

PRESCRIPTION DRUG BENEFIT ADMINISTRATION AGREEMENT

This Prescription Drug Benefit Administration Agreement ("**Agreement**"), effective January 1, 2020 ("**Effective Date**"), is between Monroe County School Board, a(an) a body corporate, ("**Client**"), and OptumRx, Inc., a California corporation ("**OptumRx**"). The Services will be implemented on the Effective Date so long as this Agreement is signed by Client and received by August 1, 2019.

1. PRESCRIPTION DRUG BENEFIT SERVICES

- 1.1 **Engagement.** Client engages OptumRx as its exclusive provider of the prescription drug benefit services set forth in this Agreement, including the attached Exhibits (the "**Services**").

2. TERM AND TERMINATION

- 2.1 **Term.** The initial term of this Agreement begins on the Effective Date and expires on December 31, 2022 ("**Initial Term**"). Thereafter, this Agreement automatically renews for successive twelve (12)-month renewal periods on each applicable anniversary date (each a "**Renewal Term**"), unless either party provides the other party with written notice of non-renewal at least ninety (90) days before the end of the Initial Term or a Renewal Term, as applicable. All Renewal Terms and the Initial Term shall collectively be referred to herein as the "**Term**".
- 2.2 **Termination.** This Agreement may be terminated as set forth in this section or as specified elsewhere in this Agreement.
- 2.2.1 **For Cause.** Either party may terminate this Agreement following a material breach by the other party. The non-breaching party shall notify the breaching party of the breach and the breaching party shall have thirty (30) days (the "**Cure Period**") to cure the breach. If the breaching party fails to cure the breach within the Cure Period, then the non-breaching party may terminate the Agreement upon written notice to the breaching party.
- 2.2.2 **For Convenience.** After the first year of the Initial Term, either party may terminate this Agreement without cause by providing at least ninety (90) days' prior written notice to the other party.
- 2.3 **Effect of Termination.** Termination of this Agreement will not affect the rights and obligations of the parties arising out of any transactions occurring before the effective date of the termination, except as follows: (a) if Client improperly terminates this Agreement or if OptumRx terminates this Agreement for default by Client prior to the end of the Initial Term or any Renewal Term, then OptumRx will retain all pending or future Rebates payable under this Agreement; or (c) as otherwise specified in **Exhibit C** (Compensation).
- 2.4 **Transition Assistance Following Termination.** Upon notice of termination of this Agreement, OptumRx will, to the extent applicable, provide Client or its designee with up to twelve (12) transmissions, in the aggregate, of the following files in OptumRx's standard format: (a) existing Home Delivery Pharmacy or Specialty Pharmacy open refill transfer files for Members, based upon Client's most current eligibility files; (b) Client's Claims history file; (c) Client's prior authorization files; and (d) Client's accumulator files. OptumRx shall be only be responsible to process those Claims that are for Prescription Drugs dispensed before the termination date and received by OptumRx from Network Pharmacies no later than thirty (30) days after the termination date and from Members no later than sixty (60) days after the termination date.

