



Proposal to Serve

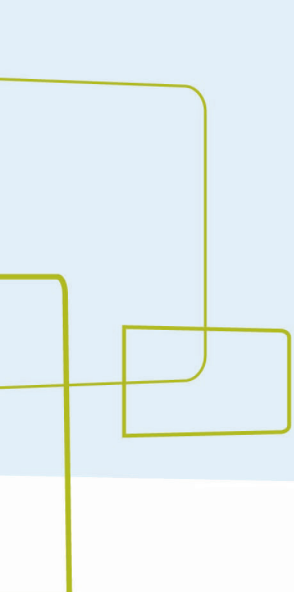
The State of New York

Mental Health and Substance Abuse Program for the Empire Plan, Excelsior Plan and Student Employee Health Plan Cost Proposal

Redactions

April 16, 2013





Mental Health and Substance Abuse Program for the Empire Plan, Excelsior Plan and Student Employee Health Plan—Cost Proposal

Redactions

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Cost Proposal

Section V

SECTION V: COST PROPOSAL REQUIREMENTS

A. Introduction

As described in this RFP, the Mental Health and Substance Abuse Program provides health benefits to covered members on a self-funded basis. The costs associated with the MHSA Program include Network Claims Costs, Non-Network Claim Costs, Administrative Fees, Shared Communication Expenses and Assessments made through State or federal legislation. Section V presents the Cost Proposal submission requirements as well as the requirements concerning the financial transactions and other cost/transparency related questions.

B. Cost Proposal components

The following present the Cost Proposal components, associated duties and responsibilities and the Cost Proposal submission requirements.

1. Network Claims**a. Duties and Responsibilities**

- 1) In accordance with Section IV of the RFP, the Contractor must contract with Network Providers. The amount charged to the MHSA Program shall be the contracted Network Provider fee less, any applicable Copayment and coordination of benefits when the claim is processed as secondary coverage.

Confirmed.

- 2) The Contractor agrees that the weighted average of the actual Network Provider fees to be charged to the MHSA Program for each CPT, HCPCS and Revenue Code implemented on January 1, 2014 shall not exceed the amounts quoted in Exhibit V.A. During implementation, the Contractor shall submit an analysis confirming that the weighted average contracted 2014 Provider Network fees are less than or equal to the fees quoted in Exhibit V.A, subject to the review and written approval of the Department. No increases to the Network

Provider fees, charged to the MHSA Program, will be permitted for the 2014 Plan year.

Confirmed.

- 3) For each Plan year after 2014, the Contractor must manage the Network Provider fee charged to the Department such that the annualized aggregate impact on MHSA Program costs of any proposed modification to the Network Provider fee is capped by the annual increase in CPI-W for medical care, as reported by the Bureau of Labor Statistics for the month of July of the preceding calendar year.

Confirmed.

- 4) Claim Payments are to be made based on the requirements contained in Articles 6.11.0 and 12.1.0 of the Agreement resulting from this RFP, including but not limited to each group's Copayment, Co-insurance, Deductible as reflected in Exhibit II.B; and Exhibit II.B2 as well as the annual maximum for ABA services as reflected in the most current Plan Communication materials.

Confirmed.

5) ***Network Pricing Guarantee:*** The Contractor is responsible for managing modifications , if any, to the fees paid to Network Providers in Plan years two through five of the Agreement to the extent such modifications in the Provider Network fees are in the best financial interest of the MHSA Program and the Department, as solely determined by the Department. During each Plan year, the Contractor must report any proposed Provider Network fee schedule modifications, if any, and the estimated financial impact to the MHSA Program to the Department prior to any such changes. The MHSA Program allows for Network Provider fee increases every Plan year after 2014; however, the annualized aggregate impact on MHSA Program costs of any modification to the Network Provider fees shall be reviewed and shall be capped by the annual increase in CPI-W for medical care, as reported by the Bureau of Labor Statistics for the month of July of the preceding calendar year. This annual review of any

modification to the Network Provider fees shall be completed by the Contractor, in writing, for final review and written approval by the Department. The annual review provided by the Contractor shall include a calculation of the aggregate impact of the modification of Network Provider fees, for that Plan year, as compared to the Network Provider fees paid in the base year, based on the actual utilization of each Network Provider and service in the base year. The following presents the current and base years for each annual review covered by the Agreement:

<u>Report Due</u>	<u>Base Year</u>	<u>Current Year</u>
6/30/16	2014	2015
6/30/17	2015	2016
6/30/18	2016	2017
6/30/19	2017	2018

The calculated aggregate impact of the Network Provider fee modification for that Plan year, normalized for any change in enrollment, will be compared to the maximum allowable CPI increase to determine the Contractor's compliance with the Network Provider pricing guarantee. At the conclusion of each annual review, the Contractor shall forfeit a specific dollar amount of the Administrative Fee for failure to meet this guarantee, as follows.

For each annual review, the Contractor's amount to be credited against the Administrative Fee for each .01 to 1.0% increase in the aggregate MHSA Program Network costs in excess of the annual increase in the CPI-W for medical care as reported by the Bureau of Labor Statistics for the month of July is \$250,000.

Confirmed.

b. Required Submission

- 1) Confirm the Offeror's agreement to perform/fulfill and comply with the duties and responsibilities listed in Section V.B.1a.above, Section IV of the RFP and Section VII, Articles 6.10.0 and 12.1.0 of the RFP.

Confirmed.

- 2) The Offeror must complete Exhibit V.A, Quoted Average Network Fees by CPT, HCPCS and Revenue Code, in accordance with the instructions contained in Exhibit V.A.1 of the RFP.

Confirmed – Please refer to Exhibit V.A

- 3) The Offeror must complete Exhibit V.B, Network Fees - Applied Behavioral Analysis Benefits, in accordance with the instructions contained therein.

Confirmed – Please refer to Exhibit V.B

2. Non-Network Claims**a. Duties and Responsibilities**

- 1) The Contractor will accurately process Non-Network claims and make payments directly to the Enrollee in a timely manner.

Confirmed.

- 2) The Contractor will process Non-Network claims using Reasonable and Customary charges based on the 90th percentile of charges for each service performed. Reasonable and Customary means the lowest of:

1. The actual charge for services; or
2. The usual charge for services by the Provider for the same or similar service; or
3. The usual charge for services of other Providers in the same or similar geographic area for the same or similar service.

Confirmed.

- 3) The claim payments are to be made based on the requirements contained in Section IV of the RFP, including but not limited to each group's Co-insurance and Deductible as reflected in Exhibit II.B; and Exhibit II.B2 as well as the annual maximum for ABA services.

Confirmed.

- 4) Where a Network Provider is not available because of clinical or access considerations, the Contractor must negotiate a Single Case Agreement with a Non-Network Provider in a manner consistent with what is typically allowed for a Network Provider in the same discipline for the same service. The Contractor must pay the claim and charge the MHSA Program as if the services were incurred in-network.

Confirmed.

- 5) The Contractor will update its database with Fair Health's Reasonable and Customary amounts in a timely manner, at a minimum of twice a year.

Confirmed.

b. Required Submission

- 1) Confirm the Offeror's agreement to perform/fulfill and comply with the duties and responsibilities listed in Section V.B.2.a. above, Section IV of the RFP and Section VII, Article 12.2.0 of the RFP.

Confirmed.

3. Administrative Fee

The Administrative Fee is the fee quoted by the Contractor representing the charge to the MHSA Program to cover all of the administrative services provided by the Contractor, with the exception of Shared Communication Expenses.

a. Duties and Responsibilities

The Contractor is required to:

- 1) Be bound by its quoted Administrative Fee, as proposed in the Contractor's Cost Proposal for the entire term of the Agreement, unless amended in writing;

Confirmed.

- 2) Manage all MHSA Program Enrollees based on the Contractor's Administrative Fee, as proposed by the Contractor in its Cost Proposal;

Confirmed.

- 3) Implement any changes necessary to accommodate MHSA Program modifications resulting from collective bargaining, legislation or within the statutory discretion of the State within 60 days of notice;

Confirmed.

- 4) Implement all benefit designs as required by the Department with or without final resolution of any request for an Administrative Fee adjustment. Refusal to implement benefit design changes will constitute a material breach of the Agreement and the Department will seek compensation for all damages resulting;

Confirmed.

- 5) Agree not to request a higher Administrative Fee, and the Department will not consider any increase to the Administrative Fee that is not based on a material change to the MHSA Program requiring the Contractor to incur additional costs. The determination of what constitutes a material change will be at the sole discretion of the Department;

Confirmed.

- 6) Submit detailed documentation of additional administrative/clinical costs, over and above existing administrative/clinical costs, with any request for an increase in the Administrative Fee resulting from a material change in the benefit structure of the MHSA Program. The Department reserves the right to request and the Contractor agrees to provide any additional information and documentation the Department deems necessary to verify that the request for an increase to the Administrative Fee is warranted. The Department's decision to modify the Administrative Fee to the extent necessary to compensate the Contractor for documented additional costs incurred shall be at the sole discretion of the Department, subject to the approval of a formal amendment to the Agreement by the New York State Attorney General and New York State Office of State Comptroller;

Confirmed.

- 7) Agree that the Administrative Fee shall be payable only for the number of covered Enrollees each month and that the number of covered Enrollees for a given month shall be determined by the Department based upon monthly MHSA Program enrollment data contained in NYBEAS; and

Confirmed.

- 8) Claims incurred during the period January 1, 2014 through December 31, 2018 but processed/paid after December 31, 2018, as well as applicable Disabled Lives claims incurred after December 31, 2018 will be administered by the Contractor selected in response to this RFP. An Administrative Fee will not be payable beyond December 31, 2018; therefore, Offerors should take this into consideration in developing their proposed Administrative Fee.

Confirmed.

b. Required Submission

- 1) Confirm the Offeror's agreement to perform/fulfill and comply with the duties and responsibilities listed in Section V.B.3.a. above.

Confirmed.

- 2) The Offeror is required to provide the Offeror's Administrative Fee quote in Exhibit V.C

Confirmed - Please refer to Exhibit V.C

4. Assessments

In accordance with the Health Care Reform Act of 1996, two assessments/surcharges are chargeable to applicable health plans, including the Empire Plan: 1) Graduate Medical Expense (GME) and 2) Bad Debt and Charity (BDC) Assessment. The GME component of the Empire Plan is assessed on the Hospital component of the Empire Plan and therefore not chargeable under the MHSA Program. The BDC is applicable to the MHSA Program.

In addition, other fees and assessments as stipulated by State or federal law may be applicable over the term of the contract. Such amounts shall be paid by the MHSA Program either through the Contractor or directly to the authorized agency after a determination is made by the Department regarding the applicability of each fee/assessment to the MHSA Program.

a. Duties and Responsibilities

- 1) The Contractor shall calculate the applicable BDC each month from the applicable paid claims and may charge the MHSA Program at the time this assessment is paid to the regulatory agency/intermediary by the Contractor.

Confirmed.

- 2) The Contractor shall advise the Department of any new applicable assessments in a timely manner.

Confirmed.

- 3) The Contractor shall bill the MHSA Program for any new assessments within 30 days after the amounts are paid to the regulating entity.

Confirmed.

b. Required Submission

- 1) Confirm the Offeror's agreement to perform/fulfill and comply with the duties and responsibilities in Section V.B.4.a. above.

Confirmed.

- 2) Disclose other applicable assessments, if any, including the amount and basis of the assessment, made by other states/federal government that are applicable to the MHSA Program. Advise whether these assessments can be paid by the Offeror on behalf of the MHSA Program or if they would be directly paid by the Department.

The MHSA Program would be subject to the following fees/assessments based on the current regulations. Fees/assessments below are subject to change based on State or federal law:

- **Comparative Effectiveness Research (CER) Fee. The fee for 2013 is \$2.00 per member per year. After 2013, the fee will be adjusted based on the amount indexed to national health expenditures thereafter. The fee would be paid directly by the Department.**
- **Reinsurance fee. The fee for 2014 is \$5.25 per member per month. The Department would be liable for this amount in total amount for all the medical NYSHIP coverages. Empire BCBS will discuss with the Department how to allocate a portion, if requested, of the \$5.25 per member per month fee to the MHSA program. If Empire BCBS makes the payment, the Department would reimburse Empire BCBS the dollars paid.**

Please note that other fees and assessments as stipulated by State or federal law may be applicable over the term of the contract. Such amounts shall be assessed to the MHSA program separately from the monthly per contract administrative fee if Empire BCBS is determined to be responsible to make the payment.

5. Shared Communication Expense**a. Duties and Responsibilities**

- 1) The Contractor will pay the medical carrier/third party administrator on a quarterly basis an amount billed for Shared Communication Expenses. The Contractor will be notified prior to the beginning of each Plan Year the amount of Shared Communication Expenses that will be billed.

Confirmed.

- 2) The Contractor shall seek reimbursement of the Shared Communications Expense from the Department by including the amount with the voucher for the payment of the next Administrative Fee to be paid.

Confirmed.

b. Required Submission

- 1) Confirm the Offeror's agreement to perform/fulfill and comply with the duties and responsibilities in Section V.B.5.a. above.

Confirmed.

C. Payments/ (Credits) to/ from the Contractor

This Section presents information regarding the financial structure and timing of financial transactions related to the Agreement and the specific items Offerors must submit with their Cost Proposal and questions related to those requirements.

The following information is presented for use by Offerors in developing their Cost Proposal. As of October 2012, there were 231,297 individual contracts and 290,800 family contracts with Empire Plan Mental Health and Substance Abuse coverage. In addition to the Empire Plan contracts, there are 126 individual contracts and 110 family contracts with the Excelsior Plan and 4,737 individual contracts and 767 family contracts with the Student Employee Health Plan (SEHP) benefits. The enrollment mix and benefit characteristics are presented in Exhibit II.A through Exhibit II.A4; Exhibit II.C; Exhibit II.C2; and Exhibit II.D. of this RFP. However, the Department cannot guarantee that, during the term of the Agreement, the same enrollment mix and benefit characteristics as those set forth in Exhibit II.A through Exhibit II.A4; Exhibit II.C; Exhibit II.C2; and Exhibit II.D will exist.

a. Duties and Responsibilities

- (1) The Department will set up an imprest bank account from which the Contractor may issue claim payments by check or wire transfer. The claim amounts charged to the imprest account will occur when checks to Providers and Enrollees are presented for payment and cleared, or when wire transfers to Providers are completed.

Confirmed. Empire BCBS will work with the Department to establish a banking arrangement that meets the MHSA Program's requirement, understanding that funds are available within the account for reimbursement at the time the check clears for payment.

- (2) The Plan will pay an Administrative Fee on a monthly basis thirty (30) Days after receipt of an accurate invoice. Any credit amounts due from the Contractor to the Department for failure to meet the performance guarantees set forth in the Agreement shall be applied as a credit against the Administrative Fee charged to the MHSA Program on the first invoice issued by the Contractor subsequent to the Department's written approval of the performance guarantee calculation. Alternatively, the Department may request and receive payment of any

performance guarantee amount directly from the Contractor, as opposed to a credit against the Administrative Fee payable to the Contractor.

Confirmed.

- (3) The Contractor will be billed the MHSA Program's portion of the Shared Communications Expense by the medical carrier/third party administrator in 2014 and each Plan Year thereafter in four (4) equal installments. The Contractor will pay the medical carrier/third party administrator the amount billed and may seek reimbursement from the MHSA Program. Subsequent years' amounts will be calculated by the Department and communicated to the Contractor during the annual rate renewal process. Upon receipt of each Shared Communications Expense bill, the Contractor may bill and the Plan will pay the Contractor an identical amount within thirty (30) Days.

Confirmed.

- (4) Upon final audit determination by the Department, any audit liability amount assessed by the Department shall be paid/credited to the MHSA Programs within thirty (30) Days of the date of the Department's final determination, or within thirty (30) Days of receipt of recoveries related to fraud or abuse or Department errors.

Confirmed.

- (5) The Contractor shall analyze and monitor claim submissions to promptly identify errors, fraud and/or abuse and report to the State such information in a timely fashion in accordance with a State approved process. The Contractor will credit the MHSA Program the amount of any overpayment made by the Contractor regardless of whether any overpayments are recovered from the Provider and/or Enrollee in instances where a claim is paid in error due to Contractor error. The Contractor shall report fraud and abuse to the appropriate authorities. In cases of overpayments resulting from errors only found to be the responsibility of the State, or due to fraud and abuse, the Contractor shall use reasonable efforts to recover any overpayments and credit 100% of any recoveries to the MHSA

Program within 30 Days of receipt of such recoveries; however, the Contractor is not responsible to credit amounts that are not recovered.

Confirmed. We will analyze and monitor claim submissions to promptly identify errors, fraud and/or abuse and report to the State such information in a timely fashion in accordance with a process mutually agreed to by the parties.

- (6) Litigation recoveries and settlements shall be paid/credited to the MHSA Program within fifteen (15) Days of receipt by the Contractor.

Litigation recoveries and settlements shall be paid/credited to the MHSA Program and will be paid/credited to the MHSA Program within fifteen (15) days of receipt except when an additional fifteen(15) to thirty (30) days are required due to the complexity of recovery/settlement distribution. We will notify the State when additional time is required.

- (7) The Contract resulting from this RFP is not subject to Article XI-A of NYS Finance Law. The Contractor agrees that MHSA Program Services provided under the Agreement shall continue in full force and effect for a minimum of at least thirty (30) days beyond the payment due dates as set forth in Article XV of the Agreement. If after the thirty-fifth (35) calendar day after receipt of an accurate invoice, as set forth in Article XV of the Agreement, the Contractor has not yet received payment from the State for said invoice, the Contractor may proceed under the Dispute Resolution provision in Appendix B and the Agreement shall remain in full force and effect until such final decision is made, unless the Parties can come to a mutual agreement, in which case, the Agreement shall also remain in full force and effect.

