**PHARMACY BENEFIT MANAGER SERVICES CONTRACT**

This Pharmacy Benefit Manager Services Contract (Contract) is made by and between the State of Mississippi State and School Employees Health Insurance Management Board (Board), acting administratively through the Department of Finance and Administration (DFA), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (PBM) effective January 1, 2021, under the following terms and conditions under which the PBM agrees to provide services to the Board relating to the State and School Employees’ Health Insurance Plan (Plan), and any other plans/programs for which the Board is or becomes responsible during the term of this Contract.

1. **Definitions**
2. “Allowable Charge” means the lesser of the amount payable under the terms of the Pharmacy’s contract with the PBM for a Covered Medication or the cash price inclusive of all applicable customer discounts which a cash paying customer of the Pharmacy pays for a Covered Medication.
3. “AWP” means the “average wholesale price” for a standard package size of a prescription drug from the most current pricing information provided to PBM by Medi-Span Prescription Pricing Guide, or following approval by the Board, any other nationally available reporting service of pharmaceutical prices as utilized by PBM as a pricing source for prescription drug pricing. The AWP used is based on the date sensitive 11-digit national drug code (NDC) of the actual package size dispensed as set forth by Medi-Span on the date the Claim is dispensed.
4. “Brand Name Drug” means drug that has a trade name and is protected by a patent. A brand name drug may only be produced and sold by the pharmaceutical company holding the patent or a pharmaceutical company that has been licensed and authorized by the patent holder to produce and sell the drug. Medi-Span Multi-Source Indicator will be used for calculating aggregate financial guarantees. For prescription drug claims processed where the underlying prescription drug product is identified having a Multi-Source indicator code identifier of “M”, “N”, or “O” on the date dispensed, the claim should be considered a Brand claim unless otherwise noted as an exclusion. Claims processed where the Multi-Source indicator is a “Y” on the date dispensed will be considered as Generic claims.
5. “Compound Drug” shall mean a formulation containing one or more “Drug Products”, which is extemporaneously weighed or measured then prepared by a Participating Pharmacy in accordance with a Physician’s Prescription Order. A Compound Drug prescription meets the following criteria: two or more solid, semi-solid or liquid ingredients, at least one of which is a Covered Medication that is not commercially available. Compound drug claims will only be covered for medications for which the compounded product is not commercially available.

1. “Copayment” means that portion of the Allowable Charge for a given Covered Service which, under the terms of the Plan, is required to be paid by the participant directly to the Participating Provider of Prescription Drug Services. The Employee will pay the lower of:
   * 1. the Copayment, Coinsurance or Deductible;
     2. the plan-negotiated discount price contracted rate, plus dispensing fee; or
     3. the pharmacy’s usual and customary charge for the Drug Product, MAC (maximum allowable cost) or retail cash price.
2. “Covered Service” means a Prescription Drug Service provided under the terms of this Contract for which payment may be requested under terms of the Plan.
3. “Employee” means an eligible person who has satisfied the specifications of the Plan’s Plan Document’s Schedule of Eligibility and has enrolled for coverage under the Plan. Unless otherwise, “Employee” refers to an active employee, a retired employee or a COBRA participant.
4. “Formulary” means the PBM’s Performance Drug List (PDL), which is a list of preferred pharmaceutical products, created and maintained by the PBM, as amended from time to time, which: (a) has been approved by PBM’s pharmacy and therapeutics committee; (b) reflects the PBM’s recommendations as to which pharmaceutical products should be given favorable consideration by plans and their participants; and (c) includes all standard clinical programs, including but not limited to prescribing guidelines such as prior authorization, step therapy, and quantity level limits, if elected by the Board.
5. “Generic Drug” means a drug that is therapeutically equivalent (identical in strength, concentration, and dosage form) to a Brand Name Drug and that generally is made available when patent protection expires on the Brand Name Drug. The Board’s expectation is that Medi-Span Multi-Source Indicator will be used for calculating aggregate financial guarantees. For prescription drug claims processed where the underlying prescription drug product is identified having a Multi-Source indicator code identifier of “M”, “N”, or “O” on the date dispensed, the claim should be considered a Brand claim unless otherwise noted as an exclusion. Claims processed where the Multi-Source indicator is a “Y” on the date dispensed will be considered as Generic claims.
6. “Health Insurance Portability and Accountability Act (HIPAA)” shall refer to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
7. “Health Management Vendor” means the vendor that provides health management services to the Plan including, but not limited to, hospital management services, continued stay management, discharge planning, retrospective review, review of high cost diagnostic procedures, and medical necessity review for specified medical services. This vendor also provides wellness and health promotion, case management, and disease management services.
8. “Limited Distribution Drugs” means Specialty Drugs which are distributed to either one (1) or a very limited number of pharmacies, distributors or wholesalers.
9. “Maximum Allowable Charge” means the maximum reimbursement payable to a Participating Provider for Covered Services under the terms of this Contract.
10. “Maximum Allowable Cost” or “MAC” means the unit price that has been established by the PBM for a multi-source drug (i.e., a drug with more than two sources) included on the MAC drug list applicable to the Board, which list may be amended from time to time by the PBM in maintaining its generic pricing program. A copy of such MAC drug list shall be provided to the Board prior to execution of this Contract and thereafter upon the Board’s reasonable request.
11. “Network Pharmacy” means a retail pharmacy, Home Delivery Pharmacy, Specialty Pharmacy or other facility that is duly licensed to operate as a pharmacy and is owned or operated by the PBM (or an affiliate) or has entered into a Network Pharmacy Agreement.
12. “Paid Claims” means as all transactions made on eligible participants that result in a payment to pharmacies or participants from the Plan or the Plan participant copayments. (Does not include reversals, rejected claims and adjustments.) Each unique prescription that results in payment shall be calculated separately as a paid claim.
13. “Participant” means an individual who is eligible to receive Prescription Drug Services for which payment may be sought under the terms of the Plan.
14. “Participating Provider” means a pharmacy or pharmacist which has entered into a contract with the PBM to provide Prescription Drug Services under this Contract. All pharmacists employed by a Participating Provider are subject to all requirements imposed on Participating Providers under this Contract.
15. “Pharmacy Benefit Manager (PBM)” means the entity that administers the prescription drug portion of the Plan. The PBM is expected to provide pharmacy claims processing, mail order pharmacy services, and other services, such as rebate negotiations with drug manufacturers, development and management of pharmacy networks, Formulary management, drug utilization review programs, generic drug substitution, and disease management programs.
16. “Plan” means the self-insured Mississippi State and School Employees’ Health Insurance Plan as defined in Mississippi Code Annotated § 25-15-1 et. seq.
17. “Plan Document” means the document that states the benefits and eligibility terms of the Plan. The Plan Document is published and maintained by the Board. All benefits under the Plan are subject to the Plan Document.
18. “Rebate” means any compensation or remuneration of any kind received or recovered by the PBM, or any of its affiliates, from a pharmaceutical manufacturer attributable to the purchase or utilization of covered drugs by eligible persons, including, but not limited to, incentive rebates categorized as mail order purchase discounts; credits; rebates, regardless of how categorized; market share incentives; promotional allowances; commissions; educational grants; market share of utilization; drug pull-through programs; implementation allowances; clinical detailing; rebate submission fees; and administrative or management fees. Rebates also include any fees that PBM, or any of its affiliates, receives from a pharmaceutical manufacturer for administrative costs, formulary placement, and/or access.
19. “Specialty Drug” means pharmaceutical products that are typically expensive and require special handling and monitoring such as patient training, care coordination, adherence monitoring. They can be administered orally or through injection, infusion, inhalation, or other non-oral methods. Many are biologically developed (biologics) and can be used to treat chronic, life threatening, and rare conditions.
20. “Specialty Pharmacy” means a contracted pharmacy providing Specialty Drugs, including any specialty pharmacies owned by the PBM.
21. “Third Party Claims Administrator” means the organization under contract to the Board responsible for processing all medical claims, other than claims for prescription drug services, received from participants.
22. “Usual and Customary” or “U&C” means the amount a participating provider would charge to a cash paying customer for same strength, quantity, and dosage form of a covered drug, as of the date the prescription is filled.
23. **Scope of Services**

The PBM shall provide all services directly related to this Contract from facilities using staff and resources located within the United States. The PBM agrees, at the request of the Board, to assist the Board and the staff of DFA by providing the following pharmacy benefit manager administration services:

## Account Service

1. The PBM must assign a dedicated, but not necessarily exclusive, account manager to participate in activities relative to all aspects of the contract between the Board and the PBM, and to meet with DFA staff on a quarterly basis to review Plan utilization, attend meetings with the Board’s meetings (if requested), and make recommendations regarding services and/or programs on a quarterly basis, to discuss performance, address administration issues and review reports. Please confirm that you agree to this.
2. The PBM must employ and assign a dedicated and exclusive clinical pharmacist to advise, consult, and participate in activities relative to all aspects of the contract between the Board and the PBM. Duties of the clinical pharmacist will include, but are not limited to, reducing wasteful spending through analysis and provider education, providing advice regarding drugs for which the Plan may require prior authorization for coverage, notification of blockbuster or pipeline drugs, FDA approval of new drugs, and education regarding therapeutic substitutions. The clinical pharmacist will be provided office space within the DFA – Office of Insurance, and must also reside in the State of Mississippi to participate in employer health/benefit fairs, and visit physician offices and pharmacies to discuss the preferred drug list, use of generics, prescribing and utilization patterns, and educate the provider community on the most up-to-date drug therapies. Though not an employee, nor under the direct supervision of the State, the clinical pharmacist will be expected to be physically present in the office during normal business hours to facilitate direct access by Board staff, except when offsite fulfilling other duties for the Plan. PBM must provide computer and other necessary equipment.
3. The PBM must provide consultative services regarding pharmacy benefit design including, but not limited to, formularies, allowable charges, generic drug incentives, implementation of programs which control utilization and optimize health, utilization review services, and evaluation of drug use and cost data.
4. The PBM is responsible for maintaining an adequate customer service staff to respond to inquiries from participants, providers, and DFA staff regarding the services provided by the PBM through a toll free telephone line. The service shall be available 24 hours, 7 days a week, other than scheduled maintenance times, to participants and providers.
5. The PBM is required to conduct at least one (1) customer satisfaction survey within the third quarter of the initial contract period and one (1) annually thereafter. The contents of the satisfaction survey must be agreed upon by the Board and the PBM.
6. The PBM is required to participate in activities with the TPA and/or DFA staff in responding to participant or provider inquiries or complaints relating to pharmacy benefit services.
7. The PBM, at its own expense, is required to participate in health/benefit fairs per year to educate participants.
8. The PBM must cooperate with the Board and with all other contractors of the Board with respect to the ongoing coordination and delivery of health care services, and in any transition of responsibilities.
9. The PBM agrees to provide competent and proficient account management staff and promptly address and respond to any staffing concerns with DFA.