3. COMPENSATION AND BILLING

- 3.1 **Compensation.** The parties agree to the rates, fees, reimbursements and guarantees set forth on **Exhibit C** (Compensation) for the Services. In addition to the Compensation, Client will pay OptumRx any additional compensation that is authorized elsewhere in this Agreement.
- 3.2 **Payment Terms.** OptumRx will invoice Client for Prescription Claims (with supporting detail) and for administrative fees at semi-monthly billing cycles that run from the 1st through the 15th and from the 16th through the end of the month. Client will pay OptumRx all undisputed invoiced amounts, via electronic fund transfer or other reliable means, no later than two (2) business days after Client receives the invoice and supporting Claims detail file ("**Payment Due Date**").
- 3.3 **Invoice Dispute.** Client may dispute any amounts on invoices that Client believes to be in error no later than sixty (60) days after the date of the disputed invoice. If Client fails to dispute an invoice within such time period, Client will be deemed to have accepted such charges. This section will not preclude Client's right to audit described in section 4.2 (Client Audits).
- 3.4 **Payment Default.**
- 3.4.1 Late Payments and Late Fees. Any undisputed amounts Client owes under this Agreement that are not paid by the Payment Due Date will bear interest from the Payment Due Date until paid in full at the annual rate of interest equal to the lesser of two percentage points (2%) above the prime interest rate determined by the U.S. Federal Reserve Bank or the maximum interest rate then permitted by law.
- 3.4.2 Payment Default Remedies. If Client fails to pay any amount due on a validly submitted invoice for which no objection is filed in good faith in accordance with section 3.3 (Invoice Dispute) within two (2) business days after the applicable Payment Due Date and fails to make such payment within three (3) business days after OptumRx's notice to Client of such non-payment (which notice may occur via email and/or telephone call), then OptumRx, in its sole discretion, shall have the non-exclusive and cumulative options in addition to its remedies under this Agreement, at law or in equity, to: (i) suspend performance of any or all of OptumRx's obligations under or in connection with this Agreement, including processing of Prescription Claims, (ii) require Client to pre-fund a pharmacy spend account in the amount of two (2) times the average monthly prescription drug spend of Client, (iii) utilize available deposited or escrowed funds, or (iv) immediately terminate this Agreement upon notice to Client.
- 3.5 **Right of Recoupment.** OptumRx may withhold, deduct, net or recoup from future amounts owed or reimbursable to Client under this Agreement any undisputed amounts Client owes to OptumRx that are outstanding beyond their applicable Payment Due Date.
- 3.6 **Payment from Members.** Except as permitted by Laws, OptumRx will not seek payment from a Member for Covered Prescription Services or amounts due to OptumRx from Client, other than Cost-Sharing Amounts, returned check fees or collection costs. OptumRx will contractually require each Network Pharmacy to comply with the requirements of this section. If Client requests, and OptumRx agrees to, an increased "ceiling" of the maximum allowable Cost-Sharing Amount that a Member is allowed to have outstanding before a Prescription Drug is dispensed at OptumRx's Home Delivery or Specialty Pharmacies, then Client is responsible for Cost-Sharing Amounts that are not paid by Members.

4. MAINTENANCE OF RECORDS; AUDITS

4.1 **Records.** Each party will retain records directly related to the performance of the Services for a period of ten (10) years following the date of their creation or for a longer time period, if required by Laws.

4.2. **Client Audits.**

4.2.1. Client, at its own expense, may audit OptumRx once each contract year to determine whether OptumRx is fulfilling the terms of this Agreement. Client must notify OptumRx in writing of its intent to audit and such notice constitutes authorization for OptumRx to disclose Client-specific information, including Member information and PHI, to the auditor. The place, time, type, scope, and duration of all audits must be mutually agreed upon by the parties. No audits will be initiated or conducted during December or January because of the demands of the annual renewal and implementation period. The audit scope will cover a period not to exceed twelve (12) months, unless the audit relates to a financial guarantee for a period exceeding twelve (12) months, in which case the audit scope will be limited to the term of the financial guarantee. Requests for an audit must be submitted within six (6) months of the end of the period to be audited. Audits may be conducted for up to twenty-four (24) months immediately after termination of this Agreement, upon providing OptumRx with ninety (90) days' notice after the termination effective date. Once Client has performed an audit for a particular audit period (whether limited or full scope), that audit period will be closed, and Client may not perform any further audits for that audit period. Client may audit OptumRx through a mutually agreed upon audit firm, so long as the auditor executes a nondisclosure agreement with OptumRx and Client does not compensate the audit firm, in whole or in part, on a basis that is contingent upon the results of the review of OptumRx's records or the contents of the audit report.

4.2.2. OptumRx will provide Client's auditor with access to all relevant Client-specific information reasonably necessary to conduct the audit, including all applicable Prescription Claims, and, in the case of a Rebate audit, access to OptumRx's top five (5) rebate agreements or rebate agreements that account for at least seventy-five percent (75%) of the Client's total rebate revenue generated per year, whichever is less. Any audit of Rebate agreements must be conducted on-site by a mutually agreed upon third party auditor and Client's auditor may not copy (through handwritten notes or otherwise) or retain contracts or related documents provided by OptumRx during such audit. Client's auditor may take and retain notes to the extent necessary to document any identified errors, and such notes are subject to review by OptumRx to ensure compliance with this section.

