

MITCHELL INTERNATIONAL

SCRIPTADVISOR PHARMACY BENEFIT MANAGEMENT SERVICES AGREEMENT

This ScriptAdvisor Pharmacy Benefit Management Services Agreement (this "Agreement") with an effective date of signing by both Parties (the "Effective Date") between Mitchell International, Inc. a Delaware Corporation, having offices at 6220 Greenwich Drive, San Diego, CA 92122 ("Mitchell") and County of Shasta, through its Risk Management Department a political subdivision of the State of California, having offices at 1450 Court Street, Room 348, Redding, CA 96001 ("Customer"), each a "Party" and together the "Parties" as used throughout the Agreement.

Defined terms used throughout this Agreement are provided in Exhibit A attached hereto and incorporated herein by reference.

WHEREAS, Mitchell's ScriptAdvisor engages in pharmacy benefit management services, including, among other things, pharmacy network contracting, eligibility verification, pharmacy claims processing, formulary administration and managed care services (collectively, "PBM Services"); and

WHEREAS, Customer desires to utilize Mitchell's ScriptAdvisor PBM Services exclusively for its PBM Services during the term of this Agreement as set forth herein.

NOW THEREFORE, in consideration of the mutual promises, covenants and representations of the parties, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Obligations of Mitchell.

(a) Retail Participating Pharmacy Network.

- (i) National Network. Mitchell will provide a national network of Participating Pharmacies ("Mitchell National Network") to provide Covered Prescription Drug Services to Eligible Claimants.
- (ii) Participation Requirements. Mitchell will require each Participating Pharmacy to meet Mitchell's participation requirements, including licensure, insurance and provider agreement requirements.
- (iii) Customer Service for Participating Pharmacies and Provider Inquiries. Mitchell will provide a call center telephone line available to all Participating Pharmacies with service hours between 5:00 AM and 8:00 PM Pacific time. Script Advisor has 24 hour answering service for any escalated issues.

(b) Claims Processing.

- (i) Claims Processing Services. Mitchell shall provide claims processing services for prescriptions dispensed on or after the Activation Date. Mitchell will process Claims received from Participating Pharmacies and Eligible Claimants, determine whether such Claims qualify for reimbursement in accordance with the terms of the Plan Design Document, and determine the payment applicable to the Claim. Mitchell will process Claims within the National Council for Prescription Drug Programs ("NCPDP") standard adopted under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") Regulations for Electronic Transactions. Upon termination of this Agreement, Mitchell shall be solely responsible to process only those Claims that are for prescriptions dispensed before the termination date and received by Mitchell from Participating Pharmacies no later than thirty (30) days after the termination date.
- (ii) Claims from Participating Pharmacies. The following services will be provided upon receipt of a Claim:

- (A) Verification that the individual for whom the prescription has been provided is an Eligible Claimant; and
 - (B) Verification that the medication dispensed is covered under the Plan Design Document; and
 - (C) If applicable, verification that the prescribing person is authorized under the Plan Design Document; and
 - (D) Concurrent on-line drug utilization review ("DUR") for all Claims submitted through point of sale. DUR is intended to assist the pharmacist in identifying possible drug interactions and other issues which may be indicative of prescribing inappropriate drugs; and
 - (E) Prior authorization review, consisting of administering rules and conditions established by Customer to determine if certain drugs or drug classes or categories are approved under the Plan Design Document.
- (iii) Formulary Management. Mitchell will assist in the creation of custom formularies as directed by Customer and allow Customer to edit formularies via the ScriptAdvisor Web Portal.
- (c) Mail Service Pharmacy. If agreed to in writing between the Parties, Mitchell shall provide the following services from its mail service pharmacy:
- (i) Receive prescriptions from Claimants via U.S. mail or commercial carrier at an address as specified by Mitchell from time to time, subject to and in accordance with the Plan Design Document. Upon presentation of a prescription by a claimant, Mitchell shall determine within 48 hours whether the claimant is eligible under the Plan Design Document and whether the prescription is for a Covered Prescription Drug. Prescriptions will be dispensed from the mail service pharmacy in a quantity prescribed by the prescriber, but not to exceed a 90-day supply.
 - (ii) Fill prescriptions during normal business hours, subject to the professional judgment of the dispensing pharmacist;
 - (iii) Provide Claimants toll-free telephone access to a pharmacist and customer service representative;
 - (iv) Provide to Customer promotional materials that explain to Claimants how to use the mail service program, as well as any other materials Claimants may require to begin using the mail service program. Customer agrees to distribute such promotional materials and other information to Claimants;
 - (v) Provide computerized drug interaction monitoring of Claimants based upon the Claimant profile, programs for generic substitution and therapeutic intervention, pharmaceutical cost containment services and safety edits, and subject to prescriber approval, clinical appropriateness, the terms of the Plan Design Document and applicable law; and
 - (vi) Ship all prescription orders to Claimants via U.S. Postal Service or other appropriate carrier to the address provided by Customer and/or the Claimant, as long as such addresses are located in the United States.
- (d) Specialty Pharmacy. If agreed to in writing between the Parties, Mitchell shall provide the following services from its specialty pharmacy:
- (i) Receive prescriptions for Specialty Drugs as identified in the Specialty Drug List provided

to Customer and updated as required via the U.S. mail or commercial carrier at an address specified by Mitchell from time to time, subject to and in accordance with the Plan Design Document. Upon presentation of a prescription by a claimant, Mitchell shall promptly determine whether the claimant is eligible under the Plan Design Document and whether the prescription is for a Covered Prescription Drug. Prescriptions will be dispensed from the Specialty pharmacy in a quantity prescribed by the prescriber, but not to exceed a 90-day supply.

- (ii) Fill prescriptions, subject to the professional judgment of the dispensing pharmacist via U.S. mail or commercial carrier or facsimile at an address or telephone number specified by Mitchell from time to time;
 - (iii) Provide Claimants toll-free telephone access to a licensed pharmacist and customer service representative;
 - (iv) Provide to Customer promotional materials that explain to Claimants how to use the specialty service program, as well as any other materials Claimants may require to begin using the specialty program and Customer shall distribute such information to Claimants;
 - (v) Provide computerized drug interaction monitoring of Claimants based upon the Claimant profile, programs for generic substitution and therapeutic intervention, pharmaceutical cost containment services and safety edits, and subject to prescriber approval, clinical appropriateness, the terms of the Plan and applicable law;
 - (vi) Ship all prescription orders to Claimants via U.S. Postal Service or other appropriate carrier to the address provided by Customer and/or the Claimant, as long as such addresses are located in the United States; and
 - (vii) Provide Customer with a list of certain drugs that will be subject to the specialty pharmacy pricing rate.
- (e) Clinical Services. If agreed to in writing between the Parties, Mitchell will provide "Clinical Services" under this Agreement. Examples of Clinical Services include:
- (i) Drug Utilization Review. Prospective, Concurrent and Retrospective reviews comprised of point-of-sale controls and clinical intervention.
 - (ii) Pharmacy Review Services. Pharmacy review services with credentialed, board certified and licensed pharmacist(s), including drug prior authorization review, necessity of drug therapy, tiered drug therapies, step drug therapies, drug dosage and quantity limits.
 - (iii) Laboratory Testing Services. Accredited laboratory testing services.
- (f) Customer and Claimant Services.
- (i) Account Management. Mitchell shall provide trained, experienced account service resources to serve as liaison between Customer and Mitchell for the purpose of facilitating operational activities, resolving issues, and providing consultative support. Account management support includes scheduling conference calls to monitor and discuss outstanding priorities. Account management staff will act as the primary contact to Customer after the implementation process is completed. Mitchell account management will additionally support Customer with requests for proposals as reasonably requested.
 - (ii) Identification Cards. Mitchell will distribute identification cards to Eligible Claimants that have enrolled into the pharmacy benefits management program. Other client approved materials may include program introduction of benefits letters to the Customer and Claimant, pharmacy list, and if appropriate, mail order forms.

