

**AGENT AGREEMENT  
BETWEEN  
MCLAREN HEALTH PLAN, INC., MCLAREN HEALTH PLAN COMMUNITY,  
HEALTH ADVANTAGE, INC.  
AND**

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This Agent Agreement is effective \_\_\_\_\_ (“Effective Date”) and is entered into between McLaren Health Plan, Inc., McLaren Health Plan Community and Health Advantage, Inc. (each referred to separately as “Plan”) and \_\_\_\_\_ (“Agent”).

The parties agree as follows:

**1. AGENT’S AUTHORITY AND OBLIGATIONS**

**1.1. Authority.** Agent is authorized on behalf of Plan during the term of this Agreement to solicit and service the Products selected in Section 9. As used in this Agreement, “Products” are the health coverages or services in Plan’s service area, which Plan has authorized Agent to solicit and service in Section 9. Any sale by Agent is binding on Plan only if accepted in writing by Plan. Plan has the sole discretion to reject any sales submitted by Agent to Plan. Agent has no authority to act on Plan’s behalf except as provided in this Agreement. Agent does not have authority to and must not perform any of the following:

- A.** Bind coverage or accept an applicant for coverage;
- B.** Modify, alter or terminate any Plan contract;
- C.** Solicit, service or sell on behalf of Plan any product not authorized by this Agreement;
- D.** Incur any debt or liability or withhold money or property of Plan;
- E.** Waive defaults by members or any other party contracted with Plan;
- F.** Extend the time for or method of payment of amounts owed to Plan;
- G.** Quote rates other than those provided by Plan;
- H.** Collect premiums, deposits or other money from a group or member; or
- I.** Do anything on behalf of Plan that is not permitted by this Agreement.

**1.2 License.** Agent must maintain licenses as required by Michigan law to solicit and service Products on behalf of Plan. Agent must immediately notify Plan of any expiration, termination, suspension, revocation or other action by the Michigan Department of Insurance and Financial Services, its successors, or any other government agency. Agent will not be paid any commission for any time when its license is suspended, terminated or revoked. Agent must immediately notify Plan of any misdemeanor or felony charges related to Agent’s actions, including fraud, dishonesty, breach of trust, theft, misappropriation of money, or breach of fiduciary duty.

**1.3 Expenses.** Agent is responsible for all expenses incurred while performing services under this Agreement.

**1.4 Use of Plan Name and Materials.** Agent must not use Plan’s name, logo, advertising and marketing materials or supplies, or any other materials provided to Agent by Plan in any

advertising or sales promotions without the prior written consent of Plan. Agent must promptly notify Plan if Agent becomes aware of the use of Plan's name or logo in any advertising or sales promotion, other than as permitted under this Agreement. Upon termination of this Agreement, all rights and privileges provided to Agent under this Agreement regarding the use of Plan's name and logo immediately expire, and Agent must promptly give Plan all advertising, sales, enrollment and other materials related to Plan.

**1.5 Errors and Omissions Insurance.** Agent must maintain errors and omissions insurance with minimum coverage limits of \$1,000,000 per occurrence and \$1,000,000 in the aggregate. Upon signing this Agreement, Agent must provide evidence of its errors and omission coverage to Plan. Upon Plan's request, Agent will provide proof of coverage to Plan. Agent must immediately notify Plan of any changes in its coverage.

**1.6 Compliance with Law and Plan Rules.** Agent must comply with all state and federal laws and regulations applicable to Agent's obligations in this Agreement. Agent must also comply with all rules and instructions issued by Plan, including, but not limited to Plan's underwriting rules regarding the solicitation, sale and servicing of any Products. Agent must avoid conflicts of interest and cooperate with and advance the interests of Plan with its customers. Agent must comply with the applicable requirements of the regulatory requirements attachments. The parties intend for this Agreement to comply with all applicable laws, regulations and regulatory guidance. If at any time Plan determines that payments or the payment methodology under this Agreement is not permitted under federal laws or regulations, or this Agreement violates in whole or in part any material provision of a law, regulation or regulatory guidance, Plan will promptly notify Agent. Notwithstanding Section 8.7 of the Agreement, Plan may, in its sole discretion, immediately amend the Agreement to comply with applicable laws, regulations or regulatory guidance or immediately terminate this Agreement without cause.

**1.7 Servicing Requirements.** If required by Plan, Agent must inform or distribute any Plan communications or materials to Plan's customers in a timely manner. Agent will perform all reasonable duties and services required by Plan to service Plan's customers. If requested by Plan, this may include delivery and explanation of administrative forms (initial and renewal). Agents must provide to Plan current and accurate employee demographic data, coverage history, and other information requested by Plan regarding a group or prospective group. Any material misrepresentation of any information given to Plan is considered to be fraud, and will result in forfeiture of any payments due under this Agreement, and termination of all obligations to Agent by Plan.

**1.8 Subcontractors.** If Agent uses a subcontractor to perform any of Agent's obligations under this Agreement, Agent will enter into an agreement with the subcontractor that requires the subcontractor to be bound by the same terms and conditions that apply to Agent under this Agreement with respect to the delegated obligations.

**1.9 Change in Address.** Agent will promptly notify Plan, in writing, of any change in Agent's address.

**1.10 Non-Exclusivity.** This Agreement is not exclusive for either party.

**1.11 Objective Assessment and Recommendations.** In accordance with federal regulations (e.g., 42 CFR 422.2274(c)(13)), no provision of this Agreement shall have a direct or indirect effect of creating an incentive that would reasonably be expected to inhibit an Agent's ability to objectively assess and recommend which plan best fits the health care needs of a beneficiary. If Plan identifies a provision of this Agreement that has a direct or indirect effect of creating such an incentive, Plan will notify Agent and the provision shall no longer be enforceable under this Agreement.

## **2. PLAN'S RESERVED RIGHTS**

**2.1 Appointment of Agent.** A Plan may, in its sole discretion, appoint Agent to solicit Products for the Plan. A Plan may terminate any of Agent's appointments at any time without terminating this Agreement in its entirety.

**2.2 Discontinuation/Withdrawal.** Plan reserves the right to discontinue or withdraw from the sales or marketing of any Product at any time.

**2.3 Modifications/Amendments to Products.** Plan reserves the right to change or amend any of the terms of its Products at any time. Plan also reserves the right to change its business practices or operations relating to its Products at any time.

**2.4 Advertising and Marketing.** Plan may advertise and provide promotional materials at its discretion.

## **3. COMMISSIONS**

**3.1. Payment of Commissions.** Subject to Agent's compliance with the terms and conditions of this Agreement, Plan will compensate Agent for Agent's services during the term of this Agreement in accordance with the applicable Commission Schedule. Plan may have multiple commission schedules (e.g. one for commercial and one for Medicare Advantage). For Medicare Advantage, additional requirements for commissions are located in Exhibit 2 to Attachment C. Plan's Commission Schedules will be made available to Agent and can be provided to Agent upon request. Commission payments for premiums paid will be paid by the end of the month following the month the premiums were received. Notwithstanding the foregoing, Plan may set the timing of payments in a different manner for products, as specified for the specific product. Further, notwithstanding anything to the contrary in this Agreement, Plan may at any time, alter the time period for paying commissions by notifying Agent. Commissions will be based on the applicable Commission Schedule in effect when the premiums were due.