## On-Line Access for Board Staff

The PBM must provide to Board staff read-only access to its claims processing and eligibility system. Access by the Board’s staff must include, at a minimum, review of participant claims history and participant eligibility information. Additionally, the PBM agrees to allow access to its member website with a dummy login prior to the go-live date.

## Pharmacy Network Service

1. The PBM is responsible for the delivery of quality prescription drug services to participants through discount arrangements or other financial contracts with participating pharmacies. The PBM must maintain a pharmacy re-credentialing process at least every three years or as otherwise required by URAC or CMS.
2. The PBM is required to maintain a separate credentialing process for specialty and compound pharmacies. The PBM is required to provide an open credentialing process for specialty network without unnecessary restrictions such as limited application period, licensed in at 50 states, etc.
3. The PBM is required to provide on-line access to a directory of participating pharmacies, including their names, addresses and telephone numbers. Participating pharmacy information must be regularly maintained and updated.
4. The PBM agrees to notify DFA staff at least 60 days in advance regarding termination of a current pharmacy chain or independent pharmacy. PBM agrees to also notify impacted participants within 15 days of termination.
5. The PBM must include independent pharmacies in the proposed retail network and all guarantees proposed are inclusive of independent pharmacies.

## Staffing

The PBM will hire and maintain sufficient staff to meet the needs of the Board and the Plan’s participants.

## Communication Materials/Forms

The PBM, at its own cost, is responsible for designing, printing, and distributing brochures, preferred drug lists, and forms, cobranded, and with the Board’s approval, as necessary and required to establish and administer pharmacy services and programs. Communication materials/forms will be mailed to participants, employer units, and the Board.

## Identification Cards

The PBM, at its own cost, must provide routine distribution of ID cards, including printing, mailing, and postage. The PBM, at its own cost, will provide ID cards directly to the participant’s home address for (1) the initial enrollment of the Plan, (2) future new enrollees, (3) participants who change coverage category (e.g. single to family), and (4) replacement of lost cards. Participants with single coverage should receive one (1) ID card; participants with dependent coverage should receive at least two (2) ID cards. The information to be printed on each ID card will include, at a minimum, the participant’s name and identification number, Plan name, the PBM name and toll free customer service telephone number.

## Data Transfers and File Maintenance Requirements

1. The PBM will receive updated eligibility information from the Board’s TPA based on the current specifications. It is the PBM’s responsibility to coordinate the data transfer with the Board’s TPA to ensure an efficient and accurate process. The PBM is also responsible for the electronic transfer of prescription drug claim information to the Board’s TPA for purposes of coinsurance maximum, out-of-pocket limit, and deductible accumulation.
2. The PBM is responsible for the electronic transfer of prescription drug claim information to the Board’s health management vendor, and for accepting the electronic transfer of information from the Board’s health management vendor relative to enrollment in the Plan’s tobacco cessation program or other programs that may require special pharmacy benefits.
3. The PBM is responsible for the electronic transfer of prescription drug claim information to the Board’s decision support services vendor. The Board currently contracts with Health Data and Management Solutions, Inc. (HDMS) for decision support services.

## Claims Processing Services

1. The PBM’s claims processing services must include, at a minimum, verification of eligibility, review of claims in accordance with the Plan benefits, receipt, processing, adjustment, and authorization of claim payments, provision of claim forms, and provision of explanation of benefit (EOB) forms for paper claims.
2. The PBM must maintain, at a minimum, the following information for all claims: participant name, participant identification number, patient name or other specific identifier, claim number, pharmacy number, pharmacy name, service date, mail/retail indicator, formulary flag, specialty indicator, ingredient cost, dispensing fee, sales tax amount, plan paid amount, copayment amount, NDC, and drug name.
3. The PBM must be able to accommodate multiple plan designs such as the Plan’s current Base Coverage and Select Coverage as described in Appendix B – 2020 Plan Document, and must be able to process claims with a deductible that is integrated with the medical plan deductible (i.e. Base Coverage).
4. The PBM must adjudicate all claims according to “lowest of” logic such that members and the Plan pay the lowest cost of the contracted price or the pharmacy’s usual and customary amount (including the pharmacy’s sale price, if any). PBM will not be allowed to adjudicate claims based on ‘zero balance logic” or on a minimum copayment amount, and retail pharmacies will not be allowed to collect a minimum payment.
5. Any pharmaceutical provider tax is to be paid by the PBM.

## Federal Reporting

As required by Federal law, the PBM, after discussions and negotiations with the Board, will prepare and file reports required by the Federal Government.

## Coordination of Benefits

The PBM is responsible for providing coordination of benefits (COB) services. The TPA provides information regarding a participant’s COB status to the PBM. The PBM must reject primary payment for participants for whom the Plan is secondary and must provide for secondary payment of prescription drug claims submitted, either electronically or by submission of a hard copy claim form to be obtained from the PBM. Benefits for secondary claims, are based upon the allowable charge, less the amount paid by the primary carrier, less the applicable copayment for that prescription drug. Any additional cost for this service must be included in the financial proposal.

## Quality Control

The PBM is responsible for quality control processes to regularly evaluate the performance and accuracy of the claims processing systems and the claims processing staff. Findings of quality control evaluations will be provided to the Board.

## Appeal Resolution

The PBM must provide an appeal process for claims partially or fully denied for payment upon the request of a participant or provider in accordance with guidelines outlined in the Plan Document at no extra cost to the Board.

## Prior Authorization Program

The PBM must provide prior authorization services to promote cost management while ensuring that participants can access needed prescription drugs. The prior authorization program must use evidence-based guidelines and the latest clinical literature and outcomes data, as well as FDA guidelines. The PBM will advise the DFA regarding those drugs for which the Plan may benefit by requiring prior authorization for coverage. The PBM's staff, under the supervision of clinical pharmacists, will review participant prescriptions for those drugs requiring prior authorization and/or medical necessity review in accordance with criteria, definitions and procedures developed by the PBM.

## Management Reporting

The PBM must provide management reports, with content and in a format approved by the Board, at no additional charge. These reports will be provided, at the Board’s request, in a hard copy and/or electronic format. The PBM must provide to assigned DFA staff access to web-based reporting tools for management and other reports. The PBM is also expected to have the capability of providing ad hoc reports at the Board's request.

## Drug Utilization Review (DUR)

The PBM is required to provide a concurrent, prospective and retrospective DUR system to assist pharmacy providers in screening certain drug categories for clinically important potential drug therapy problems at the time the prescription is dispensed to the participant. The DUR program must provide an evaluation of drug therapy before each prescription is filled by means of an online, real-time, electronic point-of-sale claims management system. Evaluation must include, at a minimum, monitoring for therapeutic appropriateness, over-utilization and under-utilization, appropriate use of generic products, and screening for potential drug therapy problems due to therapeutic duplication, drug-disease contraindications, drug interactions, incorrect drug dosage or duration of drug treatment, physician profiling, and clinical abuse/misuse and, as necessary, introduce remedial strategies in order to improve the quality of care of the participant.

## Step Therapy

The PBM is required to provide a step therapy program designed to optimize rational drug therapy while controlling costs by defining how and when a particular drug or drug class should be used based on a patient’s drug history.

## Dosage Optimization

The PBM is required to provide a dose optimization program designed to slow the rising cost of prescription drugs and help increase patient compliance with drug therapies. As part of the dose optimization program, the PBM must work with the participant, the health-care provider and pharmacist to replace multiple doses of lower strength medications with a single dose of higher-strength medications where appropriate.

## Medication Adherence Program

The PBM is required to provide a comprehensive pharmacy care program to improve medication adherence for participants with chronic conditions. As part of the medication adherence program, the PBM will provide telephonic coaching that will involve calls to participants from a health educator who is specially trained in the chronic condition. The calls will involve coaching participants on behavioral reinforcement strategies that will help them to continue taking their medications on schedule; calls will also include specially tailored education for the chronic condition. Doctors will receive written educational information on the rates of medication adherence, implications of non-adherence, and methods for improving adherence. Doctors will also receive alerts on participants who are not filling their medication prescriptions.

## Quantity Limits

The PBM is required to provide a limitation program for drugs which are indicated only for a specific therapeutic period or are limited to certain amounts. If, based on on-line adjudication, the quantity of a covered drug is not approved by the PBM, the prescribing physician must be allowed to contact the PBM for prior approval of additional quantities based on documentation of medical necessity.