- (iii) Ancillary Services. If Customer requests additional or ancillary services, including Durable Medical Equipment (DME), Home Medical Equipment (HME), Physical Therapy/Chiropractic (PT/Chiro), Diagnostic Testing, Drug Screening, Translation and Transportation or other consultative services, other than those described herein, Mitchell shall attempt to accommodate Customer at a mutually agreed upon rate amendment, signed by the parties prior to the performance of the ancillary services.

2. Customer Responsibilities.

- (a) Payments to Mitchell. Mitchell shall invoice Customer no sooner than 14 days after the medication has been approved by Mitchell or Customer, for the PBM Services as set forth in Exhibit C attached hereto. Customer will pay the amount as submitted on each compensable claim within the applicable statutory guidelines. In no event shall compensation paid to Mitchell by Customer pursuant to this Agreement exceed \$1,500,000 over the entire Term of this Agreement, as provided for in Section 3.
- (b) Network Claims Funding. All payments by Customer to Mitchell for Covered Prescription Drug Services ("Network Claims Funding") shall be made via electronic fund transfer, automated clearing house (together, "Electronic Payment") debit or paper check with correspondence remittance documentation. Mitchell shall retain cash management responsibilities over the Network Claims Funding to help ensure prompt payment to Participating Pharmacies.
- (c) Claims Specifications & Plan Design Document. Customer is solely responsible for final approval of the specifications for each Plan Design Document and its implementation. Mitchell will assist Customer and Customer will provide specifications for each Plan Design Document in sufficient detail to permit Mitchell to perform its duties as described herein for claims submitted under each Plan Design Document for the applicable rates set forth herein. This Agreement provides that Customer changes to Plan Design Document will be submitted to Mitchell with thirty (30) days advance written authorization from Customer. In no event where Mitchell is assisting in implementing the Plan Design Document, will Plan Design Document changes be made without ten (10) days advance written notice of the required implementation date. Mitchell shall not be responsible for any changes to any previously established Plan Design or program-specific information until Mitchell shall have confirmed its agreement to and acceptance of such changes to Customer in writing and shall have specified a date for change implementation. For the sake of clarity, Mitchell will implement and manage plan design development, set-up, and maintenance with a required final approval of plan design from Customer. Following implementation of the Plan, the ScriptAdvisor Web Portal (as described in Exhibit "C") gives authorized users of Customer the ability to change Claim Specifications and Plan Design (formulary and other point of sale edits) dynamically without pre-approval or implementation from Mitchell. All changes are tracked on the web portal and Mitchell shall not be liable or held responsible for any changes so made under Section 7 of this Agreement. Customer shall ensure only authorized users make changes via the Web Portal.
- (d) Customer's Ability to Modify. The Parties may agree to modify the obligations and responsibilities of Mitchell during the term of this Agreement following the execution of an amendment hereto by the Parties. Upon acceptance by Mitchell of such modifications, Customer will be responsible for the additional fees and expenses agreed to by the Parties.
- (e) Exclusivity. Customer agrees to utilize Mitchell's ScriptAdvisor pharmacy solutions exclusively throughout the term of the agreement for its PBM services.

3. Term and Termination.

- (a) Term. This Agreement will become effective on the Effective Date and continue for three (3) years

after the Activation Date (the "Initial Term"). Thereafter, this Agreement shall automatically continue in effect for two additional one-year terms (each a "Renewal Term") at Mitchell's current rates, provided that either party may terminate this Agreement effective as of the last day of the Initial Term or any Renewal Term by providing written notice of non-renewal to the other party at least ninety (90) days prior to the end of such Initial Term or Renewal Term. Notwithstanding any provision in this Agreement to the contrary, in no event may either party terminate this Agreement without cause prior to the expiration of the Initial Term. "Term" shall mean the Initial Term and any Renewal Term, if applicable.

- (b) Termination for Cause. Either Party may terminate this Agreement following a material breach by the other Party. The non-breaching Party shall notify the breaching Party of the breach and the breaching Party shall have thirty (30) days (the "Cure Period") to cure the breach to the reasonable satisfaction of the non-breaching Party. If the breaching Party fails to cure the breach within the Cure Period, then the non-breaching Party may terminate the Agreement after providing written termination notice to the breaching Party.
- (c) Effect of Termination. Except as herein otherwise provided this Agreement will be of no further force or effect as of the date of termination or expiration except that each Party will remain responsible for any obligations or liabilities arising from activities carried on by or on behalf of such Party during the period this Agreement was in effect, including Customer's payment of all invoices for PBM Services provided by Mitchell and Service Fees incurred by Customer as they become due under the terms of this Agreement.
- (d) Customer may terminate this Agreement without cause on 30 days written notice to Mitchell.
- (e) Customer may terminate this Agreement immediately upon oral notice should the allocated funding level for the Term of \$1,500,000 be reached, funding cease or be materially decreased during the term of this agreement.
- (f) Mitchell may terminate this Agreement in the event that the allocated funding level for the Term of \$1,500,000 be reached, funding cease or be materially decreased during the term of this Agreement. Should neither Party terminate this Agreement, Mitchell shall have no obligation to perform services under this Agreement until Customer is able to secure additional funding.

4. Confidentiality.

- (a) General. Proprietary Information will include the following: (1) the terms of this Agreement (but not the existence thereof) and all information disclosed by each Party to the other pursuant to this Agreement; (2) any information or material that would give a third party some competitive business advantage or the opportunity of obtaining such advantage, or the disclosure of which could be detrimental to the interests of a Party to this Agreement including, but not limited to, a Party's databases, software, systems, products, services, layouts, designs, formats, procedures in any form of expression, processes, tags, applications, interfaces, interface formats, technology and all elements thereof, files, compilations, analyses, publications, edits, protocols, documents, reports, and any derivative works (as defined in the Copyright Act of 1976, as amended), developments, changes, modifications or new features relating thereto; (3) any information or material which is marked "Confidential," "Restricted," or "Proprietary Information" or other similar marking. Each Party acknowledges and agrees that the other Party's Proprietary Information constitutes confidential material and trade secrets of the other Party.
- (b) Exclusions. Proprietary Information does not include information which: (1) is in the public domain at the time of disclosure through no fault of the receiving Party; (2) is property within the legitimate possession of the receiving Party prior to receipt from the other Party; (3) is lawfully received from a third party having rights in the information without restriction of the third party's right to disseminate the information; and (4) is independently developed by the receiving Party without previous knowledge of such Proprietary Information.

