will provide notice of its determination within 72 hours.
 - iii. For a standard external review, MedTrak will complete a preliminary review to ensure the request meets requirements for an external review within 5 business days.
 - iv. You may submit in writing to the IRO any additional information that you want the IRO to consider within 10 business days.
 - v. For a standard external review, the IRO will provide written notice of its determination within 45 days.

Exhibit C
Financial Terms

Pursuant to the Client Agreement, each Client shall elect one of the various pricing options set forth in this Exhibit D as Exhibit D-1, Exhibit D-2, etc. The provisions of this Exhibit D shall apply to all pricing options, and any reference to “Exhibit D” in this Agreement, the Client Agreement, and all Exhibits and other attachments shall include all pricing options, as applicable to each particular Client.

1. Definitions

- a. “Average Wholesale Price” or “AWP” means the current wholesale price of a “Drug Product” as established by its manufacturer and as reported in a nationally recognized drug database.
- b. “Brand Drug Product” means a “Drug Product” single-source and multisource “Drug Product” based on indicators set forth in Medi-Span and consistent with standard practice utilized for all clients; provided, however, certain Drug Products licensed and marketed as brand name drugs with at least one (1) competing generic equivalent of the marketed brand name drug may process as a Generic Drug Product for adjudication and Copay purposes.
- c. “Compound Drug” means a formulation containing one or more “Drug Products”, which is extemporaneously prepared by a Participating Pharmacy in accordance with a Physician’s prescription order.
- d. “Copayment” or “Deductible” means the amount an Eligible Member is required to pay a Participating Pharmacy, in accordance with the terms of the Plan, for a Covered Medication dispensed by the Participating Pharmacy.
- e. “Generic Drug Product” means a Drug Product with an FDA-approved “Abbreviated New Drug Application” (or “ANDA”) and determined using indicators from Medi-Span (or other nationally recognized drug database) on the basis of a standard brand/generic algorithm utilized for all MedTrak clients, which shall be provided to TPA upon request
- f. “Limited Distribution Drug” or “LDD” means a Drug that is only available through a limited number of specialty pharmacies.
- g. “Maximum Allowable Cost” or “MAC” means the maximum cost allowed for a Generic Drug Product, as set by MedTrak from time to time.
- h. “Orphan Drug” means a drug intended for use in a rare disease or condition as defined by the Orphan Drug Act.
- i. “PMPM” means per member per month.
- j. “Specialty Drug” means a high-cost, complex pharmaceutical that may have unique clinical, administration, distribution, or handling requirements and may not be commonly available through traditional retail or mail pharmacies; excluding, however, all Limited Distribution Drugs and Orphan Drugs.
- k. “Specialty Drug List” means a list of Specialty Drugs, Limited Distribution Drugs, and Orphan Drugs maintained by MedTrak and updated from time to time in the sole discretion of MedTrak, which shall be provided to TPA in Excel format upon request.
- l. “Usual and Customary Charge” or “U&C” means the Pharmacy Services price Pharmacy submits to MedTrak as its usual and customary charge.

2. Retail Pharmacy Paid Claim Charge

For each Covered Medication dispensed by a retail Participating Pharmacy to an Eligible Member, Client agrees to pay MedTrak the “Retail Pharmacy Paid Claim Charge”, plus any applicable sales or excise tax or other handling or governmental charge (as determined by law), less any applicable Copayment or Deductible, as described in the Plan. The Retail Pharmacy Service Charge is:

- a. For Brand Drug Products, 30-Day’s Supply, the lesser of: (i) the applicable AWP discount for Brand Drug Products set forth in the table below plus a \$0.75 dispensing fee, or (ii) the U&C.
- b. For Generic Drug Products, 30-Day’s Supply, the lesser of: (i) MAC plus a \$0.75 dispensing fee, (ii) the applicable AWP discount for Brand Drug Products set forth in the table below plus a \$0.75 dispensing fee; or (iii) the U&C.
- c. For Brand Drug Products, 90-Day’s Supply, the lesser of: (i) the applicable AWP discount for Brand Drug Products set forth in the table below plus a \$0.00 dispensing fee, or (ii) the U&C.

- d. For Generic Drug Products, 90-Day's Supply, the lesser of: (i) MAC plus a \$0.00 dispensing fee, (ii) the applicable AWP discount for Brand Drug Products set forth in the table below plus a \$0.00 dispensing fee, or (iii) the U&C.
- e. For Compound Drugs, the aggregate amount of the lesser of logic of each ingredient contained in the Compound Drug plus a compounding fee submitted by the Participating Pharmacy (net of any co-payments, coinsurances, or deductible amounts), plus any applicable sales or excise tax or other handling or governmental charge (as determined by law).

For purposes of the foregoing provisions in this Exhibit D, any reference to "Retail 30" or "30-Days' Supply" or "30-day supplies" shall mean any Covered Medication dispensed in a 1- to 83-day supply; and, provided further, any reference to "Retail 90" or "90-Days' Supply" or "90-day supplies" shall mean any Covered Medication dispensed in a days' supply of 84 or more.

Subject to the terms and conditions herein, MedTrak shall provide Client with the following dollar-for-dollar minimum financial guarantees with respect to Retail Pharmacy Paid Claim Charges:

Post-AWP Settlement Minimum Discount Guarantees & Maximum Dispensing Fees	
Type	Retail
Retail 30 Brand Drug Products	AWP – 17.50% Discount \$0.75 Dispensing Fee
Retail 90 Brand Drug Products	AWP – 21% Discount \$0.00 Dispensing Fee
Retail 30 Generic Drug Products	AWP – 81% Discount \$0.75 Dispensing Fee
Retail 90 Generic Drug Products	AWP – 84% Discount \$0.00 Dispensing Fee

With respect to the foregoing Generic Drug Product guarantees, the effective generic discount and the generic discount guarantee calculation includes Claims for the following: MAC generics, non-MAC generics, multi-source generics, generics in their FDA-granted exclusivity period, patent litigated generics, generics with limited supply, U&C Claims, and generic medications prescribed and/or dispensed in conjunction with a specialty medication. The above generics will NOT be included in the brand discount guarantees.