4.2.3. Client or its auditor may send OptumRx up to three hundred (300) suspected erroneous Prescription Claims for OptumRx to perform additional research prior to providing OptumRx with its audit report. Client or its auditor shall provide an audit report in writing to OptumRx within forty-five (45) calendar days after the end of the audit. Such audit report will contain a representative sample of Prescription Claims suspected to be erroneous or the entire suspected error population, as well as the dollar amount associated with any suspected errors. If Client or its auditor provides OptumRx with the entire suspected error population then OptumRx will review a statistically valid sample of the Prescription Claims and provide Client or its auditor with its response within thirty (30) calendar days of OptumRx's receipt of the audit report. Client or its auditor shall have thirty (30) calendar days to respond to OptumRx's response. If Client or its auditor fails to provide an initial audit report to OptumRx within forty five (45) calendar days of the end of the audit or fails to respond to OptumRx's response to the audit report within thirty (30) calendar days, then the audit will be considered closed. Any payment made, whether by OptumRx or

Client, based upon audit findings will be made within thirty (30) days following Client and OptumRx agreeing to the audit results, as reflected in an executed audit settlement agreement.

5. DATA PROTECTION AND OWNERSHIP

5.1 **Data Ownership.** Client owns and will continue to own Client Information and OptumRx owns and will continue to own OptumRx Information, despite data use or possession by the other party or its subcontractor or vendor. Despite any contrary provisions in this Agreement, during the Term and for a reasonable period after termination of this Agreement, Client grants OptumRx the right to use and disclose to third parties Member drug and related medical data to perform OptumRx's responsibilities under this Agreement and to use in OptumRx's research, cost analyses, and cost comparison studies. All research, cost analyses, cost comparisons and other similar studies or reports OptumRx conducts or prepares, either directly or through any of its affiliates, will be OptumRx's sole and exclusive property. OptumRx may aggregate this information with that of other clients and de-identify it to protect Client and Member confidentiality and more generally for use in research and other permitted uses. Intellectual Property shall be the sole property of the party developing such Intellectual Property.

5.2 **Use of Name.** The parties agree not to use each other's name, logo, service marks, trademarks or other identifying information without the written permission of the other, except for use to the extent necessary for OptumRx to carry out its obligations under this Agreement.

5.3 Confidentiality

5.3.1 Definitions.

5.3.1.1. **"Confidential Information"** means: (a) the terms of this Agreement and all Client Information and OptumRx Information; (b) all material, non-public information of Discloser which Recipient knows or should reasonably be expected to know is confidential or proprietary to Discloser; (c) any information that Discloser designates as confidential or proprietary; and (d) any non-public business plans, marketing plans and strategies, financial and operational plans, business methods and practices, customer or prospect information, supplier or vendor information, financial information, personnel information as well as software, technology, inventions (whether or not patentable) that Discloser owns, licenses or uses. Confidential Information will not include information that: (i) is already known to Recipient prior to the date of this Agreement; (ii) is generally available to the public, other than as a result of a breach of this Agreement; (iii) becomes available to Recipient from a third party source legally permitted to disclose the information to Recipient without restriction on the disclosure; or (iv) is independently developed by Recipient without reference to, or use of, any of the Discloser's Confidential Information.

5.3.1.2. **"Discloser"** means each party that provides Confidential Information pursuant to this Agreement.

5.3.1.3. **"Recipient"** means each party that receives Confidential Information pursuant to this Agreement.

5.3.1.4. **"Representatives"** means directors, officers, employees, agents, contractors, or advisors of the Recipient.