## Early Refill

The PBM is required to process requests from participants, pharmacists, and providers for early refills or advance supplies of a medication due to vacations, dosage changes, or for lost or destroyed medication.

## Website

The PBM will develop and maintain a searchable public website that is accessible to participants and providers with no access restriction or registration requirement except for those functions which allow for review of a participant’s prescription claim history, or that include other forms of personal health information. The website contains at a minimum:

1. A current provider directory
2. Ability to conduct a zip-code based pharmacy proximity search
3. Claim forms for both primary and secondary coverage
4. On-line mail order refill capabilities
5. Mail order forms
6. Formulary or preferred drug list
7. Total Drug Cost (participant and Plan payment) as well as alternative drug price check functionality
8. Research drug interactions, side effects, and risks of drugs
9. Determine the availability of generic substitutions
10. Health/wellness information

## Field and Desk Audits

Pharmacy field and desk audit services must be included in the administrative fee, and the PBM must provide an annual report of audit activities and findings. Any errors will be addressed and corrected in a timely manner by the PBM. Any amounts recovered due to a field or desk audit will be 100% refunded to the Board.

## Specialty Medication and Supplies

1. The PBM is required to provide a Specialty Network for prescription fulfillment and distribution of specialty medications and supplies, pharmaceutical care management services, customer service, utilization and clinical management, integrated reporting, and claims processing. The specialty medication program must include, at a minimum, patient profiling focusing on the appropriateness of specialty medication therapy and care, and the prevention of drug interactions. The program must also include patient education materials, patient monitoring, adherence programs, and compliance programs. Programs such as drug utilization review, drug limitation (step therapy, quantity and supply limits) and prior authorization services must be extended to the specialty medication program. Channel distribution (retail, specialty, mail pharmacy) must be optimized for plan and participant savings.
2. The Specialty Network must open and comply with the State’s “any willing provider” statutory requirements (Section 83.9.6 subs 3(b)). Note: An exclusive central fill distribution channel is not acceptable.
3. Specialty medications must be deliverable to the participant’s residence or the participant’s physician’s office. The PBM must provide to participants a toll free telephone access to a registered nurse, pharmacist, or patient care coordinator (as appropriate) twenty-four (24) hours per day, seven (7) days per week.
4. The Specialty Pharmacies must be properly licensed, certified or credentialed to operate in the applicable states where dispensing specialty operations reside.
5. The Specialty Pharmacies must collect copayments for specialty mail order services with no balance billing of unpaid copayments allowed.
6. The PBM must provide an overall specialty discount guarantee for those drugs dispensed through the exclusive specialty drug program in addition to a claim by claim, the greater of will apply.
7. The PBM agrees during the life of the contract no new therapeutic classes will be added to the specialty drug list without written consent of the State.
8. The PBM will adjudicate all specialty claims at the lesser of: (a) the contracted discount plus dispensing fee or (b) MAC plus dispensing fee.
9. The PBM will guarantee Retail/Specialty unit cost equalization meaning that Specialty unit costs for medications dispensed at non-retail specialty pharmacies prior to participant cost sharing, and dispensing fees will be no greater than the unit cost for the same NDC-11 at Retail.
10. The PBM will produce a date-sensitive comparison report showing unit costs charged to the State at a GCN-level, and reimburse the State on a dollar-for-dollar basis for all instances where Specialty unit costs exceed retail unit's costs. Report and reconciliation will be provided on a quarterly basis, without a request being made by the State.

## Mail Order Services

1. The PBM must make available a mail order prescription drug program to process and dispense covered prescription drugs. Programs such as drug utilization review, drug limitation, and prior authorization services must be applied to mail order services and must be consistent with the retail channel.
2. The PBM’s mail order service must provide to participants toll free telephone access to a pharmacist and customer service representative twenty-four (24) hours per day, seven (7) days per week.
3. The PBM will guarantee that discounts provided on mail order claims should meet or exceed those of retail.

## Annual Explanation of Benefits

The PBM must be capable of providing an annual on-line explanation of benefits (EOB) to each participant utilizing the prescription drug program. The purpose of the annual EOB is not only to provide the participant with a complete list of prescription drugs processed through the prescription drug program, but to educate the participant regarding potential savings based on therapeutic and generic substitutions, dosage optimization, etc. At a minimum, the explanation of benefits should include:

1. Name and Address of PBM
2. Toll Free Number for PBM
3. Participant’s Name and Address
4. Participant’s Identification Number
5. Patient's Name
6. Provider Name
7. Claim Date of Service
8. Type of Service
9. Total Charges
10. Discount Amount
11. Allowed Amount
12. Excluded Charges
13. Amount Applied to Deductible
14. Copayment or Coinsurance Amount
15. Total Patient Responsibility
16. Total Payment Made and To Whom

## Rebates

1. The Board shall be entitled to receive the greater of: (1) the guaranteed minimum per claim rebate amount, or (2) 100% of all rebates received by the PBM attributable to the Board’s utilization that the PBM receives from any and all pharmaceutical manufacturers or intermediaries or other similar sources. These sources may include, but will not be limited to, market share incentives; promotional allowances; commissions; educational grants; Inflation protection; implementation allowances; clinical detailing; or rebate submission fees. The intermediary will pay the PBM 100% of the rebates it receives that are directly attributable to prescription drug claims paid by the Board, allowing the PBM to pay the Board 100% of the rebates collected, regardless of who collected them (the PBM or the intermediary). With regard to rebates received by the PBM from any intermediary, the Board shall have audit rights to ensure compliance by the PBM and its intermediary with transparency and rebate submission requirements. The PBM must ensure that, to the extent that the Plan’s prescription drug purchases are included, any agreement the PBM now has, or subsequently enters into with an intermediary for rebate collection, contain sufficient language to provide the Board free and direct audit access to the financial records, claims data, remittance data, contracts (e.g. pharmacy network, pharmaceutical manufacturer, etc.), reports and other information required by the Board to verify that the Transparency requirement is being met by the PBM and the intermediary. Any fees or cost associated with rebates administration should be included in the PBM’s bundled administration fee.
2. The PBM will offer price or inflation protection guarantees and please define the dollars at risk your organization will commit to in this guarantee.
3. The PBM must pass through price protection received from manufacturers through rebates to the Plan.
4. The PBM will provide an NDC level report on earned rebate dollars and all ancillary fees received by your organization from pharmaceutical manufacturers for medications dispensed for the state in addition to the monthly and annual reconciliation reports.
5. The PBM must provide rebate reporting by therapeutic category and by manufacturer on a quarterly basis and down to the NDC level.
6. The PBM’s confirms their manufacturer agreements contain provisions that limit the amount the manufacturer can raise the AWP price of prescription drugs each year.
7. The PBM will charge one overall administrative fee for all pharmacy services which shall include, but not be limited to, fees for rebate management, retail management, formulary management, and network management.

## Transparency

1. The Board must have a transparent financial pricing arrangement from the PBM. “Transparency” refers to financial arrangements which represent a direct and complete pass-through of all elements of negotiated provider pricing (e.g. discounts and dispensing fees, etc.). The Board must receive the full and complete amount of any discounts received by the PBM from any and all retail pharmacies. The PBM will not retain a differential (i.e. spread) between the amount reimbursed to the PBM by the Board for each transaction and the payments made to the retail pharmacies by the PBM.
2. The Board will not apply the above standard to mail order or specialty pharmaceutical transactions when owned by the PBM. For these mail order or specialty pharmaceuticals, the Board will accept the best possible discount arrangements from the PBM as it relates to discounts from AWP. Rebates generated through mail order and/or specialty pharmaceuticals will be subject to the transparency requirement described below.
3. The only compensation the PBM will receive, attributable to the Plan’s utilization shall be from or on behalf of the Board, for the services described in this proposal or any subsequent contract, shall be the PBM’s quoted administrative fees listed in the PBM’s proposal or agreed upon in writing through subsequent discussion with the Board.
4. The PBM agrees to disclose details of all programs and services generating financial remuneration from outside entities.

## Full Disclosure and Independent Review

The Board must have access to all of the PBM’s financial records including the Maximum Allowable Cost (MAC) list used to adjudicate the Plan's claims, claims data, remittance data, contracts (e.g. pharmacy network, pharmaceutical manufacturer, etc.), reports and other information required by the Board to verify that the transparency requirement is being met by the PBM during the period covered by the contractual term. Full disclosure as used herein would include, but not be limited to, auditing the following types of financial arrangements:

1. Any amount paid for the Plan by the PBM to retail pharmacies under contract with the PBM’s retail network is subject to audit even though the PBM may deem said contracts proprietary and confidential;
2. Rebates or any other monies or fees, which include administrative fees, paid to the PBM by pharmaceutical manufacturers are subject to review for audit purposes;
3. Any amount paid for the Plan by the PBM to a mail order or specialty pharmacy, when not owned by the PBM, will be subject to audit, whether or not the contract is considered proprietary and confidential by the PBM;
4. Discounts negotiated directly by the PBM with manufacturers shall be subject to audit; and
5. Aggregate rebate collecting, reporting, and contractual arrangements.

The Board, at its discretion, may use the services of an independent reviewer to perform reviews/audits of the PBM’s records on behalf of the Board. The Board and its independent reviewer will comply with all applicable confidentiality laws and will not reveal any confidential information acquired as a result of the review/audit. The Board has the right to review/audit records for the entire term of the agreement without limitation up to two times per calendar year. Any claims information, documents, etc. which the PBM may deem as containing “trade secrets” will not preclude an examination of such items through the audit process. The PBM will provide the Board assistance in the audit reviews by providing access to records, copies of claims data, access to reasonable support staff, etc. at no cost to the Board. The PBM will cooperate with the independent reviewer and agree to respond to any inquiries by the independent reviewer within the agreed upon schedule. The PBM will, within 60 days of final report being issued by Auditor, complete the final reconciliation and submit any and all reimbursement to the Plan. The PBM will not restrict the size of the claims sample reviewed by the independent reviewer which may include a review of 100% of all claims for the period under review. The Board will bear the cost of any fees charged by its independent reviewer.

