

MCLAREN HEALTH PLAN, INC.

AGENT SERVICES AND COMMISSION AGREEMENT

THIS AGREEMENT is entered into this ____ day of _____, 201__, between McLaren Health Plan, Inc. (hereafter “MHP”), a Michigan nonprofit corporation and health maintenance organization, and _____ (hereafter “Agent”).

WHEREAS, MHP offers Medicare Advantage coordinated care plans in its designated service area in the State of Michigan; and

WHEREAS, MHP wishes to develop a sales force to market the Medicare Advantage plans; and

WHEREAS, Agent is a duly licensed insurance agent in good standing and qualified under the laws of the state of Michigan; and

WHEREAS, MHP desires to engage Agent to solicit applications from eligible individuals to enroll in a MHP Medicare Advantage plan, and Agent desires and agrees to provide these services to MHP.

THEREFORE, in consideration of the mutual covenants and promises contained herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. **DEFINITIONS:** Terms used in this Agreement shall be defined as follows:
 - a. **Centers for Medicare and Medicaid Services (“CMS”):** the agency within the Department of Health and Human Services that administers the Medicare program.
 - b. **CMS Contract Year:** January 1 through December 31 of each year.
 - c. **Completion of Audit:** completion of audit by the Department of Health and Human Services, the Government Accountability Office, or their designees of a Medicare Advantage Organization, Medicare Advantage Organization contractor or related entity.
 - d. **Contract:** a Plan that has been issued to an Eligible Individual.

- e. **Downstream Entity:** any party that enters into a written arrangement, acceptable to CMS, with persons or entities involved with the MA benefit, below the level of the arrangement between an MA organization (or applicant) and a first tier entity. These written arrangements continue down to the level of the ultimate provider of both health and administrative services.
- f. **Eligible Individual:** an individual who meets the eligibility requirements of CMS and MHP for a Medicare Advantage plan.
- g. **Final Contract Period:** the final term of the contract between CMS and MHP.
- h. **First Tier Entity:** any party that enters into a written arrangement, acceptable to CMS, with an MA organization or applicant to provide administrative services or health care services for a Medicare eligible individual under the MA program. For purposes of the Letter of Agreement, Gordon is the First Tier Entity.
- i. **Medicare Advantage (“MA”):** an alternative to the traditional Medicare program in which private plans run by health insurance companies provide health care benefits that eligible beneficiaries would otherwise receive directly from the Medicare program.
- j. **Medicare Advantage Organization (“MA organization”):** a public or private entity organized and licensed by a State as a risk-bearing entity (with the exception of provider-sponsored organizations receiving waivers) that is certified by CMS as meeting the MA contract requirements. For purposes of this Agreement, MHP is the MA Organization.
- k. **Member or Enrollee:** a Medicare Advantage eligible individual who has enrolled in or elected coverage in a MHP Medicare Advantage Plan.
- l. **Plan:** the Medicare Advantage plans offered by MHP.

2. DUTIES AND RESPONSIBILITIES OF AGENT

- a. Equal Presentation of MHP Products. Agent shall offer MHP Plans to each Eligible Individual who is solicited by Agent or who requests information on Medicare Advantage Plans from Agent on equal terms and in the same manner as Medicare Advantage Plans of other companies are offered.
- b. Scope of Authority. Agent is authorized by MHP to solicit applications to enroll in a Plan from Eligible Individuals. Agent agrees to solicit and to offer applications to enroll in a Plan only to Eligible Individuals and in the designated service area listed in Exhibit A. Agent acknowledges and agrees that MHP may change the designated service area listed in Exhibit B and the Medicare Advantage Plans available from

MHP at any time without obtaining the consent of Agent. All future changes to the service area will be posted on MHP's website at www.McLarenAdvantage.org.