Confirmed

b. Required Submission

- 1) The Offeror is required to confirm the Offeror's agreement to perform/fulfill and comply with the duties and responsibilities listed in Section V.C.a above.

Confirmed

- 2) Describe, in detail, the Offeror's proposed invoicing process, if any, including the timing for invoice preparation and supporting detail claims files at the end of each payment period, required payment timeframes and whether this structure is in effect for any other self-funded customers.

After the close of the month, a summary invoice is created containing information on the monetary amounts of claims payments issued compared to the amount issued by the Imprest banking process. Any miscellaneous items incurred that are not related to the Imprest process are charged on the invoice. The monthly invoice will include the Retention fees for the current month. This process is currently utilized for all Administrative Service Only (ASO) customers that utilize our banking arrangement, which is similar to the requirements outlined in C.A.1 (above).

D. Cost/Transparency Related Questions

1. Network Provider Questions

- a. Describe fully the nature of your reimbursement arrangements with Network Facilities. Distinguish between per diems, case rates, percent of charges verses other types of reimbursement arrangements. Also distinguish between how your reimbursement arrangements are structured in NYS verses states other than NYS with a high concentration of Empire Plan members, such as New Jersey and Florida.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

- b. Is there an escalator clause in your contracts with Network Facilities to increase fees or do increases have to be negotiated? What is your contracting cycle with Facilities? When were the Network Facility fees last increased?

[REDACTED]

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- d. Is there an escalator clause in your Network Practitioner contracts for fee increases or are increases negotiated on a case by case basis? What is your contracting cycle with Network Practitioners? When did you last increase these fees?

[REDACTED]

[REDACTED]

[REDACTED]

- e. What does the current average Network Practitioner reimbursement represent as: 1) a percentage of covered charges for your book of business in NYS; and 2) a percentage of the reasonable and customary charges?

■ [REDACTED]

■ [REDACTED]

- f. Some Offerors negotiate global reimbursement arrangements with Network Facilities to cover certain services such as professional inpatient visits that are normally billed by Practitioners. With respect to global reimbursement, please respond to the following:

- 1) Do you reimburse Network Facilities globally for any Practitioners' services?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 2) If yes, describe completely the types of services that are globally reimbursed and the prevalence of such reimbursement both within and outside NYS. What percent of your Network Facility claim dollars do you estimate are attributable to global reimbursement?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- g. Confirm your willingness to provide the Department with information pertaining to specific fee arrangements made with Providers, if requested.

Confirmed.

- h. Is the Offeror's Proposed Network a standard Network or has it been specifically contracted to administer the Empire Plan MHSA Program?

We are proposing our standard PPO network of MHSA providers. BlueCross and BlueShield plan members, including those with Empire BCBS take their health care benefits with them across the country. The BlueCard program provides access to doctors and hospitals almost everywhere, ensuring peace of mind and access to quality health care.

- i. Does the Offeror have a single standard contract with Network Providers with consistent terms applied to all of the Offeror's clients? If no, please describe the basis and reasons for the differences.

Contracts are negotiated independently therefore terms may vary. Additionally, the service area covered by this program spans several different BlueCross and BlueShield plans who have different contractual terms. In New York, many of these terms will be fairly consistent as there are a number of standard clauses that all health plans are required to implement. Outside of New York there will be greater variation, but the BlueCross BlueShield Association has created functionality that connects all plans to minimize any possible disruption, and provides a consistent framework for participating plans to follow.

- j. In addition to negotiating agreements with Network Providers on behalf of clients, does the Offeror or any of its Affiliates or any sub-contractor's Affiliates have other business arrangements with Network Providers from which the Offeror or any of its Affiliates or any sub-contractor's Affiliates have derived revenues? If the Offeror and/or any of its Affiliates or any sub-contractor's Affiliates derive revenue or obtain other consideration or compensation from agreements with Network Providers, please identify the recipient(s) of such Network Provider revenue and explain the business relationship from which the revenue is derived. Please detail how the Offeror's

business model ensures that these relationships do not create a real or perceived conflict with the clinical and financial interests of the MHSA Program.

Empire BCBS subcontracts with Autism Services Group (ASG) to access their ABA Provider Network. Under this arrangement, the reimbursement fee paid to ASG is a combination of an administrative fee and reimbursement for services provided. The administrative fee is for access to the provider network and related functions of maintaining that network (i.e., provider recruitment and credentialing activities). Empire BCBS reconciles the services delivered to the payments made to ASG, which is currently a fee-for-service arrangement. The autism benefit supported by this network is managed, applicable to a finite population and has a capped maximum annual financial exposure of \$45K per covered individual. The benefit requires precertification which ensures the medical necessity of the treatment plan, ensuring no financial conflicts exist with the Program.

- k. Are the Offeror's Network fee schedules incorporated in formally adopted corporate policies and procedures? Please explain.

Yes. As new practitioners are brought on board and as existing practitioners are updated, there are rules that dictate the reimbursement and participation indicators that are applied. This improves predictability of our network size and reimbursement.

- l. Does the Offeror maintain more than one Network fee schedule for purposes of reimbursing Network Providers? Or, does the Offeror have multiple reimbursement agreements with individual Network Providers that are assigned and utilized based on client?

Empire BCBS's standard behavioral health fee schedule is consistent across our entire service area and the only variation to reimbursement occurs between LCSWs, Nurse Practitioners, Psychologists and Psychiatrists.

2. Transparency of Financial Interests - Post Contract Award Requirements

The Contractor must agree to be open and forthright in all matters related to the clinical management and cost management of the MHSA Program. The State has strict standard audit provisions, subject to confidentiality requirements. Disclosure obligations include, but are not limited to:

- a. Providing full access to all sub-contractor and Network Provider agreements related to the MHSA Program under strict confidentiality provisions;

Confirmed.

- b. Agreeing to the standard audit provisions set forth in Contract Provisions, Section VII of this RFP (see Article XXIII entitled “Audit Authority”), and Appendices A and B; and

Confirmed.

- b. Agreement that the Contractor will disclose all agreements related to the provision, servicing and administration of MHSA Program services in effect during the term of the Agreement resulting from this RFP. This includes all relationships between or among the Contractor, and relevant third parties including but not limited to the Contractor, Providers and any other entity from which the Contractor or the subcontractor receives any form of compensation or any other consideration as a consequence of managing and reimbursing for services under the MHSA Program.

Confirmed.

- 3. **Transparency During the Procurement Process.** Contractor must provide all information the Department deems necessary to support their Cost Proposal. This includes but is not limited to adequate information to support the Offeror’s Proposal relative to assuring alignment with the financial interests of the MHSA Program and other information as the Department determines is necessary to address any perceived or actual conflicts between the Contractor’s business model and the financial interests of the MHSA Program.

Please confirm.

Confirmed.

4. Explain the contractual and financial relationships among or between the Contractor, subcontractor, if any, and key Network Providers. Please describe how the Offeror's proposed business model eliminates any real or potential conflicts with the clinical and financial interests of the MHSA Program.

Empire BCBS subcontracts with Autism Services Group (ASG) to access their ABA Provider Network. This is currently a non-risk arrangement and therefore there is no conflict of clinical and financial interest. Under this arrangement, a component of the fee paid to ASG is related to the service being delivered by the ABA provider in addition to an established administrative fee for access to the provider network and related functions of maintaining that network (i.e., provider recruitment and credentialing activities). Empire BCBS reconciles the services delivered to the payments made to ASG, which is currently a fee-for-service arrangement.

5. The Department recognizes that the Offerors' business model may present potential conflicts between the financial interests of the MHSA Program and the Offeror. Please describe any protections or processes the Offeror proposes to mitigate any conflicts of interest.

The business model we are proposing does not present any conflict between the financial interests of the MHSA Program and Empire BCBS.

Exhibits

Exhibits
Exhibits

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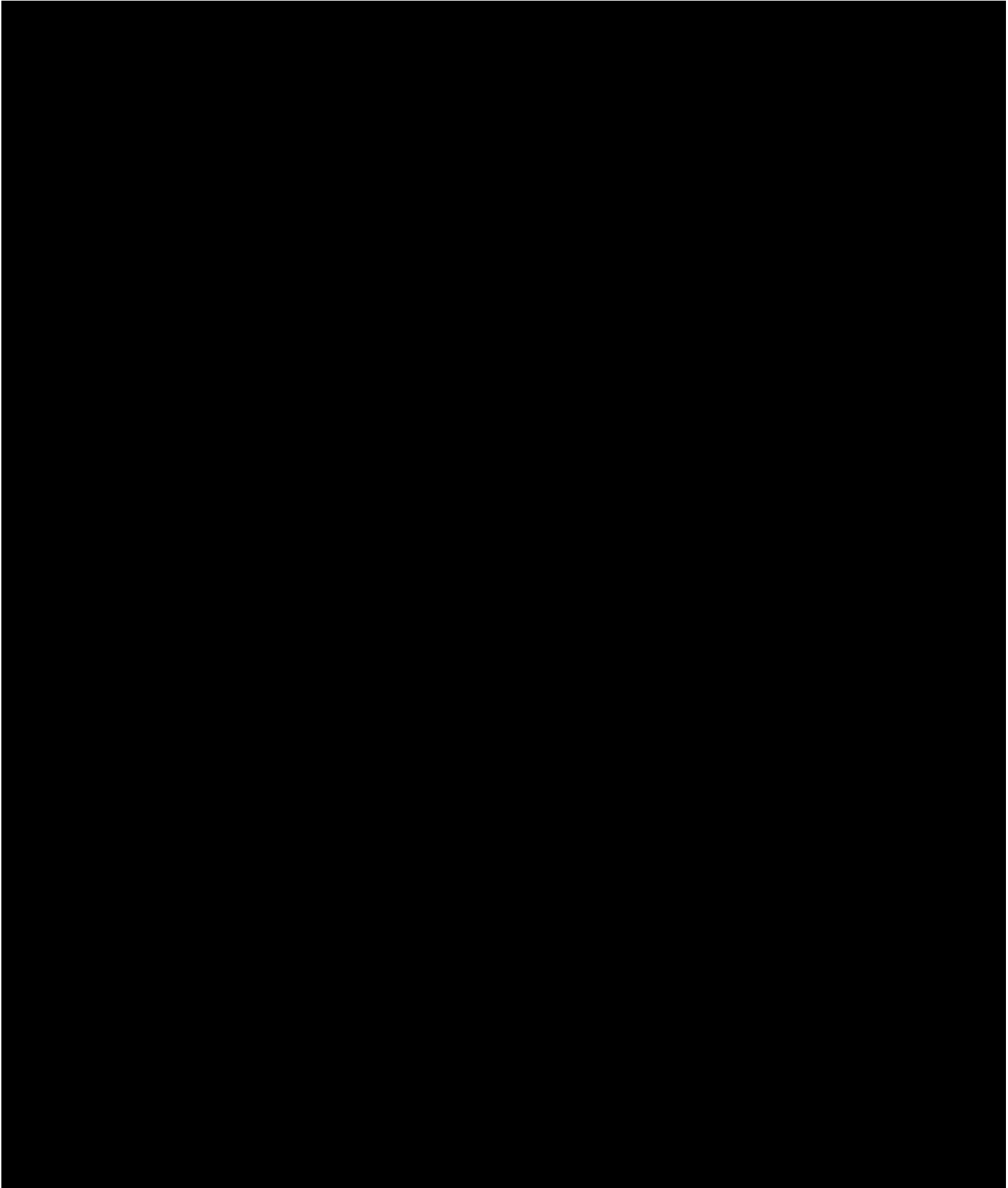
Claims Analysis

**Exhibit
V.A**

Exhibit V.A
Claims Analysis

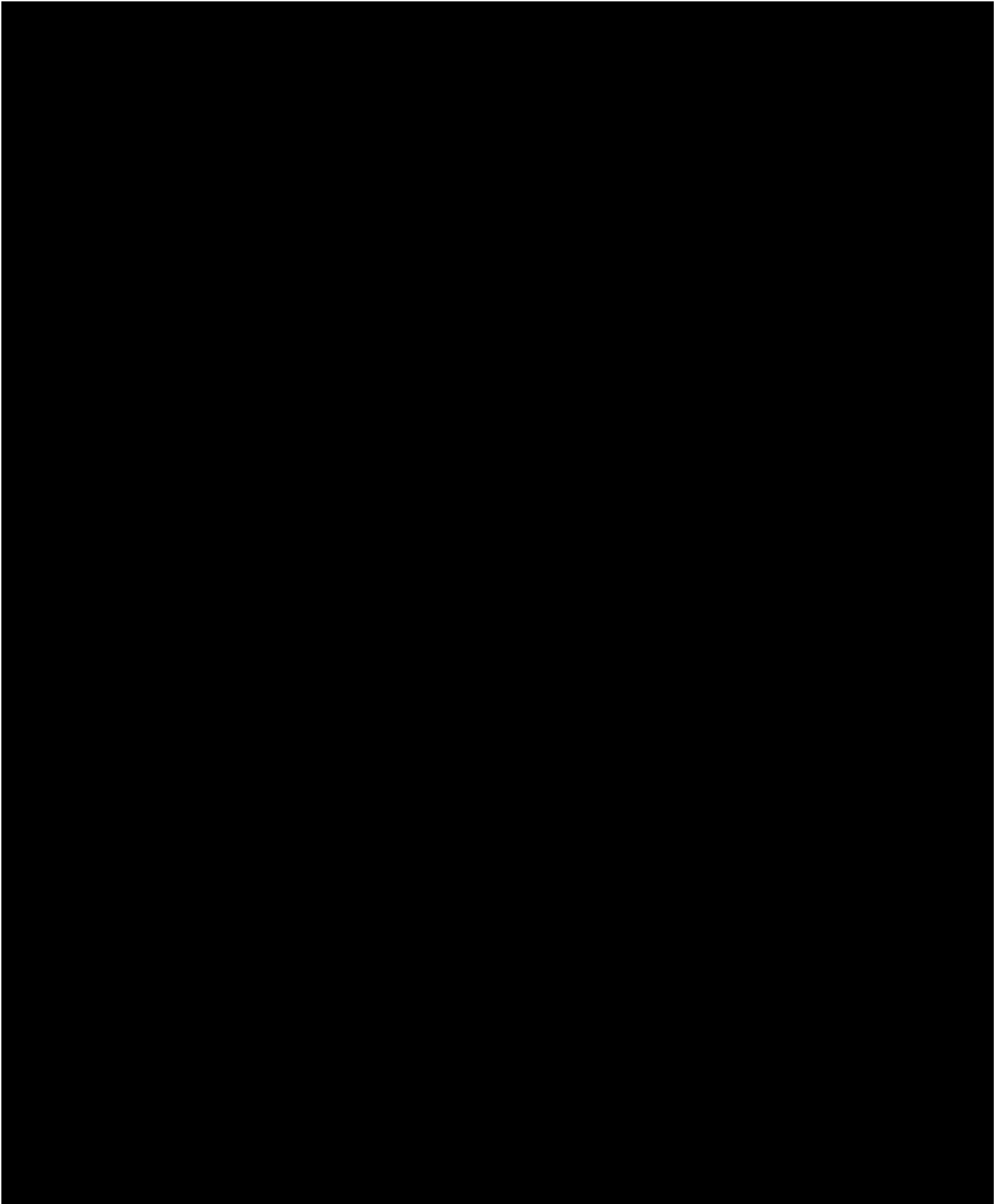
Mental Health and Substance Abuse Program
Quoted Average Cost Per Each CPT/Revenue Code