- (c) Use of Proprietary Information. Customer acknowledges and agrees that;
- (i) Mitchell uses certain information, at its discretion, which is not identifiable to a particular Customer or Eligible Claimant including, but not limited to, industry reports and trends, benchmarks, cost analysis, cost comparisons, DUR, health economics outcomes research, and other business purposes, for which Mitchell will retain full ownership rights and may receive payment, and;
 - (ii) Mitchell discloses Customer Proprietary Information to Network Pharmacies as Mitchell deems necessary to operate the Mitchell Network. Each Party agrees to hold the other Party's Proprietary Information in confidence, to use and reproduce such Proprietary Information only to accomplish the intent of this Agreement, and to use reasonable care to avoid unauthorized disclosure or use of the other Party's Proprietary Information.
- (d) Return or Destruction of Proprietary Information. The Parties agree that upon termination or expiration this Agreement, without regard to the reason therefor and upon written request, the Parties will return to one another or destroy all materials containing the other Party's Proprietary Information within thirty (30) days after the written request. Each Party has a right to maintain the other Party's Proprietary Information as required by Law.
- (e) Governmental Requests. If a Party is required to file this Agreement or any portion thereof with, or to provide any information pertaining to this Agreement to, any state or federal or regulatory body, it will notify the other Party sufficiently in advance for the Parties to work together to redact such provisions and to keep confidential such information as the other Party deems sensitive. Customer acknowledges that at a minimum Mitchell considers all monetary provisions, damage limitations, and formularies to be sensitive. Each Party will use its best efforts to comply with this Section and will keep the other Party apprised of any decision by the regulatory body. Each Party will provide the other Party with copies of all written communications with the agency or regulatory body pertaining to the services to be provided hereunder or to this Agreement.
- (f) The Parties acknowledge that any breach of confidentiality would cause irreparable harm. In the event of such a breach, the non-breaching Party will have a right to seek injunctive or other equitable relief, in addition to any legal remedies available.
- (g) Ownership. All Proprietary Information, unless otherwise agreed in writing, remains the exclusive property of the disclosing Party. Each Party will retain full and exclusive ownership and all rights over its respective Proprietary Information, and the programming, conception, development or enhancement thereof, and over its publications, trade secrets, copyrights, trademarks and patents, and the other Party will not purport to have ownership thereof. Customer agrees not to take any action which would mask, delete or otherwise alter any Mitchell on-screen disclaimers or copyright, trademark and service notifications provided by Mitchell from time to time, or any "point and click" features relating to acknowledgement and acceptance of such disclaimers and notifications.

5. Access and Records.

- (a) Record Maintenance. For the longer of the period required by law or seven (7) years from the date of rendering any Covered Prescription Drug Service, the Parties will maintain records related thereto, including, but not limited to, prescription records and other documentation related to PBM Services provided to Eligible Claimants.
- (b) Use of Information. Except for Confidential Information, each Party may use, reproduce, or adapt information obtained in connection with this Agreement, including Claims data information and eligibility information, in any manner they deem appropriate, except that each Party and its agents, employees, and contractors shall maintain the confidentiality of this information to the extent required by applicable law or regulation including the provisions of HIPAA, and may not use the

information in any way prohibited by law. Each Party shall be solely responsible for its own use of such information, and shall indemnify and hold the other Party harmless for, from and against any and all costs, losses, and damages incurred by the other Party as a result of such use.

6. Indemnity

- (a) Subject to Section 7 (Limitation of Liability) of this Agreement, each Party ("Indemnitor") will indemnify and defend the other Party and its owners, officers, directors, employees, affiliates, agents, representatives and the successors and assignees thereof (each an "Indemnitee") against, and hold them harmless from and against, any and all liability, loss, damage and expense arising directly or indirectly from third-party claims against the other Party ("Losses") that are the direct result of such Party's material breach of this Agreement. In addition, Customer will indemnify, defend and hold Mitchell harmless from and against, any and all Mitchell Losses related to third party claims resulting from the contents or coverage of a Plan Design Document or to acts or omissions by Mitchell in compliance with Customer instructions, directions or changes, except to the extent that such Losses are the direct result of Mitchell's material breach of this Agreement.
- (b) Indemnity Procedures. Each Party's obligation to indemnify will apply only if the Indemnitee has given the Indemnitor prompt written notice of the claim, provides all reasonable information and assistance to the Indemnitor for the Indemnitor to settle or defend the action, and grants the Indemnitor the sole authority to control the defense and settlement of the third party claim.

7. Limitation on Liability.

- (a) Exclusion of Damages. Notwithstanding any term of this Agreement, in no event will either Party be liable to the other Party for special, indirect, incidental, exemplary, consequential (including but not limited to loss of profits) or punitive damages arising from the relationship of the Parties or the conduct of business under this Agreement, even if the responsible Party has been advised of in advance or has foreseen the possibility of such damages.
- (b) Excluded Liabilities. Notwithstanding any other provision of this Agreement, in no event will either Party ("a Party") have any liability to the other Party ("Other Party") if the Other Party has not directly caused such liability by breaching this Agreement or for damages and expenses of any kind arising from any of the following:
 - (i) The Other Party's negligence or failure to perform its obligations in this Agreement or abide by Laws;
 - (ii) Changes or instructions made or directed by the Other Party;
 - (iii) Use of the Other Party's data;
 - (iv) The provision of data or information to the Party by the Other Party or by third parties;
 - (v) The Other Party's or third parties' lack of a right to forward data or information to the Party;
 - (vi) Medical, scientific, business, or plan judgments made as a result of services provided by the Other Party or as a result of or after consultation with Other Party's staff;
 - (vii) Stopping payment on stale checks, complying with the instructions of the Other Party with respect to the issuance and handling of checks, and any bank's issuance and handling of checks;

- (viii) The unauthorized interruption, corruption, use of, or access through the Internet of the Other Party;
 - (ix) The professional judgment exercised by a pharmacist in dispensing prescriptions or otherwise providing related pharmaceutical services at pharmacies or the failure of Prescribers and other healthcare providers to act in accordance with Laws and applicable professional standards;
 - (x) If the Other Party requests the Party to exercise discretion on its behalf, exercising such discretion, except to the extent the Party has failed to use reasonable care with respect to the exercise of such discretion.
- (c) Liability Limitation. Each Party's total aggregate and cumulative liability during the Term will not exceed the amount paid by Customer under this Agreement for Service Fees during the twelve (12) month period preceding the claim(s) that gave rise to such liability.

