**NON-DISCLOSURE AGREEMENT**

THIS AGREEMENT (hereinafter referred to as “Agreement”) is made as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Proposing Organization”), and the Mississippi Department of Finance and Administration (“DFA”), acting administratively on behalf of the Mississippi State and School Employees Health Insurance Management Board (“Board”).

**RECITALS**

WHEREAS, Proposing Organization is a qualified, experienced pharmacy benefit manager capable of providing prescription drug benefit management services that is interested in submitting a response to the Request for Proposal (“RFP”) for Pharmacy Benefit Manager issued by the State and School Employees Health Insurance Management Board on February 11, 2020; and

WHEREAS, the DFA requires, as part of that response to the RFP, the re-pricing by Proposing Organization of a sample of actual prescription drug claims that were paid by the Mississippi State and School Employees’ Health Insurance Plan (“Plan”) in 2019 (this paragraph constitutes the “Purpose”); and

WHEREAS, the DFA wishes to provide to Proposing Organization pharmacy claims data relating to the Plan which has been de-identified per §164.514 of the HIPAA Privacy Rule, but contains other confidential information related to the Plan’s pharmacy benefits relevant to the re-pricing of the claims by the proposing organization (“Board’s Confidential Information”); and

WHEREAS, the Proposing Organization will provide information in its response to the RFP which is comprised of confidential and proprietary information related to the pharmacy benefit management services, which may include information and documents related to the business of the Proposing Organization and its affiliates, including, but not limited to, financial information, pricing of services, negotiated rates with its participating pharmacies, financial arrangements with pharmaceutical manufacturers, prices paid or received from vendors, methods of doing business, data, trade secrets, contracts, documents, concepts, expenses related to their businesses, and competitively sensitive documents and information, as well as any compilation, summary, analysis, or other work product based on the foregoing, to be collectively referred to as the “Proposing Organization’s Confidential Information”; and

WHEREAS, the Proposing Organization wishes to provide the Board with Proposing Organization’s Confidential Information, provided that such disclosure is necessary for evaluation by the Board and provided further that the Board agrees to keep Proposing Organization’s Confidential Information confidential subject to paragraph **1.3 Instructions to Proposers, Item #****8** of the RFP;

NOW, THEREFORE, in consideration of the foregoing and of the following promises, the parties hereto agree as follows:

1. **Covenant of Use and Confidentiality.** Proposing Organization shall not at any time: (i) use Board’s Confidential Information for any purpose other than for the Purpose delineated herein; (ii) disclose Board’s Confidential Information to any other person or entity, other than the Board; (iii) examine or make copies of any reports or other documents, papers, memoranda or extracts containing Board’s Confidential Information other than for the Purpose; or (iv) utilize for their own benefit or for the benefit of any third party any of the Board’s Confidential Information.
2. **Information Not Confidential.**  The term “Board’s Confidential Information” does not include information which (i) is generally available to the public, other than as a result of a disclosure by the Board or its representatives; or (ii) is lawfully and properly available to the Proposing Organization on a non-confidential basis from a source not known or reasonably suspected to be prohibited from transmitting the information by a contractual, legal or fiduciary obligation. Likewise, the term “Proposing Organization’s Confidential Information” does not include information which (i) is generally available to the public, other than as a result of a disclosure by the Proposing Organization or its representatives; or (ii) is lawfully and properly available to the Board on a non-confidential basis from a source not known or reasonably suspected to be prohibited from transmitting the information by a contractual, legal or fiduciary obligation.
3. **Compelled Disclosure**. If the Proposing Organization is compelled by a court or other authority to disclose the Board’s Confidential Information, the Proposing Organization shall give the Board prompt written notice so that the Board may take steps either to ensure the disclosures are appropriately protected under the terms of a court approved protective order or oppose such disclosure. Likewise, if the Board is compelled by a court or other authority to disclose the Proposing Organization’s Confidential Information (as specifically identified per **1.3 Instructions to Proposers** **Item #8**. in the RFP), the Board shall give the Proposing Organization prompt written notice so that the Proposing Organization may take steps either to ensure the disclosures are appropriately protected under the terms of a court approved protective order or oppose such disclosure.
4. **Covenant to Refrain From Use; Obligation of Confidentiality.** It is agreed and acknowledged by the Proposing Organization that all of the Board’s Confidential Information is confidential, and that no part of the Board’s Confidential Information shall be used by the Proposing Organization in any manner that is detrimental or adverse to the best interests of the Board. The Board shall limit access to the Proposing Organization’s Confidential Information to essential personnel who need to have access to Proposing Organization’s Confidential Information in order to evaluate the Proposing Organization’s response to the RFP, and shall take all reasonable steps to ensure that no unauthorized person or entity shall have access to any of the Proposing Organization’s Confidential Information. The Proposing Organization shall use all reasonable efforts to keep the Board’s Confidential Information confidential in the same manner as it would treat its own most protected and confidential information, and shall not, without prior written consent of the Board, disclose any such information to any other person, firm or entity except as expressly set forth herein. The Board shall use all reasonable efforts to keep the Proposing Organization’s Confidential Information confidential in the same manner as it would treat its own most protected and confidential information, and shall not, without prior written consent of the Proposing Organization, disclose any such information to any other person, firm or entity except as expressly set forth herein. The Board may release the Proposing Organization’s Confidential Information in response to a subpoena or other legal process to disclose Proposing Organization’s Confidential Information, after giving Proposing Organization prompt written notice of the Board’s receipt of such subpoena or legal process so that Proposing Organization may take steps to oppose such disclosure as set forth in section 3 above. Notwithstanding the foregoing, the Board shall only disclose that portion of the Proposing Organization’s Confidential Information it is required to disclose in the opinion of its counsel in response to any subpoena or legal process. Likewise, the Proposing Organization may release the Board’s Confidential Information in response to a subpoena or other legal process to disclose Board’s Confidential Information, after giving the Board prompt written notice of the Proposing Organization’s receipt of such subpoena or legal process so that the Board may take steps to oppose such disclosure as set forth in section 3 above. Notwithstanding the foregoing, the Proposing Organization shall only disclose that portion of the Board’s Confidential Information it is required to disclose in the opinion of its counsel in response to any subpoena or legal process.
5. **Ownership of Confidential Information**. This Agreement and the performance by the Proposing Organization of its re-pricing processes or other processes in its preparation of its response to the RFP shall not alter ownership of, or rights to, the Board’s Confidential Information. This Agreement and the performance by the Board of its evaluation of proposals submitted in response to this RFP shall not alter ownership of, or rights to, the Proposing Organization’s Confidential Information.
6. **Date of Disclosure**. This Agreement applies to Board’s Confidential Information received by or accessed by the Proposing Organization before or after the date of this Agreement, and to the Proposing Organization’s Confidential Information received by or accessed by the Board before or after the date of this Agreement.
7. **Indemnification.** To the fullest extent allowed by law, the Proposing Organization shall indemnify, defend, save and hold harmless, protect, and exonerate the State of Mississippi, its Commissioners, Board Members, officers, employees, agents, and representatives 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 from wrongful or negligent acts or omissions by Proposing Organization and/or its partners, principals, agents, employees, and/or subcontractors in the protection of or failure to protect the Board’s Confidential Information that is the subject of this Agreement. In the State’s sole discretion, the Proposing Organization may be allowed to control the defense of any such claim, suit, etc. In the event the Proposing Organization defends said claim, suit, etc., the Proposing Organization shall use legal counsel acceptable to the State; the Proposing Organization shall be solely liable for all reasonable costs and/or expenses associated with such defense and the State shall be entitled to participate in said defense. The Proposing Organization shall not settle any claim, suit, etc., without the State’s concurrence, which the State shall not unreasonably withhold.
8. **Equitable Relief.** It is understood and agreed that money damages would not be a sufficient remedy for any breach of this Agreement and that the non-breaching party shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and the parties further agree to waive any requirement for the security or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Agreement but shall be in addition to all other remedies available at law or equity.
9. **Non-Assignability.** Under no circumstances shall any party, without the prior written consent of the other, assign any of its rights, powers, duties or obligations under this Agreement to any other person or entity.
10. **Limitation on Public Disclosure.** No party shall make any public disclosure concerning the subject matter hereof or contemplated hereby without the prior written consent of the other party. This provision shall survive the termination of this Agreement.
11. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and to each party's predecessors, successors, permitted assigns, subsidiaries, affiliates and the employees, agents, officers, directors and trustees of each such entity.
12. **Entire Agreement.** This Agreement represents the entire agreement between the parties with respect to the subject matter hereof and supersedes any agreements previously entered into relating to the subject matter hereof, whether any such agreement was written or oral.
13. **Amendment Modification of Agreement.** This Agreement cannot be changed, modified or terminated except by a written agreement signed by the authorized representatives of each party on or after the date hereof. Any waiver of any of the provisions of this Agreement must be in writing and signed by a duly authorized representative of the party against whom enforcement of such waiver is sought. One or more waivers of any provisions of this Agreement shall not be construed as a waiver of a subsequent breach of any other provision.
14. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi applicable to contracts executed in and performed in the State of Mississippi. The parties further consent, irrevocably and unconditionally, to submit to the jurisdiction of the courts of the State of Mississippi (Hinds County, Mississippi, if a court of appropriate jurisdiction is located there), for any lawsuits, claims or other proceedings arising out of or relating to this Agreement, and not to commence any such lawsuit, claim or proceeding elsewhere.
15. **Counterparts.** This Agreement may be signed in counterparts, which together shall be deemed to constitute one complete document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Department of Finance and Administration**

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

 (Signature) (Signature)

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

 (Printed Name) (Printed name)

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