Amended 3-11-13



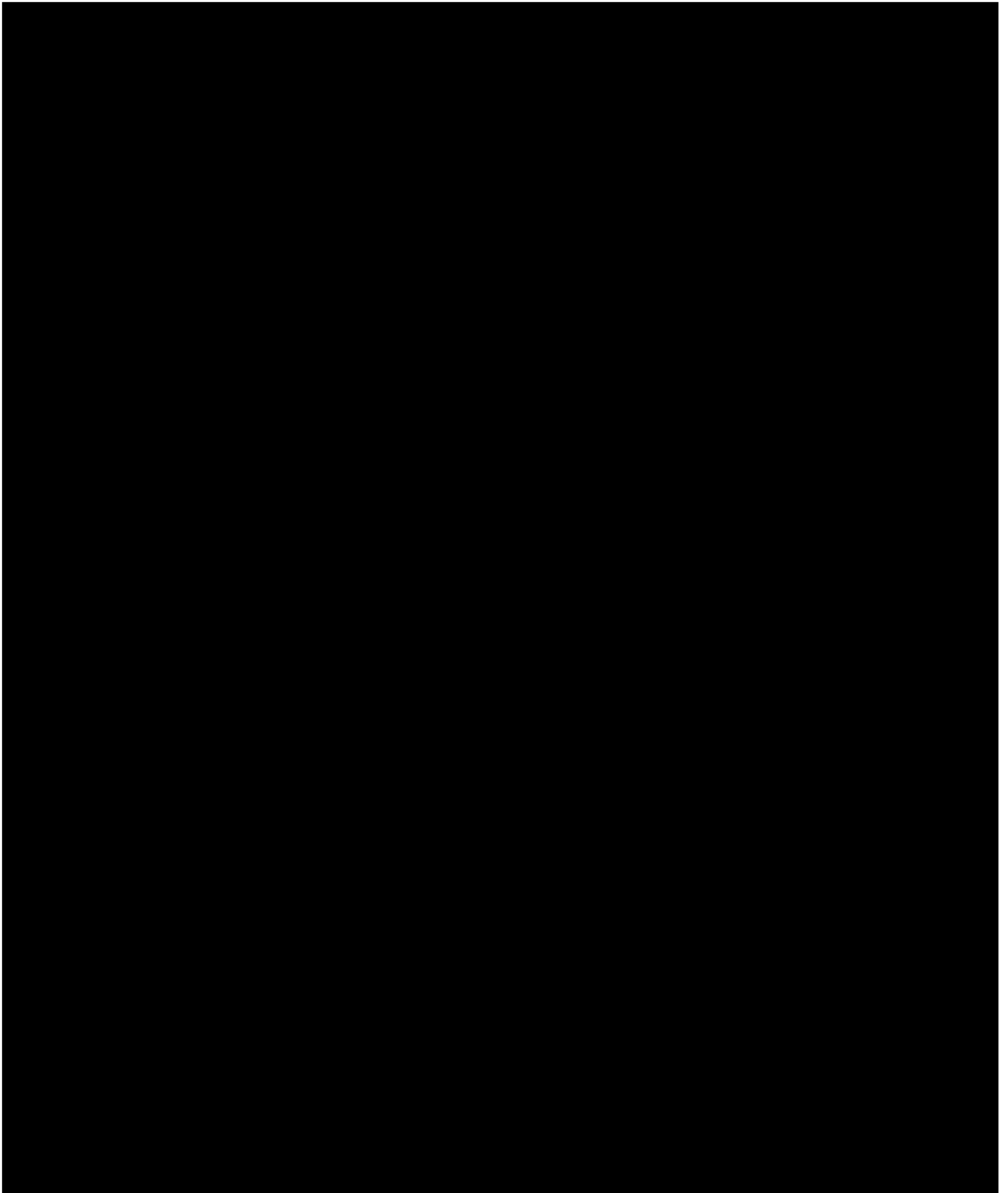
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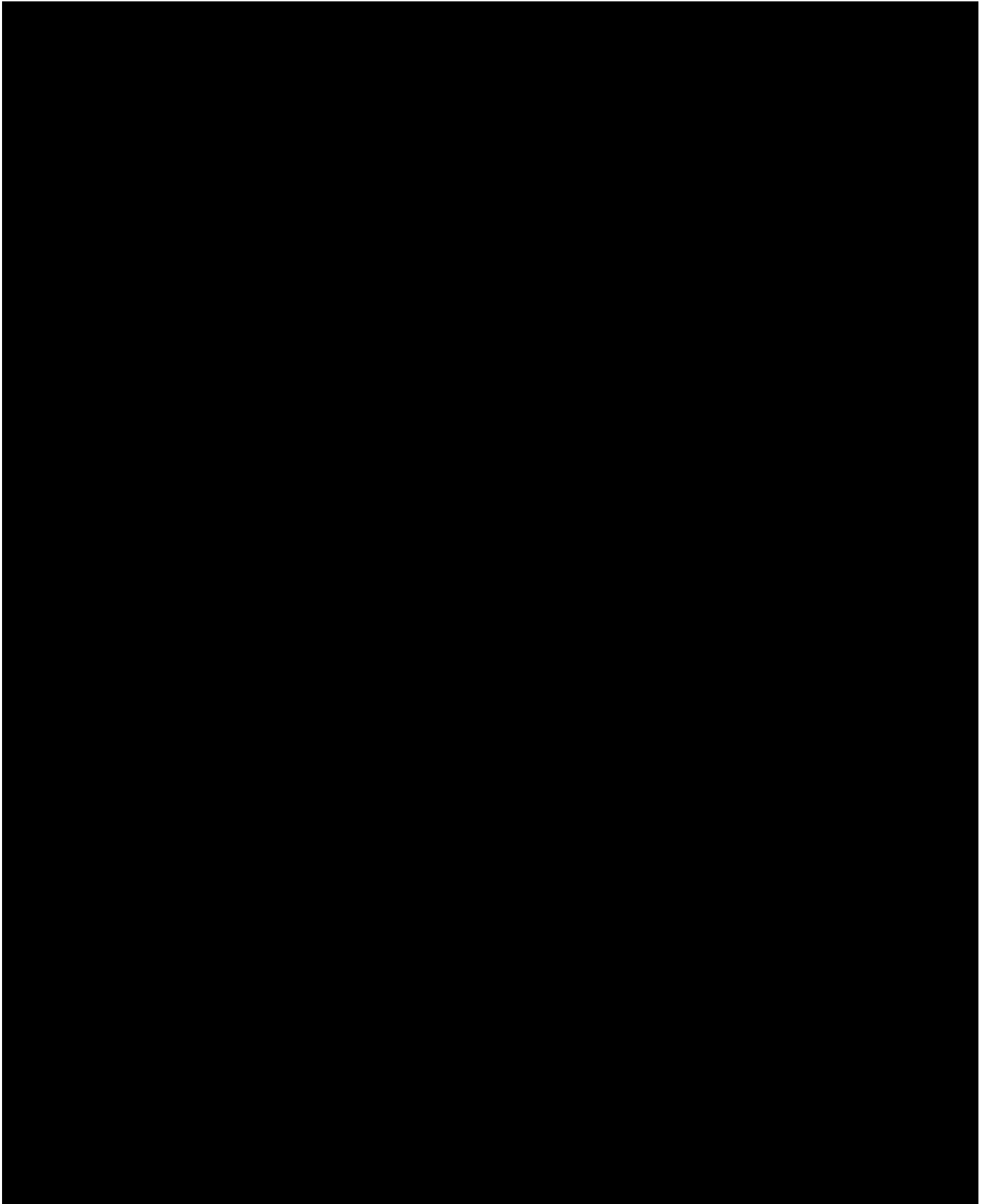
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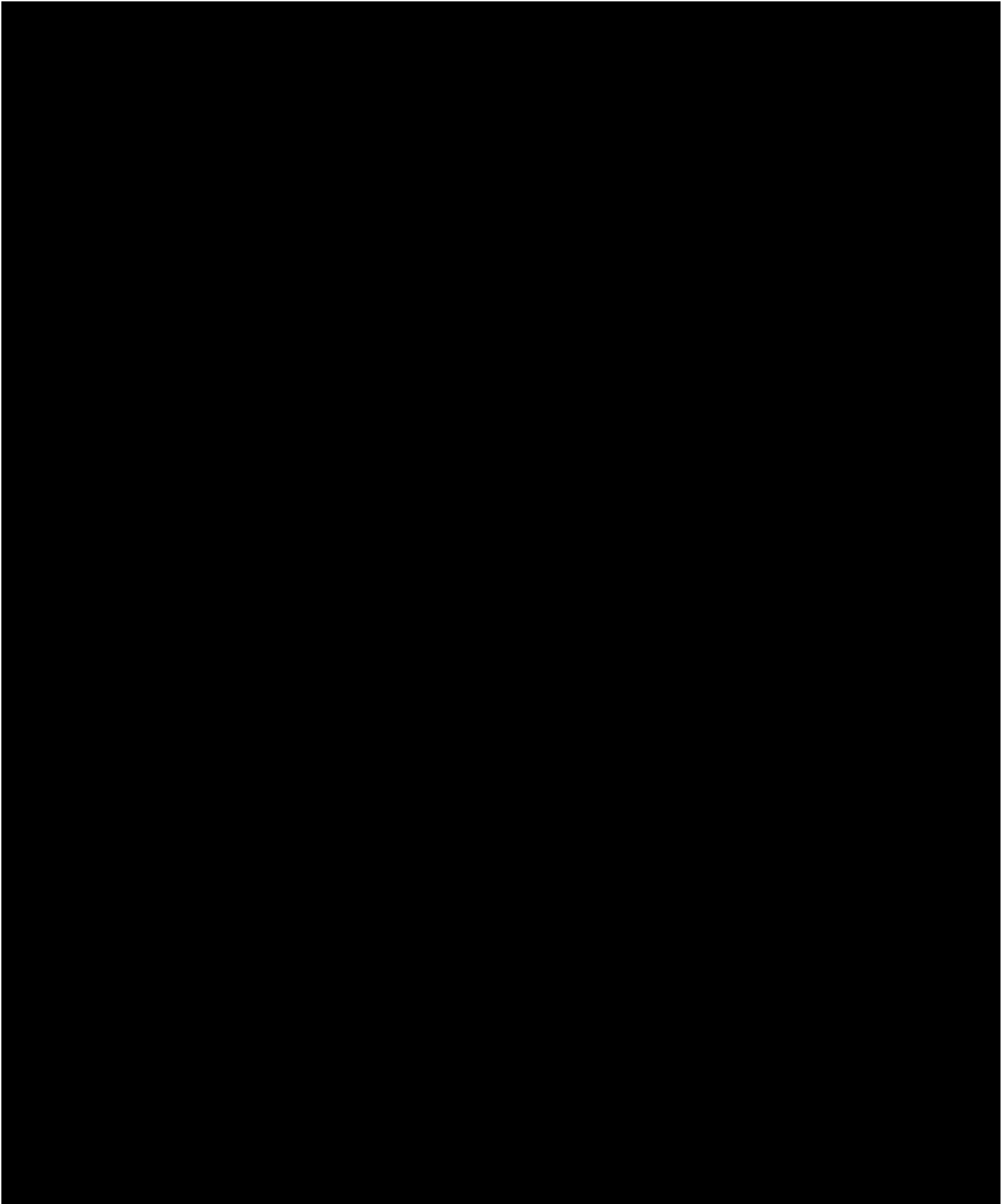
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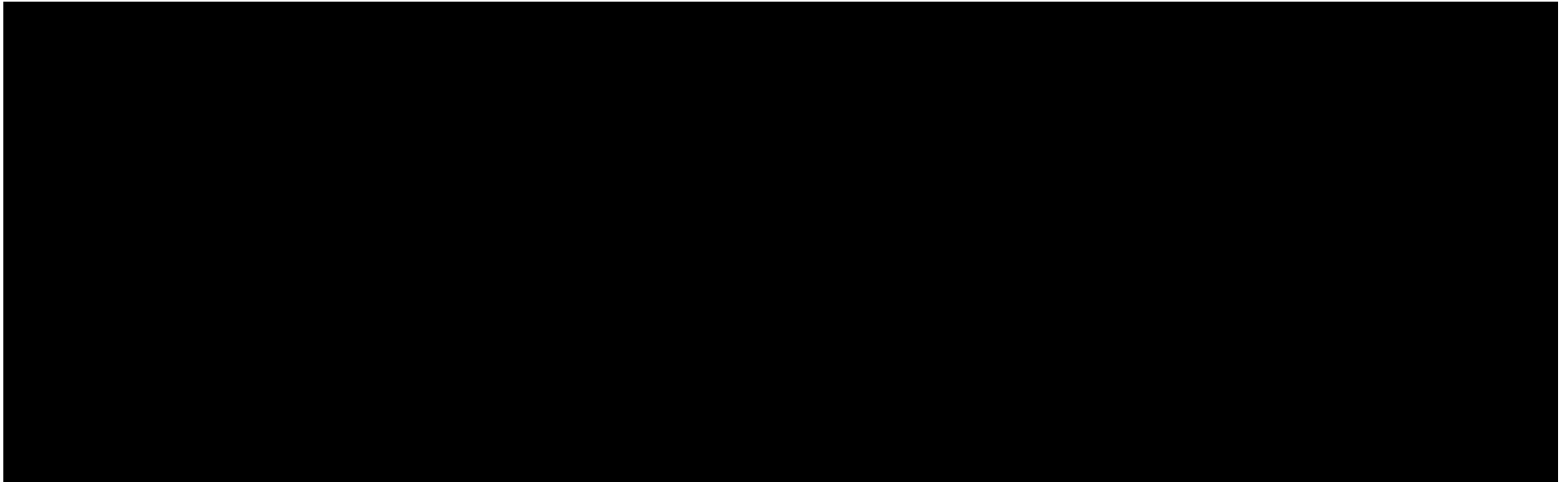


Applied Behavioral Analysis Fee Quote

**Exhibit
V.B**

Exhibit V.B

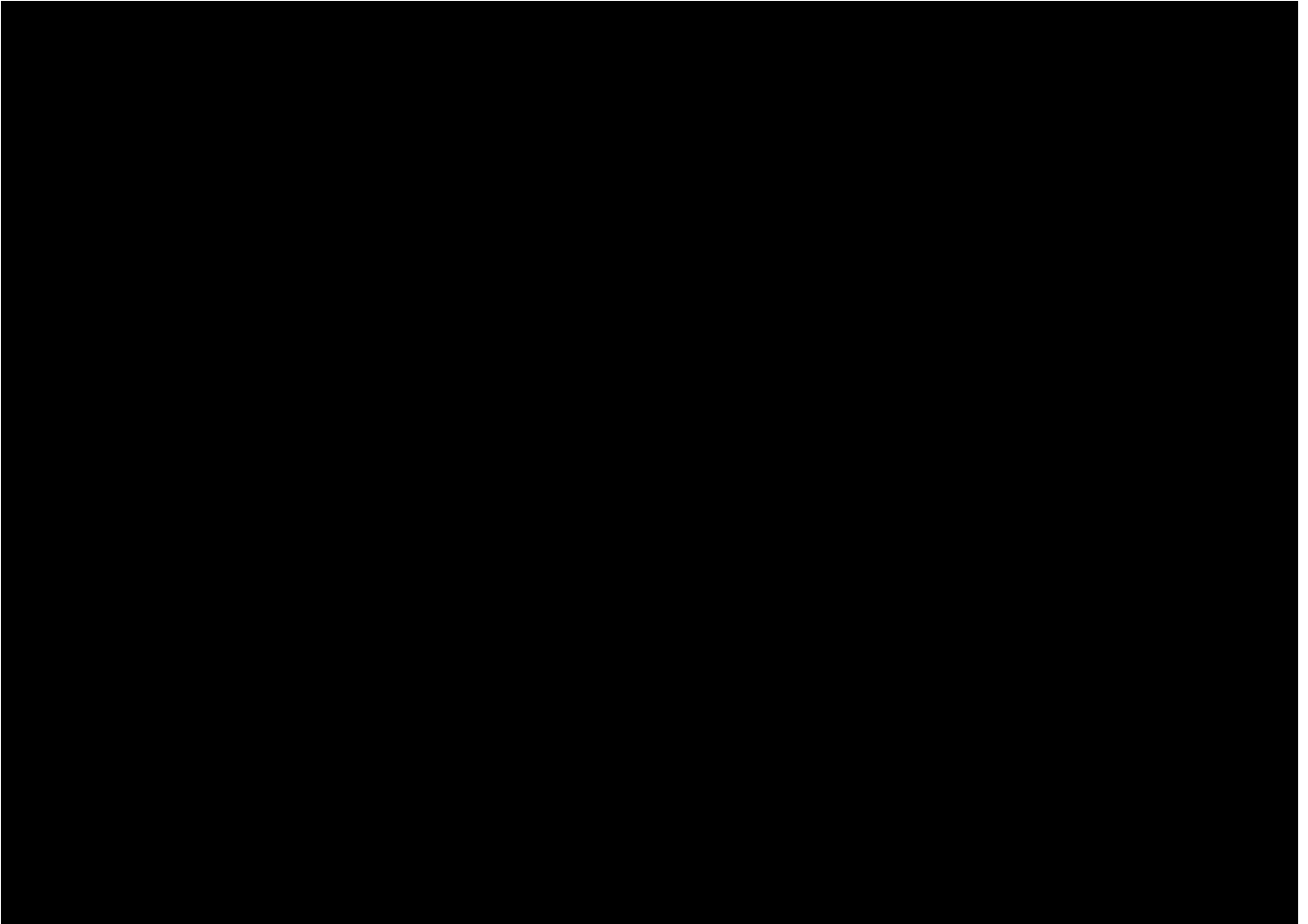
**Mental Health and Substance Abuse Program
Applied Behaviorial Analysis Fee Quote**



Administrative Fee Evaluation

**Exhibit
V.C**

**Mental Health and Substance Abuse Program
Administrative Fee Evaluation**



Extraneous Terms

**Exhibit
I.X**

April 16, 2013

Extraneous Terms Template
(Instructions for Documentation and Submission)

Offerors shall identify all Extraneous Terms in the table provided on the following page, and shall adhere to all instructions below for preparing the table.

INSTRUCTIONS:

**RFP Section
and Sub-Section
Reference:**

The Offeror must insert the exact RFP Section, and Sub-Section number of the requirement(s) that the Offeror is proposing to modify. The Offeror must insert the nature of the proposed change and its impact on the Requirement.

RFP Requirement:

The Offeror must insert a concise description of the requirement(s) that the Offeror is proposing to modify.

**Proposed
Extraneous Term
Type:**

The Offeror must insert a one-word description, of the type of modification to each of the requirement(s) that the Offeror is proposing to modify, selected from the following list:

- ☐ Additional;
- ☐ Supplemental;
- ☐ "Or Equal"; or
- ☐ Alternative

**Proposed
Extraneous
Term:**

The one-word description must be followed by proposed alternate wording of the requirement(s).

**Impact on RFP
Requirement:**

The Offeror should describe the impact of the alternate wording. Then, the comments should explain how the modification(s) would benefit the State and provide best value. If there is a corresponding impact on the Administrative, Technical or Financial Proposal(s), that impact should be explained here with reference(s) to the parts of the volume(s) that are affected. However, **DO NOT INCLUDE ANY COST DATA IN THE ADMINISTRATIVE OR TECHNICAL PROPOSALS.**

The Offeror must use the table format described above and detailed on the following page to summarize its proposed Extraneous Terms, if any. The Offeror may refer to more voluminous narratives, tables, figures and appendices that more fully describe aspects of the Extraneous Terms, provided that the additional material is fully cross-referenced by this required table.