The following types of Claims shall be excluded from the foregoing guarantees: Specialty Drugs, single-source generics, Compound Drugs, vaccines, in-house Claims, reversed Claims, OTC Drug Products, Claims subject to Most Favored Nations pricing, and Claims for Drug Products designated as "Currently in Shortage" or other similar designation in the Drug Shortages database maintained by the FDA.

100% member paid claims (zero balance due claims) will be included in the foregoing guarantees, with discounts for these claims calculated based on the ingredient cost prior to the application of member paid amount.

Eligible Members shall pay the lowest of MAC, AWP discount, U&C, and Copay.

Additionally, if Client requires MedTrak to include any currently non-contracted pharmacies as Participating Pharmacies, and MedTrak is unable to obtain rates from such pharmacies as favorable as those guaranteed by MedTrak hereunder, then Claims from such pharmacies shall also be excluded from the financial guarantees hereunder. If at any time applicable laws, regulations or administrative or judicial interpretations or rulings increase the amounts MedTrak must pay to Participating Pharmacies, the foregoing financial guarantees will be amended by mutual agreement of the parties to reflect such increase.

3. Mail Pharmacy Paid Claim Charge

The mail Participating Pharmacy designated by MedTrak and approved by Client is the exclusive provider of mail Pharmacy Services. For each Covered Medication dispensed by the mail Participating Pharmacy to an Eligible Member, Client agrees to pay MedTrak the mail pharmacy Paid Claim Charge, plus any applicable sales or excise tax or other

handling or governmental charge (as determined by law), less any applicable Copayment or Deductible, as described in the Plan. The Mail Pharmacy Service Charge is:

- a. For Brand Drug Products, AWP – 24% plus a \$0.00 dispensing fee.
- b. For Generic Drug Products, AWP – 84% plus a \$0.00 dispensing fee.
- c. For Compound Drugs, the aggregate amount of the lesser of logic of each ingredient contained in the Compound Drug plus a compounding fee submitted by the Participating Pharmacy (net of any co-payments, coinsurances, or deductible amounts), plus any applicable sales or excise tax or other handling or governmental charge (as determined by law).

4. Best-In-Class Specialty Pharmacy Paid Claim Charge

The “Best-In-Class Specialty” Participating Pharmacies designated by MedTrak and approved by Client are the exclusive providers of specialty Pharmacy Services. If and when Client elects to participate in MedTrak’s Best-In-Class Specialty Pharmacy program, for each Covered Medication that is a Specialty Drug, and dispensed by a Best-In-Class Specialty Participating Pharmacy, Client agrees to pay MedTrak the “Best-In-Class Specialty Pharmacy Paid Claim Charge”, expressed as an AWP discount, plus any applicable sales or excise tax or other handling or governmental charge (as determined by law), less any applicable Copayment or Deductible, as described in the Plan. The Best-In-Class Specialty Pharmacy Service Charge is maintained by MedTrak on the Specialty Drug List, which may be updated from time to time in MedTrak’s discretion and provided to Client upon request. The Best-In-Class Specialty Pharmacy Service Charge includes the cost of certain “Ancillary Supplies”, including syringes, needles, and alcohol swabs. The Best-In-Class Specialty Pharmacy Service Charge does not include the cost of home infusion supplies, devices and in-home nursing services. MedTrak reserves the right to modify the Specialty Drug List from time to time.

Notwithstanding the foregoing, and subject to the terms and conditions herein, with respect to Specialty Drugs dispensed by authorized BIC Specialty Pharmacies only, MedTrak shall provide Client with the following minimum financial guarantee with respect to Best-In-Class Specialty Pharmacy Service Charge:

Post-AWP Settlement Minimum Discount Guarantees & Maximum Dispensing Fees	
Type	Best-in-Class (BIC) Network
Specialty Drugs	AWP – 19% Discount \$0.00 Dispensing Fee

The following types of Claims shall be excluded from the foregoing BIC Specialty guarantees: Compound Drug Claims; reversed Claims; OTC Drug Products; Limited Distribution Drugs (which may include Orphan Drugs); U&C Claims; and Claims for any Specialty Drug Products dispensed by a pharmacy that is not a BIC Specialty Pharmacy awarded that particular Specialty Drug Product. Note that with respect to Specialty Drug Products dispensed by a pharmacy that is not a BIC Specialty Pharmacy awarded that particular Specialty Drug Product, MedTrak will bill to Client, and Client shall pay MedTrak, the Non Best-In-Class Specialty Pharmacy Paid Claim Charge specified further below in this Exhibit D.

This rate includes the cost of certain “Ancillary Supplies”, including syringes, needles, and alcohol swabs. The rate does not include the cost of home infusion supplies, devices and in-home nursing services. This rate also does not apply to Limited Distribution Drugs, which are negotiated separately.

5. Non-Best-In-Class Specialty Pharmacy Paid Claim Charge

In the event that a Specialty Drug, Limited Distribution Drug, or Orphan Drug is dispensed from a pharmacy other than the Best-In-Class Specialty Participating Pharmacy listed on the Specialty Drug List, Client agrees to pay MedTrak the “Non-Best-In-Class Specialty Pharmacy Paid Claim Charge”, plus any applicable sales or excise tax or other handling or governmental charges (as determined by law), less any applicable Copayment and/or Deductible, as described in the Plan. The Non-Best-In-Class Specialty Pharmacy Service Charge is:

- a. For Brand Drug Products, AWP – 11% plus a \$0.75 dispensing fee.
- b. For Generic Drug Products, AWP – 11% plus a \$0.75 dispensing fee.