## Market Checks

The Board may perform, or have performed on its behalf, following the twelfth (12th) month of the effective date services being provided and annually thereafter, a market check or an assessment of market conditions, pharmaceutical pricing, dispensing fees, and any other matters, services, or price drivers pertaining to this contract to determine if the terms of the contract are competitive with the then current market conditions. The market check will be allowed annually for the life of the contract.

If the Board or its designee provides the PBM with a written report conducted by a third party audit firm that takes into account, in the aggregate, the general plan design, formulary, clinical and trend programs utilized by the Board, participating network, utilization, and demographics for generally comparable plans that indicate a 1% or greater savings, the PBM will have the opportunity to respond, within thirty (30) days of receipt of the third party auditor market assessment, with a proposed amendment to the contract for new pricing terms that are mutually agreed upon and implemented no later than sixty (60) days after the third party audit firm report is completed and provided to the PBM. If the parties cannot come to agreement on the new terms, the Board reserves the right to terminate the contract with 120 days advance notice without penalty.

## Formulary Management

1. The PBM must administer all the provisions outlined in the Appendix B - 2020 Plan Document.
2. The PBM must adhere to, develop and administer an evidence and value-based formulary program including ongoing pharmacy and therapeutics committee review and maintenance.
3. The PBM must provide a customizable formulary which provides access to clinically effective medications as the lowest net cost.
4. The PBM agrees that drugs will not be excluded from coverage unless required by FDA or the plan sponsor.
5. The PBM must provide plan design, clinical and utilization management program and formulary modeling service at no charge.

## Manufacturer Coupons/Patient Assistance Programs

1. The PBM agrees to have programs in place to counter the use of manufacturer's coupons/patient assistance programs that promote the dispensing of higher cost brand name drugs when a lower cost generic or alternative is available. Describe the PBMs strategy to combat the use of manufacturer's coupons.
2. The PBM will administer a variable copayment plan design to leverage available specialty drug manufacturer patient assistance programs.
3. The PBM’s variable copayment plan design, if selected, will be in place for the life of the contract.
4. **Responsibilities of the Board, Administrator of the Plan**
5. The Board reserves the exclusive right to amend, reduce, or eliminate any part of the Plan or change any benefits at any time. To the extent that such amendment, reduction, elimination, or change materially affects the services provided by the PBM under this Contract, the Board shall notify the PBM of such change via a letter of authorization in a timely manner and in advance of such change. In case of conflict between this Contract and the Plan Document, the Plan Document will prevail.
6. The Board or its designee shall provide educational material to all participants explaining conditions of coverage, cost sharing, benefit design, and financial incentives encouraging compliance with the Plan’s Pharmacy Benefit Management program.
7. The Board shall have final authority on any appeal, application, and interpretation of the Plan’s benefits or eligibility policies.
8. The Board will not disseminate, sell, or license any proprietary information belonging to the PBM to others without the PBM’s prior written approval, unless the information is subject to the Public Records Law of the State or is required to be released by law.
9. **Contract Term**
10. The effective date of this Contract will be January 1, 2021. This Contract’s term will be for four (4) years with an option to renew for one (1) year at the Board’s discretion. By March 1, 2024, the Board will notify the PBM, in writing, of the Board’s intent as to renewal of the Contract for one (1) additional year.
11. This Contract may be terminated by either party, with or without cause, upon at least ninety (90) days prior written notice of intent to terminate.
12. All records and information provided by the Board or through its third party contractors to the PBM are the sole property of the Board and shall be returned to the Board within thirty (30) days of the termination date of this Contract. The PBM shall be entitled to retain and utilize data that have been captured, computed, or stored in the PBM’s databases to the extent that such data cannot be identified or linked to the Board, Plan, or an individual Plan participant.
13. Upon termination of this Contract, the PBM shall cooperate with the Board and the new PBM during the transition of the Board’s business to the new PBM. Upon request from the Board, the PBM shall provide all Board information maintained by the PBM in a time frame specified by the Board. Information provided shall be in a format designated by the Board and shall include, but not be limited to, where applicable, file layouts and legends at a mutually agreeable cost. The PBM shall provide such explanation of the information provided as to facilitate a smooth transition.
14. **Consideration**

The Board agrees to compensate the PBM for services approved by the Board and performed by the PBM under the terms of this Contract as follows:

A. The fees listed in **Exhibit A *–*** ***Fee Schedule for Pharmacy Benefit Management Services*** shall constitute the entire compensation due to the PBM for services and all of the PBM’s obligations hereunder regardless of the difficulty, materials, or equipment required. The fees include, but are not limited to, all applicable taxes, fees, general office expense, travel, overhead, profit, and all other direct and indirect costs, incurred or to be incurred, by the PBM. The Board shall not provide any prepayments or initial deposits in advance of services being rendered. Fees for services provided by the PBM shall be billable to the Board in arrears on a monthly basis. Only those services agreed to by contract shall be considered for reimbursement/compensation by the Board. Payment for any and all services provided by the PBM to the Board and/or the Plan shall be made only after said services have been duly performed and properly invoiced. The fees listed in**Exhibit A *–*** ***Fee Schedule for Pharmacy Benefit Management Services*** of this contract are firm for the duration of this contract and are not subject to escalation for any reason, unless this contract is duly amended.

1. The PBM must submit all invoices, in a form acceptable to the Board (provided that such acceptance will not be unreasonably withheld) with all the necessary supporting documentation, prior to any payment to the PBM of any administrative fees. Administrative fees must be invoiced on a monthly basis, in sufficient detail and format as determined by the Board. Such invoices shall include, at a minimum, a description of the service(s) provided, the quantity or number of hours billed, the compensation rate, the time period in which services were provided, total compensation requested for each individual service being billed, and total administrative fees requested for the period being invoiced. The Board agrees to make payment to the PBM on any undisputed amounts within thirty (30) days from the date services were rendered or the date of receipt of the invoice, whichever comes last. Upon the effective date of termination of this contract, the PBM’s obligation to provide any further services under this contract shall cease. The PBM shall, however, remain liable for any obligations arising hereunder prior to the effective date of such termination. No additional compensation will be provided by the Board for any expense, cost, or fee not specifically authorized by this contract, or by written authorization from the Board.
2. The payment of an invoice by the Board shall not prejudice the Board's right to object or question any invoice or matter in relation thereto. Such payment by the Board shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any costs invoiced therein. The PBM's invoice or payment may be subject to further reduction for amounts included in any invoice or payment theretofore made which are determined by the Board, on the basis of audits, not to constitute allowable costs. Any payment shall be reduced for overpayment or increased for underpayment on subsequent invoices. For any amounts which are or shall become due and payable to the Board and/or the Plan by the PBM, the Board reserves the right to (1) deduct from amounts which are or shall become due and payable to the PBM under contract between the parties; or (2) request and receive payment directly from the PBM within fifteen (15) days of such request, at the Board’s sole discretion.
3. Compensation to the PBM for travel expenses for quarterly meetings and annual onsite trainings are included in the bundled fee. In the event the Board requests and authorizes the PBM for the performance of any of the services covered under this Contract for which travel expenses are not already included, compensation to the PBM for travel, meals and/or lodging must be approved in advance and shall be allowed subject to the following criteria:
   1. In order to be compensable by the Board, travel expenses must be reasonable and necessary for the fulfillment of the project and contractual obligations;
   2. Air travel reimbursement will be limited to “Coach” or “Tourist” class rates, and must be supported by a copy of an original invoice;
   3. Meals and lodging expenses will be reimbursed in the amount of actual costs, subject to the maximum per diem as defined in the Federal Register. A copy of all hotel receipts must be provided. A copy of meal receipts is not necessary;
   4. Taxi fares, reasonable rental car expenses, and airport parking expenses will be reimbursed in the amount of actual costs, and must be supported by a copy of an original receipt/invoice;
   5. Personal automobile mileage and related costs are not compensable expenses;
   6. Time spent in “travel status” is not compensable.
4. ***Availability of Funds***

*It is expressly understood and agreed that the obligation of the Board to proceed under this Contract is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the Contract are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the Board, the Board shall have the right upon ten (10) working days written notice to PBM, to terminate this Contract without damage, penalty, cost or expenses to the Board of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.*

1. ***E-Payment***

*PBM agrees to accept all payments in United States currency via the State of Mississippi’s electronic payment and remittance vehicle. The DFA agrees to make payment in accordance with Mississippi law on “Timely Payments for Purchases by Public Bodies,” which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-301 et seq.*

1. ***Paymode***

*Payments by state agencies using the State’s accounting system shall be made and remittance information provided electronically as directed by DFA. These payments shall be deposited into the bank account of PBM’s choice. DFA may, at its sole discretion, require PBM to electronically submit invoices and supporting documentation at any time during the term of this Contract. PBM understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency****.***

1. **Recovery of Money**

Whenever, under the Contract, any sum of money shall be recoverable from or payable by the PBM to the Board, the same amount may be deducted from any sum due to the PBM under the Contract or under any other Contract between the PBM and the Board. The rights of the Board are in addition and without prejudice to any other right the Board may have to claim the amount of any loss or damage suffered by the Board on account of the acts or omissions of the PBM.