5.3.2 **Confidentiality Obligations.** Recipient will: (i) hold Confidential Information in confidence and protect it as confidential and proprietary utilizing no less than the degree of care Recipient uses to protect its own similar confidential information; (ii) disclose Confidential Information only to Representatives of Recipient with a legitimate need to know the Confidential Information for the purposes of performing Recipient's obligations pursuant to this Agreement, and who are made aware of this Agreement and bound by appropriate confidentiality obligations; (iii) use Discloser's Confidential Information only as specifically permitted by this Agreement or as otherwise necessary to perform Recipient's obligations pursuant to this Agreement, which, in the case of OptumRx as the Recipient, may include disclosures to comply with Rebate reporting or other data collection, maintenance, security or submission requirements; and (iv) not reverse engineer, disassemble, decompile or create derivative works using Discloser's Confidential Information. Each party is and will remain solely and completely liable and responsible for any breach of this Agreement by its Representatives and will promptly notify the other party if becomes aware of any breach and use reasonable efforts to minimize the damage from the breach. Each party to this Agreement may act at times as a Discloser or as a Recipient, and the terms of this section shall apply accordingly.

5.3.3 **Exceptions to Confidentiality Obligations.** Notwithstanding the foregoing, Recipient may disclose Confidential Information to the extent required or compelled by Laws or a Governmental Authority with competent jurisdiction, on the conditions that Recipient will: (i) give prompt notice to Discloser after learning of the need to disclose (if allowed by Laws); (ii) disclose only that portion of Discloser's Confidential Information that Recipient's legal counsel advises is legally necessary to comply with the Laws or Governmental Authority order; and (iii) reasonably cooperate with Discloser if it objects to the disclosure.

5.4 **Return of Confidential Information.** Upon Discloser's request, Recipient will use commercially reasonable efforts to promptly return or destroy Discloser's Confidential Information within Recipient's possession or control. If Recipient determines that return or destruction of Confidential Information is not feasible, Recipient will notify Discloser and may retain the Confidential Information, on condition that the Confidential Information remains subject to the terms of this section. Recipient may retain a copy of Discloser's Confidential Information for archival purposes or as otherwise required by Laws.

5.5 **Protected Health Information.** The parties will comply with the Business Associate Agreement in **Exhibit D**, which outlines the parties' obligations for use and disclosure of PHI.

5.6 **Equitable Relief.** The parties acknowledge that it would be difficult to measure damages resulting from any breach of their respective obligations in this section, injury from this breach would be impossible to calculate and money damages would be an inadequate remedy. Consequently, in addition to any other rights or remedies available under this Agreement, the parties may seek injunctive and other equitable relief, without bond or other security, for a party's actual or threatened breach of this section. The obligations, rights and remedies of the parties under this section are cumulative and in addition to, and not in lieu of, all obligations, rights or remedies at law or in equity.

6. INDEMNIFICATION; LIMITATION OF LIABILITY; INSURANCE

6.1 **Indemnification.** To the extent permitted by Florida Statute § 768.28, Client and OptumRx ("**Indemnitors**") will defend, indemnify and hold harmless the other party, its affiliates and their respective directors, officers, employees, representatives, agents, successors, successors-in-interest and assigns ("**Indemnitees**") from and against all third party claims, legal or equitable causes of action, suits, litigation, or other process for settling disputes or disagreements, including any of the foregoing processes or procedures in which injunctive or equitable relief is sought (an "**Indemnification Claim**") against an Indemnitee to the extent

arising or resulting from, or attributable to, Indemnitor's material breach of this Agreement or its negligence or intentional misconduct (including fraud), except to the extent the liability results from Indemnitor's negligence, intentional misconduct or breach of this Agreement. Indemnitor will provide prompt notice to Indemnitor upon learning of any occurrence or event that may reasonably be expected to result in an obligation of Indemnitor under this section. Indemnitor's failure to provide prompt notice will not relieve Indemnitor of its obligations under this section, except to the extent that the omission results in a failure of actual notice to Indemnitor and Indemnitor suffers damages because of the failure to notify. In all events, OptumRx's indemnification will not extend to indemnification of Client or the Benefit Plan against any Indemnification Claim that constitutes payment of Benefit Plan benefits. Indemnitor will provide Indemnitor with reasonable information and assistance for Indemnitor to defend such Indemnification Claim, demand, or cause of action.