The Non-Best-In-Class Specialty Pharmacy Service Charge includes the cost of certain “Ancillary Supplies”, including syringes, needles, and alcohol swabs. The Non-Best-In-Class Specialty Pharmacy Service Charge does not include the cost of home infusion supplies, devices and in-home nursing services.

The Non-Best-In-Class Specialty Pharmacy Paid Claim Charge does not apply to Limited Distribution Drugs. MedTrak will submit all Claims for Limited Distribution Drugs by Non-Best-In-Class Specialty Pharmacies to Client for authorization.

6. Miscellaneous Charges

Client shall pay the Miscellaneous Charges to MedTrak listed below:

- a. Administration Fee: \$0.00 per paid Claim.
- b. Direct member reimbursement Claims: \$2.50 per such Claim.
- c. Prior Authorizations:
 - i. Simple Review (prescriber outreach & BIC member advocacy referral): \$10.00 per review.
 - ii. Complex Criteria Review (pharmacist review of coverage criteria involving physician): \$50.00 per review.
 - iii. Pharmacist Clinical Review (review of experimental/investigational Drug Product): \$75.00 per review.
- d. External Appeal of Coverage Denial – Pursuant to the Appeals Process set forth on Exhibit C, MedTrak may request an external appeal review from an accredited independent review organization (“IRO”) in the event of a coverage denial. MedTrak will pass through all costs of the IRO to Client as a billed charge pursuant to the payment terms of this Agreement, as well as a \$100.00 fee paid to MedTrak for the administration of such review.
- e. For each Vaccine Claim covered by Client and processed through a Participating Pharmacy contracted with MedTrak to administer Vaccines, Client agrees to pay an additional Vaccine Administration Charge of up to, but not more than, \$25.00 per Claim.
- f. Cardholder Identification (“ID”) Cards – MedTrak issues initial Cardholder ID Cards to Client prior to the Effective Date at \$1.00 per ID Card. After the Effective Date, MedTrak issues Cardholder ID Cards to Client at \$1.00 per ID Card. If Client requests MedTrak to send Cardholder ID Cards to each Cardholder, Client agrees to pay MedTrak’s applicable postage costs.

7. Program Charges

If Client elects to implement any of the below listed MedTrak Programs, Client shall pay the corresponding Program Charges to MedTrak listed below:

- a. RightCHOICE Program: \$0.05 PMPM.
- b. Medical Channel Management Program: \$0.10 PMPM.
- c. All MedTrak Step Therapy Programs: \$0.20 PMPM.
- d. BIC Align Program: \$0.20 PMPM.
- e. Rx-OTC Program: \$0.05 PMPM.
- f. CareTrakRx-Pain Management Program: \$0.10 PMPM.

8. Formulary Program Discounts

MedTrak will pay Formulary Program (as defined below in Exhibit E to this Agreement) discounts, in the form of Rebates, to Client subject to Client’s participation in the Formulary Program and overall compliance with Exhibit E to this Agreement. Subject to such compliance, eighty-five percent (85%) of all payments to MedTrak by pharmaceutical manufacturers or intermediaries that are denominated by such manufacturers or intermediaries as Rebates in agreements with MedTrak and that are attributed directly to the claims for Pharmacy Services paid by Client shall be transferred to Client. Client agrees that Rebate payments are based upon Plan design over which MedTrak has no discretionary control or authority, and such rebate payments are subject to change due to various factors, as described in this Agreement. Rebate payments are made within thirty (30) days after six (6) months from the end of the quarter in which Paid Claims were incurred. Notwithstanding the foregoing, the aggregate amount of the percentage of rebates set forth above shall not be less than the aggregate amount of the minimum rebates across all channels as set forth below:

For qualified 3-Tier Plans on the Select Formulary:

- a. dispensed through a retail pharmacy for a 30-day supply, MedTrak shall pay Client \$140.00.
- b. For each eligible Brand Drug Product, as described in Exhibit E, that is a non-Specialty Drug Covered Medication dispensed through a retail pharmacy for a 90-day supply, MedTrak shall pay Client \$400.00.
- c. For each eligible Brand Drug Product, as described in Exhibit E, that is a non-Specialty Drug Covered Medication dispensed through a mail pharmacy, MedTrak shall pay Client \$600.00.
- d. For each eligible Brand Drug Product, as described in Exhibit E, that is a Specialty Drug Covered Medication dispensed through a contracted pharmacy, MedTrak shall pay Client \$1,300.00.

For 2-Tier Plans on the Select Formulary:

- a. For each eligible Brand Drug Product, as described in Exhibit E, that is a non-Specialty Drug Covered Medication dispensed through a retail pharmacy for a 30-day supply, MedTrak shall pay Client \$120.00.
- b. For each eligible Brand Drug Product, as described in Exhibit E, that is a non-Specialty Drug Covered Medication dispensed through a retail pharmacy for a 90-day supply, MedTrak shall pay Client \$300.00.
- c. For each eligible Brand Drug Product, as described in Exhibit E, that is a non-Specialty Drug Covered Medication dispensed through a mail pharmacy, MedTrak shall pay Client \$500.00.
- d. For each eligible Brand Drug Product, as described in Exhibit E, that is a Specialty Drug Covered Medication dispensed through a contracted pharmacy, MedTrak shall pay Client \$1,000.00.

For qualified 3-Tier Plans on National Formulary:

- a. For each eligible Brand Drug Product, as described in Exhibit E, that is a non-Specialty Drug Covered Medication dispensed through a retail pharmacy for a 30-day supply, MedTrak shall pay Client \$105.00.
- b. For each eligible Brand Drug Product, as described in Exhibit E, that is a non-Specialty Drug Covered Medication dispensed through a retail pharmacy for a 90-day supply, MedTrak shall pay Client \$250.00.
- c. For each eligible Brand Drug Product, as described in Exhibit E, that is a non-Specialty Drug Covered Medication dispensed through a mail pharmacy, MedTrak shall pay Client \$300.00.
- d. For each eligible Brand Drug Product, as described in Exhibit E, that is a Specialty Drug Covered Medication dispensed through a contracted pharmacy, MedTrak shall pay Client \$950.00.