Extraneous Terms

EXTRANEIOUS TERM(S)			
No.	RFP Section and Sub-Section Reference	RFP Requirement	Proposed Extraneous Term Type
1.	Sec. V Cost Proposal, C. a. (5)	The Contractor shall analyze and monitor claim submissions to promptly identify errors, fraud and/or abuse and report to the State such information in a timely fashion in accordance with a State approved process.	<input type="checkbox"/> Additional; <input checked="" type="checkbox"/> Supplemental; <input type="checkbox"/> "Or Equal"; or <input type="checkbox"/> Alternative
<u>Proposed Extraneous Term(s):</u> The Contractor will analyze and monitor claim submissions to promptly identify errors, fraud and/or abuse and report to the State such information in a timely fashion in accordance with a process mutually agreed to by the parties.			
<u>Impact on RFP Requirement:</u> Supplements the requirement to clarify the intent that the process used will be mutually determined.			
2.	Sec. V Cost Proposal, C. a. (6)	Litigation recoveries and settlements shall be paid/credited to the MHSA Program within fifteen (15) Days of receipt by the Contractor.	<input type="checkbox"/> Additional; <input checked="" type="checkbox"/> Supplemental; <input type="checkbox"/> "Or Equal"; or <input type="checkbox"/> Alternative
<u>Proposed Extraneous Term(s):</u> Litigation recoveries and settlements shall be paid/credited to the MHSA Program within fifteen (15) days of receipt except when an additional fifteen (15) to thirty (30) days are required due to the complexity of recovery/settlement distribution. We will notify the State when additional time is required.			
<u>Impact on RFP Requirement:</u> Supplements the requirement to provide for additional time to for the payment/credit when the State is not the only customer entitled to a portion of the litigation recovery/settlement distribution.			

Sample ASO Contract

Appendix A

ADMINISTRATIVE SERVICES AGREEMENT

This Administrative Services Agreement ("Agreement") is entered into by and between _____ ("Employer") and Empire HealthChoice Assurance, Inc. d/b/a/ Empire Blue Cross Blue Shield ("Empire") and is effective as of - _____ upon the following terms and conditions:

1. Employer is the sponsor of a self-funded Group Health Plan (as defined below) providing, among other things, health care benefits to certain eligible employees and their qualified dependents.
2. Employer desires to retain Empire as an independent contractor to administer certain elements of Employer's Group Health Plan.
3. Empire desires to administer certain elements of Employer's Group Health Plan pursuant to the terms of this Agreement.

In consideration of the promises and the mutual covenants contained in this Agreement, Empire and Employer (the "Party" or "Parties" as appropriate) agree as follows:

ARTICLE 1 – DEFINITIONS

For purposes of this Agreement and any amendments, attachments or schedules to this Agreement, the following words and terms have the following meanings unless the context or use clearly indicates another meaning or intent:

ADMINISTRATIVE SERVICES FEE. The amount payable to Empire in consideration of its administrative services and operating expenses as indicated in Section 3 of Schedule A, excluding any cost for stop loss insurance coverage or any other policy of insurance, if applicable. All additional charges not included in the Administrative Services Fee are specified elsewhere in this Agreement.

AGREEMENT PERIOD. The period of time indicated in Section 1 of Schedule A.

EMPIRE AFFILIATE. An entity controlling, under common control with or controlled by Empire.

BENEFITS BOOKLET. A description of the portion of the health care benefits provided under the Plan that is administered by Empire.

BILLED CHARGES. The amount that appears on a Member's Claim form (or other written notification acceptable to Empire that Covered Services have been provided) as the Provider's charge for the services rendered to a Member, without any adjustment or reduction and irrespective of any applicable reimbursement arrangement with the Provider.

BLUECARD PROGRAM. A Blue Cross and Blue Shield Association program whereby Empire can process certain Claims for Covered Services received by Members outside of Empire's service area while accessing the reimbursement arrangement of a Provider that has contracted with another Blue Cross and/or Blue Shield Plan. However, some Blue Cross and/or Blue Shield Plans may not participate in this program and, in that event, Empire will not access that Blue Cross and/or Blue Shield Plan's reimbursement arrangement. Additionally, Empire may have other arrangements to provide access to Providers outside of Empire's service area, in which event Empire will not access the BlueCard Program.

BLUE CROSS BLUE SHIELD ASSOCIATION ("BCBSA"). An association of independent Blue Cross and Blue Shield companies.

CLAIM. Written or electronic notice of a request for reimbursement of any health care service or supply on a form acceptable to Empire.

CLAIMS RUNOUT SERVICES. Processing and payment of Claims that are incurred but unreported and/or unpaid as of the date this Agreement terminates.

COVERED SERVICE. Any health care service or supply rendered to Members for which benefits are eligible for reimbursement pursuant to the terms of the applicable Benefits Booklet.

EMPLOYER AFFILIATES. Companies affiliated with the Employer that are participating in the Plan and which, along with the Employer constitute a single “control group” as that term is used in Internal Revenue Code.

ERISA. The Employee Retirement Income Security Act of 1974, as amended, and regulations promulgated thereunder.

GROUP HEALTH PLAN or PLAN. An employee welfare benefit plan (as defined in Section 3(1) of ERISA) established by the Employer, in effect as of the Effective Date, as described in the Plan Documents, as they may be amended from time to time.

INVOICE DUE DATE. The date on the invoice provided to Employer indicating when payment is due.

LINES OF COVERAGE. The benefit options that are described in the Benefits Booklet, such as POS, PPO, HRA or HSA, that are available to Members as indicated in Section 3 of Schedule A.

MEMBER. The individuals, including the Subscriber and his/her dependents, as defined in the Benefits Booklet, who have satisfied the Plan eligibility requirements of the Employer, applied for coverage, and been enrolled for Plan benefits.

NETWORK PROVIDER. A physician, health professional, hospital, pharmacy, or other individual, organization and/or facility that has entered into a contract, either directly or indirectly, with Empire to provide Covered Services to Members through negotiated reimbursement arrangements.

PAID CLAIM. The amount charged to the Employer for Covered Services or services provided during the term of this Agreement. Paid Claims may also include any applicable interest that Empire is legally required to pay, Claims surcharges or other surcharges assessed by a state or government agency or any Claims paid pursuant to pilot or test programs as described more fully in Article 2(g). In addition, Paid Claims shall be determined as follows:

1. Provider and Vendor Claims. Except as otherwise provided in this Agreement, Paid Claims shall mean the amount Empire actually pays the Provider or Vendor (without regard to whether Empire reimburses such Provider or Vendor on a percentage of charges basis, a fixed payment basis, a global fee basis, a capitated basis, or single case rate, etc.) or whether such amount is more or less than the Provider's or Vendor's actual Billed Charges for a particular service or supply.
2. Prescription Drug Claims. If applicable to the Plan benefits as indicated in Schedule B, Paid Claims for Prescription Drugs dispensed by pharmacies shall mean an amount that Empire charges Employer based upon the rates that Empire negotiates with pharmacy Providers in the network (without regard to whether Empire reimburses such Provider based on AWP, MAC, dispensing fee, or other pricing benchmark or whether such amount is greater or less than the rate actually paid to such Providers in the network for particular services, drugs or supplies). Empire negotiates contracts with pharmacy Providers on its own behalf at various compensation terms and rates. Empire may retain the difference, if any, between the amounts charged Employer and the dispensing fee and/or the drug reimbursement rate actually paid to such Providers.
3. Performance Payments. If a Provider or Vendor participates in any Empire program in which performance incentives, rewards or bonuses (“Performance Payments”) are paid based on the achievement of certain goals, outcomes or performance standards adopted by Empire (collectively, “Performance Targets”), Paid Claims shall also include the amount of such Performance Payments. Such Performance Payments may be charged to Employer on a per Claim, lump sum, per Subscriber, per Member, or a pro-rata apportionment basis. The amount charged to Employer may be greater than the amount actually paid to any one particular Provider or Vendor pursuant to the terms of the contract with such Provider or Vendor.
4. Fees Paid to Manage Care. Paid Claims may also include fees paid to Providers or Vendors for managing the care of designated Members. In addition, Paid Claims may also include an amount Empire charges to oversee managed care programs and such program charges, if any, shall be provided in Section 4 of Schedule A.
5. Claims Payment Pursuant to any Judgment, Settlement, Legal or Administrative Proceeding. Paid Claims shall include any Claim amount paid as the result of a settlement, judgment, or legal, regulatory or administrative proceeding brought against the Plan and/or Empire, or otherwise agreed to by Empire, with respect to the decisions made by Empire regarding the coverage of or amounts paid for services under the terms of the Plan. Paid Claims also includes any amount paid as a result of Empire's billing dispute

resolution procedures with a Provider or Vendor. Any Claims paid pursuant to this provision will count towards any stop loss accumulators under a stop loss agreement with Empire.

6. Claims Payment Pursuant to the BlueCard and Other BCBSA Programs. Paid Claims shall include any amount paid for Covered Services incurred outside the geographical area that Empire serves and that are processed through the BlueCard Program or for any amounts paid for Covered Services provided through another BCBSA program (e.g. BCBSA Blue Distinction Centers for Transplant). More information about the BlueCard Program is found in Article 15 of this Agreement.
7. Claims Payment Pursuant to a Consumer Directed Health Plan Account. If applicable to Plan benefits and as indicated on Schedule B of this Agreement, Paid Claims shall include any amount actually paid by Empire from a consumer directed health plan account, such as a health reimbursement account or a health incentive account.

PLAN DOCUMENTS. The documents that set forth the terms of the Plan, and which include the Summary Plan Description and the Benefits Booklet.

PRESCRIPTION DRUG. Insulin and those drugs and drug compounds that are included in the U.S. Pharmacopoeia and that are required to be dispensed pursuant to a prescription or that are otherwise included on Empire's formulary (e.g., certain over-the-counter drugs).

PROPRIETARY INFORMATION AND CONFIDENTIAL INFORMATION. Employer Proprietary Information is the systems, procedures, methodologies and practices used by Employer to run its operations and the Plan and other non-public information about Employer. Empire Proprietary Information is the systems, procedures, methodologies and practices used by Empire in connection with its underwriting, Claims processing, Claims payment and health care management activities. Empire Proprietary Information also includes Empire's Provider network, negotiated fees, terms and discounts with Providers, and other non-public information about Empire. Empire Confidential Information includes Provider tax identification numbers or social security numbers and drug enforcement administration ("DEA") numbers or pharmacy numbers.

PROVIDER. A duly licensed physician, health professional, hospital, pharmacy or other individual, organization and/or facility that provides health services or supplies within the scope of an applicable license and/or certification and meets any other requirements set forth in the Benefits Booklet.

SUBSCRIBER. An employee or retiree of Employer or other eligible person (other than a dependent) who is enrolled in the Plan.

SUMMARY PLAN DESCRIPTION ("SPD"). A document provided to Subscribers by the Employer or its designee that describes the health care benefits available to Members under the Plan, their rights under the Plan and the obligations of the Plan. This document may incorporate the Benefits Booklet. In the event of any conflict or inconsistency between the Summary Plan Description and the Benefits Booklet, the terms of the Benefits Booklet shall control Empire's performance under this Agreement.

VENDOR. A person or entity other than a Provider, including an Empire Affiliate, that provides services or supplies pursuant to a contract with Empire.

ARTICLE 2 – ADMINISTRATIVE SERVICES PROVIDED BY EMPIRE

- a. Empire shall process the enrollment of eligible individuals and termination of Members as directed by the Employer subject to the provisions of this Agreement. Empire shall, with the assistance of Employer, respond to direct routine inquiries made to it by employees and other persons concerning eligibility in the Plan.
- b. Empire shall perform the following Claims administrative services:
 1. Process Claims with a Claims Incurred Date indicated in Section 1 of Schedule A and provide customer service at a level consistent with industry standards, including investigating and reviewing such Claims to determine what amount, if any, is due and payable according to the terms and conditions of the Benefits Booklet and this Agreement. Empire shall perform coordination of benefits ("COB") with other payors, including Medicare. In processing Claims, Empire shall utilize

Empire's medical policies and medical policy exception process, its definition of medical necessity, its precertification and/or preauthorization policies and applicable Claim timely filing limits.

2. Disburse to the applicable individuals or entities (including Providers and Vendors) payments that it determines to be due according to the provisions of the Benefits Booklet.
 3. Provide notice in writing when a Claim for benefits has been denied which notice shall set forth the reasons for the denial and the right to a full and fair review of the denial under the terms of the Benefits Booklet and shall otherwise satisfy applicable regulatory requirements, including those of ERISA, governing the notice of a denied Claim.
- c. Pursuant to Section 405(c)(1) of ERISA, Employer delegates to Empire fiduciary authority to determine claims for benefits under the Plan as well as the authority to act as the appropriate fiduciary under Section 503 of ERISA to determine appeals of any adverse benefit determinations under the Plan. Empire shall administer complaints and appeals according to Empire's complaint and appeals policy, unless otherwise provided in the Benefits Booklet. In carrying out this authority, Empire is delegated full discretion to determine eligibility for benefits under the Plan and to interpret the terms of the Plan. Empire shall be deemed to have properly exercised such authority unless a Member proves that Empire has abused its discretion or that its decision is arbitrary and capricious. Empire is a fiduciary of the Plan only to the extent necessary to perform its obligations and duties as expressed in this Agreement and only to the extent that its performance of such actions constitutes fiduciary action under ERISA. Empire shall not act as the administrator of the Plan nor shall it have any fiduciary responsibility in connection with any other element of the administration of the Plan.
- d. Empire shall have the authority, in its discretion, to institute from time to time, utilization management, case management, disease management or wellness pilot initiatives in certain designated geographic areas. These pilot initiatives are part of Empire's ongoing effort to find innovative ways to make available high quality and more affordable healthcare and will apply equally to Members of both insured and self-funded plans. A pilot initiative may affect some, but not all Members under the Plan. These programs will not result in the payment of benefits which are not provided in the applicable Benefits Booklet, unless otherwise agreed to by the Employer. Empire reserves the right to discontinue a pilot initiative at any time without advance notice to Employer.
- e. Empire shall perform recovery services as provided in Article 13.
- f. Empire shall issue identification cards to Subscribers and/or Members, as applicable, and the content and design of the identification cards shall comply with BCBSA regulations.
- g. Empire shall provide certificates of creditable coverage as required by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") with respect to Members' participation in the Plan. Employer agrees to promptly provide Empire with any information relating to a Subscriber's employment history as may be necessary for Empire to provide the certificates of creditable coverage.
- h. Empire shall provide Members and potential Members access to an online directory of Providers contracted with Empire ("Provider Directories"). Such Provider Directories shall also be available and distributed in booklet format upon Member request. Additionally, if applicable to Plan benefits, Empire shall ensure that Members and potential Members have access to the BlueCard directory of Providers via a website sponsored by BCBSA.
- i. Empire reserves the right to make benefit payments to either Providers or Members at its discretion. Employer agrees that the terms of the Plan will include provisions for supporting such discretion in determining the direction of payment including, but not limited to, a provision prohibiting Members from assigning their rights to receive benefit payments, unless otherwise prohibited by applicable state law.
- j. If applicable to the Plan benefits and as indicated in Schedule B of this Agreement, Empire may provide or arrange for the provision of the following managed care services:
1. Conduct medical necessity review, utilization review, and a referral process, which may include, but is not limited to: (a) preadmission review to evaluate and determine the medical necessity of an admission or procedure and the appropriate level of care, and for an inpatient admission, to authorize an initial length of stay; (b) concurrent review throughout the course of the inpatient admission for authorization of additional days of care as warranted by the patient's medical

condition; (c) retrospective review; and (d) authorizing a referral to a non-Network Provider. Empire shall have the authority to waive a requirement if, in Empire's discretion, such exception is in the best interest of the Member or the Plan, or is in furtherance of the provision of cost effective services under this Agreement.

2. Perform case management to identify short and long term treatment programs in cases of severe or chronic illness or injury. Empire may, but is not required to, customize benefits in limited circumstances by approving otherwise non-Covered Services if, in the discretion of Empire, such exception is in the best interest of the Member and the Plan.
 3. Provide access to a specialty network of Providers if the Plan includes a specialty network. Empire reserves the right to establish specialty networks for certain specialty or referral care.
 4. Provide any other managed care services incident to or necessary for the performance of the services set forth in this Article 2.
- k. If applicable to the Plan benefits and as indicated in Schedule B of this Agreement, Empire shall offer programs to help Employer effectively manage the cost of care, and Employer shall pay fees for the programs selected by Employer only if such fees are indicated in Section 3(B) of Schedule A. Employer shall abide by all applicable policies and procedures of the programs selected, which may require Employer to provide requested information prior to Empire initiating the service.
- l. On behalf of Employer, Empire shall produce and maintain a master copy of the Benefits Booklet and make changes and amendments to the master copy of the Benefits Booklet and incorporate any approved changes or amendments pursuant to Article 18(a) of this Agreement. Employer shall determine, in its sole discretion, whether Empire has accurately produced the Benefits Booklet and has fully implemented the approved changes or amendments. Until Employer has approved the Benefits Booklet, Empire will administer the quoted benefits according to Empire's most similar standard Benefits Booklet language.
- m. Empire will provide the Employer with Plan data and assistance necessary for preparation of the Plan's information returns and forms required by ERISA or other federal or state laws. Empire shall prepare and mail all IRS Form 1099's and any other similar form that is given to Providers or brokers. Form 5500s are the sole responsibility of the Employer; however, Empire shall provide timely information and assistance, if requested. Empire will disclose its fee and compensation information to Employer, as required by applicable law, for Employer to complete its Form 5500 and assess its compliance with section 408(b)(2) of ERISA and any applicable regulations promulgated thereunder. Summary annual reports shall be prepared and mailed by the employer and are the sole responsibility of the Employer.
- n. Empire shall provide reports of unclaimed funds to Employer; however, such reports shall not include any information about Paid Claims processed through the BlueCard Program. Employer shall administer the unclaimed funds pursuant to applicable unclaimed property or escheat laws and shall make any required payment or file any required reports under such laws.
- o. Unless otherwise agreed to by the Parties and specified in the Benefits Booklet, Empire's standard policies and procedures, as they may be amended from time-to-time, will be used in the provision of services specified in this Agreement. In the event of any conflict between this Agreement and any of Empire's policies and procedures, this Agreement will govern.
- p. If applicable to the Plan benefits as indicated in Schedule B, Empire shall provide conversion rights to Members following termination of this Agreement, and Employer shall pay the fee indicated in Section 3(C) of Schedule A.
- q. The Massachusetts Uncompensated Care Trust Fund, the New York Health Care Reform Act, the Maine Dirigo Savings Offset Payment, and other similar state legislation requires Employers to finance health related initiatives through assessments and/or surcharges added to certain Paid Claims. After Employer completes the applicable forms, Empire shall make all assessment and/or surcharge payments on behalf of Employer to the appropriate pools administered by the respective states, based primarily upon Empire's Paid Claims information and Member information provided to Empire by Employer.
- r. Empire shall provide required notices describing Member's rights under the Women's Health and Cancer Rights Act (WHCRA) upon a Member's enrollment and at least annually thereafter.