- c. Limitation of Authority. Agent may not alter, amend, delete, vary or waive the eligibility requirements, or the terms of any Plan, Contract or application (collectively "**Contract Terms**"), or make any promise, statement, warranty or representation regarding Contract Terms unless contained in the Plan, Contract or application.
- d. Application. Agent will assist individuals in completing and submitting applications to enroll in a Plan in accordance with MHP policies and procedures. Agent will assure that all forms included in the application have been completed and are submitted with the application. Agent acknowledges that Agent has received and reviewed all of MHP policies and procedures regarding marketing, solicitation and sale of the Plans and Agent understands and agrees to be bound by such policies and procedures.
- e. Acceptance of Enrollment. MHP may accept or reject any application to enroll in a Plan submitted by Agent based on underwriting and enrollment policies of MHP. No offer made or received by Agent, and no application completed by an individual, is binding until accepted by MHP, in the exercise of its sole discretion. In no event shall any individual be eligible to receive benefits under a Plan unless and until the individual's application is accepted by MHP, with such effective date as determined by MHP. Agent shall inform all individuals submitting applications to enroll in a Plan that all applications are conditional and subject to acceptance and approval in writing by MHP. MHP will notify Agent whether MHP has accepted applications submitted by Agent.
- f. Servicing of New Business. Agents will perform all reasonable duties and services required by MHP to service Contracts solicited by Agent, including but not limited to the following:
 - i. Procuring, soliciting, receiving and forwarding to MHP or MHP's designee, applications to enroll in a Plan, and servicing existing MHP contracts in accordance with MHP policies and procedures, and all applicable state and federal statutes and governmental regulations pertaining to the conduct of the business covered hereby, including but not limited to the regulations adopted by CMS governing Medicare Advantage plans.
 - ii. Reviewing all applications to assure that they are fully completed and that all forms and documents requested by MHP are included and promptly forwarding such applications to MHP or its designee.
- g. Marketing Materials. Agent will only use and distribute advertising and marketing materials provided or approved in writing by MHP when providing services under

this Agreement. Agent will comply with all MHP policies and procedures and all state and federal statutes and regulations regarding the use of all such materials, including but not limited to the regulations adopted by CMS governing Medicare Advantage plans.

h. Cancellation and Rescission of Plan; Review of Applications.

- i. MHP reserves the right to cancel any Contract solicited by Agent.
- ii. Agent acknowledges and agrees that MHP will monitor the number of individuals solicited by Agent that request or otherwise bring actions seeking the rescission of their respective Contract. A material number of such requests for rescission or actions to rescind Contracts may result in the immediate termination of this Agreement pursuant to Section 6.c below.
- iii. Agent acknowledges and agrees that MHP will conduct random quality reviews of applications and other materials submitted by Agent to ensure the accuracy of information disclosed on such applications and materials. Alterations made by Agent or directed to be made by Agent, that distort the accuracy of the information disclosed on the applications or materials submitted by Agent may result in the immediate termination of this Agreement pursuant to Section 6.c below.
- i. Duty of Loyalty. During the term of this Agreement, Agent and its employees and contractors will not encourage or induce any Covered Person to terminate his/her Contract with MHP.
- j. Agent Training. Prior to soliciting individuals to enroll in any Plan, Agent will participate, and will require its employees and contractors to participate in, an orientation and training program to become informed about MHP policies and procedures, Medicare Advantage Plans and the CMS regulations governing the sale and solicitation of Medicare Advantage Plans.

3. ADDITIONAL CMS-REQUIRED PROVISIONS

- a. HHS, the Comptroller General, or their designees have the right to audit, evaluate, and inspect any pertinent information for any particular contract period, including, but not limited to, any books, contracts, computer or other electronic systems (including medical records and documentation of the first tier, downstream, and entities related to CMS' contract with MHP, through 10 years from the final date of the final contract period of the contract entered into between CMS and MHP or from