1. **Record Retention and Access to Records**

The Board reserves the right to audit all records maintained by the PBM and/or its affiliates relative to the PBM’s performance under this Contract. At least forty-eight (48) hours’ notice by the Board will be given to the PBM of the intent to audit. The Board shall have the right to perform financial, performance, and other special audits on such records maintained by the PBM during regular business hours throughout the Contract period. Provided PBM is given reasonable advance written notice and such inspection is made during normal business hours of the PBM, the PBM agrees that the Board or any of its duly authorized representatives shall have unimpeded, prompt access to any of PBM’s books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All financial records related to this Contract shall be kept by the PBM for a minimum period of three (3) years after final payment under this Contract and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later. It is understood and agreed that all claims-related records shall be maintained electronically until such time as the Board and PBM agree that they are no longer needed.

1. ***Applicable Law***

*The Contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws, provisions, and any litigation with respect thereto shall be brought in the courts of the State. PBM shall comply with applicable federal, state, and local laws and regulations.*

1. ***Compliance with Laws***

*The PBM understands that DFA is an equal opportunity employer and, therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, State, or local laws. All such discrimination is unlawful and the PBM agrees during the term of this Contract that the PBM will strictly adhere to this policy in its employment practices and provision of services. The PBM shall comply with, and all activities under this Contract shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.*

1. **Anti-Assignment/Subcontracting**

PBM acknowledges that it was selected by the Board to perform the services required hereunder based, in part, upon PBM’s special skills and expertise. The PBM shall not assign, subcontract or otherwise transfer in whole or in part, its right or obligations under this Contract without prior written consent of the Board, which Board may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer without said consent shall be null and void. No such approval by Board of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of Board in addition to the total fixed price agreed upon in this Contract. Subcontracts shall be subject to the terms and conditions of this Contract and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this Contract shall be binding upon the respective successors and assigns of the parties.

1. **Confidential Information**

“Confidential Information” shall mean: (a) those materials, documents, data, and other information which the PBM has designated in writing as proprietary and confidential; and (b) all data and information which the PBM acquires as a result of its contact with and efforts on behalf of the Board and any other information designated in writing as confidential by the Board. Each party to this Contract agrees to the following: (i) To protect all confidential information provided by one party to the other; (ii) To treat all such confidential information as confidential to the extent that confidential treatment is allowed under State and/or federal law; and (iii) Except as otherwise required by law, not to publish or disclose such information to any third party without the other party’s written permission; and, (iv) To do so by using those methods and procedures normally used to protect the party’s own confidential information. Any liability resulting from the wrongful disclosure of confidential information on the part of the PBM or its subcontractor shall rest with PBM. Disclosure of any confidential information by the PBM or its subcontractors without the express written approval of the Board may result in the termination of this Contract.

1. **Disclosure of Confidential Information**

In the event that either party to this Contract receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that party shall promptly inform the other party (unless prohibited by law or governmental authority from providing such notice) and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this Contract. The parties agree that this section is subject to and superseded by Mississippi Code Annotated §§ 25-61-1 *et seq*.

1. ***Transparency***

*This Contract, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983,” and its exceptions. See Mississippi Code Annotated §§ 25-61-1 et seq. and Mississippi Code Annotated § 79-23-1. In addition, this Contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 et seq. Unless exempted from disclosure due to a court-issued protective order, a copy of this executed Contract is required to be posted to the Department of Finance and Administration’s independent agency contract website for public access at* [*http://www.transparency.mississippi.gov*](http://www.transparency.mississippi.gov)*. Information identified by PBM as trade secrets, or other proprietary information, including confidential PBM information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.*

1. **Contractor Personnel**

The Board shall, throughout the life of the Contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by the PBM. If the Board reasonably rejects staff or subcontractors, the PBM must provide replacement staff or subcontractors satisfactory to the Board in a timely manner and at no additional cost to the Board. The day-to-day supervision and control of the PBM’s employees and subcontractors is the sole responsibility of the PBM.

1. **Independent Contractor**

The PBM shall, at all times, be regarded as and shall be legally considered an Independent Contractor and shall at no time act as an agent for the Board. Nothing contained herein shall be deemed or construed by Board, PBM, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between Board and PBM. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of Board or PBM hereunder creates, or shall be deemed to create a relationship other than the independent relationship of Board and PBM. PBM’s personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of Board. No act performed or representation made, whether oral or written, by the PBM with respect to third parties shall be binding on the Board. Neither the PBM nor its employees shall, under any circumstances, be considered servants, agents, or employees of the Board; and the Board shall at no time be legally responsible for any negligence or other wrongdoing by the PBM, its servants, agents, or employees. Board shall not withhold from the Contract payments to PBM any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to PBM. Further, Board shall not provide to PBM any insurance coverage or other benefits, including Workers’ Compensation, normally provided by Board for its employees.

1. ***E-Verification***

*If applicable, PBM represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 et seq. The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. PBM agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, PBM agrees to provide a copy of each such verification. PBM further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this Contract may subject PBM to the following: (i) termination of this Contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public; (ii) the loss of any license, permit, certification or other document granted to PBM by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or, (iii) both. In the event of such cancellations/termination, PBM would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.*

1. **Authority to Contract**

PBM warrants: (a) that it is a validly organized business with valid authority to enter into this Contract; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this Contract is not restricted or prohibited by any loan, security, financing, contractual, or other contract of any kind; and, (d) notwithstanding any other provision of this Contract to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Contract.

1. **Debarment and Suspension**

The PBM certifies to the best of its knowledge and belief, that it: (i) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any Federal department or agency or any political subdivision or agency of the State of Mississippi; (ii) Has not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; (iii) Has not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against it for a violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (iv) Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of these offenses enumerated in paragraphs two (2) and three (3) of this certification; and, (v) Has not, within a three-year period preceding this proposal, had one or more public transactions (Federal, State, or local) terminated for cause or default.

1. **Modification or Renegotiation**

This Contract may be modified only by written Contract signed by the parties hereto. The parties agree to renegotiate the Contract if federal, state and/or the Board revisions of any applicable laws or regulations make changes in this Contract necessary.

1. ***Procurement Regulations***

This Contract shall be governed by the applicable provisions of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.dfa.ms.gov/dfa-offices/personal-service-contract-review/pscrb-rules-regulations/>.

1. ***Representation Regarding Contingent Fees***

*PBM represents that it has not retained a person to solicit or secure a Board contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.*

1. ***Representation Regarding Gratuities***

*The PBM represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations.*

1. ***Termination upon Bankruptcy***

*This Contract may be terminated in whole or in part by Board upon written notice to PBM, if PBM should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by PBM of an assignment for the benefit of its creditors. In the event of such termination, PBM shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total Contract price.*

1. ***Termination for Convenience***
2. *Termination. The Board may, when the interests of the State so require, terminate this Contract in whole or in part, for the convenience of the State. The Board shall give written notice of the termination to PBM specifying the part of the Contract terminated and when termination becomes effective.*
3. *PBM’s Obligations. PBM shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination, PBM will stop work to the extent specified. PBM shall also terminate outstanding orders and subcontracts as they relate to the terminated work. PBM shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Board may direct PBM to assign PBM’s right, title, and interest under terminated orders or subcontracts to the State. PBM must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.*
4. ***Termination for Default***
5. *Default. If PBM refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract or any extension thereof, or otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Board may notify PBM in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Board, such officer may terminate PBM’s right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Board may procure similar supplies or services in a manner and upon terms deemed appropriate by the Board. PBM shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.*
6. *PBM’s Duties. Notwithstanding termination of the Contract and subject to any directions from the Chief Procurement Officer, PBM shall take timely, reasonable, and necessary action to protect and preserve property in the possession of PBM in which the State has an interest.*
7. *Compensation. Payment for completed services delivered and accepted by the State shall be at the Contract price. The State may withhold from amounts due PBM such sums as the Board deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.*
8. *Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of subcontractors, PBM shall not be in default by reason of any failure in performance of this Contract in accordance with its terms (including any failure by PBM to make progress in the prosecution of the work hereunder which endangers such performance) if PBM has notified the Board within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, PBM shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit PBM to meet the Contract requirements. Upon request of PBM, the Board shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, PBM’s progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the Board under the clause entitled “Termination for Convenience.*
9. *Erroneous Termination for Default. If, after notice of termination of PBM’s right to proceed under the provisions of this clause, it is determined for any reason that the Contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (D) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to a termination for convenience.*
10. *Additional Rights and Remedies. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.*
11. ***Stop Work Order***
12. *Order to stop work. The Board, may by written order to the PBM at any time, and without notice to any surety, require the PBM to stop all or any part of the work called for by this Contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to the PBM, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the PBM shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Board shall either (i) cancel the stop work order; or (ii) terminate the work covered by such order as provided in the "Termination for Default" clause or the "Termination for Convenience" clause of this Contract.*
13. *Cancellation or Expiration of the Order. If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the PBM shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or PBM price, or both, and the Contract shall be modified in writing accordingly, if: (i) the stop work order results in an increase in the time required for, or in the PBM’s cost properly allocable to, the performance of any part of this Contract; and, (ii) the PBM asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Board decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.*
14. *Termination of Stopped Work. If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.*
15. *Adjustment of Price. Any adjustment in Contract price made pursuant to this clause shall be determined in accordance with the Modification or Renegotiation clause of this Contract.*
16. **Oral Statements**

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Contract. All modifications to the Contract must be made in writing by the Board and agreed to by the PBM.

1. **Ownership of Documents and Work Papers**

The Board shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the Contract which is the subject of this Contract, except for the PBM’s internal administrative and quality assurance files and internal project correspondence. The PBM shall deliver such documents and work papers to the Board upon termination or completion of the Contract. The foregoing notwithstanding, the PBM shall be entitled to retain a set of such work papers for its files. The PBM shall be entitled to use such work papers only after receiving written permission from Board and subject to any copyright protections.