**3.2 Changes to Commission Schedules.** Commission Schedules may be changed at any time by Plan, in Plan's sole discretion by providing to Agent either (i) written notice or (ii) a revised Commission Schedule. Notwithstanding the foregoing, any change in the compensation payable shall not be retroactive, and shall apply only to Products solicited or arranged by Agent after the effective date specified in the written notice or revised Commission Schedule, which effective date shall be at least forty-five (45) business days after the date on which such written notice or revised Commission Schedule is provided to Agent.

### **3.3 Agent of Record Requirement.**

**A. Individual Plans.** If Plan pays commissions for the sale of individual plans, commissions will only be paid on premium paid by an individual that has designated Agent as the Agent of Record on the member's application to Plan. Commissions are not payable for any period of which Agent is not Agent of Record for the individual.

**3.4 Conditions for Receiving Commissions.** Commissions will be paid for premiums earned and received by Plan (net of retroactive additions and terminations) from a group or individual with respect to the relevant calendar month, but Plan has no obligation to pay a commission until the premiums have been actually received by Plan. Plan will not pay any commission following termination of this Agreement for any reason. The commissions due for a particular month will be adjusted based upon retroactive enrollment changes, Plan, group or, as applicable, individual enrollment error, or other circumstances identified by Plan.

**3.5 Adjustments to Commissions.** Agent may collect commission adjustments for a period of up to 120 days from the date compensation would have been due. Commission adjustments will be automatically included in the following month's commission payment and may not be collected by means of an independent payment. Agent forfeits its right to any payment after 120 days and Plan has no obligation to make any payment.

**3.6 Overpayments.** Agent must promptly notify Plan if Agent becomes aware of an overpayment. Overpayments may arise several ways, including but not limited to, retroactive disenrollment of members, termination of a group or member for failure to pay premium, or a Plan's payment of an incorrect amount of commissions to Agent. If a Plan pays Agent more than the amount due to Agent as a commission, Agent must promptly return the funds to Plan. Plan may, in its sole discretion, offset the overpayment against Agent's next commission payment. If Plan incurs any costs in collecting the overpayment from Agent, including but not limited to collection and attorney fees, Agent will reimburse Plan for its costs.

**3.7 No Compensation to Other Agents.** Plan will not pay compensation to any other agent, broker or producer under the terms of this Agreement. Agent agrees to defend, indemnify and hold harmless Plan if an agent, broker or producer (other than Agent) makes a claim for compensation against Plan under the terms of this Agreement.

## **4. TERM AND TERMINATION**

**4.1 Term of the Agreement.** The term of this Agent Agreement is one year beginning on the Effective Date. This Agreement will automatically renew for additional one year periods unless terminated in accordance with Section 4.2 of this Agreement.

## 4.2 Termination.

**A. Termination for any Reason.** Either party may terminate this Agreement at any time, for any reason, by providing at least 60 days prior written notice to the other party.

**B. Termination for Loss of License.** If, at any time during the term of this Agreement, Agent does not have, or fails to maintain, a license required to perform services or receive compensation under this Agreement (including if Agent's license is revoked by a licensing or regulatory agency but not including a temporary suspension of Agent's license), this Agreement will be terminated effective as of the date that Agent first lost, or failed to maintain, the license without regard to when Plan learns of the loss of, or failure to maintain the license or when Plan notifies Agent that this Agreement has been terminated. Plan may recover any compensation paid to Agent after Agent loses or fails to maintain a fully active license.

**C. Termination for Disciplinary Action.** If a licensing or regulatory agency subjects Agent to any disciplinary sanction (for example, a reprimand or temporary suspension of Agent's license), Plan may terminate the Agreement by providing written notice to Agent effective upon receipt of the notice, or any later date that Plan specifies in the notice. Regardless of whether the Agreement is terminated, no compensation will be payable to Agent for services provided during any period in which Agent's license is temporarily suspended. Plan may recover any compensation paid to Agent during any period in which Agent's license is temporarily suspended.

**D. Termination Upon Ending of Agent's Business.** This Agreement will automatically terminate upon Agent's death, dissolution, receivership, insolvency, or bankruptcy.

**E. Termination for Agent's Breach.** If Agent breaches a material term of this Agreement, Plan may terminate this Agreement immediately by notifying Agent in writing of the effective date of termination. Material terms of this Agreement include, but are not limited to those related to Agent's use of Plan's materials, confidentiality and Agent's authority. The effective date of termination may be the date of the breach, or any later date that Plan specifies in the notice of termination.

**F. Termination for Fraud.** If Agent engages in, or knowingly assists another to commit, fraudulent or dishonest activity in connection with the solicitation, enrollment or renewal, this Agreement will terminate effective as of the date on which Agent engaged in or assisted with the activity without regard to when Plan learns of the fraudulent or dishonest activity or when Plan notifies Agent that this Agreement has been terminated. Plan may recover any compensation paid to Agent after Agent engaged in, or knowingly assisted another to commit, the fraudulent or dishonest act without regard to when Agent actually earned the compensation.

**G. Termination Due to Order by Government Agency or Court.** This Agreement will terminate automatically if a 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. Notwithstanding the foregoing, if the termination ordered or prohibited is only for a Product, if permitted by law, the Agreement will remain in effect for all other Products.

### **4.3 Obligations Following Termination.**

**A. Obligations Following a Section 4.2(A) Termination.** If the Agreement is terminated in accordance with Section 4.2(A), Agent will keep all business placed with a Plan, including applicable commissions, but will not be allowed to write new business for Plan, bind a new risk for Plan, renew a Product, or increase the obligations of Plan without the approval of Plan. Plan will not pay commissions after termination of this Agreement at any time that Plan determines that it would have terminated the Agreement in accordance with Sections 4.2(B), (C), (D), (E), (F) or (G).

**B. Obligations Following all other Terminations.** If the Agreement is terminated in accordance with Sections 4.2(B), (C), (D), (E), (F), or (G), Plan will keep the business the Agent has placed with Plan and no commissions will be paid to Agent after termination of the Agreement. Following termination of this Agreement, neither Agent nor any employee, representative, or agent of Agent, will at any time, directly or indirectly, induce or seek to induce any group or subscriber to lapse, surrender, or cancel any Plan coverage.

**C. Other Obligations.** Following termination of this Agreement, Agent shall direct inquiries regarding Plan's Products to Plan. At the request of Plan, Agent shall copy all requested records in its possession relating to Plan applicants and Members and forward copies of the records to Plan.

## **5. MONITORING AND AUDITING**

**5.1 Consent to Monitoring.** Agent will permit Plan to monitor the performance of Agent on an ongoing basis, in any manner that Plan determines appropriate. Plan's monitoring under this section does not relieve Agent of its obligations under this Agreement.

**5.2 Plan Audits.** Agent will maintain and require its subcontractors to maintain their books and records in a manner that permits audits or inspections as required by this Agreement. Plan may inspect and audit any and all information and records related to the services Agent performs under this Agreement.

**5.3 Government Audits.** Agent will permit access by applicable government authorities or their designees to audit and inspect Agent's books and records, contracts, computers, or other electronic systems, including medical records and any other documentation relating to this Agreement in accordance with applicable laws and regulations.