8. Insurance Coverage.

- (a) Without limiting Mitchell's duties of defense and indemnification, Mitchell shall obtain, from an insurance carrier authorized to transact business in the State of California, and maintain continuously during the term of this agreement Commercial General Liability Insurance, including coverage for owned and non-owned automobiles, and other insurance necessary to protect the County and the public with limits of liability of not less than \$1 million combined single limit bodily injury and property damage; such insurance shall be primary as to any other insurance maintained by Customer.
- (b) Mitchell shall obtain and maintain continuously required Workers' Compensation and Employer's Liability Insurance with an insurance carrier authorized to transact business in the State of California covering the full liability for compensation for injury to those employed by Mitchell. Each such policy shall be endorsed to state that the Workers' Compensation carrier waives its right of subrogation against the Customer. Mitchell hereby certifies that Mitchell is aware of the provisions of section 3700 of the Labor Code, which requires every employer to insure against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and Mitchell shall comply with such provisions before commencing the performance of the work or the provision of services pursuant to this agreement.
- (c) Mitchell shall obtain and maintain continuously a policy of Errors and Omissions coverage with limits of liability of not less than \$1 million per occurrence, \$2 million annual aggregate.
- (d) Without limiting any of the obligations or liabilities of Mitchell, Mitchell shall carry and maintain Cyber Liability insurance with limits of not less than \$1 million for each occurrence and an annual aggregate of \$3 million covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. Such coverage is required only if any products and/or services related to information technology (including hardware and/or software) are provided to County and for claims involving any professional services for which Mitchell is engaged with or providing to County for as long as respective, applicable statute(s) of limitation or response are in effect relating to the specific purposes of this Agreement to cover any and all claims.
- (e) Mitchell shall require subcontractors, if any, to carry satisfactory liability and workers' compensation and other required types of insurance.
- (f) Mitchell agrees to provide Customer with evidence of Mitchell's insurance coverage, as requested by this section 8, upon Customer's written request. Such insurance will name Customer as additionally insured.

- (g) The insurance limits required may be obtained through any combination of primary and excess or umbrella liability insurance.

9. Mitchell is Not an Insurer or Healthcare Provider.

- (a) Mitchell PBM Services are intended as an aid to, and not a substitute for, the knowledge, expertise, skill and judgment of prescribers, pharmacies, or other healthcare professionals. Pharmacies, prescribers, other healthcare professionals, and Customer's employees are individually responsible for acting or not acting upon information generated and transmitted by Mitchell, and Mitchell does not control or intervene in the healthcare of Claimants, Plan decisions, or actions taken by pharmacies, Prescribers, other healthcare professionals, Customer, or Claimants, and Mitchell is not responsible therefor. Mitchell's PBM Services are intended to assist Customer in their decision-making process, including any Customer decisions made with respect to coverage and benefits related to such coverage for Claimants. However, Customer shall be solely responsible for coverage and benefit related decisions made for Claimants, and Mitchell shall have no liability or responsibility for Customer's use of information provided by Mitchell and used in Customer's coverage based decisions for Claimants.

10. Compliance With Laws

- (a) Compliance. Each Party represents and warrants that it will take reasonable steps to comply with the laws and regulations applicable to this Agreement and the HIPAA Business Associate Security and Trading Partner Agreement attached as Exhibit D.
- (b) Customer Notice to Mitchell of Regulated Changes to Services. Customer agrees to promptly notify Mitchell of any laws or regulations (regardless of whether they existed on the Effective Date) that materially impact Mitchell's obligations hereunder as soon as practicable after Customer has become aware of such laws.

11. Notices. Unless otherwise specifically provided herein, all notices, consents, requests, demands and other communications required or permitted hereunder:

- (a) Shall be in writing;
- (b) Shall be sent by messenger, certified or registered U.S. mail, a recognized national overnight delivery service for next business day delivery, facsimile or e-mail (with a copy sent by one of the foregoing means), charges prepaid as applicable, to the appropriate address or number set forth below; and
- (c) Shall be deemed to have been given on the date of receipt by the addressee (or, if the date of receipt is not a business day, on the first business day after the date of receipt), as evidenced by:
 - (i) A receipt executed by the addressee (or a responsible person in his or her office), the records of the person delivering such communication or a notice to the effect that such addressee refused to claim or accept such communication, if sent by messenger, U.S. mail or recognized national overnight delivery service, or
 - (ii) A receipt, or other evidence of transmittal, generated by the sender's facsimile or e-mail software showing that such communication was sent to the appropriate number or e-mail address on a specified date, if sent by facsimile or e-mail.

- (d) All such communications shall be sent to the following addresses or numbers, or to such other addresses or numbers as any Party may inform the others by giving five (5) business days' prior notice:

If to Customer: Shasta County Risk Management
Director of Support Services
1450 Court Street, Room 348
Redding, CA 96001

If to Mitchell: Mitchell International, Inc.
6220 Greenwich Drive
San Diego, CA 92122
E-Mail: jeff.pirino@mitchell.com

With a copy to: Mitchell International, Inc.
6220 Greenwich Drive
San Diego, CA 92122
Attention: Legal Department

12. General Provisions.

- (a) Advertising. Neither Party shall use promotional material referencing or referring to the other Party without the prior consent of the other Party; provided, however, that the Parties may publicize that Mitchell provides Covered Prescription Drug Services to Customer. Both Parties will cease any and all usage immediately upon termination or expiration of this Agreement.
- (b) Intellectual Property. Any rights in information, innovations, ideas, discoveries, products, creative works and the like (whether or not copyrightable or patentable), suggestions, communications, data, reports and results conceived, derived, reduced to practice, made or developed by either Party as a direct result of the services under this Agreement shall be the sole property of the Party developing such.
- (c) Other Obligations. The Parties represent and warrant that the terms of this Agreement are not inconsistent with any other obligations whether contractual or otherwise that the Party may have or with the policies of any other entity with which the parties are associated.
- (d) Governing Law. This Agreement will be governed and construed in accordance with the laws of the State of California without giving effect to principles of conflict of laws.
- (e) Consent to Jurisdiction. Each of the parties hereto hereby irrevocably submits to the exclusive jurisdiction of any California state or federal court located in San Diego County, California in any action or proceeding arising out of or relating to this Agreement, and each of them hereby irrevocably agrees that all claims in respect of such action or proceeding shall be heard and determined in such California state or federal court. Each party hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.
- (f) Independent Contractors. Each Party is an independent entity and nothing in this Agreement shall be construed to establish an employer/employee or principal/agent relationship or any fiduciary or other relationship other than independent parties contracting with each other for the purpose of carrying out the duties and obligations of this Agreement. Nothing in this Agreement is intended or shall be construed to confer rights upon any person or third party entity (including Participating Pharmacies, covered manufacturers and Eligible Claimants) other than the Parties hereto and their successors or permitted assigns, any rights or remedies under or by reason of this Agreement.
- (g) Force Majeure. Excluding payment obligations, neither Party shall be deemed to have breached this

Agreement or be held liable for any failure or delay in the performance of all or any portion of its obligations under this Agreement if prevented from doing so by a cause or causes beyond its control. Without limiting the generality of the foregoing, such causes include acts of God or the public enemy, fires, floods, storms, earthquakes, riots, strikes, boycotts, lock-outs, acts of third parties (e.g., wholesalers), wars and war-operations, restraints of government, power or communication line failure or other circumstances beyond the Party's control, or by reason of the judgment, ruling, order of any court or agency of competent jurisdiction, or materially altering the law or regulations covering the subject matter of this Agreement or any other change in such law or regulations subsequent to the execution of this Agreement. However, if the force majeure event continues for thirty (30) consecutive days the Party not directly affected by it may terminate this Agreement immediately upon written notice to the other Party without penalty to it.