- s. Empire shall have the authority to build and maintain its Provider network. Nothing in this Agreement shall be interpreted to require Empire to maintain negotiated fees or reimbursement arrangements or other relationships with certain Providers or Vendors. Empire will be solely responsible for acting as a liaison with Providers including, but not limited to, responding to Provider inquiries, negotiating rates with Providers or auditing Providers.
- t. If a catastrophic event (whether weather-related, caused by a natural disaster, or caused by war, terrorism, or similar event) occurs that affects Members in one or more locations, and such catastrophic event prevents or interferes with Empire's ability to conduct its normal business with respect to such Members or prevents or interferes with Members' ability to access their benefits, Empire shall have the right, without first seeking consent from Employer, to take reasonable and necessary steps to process Claims and provide managed care services in a manner that may be inconsistent with the Benefits Booklet in order to minimize the effect such catastrophic event has on Members. As soon as practicable after a catastrophic event, Empire shall report its actions to Employer. Employer shall reimburse Empire for amounts paid in good faith under the circumstances and such amounts shall constitute Paid Claims, even if the charges incurred were not for services otherwise covered under the Benefits Booklet.
- u. Empire shall submit any claim that is required to be filed under any stop loss policy issued by Empire or an Empire Affiliate. Empire shall have no obligation to prepare or file any claim for excess risk or stop loss coverage under a policy not issued by Empire or an Empire Affiliate. Empire shall provide Employer with Claims data pursuant to Article 11 of this Agreement if Employer chooses to file a claim under a stop loss policy issued by an entity other than Empire or an Empire Affiliate. Empire shall assume no liability or responsibility to Employer for inconsistencies between the determination of Covered Services under the Benefits Booklet and this Agreement and the determination of coverage by an unaffiliated stop loss carrier.
- v. If applicable to Plan benefits as indicated on Schedule B to this Agreement, Empire shall assist Employer in determining whether its Prescription Drug benefit constitutes "creditable prescription drug coverage" as that term is used under the Medicare Part D laws (specifically, 42 C.F.R. 423.56). Unless otherwise agreed to by the Parties, Employer shall be solely responsible for communicating with Members regarding creditable prescription drug coverage matters.
- w. If a Member is a Massachusetts resident, Empire shall mail the Member any notices required by the Massachusetts Health Care Reform Act ("HCRA") reflecting coverage during the current and prior Agreement Period. If a Member works in Massachusetts for the Employer, but resides in another State, Empire will only provide such notices if Employer notifies Empire at least 60 days prior to any notice deadline imposed by HCRA that such Member requires the HCRA notices.

ARTICLE 3 – OBLIGATIONS OF EMPLOYER

- a. The Employer shall furnish to Empire initial eligibility information regarding Members. Employer is responsible for determining eligibility of individuals and advising Empire in a timely manner, through a method agreed upon by the Parties, as to which employees, dependents, and other individuals are to be enrolled Members. Empire reserves the right to limit the effective date of retroactive enrollment to a date not earlier than 60 days prior to the date notice is received. Such retroactive enrollments shall be subject to Empire's receipt of the applicable Administrative Services Fees. The Employer shall keep such records and furnish to Empire such notification and other information as may be required by Empire for the purpose of enrolling Members, processing terminations, effecting COBRA coverage elections, effecting changes in single or family coverage status, effecting changes due to a Member becoming eligible or ineligible for Medicare, effecting changes due to a leave of absence, or for any other purpose reasonably related to the administration of eligibility under this Agreement. The Employer acknowledges that prompt and complete furnishing of the required eligibility information is essential to the timely, accurate, and efficient processing of Claims.

Employer shall notify Empire monthly of the Subscribers, dependents, or other individuals that will be or have become ineligible for benefits under the Plan. Upon receipt of such notice, Empire shall terminate coverage effective as of the date specified in the Benefits Booklet. The Employer shall give Empire advance notice, if possible, of any Member's expected termination and/or retirement. Empire reserves the right to limit retroactive terminations to a maximum of 60 days prior to the date notice is received. Empire shall credit Employer Administrative Services Fees for such retroactive terminations as indicated in Section 3(A) of Schedule A.

If Empire has paid Claims for persons no longer eligible for reasons including, but not limited to, Empire having been provided inaccurate eligibility information, or Empire having received notice of a retroactive change to enrollment, then Employer shall reimburse Empire for all unrecovered Paid Claim amounts to the extent that the amounts have not already been paid by Employer.

- b. Employer acknowledges that it or its designee(s) serves as the “plan sponsor, “plan administrator” and “named fiduciary” as those terms are defined in ERISA. Employer has the discretionary authority and control over the management of the Plan, and all discretionary authority and responsibility for the administration of the Plan except as delegated to Empire in Article 2(c) of this Agreement. Empire does not serve either as “plan administrator” or as the Plan’s “named fiduciary”. Employer retains all final authority and responsibility for the Plan and its operation and Empire is empowered to act on behalf of Employer in connection with the Plan only as expressly stated in this Agreement or as otherwise agreed to by the Parties in writing.
- c. It is understood and agreed that the provision of any notice, election form, or communication and the collection of any applicable premium or fees required by or associated with Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (“COBRA”), or any other applicable law governing continuation of health care coverage, shall be the sole responsibility of Employer and not Empire, except as otherwise agreed to in a written agreement between the Parties.
- d. Employer is solely responsible for compliance with the Family and Medical Leave Act (“FMLA”).
- e. Employer agrees to and shall collect those contributions from Subscribers that are required by Employer for participation in the Plan. If Employer elects Empire’s stop loss coverage, Employer shall abide by Empire’s participation and contribution guidelines.
- f. Unless otherwise agreed to by the Parties in writing, the Employer shall prepare and distribute SPDs, summary annual reports, and all notices or summaries of changes or material modifications to the Plan. Employer shall ensure that when it or its designee prepares the SPD, such SPD will accurately reflect the terms of the Benefits Booklet.
- g. To the extent that Medicare, Medicaid, the Veterans Administration or any other federal or state agency or entity asserts a reimbursement right against Employer, the Plan, or Empire pursuant to that agency’s or entity’s rights under applicable law with respect to Claims processed by Empire under this Agreement, the Employer shall be responsible for reimbursing Empire any such amounts determined to be owed.
- h. Employer shall give notice to Empire of the expected occurrence of any of the following events (including a description of the event), with such notice to be given at least 30 days prior to the effective date of the event, unless such advance notice is prohibited by law or contract in which case, notice will be provided as soon as practicable:
 - 1. Change of Employer’s name;
 - 2. Any merger between or consolidation with another entity where, after such merger or consolidation, Employer is not the controlling entity;
 - 3. The sale or other transfer of all or substantially all of the assets of either the Employer or any of the Employer Affiliates or the sale or other transfer of the equity of Employer or any of the Employer Affiliates, or;
 - 4. Any bankruptcy, receivership, insolvency or inability of Employer to pay its debts as they become due.
- i. The Employer shall have the sole responsibility, in accordance with state or federal law, to develop procedures for determining whether a medical child support order is a “qualified” medical child support order and whether a domestic relations order is a “qualified” domestic relations order. The Employer shall provide notice to Empire once it has made such determination.
- j. The Employer may request Empire, on an exception basis, to process and pay Claims that were denied by Empire or take other actions with respect to the Plan that are not specifically set forth in this Agreement or the Benefits Booklet. In such cases, any payments shall not count toward the stop loss accumulators under a stop loss agreement issued by Empire, unless otherwise agreed to by Empire. Empire may charge

Employer a processing fee that has been mutually agreed to by the Parties prior to the processing of the Claim. Empire shall not be responsible for any liability associated with any act or omission undertaken at the direction of, or in accordance with, instructions received from the Employer under this provision.

ARTICLE 4 – CLAIMS PAYMENT METHOD

- a. Employer shall pay or fund Paid Claims according to the Claims payment method described in Section 4 of Schedule A. Employer shall pay or fund such amounts by the Invoice Due Date. In addition, from time to time, the Parties acknowledge that Employer may request a review of the appropriateness of a Claim payment and, during the review period, Employer shall pay or fund such Claim.
- b. The Parties acknowledge that, from time to time, a Claims adjustment may be necessary as a result of coordination of benefits, subrogation, workers' compensation, other third party recoveries, payment errors and the like, and that the adjustment will take the form of a debit (for an additional amount paid by Empire) or a credit (for an amount refunded to Employer). The Parties agree that such Claims adjustment shall be treated as an adjustment to the Claims payment made in the billing period in which the adjustment occurs, rather than as a retroactive adjustment to the Claim in the billing period in which it was initially reported as paid. Any Claims credit may be reduced by a fee charged by Vendors as indicated in Article 13 of this Agreement. In addition, a credit shall not be provided to Employer for the proportionate share of a recovery related to a Claim that was covered under stop-loss coverage provided by Empire.
- c. Employer shall open and maintain a bank account (the ["Account/Sub-Account"]) according to the criteria set forth on Schedule C to this Agreement. Employer agrees to maintain funds in the [Account/Sub-Account] at appropriate levels satisfactory to Empire in order to satisfy Employer's obligations under this Agreement. Employer authorizes Empire to pay Claims for Covered Services from the [Account/Sub-Account].

ARTICLE 5 – ADMINISTRATIVE SERVICES FEE

During the term of this Agreement, Employer agrees to maintain funds in the [Account/Sub-Account] described on Schedule C to this Agreement at appropriate levels to satisfy Employer's obligations to pay Administrative Services Fee described in Section 3 of Schedule A and other fees agreed to by the Parties under this Agreement.

ARTICLE 6 – RENEWAL SCHEDULES

If Empire offers to renew this Agreement at the end of an Agreement Period, then Empire shall provide Employer with the terms and conditions of the proposed renewal in writing within the time period provided in Section 1 of Schedule A. The Employer shall notify Empire in writing of its selection from the renewal options by indicating its selection and signing Empire's designated renewal form. If Empire does not receive a signed acceptance of the renewal from Employer prior to the start of the next Agreement Period, the Employer's payment of the amounts set forth in the renewal shall constitute Employer's acceptance of the terms. Empire shall provide a revised Schedule A that will become part of this Agreement without the necessity of securing Employer's signature.

ARTICLE 7 – CLAIMS RUNOUT SERVICES

- a. Claims Runout Services shall be provided for the period of time provided in Section 6 of Schedule A (the "Claims Runout Period"). During the Claims Runout Period, the terms of this Agreement shall continue to apply. Empire shall have no obligation to process or pay any Claims or forward Claims to Employer beyond the Claims Runout Period. Any amounts recovered beyond the Claims Runout Period shall be retained by Empire as reasonable compensation for services under this Agreement. Empire shall, however, return any recoveries for which Empire had received monies, but had not processed the recovery prior to the end of the Claims Runout Period. In addition, Employer shall have no obligation to reimburse Empire for any amounts paid by Empire due to adjustments to Claims after the end of the Claims Runout Period.
- b. The Administrative Services Fee for the Claims Runout Period, if applicable, is provided in Section 6 of Schedule A. Paid Claims and the Administrative Services Fee shall be invoiced and paid in the same manner as provided in Sections 4 and 5 of Schedule A, unless otherwise provided or agreed to in writing by the Parties.

ARTICLE 8 – LATE PAYMENT PENALTY

If Employer fails to timely pay or fund any amount due to Empire under this Agreement, Employer agrees to pay a late payment penalty for each day the payment is late. The late payment penalty shall be calculated at the rate of 12% simple interest per annum (365 days), and shall be included on a subsequent invoice and payable by the Invoice Due Date. In addition, Employer agrees to reimburse Empire for any expenses charged to Empire by a financial institution, Provider or Vendor due to Employer's failure to maintain sufficient funds in a designated bank account required under this Agreement. Any acceptance by Empire of late payments shall not be deemed a waiver of its rights to terminate this Agreement for any future failure of Employer to make timely payments.

ARTICLE 9 – HIPAA

- a. Empire's duties and responsibilities in connection with the requirements imposed by the Health Insurance Portability and Accountability Act ("HIPAA") and the privacy and security regulations promulgated thereunder will be set forth in a separate business associate agreement between the Parties.
- b. In the event the Plan submits Claims or eligibility inquiries or any other HIPAA covered transaction as defined in 45 CFR Part 160 and 162 to Empire through electronic means, the Plan and Empire shall comply with all applicable requirements of HIPAA and the Plan and Empire shall require any of their respective agents or subcontractors to comply with all applicable requirements of HIPAA.

ARTICLE 10 – PROPRIETARY AND CONFIDENTIAL INFORMATION

- a. Each Party agrees to treat the other Party's Proprietary Information and Confidential Information in strict confidence, and shall institute commercially reasonable safeguards to protect the Information.
- b. Employer shall use and disclose Empire's Proprietary Information and/or Confidential Information solely for the purpose of administering the Plan. Employer shall not use or disclose Empire's Proprietary Information and/or Confidential Information, or reports or summaries thereof, for any other purpose, including, but not limited to: (1) combining Empire's Proprietary Information and/or Confidential Information with other data to create or add to an existing aggregate database that will or could be made available to any entity other than the Employer; (2) combining Empire's Proprietary Information and/or Confidential Information with any other data received from Empire; or, (3) selling or disclosing Empire's Proprietary Information and/or Confidential Information to any other person or entity.
- c. Employer shall not disclose Empire's Proprietary Information and/or Confidential Information to any other person or entity without Empire's prior written consent. Employer may disclose Empire's Proprietary Information and/or Confidential Information to other Employer subcontractors, stop loss carriers, consultants, agents or auditors who need to know such information in order to provide services to Employer, (e.g. Plan administration), provided that such third party signs a confidentiality agreement with Empire prior to disclosure.
- d. Upon termination of this Agreement, either Party may retain, return or destroy the other Party's Proprietary Information and Confidential Information; however, the Parties agree to continue to comply with the provisions as set forth in this Article 10 upon termination of this Agreement for as long as it retains the other Party's Proprietary Information and Confidential Information.
- e. This Agreement shall not be construed to restrict the use or disclosure of information that: (1) is public knowledge other than as a result of a breach of this Agreement; (2) is independently developed by a Party not in violation of this Agreement; (3) is made available to a Party by any person other than Empire or Employer, provided the source of such information is not subject to any confidentiality obligations with respect to it; or, (4) is required to be disclosed pursuant to law, order, regulation or judicial or administrative process, but only to the extent of such required disclosures and after reasonable notice to the other Party.
- f. If a Party determines the confidentiality of its Proprietary Information or Confidential Information is not properly being used or maintained in accordance with the provisions as set forth in this Article 10, that Party shall have the right to terminate this Agreement by giving the non-compliant Party at least 60 days prior written notice of termination. Notwithstanding any other provision of this Agreement, a Party may seek

injunctive or other equitable relief from a court of competent jurisdiction against the non-compliant Party should there be any unauthorized use of Proprietary Information or Confidential Information.

ARTICLE 11 – DATA REPORTS

- a. Upon Employer's request and only as permitted by the business associate agreement entered into between the Parties, Empire will provide Empire's standard account reporting package. Prior to Empire providing data or reports to Employer, the Parties must mutually agree to the types, format, content and purpose of the reports requested. If Employer requests from Empire information that is not part of Empire's standard account reporting package, and such request is approved by Empire, Employer agrees to pay a mutually agreed upon charge to Empire for such additional reports.
- b. Empire and Empire Affiliates shall have the right to use, disclose or sell Claims data collected in the performance of services under this Agreement, so long as: (i) the data is de-identified in a manner consistent with the requirements of HIPAA; or (ii) the data is used or disclosed for research, health oversight activities, or other purposes permitted by law; or (iii) a Member has consented to the release of his or her individually identifiable data. The data used, disclosed or sold shall be used for a variety of lawful purposes including, but not limited to, research, monitoring, and benchmarking of industry and health care trends.

ARTICLE 12 – CLAIMS AUDIT

- a. At Employer's expense, Employer shall have the right to audit Claims on Empire's premises, during regular business hours and in accordance with Empire's audit policy, which may be revised from time to time. A copy of the audit policy shall be made available to Employer upon request.
- b. If Employer elects to utilize a third-party auditor to conduct an audit pursuant to this Agreement and Empire's audit policy, such auditor must be mutually acceptable to Employer and Empire. Empire will only approve auditors that are independent and objective and will not approve auditors paid on a contingency fee or other similar basis. Empire reserves the right to charge a fee to Employer for expenditure of time by Empire's employees in completing any audit. An auditor or consultant must execute a confidentiality and indemnification agreement with Empire pertaining to Empire's Proprietary and Confidential Information prior to conducting an audit.
- c. Employer may conduct an audit once each calendar year and the audit may only relate to Claims processed during the current year or immediately preceding calendar year (the "Audit Period") and neither Employer nor anyone acting on Employer's or the Plan's behalf, shall have a right to audit Claims processed prior to the Audit Period. The scope of the audit shall be agreed to in writing by the Parties prior to the commencement of the audit.
- d. Employer shall provide to Empire copies of all drafts, interim and/or final audit reports at such time as they are made available by the auditor or consultants to Employer. Any errors identified and/or amounts identified as owed to Employer as the result of the audit shall be subject to Empire's review and approval prior to initiating any recoveries of Paid Claims pursuant to Article 13 of this Agreement. Empire reserves the right to terminate any audit being performed by or for Employer if Empire determines that the confidentiality of its information is not properly being maintained or if Empire determines that the Employer or auditor is not following Empire audit policy.
- e. An audit performed pursuant to this Agreement shall be the final audit for the Audit Period and for any prior Audit Period unless otherwise agreed to in writing by the Parties; however, Claims may be re-audited if Employer is required to conduct the audit by a government agency with which it has a contractual arrangement.