## **6. CONFIDENTIALITY**

### **6.1 Confidential Information.**

**A. Plan's Confidential Information.** In performing its obligations under this Agreement, Agent will have access to information that is confidential and proprietary to Plan ("Plan Confidential Information"). Plan Confidential Information may include, without limitation: this Agreement, names, addresses, and demographic information relating to Plan

members or prospective members, marketing strategies, targeting methods, and other Plan business objectives. Agent must use Plan Confidential Information only for the purpose of providing services and must not use Plan Confidential Information for any other purpose. Agent must ensure that only its employees, authorized agents, or subcontractors who need to know Plan Confidential Information to perform services under this Agreement will receive Plan Confidential Information and that they agree to be bound by the provisions of this Section 6. Agent may not disclose Plan Confidential Information to any unauthorized party without Plan's prior written consent. Unauthorized parties include, but are not limited to other HMOs, PPOs, TPAs and other similar entities. Agent must treat Plan Confidential Information with at least the same degree of care that it treats its own confidential information, but in no case less than a reasonable degree of care to prevent disclosure of Confidential Information to unauthorized parties. Agent must immediately notify Plan of any loss or unauthorized disclosure or use of Plan Confidential Information.

**B. Agent's Confidential Information.** In performing its obligations under this Agreement, Plan will have access to information that is confidential and proprietary to Agent ("Agent Confidential Information"). Agent Confidential Information may include, without limitation: marketing strategies, targeting methods, and other Agent business objectives. Plan will use Agent Confidential Information only for the purpose of fulfilling its obligations under this Agreement and will not use Agent Confidential Information for any other purpose. Plan will ensure that only its employees, authorized agents, or subcontractors who need to know Agent Confidential Information to perform services under this Agreement will receive Agent Confidential Information, and that they agree to be bound by the provisions of this Section 6. Plan may not disclose Agent Confidential Information to any unauthorized party without Agent's prior written consent. Plan will treat Agent Confidential Information with at least the same degree of care that it treats its own confidential information, but in no case less than a reasonable degree of care to prevent disclosure of Agent Confidential Information to unauthorized parties. Plan will immediately notify Agent of any loss or unauthorized disclosure or use of Agent Confidential Information.

**6.2 Exclusions.** A party's obligations regarding the use and disclosure of the other party's Confidential Information does not apply to Confidential Information that: (a) the receiving party already knew; (b) the receiving party received from a third party that had the right to make the disclosure; (c) the party that owns the Confidential Information specifically authorizes the other party to disclose; (d) a party developed independently without use or reference to the other party's Confidential Information; (e) becomes part of the public domain through no fault of the receiving party; or (f) the receiving party was ordered to disclose by a court or agency with appropriate jurisdiction.

**6.3 Injunctive Relief.** Any unauthorized use or disclosure of the other party's Confidential Information may cause immediate and irreparable harm to the party that owns the Confidential Information for which money damages will not be an adequate remedy. Each party agrees that the other party is entitled to seek injunctive relief without posting bond.

**6.4 Return or Destruction of Confidential Information.** Upon the owning party's demand, or upon the termination of this Agreement, the receiving party will comply with the instructions

of the party that owns the Confidential Information regarding the return or disposition of Confidential Information.

**6.5 Survival of Confidentiality.** The obligations of this Section 6 will survive the termination of this Agreement for a period of five years, except for trade secrets, where each party's obligations will continue for as long as the information remains a trade secret.

**6.6 Confidentiality of Member Protected Health Information.** For Protected Health Information (as that term is defined in the HIPAA rules and regulations), the parties agree to comply with the terms of the Business Associate Agreement entered into concurrently with this Agreement.

## **7. LIMIT OF LIABILITY AND INDEMNITY**

**7.1 Limit of Liability.** Agent's sole, exclusive remedy for any breach by a Plan of this Agreement or for any other damages resulting from the Plan's performance under this Agreement is limited to money damages equal to the lesser of Agent's actual damages, or the sum of all amounts paid to Agent by the Plan under this Agreement.

**7.2 Disclaimer of Damages.** To the maximum extent permitted by applicable law, in no event will Plan, its affiliates and subsidiaries be liable for any lost profits, lost savings or any consequential, incidental, indirect, special, punitive, or other damages whatsoever (including, without limitation, damages for loss of business profits, business interruption, loss of business information, or other pecuniary loss) arising out of this Agreement even if Agent has been advised of the possibility of damages, or for any other claim by Agent or for any third party claim.

**7.3 Indemnification.** During and after the term of this Agreement, Agent will indemnify, defend, and hold Plan harmless from and against any claim, loss, damage, or expense, including reasonable attorneys' fees, caused by or arising from any act, error or omission by Agent, its employees and subcontractors. Agent must indemnify and hold Plan harmless from and against any and all claims, lawsuits, demands, liabilities, taxes (including taxes on compensation), charges, judgments, settlements, costs, penalties and expenses of whatever kind or nature the Companies may sustain or incur at any time and arising in any manner out of an act, error or omission by Agent with respect to this Agreement.

## **8. GENERAL TERMS**

**8.1 Independent Contractors.** Agent is an independent contractor and is not an employee of Plan. This Agreement does not create any other relationship between the parties, including any joint venture or agency.

**A. State and Federal Taxes.** Plan will not withhold FICA (Social Security and Medicare taxes) from Agent's payments or make FICA payments on Agent's behalf, or make state or federal unemployment compensation contributions on Agent's behalf, or withhold state or federal income tax from Agent's payments. Agent must pay all taxes incurred while



performing services under this Agreement, including all applicable income taxes. Upon Plan's request, Agent will provide Plan with proof that the payments have been made.

**B. Fringe Benefits.** Neither Agent nor Agent's employees or contract personnel are eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan of Plan.

**C. Worker's Compensation.** Plan will not obtain worker's compensation insurance on behalf of Agent or Agent's employees. If Agent hires employees to perform any work under this Agreement, Agent will cover them with worker's compensation with limits not less than the statutory requirements of applicable state and federal laws.

**D. Unemployment Compensation.** Plan will make no state or federal unemployment compensation payments on behalf of Agent or Agent's employees or contract personnel. Agent will not be entitled to these benefits in connection with work performed under this Agreement. If Agent files a petition for and receives unemployment compensation, the total amount of unemployment compensation awarded to and received by Agent will be deducted from and be an offset against the amount of compensation due and payable to Agent by Plan under this Agreement.

**8.2 Entire Agreement.** This Agreement and the application to which it is attached and any addenda, schedules, rules or other agreements provided for in this Agreement or incorporated hereunder, are the entire agreement of the parties and supersedes all previous agreements whether oral or written, between Plan and Agent.

**8.3 Assignment.** Plan may assign any or all of its rights and responsibilities under this Agreement to a subsidiary or affiliate of Plan. Agent may not assign any of its rights, responsibilities or commissions under this Agreement to any person or entity without the prior written consent of Plan.

**8.4 Governing Law.** This Agreement will be governed by and construed according to Michigan law and federal law as applicable.

**8.5 Waiver of Class Action.** Any dispute resolution proceedings will be conducted only on an individual basis and not in a class or representative action or as a named or unnamed member in a class, consolidated representative, or private attorney general action, unless both Agent and Plan agree to do so in writing.

**8.6 Waiver of Jury Trial.** The parties waive the right to a trial by jury in any proceeding or litigation brought against the other related to this Agreement.