- (h) Assignment. Neither party may assign any rights or obligations under this Agreement without the other party's prior written consent, except that either party may assign this Agreement without the consent of the other party to a parent company, controlled affiliate, or affiliate under common control with the assigning party and either party may assign this Agreement without consent of the other party in connection with a sale of assets, sale of stock or other similar type of business combination that results in a material change in ownership. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties.
- (i) Severability and Waiver. The invalidity or unenforceability of any term or provision of this Agreement shall in no way affect the validity or enforceability of any other term or provision. The waiver by either Party of a breach of any provision of this Agreement shall not operate as or be construed as a waiver of any subsequent breach thereof.
- (j) Dispute Resolution Procedures. The parties shall make a good faith effort to resolve any disputes arising during the term of this Agreement.
 - (i) If the parties are unable to resolve the dispute through informal discussions, either party may submit a written complaint to the other party describing the dispute and proposing a manner of resolving such dispute. The party receiving such complaint shall respond by accepting, rejecting, or modifying such proposed resolution, in writing, within thirty (30) days of the date of receipt of such complaint.
 - (ii) If the parties are still unable to resolve the dispute and only after both parties have determined through proper documentation that they have complied with Section 12(j)(i) above, then both parties shall agree to Executive Dispute Resolution. "Executive Dispute Resolution" shall mean and require each Party to meet in person for a reasonable amount of time at a mutually agreeable location and make good faith efforts to resolve the dispute. This meeting shall be attended by at least one senior executive of each Party with the authority to settle disputes arising from this Agreement.
 - (iii) Only after the Parties have tried in good faith to resolve disputes through informal means, both Parties have tried to resolve disputes through formal written means, and they have met to resolve disputes through the Executive Dispute Resolution process, may either Party submit the dispute to binding arbitration in accordance with the rules and regulations of the American Arbitration Association, unless the Parties mutually agree to some other arbitration procedure or some other forum to resolve the dispute. The Parties shall share equally in the cost of arbitrating such disputes.
- (k) Exclusivity. Customer agrees to utilize only Mitchell to provide it with pharmacy benefit management services, pharmacy claims processing, retail, mail, specialty, clinical and any other pharmacy benefit management services described herein for injured claimants during the Term of this Agreement. Additionally, Customer will exclusively offer such PBM Services to Eligible Claimants. Notwithstanding any provision herein to the contrary Customer shall not be required to utilize PBM Services if an Eligible Claimant refuses to use PBM Services.

- (l) No Third Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties and no other entity, including any Eligible Claimant, is intended to have any rights under or to enforce this Agreement.
- (m) Survival of Terms. The provisions of Sections 3 through 10 shall survive the termination or expiration of this Agreement.
- (n) Entire Agreement. This Agreement, any exhibits, attachments, and any documents incorporated by reference constitute the entire agreement of the parties regarding the subject matter hereof. It supersedes any prior agreements, negotiations or representations, either oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only by a writing executed by both parties.

SIGNATURE PAGE FOLLOWS

MITCHELL INTERNATIONAL, INC

By: [Signature]

Name: David A. Tolene

Title: EVP

Date: 3/7/17

CUSTOMER:

By: _____

Name: _____

DAVID KEHOE, CHAIRMAN
Board of Supervisors, County of Shasta
State of California

Date: _____

ATTEST:

LAWRENCE G LEES
Clerk of the Board of Supervisors

By: _____

Deputy

Approved as to form:

RUBEN E. CRUSE, JR
County Counsel

By: [Signature] 3/17/17

By: Adam Pressman

Risk Management Approval

By: [Signature] 03/14/17

By: James Johnson

Risk Management Analyst

EXHIBIT A

DEFINITIONS

In addition to the capitalized terms defined elsewhere in this Agreement, the following terms shall have the following meanings:

1. "Activation Date" means when claims will first be processed under this Agreement.
2. "Average Wholesale Price" or "AWP" means the average wholesale price of a prescription drug as set forth by Medi-Span on the date dispensed.
3. "Claims" – See "Processed Claims"
4. "Copayment or Coinsurance or Deductible" (collectively "Copayment") mean the fees, other than premiums, which an Eligible Claimant is required to pay for certain Covered Prescription Drug Services provided under the Benefit Plan. A Copayment may be either a specified dollar amount or a percentage of eligible expenses. An Eligible Claimant is responsible for the payment of any Copayment directly to a Participating Pharmacy at the time the prescription is dispensed and for mailing the payment of any Copayment to the Mail Service Pharmacy or Specialty Pharmacy.
5. "Covered Prescription Drug Services" means those outpatient prescription drugs and pharmacy products, services and supplies as described in the current Plan Design Document.
6. "Covered Person" means an individual eligible to receive Covered Prescription Drug Services.
7. "Eligible Claimants" or "Claimants" means those individuals who are entitled to Covered Prescription Drug Services through Customer.
8. "Formulary" or "Preferred Drug List" (collectively known as "Formulary") means the list of prescription drugs and medications selected or created by Customer. Mitchell shall implement the Formulary selected or created by Customer and implemented by Mitchell for regular use and which will be dispensed through Participating Pharmacies, the Mail Service Pharmacy or the Specialty Pharmacy to Eligible Claimants.
9. "Brand Name Drug" means a single or multisource brand prescription drug product that has a trade name, is patent protected and can be produced or sold only by the company holding the patent and that is labeled as such. Mitchell classifies brands using Medispan's Multi-source indicators of "M", "N", and "O". Mitchell reserves the right to change to another nationally recognized data source (e.g. First Databank) to classify brand drugs. Mitchell will provide Customer with at least a sixty (60) day advance notice of any changes, an analysis of any drugs which may be impacted by the transition and an amendment to this Agreement to clearly delineate the definitions and changes.
10. "Generic Drugs" means a prescription drug, whether identified by its chemical, proprietary, or non-proprietary name, that is therapeutically equivalent and interchangeable with drugs having an identical amount of the same active ingredient(s) and approved by the Food and Drug Administration as a generic. Claims will process as a generic upon receiving and loading a file from Medispan where the generic indicator is indicative of such, whether single-source and/or multi-source, non-brand prescription drugs. Mitchell classifies generics using Medispan's Multi-source code of "Y". Mitchell reserves the right to change to another nationally recognized data source (e.g. First Databank) to classify brand drugs. Mitchell will provide Customer with at least a sixty (60) day advance notice of any changes, an analysis of any drugs which may be impacted by the transition, and an amendment to this Agreement to reflect such changes.

11. "Participating Pharmacy" means a retail pharmacy that has entered into an agreement with Mitchell under which the pharmacy has agreed to provide Covered Prescription Drug Services to Eligible Claimants and to comply with applicable regulatory requirements.
12. "Plan Design Document" means a document plan developed by Customer during the implementation stage that describes the prescription plan for Eligible Claimants, applicable to Eligible Claimants as provided by Customer. Upon Customer completion, Customer agrees to submit the Plan Design Document to Mitchell for implementation.
13. "Processed Claims, Claims, or Claim Forms" (collectively "Claims") means electronic or paper pharmacy claims that are (i) transmitted to Mitchell by Participating Pharmacies or Eligible Claimants as a result of Covered Prescription Drug Services being supplied to Eligible Claimants by Participating Pharmacies, and (ii) processed by Mitchell with the result being that the claims are either paid, denied, rejected or reversed.
14. "Specialty Drugs" shall mean medications that (i) treat unique populations, (ii) require close therapy management and monitoring, (iii) require special handling and/or storage, (iv) are produced through biotechnologies, (v) are expensive and may involve complex reimbursement processes, or (vi) are generally administered as injections or infusions.