For 2-Tier Plans on the National Formulary:

- a. For each eligible Brand Drug Product, as described in Exhibit E, that is a non-Specialty Drug Covered Medication dispensed through a retail pharmacy for a 30-day supply, MedTrak shall pay Client \$95.00.
- b. For each eligible Brand Drug Product, as described in Exhibit E, that is a non-Specialty Drug Covered Medication dispensed through a retail pharmacy for a 90-day supply, MedTrak shall pay Client \$215.00.
- c. For each eligible Brand Drug Product, as described in Exhibit E, that is a non-Specialty Drug Covered Medication dispensed through a mail pharmacy, MedTrak shall pay Client \$260.00.
- d. For each eligible Brand Drug Product, as described in Exhibit E, that is a Specialty Drug Covered Medication dispensed through a contracted pharmacy, MedTrak shall pay Client \$675.00.

9. Third-Party Fee Disclosure

Client acknowledges that it has retained TPA as a consultant to Client's Pharmacy Benefit Plan and/or this Agreement (the "TPA Services"); and, for so long as Client authorizes TPA as such, MedTrak is hereby directed to pay TPA on Client's behalf, from any amounts received from Client under this Agreement, the amount set forth below, which will be paid quarterly to TPA (the "TPA Fee"). The TPA Fee will compensate TPA for such TPA Services performed on behalf of Client, and will be calculated and paid in the amount of \$2.25 per paid Claim.

Client acknowledges that it has retained Leaf Health ("Consultant") as a consultant to Client's Pharmacy Benefit Plan and/or this Agreement (the "Consultant Services"); and, for so long as Client authorizes Consultant as such, MedTrak is hereby directed to pay Consultant on Client's behalf, from any amounts received from Client under this Agreement, the amount set forth below, which will be paid quarterly to Consultant (the "Consultant Fee"). The Consultant Fee will compensate Consultant for such Consultant Services performed on behalf of Client, and will be calculated and paid in the amount of \$0.75 per paid Claim.

Exhibit D
Formulary Program

1. Definitions

- a. “Formulary Program” shall mean a program established by MedTrak under which pharmaceutical manufacturers provide MedTrak with discounts, which are (i) due and payable to MedTrak pursuant to the terms of contracts with pharmaceutical manufacturers; and (ii) directly attributable to the dispensing of Covered Medications on the Formulary to Eligible Members.
- b. “Formulary Program Claim Exclusions” shall mean (i) Claims for Brand Drug Products that are also available as Generic Drug Products, (ii) 100% Copayment Claims, (iii) Claims submitted by Eligible Members, (iv) Claims where MedTrak is the secondary payer, (v) Claims for Compound Drugs and over-the-counter Drug Products, and (vi) Claims filled through Client-owned, university, long term care, 340b pharmacies, or pharmacies located on the premises of a Client.
- c. “Rebates” shall mean retrospective rebates paid to MedTrak that are directly attributable to the utilization of certain pharmaceuticals by Eligible Members.

2. Terms of Formulary Program

- a. MedTrak agrees to allow Client to participate in the Formulary Program in Client’s sole discretion, and MedTrak agrees to pay certain Formulary Program discounts to Client to the extent such Formulary Program discounts are attributable to Client’s participation in the Formulary Program and Eligible Members’ use of the Formulary, and as are described in Exhibit C, but if and only if Client meets its obligations under Exhibit C and this Exhibit D of this Agreement, and if and only if Client meets such other reasonable and generally applicable requirements for participation in the Formulary Program and associated parameters as may be communicated by MedTrak to Client from time to time.
- b. Client (or TPA) shall have sole discretion regarding participation in MedTrak’s Formulary Program, which may include, but is not limited to, the distribution of Formularies to Cardholders prior to the Effective Date and as necessary thereafter, and which participation shall require Client’s conformance to the Formulary. By choosing to participate in the Formulary Program, Client further warrants that Client is not participating in any other formulary program and that neither TPA nor any other agent of Client is participating in any other formulary program on behalf of Client.
- c. Client understands that its eligibility to receive any payments from MedTrak under this Exhibit D may change from time to time due to changes in Client’s Plan; changes in MedTrak’s agreements with pharmaceutical manufacturers or Rebate intermediaries; changes in laws or governmental actions, including but not limited to such laws or actions affecting prescription drug benefits, benefits structure, or pricing (including Rebates); the selection of certain services, such as prior authorization or open formulary management; or any change in the Formulary Program. Client acknowledges and agrees that only Claims for Brand Drug Products (as defined on Exhibit C) with an FDA-approved “New Drug Application” (“NDA”) are eligible for such payments. Client further acknowledges and agrees that Formulary Program Claim Exclusions are not eligible for such payments.
- d. Subject to Client’s participation in the Formulary Program and compliance with Sections 2.b. and 2.c., above, MedTrak shall pay to Client certain amounts received by MedTrak as discounts or Rebates, pursuant to the Formulary Program, from drug manufacturers or intermediaries, which amounts are denominated as discounts or Rebates by such manufacturers or intermediaries and which are attributable to Pharmacy Services utilized by Eligible Members, and consistent with the amounts provided for in accordance with Exhibit C hereto. Client acknowledges and agrees that it shall not have a right to interest on, or the time value of, any discount, Rebate or other payments received by MedTrak during the collection period for monies payable to Client under this Exhibit D. Client acknowledges that Rebate payments from manufacturers or intermediaries are received on a periodic basis by MedTrak and relate to earlier months’

claims. In the event Client is in breach of this Agreement, MedTrak reserves the right to delay payment to Client of any amounts hereunder and to offset any Rebate payments otherwise due hereunder.