**8.7 Amendment to Agreement.** Plan may amend any of the terms of this Agreement by providing at least 30 days notice to Agent, or a shorter period of time, if required by law, regulation or a regulatory agency. Agent's continued performance after the amendment effective date is considered acceptance of the amendment and Agent's signature is not required. However,

if Agent objects to an amendment and notifies Plan prior to the effective date of the amendment, Plan and Agent will endeavor to negotiate the terms of the amendment.

**8.8 Waiver.** The failure of Plan at any time to require performance by Agent of any provision of this Agreement will not affect in any way Plan’s right to require performance at any time thereafter. The waiver by Plan of a breach of any provision of this Agreement does not constitute a waiver of the provision itself.

**8.9 Severability.** If any provision of this Agreement is found to be illegal or otherwise unenforceable, the remainder of this Agreement will not be affected and will remain fully enforceable.

**8.10 Several Liability and Enforcement.** All representations, warranties, covenants, liabilities and obligations under this Agreement are several, and not joint, to each Plan, and no Plan will be liable for any breach, default, liability or other obligation of any other Plan party to this Agreement. Each Plan is a separate entity and may independently enforce the terms and conditions of this Agreement.

**8.11 Notice.** Any notice required or permitted under this Agreement must be in writing and, if mailed, be effective three days after being sent by certified or registered mail, or if sent by a national transportation company the next business day or sooner, be effective upon receipt by the addressee. Any notice must be addressed to the following:

**Plan**

McLaren Health Plan, Inc.  
Attn: President and CEO  
G-3245 Beecher Rd  
Flint, MI 48532

**Agent**

To the address listed below on the signature page

Either party may change its address by providing written notice of the new address as provided in this Section 8.9.

**9. PRODUCTS COVERED UNDER THIS AGREEMENT**

**9.1** Agent agrees to provide services for the following Products:

- Commercial Individual Products – Off Exchange
- Commercial Individual Products – On Exchange (*Must comply with Attachment A*)
- Medicare Supplement (*Must comply with Attachment B*)
- Medicare Advantage – All products (*Must comply with Attachment C*)

Either party may remove a selected product by providing at least thirty (30) days written notice to the other party. No commissions will be paid to Agent if Plan discontinues offering a Product. Additionally, no commissions will be paid to Agent, if Agent does not meet the requirements of a Product as provided in the applicable regulatory attachment.

The authorized representatives of the parties have caused this Agreement to be executed.

**McLaren Health Plan, Inc.,  
McLaren Health Plan Community  
and Health Advantage, Inc.**

\_\_\_\_\_ (Agent)



\_\_\_\_\_  
By: Jeff Romback  
Its: Vice President,  
Strategic Business Operations

On behalf of the above-named entities

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

Its: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Fed Tax ID#: \_\_\_\_\_

## Attachment A – Exchange Requirements

Capitalized terms used in this Attachment A that are not defined have the meanings defined in the Agreement.

For purposes of this Attachment A, the following definitions apply:

**“Delegated Entity”** means any party that enters into an agreement with Plan to provide administrative services or health care services to qualified individuals, qualified employers, or qualified employees and their dependents. Provider is a Delegated Entity.

**“Downstream Entity”** means any party that enters into an agreement with a Delegated Entity or with another downstream entity for purposes of providing administrative or health care services related to the agreement between a Delegated Entity and Plan.

**“Exchange”** means a governmental agency or non-profit entity that meets the applicable standards of 45 CFR 155 subpart D and makes QHPs available to individuals and employers. This term includes both state and Federally-Facilitated Exchanges.

**“Qualified Health Plan” or “QHP”** means a health plan that has in effect a certification that it meets the standards described in subpart C of part 156 issued or recognized by each Exchange through which a plan is offered in accordance with the process described in subpart K of part 155. McLaren Health Plan Community offers QHPs.

- 1. Delegated Activities.** The activities or responsibilities with regard to Plan’s QHP products that are delegated to Agent are specified in the Agreement. [45 CFR 156.340(b)(1)]
- 2. Reporting and Monitoring Activities.** Plan will monitor the performance of the Agent on an ongoing basis as provided for in the Agreement. [45 CFR 156.340(b)(1)]
- 3. Revocation of Delegation and Reporting Activities.** HHS and Plan reserve the right to revoke the delegation activities and reporting requirements or to specify other remedies in instances where HHS or Plan determines that Agent has not performed satisfactorily. Plan may immediately terminate the Agreement if Plan determines that Agent has not performed satisfactorily. If Plan terminates the Agreement or revokes any delegated functions to Agent, Agent must cooperate with Plan’s transition activities. [45 CFR 156.340(b)(2)]
- 4. Compliance with Applicable Laws and Regulations.** Agent and any Downstream Entity must comply with all applicable laws and regulations relating to the standards of 45 C.F.R. part 156 subpart C; all exchange processes, procedures, and standards in accordance with subparts H and K of part 155, and any applicable state statutes and regulations regarding the exchange and, in the small group market; 45 C.F.R. §155.705; 45 C.F.R. §155.220 with respect to assisting with enrollment in Plan; and 45 C.F.R. §§156.705 and 156.715 for maintenance of records and compliance reviews for Plan to the extent that it operates in a Federally-facilitated Exchange or FF-SHOP. [45 CFR 156.340(a)(3)]

**5. Record Retention and Audits.** Agent and any Downstream Entity must permit access by the Secretary and the OIG or their designees in connection with their right to evaluate through audit, inspection, or other means, to Delegated Entity or any Downstream Entity's books, contracts, computers, or other electronic systems, including medical records and documentation, relating to Plan's obligations in accordance with Federal requirements until ten years from the termination or expiration of the Agreement. [45 CFR 156.340(a)(4)]

**6. Subcontracting.** Subject to the subcontracting terms of the Agreement, if Agent, subcontracts any functions to a Downstream Entity to perform any services on behalf of Plan, Agent must ensure that the subcontracting agreement is in writing and includes the terms in this Attachment A.

**7. Training/Registration Requirement.** Agent may solicit Plan Marketplace (Exchange) group or individual plans only if Agent has completed the applicable required Marketplace training and registration and has provided Plan with a copy of a certificate proving the registration. If Agent fails to obtain or maintain the required registration, Agent will immediately discontinue soliciting and servicing Plan's Marketplace Products. Agent will not be paid commissions at any time after Agent failed to obtain or maintain the required registration.

**8. Event of Conflict.** If there is an inconsistency between the provisions of this Attachment A and the Agreement, this Attachment A will prevail as it relates to the subject matter of Attachment A.

## **Attachment B – Medicare Supplement Requirements**

- 1. Notice Requirements to Applicants.** Agent must comply with the requirements in MCL 500.3827, including but not limited to the provision of notices to applicants.
- 2. No Material Misrepresentations.** Agent must not materially misrepresent any of Plan's policy's provisions when soliciting the policy to a member or prospective member. [MCL 500.3830]
- 3. Appropriateness of Products.** In recommending the purchase or replacement of any Medicare Supplement coverage, Agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement. [MCL 500.3861]
- 4. Use of Materials.** In addition to the terms of the Agreement related to the use of materials, Agent must not use solicitation or marketing materials, unless they have been approved by Plan and the State of Michigan licensing authority, if applicable. [MCL 500.3847]
- 5. Criminal Acts.** Agent warrants that Agent has not been convicted of any criminal act involving dishonesty or breach of trust or been convicted of an offense under Section 14033 of the Violent Crime Control and Law Enforcement Act of 1994. Further, Agent agrees to immediately inform the Companies of any conviction of the types described in the preceding sentence.
- 6. Event of Conflict.** If there is an inconsistency between the provisions of this Attachment A and the Agreement, this Attachment B will prevail as it relates to the subject matter of Attachment B.