EXHIBIT B

STANDARD MITCHELL PRODUCTS AND SERVICES FOR CLAIMS FILLED WITHIN THE MITCHELL NATIONAL NETWORK OR MITCHELL AFFILIATED MAIL OR SPECIALTY PHARMACIES

Mitchell shall provide the following standard services (all as more fully described in this Agreement to Customer consistent with Customer's current Plan Design Document).

Standard Services:

1. Claims Processing Services
 - a. Eligibility Management
 - b. Eligibility Verification
 - c. On-line Electronic Claims Processing/Administration
 - d. Formulary
 - e. Prior Authorization
2. National Pharmacy Network Services
 - a. Administration of the National Pharmacy Network
 - b. Pharmacy Help Desk
3. Clinical Services
 - a. Concurrent Drug Utilization Review (DUR)
 - b. Opioid Monitoring and Management
 - c. Step Therapy and Therapeutic Interchange
 - d. Generic Substitution
4. Customer Services
 - a. Account Management
 - b. Implementation Support
 - c. Standard Reporting Package
 - d. Claimant web site for access to general and plan-specific information
5. Mail Service and Specialty Pharmacy
 - a. Postage included (additional charges may apply for express shipments)
6. Managed Care Services
 - a. Pharmacists Review
 - b. Peer Review
 - c. Pharmacy Intervention

EXHIBIT C
CLAIMS ADMINISTRATION AND SERVICE FEES

A. Service Fees.

Customer will pay Mitchell for the PBM Services provided herein as follows:

1) Retail & Mail-Order pricing:

Network Brand Name Drug: CA Fee Schedule minus 2% + \$6.00 dispensing fee
Network Generic Drug: CA Fee Schedule minus 2% + \$6.00 dispensing fee
Multi Source Drugs (See **Exhibit C-1** Multi Source Drug List): Cost plus 20% + \$6.00
Mail Order Brand Name Drug: CA Fee Schedule minus 2% + \$6.00 dispensing fee
Mail Order Generic Drug: CA Fee Schedule minus 2% + \$6.00 dispensing fee

2) Specialty Pharmacy Network pricing:

Injured Workers Pharmacy

States with Fee Schedules:

- a. Brand - State Fee Schedule minus 2.5%
- b. Generic - State Fee Schedule minus 2.5%

U&C States:

- a. Brand – AWP minus 2.5%
- b. Generic - AWP minus 2.5%

Concentra

States with Fee Schedules:

- a. Brand - State Fee Schedule minus 3.5%
- b. Generic - State Fee Schedule minus 3.5%

U&C States:

- a. Brand – AWP minus 3.5%
- b. Generic - AWP minus 3.5%

Cordant Health Solutions

- a. Full Comprehensive Panel, billed under single code 80299 - \$420
- b. PME (Personal Metabolic Evaluation) – Administered by Insight Labs - \$2,100

DermaTran Health Solutions

Compound medications:

- a. 90gm - \$413
- b. 120gm - \$693
- c. 180gm - \$735
- d. 240gm - \$945
- e. Over 240gm - \$4.13 per gm

US Health Works

States with Fee Schedules:

- a. Brand - State Fee Schedule (including any dispensing fee) minus 3.5%
- b. Generic - State Fee Schedule (including any dispensing fee) minus 3.5%

U&C States:

- a. Brand – AWP minus 3.5% plus \$3.50
- b. Generic - AWP minus 3.5% plus \$3.50

Compound medications:

- a. 90gm - \$413
- b. 120gm - \$693
- c. 180gm - \$735
- d. 240gm - \$945
- e. Over 240gm - \$4.13 per gm

AHCS/RX partners

States with Fee Schedules:

- a. Brand - State Fee Schedule (including any dispensing fee) minus 3.5%
- b. Generic - State Fee Schedule (including any dispensing fee) minus 3.5%

U&C States:

- a. Brand – AWP minus 3.5% plus \$3.50
- b. Generic - AWP minus 3.5% plus \$3.50

B. Scope of services:

Service	Description	Pricing
Plan Design	Mitchell can assist in Customer's Plan Design Document development, defining all aspects of the program, including but not limited to: • Eligibility & verification process for walk-in & point of sale processing • Pharmacy adjudication parameters (e.g. formulary, drug utilization review edits, prior authorization, help desk support) • Network conversion • Card and communication materials • Billing	Included No Charge
Setup and Implementation	Dedicated Implementation Team: • Project Manager • Development of project Plan Design & Statement of Work (SOW) • Systems setup, configuration & testing • Network and systems evaluation	Included No Charge

Service	Description	Pricing
Maintenance and Support	• Process analysis and recommendations • Onsite adjustor and manager training Ongoing program maintenance and support, including but not limited to: • Program administration • Implement changes to Plan Design Document, custom formulary and other point of sale controls, or process as directed by Customer • Customer Service / Help Desk (800-Phone and Email Support) ○ ScriptAdvisor portal ○ Pharmacy, Claimant, provider or Customer's claims adjuster calls • Account Manager (AM) ○ Ongoing Account Management including program support ○ Issue management and resolution ○ Monthly program updates ○ Quarterly partnership reviews ○ Onsite visits and training as needed	Included No Charge
ScriptAdvisor Web Portal	Web Portal interface to perform the following claim functions: • Prior authorization • Past prior authorizations • Claimant prescription history access • Drug lookup • Claimant ID card request • Temporary card creation • Free text claim instructions for future claim handling direction • Past free text instructions for claim handling direction • Claim status validation • High risk claim identification • High risk claim management • Integrated reporting suite • Managed care service referrals • Electronic communication tracking • Network pharmacy locator • Opioid management program • Link to ODG Procedure Summaries • NDC based Morphine Equivalent Dose Calculator	Included No Charge

Service	Description	Pricing
ScriptAdvisor Reporting	Customizable reports for Adjustors and Managers - Viewable anytime in the web portal and exportable into excel or as a PDF. - Including plan performance reports, savings, utilization summary, clinical and claimant reports	Included No Charge
Integration Services	EDI feeds with SmartAdvisor Bill Review and Claims Examiner Portal Platforms: - Claim / Claimant eligibility feeds - Bill data feeds - Standard Bill Import to SmartAdvisor (i.e. Electronic Billing) - Out-of-Network bill re-pricing	Included No Charge

Product	Conditions	Pricing
Physician Pharmacological Review (PPR): Brief with RN clinical letter	- Clinical Records reviewed are equal to or less than 25 pages; and - Equal to or less than 2 drugs	\$450.00 Per Review
PPR: Standard with RN clinical letter	- Clinical Records reviewed are equal to or less than 25 pages; and 3-6 drugs	\$744.00 Per Review
PPR: Extensive with RN clinical letter	Clinical Records reviewed are greater than 25 pages or more than 6 drugs	\$912.00 Per Review