1. ***Trade Secrets, Commercial and Financial Information***

*It is expressly understood that Mississippi law requires that the provisions of this Contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the Contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.*

1. **Third-Party Action Notification**

The PBM shall give the Board prompt notice in writing of any action or suit filed, and prompt notice of any claim made against the PBM by any entity that may result in litigation related in any way to this Contract.

1. ***Indemnification***

*To the fullest extent allowed by law, the PBM shall indemnify, defend, save and hold harmless, protect, and exonerate DFA, its Commissioners, Board Members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys’ fees, arising out of or caused by the PBM and/or its partners, principals, agents, employees, and/or subcontractors in the performance of or failure to perform this Contract. In the State’s sole discretion, the PBM may be allowed to control the defense of any such claim, suit, etc. In the event the PBM defends said claim, suit, etc., the PBM shall use legal counsel acceptable to the State. The PBM shall be solely responsible for all costs and/or expenses associated with such defense and the State shall be entitled to participate in said defense. The PBM shall not settle any claim, suit, etc., without the State’s concurrence, which the State shall not unreasonably withhold. Subject to the limitations of the Mississippi Tort Claims Act, DFA agrees that it is responsible for the actions of its agents and employees and will defend the same to the fullest extent allowed by law.  Nothing in this Contract shall have the effect of changing or altering or of eliminating any defense available to the State under the Tort Claims Act.*

1. ***Approval***

*It is understood that if this contract requires approval by the Public Procurement Review Board and/or the Mississippi Department of Finance and Administration Office of Personal Service Contract Review and this contract is not approved by the PPRB and/or OPSCR, it is void and no payment shall be made hereunder.*

1. **Change in Scope of Work**

The Board may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the Contract. No claims may be made by PBM that the scope of the project or of PBM’s services has been changed, requiring changes to the amount of compensation to the PBM or other adjustments to the Contract, unless such changes or adjustments have been made by written amendment to the Contract signed by the Board and the PBM. If the PBM believes that any particular work is not within the scope of the project, is a material change, or will otherwise require more compensation to the PBM, the PBM must immediately notify the Board in writing of this belief. If the Board believes that the particular work is within the scope of the Contract as written, the PBM will be ordered to and shall continue with the work as changed and at the cost stated for the work within the Contract.

1. **Failure to Enforce**

Failure by the Board at any time to enforce the provisions of the Contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the Contract or any part thereof or the right of the Board to enforce any provision at any time in accordance with its terms.

1. **Standards of Care/Remedies**

The PBM shall exercise reasonable care and due diligence consistent with standards in the industry in the performance of its obligations under this Contract. Each party shall have available to it all remedies available at law or equity.

1. **Right to Audit**

PBM shall maintain such financial records and other records as may be prescribed by DFA or by applicable federal and state laws, rules, and regulations. PBM shall retain these records for a period of three years after final payment, or until they are audited by DFA, whichever event occurs first. These records shall be made available for inspection during regular business hours and with reasonable advance notice during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi State Auditor’s Office, its designees, or other authorized bodies.

1. **Severability**

If any part of this Contract is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision, and to this end the provisions hereof are severable. In such event, the parties shall amend the Contract as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

1. **Insurance**

Without limiting any liabilities or any other obligation, PBM shall purchase and maintain, at its own expense, throughout the term of this Contract or until all obligations have been discharged or satisfied, insurance against claims that may arise from or in connection with the performance of the work by PBM to specifically include professional liability insurance. Such policy of insurance shall provide a minimum coverage in the amount of three million dollars ($3,000,000) annual aggregate through an insurance company licensed by the Mississippi Department of Insurance. The PBM shall also provide errors and omissions and pharmacy services professional liability insurance, which shall provide a minimum coverage in the amount of ten million dollars ($10,000,000) per claim and ten million ($10,000,000) annual aggregate. These insurance requirements are minimum requirements for this Contract and in no way limits any indemnity provisions in the Contract. The Board does not warrant that these insurance requirements are sufficient to protect PBM from liabilities that might arise out of performance of the work under this Contract by PBM. The PBM shall annually provide the Board a current Certificate of Insurance.

1. **Implementation Bond**

The PBM shall secure an implementation bond or escrow account in the amount of one million dollars ($1,000,000) naming the Board as exclusive beneficiary to guarantee timely and complete establishment of the contract and related services. Such bond or escrow account must be secured within thirty (30) days of the date the contract is executed. Any failure of the PBM to perform timely and complete establishment of such services shall result in damages recoverable by the Board against the PBM’s implementation bond or escrow account. Upon the Board’s agreement that the PBM has complied with its responsibilities for establishing the pharmacy benefits management program and related administrative services, the implementation bond or escrow account shall be released. This requirement will not apply if the incumbent PBM with services established under the current contract is selected through this procurement process to enter into negotiations for the new contract.

1. **Business Associate Statement**

In the paragraphs that follow under this section, the term “BA Statement” will refer to this section of the Contract, the term “Business Associate” will refer to the Consultant, and the term “Covered Entity” will refer to the Plan. The purpose of this BA Statement is to satisfy certain standards and requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (HHS) (the HIPAA Regulations) and other applicable laws, including the American Recovery and Reinvestment Act (ARRA) of 2009, as applicable. The Covered Entity wishes to disclose certain information (Information) to Business Associate pursuant to the terms of the Contract, some of which may constitute Protected Health Information (PHI). The Covered Entity desires and directs Business Associate to share PHI with other Business Associates of the Covered Entity. In consideration of mutual promises below and exchange of information pursuant to this BA Statement, the parties agree as follows:

1. Definitions.

Terms used, but not otherwise defined, in this BA Statement shall have the same meaning as those terms in the Standards for Privacy of Individually Identifiable Information (the Privacy Rule) and the Security Standards under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). In the event of an inconsistency between the provisions of this BA Statement and mandatory provisions of the Privacy Rule and or the Security Standards, as amended, the Privacy Rule and/or the Security Standards shall control. Where provisions of this BA Statement are different than those mandated in the Privacy Rule and/or the Security Standards, but are nonetheless permitted by the Privacy Rule and/or the Security Standards, the provisions of this BA Statement shall control.