ARTICLE 13 – RECOVERY SERVICES

- a. Employer grants to Empire the right, but not the obligation, to pursue recoveries related to Paid Claims processed under this Agreement, including during any Claims Runout Period. Empire shall exercise discretion to determine which recoveries it will pursue and, in no event will Empire pursue a recovery if the cost of the collection is likely to exceed the recovery amount or if the recovery is prohibited by law or an

agreement with a Provider or Vendor. Empire will not be liable for any amounts it does not successfully recover.

If Empire determines that there is a potential recovery opportunity, Employer grants Empire the authority and discretion to do the following: (1) determine and take steps reasonably necessary and cost-effective to effect recovery; (2) select and retain outside counsel or other Vendors as appropriate; (3) reduce any recovery obtained on behalf of the Plan by its proportionate share of the outside counsel fees and costs incurred during litigation or settlement activities to obtain such recovery; and (4) negotiate and effect any settlement of the Employer's and Plan's rights by, among other things, executing a release waiving the Employer's and Plan's rights to take any action inconsistent with the settlement.

- b. During the term of this Agreement and any applicable Claims Runout period, Empire may pursue payments to Members by any other person, insurance company or other entity on account of any action, claim, request, demand, settlement, judgment, liability or expense that is related to a Claim for Covered Services ("Subrogation Services"). Empire may charge Employer a fixed percentage fee up to 25% of gross subrogation recovery, or, if outside counsel is retained, 15% of net recovery after a deduction for outside counsel fees for Subrogation Services ("Subrogation Fee"). Any subrogation recoveries shall be net of the Subrogation Fee and shall be treated as an adjustment to the Claims payment in the billing period in which the adjustment occurs as described in Article 4 of this Agreement. Subrogation Fees will not be assessed on subrogation recoveries until they are received by Empire and credited to Employer.
- c. Notwithstanding any other provision of this Article 13, Empire has responsibility for compliance with Provider and Vendor contracts, including discount and contract audits. Empire shall have authority to enter into a settlement or compromise regarding enforcement of these contracts, including the right to reduce future reimbursement to Provider or Vendor in lieu of a lump sum settlement. If Empire conducts audits or reviews to enforce Provider or Vendor contracts or activities, and recoveries or cost avoidance is a result of such audits, reviews or enforcement activities, then Empire shall provide Employer a credit, after a reduction of third party vendor fees or costs, if any. Empire shall credit Employer a proportionate share of the net recovery equal to the ratio of (1) total Members' Paid Claims to such Provider or Vendor for the audit period, to (2) total payments made to such Provider or Vendor for all of Empire's business during the audit period. Notwithstanding the above, Empire shall retain any recoveries made from a Provider or Vendor resulting from any audits or reviews if the cost to administer the refund is likely to exceed the total recovery from the Provider or Vendor.
- d. Empire shall credit Employer net recovery amounts after deduction of fees and costs as set forth in this Article 13 not later than 150 days following the receipt of such recovery amounts. If Empire does not credit Employer within 150 days of its receipt of recovery amounts, Empire shall pay Employer interest calculated at the Federal Reserve Funds Rate in effect at the time of the payment. Empire may have contracts with Network Providers or Vendors or there may be judgments, orders, settlements, applicable laws or regulations that may limit Empire's right to make recoveries under certain circumstances. Employer agrees that Empire shall not be responsible for any such amounts that it is unable to recover from such Providers or Vendors. Notwithstanding the provisions of this Article 13, Empire may, but is not required to, readjudicate Claims or adjust Members' cost share payments related to the recoveries made from a Provider or a Vendor. In no event, however, will Empire be liable to credit Employer for any recovery after the termination date of this Agreement and any Claims Runout Period, and the Employer acknowledges and agrees that such sums shall be retained by Empire as reasonable compensation for recovery services provided by Empire.

ARTICLE 14 – PHARMACY BENEFITS AND SERVICES

- a. If applicable to Plan benefits and as indicated in Schedule B of this Agreement, Empire, through a Vendor or its affiliate pharmacy benefit manager (Empire PBM), shall provide the following Prescription Drug management services:
 - 1. Empire shall offer Employer access to a network of pharmacies that have entered into contractual arrangements with Empire under which such pharmacies agree to provide pharmacy services to Members and accept negotiated fees for such services ("Network Pharmacies"). Empire shall determine, in its sole discretion, which pharmacies shall be Network Pharmacies, and the composition of Network Pharmacies may change from time to time.

2. Empire will furnish and maintain a drug formulary for use with the Plan, and Empire shall periodically review and update its formulary. The Employer shall adopt such formulary as part of the design of the Plan. Unless mutually agreed to in writing by the Parties, upon termination of the Agreement, the Employer shall cease adoption and use of Empire's formulary as part of its Plan. Employer agrees that the drug formulary is Empire Proprietary Information and agrees to treat such information consistent with the terms set forth in Article 10 of this Agreement. The drug formulary will be made available to Members on Empire's web site and upon request may be provided to Employer in a mutually acceptable format for Employer's distribution to Members.
 3. Empire shall offer Employer a mail order pharmacy program, through which Members may receive mail order prescription services. Additional fees for express mail, shipping or handling may be charged to Members. Empire shall also offer Employer a specialty pharmacy program, through which Members may receive specialty pharmacy prescription services. Empire shall provide all necessary information and forms to Members to obtain these services.
 4. Empire shall arrange for the processing of Prescription Drug Claims in accordance with the Benefits Booklet.
- b. Empire and/or its Vendor has negotiated programs with pharmaceutical manufacturers for rebates on certain Prescription Drugs dispensed to Members ("Drug Rebates") and has arranged for payments of such Drug Rebates to be made directly to Empire. The Employer agrees that neither it, the Plan nor any Members shall have any legal or beneficial interest in any Drug Rebates received by Empire or its Vendor.
 - c. Empire, through its Vendor or through Empire PBM, may receive and retain administrative fees from pharmaceutical manufacturers for providing services to such pharmaceutical manufacturers consistent with the requirements and restrictions of applicable state and federal laws. In addition, Empire, its Vendor or Empire PBM may receive and retain service fees from pharmaceutical manufacturers for providing services (e.g., Provider and Member education programs that promote clinically appropriate and safe dispensing and use of Prescription Drugs). For purposes of this Agreement, administrative fees and service fees received by Empire, its Vendor or Empire PBM from pharmaceutical manufacturers shall not be considered Drug Rebates.
 - d. If Employer terminates the pharmacy benefits portion of its Plan with Empire at any time, then Empire shall have the right to amend the Administrative Services Fee indicated in Section 3(A) of Schedule A.

Alternative 1 (For non-HMO plans)

ARTICLE 15 – BLUECARD PROGRAM
(The language in this Article is required by BCBSA.)

- a. Whenever Members access health care services outside the geographic area Empire serves, the Claims for those services may be processed through BlueCard and presented to Empire for payment in conformity with network access rules of the BlueCard Policies then in effect ("BlueCard Policies"). Under BlueCard, when Members receive Covered Services within the geographic area serviced by an on-site Blue Cross and/or Blue Shield Licensee ("Host Blue"), Empire will remain responsible under this Agreement; however, the Host Blue will be responsible in accordance with applicable BlueCard Policies, if any, for contracting with its participating Providers and handling all interaction with these Providers, and, if applicable, providing some managed care services.
- b. BlueCard Liability Calculation Method Per Claim. The calculation of Member liability on Claims for Covered Services incurred outside the geographic area Empire serves and processed through BlueCard will be based on the lower of the Provider's billed charges or the negotiated price Empire pays the Host Blue. The calculation of Employer liability on Claims for Covered Services incurred outside the geographic area Empire serves and processed through BlueCard will be based on the negotiated price Empire pays the Host Blue. The methods employed by a Host Blue to determine a negotiated price will vary among Host Blues based on the terms of each Host Blue's Provider contracts. The negotiated price paid to a Host Blue by Empire on a Claim for health care services processed through BlueCard may represent:
 1. the actual price paid on the Claim by the Host Blue to the Provider ("Actual Price"), or
 2. an estimated price, determined by the Host Blue in accordance with BlueCard Policies based on the Actual Price, increased or reduced to reflect aggregate payments expected to result from

settlements, withholds, any other contingent payment arrangements and non-claims transactions with all of the Host Blue's Providers or one or more particular Providers ("Estimated Price"), or

3. an average price, determined by the Host Blue in accordance with BlueCard Policies, based on a billed charges discount representing the Host Blue's average savings expected after settlements, withholds, any other contingent payment arrangements and non-Claims transactions for all of its Providers or for a specified group of Providers ("Average Price"). An Average Price may result in greater variation to the Member and Employer from the Actual Price than would an Estimated Price.

Host Blues using either the Estimated Price or Average Price will, in accordance with BlueCard Policies, prospectively increase or reduce the Estimated Price or Average Price to correct for over- or underestimation of past prices. However, the amount paid by the Member and Employer is a final price and will not be affected by such prospective adjustment. In addition, a liability calculation method of Estimated Price or Average Price may result in some portion of the amount paid by Employer being held in a variance account by the Host Blue, pending settlement with its participating Providers. Because all amounts paid are final, the funds held in a variance account, if any, do not belong to Employer and are eventually exhausted by Provider settlements and through prospective adjustments to the negotiated prices.

Statutes in a small number of states may require a Host Blue either (1) to use a basis for calculating Member liability for Covered Services that does not reflect the entire savings realized, or expected to be realized, on a particular Claim or (2) to add a surcharge. Should any state statutes mandate liability calculation methods that differ from the negotiated price methodology or require a surcharge, Empire would then calculate Member liability and Employer liability for any Covered Services consistent with the applicable statute in effect for the area where the Host Blue conducts business at the time the Member received those services.

- c. Negotiated Price Per Member Per Month (Applicable to BlueCard Point of Service Coverage Only). For some Host Blues, Employer may have liability on a per Member/Subscriber per month basis for Provider health care services performed outside of the geographic area Empire services, such as for capitated service fees, performance incentive fees, adjustments to the Actual Price determined by the Host Blue instead of developing an Estimated Price or Average Price per Claim, or other Provider fees charged on this basis. The methods employed by a Host Blue to determine a negotiated price will vary among Host Blues based on the terms of each Host Blue's Provider contracts.

Employer's liability for capitated Provider services will be at the negotiated price Empire pays to the Host Blue. The negotiated price paid by Empire for per Member per month capitated services provided through BlueCard represents:

1. the Provider's actual per Member per month price paid by the Host Blue to the Provider ("Actual PMPM Price") or
2. an estimated per Member per month price, determined by the Host Blue in accordance with BlueCard Policies, based on the Actual PMPM Price increased or reduced to reflect aggregate payments expected to result from settlements, withholds, any other contingent payment arrangements and non-claims transactions with all of the Host Blue's Providers or one or more particular Providers ("Estimated PMPM Price"), or
3. an average per Member per month price, determined by the Host Blue in accordance with BlueCard Policies, based on (A) the sum of the Actual PMPM Price of each Member of the account, adjusted for expected settlements, withholds, any other contingent payment arrangements and non-claims transactions, divided by (B) the total number of Members of the account ("Average PMPM Price").

Negotiated prices for Provider fees paid per Member per month (other than for capitated services), such as a performance incentive fee, are based on an estimate of the annualized total of that fee, determined by the Host Blue, in accordance with BlueCard Policies, for all of its Providers or for a specified group of Providers.

Host Blues using either the Estimated PMPM Price or Average PMPM Price method will, in accordance with BlueCard Policies, prospectively increase or reduce the Estimated PMPM Price or Average PMPM Price to correct for over- or underestimation of past prices. However, the amount paid by the Member and Employer is a final price and will not be affected by such adjustment. In addition, a liability calculation method of

Estimated PMPM Price or Average PMPM Price may result in some portion of the amount paid by Employer being held in a variance account by the Host Blue, pending settlement with its Providers. Because all amounts paid are final, the funds held in a variance account do not belong to Employer and are eventually exhausted by Provider settlements and through prospective adjustments to the negotiated prices.

- d. Return of Overpayments. Under BlueCard, recoveries from a Host Blue or from the participating Providers of a Host Blue can arise in several ways, including, but not limited to, anti-fraud and abuse audits, Provider/hospital audits, credit balance audits, utilization review refunds, and unsolicited refunds. In some cases, the Host Blue will engage third parties to assist in discovery or collection of recovery amounts. The fees of such a third party may be netted against the recovery. Recovery amounts, net of fees, if any, will be applied in accordance with applicable BlueCard Policies, which generally require correction on a Claim-by-Claim or prospective basis.
- e. BlueCard Fees and Compensation. Employer understands and agrees (1) to pay certain fees and compensation to Empire which Empire is obligated under BlueCard to pay to the Host Blue, to BCBSA, or to BlueCard vendors, unless Empire's contract obligations to Employer requires those fees and compensation to be paid only by Empire and (2) that fees and compensation under BlueCard may be revised from time to time without Employer's prior approval in accordance with the standard procedures for revising fees and compensation under BlueCard. Some of these fees and compensation are charged each time a Claim is processed through BlueCard and include, but are not limited to, access fees, administrative expense allowance fees, central financial agency fees, and ITS transaction fees. Also, some of these Claim-based fees, such as the access fee and the administrative expense allowance fee, may be passed on to Employer as an additional liability. Other fees include, but are not limited to, an 800 number fee and a fee for providing appropriate Provider directories. Employer shall pay Empire these BlueCard-related fees unless otherwise indicated on Section 7 of Schedule A.
- f. Determinations of Covered Services (Applicable to BlueCard Point of Service Coverage Only). If Empire, or if the Employer, determines that a Claim is a Covered Service, coverage shall not be denied based on the Host Blue's network protocols, if any. Under BlueCard, a Member shall not be denied coverage of health care services received outside of the geographic area Empire serves if the health care services (1) are covered by the network protocols, if any, of the Host Blue; and (2) are not specifically limited or excluded by Employer's Plan Document. In such a case, the Employer agrees to pay for such covered services pursuant to the provisions of this Article 15.

Alternative 2 (For HMO plans - If account has both Non-HMO and HMO ASO plans, use both Articles and the HMO Article becomes 15A)

**Article 15 – BLUECARD PROGRAM (HMO PLANS)
(The language in this Article is required by BCBSA.)**

- a. Whenever Members access health care services outside the geographic area Anthem serves, the Claims for those services may be processed through BlueCard and presented to Anthem for payment in conformity with network access rules of the BlueCard Policies then in effect ("Policies").

Members who are traveling outside of the Anthem's service area may obtain emergency and urgent care services from a provider participating with an on-site Blue Cross and/or Blue Shield Licensee ("Host Blue"), where available. Services that are not emergency or urgent care services are not covered through the BlueCard Program.

When Members receive covered emergency or urgent care services within the geographic area served by a Host Blue, Anthem will remain responsible to Employer for fulfilling Anthem's contractual obligations. However, the Host Blue will only be responsible, in accordance with applicable BlueCard Policies, if any, for providing such services as contracting with its participating providers and handling all interaction with its participating providers. The financial terms of BlueCard are described generally below.

- b. Liability Calculation Method Per Claim. The calculation of Member liability on Claims for Covered Services incurred outside the geographic area Anthem serves and processed through BlueCard will be based on the lower of the provider's billed charges or the negotiated price Anthem pays the Host Blue. The calculation of Employer liability on Claims for Covered Services incurred outside the geographic area Anthem serves and processed through BlueCard will be based on the negotiated price Anthem pays the Host Blue. The methods employed by a Host Blue to determine a negotiated price will vary among Host Blues based on the

terms of each Host Blue's provider contracts. The negotiated price paid to a Host Blue by Anthem on a Claim for health care services processed through BlueCard may represent:

1. the actual price paid on the claim by the Host Blue to the health care provider ("Actual Price"), or
2. an estimated price, determined by the Host Blue in accordance with BlueCard Policies, based on the Actual Price increased or reduced to reflect aggregate payments expected to result from settlements, withholds, any other contingent payment arrangements and non-claims transactions with all of the Host Blue's health care providers or one or more particular providers ("Estimated Price"), or
3. an average price, determined by the Host Blue in accordance with BlueCard Policies, based on a billed charges discount representing the Host Blue's average savings expected after settlements, withholds, any other contingent payment arrangements and non-claims transactions for all of its providers or for a specified group of providers ("Average Price"). An Average Price may result in greater variation to the Member and Employer from the Actual Price than would an Estimated Price.

Host Blues using either the Estimated Price or Average Price will, in accordance with BlueCard Policies, prospectively increase or reduce the Estimated Price or Average Price to correct for over- or underestimation of past prices. However, the amount paid by the Member and Employer is a final price and will not be affected by such prospective adjustment. In addition, the use of a liability calculation method of Estimated Price or Average Price may result in some portion of the amount paid by Employer being held in a variance account by the Host Blue, pending settlement with its participating providers. Because all amounts paid are final, the funds held in a variance account, if any, do not belong to Employer and are eventually exhausted by provider settlements and through prospective adjustment to the negotiated prices.

Statutes in a small number of states may require a Host Blue either (1) to use a basis for calculating Member liability for Covered Services that does not reflect the entire savings realized, or expected to be realized, on a particular Claim or (2) to add a surcharge. Should any state statutes mandate liability calculation methods that differ from the negotiated price methodology or require a surcharge, Anthem would then calculate Member liability and Employer liability for any Covered Services consistent with the applicable statute for the state or area in which the Host Blue conducts business in effect at the time the Member received those services.