- the date of completion of any audit, whichever is later. [42 C.F.R. §§ 422.504(i)(2)(i) and (ii)]
- b. HHS, the Comptroller General, or their designees have the right to audit, evaluate, collect, and inspect any records under Section 3(a) of this Agreement directly from Agent. For records subject to review under Section 3(a), except in exceptional circumstances, CMS will provide notification to MHP that a direct request for information has been initiated. [42 C.F.R. §§ 422.504(i)(2)(ii) and (iii)]
 - c. Agent will comply with the confidentiality and enrollee record accuracy requirements, including: (1) abiding by all Federal and State laws regarding confidentiality and disclosure of medical records, or other health and enrollment information, (2) ensuring that medical information is released only in accordance with applicable Federal or State law, or pursuant to court orders or subpoenas, (3) maintaining the records and information in an accurate and timely manner, and (4) ensuring timely access by enrollees to the records and information that pertain to them. [42 C.F.R. §§ 422.504(a)(13) and 422.118]
 - d. Enrollees will not be held liable for payment of any fees that are the legal obligation of MHP. [42 C.F.R. §§ 422.504(i)(3)(i) and 422.504(g)(1)(i)]
 - e. Any services or other activity performed in accordance with a contract or written agreement by Agent will be consistent and comply with MHP's contractual obligations. [42 C.F.R. § 422.504(i)(3)(iii)]
 - f. Agent and any related entity, contractor or subcontractor will comply with all applicable Medicare laws, regulations, and CMS instructions. [42 C.F.R. §§ 422.504(i)(4)(v)]
 - g. The MHP activities or responsibilities under its contract with CMS that are delegated to Agent are: marketing MHP MA-PD Plans to Eligible Individuals, including assisting Eligible Individuals with the completion of applications for the MHP MA-PD Plans. MHP will monitor the performance of Agent on an ongoing basis, and CMS and MHP reserve the right to revoke the delegation activities and reporting requirements or to specify other remedies in instances where CMS or MHP determines that such parties have not performed satisfactorily. [42 C.F.R. §§ 422.504(i)(4) and (5)]
 - h. Agent shall have a compliance plan that includes: (1) measures to detect, correct, and prevent fraud, waste, and abuse; and (2) written policies, procedures, and standards of conduct articulating Agent's commitment to comply with all applicable federal and state standards. Agent is responsible for completing fraud, waste and abuse as well as general compliance training and education for their respective employees, including procedures for effective internal monitoring and auditing. Agent shall allow MHP to maintain appropriate oversight of training efforts under the compliance plan. MHP

agrees to assist Agent, as appropriate, with education and training materials relating to this Agreement. At least annually, Agent shall attest to MHP that Fraud, Waste and Abuse (“FWA”) and General Compliance education and training has been conducted for Agent and all employees through the Medicare Learning Network (MLN). Agent may combine the FWA and General Compliance training with Agent’s other training activities, but Agent must attest to MHP that Agent did not make any changes to the training from the MLN.

- i. In the event of a conflict between the terms and conditions of this Section 3 and the terms of the remainder of this Agreement, the terms of Section 3 control.

4. REPRESENTATIONS AND WARRANTIES

- a. Qualifications. Agent certifies that Agent, and all employees or contractors of Agent who will solicit or sell Plans, is a duly licensed insurance agent in the state of Michigan (“**State**”) in good standing, and is qualified to solicit applications from individuals to enroll in a Plan. Agent has provided to MHP a true and accurate copy of Agent’s current insurance license, and the current license of all employees and contractors who will solicit or sell Plans, and will, upon request, provide proof of renewal of such license or licenses. Agent further certifies to MHP that Agent has fully disclosed, and has required all employees and contractors who will solicit or sell Plans to disclose, all information requested by MHP in connection with this Agreement, and that all information disclosed is complete, true and correct. If Agent’s license, or the license of any employee and contractor who will solicit or sell Plans is suspended or terminated, or if any response contained in Agent’s application or the application of any employee and contractor who will solicit or sell Plans is or becomes inaccurate, misleading or false after being submitted to MHP, Agent will provide, or will require the employee and contractor to provide, written notice to MHP within three (3) business days, and provide updated accurate and complete information within such timeframe. In the event Agent learns, or any employee or contractor who will solicit or sell Plans learns, that any adverse action will be taken against Agent or the employee or contractor by the Michigan Department of Insurance and Financial Services (“**DIFS**”), or by any other state or federal agency or regulator, then notice of such impending action, whether such notice was received by Agent or the employee or contractor orally or in writing, shall be transmitted to MHP within three (3) business days of receipt of notice, in writing, by Agent or the employee or contractor.
- b. Independent Contractor. At all times during the term of this Agreement, the relationship between MHP and Agent shall be that of independent contractors. Nothing in this Agreement shall be construed or deemed to establish or create a relationship of employer and employee.