1. Breach. Breach shall be as defined in HITECH and the HIPAA regulations at 45 CFR §164.402.
2. Business Associate. Business Associate shall have the meaning given to such term under the HIPAA Regulations, including, but not limited to, 45 CFR § 160.103.
3. Covered Entity. Covered Entity shall have the same meaning given to such term under the HIPAA Regulations, including, but not limited to, 45 CFR § 160.103.
4. Designated Record Set. Designated Record Set shall have the same meaning given to such term under 45 CFR § 164.501 and shall mean a group of records maintained by or for the Covered Entity that is the payment, enrollment, claims adjudication and case or health management record systems maintained by or for the Covered Entity, or used, in whole or in part, by or for the Covered Entity, to make decisions about Individuals.
5. Electronic Media. Electronic Media has the same meaning as the term “electronic media” in 45 CFR § 160.103, which is:
6. Electronic storage material on which data is or may be recorded electronically, including for example, devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or
7. Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), or intranet, leased lines, dial-up lines, private networks, and the physical movement of removable / transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media if the information being exchanged did not exist in electronic form immediately before the transmission.
8. Electronic Protected Health Care Information or (EPHI). EPHI has the same meaning as the term ‘electronic protected health care information’ in 45 CFR § 160.103, and is defined as that PHI that is transmitted by or maintained in electronic media.
9. Individual. Individual shall have the same meaning as the term “individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
10. Privacy Rule. Privacy Rule shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, subparts A and E.
11. Protected Health Information or (PHI). PHI shall have the same meaning as the term “protected health information" in 45 CFR § 164.103, limited to the information created, maintained, transmitted or received by Business Associate from or on behalf of Covered Entity.
12. Required By Law. Required By Law shall have the same meaning as the defined term “required by law” in 45 CFR § 164.103.
13. Security Incident has the meaning in 45 CFR § 164.304, which is: the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
14. Security Standards shall mean the Security Standards under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) codified at 45 CFR Parts 160 and 164, subpart C (Security Rule).
15. Unsecured PHI as defined in HIPAA and the HIPAA regulations at 45 CFR § 164.402, means protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of technology or methodology specified by the Secretary in guidance issued under 13402(h)(2) of Public Law 111-5 on HHS website.
16. Obligations and Activities of Business Associate.
17. Compliance with Applicable Laws. Business Associate shall fully comply with the standards and requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (ARRA) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the HIPAA Regulations) and other applicable laws as of the date(s) the requirements under these laws become effective for Business Associates. This compliance shall include all requirements noted in Section 13404(a), (b) and (c) of the HITECH Act.
18. Business Associate directly subject to certain HIPAA provisions. Under HITECH, Business Associate acknowledges that it is directly subject to certain HIPAA provisions including, but not limited to, Sections 13401, 13404, 13405 of HITECH.
19. Use and Disclosure of Protected Health Information. Business Associate may use and/or disclose the Covered Entity’s PHI received by Business Associate pursuant to this BA Statement, the Contract, or as required by law, or as permitted under 45 CFR §164.512, subject to the provisions set forth in this BA Statement. Business Associate may use PHI in its possession for its proper management and administration or to fulfill any of its legal responsibilities. Business Associate may disclose PHI for its proper management and administration or to carry out its legal responsibilities, provided the disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and use or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been violated. The Covered Entity specifically requests that Business Associate disclose PHI to other Business Associates of the Covered Entity for Health Care Operations of the Covered Entity. The Covered Entity shall provide a list of the affected Business Associates and will request specific disclosures in written format. If any affected Business Associate is no longer under a BA Statement with the Covered Entity, the Covered Entity shall promptly inform Business Associate of such change.
20. Safeguards Against Misuse of Information. Business Associate shall use appropriate safeguards to prevent the use or disclosure of the Covered Entity’s PHI in any manner other than as permitted or required by this BA Statement or as required by law. Business Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of the Business Associate’s operations and the nature and scope of its activities.
21. Reporting of Disclosures. Business Associate shall report to the Covered Entity any use or disclosure of the Covered Entity’s PHI in violation of this BA Statement or as required by law of which the Business Associate is aware, including Breaches of Unsecured PHI as required by 45 CFR §164.410, and agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of the Covered Entity’s PHI by Business Associate in violation of this BA Statement.
22. Business Associate’s Agents. Business Associate shall ensure that any agents, including subcontractors, to whom it provides PHI received from (or created or received by Business Associate on behalf of) the Covered Entity agree to be bound to by restrictions and conditions on the use or disclosure of PHI that are no less protective that those that apply to Business Associate with respect to such PHI. Business Associate represents that in the event of a disclosure of PHI to any third party, the information disclosed shall be in a limited data set if practicable and in all other cases the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure or request.
23. Nondisclosure. Business Associate shall not use or further disclose the Covered Entity’s PHI otherwise than as permitted or required by this BA Statement, the Contract, or as required by law.
24. Availability of Information to the Covered Entity and Provision of Access and Accountings. Business Associate shall make available to the Covered Entity such Protected Health Information maintained by the Business Associate in a Designated Record Set as the Covered Entity may require to fulfill the Covered Entity’s obligations to provide access to, or provide a copy of, such Designated Record Set as necessary to satisfy the Covered Entity's obligations under 45 CFR § 164.524. Business Associate shall also maintain and make available the information required to provide an accounting of disclosures of Protected Health Information to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR § 164.528.
25. Amendment of PHI. Business Associate shall make the Covered Entity’s PHI available to the Covered Entity as the Covered Entity may require to fulfill the Covered Entity’s obligations to amend PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR § 164.526 and Business Associate shall, as directed by the Covered Entity, incorporate any amendments to the Covered Entity’s PHI into copies of such PHI maintained by Business Associate. Business Associate agrees to make any amendment(s) to Protected Health Information that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of the Covered Entity or an Individual, and in the time and manner designated by the Covered Entity. [45 CFR § 164.504(e)(2)(F)]
26. Internal Practices. Business Associate agrees to make its internal practices, policies, procedures, books, and records relating to the use and disclosure of PHI received from the Covered Entity (or received by Business Associate on behalf of the Covered Entity) available to the Secretary of the U.S. Department of Health and Human Services for inspection and copying for purposes of determining the Covered Entity's compliance with HIPAA and the HIPAA Regulations.
27. Notification of Breach. During the term of this BA Statement, Business Associate shall notify the Covered Entity following discovery and without unreasonable delay (but in no case later than 60 days) any Breach of Unsecured PHI. Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
28. Safeguard of EPHI. The Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
29. Subcontractors. The Business Associate will ensure that any agent, including a subcontractor, to whom it provides PHI agrees to implement reasonable and appropriate safeguards to protect it.
30. Notification. The Business Associate will report to the Covered Entity through the Mississippi Department of Finance and Administration, Office of Insurance any Breach of Unsecured PHI of which it becomes aware, without unreasonable delay, in the following time and manner:
31. any actual, successful Security Incident will be reported to the Covered Entity in writing, without unreasonable delay; and
32. any attempted, unsuccessful Security Incident, of which Business Associate becomes aware, will be reported to the Covered Entity in writing, on a reasonable basis, at the written request of the Covered Entity. If the Security Rule is amended to remove the requirement to report unsuccessful attempts at unauthorized access, this subsection (ii) shall no longer apply as of the effective date of the amendment of the Security Rule.
33. Business Associate shall maintain and provide to the Covered Entity without unreasonable delay and in no case later than 60 days of discovery of a Breach of Unsecured PHI, (as these terms are defined in the HIPAA Regulations), the appropriate information to allow the Covered Entity to adhere to Breach notification.
34. The information provided to the Covered Entity must include, at a minimum and to the extent possible, the identification of each individual whose Unsecured PHI has been, or is reasonably believed by the Business Associate to have been accessed, acquired, used, or disclosed during the Breach, and the Business Associate shall provide the Covered Entity with any other available information that the Covered Entity is required to include in its notification to the Individual following discovery of a Breach and without unreasonable delay or promptly thereafter as information becomes available, including:
35. A brief description of what happened, including the date of the breach, if known, and the date of the discovery of the breach.
36. A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
37. The steps individuals should take to protect themselves from potential harm resulting from the breach.
38. A brief description of what the Business Associate involved is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.
39. Minimum Necessary. Business Associate shall limit its uses and disclosures of, and requests for, PHI (a) when practical, to the information making up a Limited Data Set; and (b) in all other cases subject to the requirements of 45 CFR § 164.502(b), to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure or request.
40. Marketing. Business Associate will not sell PHI or use or disclose PHI for purposes of marketing, as defined and proscribed in the Regulations.
41. Data Aggregation. Business Associate may use PHI in its possession to provide data aggregation services relating to the health care operations of the Covered Entity, as provided for in 45 CFR §164.501.
42. De-identification of PHI. Business Associate may de-identify any and all PHI, provided that the de-identification conforms to the requirements of 45 CFR § 164.514(b), and further provided that Business Associate maintains the documentation required by 45 CFR § 164.514(b), which may be in the form of a written assurance from Business Associate. Pursuant to 45 CFR § 164.502(d), de-identified information does not constitute PHI and is not subject to the terms of the BA Statement.
43. Business Associate may not use or disclose PHI in a manner that would violate the Privacy Rule if done by Covered Entity, except for uses or disclosures necessary for (1) Business Associate’s proper management and administration and legal responsibilities or (2) for data aggregation services.
44. Obligations of the Covered Entity
45. Covered Entity’s Representatives. The Covered Entity shall designate, in writing to Business Associate, individuals to be regarded as the Covered Entity’s representatives, so that in reliance upon such designation Business Associate is authorized to make disclosures of PHI to such individuals or to their designee(s).
46. Restrictions on Use or Disclosure of PHI. If the Covered Entity agrees to restrictions on use or disclosure, as provided for in 45 CFR § 164.522 and the HITECH Act, of PHI received or created by Business Associate regarding an Individual, the Covered Entity agrees to pay Business Associate the actual costs incurred by Business Associate in accommodating such voluntary restrictions.
47. Limitation on Requests. The Covered Entity shall not request or require that Business Associate make any use or alteration of PHI that would violate HIPAA or HIPAA Regulations if done by the Covered Entity, except for uses or disclosures necessary for (1) Business Associate’s proper management and administration and legal responsibilities or (2) data aggregation services.
48. Inspection and Enforcement.

Upon reasonable notice, upon a reasonable determination by the Covered Entity that Business Associate has breached this BA Statement; the Covered Entity may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this BA Statement. Business Associate shall promptly remedy any violation of any term of this BA Statement and shall certify the same to the Covered Entity in writing. The fact that the Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate’s facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this BA Statement, nor does the Covered Entity’s (i) failure to detect or (ii) detection, but failure to notify Business Associate or require Business Associate’s remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of the Covered Entity’s enforcement rights under this BA Statement. Business Associate shall fully cooperate with the U.S. Department of Health and Human Services, as the primary enforcer of the HIPAA, who shall conduct periodic compliance audits to ensure that both Business Associate and the Covered Entity are compliant.

1. Termination.
2. Material Breach. A breach by Business Associate of any provision of this BA Statement, as determined by the Covered Entity, shall constitute a material breach of the BA Statement and shall provide grounds for immediate termination of the BA Statement and the Contract by the Board pursuant to Section E.2. of this BA Statement. [45 CFR § 164.504(e)(3)]
3. Reasonable Steps to Cure Breach. If either Party knows of a pattern of activity or practice of the other that constitutes a material breach or violation of that Party’s obligations under the provisions of this BA Statement or another arrangement and does not terminate this BA Statement pursuant to Section E.1., then that Party shall take reasonable steps to cure such breach or end such violation, as applicable. If the Party’s efforts to cure such breach or end such violation are unsuccessful, that Party shall either (i) terminate this BA Statement if feasible; or (ii) if termination of this BA Statement is not feasible, the non-breaching Party shall report the other Party’s breach or violation to the Secretary of the Department of Health and Human Services. [45 CFR § 164.504(e)(1)(ii)]
4. Judicial or Administrative Proceedings. Either party may terminate this BA Statement, effective immediately, if (i) the other party is named as a defendant in a criminal proceeding for a violation of HIPAA or (ii) a finding or stipulation that the other party has violated any standard or requirement of HIPAA or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
5. Effect of Termination. Upon termination of this BA Statement and the Contract for any reason, Business Associate shall return or destroy PHI received from the Covered Entity (or created or received by Business Associate on behalf of the Covered Entity) that Business Associate still maintains in any form, and shall retain no copies of such PHI except for copies that Business Associate will use solely for archival purposes and to defend its work product, provided that documents and data remain confidential and subject to this BA Statement, or if return or destruction is not feasible, it shall continue to extend the protections of this BA Statement to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 CFR § 164.504(e)(2)(I)]
6. Disclaimer.