## Attachment C – Medicare Advantage

### 1. DEFINITIONS:

Terms used in this Attachment C shall be defined as follows:

**“Centers for Medicare and Medicaid Services” or “CMS”** is the agency within the Department of Health and Human Services that administers the Medicare program.

**“CMS Contract Year”** means January 1 through December 31 of each year.

**“Completion of Audit”** means 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.

**“Contract”** means a Plan Product that has been issued to an Eligible Individual.

**“Downstream Entity”** is 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.

**“Eligible Individual”** is an individual who meets the eligibility requirements of CMS and Plan for a Medicare Advantage plan.

**“Final Contract Period”** means the final term of the contract between CMS and Plan.

**“First Tier Entity”** is 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.

**“Medicare Advantage” or “MA”** is 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.

**“Medicare Advantage Organization” or “MA organization”** is 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, Plan is the MA Organization.

**“Member” or “Enrollee”** is a Medicare Advantage eligible individual who has enrolled in or elected coverage in a Plan Product.

**“Plan Product”** is a Medicare Advantage plan offered by Plan.

## 2. DUTIES AND RESPONSIBILITIES OF AGENT

**2.1 Equal Presentation of Plan Products.** Agent shall offer Plan’s Medicare Advantage products 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.

**2.2 Scope of Authority.** Agent is authorized by Plan to solicit applications to enroll in a Plan Product from Eligible Individuals. Agent agrees to solicit and to offer applications to enroll in a Plan Product only to Eligible Individuals and in the designated service area listed in Exhibit 1 to Attachment C. Agent acknowledges and agrees that Plan may change the designated service area listed in Exhibit 1 to Attachment C and the Medicare Advantage Plan Products available from Plan at any time without obtaining the consent of Agent. All future changes to the service area will be posted on Plan’s website at [www.mclarenhealthplan.org](http://www.mclarenhealthplan.org).

**2.3 Limitation of Authority.** Agent may not alter, amend, delete, vary or waive the eligibility requirements, or the terms of any Plan Product, Contract or application (collectively “**Contract Terms**”), or make any promise, statement, warranty or representation regarding Contract Terms unless contained in the Plan Product, Contract or application.

**2.4 Application.** Agent will assist Eligible Individuals in completing and submitting applications to enroll in a Plan Product in accordance with Plan 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 Plan’s policies and procedures regarding marketing, solicitation and sale of the Plan Products and Agent understands and agrees to be bound by such policies and procedures.

**2.5 Acceptance of Enrollment.** Plan may accept or reject any application to enroll in a Plan Product submitted by Agent based on underwriting and enrollment policies of Plan. No offer made or received by Agent, and no application completed by an individual, is binding until accepted by Plan, in the exercise of its sole discretion. In no event shall any individual be eligible to receive benefits under a Plan Product unless and until the individual’s application is accepted by Plan, with an effective date determined by Plan. Agent shall inform all individuals submitting applications to enroll in a Plan Product that all applications are conditional and subject to acceptance and approval in writing by Plan. Plan will notify Agent whether Plan has accepted applications submitted by Agent.

**2.6 Servicing of New Business.** Agents will perform all reasonable duties and services required by Plan to service Contracts solicited by Agent, including but not limited to the following:

**A.** Procuring, soliciting, receiving and forwarding to Plan or Plan’s designee, applications to enroll in a Plan Product, and servicing existing Plan Contracts in accordance with Plan policies and procedures, and all applicable state and federal statutes and governmental regulations related to this Agreement, including but not limited to the regulations adopted by CMS governing Medicare Advantage plans.



**B.** Reviewing all applications to assure that they are fully completed and that all forms and documents requested by Plan are included and promptly forwarding the applications to Plan or its designee.

**2.7 Marketing Materials.** Agent will only use and distribute advertising and marketing materials provided or approved in writing by Plan when providing services under this Agreement. Agent will comply with all Plan 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.

**2.8 Cancellation and Rescission of Plan Products; Review of Applications.**

**A.** Plan reserves the right to cancel any Contract solicited by Agent.

**B.** Plan will monitor the number of individuals solicited by Agent that request or otherwise seek rescission of their Contract. A material number of requests for rescission or actions to rescind Contracts may result in the immediate termination of this Agreement for Cause.

**C.** Plan will conduct random quality reviews of applications and other materials submitted by Agent to ensure the accuracy of information disclosed on 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.

**2.9 Duty of Loyalty.** During the term of this Agreement, Agent and its employees and contractors will not encourage or induce any Member to terminate his/her Contract with Plan.

**2.10 Agent Training.** Prior to soliciting individuals to enroll in a Plan Product, Agent must participate, and will require its employees and contractors to participate in, an orientation and training program to become informed about Plan policies and procedures, Medicare Advantage Plans and the CMS regulations governing the sale and solicitation of Medicare Advantage Plans. Agent may solicit Plan Medicare group or individual plans only if Agent has completed Plan's required training. Plan's required training includes the following:

- A.** AHIP, NABIP, Miramar and Pinpoint training completion with certification;
- B.** Completion of the Plan's MA product training (provided to FMO by the Plan) with a passing score of at least eighty five percent (85%);
- C.** Fraud, waste and abuse training; and
- D.** General compliance training.

Agent will not be paid commissions at any time after Agent failed to meet Plan's required training requirements.

### 3. ADDITIONAL CMS REQUIRED PROVISIONS

**3.1 Government Audit Rights.** 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 Plan, through 10 years from the final date of the final contract period of the contract entered into between CMS and Plan or from the date of completion of any audit, whichever is later. [42 CFR §§ 422.504(i)(2)(i) and (ii)]

HHS, the Comptroller General, or their designees have the right to audit, evaluate, collect, and inspect any records under this Agreement directly from Agent. For records subject to review, except in exceptional circumstances, CMS will provide notification to Plan that a direct request for information has been initiated. [42 CFR §§ 422.504(i)(2)(ii) and (iii)]

**3.2 Confidentiality.** 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 CFR §§ 422.504(a)(13) and 422.118]

**3.3 Enrollee Hold Harmless.** Enrollees will not be held liable for payment of any fees that are the legal obligation of Plan. [42 CFR §§ 422.504(i)(3)(i) and 422.504(g)(1)(i)]

**3.4 Compliance with Agreement.** Any services or other activity performed in accordance with a contract or written agreement by Agent will be consistent and comply with Plan's contractual obligations. [42 CFR § 422.504(i)(3)(iii)]

**3.5 Compliance with Laws Regulations and CMS Instructions.** Agent and any related entity, contractor or subcontractor will comply with all applicable Medicare laws, regulations, and CMS instructions. [42 CFR § 422.504(i)(4)(v)]

**3.6 Delegated Activities and Monitoring.** The Plan activities or responsibilities under its contract with CMS that are delegated to Agent are: marketing Plan Products to Eligible Individuals, including assisting Eligible Individuals with the completion of applications for the MA-PD Plan Products. Plan will monitor the performance of Agent on an ongoing basis, and CMS and Plan reserve the right to revoke the delegation activities and reporting requirements or to specify other remedies in instances where CMS or Plan determines that such parties have not performed satisfactorily. Agent's performance will be reviewed and evaluated at least annually. [42 CFR §§ 422.504(i)(4) and (5)]

**3.7 Compliance.** 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 Plan to maintain appropriate oversight of training efforts under the compliance plan. Plan agrees to assist Agent, as appropriate, with education and training materials relating to this Agreement. At least annually, Agent shall attest to Plan 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 Plan that Agent did not make any changes to the training from the MLN.