- c. Compliance Laws and Policies. Agent agrees to comply fully and promptly with all laws, regulations, and MHP policies and procedures applicable to the performance of duties, responsibilities and obligations hereunder, including but not limited to the regulations adopted by CMS governing the sale and marketing of Medicare Advantage products.
- d. Insurance. During the term of this Agreement, Agent will maintain insurance, including errors and omissions insurance, that is in accordance with industry standards as to type and amounts. Upon request by MHP, Agent will provide, and will require its contractors to provide, evidence of such insurance coverage to MHP.

5. COMPENSATION – WHILE AGREEMENT IS IN EFFECT

- a. Terms of Compensation. Subject to all the terms and conditions of this Agreement and prior to its expiration or earlier termination, MHP shall pay to Agent the amounts set forth on the Compensation Schedule attached as Exhibit B. Agent shall accept such compensation as compensation in full for all services performed and for all expenses incurred by Agent under this Agreement. Agent shall not be entitled to receive compensation except on business (i) generated by Agent, (ii) submitted to MHP or MHP's designee and (iii) for which Agent's name appears on the application as the agent. In the event that more than one Agent claims entitlement to receive compensation on the sale of a Plan, MHP shall have the right, in its sole and absolute discretion, to decide and settle the dispute. The decision of MHP shall be final, binding, conclusive and non-appealable.
- b. Changes in Compensation. MHP may, at any time, increase or decrease the compensation payable on any or all MHP Plans, and may fix the compensation payable on any or all new Medicare Advantage Plans that are added to the Compensation Schedule by furnishing to Agent either (i) written notice or (ii) a revised compensation schedule. Notwithstanding the foregoing, any change in the compensation payable shall not be retroactive, and shall apply only to Medicare Advantage Plans solicited or arranged by Agent after the effective date specified in the written notice or revised compensation schedule, which effective date shall be at least forty-five (45) business days after the date on which such written notice or revised compensation schedule is furnished to Agent.
- c. Payment of Compensation. All compensation due to Agent under this Agreement shall be based on the enrollment of Eligible Individuals in a MHP Medicare Advantage Plan, as determined by CMS and MHP.
 - i. Deductions for Non-Enrollment. If MHP, in its sole discretion, elects to pay any compensation to Agent prior to receiving CMS confirmation of the enrollment of an Eligible Individual in a Plan and CMS does not, in fact, enroll the individual in the Plan, Agent shall promptly refund such

compensation paid to Agent and attributable to such individual. MHP may deduct such compensation from amounts otherwise owed by MHP to Agent.

- ii. Deductions for Rapid Disenrollment. If an individual disenrolls or is disenrolled from a MHP Medicare Advantage Plan within three (3) months of enrollment during any CMS Contract year such that, in accordance with the CMS Marketing Guidelines, such disenrollment is a “rapid disenrollment”, and MHP has paid any compensation to Agent for the Member, Agent shall refund such compensation paid to Agent and attributable to such Member for such CMS Contract year. MHP may deduct such compensation from amounts otherwise owed by MHP and shall provide Agent with information supporting the amount of any deductions taken pursuant to this Section.
 - iii. Deductions for Disenrollment of Members. Agent acknowledges and agrees that all one-time payments to Agent upon initial enrollment or renewal shall be deemed advance of compensation to Agent. Agent acknowledges and agrees that MHP is required under the CMS Marketing Guidelines to recover compensation payments from Agent under the additional following situations:
 - a) MHP will recover a pro-rated amount of initial compensation when a Member disenrolls from a Plan. The amount will be equal to the number of months left in the CMS Contract year following disenrollment multiplied by the monthly renewal compensation fee.
 - b) MHP will recover a pro-rated amount of renewal compensation when a Member disenrolls from a Plan. The amount will be equal to the number of months left in the CMS Contract year following disenrollment multiplied by the monthly renewal compensation fee.
 - iv. Deductions for Mid-Year Termination of Agreement. Agent acknowledges and agrees that all one-time payments to Agent upon initial enrollment or renewals shall be deemed an advance of compensation for Agent (“**Annual Advance**”). If this Agreement is terminated with cause by MHP or without cause by Agent at any time prior to the end of the CMS Contract year for which the Annual Advance has been made, Agent shall refund a pro-rated amount of the initial or renewal compensation, as applicable. The amount will be equal to the number of months left in the CMS Contract year following termination.
- d. MHP Decision Final. In computing compensation, the determination of MHP, in its sole discretion, shall be final in classifying or identifying the type, class, or kind of Medicare Advantage Plan and the applicable compensation payable. In all cases where Agent’s claim to compensation is disputed or is otherwise questionable, MHP