- c. **Return of Overpayments.** Under BlueCard, recoveries from a Host Blue or from participating providers of a Host Blue can arise in several ways, including, but not limited to, anti-fraud and abuse audits, provider/hospital audits, credit balance audits, utilization review refunds, and unsolicited refunds. In some cases, the Host Blue will engage third parties to assist in discovery or collection of recovery amounts. The fees of such a third party are netted against the recovery. Recovery amounts, net of fees, if any, will be applied in accordance with applicable BlueCard Policies, which generally require correction on a Claim-by-Claim or prospective basis.
- d. **BlueCard Fees and Compensation.** Employer understands and agrees (1) to pay certain fees and compensation to Anthem that we are obligated under BlueCard to pay to the Host Blue, to the Blue Cross and Blue Shield Association, or to the BlueCard vendors, unless our contract obligations to Employer require those fees and compensation to be paid only by Anthem and (2) that fees and compensation under BlueCard may be revised from time to time without Employer's prior approval in accordance with the standard procedures for revising fees and compensation under BlueCard. Some of these fees and compensation are charged each time a Claim is processed through BlueCard and include, but are not limited to, access fees, administrative expense allowance fees, Central Financial Agency Fees, and ITS Transaction Fees. Also, some of these Claim-based fees, such as the access fee and the administrative expense allowance fee, may be passed on to Employer as an additional liability. Other fees include, but are not limited to, a toll-free number fee and a fee for providing PPO provider directories. Employer shall pay Anthem these BlueCard-related fees unless otherwise indicated on Section 7 of Schedule A.

ARTICLE 16 CLAIMS LITIGATION

- a. Empire shall defend against any legal action or proceeding brought against Empire to recover a claim for benefits under the Plan as administered by Empire. If a demand for benefits under the Plan is asserted, or litigation, investigation, or other proceedings are commenced against Empire by a Member, or by any other

party on behalf of a Member, in connection with the Plan, Empire shall provide notice to the Employer as soon as practicable. Empire will select and retain counsel. Employer will assume liability for payment of attorneys' fees and costs in connection with the litigation, proceeding, or investigation. If the Employer or Plan are also named in the legal action or proceeding, Employer reserves the right to retain separate counsel for itself, in its sole discretion and at its own expense, and separate counsel for the Plan. If during such litigation, investigation or proceedings Employer and Empire are both represented by the same counsel selected by Empire and a conflict of interest arises, the selected counsel shall continue to represent Empire's interests. Employer shall waive any conflict for such representation and retain its own counsel, or separate counsel for the Plan, at its own expense. Each Party will provide the other with reasonable cooperation in the defense of any such matter. Empire is authorized to settle or compromise any claim to recover benefits under the Plan arising out of a course of legal action with the approval of Employer, which approval shall not be unreasonably withheld.

- b. Notwithstanding the above in this Article 16, if Empire fails to perform its responsibility to review and determine Claims for benefits under the Plan in a manner that is consistent with customs and practices in the industry, Empire will assume liability for payment of its legal fees and costs and for the payment of a Member's legal fees and costs. However, Empire is not an insurer of benefits under the Plan nor does it underwrite the risk or otherwise assume any risk for the payment of benefits under the Plan. Under all circumstances, Employer shall be liable to pay Plan benefits awarded or paid by settlement, judgment, or otherwise.
- c. In the event of any legal action or proceeding against the Employer or Plan pertaining to Covered Services described in the Benefits Booklet, Empire shall make available to Employer, the Plan, and their respective counsel, such evidence that is not privileged or otherwise confidential and is relevant to such action or proceeding.

ARTICLE 17 - INDEMNIFICATION

Except for legal actions or proceedings seeking benefits under the Plan, which are governed by Article 16 of this Agreement, Empire and Employer shall each indemnify, defend and hold harmless the other Party, and its directors, officers, employees, agents and affiliates, from and against any and all losses, claims, damages, liabilities, costs and expenses (including without limitation, reasonable attorneys' fees and costs) resulting from: (1) the indemnifying Party's or its subcontractor's gross negligence or willful misconduct in the performance of the obligations under this Agreement, and/or (2) the indemnifying Party's or its subcontractor's breach of fiduciary duties under ERISA. The obligation to provide indemnification under this Agreement shall be contingent upon the Party seeking indemnification: (i) providing the indemnifying Party with prompt written notice of any claim for which indemnification is sought, (ii) allowing the indemnifying Party to control the defense and settlement of such claim; provided, however, that the indemnifying Party agrees not to enter into any settlement or compromise of any claim or action in a manner that admits fault or imposes any restrictions or obligations on an indemnified Party without that indemnified Party's prior written consent, which will not be unreasonably withheld; and, (iii) cooperating fully with the indemnifying Party in connection with such defense and settlement.

ARTICLE 18 – CHANGES IN BENEFITS BOOKLET AND AGREEMENT

- a. Either Party reserves the right to propose changes to the provisions described in the Benefits Booklet by giving written notice to the other Party not less than 90 days prior to the start of an Agreement Period. Both Parties may also propose changes to the Benefits Booklet at a time other than the start of an Agreement Period and such changes will be made to the Benefits Booklet if mutually agreed to in writing by the Parties. Empire's incorporation of the requested changes into the Benefits Booklet shall constitute Empire's acceptance of the Employer's requested changes. If Empire initiates the proposed changes and does not receive written notice from Employer prior to the effective date of the proposed changes that such changes are unacceptable, the changes shall be deemed acceptable by Employer and Empire shall incorporate such changes into the Benefits Booklet.
- b. If changes to the provisions of the Benefits Booklet are mandated as a result of a change to any applicable state or federal law, Empire shall have the right to make such changes to the Benefits Booklet to comply with the law and shall provide written notice to Employer at least 30 days prior to the effective date of the change, unless the effective date specified in the law is earlier.

- c. Empire also reserves the right to change the Administrative Services Fee at a time other than the start of an Agreement Period upon the occurrence of one or more of the following events: (1) a change to the Plan benefits initiated by Employer that results in a substantial change to the services to be provided by Empire; (2) a change in ownership as described in Article 3(h) of this Agreement; (3) a change in the total number of Members resulting in either an increase or decrease of 10% or more of the number of Members enrolled for coverage on the date the Administrative Services Fee was last modified; (4) a change in Employer contribution as described in Article 3(e) of this Agreement; (5) a change in nature of Employer's business resulting in a change in its designated Standard Industrial Classification ("SIC") code; or (6) a change in applicable law that results in a material increase in the administrative services from those currently being provided by Empire under this Agreement. Empire shall provide notice to Employer of the change in the Administrative Services Fee at least 30 days prior to the effective date of such change. If such change is unacceptable to Employer, either Party shall have the right to terminate this Agreement by giving written notice of termination to the other Party before the effective date of the change. If Employer accepts the proposed rates, Empire shall provide a revised Schedule A that will then become part of this Agreement without the necessity of securing Employer's signature on the Schedule.
- d. In the event any action of any department, branch or bureau of the federal, state or local government is initiated or taken ("Action") against a Party to this Agreement and such Action materially and adversely affects that Party's performance of the obligations under this Agreement, the affected Party shall notify the other Party of the nature of the Action and provide copies of pertinent documents supporting the reason(s) for the Action. If a modification to the Agreement is needed as a result of the Action, the Parties shall meet within 30 days of the notice by the affected Party to the other Party and shall, in good faith, attempt to negotiate a modification to this Agreement that minimizes or eliminates the impact of the Action. If the Parties are unable to minimize or eliminate the impact of the Action, then either Party may terminate this Agreement by giving at least 90 days notice of termination. This Agreement may be terminated sooner if agreed to by the Parties or required by the government entity initiating or taking the Action.
- e. No modification or change in any provision of this Agreement, including but not limited to, changes at renewal, shall be effective unless and until approved in writing by an authorized representative of Empire and evidenced by an amendment or new Schedule attached to this Agreement.

ARTICLE 19 – TERMINATION AND/OR SUSPENSION OF PERFORMANCE

- a. Notwithstanding any other provision of this Article, this Agreement automatically terminates, without further notice or action, if Employer fails to pay or fund any amount due under this Agreement within 7 days of the date of Empire's notice to the Employer of a delinquent amount owed. Such termination shall be effective as of the last period for which full payment was made. In addition, this Agreement automatically terminates, without further notice or action, at the end of each Agreement Period unless Empire offers to renew this Agreement and Employer accepts such offer of renewal pursuant to Article 6 of this Agreement. Upon termination of this Agreement, Employer shall remain liable for all payments due to Empire under the terms of this Agreement. Notwithstanding the above, Empire has the right to suspend performance of its obligations under this Agreement if full payment is not made by the Invoice Due Date. Empire shall have no obligation to pay any Claims under the Agreement until all required payments have been paid in full.
- b. If either Party fails to comply with any material duties and obligations under this Agreement other than payment of amounts due under this Agreement, the other Party shall have the right to: (1) terminate this Agreement by giving the non-compliant Party at least 60 days prior written notice of termination; or (2) upon written notice to the other Party, suspend performance of its obligations under this Agreement. The Employer acknowledges and agrees that in the event it is the non-compliant Party, Empire shall have no liability to any Member. Either Party, at its option, may allow the non-compliant Party to cure a breach of this Agreement and, upon acceptance in writing by that Party that a breach is cured, this Agreement may be reinstated retroactive to the date of the breach or suspension of performance.
- c. If there shall occur any change in the condition (financial or otherwise) of Employer or an Employer Affiliate that, in the reasonable opinion of Empire, has a material adverse effect upon the validity, performance, or enforceability of this Agreement, on the financial condition or business operation of Employer (or Employer Affiliate), or on the ability of Employer to fulfill its obligations under this Agreement, then Empire shall have the right to require Employer to provide adequate assurance of future performance, which may include a payment of a cash deposit, letter of credit, or other method of assurance acceptable to Empire. Examples of such a change could include, but would not be limited to the actual, or Empire's reasonable anticipation of: (1) any voluntary or involuntary case or proceedings under bankruptcy law with respect to Employer or an

Employer Affiliate; (2) any receivership, liquidation, dissolution, reorganization or other similar case or proceeding with respect to Employer or an Employer Affiliate; (3) any appointment of a receiver, trustee, custodian, assignee, conservator or similar entity or official for Employer or an Employer Affiliate; or (4) any assignment for the benefit of creditors or sale of all or substantially all of Employer's assets or a key Employer Affiliate's assets.

Any deposit amount shall be paid to Empire within 30 days of the request or in such shorter time as agreed to by the Parties. The deposit amount shall not be paid with Plan assets, shall not be funded in any part by Member contributions, and shall not be paid from any segregated fund or from funds in which the Plan or any Member has a beneficial interest. The deposit amount shall be the property of Empire, may be held in Empire's general account, may be subject to satisfy the claims of Empire's general creditors, and does not govern or limit the benefits available under the terms of the Plan. At the termination of this Agreement and designated Claims Runout Period, if any, the deposit amount, net of any outstanding fees or Claims amounts payable to Empire, shall be returned to Employer. Any deposit amount returned to Employer under this Article 19(c) shall not include interest. The deposit amount is the property of Empire. Neither Employer, the Plan, nor any Member shall have any beneficial or legal ownership interest in any deposit amount paid pursuant to this Section.

If such further assurance is required by Empire, Empire may, at any time after the date of notice to Employer of such requirement, suspend performance of its obligations under this Agreement until the date of receipt by Empire of such adequate assurance without being liable to the Employer, the Plan or any Member for such suspension. If such adequate assurance is not received within 30 days of the request, Empire may terminate this Agreement.

- d. Subject to the provisions of Article 7 of this Agreement, if this Agreement terminates and Empire makes payment of any Claim that would otherwise have been payable under the terms of this Agreement after the termination date, Employer shall be liable to reimburse Empire for such Claim to the extent that the amounts have not already been paid by Employer. Employer also agrees to cooperate fully with Empire in the coordination of pharmacy Claims with any successor pharmacy benefit manager.
- e. The Employer may terminate this Agreement at any time other than at the end of an Agreement Period by giving Empire 90 days written notice of its intent to terminate.
- f. In connection with the termination of this Agreement and upon Employer's request, Empire shall provide reports that are part of Empire's standard account reporting package at no extra charge. However Empire shall have no obligation to provide the reports after the termination date of this Agreement if such termination is due to non-payment pursuant to Article 19(a) of this Agreement. Upon Employer's request, Empire shall also provide data extract files to Employer for an additional fee mutually agreed to by the Parties. In no event shall Empire be obligated to produce more than two sets of reports following the termination date of this Agreement.

ARTICLE 20 – LIMITATION ON ACTIONS AND GOVERNING LAW

- a. No action by either Party alleging a breach of this Agreement may be commenced after the expiration of 3 years from the date on which the claim arose. Any disputes between the Parties in connection with this Agreement shall be resolved pursuant to Article 26 of this Agreement.
- b. Except to the extent preempted by ERISA or any other applicable provisions of federal law, this Agreement shall be governed by, and shall be construed in accordance with the laws of New York but without giving effect to that state's rules governing conflict of laws.

ARTICLE 21 – NO WAIVER

No failure or delay by either Party to exercise any right or to enforce any obligation herein, and, no course of dealing between Employer and Empire, shall operate as a waiver of such right or obligation or be construed as or constitute a waiver of the right to enforce or insist upon compliance with such right or obligation in the future. Any single or partial exercise of any right or failure to enforce any obligation shall not preclude any other or further exercise, or the right to exercise any other right or enforce any other obligation. The failure of one Party to provide a notice to or written demand upon the other Party shall not constitute a waiver by the failing Party to take action on other circumstances without notice or demand, if notice or written demand is not otherwise required by this Agreement.

ARTICLE 22 – ASSIGNMENT

Unless it has first obtained the written consent of an officer of the other Party, neither Party may assign this Agreement to any other person. Notwithstanding the foregoing, Empire may, with advance written notice to Employer, assign or otherwise transfer its rights and obligations hereunder, in whole or in part, to: (i) any affiliate of Empire; or (ii) any entity surviving a transaction involving the merger, acquisition, consolidation, or reorganization of Empire, or in which all or substantially all of Empire's assets are sold. Additionally, Employer may, with advance written notice to Empire, assign, delegate, or otherwise transfer its rights and obligations hereunder, in whole, to (i) any affiliate of Employer; or (ii) any entity surviving a transaction involving the merger, acquisition, consolidation or reorganization of Employer, or in which all or substantially all of employer's assets are sold, provided that such affiliate or other assignee presents, in Empire's opinion, an equivalent or better financial status and credit risk. Either Party is required to provide advance written notice under this provision only to the extent permissible under applicable law and the reasonable terms of the agreement(s) governing such merger, acquisition, consolidation, reorganization, or asset sale. If advance written notice is not allowed, notice shall be provided as soon as practicable. Upon receipt of notice of an assignment of this Agreement, the other Party may terminate this Agreement by providing the assigning Party with 30 days advance written notice of termination. Any assignee of rights or benefits under this Agreement shall be subject to all of the terms and provisions of this Agreement. Either Party may subcontract any of its duties under this Agreement without the prior written consent of other Party; however, the Party subcontracting the services shall remain responsible for fulfilling its obligations under this Agreement.

ARTICLE 23 – NOTICES

- a. Any notice or demand pursuant to Articles 19 and 22 of this Agreement shall be deemed sufficient when made in writing as follows: to Employer, by first class mail, personal delivery, or electronic mail or overnight delivery with confirmation capability, to its principal office shown upon the records of Empire; to Empire, by first class mail, personal delivery, electronic mail or overnight delivery with confirmation capability, to the designated Empire sales representative.
- b. A notice or demand shall be deemed to have been given as of the date of deposit in the United States mail with postage prepaid or, in the case of delivery other than by mail, on the date of actual delivery at the appropriate address.
- c. Employer shall be obligated to provide all notices to Members as may be necessary to effectuate any change in or termination of the Agreement.

ARTICLE 24 – ADMINISTRATION

- a. The Employer, on behalf of itself and its Members, hereby expressly acknowledges its understanding that this Agreement constitutes a contract solely between the Employer and Empire, that Empire is an independent corporation operating under a license with BCBSA permitting Empire to use the Blue Cross and Blue Shield Service Marks in designated counties in the state of New York and that Empire is not contracting as the agent of BCBSA. The Employer further acknowledges and agrees that it has not entered into this Agreement based upon representations by any person other than Empire and that no person, entity, or organization other than Empire shall be held accountable or liable to it for any of Empire's obligations to the Employer created under this Agreement. This paragraph shall not create any additional obligations whatsoever on the part of Empire other than those obligations created under other provisions of this Agreement.
- b. Empire is providing administrative services only with respect to the portion of the Plan described in the Benefits Booklet. Empire has only the authority granted it pursuant to this Agreement. Empire is not the insurer or underwriter of any portion of the Plan. Empire has no responsibility or liability for funding benefits provided by the Plan, notwithstanding any advances that might be made by Empire. Employer retains the ultimate responsibility and liability for all benefits and expenses incident to the Plan, including but not limited to, any state or local taxes that might be imposed relating to the Plan.
- c. The Parties acknowledge that the portion of the Plan described in the Benefits Booklet is a self-funded plan and is not subject to state insurance laws or regulations.

- d. Employer shall ensure that sufficient amounts are available to cover Claims payments, the monthly Administrative Services Fee, and other fees or charges.