**3.8 Amendments.** Agent and Plan will amend the Agreement, as necessary, to include other terms and conditions as CMS may find necessary and appropriate as required by 42 CFR 422.504(j).

**3.9 Exclusion Prohibition and Screening.** Agent represents and warrants that it does not employ or contract with, and shall not employ or contract with, individuals or entities to perform delegated services who are excluded from participation in federal health care programs or, if applicable, who appear on the CMS preclusion list. Agent shall review the DHHS OIG List of Excluded Individuals and Entities (LEIE list), GSA Excluded Parties List System (EPLS), and, if applicable, the CMS preclusion list prior to the hiring or contracting of any new employee, temporary employee, volunteer, consultant, governing body member, or subcontracted FDR; and monthly thereafter to ensure that none of these persons or entities are excluded from federal health program participation or, if applicable, included on the CMS preclusion list. Agent shall notify Plan immediately of any excluded or precluded individual or entity assigned to perform delegated services and remove such individual or entity from performing such delegated services. Plan shall not pay for items or services furnished by Contractor directly or through an excluded or precluded individual or entity.

**3.10 Offshoring.** If Agent or any subcontracted FDR receives, processes, transfers, handles, stores, or accesses PHI offshore, Agent shall notify Plan of any activities conducted outside the United States by Contractor or under subcontract to the contract where PHI is received, processed, transferred, handled, stored, or accessed offshore.

**3.11 Certification of Data/Information.** Agent shall certify that any data and other information submitted to Plan and/or CMS are accurate, complete and truthful based on the best knowledge, information, and belief.

**3.12 Event of Conflict.** If there is a conflict between the terms and conditions of this Section 3 and the terms of this Agreement, the terms of Section 3 control.

#### **4. REPRESENTATIONS AND WARRANTIES**

**4.1 Qualifications.** Agent certifies that Agent, and all employees or contractors of Agent who will solicit or sell Plan Products, 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 Product. Agent has provided to Plan 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 Plan Products, and will, upon request, provide proof of renewal of such license or licenses. Agent further certifies to Plan that Agent has fully disclosed, and has required all employees and contractors who will solicit or sell Plan Products to disclose, all information requested by Plan 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 Plan Products 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 Plan Products is or becomes inaccurate, misleading or false after being submitted to Plan, Agent will provide, or will require the employee and contractor to provide, written notice to Plan within three (3) business days, and provide updated accurate and complete information within such timeframe. If Agent learns, or any employee or contractor who will solicit or sell Plan Products 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 provided to Plan within three (3) business days of receipt of notice, in writing, by Agent or the employee or contractor.

**4.2 Compliance Laws and Policies.** Agent agrees to comply fully and promptly with all laws, regulations, and Plan 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.

**4.3 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 Plan, Agent will provide, and will require its contractors to provide, evidence of the required insurance coverage to Plan.

**4.4 Event of Conflict.** If there is an inconsistency between the provisions of this Attachment C and the Agreement, this Attachment C will prevail as it relates to the subject matter of Attachment C.

## **Exhibit 1 to Attachment C**

### **Medicare Advantage Service Area**

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

Alcona  
Allegan  
Alpena  
Antrim  
Arenac  
Bay  
Barry  
Benzie  
Berrien  
Branch  
Calhoun  
Cass  
Crawford  
Charlevoix  
Cheboygan  
Clare  
Clinton  
Eaton  
Emmet  
Genesee  
Gladwin  
Gratiot  
Grand  
Traverse  
Hillsdale  
Huron  
Ingham  
Ionia  
Iosco  
Jackson  
Kalamazoo  
Kalkaska  
Kent  
Lapeer  
Lake  
Leelanau  
Livingston  
Macomb  
Manistee  
Mecosta  
Midland

Missaukee  
Montcalm  
Montmorency  
Newaygo  
Oakland  
Ogemaw  
Osceola  
Oscoda  
Otsego  
Ottawa  
Presque Isle  
Roscommon  
Saginaw  
St. Clair  
Sanilac  
Shiawassee  
Tuscola  
Van Buren  
Washtenaw  
Wayne  
Wexford

## Exhibit 2 to Attachment C

### Medicare Advantage Additional Requirements for Commissions

**1. Payment Conditioned Upon Receipt of Premiums.** Payment of initial and renewal compensation is conditioned upon timely payment by the Member of his/her premium in full to Plan.

**2. 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, Plan shall pay to Agent the applicable amounts set forth above in this Exhibit 2 to Attachment C. 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 Plan or Plan’s designee and (iii) for which Agent’s name appears on the application as the agent. If more than one Agent claims entitlement to receive compensation on the sale of a Plan Product, Plan shall have the right, in its sole and absolute discretion, to decide and settle the dispute. The decision of Plan shall be final, binding, conclusive and non-appealable.

**B. Payment of Compensation.** All compensation due to Agent under this Agreement shall be based on the enrollment of Eligible Individuals in a Medicare Advantage Plan Product, as determined by CMS and Plan.

**i. Deductions for Non-Enrollment.** If Plan, 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 Product and CMS does not, in fact, enroll the individual in the Plan Product, Agent shall promptly refund such compensation paid to Agent and attributable to such individual. Plan may deduct such compensation from amounts otherwise owed by Plan to Agent.

**ii. Deductions for Rapid Disenrollment.** If an individual disenrolls or is disenrolled from a Medicare Advantage Plan Product within three (3) months of enrollment during any CMS Contract year such that, in accordance with the CMS Communications and Marketing Guidelines, such disenrollment is a “rapid disenrollment”, and Plan 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. Plan may deduct such compensation from amounts otherwise owed by Plan 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 Plan is required under the CMS Marketing Guidelines to recover compensation payments from Agent under the additional following situations:

a. Plan will recover a pro-rated amount of initial compensation when a Member disenrolls from a Plan Product. 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. Plan will recover a pro-rated amount of renewal compensation when a Member disenrolls from a Plan Product. 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 Plan 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.

v. **Plan Decision Final.** In computing compensation, the determination of Plan, in its sole discretion, shall be final in classifying or identifying the type, class, or kind of Medicare Advantage Plan Product and the applicable compensation payable. In all cases where Agent’s claim to compensation is disputed or is otherwise questionable, Plan shall have the right to decide and settle the dispute. The decision of Plan shall be binding and conclusive.

3. **Compensation Following Termination of Agreement.** If this Agreement is terminated, Plan shall immediately cease paying any compensation to Agent under this Agreement and no further payment shall be due. This termination of payment shall be independent of any other rights that Plan may have as a result of the breach of this Agreement.

4. **Event of Conflict.** If there is an inconsistency between the provisions of this Exhibit 2 to Attachment C and the Agreement, this Exhibit 2 to Attachment C will prevail as it relates to the subject matter of Exhibit 2 to Attachment C.