shall have the right to decide and settle the dispute. The decision of MHP shall be binding and conclusive.

6. TERM, TERMINATION AND RIGHT TO COMPENSATION AFTER TERMINATION

- a. Term of Agreement. The term of this Agreement shall begin on the date first written above (the “**Effective Date**”) and shall continue until terminated in accordance with the provisions of this Section 6.
- b. Termination without Cause. This Agreement may be terminated without cause by either Agent or MHP upon ninety (90) days prior written notice, provided in accordance with the notice procedures set forth in this Agreement.
- c. Automatic Termination. This Agreement will terminate automatically upon the occurrence of any of the following events:
 - i. Agent’s insurance license is suspended or terminated;
 - ii. Agent is disciplined or sanctioned, or an adverse action is taken by any state or federal regulatory authority;
 - iii. Any state or federal agency, court, administrative or regulatory body orders the termination of this Agreement or no longer permits the arrangements specified in this Agreement;
 - iv. MHP gives notice that it shall cease offering any Medicare Advantage plans;
 - v. Agent files a petition of insolvency under federal or state bankruptcy law or upon the appointment of a receiver to handle the affairs of Agent.
- d. Termination with Cause. MHP may immediately terminate this Agreement for cause upon written notice to Agent upon the occurrence of any of the following events:
 - i. The failure of Agent to comply with the rules and regulations of MHP or the laws or regulations of the state of Michigan or any Federal or state regulatory authority having jurisdiction over the parties.
 - ii. The failure of Agent to conform to the terms and conditions of this Agreement.
- e. Agent Obligations Following Termination of Agreement. Following termination of this Agreement, Agent shall direct inquiries regarding MHP Plans to MHP. At the request of MHP, Agent shall copy all requested records in its possession relating to

MHP Plan applicants and Members and forward such copies to MHP.

- f. Monies Due Agent. All payments due Agent after termination of this Agreement shall be subject to the provisions of Section 5 above.
- g. Compensation Following Termination of Agreement.
 - i. In the event this Agreement is terminated under Section 6.c. or Section 6.d., MHP shall cease paying to Agent any compensation under this Agreement and no further payment shall be due. This termination of payment shall be independent of any other rights that MHP may have as a result of the breach of this Agreement.
 - ii. Upon the termination without cause of this Agreement by MHP, MHP shall continue paying to Agent renewal compensation set forth on the Agent Compensation Schedule in effect as of the termination date for Members who continue to be enrolled in the MHP Plans from one CMS Contract year to the next CMS Contract year up to a maximum total of five (5) renewal years. Such compensation shall be due to Agent only for so long as each such applicable Member remains enrolled in the MHP Plan. The obligation of MHP to pay compensation shall cease in the event that Agent, at any time while payments continue, engages in any of the conduct set forth in Section 6.d which would have given rise to a termination for breach. This Section 6.g shall survive termination of this Agreement.

7. CONFIDENTIALITY

- a. Confidential and Proprietary Information. Agent agrees that all information of MHP acquired during the term of this Agreement including, but not limited to, information regarding (i) marketing plans, contracts, business practices and underwriting process; (ii) information regarding Members, and (iii) any other information that is proprietary or competitively sensitive is confidential and shall be the sole property of MHP. Such confidential and proprietary information shall not be disclosed to any other party without the prior written consent of MHP. Upon notice of the termination of this Agreement, Agent shall return all such materials and information, including all copies thereof, whether or not authorized, to MHP.
- b. Member Protected Health Information. MHP and Agent have entered into a Business Associate Agreement, Exhibit C, that controls how Member protected health information may be used and disclosed.