- “Single Source Generics” are generic drugs that enter the market with supply limitations, two or less manufacturers, or competitive restrictions that limit marketplace competition. The discount for these Single Source Generics shall be calculated at the brand drug discount until such time (i) there are no more supply limitations; (ii) there are more than two manufacturers; or (iii) the competitive marketplace restrictions have expired.
- The effective overall generic discount rate is the only generic rate guaranteed for purposes of retail and mail service pharmacy rates.
- Mitchell reserves the right to modify or amend the financial provisions of this Agreement upon prior notice to Customer in the event of (a) any government imposed change in federal, state or local laws or

interpretation thereof or industry wide change that would make Mitchell's performance of its duties hereunder materially more burdensome or expensive; (b) a change in the scope of services to be performed under this Agreement upon which the financial provisions included in this Agreement are based, including a change in the plan design and the exclusion of a service line (i.e. retail, mail, specialty) from Customer's service selection; (c) a change in the coverage of Claimants eligible for Medicare; (d) a reduction of greater than 10% in the total number of Claimants from the number provided to Mitchell during pricing negotiations upon which the financial provisions included in this Agreement are based; (e) unexpected movement of a branded product to off-patent or where there are generic or over-the-counter substitutes available; (f) changes made to the Average Wholesale Price (AWP) benchmark or the methodology by which AWP is calculated or reported; or (g) implementation or addition of one hundred percent (100%) Eligible Claimant paid Claims; or (h) Mitchell is no longer the exclusive specialty pharmacy provider.

EXHIBIT C-1

MULTI SOURCE DRUG LIST

'Multi-Source Drug' is a drug that is available from a brand name manufacturer and also from one or more generic manufacturers. The following NDCs are Multi-Source Drugs in California. List subject to change. Mitchell will notify Customer in writing of any changes to this List not less than 10 days prior to implementation of a new Multi-Source Drug in the Plan Design Document.

NDC	Drug Name	Strength
8083621	EFFEXOR XR	150MG
63653117106	PLAVIX	75MG
71015623	LIPITOR	20MG
65597010330	BENICAR	20MG
24542131	AMBIEN	10MG
63481062970	PERCOCET	10-325MG
50458009205	DURAGESIC	50MCG/HR
63481068706	LIDODERM	5%
52544016101	NORCO	10-325MG
71080524	NEURONTIN	300MG
25152531	CELEBREX	200MG

EXHIBIT D

HIPAA BUSINESS ASSOCIATE, SECURITY AND TRADING PARTNER AGREEMENT ("BAA")

For the sake of clarity, this BAA shall apply exclusively to the ScriptAdvisor Pharmacy Benefit Management Services Agreement between the Parties, and shall not impact any other agreement (either written or oral) entered into between the parties, and shall not impact any other right or obligation in any other agreement between the parties.

1. General Terms and Conditions

- (a) "Business Associate" means Mitchell International, Inc.
- (b) "Covered Entity" means (Insert Customer)
- (c) "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and subparts A and E of part 164.
- (d) "Security Rule" means the Standards for Security of Individually Identifiable Health Information at 45 C.F.R. part 160 and subparts A and C of part 164.
- (e) "**Protected health information**" or "**PHI**" is any information about health status, provision of health care, or payment for health care that is created or collected by a "Covered Entity" (or a Business Associate of a Covered Entity), and can be linked to a specific individual.
- (f) Capitalized terms used but not otherwise defined in this BAA have the same meaning as those terms in the Privacy Rule and Security Rule, including 45 CFR §160.103 and 164.501.

2. Obligations and Activities of Business Associate

- (a) Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this BAA, the Service Agreements or as Required by Law.
- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this BAA.
- (c) Business Associate agrees to report to Covered Entity's Privacy Official, within ten (10) business days of discovery, any use or disclosure of the Protected Health Information not provided for by this BAA, including the identification of each individual whose unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.
- (d) Business Associate agrees to ensure that any agent, or subcontractor to whom it provides Protected Health Information 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 BAA to Business Associate with respect to such information.
- (e) To the extent Business Associate has Protected Health Information in a Designated Record Set, and only to the extent required by HIPAA, Business Associate agrees to provide access, at the request of Covered Entity to Protected Health Information in a Designated Record Set, to Covered Entity in order to meet the requirements under 45 C.F.R. § 164.524.
- (f) Business Associate agrees to make any amendment(s) to Protected Health Information in its possession contained in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Covered Entity; provided, however, that Covered Entity makes the determination that the amendment(s) are necessary because the Protected Health Information that

is subject to the amendment(s) has been, or could reasonably be, relied upon by Business Associate or others to the detriment of the individual who is the subject of the Protected Health Information to be amended.

- (g) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary, in a time and manner designated the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (h) Business Associate agrees to document such disclosures of Protected Health Information in its possession 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 Protected Health Information in accordance with 45 C.F.R. § 164.528 and the HITECH Act.
- (i) Business Associate agrees to provide to Covered Entity information collected in accordance with Subsection 2(h) of this BAA, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.
- (j) Beginning on February 17, 2010, or such earlier date as required by law or regulation, Business Associate agrees to comply with the following:
 - i. Sections 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards) and 164.316 (policies and procedures and documentation requirements) of the Security Rule shall apply to Business Associate in the same manner that such sections apply to Covered Entity. The additional requirements of the HITECH Act that relate to security and that are made applicable with respect to covered entities shall also be applicable to Business Associate and shall be and by this reference hereby are incorporated into this BAA.
 - ii. Unless Covered Entity agrees, in writing, that this requirement is infeasible with respect to particular data, Business Associate shall secure all Protected Health Information by a technology standard that renders Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute and is consistent with guidance issued by the Secretary specifying the technologies and methodologies that render Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals, including the use of standards developed under Section 3002(b)(2)(B)(vi) of the Public Health Service Act, as added by HITECH.
 - iii. Business Associate may use and disclose Protected Health Information that Business Associate obtains or creates only if such use or disclosure, respectively, is in compliance with each applicable requirement of Section 164.504(e) of the Privacy Rule, relating to business associate contracts. The additional requirements of Subtitle D of the HITECH Act that relate to privacy and that are made applicable with respect to Covered Entity shall also be applicable to Business Associate and shall be and by this reference hereby are incorporated into this BAA.
 - iv. In accordance with Section 164.504(e)(1)(ii) of the Privacy Rule, if a Party materially breaches an obligation under the BAA, and such breaching Party fails to cure such material breach within thirty (30) days after receiving written notice from the non-breaching Party, the non-breaching party may terminate the ScriptAdvisor PBM Services Agreement, if feasible, or if termination is not feasible, report the material breach to the Secretary of the Department of Health and Human Services and exercise any other right or remedy available by law against the breaching Party.
- (k) Except as otherwise allowed in this BAA and HIPAA and the HITECH Act, Business Associate shall not directly or indirectly receive remuneration in exchange for any Protected Health Information of an individual unless the individual has provided a valid, HIPAA-compliant authorization. For the sake

of clarity, de-identified information is not considered Protected Health Information and may be used by Business Associate in accordance with applicable law.