- e. Client acknowledges that it may be eligible for Rebate payments under this Agreement only so long as Client (or TPA) does not (i) contract directly or indirectly with anyone else for discounts, utilization limits, rebates or other financial incentives on pharmaceutical products or formulary programs without MedTrak's prior written consent, (ii) change the Plan to add a new Drug Product exclusion after the Effective Date, or (iii) realize a material change in the utilization of rebate eligible Drug Products. In the event that Client negotiates or arranges with a pharmaceutical manufacturer or intermediary for rebates or similar discounts, without limiting MedTrak's right to other remedies, MedTrak may immediately terminate Client's participation in the Formulary Program, terminate this Agreement according to the terms of Section 5.2 hereof, and/or recover from Client all amounts paid by MedTrak to Client for Rebates on claims submitted by Client (or on behalf of Client) for Rebates other than through MedTrak.

- f. Client hereby represents and warrants, and shall recertify on a periodic basis in a form acceptable to MedTrak, with respect to any Plan which receives funding from Medicare/Medicaid, Title V, Children's Medical Services, or another government healthcare program as defined in Section 1128(h) of the Social Security Act (or any successor thereto) ("Government Programs") and for which the Client receives amounts hereunder that are attributable to such Plan, each such Plan is operating under a risk contract with the Centers for Medicare and Medicaid Services ("CMS") or a state Medicaid program, and operates in accordance with §§ 1876(g) or 1903(m) of the Social Security Act, under a federal statutory demonstration authority or successor statute or authority. Client agrees to notify MedTrak in writing of any such Plan that does not meet any of the criteria set forth herein, and MedTrak, in compliance with applicable law, shall not submit prescription drug claims for any Eligible Members in such Plan for prescriptions filled by a Participating Pharmacy. Nothing herein prohibits a Client that receives the retiree drug subsidy ("RDS") from CMS for eligible Plan Participants under the Medicare Part D Rules (42 C.F.R. Part 423, Subpart R) from receiving Rebates relating to such eligible Plan Participants' prescription drug claims under this Agreement. The parties hereto acknowledge and agree that any Rebate reimbursement provided to Client pursuant to this Agreement is a "discount" under 42 U.S.C. § 1320a-7b(b)(3) and 42 C.F.R. § 1001.952(h) (the "Discount Safe Harbor"). For the purpose of complying with the Discount Safe Harbor, MedTrak shall clearly denote in invoices and other statements amounts that constitute Rebate reimbursement hereunder. Client shall properly disclose and appropriately reflect all Rebate reimbursement in the costs claimed or the charges made to any Government Program. Without limiting the foregoing, if Client claims a subsidy from CMS for eligible Plan Participants under the Medicare Part D Rules (42 C.F.R. Part 423, Subpart R), Client shall properly disclose and appropriately reflect any Rebate reimbursement paid by MedTrak to Client in the Allowable Retiree Costs (as defined at 42 C.F.R. § 423.882) and other information submitted to CMS for payment of such subsidy in accordance with the Medicare Part D Rules, all applicable sub-regulatory guidance and CMS policies.

Client Agreement

This **Client Agreement** (“Client Agreement”) is made and entered into by and between **MedTrak Services, L.L.C.** (“MedTrak”) and **the CITY OF PEORIA, LC**, with an address of 401 West Washington Street, East Peoria, IL 61611 and organized under the laws of the State of Illinois (“Client”). This Client Agreement shall be effective as of the 1st day of May, 2020 (the “Effective Date”).

RECITALS

- A. MedTrak has previously entered into a Master Service Agreement with Consociate, Inc. (“TPA”), for the provision of pharmacy benefit management services to employers, health plans and payors who are clients of TPA (the “Master Agreement”);
- B. Client is a current, or prospective and imminently certain future Client of TPA;
- C. Client has received from TPA a copy of the Master Agreement to which this Client Agreement relates, and has had the benefit of a full review and understanding of the Master Agreement prior to Client’s execution of this Client Agreement;
- D. Client acknowledges MedTrak’s execution of the Master Agreement and commitment to be bound hereunder as if MedTrak was a signator to this Client Agreement as well; and
- E. Client has chosen to obtain from MedTrak the PBM services described in the Master Agreement and as applicable to this Client Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in the Master Agreement and this Client Agreement, Client agrees with MedTrak as to the following terms and conditions:

STATEMENT OF AGREEMENT

- 1. **Capitalized Terms.** All capitalized terms not defined herein shall have the meaning ascribed to such terms in the Master Agreement.
- 2. **Term.** Subject to Paragraph 3 below, this Client Agreement will remain in full force and effect for an initial term of one (1) year commencing on the Effective Date hereof (the “Initial Term”).
- 3. **Termination.** This Agreement may be terminated as provided in Article 6 of the Master Agreement. Neither party hereto may terminate this Client Agreement without cause or for no cause. Termination of the Master Agreement will not cause or be deemed to cause a termination of this Client Agreement, which in such case will continue in full force and effect subject to the provisions of Section 6.5 of the Master Agreement.
- 4. **Consulting Services.**
 - 4.1 **Consulting Fees.** Client has retained TPA and Consultant to provide certain services to Client, including without limitation, the negotiation with MedTrak of the financial terms of the Master Agreement (the “Consulting Services”), which Client has given TPA and Consultant the authority to negotiate. Client desires that MedTrak shall charge Client an additional amount—which amount is included in the pricing charged to Client—to compensate TPA and Consultant for such Consulting Services, and Client hereby directs MedTrak to forward to TPA and Consultant on Client’s behalf the amount of applicable fees as set forth and calculated in Exhibit C to the Master Agreement. Such fees will compensate TPA and Consultant for such Consulting Services performed on behalf of Client.
 - 4.2 **Acknowledgement.** The parties acknowledge and agree that this Paragraph 4 (including its sub-paragraphs), and the payment of the Consulting Fees do not affect the amounts owed by Client (or by TPA on behalf of Client) to MedTrak under this Client Agreement; provided, however, that MedTrak is authorized to retain for its own benefit and not forward to TPA any amounts described in this Paragraph 4 (including its sub-paragraphs) if TPA (or Client, if and as applicable) fails to make timely payments to MedTrak for services provided by MedTrak hereunder.