8. MISCELLANEOUS

- a. Notice. Any notice required by this Agreement shall be effective on the date personally delivered or mailed by certified mail, postage prepaid, to the party at the address set forth below:

MHP:

AGENT:

McLaren Health Plan, Inc.

G-3245 Beecher Road
Flint, MI 48532
Attn: President and CEO

- b. Entire Agreement; Modification. This Agreement contains the entire understanding of the parties and can be modified only by a written document signed by each party. Notwithstanding the preceding sentence, MHP reserves the right to modify unilaterally B upon thirty (30) days prior written notice. In addition, this Agreement shall automatically be amended to comply with any applicable federal, state or local law, regulation, order or directive of any governmental agency.
- c. Waiver. The waiver by MHP or Agent of a breach of this Agreement will not operate as a waiver of any subsequent breach. No delay in acting with regard to any breach of this Agreement will be construed to be a waiver of the breach.
- d. Severability. In the event that any term or condition of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, such term or condition shall be severed from this Agreement and the remaining terms and conditions shall be given their full force and effect.
- e. Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Michigan.

[Signatures appear on the following page]

IN WITNESS WHEREOF, Agent and MHP executed this Agreement on the dates indicated below.

MCLAREN HEALTH PLAN, INC.

AGENT

By: _____

Kathy Kendall

Its: President and CEO

By: _____

(Signature)

(Printed Name)

Dated: _____

Dated: _____

EXHIBIT A
MCLAREN HEALTH PLAN
SERVICE AREA

The following Michigan counties make up the Service Area for McLaren Health Plan's Medicare Advantage products:

Alpena
Antrim
Bay
Charlevoix
Cheboygan
Clare
Clinton
Emmet
Genesee
Gratiot
Hillsdale
Huron
Ingham
Isabella
Kalamazoo
Kalkaska
Lapeer
Lenawee
Macomb
Monroe
Montcalm
Montmorency
Oakland
Ogemaw
Oscoda
Otsego
Presque Isle
Saginaw
St. Joseph
Sanilac
Shiawassee
Tuscola
Van Buren
Washtenaw

Wayne

EXHIBIT B

AGENT COMPENSATION SCHEDULE

Effective for Eligible Individuals Enrolled in MHP MAPD Plans in 2016

For CMS Contract year 2016, MHP will compensate Agent as follows for MHP Medicare Advantage Plans marketed and promoted by Agent:

1. For each Eligible Individual who is enrolled in a MHP Plan as a result of the marketing and promotion services of Agent under this Agreement (a “**Member**”) MHP shall pay Agent:
 - a. A one-time initial payment of \$ _____; and
 - b. A total renewal payment of \$ _____ per year provided that (a) the Member who is enrolled in the MHP Plan in the then-current CMS Contract year remains enrolled in the MHP Plan in the immediately following CMS Contract Year; or an Eligible Individual enrolls in a “like plan type.” A new “like plan type” may be a change from one plan to another within MHP, or the Eligible Individual moving from another Medicare Organization to enroll with MHP. Compensation for renewal Members will be paid at the rate of \$17.00 per month. Renewal payments for a Member shall end after 5 CMS Contract years of renewals.
2. The one-time initial payment shall be paid to Agent on or before the last business day of the full month following the applicable Member’s enrollment in the Plan. To ensure that fees paid for members who disenroll within three months of enrollment are capable of being recouped from Agent, MHP will withhold 20% of the compensation (“**Hold Back**”). MHP will pay the Hold Back to Agent after the 93rd consecutive day of a Member’s initial enrollment in the MHP Plan.
3. Renewal Fees will be paid by the last business day of the month for each month a Member remains enrolled in a MHP Plan up to five (5) full CMS Contract years of renewal.
4. Payment of initial and renewal compensation is conditioned upon payment by the Member of his/her premium.