- (l) Business Associate shall use and disclose only the minimum necessary Protected Health Information to accomplish the intended purpose of such use, disclosure or request. Prior to any use or disclosure, Business Associate shall determine whether a limited data set would be sufficient for these purposes.
- (m) In addition to its overall obligations with respect to Protected Health Information, to the extent required by the Security Rule, Business Associate will:
 - (i) Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of Covered Entity as required by HIPAA;
 - (ii) Ensure that any agent or subcontractor to whom it provides such electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect it and agrees to adhere to the same obligations with respect to the use and disclosure of Protected Health Information; and
 - (iii) Provide aggregate reports to Covered Entity regarding any Security Incident of which Business Associate becomes aware of in a frequency mutually agreeable to the Parties

3. Permitted Uses and Disclosures of Protected Health Information by Business Associate

(a) General Use and Disclosure Provisions

Business Associate may use or disclose Protected Health Information obtained from or on behalf of Covered Entity to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this BAA, provided that such use or disclosure by Business Associate does not violate HIPAA.

(b) Specific Use and Disclosure Provisions

- (i) Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity and fulfill its obligations under any underlying agreement with Covered Entity, provided that such use or disclosure would not violate the Privacy Rule or Security Rule if done by the Covered Entity.
- (ii) Business Associate may use and disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that, as to any such disclosure, the following requirements are met:
 - (1) The disclosure is Required by Law; or
 - (2) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential 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 notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (iii) "Proper management and administration of Business Associate", for the purposes of this BAA includes creation of de-identified information that may be used and disclosed by Business Associate as Business Associate deems appropriate, provided that the information is de-identified in accordance with the Privacy Rule.

- (iv) Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity.
- (v) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, in a manner consistent with the Privacy Rule.

4. Obligations of Covered Entity.

(a) Provisions for Covered Entity to Inform Business Associate of Restrictions

- (i) Covered Entity agrees to notify Business Associate of any limitation(s) in its Notice of Privacy Practices of Covered Entity, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- (ii) Covered Entity agrees to notify Business Associate, in writing and in a timely manner, of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
- (iii) Covered Entity agrees to notify Business Associate, in writing and in a timely manner, of any restriction on the use and/or disclosure of Protected Health Information to which Covered Entity has agreed, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.
- (iv) Covered Entity agrees to obtain any patient authorizations or consents that may be required under state or federal law in order to transmit Protected Health Information to Business Associate and to enable Business Associate to use and disclose Protected Health Information as contemplated by this BAA and any underlying agreement.

(b) Permissible Requests by Covered Entity

Covered Entity may not ask Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under applicable law.

5. Limitation of Liability

IN NO EVENT WILL EITHER PARTY BE LIABLE OR RESPONSIBLE TO THE OTHER FOR ANY TYPE OF INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, LOSS OF DATA, OR CIVIL OR CRIMINAL PENALTIES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, FOR VIOLATIONS OF THIS BAA, WHETHER ARISING UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR STRICT LIABILITY. NOTWITHSTANDING ANYTHING IN THIS BAA TO THE CONTRARY, BUSINESS ASSOCIATE'S AGGREGATE LIABILITY TO COVERED ENTITY UNDER THIS BAA, REGARDLESS OF THEORY OF LIABILITY, SHALL BE LIMITED TO THE AGGREGATE SERVICE FEES ACTUALLY PAID TO BUSINESS ASSOCIATE BY COVERED ENTITY IN THE 12 MONTH PERIOD PRECEDING THE DATE OF THE CLAIM.

6. Interpretation and Amendment of this BAA

A reference in this BAA to a section of the Privacy Rule or the Security Rule means the section as in effect or as amended. Any ambiguity or inconsistency in this BAA shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule and the Security Rule. The parties hereto agree to negotiate in good faith to amend this BAA from time to time as is necessary for Covered Entity to comply with the requirements of law and for Business Associate to provide services to Covered Entity. However, no change, amendment, or modification of this BAA shall be valid unless it is set forth in writing and signed by both parties.

7. Standard Transactions

Business Associate and Covered Entity each acknowledge that it may be a “trading partner” of the other under the HIPAA Transaction Rule. The HIPAA Transaction Rule provides for certain transaction standards for the transfer of data between trading partners. Business Associate and Covered Entity each agrees not to change any definition, data condition or use of a data element or segment in a standard, add any data elements or segment to the maximum defined data set, use any code or data elements that are either marked “not used” in the standard’s implementation specification or are not in the implementation specification, or change the meaning or intent of the implementation specification.

information in any way prohibited by law. Each Party shall be solely responsible for its own use of such information, and shall indemnify and hold the other Party harmless for, from and against any and all costs, losses, and damages incurred by the other Party as a result of such use.

6. Indemnity

- (a) Subject to Section 7 (Limitation of Liability) of this Agreement, each Party ("Indemnitor") will indemnify and defend the other Party and its owners, officers, directors, employees, affiliates, agents, representatives and the successors and assignees thereof (each an "Indemnitee") against, and hold them harmless from and against, any and all liability, loss, damage and expense arising directly or indirectly from third-party claims against the other Party ("Losses") that are the direct result of such Party's material breach of this Agreement. In addition, Customer will indemnify, defend and hold Mitchell harmless from and against, any and all Mitchell Losses related to third party claims resulting from the contents or coverage of a Plan Design Document or to acts or omissions by Mitchell in compliance with Customer instructions, directions or changes, except to the extent that such Losses are the direct result of Mitchell's material breach of this Agreement.
- (b) Indemnity Procedures. Each Party's obligation to indemnify will apply only if the Indemnitee has given the Indemnitor prompt written notice of the claim, provides all reasonable information and assistance to the Indemnitor for the Indemnitor to settle or defend the action, and grants the Indemnitor the sole authority to control the defense and settlement of the third party claim.

7. Limitation on Liability.

- (a) Exclusion of Damages. Notwithstanding any term of this Agreement, in no event will either Party be liable to the other Party for special, indirect, incidental, exemplary, consequential (including but not limited to loss of profits) or punitive damages arising from the relationship of the Parties or the conduct of business under this Agreement, even if the responsible Party has been advised of in advance or has foreseen the possibility of such damages.
- (b) Excluded Liabilities. Notwithstanding any other provision of this Agreement, in no event will either Party ("a Party") have any liability to the other Party ("Other Party") if the Other Party has not directly caused such liability by breaching this Agreement or for damages and expenses of any kind arising from any of the following:
 - (i) The Other Party's negligence or failure to perform its obligations in this Agreement or abide by Laws;
 - (ii) Changes or instructions made or directed by the Other Party;
 - (iii) Use of the Other Party's data;
 - (iv) The provision of data or information to the Party by the Other Party or by third parties;
 - (v) The Other Party's or third parties' lack of a right to forward data or information to the Party;
 - (vi) Medical, scientific, business, or plan judgments made as a result of services provided by the Other Party or as a result of or after consultation with Other Party's staff;
 - (vii) Stopping payment on stale checks, complying with the instructions of the Other Party with respect to the issuance and handling of checks, and any bank's issuance and handling of checks;