The Covered Entity makes no warranty or representation that compliance by Business Associate with this BA Statement, HIPAA or the HIPAA Regulations will be adequate or satisfactory for Business Associate’s own purposes or that any information in Business Associate’s possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

1. Amendment.

Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this BA Statement and the Contract may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA Regulations and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that the Covered Entity must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all PHI that it receives or creates pursuant to this BA Statement. Upon the Covered Entity’s request, Business Associate agrees to promptly enter into negotiations with the Covered Entity concerning the terms of an amendment to this BA Statement and the Contract embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Regulations or other applicable laws. The Covered Entity may terminate this BA Statement upon 90 days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend this BA Statement and the Contract when requested by the Covered Entity pursuant to this Section; or (ii) Business Associate does not enter into an amendment to this BA Statement and the Contract providing assurances regarding the safeguarding of PHI that the Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA Regulations.

1. Assistance in Litigation or Administrative Proceedings.

Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this BA Statement, available to the Covered Entity, in a manner agreed to in advance by the parties, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Covered Entity, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA Regulations or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is a named adverse party.

1. No Third Party Beneficiaries.

Nothing expressed or implied in this BA Statement is intended to confer, nor shall anything herein confer, upon any person other than the Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

1. Effect on Contract.

Except as specifically required to implement the purposes of this BA Statement, or to the extent inconsistent with this BA Statement, all other terms of the Contract shall remain in force and effect.

1. Electronic Health Records (EHR)

If electronic health records are used or maintained with respect to PHI, individuals shall have the right to obtain a copy of such information in “electronic format”.

1. No Remuneration for PHI.

Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI, unless it first obtains a valid authorization from the individual whose PHI is being disclosed.

1. Interpretation.

This BA Statement shall be interpreted as broadly as necessary to implement and comply with HIPAA, HIPAA Regulations and applicable state laws. The parties agree that any ambiguity in this BA Statement shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA Regulations.

1. **Notices**

All notices required or permitted to be given under this Contract must be in writing and personally delivered or sent by certified United States mail postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth in this section. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

If to DFA and/or the Board: Attention: Executive Director

Department of Finance and Administration

Post Office Box 267

Jackson, Mississippi 39205-0267

With a copy of any notice to: With a copy of any notice to:

State Insurance Administrator

Department of Finance and Administration, Office of Insurance

Post Office Box 24208

Jackson, Mississippi 39225-4208

If to the PBM: Attention:

1. **Incorporation of Documents**

This Contract consists of and precedence is hereby established by the order of the following documents incorporated herein:

1. This Contract signed by the parties including Exhibit A, ***Fee Schedule*** and Exhibit B***, Performance Standards***; and
2. The PBM’s response to the State of Mississippi Request for Proposal for Pharmacy Benefit Manager Services dated \_\_\_\_\_ and attached hereto as Exhibit C and incorporated fully herein by reference;
3. The State of Mississippi Request for Proposal for Pharmacy Benefit Manager Services dated February 11, 2020, attached hereto as Exhibit D and incorporated fully herein by reference; and

This Contract, including the Exhibits referenced herein, constitutes the entire Contract of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and Contracts, written or oral, between the parties relating thereto. Any ambiguities, conflicts, or questions of interpretation of this Contract shall be resolved by first reference to this Contract including Exhibit A, and if still unresolved, by reference to Exhibit B, and if still unresolved, by reference to Exhibit C and if still unresolved, by reference to Exhibit D. Omission of any term or obligation from this Contract or the attached Exhibits shall not be deemed an omission from this Contract if such term or obligation is provided for elsewhere.

**Witness our signatures, on the date first written.**

PBM State and School Employees Health Insurance Management Board

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_

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

**EXHIBIT A**

**FEE SCHEDULE**

For Pharmacy Benefit Manager Services rendered under this Contract, the following per participant per month (PPPM) fees apply to all core services and are all-inclusive and include any expenses such as printing, binding, photocopy, and any travel:

**\*** *Optional Renewal Year*

The rates listed above are firm for the duration of the Contract and are not subject to escalation for any reason unless the Contract is duly amended. No additional compensation shall be provided by the Board for any expense, cost, or fee not specifically authorized by this Contract. The Board will not pay any fees incurred prior to the January 1, 2021 Contract effective date. All fees or charges related to any service to be provided must be identified.

**EXHIBIT B**

**PERFORMANCE STANDARDS**

The PBM agrees to the following performance guarantees and agrees to the assessment of liquidated damages for failure to meet these guarantees.

| **Performance Standard** | **Description of Standard** | **Fees at risk** |
| --- | --- | --- |
| Pharmacy Network Access | 95% of all participants within 5 miles of 1 participating pharmacy  Measurement Period: Annually | $25,000 Annually |
| Network Pharmacy POS Compliance | 99% of time internal on-line system available  Measurement Period: Quarterly | $20,000/Quarter |
| Retail Paper Claims Processing Time | 95% of prescriptions reimbursed or responded to within 15 business days of receipt  Measurement Period: Quarterly | $20,000/Quarter |
| Retail Claims Financial and Processing Accuracy | 99.5% of all claims paid with NO errors (i.e. correct drug, correct form, correct strength, correct patient, correct AWP, correct copayment, or correct deductible). Retail claims adjudication accuracy is the total number of retail claims paid correctly divided by the total number of retail claims paid.  Measurement Period: Quarterly | $20,000/Quarter |
| Mail Order Claims Processing Time | 95% of prescriptions requiring NO intervention to be shipped within 2 business days (as measured from date order received at the PBM to date order shipped)  Measurement Period: Quarterly  95% of prescriptions requiring administrative or clinical intervention to be shipped within 5 business days (as measured from date order received at the PBM to date order shipped )  Measurement Period: Quarterly | $20,000/Quarter  $20,000/Quarter |
| Mail Order Claims Financial and Processing Accuracy | 99.5% of all claims paid with NO errors (i.e. correct drug, correct form, correct strength, correct patient, correct AWP, correct copayment, or correct deductible). Mail order claims adjudication accuracy is the total number of mail order claims paid correctly divided by the total number of mail order claims paid.  Measurement Period: Quarterly | $25,000/Quarter |
| Rebate Remittance Time | 100% of all rebate dollars received by the PBM remitted to the Board within 60 days of the rebates being received by PBM.  Measurement Period: Quarterly | $20,000 |
| Customer Service | 90% of calls answered by a live customer service representative within 30 seconds during open hours  <5% of calls abandoned  100% of written inquiries responded to within 10 business days  Measurement Period: Quarterly | $5,000/Quarter  $5,000/Quarter  $5,000/Quarter |
| Account Service | Subjective satisfaction of Board with the contractual and administrative relationship based on mutually agreed satisfaction survey.  Measurement Period: Annually | $40,000/Annual |
| ID Card Distribution | 95% of ID cards mailed within 15 days of receipt of eligibility data (for monthly changes) or request for replacement card  Measurement Period: Quarterly  Average time to mail ID cards for ongoing eligibility (from the clean eligibility information provided) is ≤ 5 business days  Measurement Period: Quarterly | $10,000/Quarter  $5,000/Quarter |
| Reporting Requirements | Quarterly reports provided to Board ≤ 30 calendar days after the end of the quarter  Measurement Period: Quarterly | $10,000/Quarter |
| Written and Telephone Inquiry Response Rate | 98% response within 5 business days +  100% within 7 business days  Measurement Period: Quarterly | $10,000 per each 1% below standard with $135,000 Annual Max |
| Data Transfers | 99% of error transactions from the data transfer sent to the TPA will be corrected and returned to the TPA via data transfer within two (2) business days of receipt of the error report.  100% will be corrected and returned with 15 business days.  Measurement Period: Quarterly | $10,000/Quarter  $10,000/Quarter |
| Annual Independent Audit \*\* | Finalize the audit schedule with the Independent Auditor/DFA during the month of December each year and meet the agreed to deadlines. | $1,000 per each day of delay |

|  |  |  |
| --- | --- | --- |
| Annual Independent Audit Reconciliation\*\* | Within 60 days of final report being issued by the Independent Auditor, the PBM will complete the final reconciliation and remit any and all reimbursement to the Plan. | $50,000 + $1,000 per day after deadline |

**Measurement of Performance**

\*The Board will use the PBM’s internal reports to measure the PBM’s performance relative to the standards included in this Exhibit. The PBM’s internal reports and/or data (including detail claims data) supporting the PBM’s internal reports may be reviewed/audited by the Board, or at the Board’s discretion, by an independent reviewer. The report and determination of the independent reviewer shall be final, binding and conclusive as to an administrative review on PBM and the Board; provided, however, that before a final report and determination is issued, the Board and PBM shall each have a reasonable opportunity to review the non-proprietary supporting documentation and proposed report of the independent reviewer and to provide any comments to the independent reviewer.

\*\*The Board will reply on the collaboration with the successful use proposer and contracted vendor in accordance with section BB Full Disclosure and Independent Review to determine if the performance standards related to the annual independent audit are satisfied.

**Payment of Liquidated Damages**

In the event the Board determines that the PBM has not met a given Performance Standard, under which liquidated damages are payable to the Board for failure to comply, PBM shall remit the applicable at-risk fees for failing to meet the corresponding Performance Standard to the Board within forty-five (45) days after the end of the measurement period.

**Measurement Period**

Quarterly and Annual Measurement Periods are measured based on the calendar year.

**EXHIBIT C**

**THE PBM’S RESPONSE TO THE STATE OF MISSISSIPPI REQUEST FOR PROPOSAL FOR PHARMACY BENEFIT MANAGER SERVICES**

**EXHIBIT D**

**THE STATE OF MISSISSIPPI REQUEST FOR PROPOSAL FOR PHARMACY BENEFIT MANAGER SERVICES DATED FEBRUARY 11, 2020**