EXHIBIT C

BUSINESS ASSOCIATE AGREEMENT

Business Associate Agreement

This Business Associate Agreement (“Agreement”) is entered into between McLaren Health Plan, Inc. (“Covered Entity”) and _____ (“Business Associate”), collectively “The Parties” as of _____, 201____ (“Effective Date”).

I. Background

To the extent that Covered Entity possesses PHI, which may be disclosed or made available to Business Associate, the purpose of this Agreement is to comply with the business associate agreement requirements as set forth in HIPAA and as amended by HITECH.

In the event of any inconsistency between the provisions of this Agreement and the HIPAA Privacy and Security Rules, as may be amended from time to time by the Secretary or as a result of interpretations by HHS, a court, or another regulatory agency, the HIPAA Privacy and Security Rules shall prevail. In the event of a conflict among the interpretation of these entities, the conflict will be resolved in accordance with rules of precedence.

II. Definitions

- a. *Breach* shall have the meaning given in 45 CFR §164.402.
- b. *Designated Record Set* shall have the meaning given in 45 CFR §164.501
- c. *Electronic Protected Health Information* shall have the meaning given in 45 CFR §160.103.
- d. *HIPAA* shall mean the Health Insurance Portability and Accountability Act of 1996 and any amendments thereto.
- e. *HIPAA Privacy and Security Rules* shall mean HIPAA, HITECH, 45 CFR parts 160-164, and any other implementing regulations pertaining to the privacy or security of PHI.

f. *HITECH* shall mean the Standards for Privacy and Security of Personal Health Information in Subtitle D (Privacy) of the Health Information Technology Economic and Clinical Health Act of 2009

g. *Limited Data Set* shall have the meaning given in 45 CFR §164.514(e)(2)

h. *Minimum Necessary* shall mean a Limited Data Set or, if needed, the minimum necessary PHI to accomplish the intended purpose of a use, disclosure or request, until the effective date of the guidance required by §13405(b)(1)(B) of HITECH, at which time the term shall have the meaning specified in such guidance.

i. *Protected Health Information (PHI)* shall have the meaning given in 45 CFR §160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

j. *Required by Law* shall have the meaning given in 45 CFR §164.103.

k. *Secretary* shall mean the Secretary of the Department of Health and Human Services or his or her designee.

l. *Unsecured Protected Health Information* shall have the meaning given in 45 CFR §164.402.

III. Business Associate Acknowledgements, Obligations, Permitted Uses and Disclosures

a. Business Associate acknowledges it is subject to the requirements of the HIPAA Privacy and Security Rules to the extent required by HITECH.

b. Except as otherwise expressly limited in the Agreement, Business Associate may use or disclose PHI:

i. To perform functions, activities, or services for, or on behalf of, Covered Entity in connection with the Agreement and any other agreements in effect between Covered Entity and Business Associate.

ii. For the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that if Business Associate further discloses PHI:

1. The disclosure is Required by Law; or
2. The Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person and the person agrees to notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.

iii. To provide Data Aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B)

iv. To report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1)

Business Associate agrees to not use or further disclose PHI other than as permitted or required by the Agreement or as Required by Law.

c. Except as permitted by 45 C.F.R. §164.502(b)(2), Business Associate agrees to limit its use, disclosure and requests of PHI under the Agreement to the Minimum Necessary.

d. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement and will implement administrative, physical, and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the HIPAA Privacy and Security Rules.

e. Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Agreement and mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

f. Business Associate agrees to immediately report to Covered Entity as soon as practicable, but not later than 60 days, after becoming aware of any Breach of Unsecured

Protected Health Information in accordance with 45 CFR §164.410. Notwithstanding the foregoing, Business Associate shall report to Covered Entity any Breach related to Business Associate's Medicare Advantage product that has the potential for significant beneficiary harm (i.e., a high likelihood that the information was used inappropriately) or where there may be heightened public or media scrutiny (i.e., a high number of beneficiaries affected or particularly egregious Breaches) immediately so that Covered Entity can report this information to its CMS Account Manager within 2 business days of when Business Associate learned of the Breach.

g. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. Moreover, Business Associate shall ensure that any such agent or subcontractor agrees to implement reasonable and appropriate safeguards to protect Covered Entity's Electronic PHI as required by the HIPAA Privacy and Security Rules.

h. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.

i. Business Associate agrees to provide to Covered Entity or an individual, in time and manner reasonably designated by Covered Entity, information collected in accordance with Section III. (h) of this Agreement, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of their PHI in accordance with 45 CFR §164.528.

j. If Business Associate maintains PHI in a Designated Record Set for Covered Entity, Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner reasonably designated by Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524.

k. If Business Associate maintains PHI in a Designated Record Set for Covered Entity, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an individual, and in the time and manner reasonably designated by Covered Entity.

l. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf

of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Privacy and Security Rules.

m. Business Associate agrees it shall not directly or indirectly receive remuneration in exchange for disclosing PHI received from or on behalf of Covered Entity except as specifically permitted by HITECH Section 13405 and any implementing regulations.

IV. Covered Entity Obligations

a. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy and Security Rules if done by Covered Entity.

b. Except as permitted by 45 CFR §164.502(b)(2), Covered Entity agrees to limit its use, disclosure and requests of PHI under the Agreement to the Minimum Necessary.

c. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

d. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522.

e. Covered Entity shall be responsible for complying with the Breach notification rules in HITECH §13402 and implementing regulations (45 CFR §164.402).

V. Term and Termination

a. This Agreement shall remain in effect until such time as all other agreements between Covered Entity and Business Associate are terminated unless terminated earlier as provided herein.

b. Upon one party's knowledge of a material violation of this Agreement by the other party, the non-violating party shall either: (a) provide an opportunity for the violating party to cure the violation or end the violation and terminate this Agreement (and any underlying agreement) if the violating party does not cure the violation or end the violation within ten (10) business days; (b) immediately terminate this Agreement (and any underlying agreement) if cure

is not possible; or (c) if neither termination nor cure are feasible, the non-violating party shall report the violation to the Secretary.

c. Except as provided in paragraph (d) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

d. In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible. Upon mutual agreement of the Parties that return or destruction of PHI is not feasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such PHI.

VI. Miscellaneous

a. *Regulatory References.* A reference in this Agreement to a section in the HIPAA Privacy and Security Rules means the section as in effect or as amended, and for which compliance is required.

b. *Amendment.* The parties mutually agree to enter into good faith negotiations to amend this Agreement from time to time in order for Covered Entity or Business Associate to comply with the requirements of HIPAA or HITECH, as they may be amended from time to time, and any implementing regulations that may be promulgated or revised from time to time.

c. *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Privacy and Security Rules.

d. *No Third Party Beneficiaries.* The parties agree that there shall be no third party beneficiaries to this contract, including but not limited to individuals whose PHI is created, received, used and/or disclosed by this Business Associate in its role as business associate.

e. *No assignment.* Covered Entity and Business Associate agree that this Agreement will not be assignable by either party except as expressly provided herein.

f. *Binding Effect.* This Agreement shall be binding upon the parties hereto and their successors and assigns.

g. *Survival.* The respective rights and obligations of Business Associate, as described above in Section III., shall survive the termination of this Agreement.

h. *Address for Notices to Business Associate.* Any notices that may be required to be provided to each party under the terms of this agreement shall be provided in writing via certified mail to the following addresses:

For Covered Entity:

McLaren Health Plan, Inc.
Attn: Privacy Officer
G3245 Beecher Road
Flint, MI 48532
Phone: (517) 913-2622

For Business Associate:

Attn: _____

Phone: _____

i. *Entire Agreement.* This Agreement constitutes the entire Agreement between Covered Entity and Business Associate with respect to the matters covered herein. Covered Entity and Business Associate agree that there were no inducements or representations leading to the execution of this Agreement, nor any other agreements between them, other than those contained in this Agreement.

j. *Counterparts.* This Agreement may be executed in any number of counterparts, which, when taken together, shall constitute one original.

MCLAREN HEALTH PLAN, INC.
Covered Entity

AGENT
Business Associate

By: _____
Kathy Kendall
Its: President and CEO

By: _____

Its: _____

Date: _____

Date: _____