5. **Client Agreement and Master Agreement.**

5.1 **Incorporation.** Client and MedTrak hereby acknowledge and agree that all provisions of the Master Agreement, including any and all attachments, exhibits and riders thereto, are hereby incorporated into this Client Agreement and made binding upon Client and MedTrak to the extent made applicable to such party. In the event of any conflict between this Client Agreement and the Master Agreement, the provisions of this Client Agreement shall prevail and control. Client hereby acknowledges and agrees that, pursuant to the Master Agreement, TPA is obligated to provide Client with a copy of the Master Agreement, and has in fact done so; and, Client agrees to all terms and conditions set forth in the Master Agreement, including without limitation, the financial terms set forth in Exhibit C thereto. MedTrak and Client each shall perform their respective duties, as described in the Master Agreement, as if such duties were made expressly a part of this Client Agreement.

5.2 **Payment.** Without limiting the generality of Paragraph 5.1 above, Client hereby expressly acknowledges and agrees that Client shall be solely, directly and ultimately responsible for the payment to MedTrak of any and all amounts required under Article 5 and Exhibit C of the Master Agreement for MedTrak's services provided hereunder; provided, further, that even if Client elects to make payments through TPA as may be permitted under Section 2.5 of the Master Agreement, Client shall remain jointly and severally liable with TPA for any failure to make any payments to MedTrak as may be required under the Master Agreement and/or this Client Agreement.

5.3 **Amendment.** In the event that the Master Agreement is amended in accordance with its terms, even if such amendment is between MedTrak and TPA, Client will be bound by the terms of any such amendment (including, without limitation, any amendment to the rates set forth in Exhibit C to the Master Agreement), unless Client provides MedTrak with notice of its intention to terminate this Client Agreement in accordance with this paragraph. Any such notice must be provided within fifteen (15) business days of Client's receipt of the notice of amendment and will be effective ninety (90) days following MedTrak's receipt of such notice. Pursuant to the Master Agreement, TPA is responsible for providing Client with notice of any amendment to the Master Agreement. Moreover, Client hereby expressly authorizes TPA to make any amendment to the Master Agreement from time to time, including any amendment to the rates set forth in Exhibit C, and Client agrees to be bound immediately by any such amendment to the extent it relates to any obligation or responsibility of Client under the Master Agreement and/or this Client Agreement.

6. **Miscellaneous.**

6.1 **Independent Contractors.** The parties are independent contracting parties, and nothing in this Client Agreement is intended to nor may anything in this Client Agreement be construed to create an agency, partnership, joint venture, employer/employee relationship, fiduciary relationship, or any other legal relationship between the parties other than or in addition to that of independent contracting parties. In the event an ambiguity or question of intent or interpretation arises, this Client Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Client Agreement. Each party acknowledges that it has been represented, or had the right to seek representation, by legal counsel in the negotiation and/or execution of this Client Agreement.

6.2 **Exclusivity.** Client acknowledges and agrees that MedTrak is and shall be the sole and exclusive provider of pharmacy benefit programs, pharmacy benefit management services, claim processing services, and any other PBM services described in the Master Agreement, to and on behalf of Client and Eligible Members.

6.3 **Notices.** All notices provided for herein must be in writing and sent by U.S. Certified Mail, return receipt requested, postage prepaid, or by overnight delivery service providing proof of receipt, to the other party's respective office or the addresses set forth in the first paragraph of this Client Agreement or below any party's written signature hereto. Each party may designate by notice any future or different addresses to which notices will be sent. Notices will be deemed delivered upon receipt or upon refusal to accept delivery. MedTrak and Client expressly acknowledge and agree that the notice provisions of the Master Agreement shall apply to the provision of notice by either MedTrak or Client pursuant to this Client Agreement.

6.4 **Entire Agreement.** This Client Agreement, including the Master Agreement, as incorporated herein, constitutes the entire agreement between the parties and supersedes any previous contract between the parties. Without limiting the generality of the foregoing, Client acknowledges and agrees that this Client Agreement, including the Master Agreement, supersedes any other agreement for PBM services that Client may have (or may have had), directly or indirectly, with MedTrak.

7. **Signatory Authority.** Client hereby represents and warrants that the individual signing this Client Agreement on its behalf is duly authorized to bind Client to all terms and conditions of this Client Agreement, including the Master Agreement. Client further acknowledges and agrees that, as consideration for Client's execution of this Client Agreement, Client accepts MedTrak's signature on the Master Agreement as MedTrak's promise and obligation to be bound by all terms and conditions of the Master Agreement, as well as this Client Agreement.

8. **Business Associate Agreement.** As set forth in the Master Agreement, Client acknowledges that MedTrak is a Business Associate of Client and/or its Plan. Accordingly, the Business Associate Addendum between MedTrak and Client, as attached hereto as Attachment E-1, is hereby incorporated herein by reference and made binding upon each of MedTrak and Client respectively.

IN WITNESS WHEREOF, and in consideration of MedTrak's execution of the Master Agreement and commitment to be bound by the provisions thereof and hereof, Client has executed and delivered this Client Agreement by Client's duly authorized representative below.