## **Business Associate Agreement**

This Business Associate Agreement (“**Agreement**”) is entered into between McLaren Health Plan, Inc., McLaren Health Plan Community, and Health Advantage, Inc. (each referred to as a “**Covered Entity**”) and \_\_\_\_\_ (referred to as “**Business Associate**”), collectively the “**Parties**” as of \_\_\_\_\_ (“**Effective Date**”).

### **Recitals**

**A.** McLaren Health Plan, Inc. and McLaren Health Plan Community are health maintenance organizations and are considered to be Covered Entities as defined under HIPAA.

**B.** Health Advantage, Inc., is a third party administrator and is a considered to be a “Business Associate” under HIPAA.

**C.** For purposes of this Agreement, the parties intend that each McLaren Health Plan, Inc., McLaren Health Plan Community, and Health Advantage, Inc. will be referred to as a “Covered Entity” and Business Associate will be referred to as Business Associate throughout this Agreement even when it is performing activities as a Subcontractor for Health Advantage, Inc.

**D.** The Parties have a relationship where Business Associate provides functions or activities on behalf of, or provides services to Covered Entity that involve the use or disclosure of PHI.

**E.** The purpose of this Agreement is to comply with the requirements in HIPAA and as amended by HITECH.

**F.** The Parties intend for this Agreement to control as it relates to PHI if there is an inconsistency between the terms of this Agreement or the underlying agreement.

The Parties therefore agree as follows:

### **1. DEFINITIONS**

Capitalized terms used, but not defined in this Agreement have the meaning provided in the HIPAA Privacy and Security Rules. For purposes of this Agreement, the following definitions apply:

“**Electronic Protected Health Information**” or “**E-PHI**” has the meaning given in 45 CFR §160.103, limited to the information that Business Associate creates, accesses, receives, maintains or transmits on behalf of Covered Entity in connection with the underlying agreement. E-PHI is a subset of PHI.

“**HIPAA**” means the Health Insurance Portability and Accountability Act of 1996 and any amendments.

**“HIPAA Privacy and Security Rules”** means HIPAA, HITECH, 45 CFR parts 160-164, and any other implementing regulations pertaining to the privacy or security of PHI.

**“HITECH”** means 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.

**“Minimum Necessary”** means a Limited Data Set or, if needed, the minimum necessary PHI to accomplish the intended purpose of a use, disclosure or request.

**“Protected Health Information” or “PHI”** has the meaning given in 45 CFR §160.103, limited to the information that Business Associate creates, accesses, receives, maintains or transmits on behalf of Covered Entity in connection with the underlying agreement.

**“Secretary”** means the Secretary of the Department of Health and Human Services or his or her designee.

**“Subcontractor”** means a person or entity to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of the business associate.

## **2. BUSINESS ASSOCIATE OBLIGATIONS, PERMITTED USES AND DISCLOSURES**

**2.1 Subject to the HIPAA Privacy and Security Rules.** Business Associate is subject to and will comply with the requirements of the HIPAA Privacy and Security Rules. Business Associate will to the extent Business Associate carries out Covered Entity’s obligations under the HIPAA Privacy and Security Rules, comply with the requirements of the HIPAA Privacy and Security Rules that apply to Covered Entity in the performance of the obligation.

**2.2 Use and Disclosure of PHI.** Except as otherwise expressly limited in the Agreement, Business Associate may use or disclose PHI:

**A.** 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.

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

**I.** The disclosure is Required by Law; or

**II.** 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 Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.

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

**C.** Business Associate must not use or further disclose PHI other than as permitted or required by the Agreement or as Required by Law.

**D.** Business Associate will not de-identify PHI without Covered Entity's prior written consent.

**E.** Business Associate will not perform Data Aggregation services without Covered Entity's prior written consent.

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

**2.4 Safeguards.** Business Associate must 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 PHI and E-PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the HIPAA Privacy and Security Rules.

**2.5 Mitigation.** Business Associate must immediately report to Covered Entity any use or disclosure of PHI not provided for by this Agreement. Business Associate must promptly mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Security Incident, Breach, or a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement or the HIPAA Privacy and Security Rules.

**2.6 Reporting of Breaches.** Business Associate must immediately report to Covered Entity as soon as practicable, but not later than 5 business days, after becoming aware of any Breach or reasonably suspected Breach of Unsecured Protected Health Information. Notwithstanding the foregoing, for a Covered Entity that contracts with CMS to provide Qualified Health Plan(s), Business Associate must report to the Covered Entity any Breach or reasonably suspected Breach of Unsecured Protected Health Information in the time periods necessary for Covered Entity to report the matter to CMS in accordance with the Covered Entity's agreement with CMS. In all cases, Business Associate will provide Covered Entity with all information related to the Breach or suspected Breach, including but not limited to the content requirements in 45 CFR §164.410. Business Associate will make members of its Workforce available and will cooperate with Covered Entity in any investigation related to a Breach.

**2.7 Reporting of Security Incidents.** Business Associate must immediately report to Covered Entity as soon as practicable, but not later than 5 business days, after becoming aware of any Security Incident. Business Associate will provide Covered Entity with all information related to the Security Incident, including but not limited to the content requirements in 45 CFR §164.410. Business Associate will make members of its Workforce available and will cooperate with Covered Entity in any investigation related to a Security Incident. All incidents of ransomware that involve PHI will be considered a Security Incident that is reportable to Covered Entity.

**2.8 Agent and Subcontractor Requirements.** Business Associate must 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 the information. Moreover, Business Associate must ensure that any agent or Subcontractor agrees to implement reasonable and appropriate safeguards to protect Covered Entity's E-PHI as required by the HIPAA Privacy and Security Rules. Business Associate shall disclose to its Subcontractors only the Minimum Necessary to perform the Services as are delegated to the Subcontractor by Business Associate.

**2.9 Accounting of Disclosures.** Business Associate must document disclosures of PHI and information related to the 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. Business Associate must provide to Covered Entity or an individual, in time and manner reasonably designated by Covered Entity, information collected in accordance with 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.

**2.10 Access to PHI.** If Business Associate maintains PHI in a Designated Record Set for Covered Entity, Business Associate must 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.

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

**2.12 Books and Records.** Business Associate must make its internal practices, books, and records related to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to Covered Entity, or at the request of Covered Entity to the Secretary, in a time and manner designated by Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Privacy and Security Rules. Covered Entity has the right to audit, investigate, monitor, access, review and report on Business Associate's use of any Covered Entity's PHI, with or without advance notice from Covered Entity.

**2.13 Prohibition on Sale of PHI.** Business Associate must not sell PHI or receive any direct or indirect remuneration in exchange for PHI and not transmit to any Individual any communication about a product or service that encourages the recipient of the communication to purchase that product or service unless permitted to do so by HITECH Section 13405 and any implementing regulations.

**2.14 Part 2 Requirements.** If Business Associate uses, discloses, maintains, or transmits PHI that is protected by Part 2, Business Associate is bound by the Part 2 regulations. Any information Business Associate receives from Covered Entity that is protected by Part 2 is subject to protections that prohibit Business Associate from disclosing information protected by Part 2 without written consent of the individual, as required by Part 2. Business Associate acknowledges that any unauthorized disclosure of information under this section is a federal criminal offense.

**2.15 Prohibition on Session Replay Scripts.** Business Associate's website(s) will not contain analytics tools such as session replay scripts. Business Associate will redact, and abstain from gathering, data fields containing HIPAA information upon original configuration and each subsequent website update.