ARTICLE 25 – ENTIRE AGREEMENT

- a. The following documents will constitute the entire Agreement between the Parties: this Agreement, including any amendments and Schedules thereto, and the Benefits Booklet.
- b. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- c. This Agreement supersedes any and all prior agreements between the Parties, whether written or oral, and other documents, if any, addressing the subject matter contained in this Agreement.
- d. If any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under applicable law, order, judgment or settlement, such provision shall be excluded from the Agreement and the balance of this Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

ARTICLE 26 – ARBITRATION

- a. In the event that any dispute, claim, or controversy relating to this Agreement arises between the Parties, the Parties agree to meet in person and make a good faith effort to resolve the dispute. If the dispute is not resolved following such meeting, and either Party wishes to pursue the dispute further, that Party shall commence arbitration by filing an arbitration demand with the American Arbitration Association ("AAA") within 20 days of the meeting. The dispute shall be resolved through arbitration to be heard in New York, New York unless the Parties agree otherwise.
- b. Any dispute subject to arbitration as set forth in this Article 26 shall be settled by binding arbitration, except to the extent that the dispute is required by law to be resolved by a state or federal regulatory authority. The Employer shall not have the right to participate as a member of any class of claimants pertaining to any dispute subject to arbitration hereunder, nor shall there be any authority for disputes arising under this Agreement to be arbitrated on a class action basis. Arbitration shall be limited to disputes between the Parties and cannot be consolidated or joined with claims of other persons or entities who may have similar claims.
- c. The Commercial Arbitration Rules of the AAA shall apply, using a 3 member panel of arbitrators. The arbitration panel shall consist of one arbitrator selected by each Party and the third independent arbitrator who shall be selected and agreed upon by the first 2 arbitrators. The Parties may also use a single arbitrator provided they mutually agree to do so and mutually agree on the choice of the arbitrator. The decision of the arbitrator(s) shall be binding. Each Party shall bear its own costs (including attorneys fees) for the proceedings, and all other costs of the arbitration proceeding shall be shared equally by the Parties, except as may be awarded in the discretion of the arbitrator(s) in accordance with the arbitration decision (including an award of attorneys' fees). Judgment upon the award rendered by the arbitrator(s) may be entered and enforced in any court of competent jurisdiction.

ARTICLE 27 – MISCELLANEOUS

- a. Employer and Empire are separate legal entities. Empire is strictly an independent contractor. Nothing contained in this Agreement shall cause either Party to be deemed a partner, member, agent or representative of the other Party, nor shall either Party have the expressed or implied right or authority to assume or create any obligation on behalf of or in the name of the other Party through its actions, omissions or representations.
- b. Except as may be explicitly set forth in this Agreement, nothing herein shall be construed as an implied license by a Party to use the other Party's name, trademarks, domain names, or other intellectual property. Neither Party shall use the name, trademarks, domain names, or any other name or mark of the other Party in any press release, printed form, advertising or promotional materials or otherwise, without the prior written consent of the other Party. In addition, Employer has no license to use the Blue Cross and/or Blue Shield

trademarks or derivative marks (the "Brands") and nothing in the Agreement shall be deemed to grant a license to Employer to use the Brands. Any references to the Brands made by Employer in its own materials are subject to prior review and approval by Empire.

- c. Nothing contained herein shall cause either Party to be deemed an agent for service of legal process for the other Party.
- d. Empire may pay Performance Payments to Providers or Vendors as described in the definition of Paid Claim in this Agreement. Empire may perform a periodic settlement or reconciliation based on the Provider's or Vendor's performance and experience against established Performance Targets that would: (1) require the Provider or Vendor to repay a portion of a Performance Payment previously paid by Empire; or (2) require Empire to make additional payments. Employer acknowledges and agrees that it has no responsibility for additional payments to Providers or Vendors nor any right in any discounts or excess money refunded or paid to Empire from Providers or Vendors pursuant to such settlement/reconciliation arrangements, and neither it nor the Plan has any legal right or beneficial interest in such sums retained by Empire. Similarly, if Providers or Vendors do not achieve established Performance Targets, Empire is not obligated to refund any amounts previously charged Employer. In turn, if under any such settlement/reconciliation Empire is required to pay Providers or Vendors excess compensation for Member management performance, risk-sharing rewards, or other performance incentives, it shall not seek payment from the Employer or the Plan, and neither the Employer nor the Plan shall have any liability in connection with such amounts. Such Providers or Vendors may include Empire Affiliates. In calculating any Member co-insurance amounts in accordance with the Benefits Booklet, Empire does not take into account these settlement/reconciliation arrangements.
- e. The Parties acknowledge that Empire, in making decisions regarding the scope of coverage of services under the Benefits Booklet, is not engaged in the practice of medicine. Providers are not restricted in exercising their independent medical judgment by contract or otherwise and do not act on behalf of, or as agents for, Empire or the Plan.
- f. In addition to any other provision providing for survival upon termination of this Agreement, the Parties' rights and obligations under Articles 10, 11, 12, 13, 16, 17, 19, 24, 25(a), 25(c), 26 and 27(d) shall survive the termination of this Agreement for any reason.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by affixing the signatures of duly authorized officers.

[Employer]

Empire HealthChoice Assurance, Inc.

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

**SCHEDULE A
TO
ADMINISTRATIVE SERVICES AGREEMENT
WITH**

This Schedule A shall govern the Agreement Period from _____ through _____. For purposes of this Agreement Period, this Schedule shall supplement and amend the Agreement between the Parties. If there are any inconsistencies between the terms of the Agreement including any prior Schedule A, and this Schedule A, the terms of this Schedule A shall control.

Section 1. Effective Date and Renewal Notice

This Agreement Period shall be from 12:01 a.m. _____, 20_____ to the end of the day of _____, 20_____.

Paid Claims shall be processed pursuant to the terms of this Agreement when incurred and paid as follows:

Incurred from _____ through _____ and
Paid from _____ through _____.

Empire shall provide any offer to renew this Agreement at least _____ days prior to the end of an Agreement Period.

Section 2. Broker or Consultant Base Compensation

- ☐ Not Applicable
- ☐ Broker or Consultant Fee is \$_____ per Subscriber per month. Upon receipt of payment from Employer, Empire shall remit such amount to the broker or consultant designated by Employer.

Section 3. Fees

A. Administrative Services Fee

Administrative Services Fee:

Composite \$ _____ per Subscriber per month

Pharmacy Benefits Administrative Services Fee. Administrative Services Fee shall also include a fee that will be charged monthly for services related to pharmacy benefits management including, but not limited to, pharmacy mail services, clinical services, and customer services. Such fee shall be:

\$_____ per Subscriber per month.

Article 3(a) Administrative Services Fee Credit. Empire shall credit Employer Administrative Services Fees for each retroactive deletion up to a maximum of 60 days and such credit shall be provided by no later than at the time of the annual settlement.

B. Optional Program Fees

360° Health Program Fees

☐ Condition Care: \$_____ per Member per month

<input type="checkbox"/>	Complex Care:	\$_____	per Member per month
<input type="checkbox"/>	MyHealth Coach:	\$_____	per Member per month
<input type="checkbox"/>	MyHealth Advantage:	\$_____	per Member per month
<input type="checkbox"/>	Future Moms Options:	\$_____	per Member per month
<input type="checkbox"/>	24/7 Nurseline with HMC supplied promotion:	\$_____	per Member per month
<input type="checkbox"/>	Smoking Cessation:	\$_____	per Member per month
<input type="checkbox"/>	Worksite Wellness:	\$_____	per participating individual per location per day
		\$_____	per location per hour
<input type="checkbox"/>	Staying Healthy Reminders:	\$_____	per Member per month

following the Invoice Due Date, however, if the Invoice Due Date falls on either a banking holiday, a Saturday or a Sunday, the withdrawal shall be made on the following banking day.

☐ Refer to Schedule C of this Agreement.

Section 6. Claims Runout Services

A. Claims Runout Period

Claims Runout Period shall be for the _____ months following the date of termination of this Agreement.

B. Claims Runout Administrative Services Fees

Claims Runout Administrative Services Fees will be equal to the product of the following calculation: the Administrative Services Fee in effect at the time of termination of this Agreement multiplied by (the greater of (1) the total of the last 3 months of Subscriber enrollment; or (2) the average of the last 6 months of Subscriber enrollment) multiplied by 3. Payment is due to Empire by the Invoice Due Date.

Section 7. Other Amendments. The Administrative Services Agreement is otherwise amended as follows:

With respect to the BlueCard fees described in Article 15(e) of this Agreement, the access fees are included in the Administrative Services Fee.

Empire HealthChoice Assurance, Inc.

By: _____

Title: _____

Date: _____

**SCHEDULE B
TO
ADMINISTRATIVE SERVICES AGREEMENT
WITH**

For purposes of this Agreement Period, this Schedule B shall supplement and amend the Agreement between the Parties.

SERVICES INCLUDED IN THE ADMINISTRATION FEE IN SECTION 3A OF SCHEDULE A

Management Services:

- Empire standard Benefits and administration:
 - Empire definitions, and exclusions
 - Empire complaint and appeals process
 - Claims incurred and paid as provided in Schedule A
 - Accumulation toward plan maximums beginning at zero on effective date
 - Empire Claim forms
 - Standard ID card
 - Standard Explanation of Benefits
- Acceptance of electronic submission of updated eligibility information
- Preparation of Benefits Booklet (accessible via internet)
- Information for ERISA 5500
- Account reporting – standard data reports
- Plan Design consultation
- Employer eServices
 - Add and delete Members
 - Download administrative forms
 - View Member Benefits and request ID cards
 - View eligibility
 - View Claim status and detail

Claims and Customer Services:

- Claims processing services
- Coordination of Benefits
- Subrogation
- Medicare crossover processing
- Complaint and appeals processing
- Employer customer service, standard business hours
- Member customer service, standard business hours
- 1099s prepared and delivered to Providers
- NYHCRA (New York Health Care Reform Act) and other legislative reporting requirements
- Member eServices

Prescription Benefit Services through PBM

- Mail Order pharmacy
- Specialty Pharmacy Services
- Prescription eServices
 - Pharmacy locator
 - Online formulary
- Point of sale claims processing
- Mail order claims processing
- Mail order call center with toll free number
- Mail order regular shipping and handling
- Standard management reports
- Ad hoc reports (subject to additional programming charge if required)
- Concurrent Drug Utilization Review (DUR) programs
- Retrospective DURs
- Administrative override (i.e., vacation, lost, stolen or spilled medications)
- Clinical review
- Pharmacy help desk with toll free number
- Pharmacy audits (desk and onsite; routine, in depth or focused)

Health Care Management and 360° Health Services:

- Health Care Management
 - Precertification, concurrent and retrospective review
 - Utilization management
 - Case management
 - Empire Medical Policy
 - Neonatal Intensive Care Unit management (onsite provided where available)
- SpecialOffers
- HealthCare Advisor
- Care Comparison (where available)
- Transplant services – Blues Distinction
- Healthy Living Newsletter (available online)
- MyHealth (Member Portal)
 - Health IQ

- MyHealth Record
- Online Communities
- 360° Health Services (EPO/POS/PPO Plans)
 - 24/7 NurseLine (without Empire promotion)
 - Future Moms Maternity Program
 - Comprehensive Care Unit

Networks:

- Access to networks
 - Provider Network
 - Mental Health/Substance Abuse Network
 - Coronary Services Network
 - Human Organ and Tissue Transplant Network
 - Complex and Rare Cancer Network
 - Bariatric Surgery Network
- Cost Management/Quality improvement program
 - Credentialing
 - Hospital audit program
 - Empire standard claims bundling edits
- Empireblue.com Provider directory
- BlueCard Program / Out-of-Area discounts (where applicable)

Billing and Banking:

- Summary and detailed billing and Claims (electronic)
- Financing arrangements
 - Prorated Administrative Services Fees for new hires

OPTIONAL SERVICES

☐ **360° Health – HMO/POS/PPO Plans**

- Condition Care Core Program – Asthma, Chronic Obstructive Pulmonary Disease, Congestive Heart Failure, Coronary Artery Disease and Diabetes
- Condition Care Options
 - ☐ Vascular-at-risk
 - ☐ Low back pain
 - ☐ Musculoskeletal
 - ☐ Oncology
 - ☐ Chronic Kidney Disease (pre-ESRD)
 - ☐ End Stage Renal Disease
- MyHealth Coach
 - ☐ Gold Level
 - ☐ Platinum Level

- MyHealth Advantage
 - ☐ Silver Level
 - ☐ Gold Level
 - ☐ Platinum Level
- Future Moms Options
 - ☐ Preconception Planning
 - ☐ Parenting
- 24/7 NurseLine
 - ☐ Non-utilization-based program with Empire supplied promotion
- Worksite Wellness
 - ☐ Well Advisor
 - ☐ Health Seminars
 - ☐ On-site delivery
 - ☐ Tele-web Cast
 - ☐ Health Risk Assessments
 - ☐ Mail-based delivery option
 - ☐ Onsite delivery option
 - ☐ Fall Season Influenza Vaccinations
 - ☐ Stress Management through Therapeutic Massage
 - ☐ Health Screenings with Aggregate Summary Reporting
 - ☐ Know Your Numbers
 - ☐ Know Your Numbers Plus
 - ☐ Blood Pressure Screening
 - ☐ Total Cholesterol
 - ☐ BMI – Body Mass Index
 - ☐ Total Cholesterol & High Density Lipids
 - ☐ Weight Management Screening - BMI, Body Fat and Hip to Waist Ratio
 - ☐ Body Fat Screening
 - ☐ Diabetes Risk Assessment with Blood Pressure and BMI
 - ☐ Lipid Panel
 - ☐ Lipid Panel with Blood Pressure and BMI

OTHER OPTIONAL SERVICES

- ☐ Personalized Claim form overprinted with name and logo
- ☐ Personalized ID card overprinted with name and logo
- ☐ Personalized application overprinted with name and logo
- ☐ Electronic submission of eligibility information in HIPAA-compliant format
- ☐ Verification of dependent eligibility
 - ☐ Empire conducts annual verification of dependent eligibility (age 19 and over)
 - ☐ Empire conducts semi-annual verification of dependent eligibility
 - ☐ Empire conducts verification of dependent eligibility as follows: _____
- ☐ Non-standard approach to Coordination of Benefits
- ☐ Non-standard benefit design
 - ☐ group specific exclusions

- ☐ mandated benefit exclusions
- ☐ benefit limitations/maximums
- ☐ Deductible accumulation provided
 - ☐ Calendar Year accumulation
- ☐ Out of Pocket accumulation provided
 - ☐ Calendar Year accumulation
- ☐ Health Reimbursement Account administration
- ☐ Health Incentive Account administration
- ☐ Health Savings Account administration
- ☐ Creditable Prescription Drug Coverage Assistance
- ☐ Other

Empire HealthChoice Assurance, Inc.

By: _____

Title: _____

Date: _____

SCHEDULE C
TO ADMINISTRATIVE SERVICES AGREEMENT
WITH

This Schedule C, which describes the bank account method by which Employer will fund Paid Claims and other charges agreed to by the Parties under this Agreement and the billing and banking method. For purposes of this Agreement Period, this Schedule shall supplement and amend the Agreement between the Parties. If there are any inconsistencies between the terms of the Agreement and this Schedule C, the terms of this Schedule C shall control.

Sub-Account Method

Empire will assist Employer in establishing and maintaining a bank account ("Sub-Account") in the Employer's name at a bank designated by Empire. Employer agrees to execute all documents necessary for Empire and the designated bank to administer the Sub-Account and to provide Empire and the designated bank access to the Sub-Account, including the authority to issue stop payment on checks. The Sub-Account shall be in compliance with the following:

- ☐ Unless otherwise agreed to by the Parties, all Paid Claims, and other charges consistent with the terms of the Agreement shall be paid from the designated Sub-account. Empire will initiate ACH demand debit transactions to withdraw any amounts due under this Agreement by the Invoice Due Date.
- ☐ Unless otherwise agreed to by the Parties, all Paid Claims, Administrative Services Fees, and other charges consistent with the terms of the Agreement shall be paid from the designated Sub-account. Empire will initiate ACH demand debit transactions to withdraw any amounts due under this Agreement by the Invoice Due Date.

Empire or the designated bank will provide Employer [daily/weekly] notice of the total dollar amount of checks [issued/paid] on the Sub-Account. Empire or the designated bank shall also provide a monthly notice that will contain information about each check, including the date that each check was [issued/paid]. In addition, Empire shall provide an itemization of the charges deducted from the Sub-Account and any credits to the Sub-Account. Employer acknowledges and agrees that any bank charges or service fees assessed by the bank for the maintenance of the Sub-Account will not be charged to Employer, except as otherwise provided in Article 8 of this Agreement.

Employer agrees that it will, at all times, have sufficient funds available in the Sub-Account to satisfy its obligations under this Agreement. Should Employer fail to provide sufficient funds to satisfy its obligations, Empire shall not have an obligation to make its own funds available for the payment of such checks.

Billing and Banking

Empire shall provide the Employer:

- An estimate of Claims incurred but not paid within an Agreement Period
- An annual settlement report no later than 6 months following the end of an Agreement Period

If the annual settlement report indicates that Empire owes Employer money, Empire shall pay or credit the Employer immediately following the reconciliation. If the annual settlement report indicates that Employer owes Empire money, Empire shall provide Employer with an invoice and Employer shall pay any amounts due by the Invoice Due Date.

Empire HealthChoice Assurance, Inc.

By: _____

Title: _____

Date: _____

A note about our binders and tabs: Our binders and tabs are made from Premium Grade polypropylene, which is an environmentally friendly material. Polypropylene is produced without using water and no harmful emissions are released.

Additionally, Polypropylene is:

- A strong, non-toxic, durable material
- 100% recyclable and biodegradable
- Free from chlorine and harmful additives

Since Polypropylene is up to 35 percent lighter than many traditional plastics, this helps to reduce transportation costs and the output of carbon dioxide. In a world where more companies are increasingly aware of the need to reduce our environmental impact, Polypropylene is considered the natural choice.



Green is more than a color! Being green saves trees and lowers costs. Binder contents can be requested electronically. Consider requesting our eBinders, e-zines and microsities instead!

Health, Dental, Vision, and EAP products and services are offered by Empire HealthChoice HMO, Inc. and/or Empire HealthChoice Assurance, Inc., licensees of the Blue Cross and Blue Shield Association, an association of independent Blue Cross and Blue Shield plans.