CITY OF EAST PEORIA, IL:

By: _____

Name: _____

Title: _____

**Business Associate Addendum
to Client Agreement**

THIS BUSINESS ASSOCIATE ADDENDUM (“Addendum”) is effective as of the date of the agreement between Client (a Covered Entity) and MedTrak (a Business Associate) to which this Addendum is attached (the “Agreement”). Pursuant to the Agreement, MedTrak performs certain services for Client, in connection with which MedTrak may receive from, or create or receive on behalf of, Client health information that is considered PHI (as defined below). To the extent that such PHI is shared between the parties, this Addendum shall apply and shall set forth each party’s obligations with respect to such PHI. In consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

TERMS

1. Definitions

Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the HIPAA Rules (as defined below), the HITECH Standards (as defined below) or any future regulations promulgated or guidance issued by the Secretary (as defined below) thereunder.

- a) Breach. “Breach” shall have the same meaning as the term “breach” at 45 C.F.R. § 164.402.
- b) Electronic Health Record. “Electronic Health Record” shall mean an electronic record of health-related information on an Individual (as defined below) that is created, gathered, managed, and consulted by authorized health care clinicians and staff.
- c) Electronic PHI. “Electronic PHI” shall have the same meaning as the term “electronic protected health information” at 45 C.F.R. § 160.103, limited to the information created or received by MedTrak from or on behalf of Client.
- d) HIPAA. “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996, as amended, and the implementation regulations thereunder, including without limitation the HIPAA Rules (as defined below) and the HITECH Standards (as defined below), and all future regulations promulgated thereunder.
- e) HIPAA Rules. “HIPAA Rules” means each of the Privacy Rule (as defined below), the Security Rule (as defined below), the Breach Notification Rule, and the Enforcement Rule at 45 CFR Part 160 and Part 164.
- f) HITECH Standards. “HITECH Standards” means Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH”), found at Title XIII of the American Recovery and Reinvestment Act of 2009, and any regulations promulgated thereunder, including all amendments to the HIPAA Rules.
- g) Individual. “Individual” shall have the same meaning as the term “individual” at 45 C.F.R. § 160.103, and any amendments thereto, and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- h) Privacy Rule. “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164.
- i) Protected Health Information. “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” at 45 C.F.R. § 160.103, and any amendments thereto, limited to the information created or received by MedTrak from or on behalf of Client.
- j) Required By Law. “Required By Law” shall have the same meaning as the term “required by law” at 45 C.F.R. § 164.103.
- k) Secretary. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- l) Security Incident. “Security Incident” shall have the same meaning as the term “security incident” at 45 C.F.R. § 164.304.
- m) Security Rule. “Security Rule” shall mean the Security Standards for the Protection of Electronic PHI at 45 C.F.R. Parts 160, 162, and 164.

- n) Unsecured PHI. “Unsecured PHI” shall have the same meaning as the term “unsecured protected health information” at 45 C.F.R. § 164.402.

2. **Relationship of Parties**

In the performance of the work, duties, and obligations described in this Addendum, the Agreement, or under any other agreement between the parties, the parties acknowledge and agree that each party is at all times acting and performing as an independent contractor and at no time shall the relationship between the parties be construed as a partnership, joint venture, employment, principal/agent relationship, or master/servant relationship.

3. **Obligations and Activities of MedTrak**

- a) MedTrak agrees to not use or disclose PHI other than as permitted or required by this Addendum, the Agreement, any other agreement between the parties, or as Required By Law.
- b) MedTrak will make reasonable efforts, to the extent practicable, to limit requests for and the use and disclosure of PHI to a Limited Data Set (as defined in 45 C.F.R. § 164.514(e)(2)) or, if needed by MedTrak, to the minimum necessary PHI to accomplish the intended purpose of such use, disclosure or request, and as applicable, in accordance with the regulations and guidance issued by the Secretary on what constitutes the minimum necessary for MedTrak to perform its obligations to Client under this Addendum, the Agreement, any other agreement between the parties, or as Required By Law.
- c) MedTrak agrees to use appropriate safeguards to prevent the use or disclosure of PHI it creates, receives, maintains, or transmits on behalf of Client, other than as provided for by this Addendum or the Agreement.
- d) Business Associate agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate shall comply with the applicable requirements of the Security Rule in the same manner such provisions apply to Covered Entity.
- e) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Addendum.
- f) Following MedTrak’s discovery of a Breach of Unsecured PHI, MedTrak shall notify Client of the Breach without unreasonable delay, and in no event later than ten (10) days after MedTrak, or any of its employees or agents, discovered the Breach. To the extent that MedTrak creates, receives, maintains or transmits Electronic PHI, MedTrak agrees to report as soon as practicable to Client any Security Incident, as determined by MedTrak, involving PHI of which MedTrak becomes aware. Notwithstanding the foregoing, MedTrak and Client acknowledge the ongoing existence and occurrence of attempted but unsuccessful Security Incidents that are trivial in nature, such as pings and port scans, and Client acknowledges and agrees that no additional notification to Client of such unsuccessful Security Incidents is required. However, to the extent that MedTrak becomes aware of an unusually high number of such unsuccessful Security Incidents due to the repeated acts of a single party, MedTrak shall notify Client of these attempts and provide the name, if available, of said party. At the request of Client, MedTrak shall identify the date of the Security Incident, the scope of the Security Incident, MedTrak’s response to the Security Incident, and the identification of the party responsible for causing the Security Incident, if known.
- g) In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, MedTrak agrees to ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of MedTrak agree to the same restrictions, conditions, and requirements that apply through this Addendum to MedTrak with respect to such information.
- h) MedTrak shall provide access, at the request of Client and in a time and manner mutually acceptable to MedTrak and Client, to PHI in a Designated Record Set to Client, or, as directed by Client, to an Individual or another person properly designated by the Individual, as necessary to satisfy Client’s obligations under 45 C.F.R. § 164.524. If MedTrak maintains PHI electronically in a Designated Record Set and if an Individual requests an electronic copy of such information, MedTrak must provide Client, or the Individual or person properly designated by the Individual, as directed by Client, access to the PHI in the electronic form and format requested by the Individual, if it is readily producible in such form and format; or, if not, in a readable

electronic form and format as agreed to by MedTrak, Client, and the Individual. Any fee that MedTrak may charge for such electronic copy shall not be greater than MedTrak's labor and supply costs in responding to the request.