**2.16 Assistance in Litigation or Administrative Proceedings.** Business Associate will, at its cost, make itself, its Workforce members, agents, and Subcontractors, available to Covered Entity to testify as witnesses, or otherwise, if litigation or administrative proceedings are commenced against Covered Entity, its directors, officers, or Workforce members based upon a claimed violation of this Agreement or the HIPAA Privacy and Security Rules, except where Business Associate is named as an adverse party.

**2.17 Training.** Business Associate will provide training to its workforce and its Subcontractors and their workforce in accordance with HIPAA requirements. Business Associate will provide the training and evidence that the training was completed to Covered Entity upon Covered Entity's request.

**2.18 Ownership.** Business Associate has no ownership rights related to PHI, including any de-identified information or Limited Data Sets. Covered Entity is and remains the sole owner of all PHI and the de-identified information and Limited Data Sets created, if any.

**2.19 Red Flags Rule.** If Business Associate provides any billing, revenue cycle, or related services, Business Associate will: (a) use reasonable efforts to implement safeguards, policies, and procedures to prevent identity theft in accordance with the Red Flags Rule; (b) notify Covered Entity within 2 business days of any 'red flag' or identity theft incident of which Business Associate becomes aware; (c) reasonably cooperate with Covered Entity to investigate and provide notice to victim(s) if required; and (d) mitigate, to the extent practicable, harm related to any identity theft incident related to Business Associate's services.

### **3. COVERED ENTITY OBLIGATIONS**

**3.1 Restrictions.** Covered Entity will 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. Except as provided in 45 CFR §164.502(b)(2), Covered Entity will limit its use, disclosure and requests of PHI under the Agreement to the Minimum Necessary.

**3.2 Notifications to Business Associate.** Covered Entity will provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI, if the changes affect Business Associate's permitted or required uses and disclosures. Covered Entity will also 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.

**3.3 Breach Notification.** Covered Entity will be responsible for complying with the Breach notification rules in HITECH §13402 and implementing regulations.

#### **4. TERM AND TERMINATION**

**4.1 Term.** This Agreement will remain in effect until all other agreements between Covered Entity and Business Associate are terminated, unless terminated earlier as provided in this Agreement.

**4.2 Termination.** Upon one party's knowledge of a material violation of this Agreement by the other party, the non-violating party must 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 must report the violation to the Secretary.

#### **4.3 Obligations of Business Associate upon Termination.**

**A.** Except as provided in Section 4.3(B), upon termination of this Agreement, for any reason, Business Associate must return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision applies to PHI that is in the possession of Business Associate's Subcontractors or agents. Business Associate, its Subcontractors and agents must not retain any copies of PHI.

**B.** If Business Associate determines that returning or destroying the PHI is not feasible, Business Associate must 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 must extend the protections of this Agreement to PHI and limit further uses and disclosures of PHI to those purposes that make the return or destruction unfeasible, for as long as Business Associate maintains the PHI.

**4.5 Injunctive Relief.** The Parties agree that the remedies at law for a violation of the terms of this Agreement may be inadequate and that monetary damages resulting from a violation may not be readily measured. Accordingly, in the event of a violation by either Party of the terms of this Agreement, the other Party will be entitled to immediate injunctive relief. Nothing in this

Agreement will prohibit either Party from pursuing any other remedies that may be available to either of them.

## 5. GENERAL

**5.1 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.

**5.2 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.

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

**5.4 Headings.** The headings of articles and sections contained in this Agreement are for reference only and do not affect in any way the meaning or interpretation of this Agreement.

**5.5 No Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement, including but not limited to individuals whose PHI is created, received, used and/or disclosed by Business Associate in its role as business associate.

**5.6 No Assignment.** Covered Entity and Business Associate agree that this Agreement will not be assignable by either party except as expressly provided in this Agreement.

**5.7 Binding Effect.** This Agreement is binding upon the Parties and their successors and assigns.

**5.8 Survival.** The respective rights and obligations of Business Associate, including without limitation, the obligations of Business Associate under the termination section above, indemnification, ownership of PHI, reporting of Breaches and Security Incidents, will survive termination of this Agreement to the extent necessary to fulfill their purposes.

**5.9 Notice.** Any notices that may be required to be provided to each party under the terms of this agreement must be provided in writing by certified mail or through a nationally recognized overnight courier to the following addresses:

**For Covered Entities:**

McLaren Health Plan  
Attn: Privacy Officer  
G-3245 Beecher Road  
Flint, MI 48532

**For Business Associate:**

Attn:

**5.10 Entire Agreement.** This Agreement is the entire agreement between Covered Entity and Business Associate with respect to the matters covered in this Agreement. 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.

**5.11 Counterparts.** This Agreement may be executed in any number of counterparts, each of which is an original and all of which taken together form one single document. If any signature is delivered by facsimile or by email delivery of a “.pdf”, the signature creates a binding obligation of the Party signing with the same effect as if it were an original.

**5.12 Indemnification.** Business Associate must defend and hold harmless Covered Entity and any Covered Entity affiliate, officer, director, employee, subcontractor, agent or other members of its workforce, from all claims, liabilities, damages, fines, penalties, costs, expenses (including without limitation, reasonable attorney fees, and costs related to notifications under 45 CFR 164.400 – 164.408), or judgments which arise as a result of Business Associate’s failure to meet any of its obligations under this Agreement.

**5.13 Insurance.** Business Associate represents and warrants that Business Associate has, and will maintain, at Business Associate’s own expense, cyber liability insurance in the amount of at least \$3,000,000 annual aggregate and liability insurance covering breach of Business Associate’s requirements under this Agreement and Business Associate’s negligent or intentional disclosure or Breach of PHI covered by this Agreement. At the request of Covered Entity, Business Associate must provide to Covered Entity proof of insurance coverage required by this Section.

**5.14 Prohibition of Offshore Disclosure.** Business Associate must not access, store, share, maintain, transmit or use or disclose PHI in any form through any medium with any entity or person, including Business Associate’s employees and Subcontractors, beyond the boundaries and jurisdiction of the United States.

**5.15 Governing Law and Venue.** This Agreement, the rights of the Parties, and all actions arising in whole or in part under or in connection with it, will be governed by and construed in accordance with the laws of the state of Michigan, without giving effect to any choice or conflict-of-law provision or rule that would cause the application of the laws of any other jurisdiction. A final judgment in any action will be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

**5.16 Several Liability.** All representations, warranties, covenants, liabilities and obligations of a Covered Entity under this Agreement are several, and not joint, to each Covered Entity. No Covered Entity will be liable for any breach, default, liability or other obligation of another Covered Entity.

**5.17 Conflict.** If there is an 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 will prevail. If there is a conflict among the interpretation of these entities, the




conflict will be resolved in accordance with rules of precedence. If there is an inconsistency between the provisions of this Agreement and the underlying agreement, this Agreement will prevail as it relates to the subject matter of this Agreement.

**MCLAREN HEALTH PLAN, INC.,  
MCLAREN HEALTH PLAN COMMUNITY,  
AND HEALTH ADVANTAGE, INC.**

**Covered Entity**

**Business Associate**

By:   
\_\_\_\_\_  
Jeff Romback

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

Its: Vice President, Strategic Business  
Operations

Its: \_\_\_\_\_

On behalf of the above-named entities

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