- i) MedTrak agrees to make any amendment(s) to PHI in its possession contained in a Designated Record Set as directed or agreed to by Client pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Client's obligations under 45 CFR 164.526, in a time and manner mutually acceptable to MedTrak and Client.
- j) MedTrak agrees to document disclosures of PHI and information related to such disclosures as would be required for Client to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. As of the compliance date set forth in the regulations promulgated under HITECH or as otherwise determined by the Secretary, in addition to the accounting of disclosure obligations required under 45 C.F.R. § 164.528, MedTrak shall account for all disclosures of PHI made through an Electronic Health Record in accordance with the HITECH Standards and any future regulations promulgated thereunder.
- k) Within ten (10) business days (or such other date that MedTrak and Client may reasonably agree upon) of receiving written notice from Client that Client has received a request for an accounting of disclosures of PHI, MedTrak agrees to make available the information collected as required to permit Client to provide an accounting of disclosures as necessary to satisfy Client's obligations under 45 C.F.R. § 164.528.
- l) MedTrak shall make its internal practices, books, and records, relating to the use and disclosure of PHI received from, or created or received by MedTrak on behalf of Client, available to the Secretary for purposes of determining Client's or MedTrak's compliance with the HIPAA Rules.
- m) To the extent MedTrak is to carry out one or more of Client's obligation(s) under Subpart E of 45 CFR Part 164, MedTrak shall comply with the requirements of Subpart E that apply to Client in the performance of such obligation(s).

4. **Permitted Uses and Disclosures**

Except as otherwise limited in this Addendum:

- a) MedTrak reserves the right to **use** PHI for the proper management and administration of MedTrak, to carry out the legal responsibilities of MedTrak, and to provide data aggregation services to Client.
- b) MedTrak may **use or disclose** PHI to perform functions, activities, services, Payment activities, or Health Care Operations for, or on behalf of, Client provided that such use or disclosure would not violate the Privacy Rule if done by Client.
- c) MedTrak may **disclose** PHI in its possession for the proper management and administration of MedTrak, provided that disclosures are Required by Law, or MedTrak obtains reasonable assurances from the third party to whom the information is disclosed that such PHI will be held confidentially and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the third party, and the third party notifies MedTrak of any instances of which it is aware in which the confidentiality of the PHI has been breached.

5. **Obligations of Client**

- a) Client shall notify MedTrak in writing of any limitation(s) in its notice of privacy practices, to the extent that such limitation may affect MedTrak's use or disclosure of PHI.
- b) Client shall notify MedTrak, in writing and in a timely manner, of any change in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such change may affect MedTrak's permitted or required use or disclosure of PHI.
- c) Client shall notify MedTrak, in writing and in a timely manner, of any restriction to the use and/or disclosure of PHI, which Client has agreed to or is required to abide by under 45 C.F.R. § 164.522, to the extent that such restriction may affect MedTrak's use or disclosure of PHI.
- d) Client shall have entered into a "Business Associate Agreement" with any third parties (e.g., case managers, brokers or third party administrators) to which Client directs and authorizes MedTrak to disclose PHI.

6. Permissible Requests by Client

Client shall not request MedTrak to use or disclose PHI in any manner that would not be permissible under the Privacy Rule or the Security Rule if done by Client.

7. Termination

- a) Termination for Cause. Upon Client’s knowledge of a material breach of this Addendum by MedTrak, Client may either:
- i) Provide an opportunity for MedTrak to cure the breach or end the violation and, if MedTrak does not cure the breach or end the violation within the time specified by Client, terminate this Addendum; or
 - ii) Immediately terminate this Addendum if MedTrak has breached a material term of this Addendum and cure is not possible.

MedTrak shall ensure that it maintains the termination rights in this Section in any agreement it enters into with a subcontractor pursuant to Section 3(h) hereof.

b) Effect of Termination.

- i) Except as provided in paragraph (b)(ii) of this Section, upon termination of this Addendum, for any reason, MedTrak, with respect to PHI received from Client, or created, maintained, or received by MedTrak on behalf of Client, shall:
 - 1. Retain only that PHI which is necessary for MedTrak to continue its proper management and administration or to carry out its legal responsibilities;
 - 2. Return to Client or, if agreed to by Client, destroy the remaining PHI that MedTrak still maintains in any form;
 - 3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as MedTrak retains the PHI; and
 - 4. Not use or disclose the PHI retained by MedTrak other than for the purposes for which such PHI was retained and subject to the same conditions set out in paragraphs (a) and (c) above under “General Use and Disclosure Provisions” which applied prior to termination.
- ii) In the event MedTrak determines that returning or destroying the PHI is not feasible, MedTrak shall provide to Client notification of the conditions that make return or destruction not feasible. MedTrak shall extend the protections of this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction not feasible, for so long as MedTrak maintains such PHI.
- iii) MedTrak’s obligations under this Section shall survive the termination of this Addendum.

8. Miscellaneous

- a) Regulatory References. A reference in this Addendum to a section in the Privacy Rule or the Security Rule means the section as in effect or as amended and for which compliance is required.
- b) Amendment. No change, amendment, or modification of this Addendum shall be valid unless set forth in writing and executed by both parties. Notwithstanding the foregoing, the parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Addendum may be required to ensure compliance with such developments. The parties specifically agree to take such action as may be necessary from time to time for the parties to comply with the requirements of HIPAA. Client shall provide written notice to MedTrak to the extent that any final regulation or amendment to final regulations promulgated by the Secretary under HITECH requires an amendment to this Addendum to comply with HIPAA. The parties agree to negotiate an amendment to the Addendum in good faith.
- c) Interpretation. Any ambiguity in this Addendum shall be resolved to permit Client and MedTrak to comply with HIPAA.