- 6.2 **Limitation of Liability and Claims.** The parties' liability to each other under this Agreement will not exceed the direct damages caused by breach of this Agreement. The parties will have no liability under this Agreement for any consequential, special, indirect, incidental or punitive damages or lost profits, even if they are aware of the possibility of the loss or damages. In no event may Client or OptumRx make any claim relating to this Agreement later than one (1) year after Client becomes aware (or ought reasonably to have become aware) of the facts giving rise to the alleged claim and in any event, no later than two (2) years after the completion of the particular Services. OptumRx will not be responsible for any claims, losses, or damages sustained as a result of the actions, or failure(s) to act, by any Network Pharmacy, Drug Manufacturer or other pharmaceutical providers or other third party not under control of OptumRx pursuant to this Agreement.
- 6.3 **Insurance Requirements.** Each party will maintain: (a) during and for a reasonable period of time after the Term, reasonable and customary insurance (whether through third party carriers or self-insured arrangements or retentions), as to type, policy limits and other coverage terms, to cover the risks of loss faced by companies similar to the party in size, industry and business operations; and (b) all insurance coverage, bonds, security and financial assurances as Laws may require from time-to-time. OptumRx will maintain sufficient insurance coverage to enable it to meet its obligations created by this Agreement and by Laws, and shall provide proof of such coverage on an annual basis or upon request by Client.

7. MISCELLANEOUS

- 7.1 **Subcontractors.** OptumRx may use its affiliates, vendors or subcontractors to perform the Services. OptumRx will be responsible for the Services to the same extent that OptumRx would have been had it performed those services without the use of an affiliate, vendor or subcontractor.
- 7.2 **Notices.** All notices and other communications required or permitted under this Agreement will be in writing and sent to the addresses set forth below (or at other addresses as specified by a notice). All notices will be deemed to have been received either: (a) when delivered, if delivered by hand or commercial courier, sent by United States registered or certified mail (return receipt requested); or (b) on the next business day, if sent by a nationally recognized commercial overnight courier.

If to OptumRx:

OptumRx, Inc.
1600 McConnor Parkway
Schaumburg, IL 60173-6801
Attention: Vice President, Client Management

Copy to:

OptumRx, Inc.
1600 McConnor Parkway
Schaumburg, IL 60173-6801
Attention: General Counsel

If to Client:

Monroe County School Board
241 Trumbo Road
Key West, FL 33040
Attention: Kathryn Flannery

- 7.3 **Amendment.** Except as may otherwise be specified in this Agreement, this Agreement may be amended only by a dated written instrument executed by a duly authorized person of each party.
- 7.4 **Waiver; Severability.** The invalidity or unenforceability of any term or provision of this Agreement shall in no way affect the validity or enforceability of any other term or provision. The waiver by either party of a breach of any provision of this Agreement shall not operate as or be construed as a waiver of any subsequent breach of such provision
- 7.5 **Assignment.** A party may not assign or transfer this Agreement without the prior written consent of the other party, except that OptumRx may assign this Agreement to any affiliate upon thirty (30) days' notice to Client, so long as OptumRx remains obligated under this Agreement. This Agreement will bind the parties and their respective successors and assigns and will inure to the benefit of the parties and their respective permitted successors and assigns.
- 7.6 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of Florida, venue lying in Monroe County.
- 7.7 **Force Majeure.** If any party is unable to perform any of its obligations under this Agreement because of any cause beyond the reasonable control of and not the fault of the party invoking this section, including any act of God, fire, casualty, flood, earthquake, war, strike, lockout, epidemic, destruction of production facilities, riot, insurrection or material unavailability, and if the non-performing party has been unable to avoid or overcome its effects through the exercise of commercially reasonable efforts, this party will give prompt notice to the other party, its performance will be excused, and the time for its performance will be extended for the period of delay or inability to perform due to such occurrences; provided however, that this clause may not be invoked to excuse a party's payment obligations hereunder. OptumRx shall not be deemed to have failed to meet a performance standard to the extent and proportion that such failure is due to circumstances caused by Client, CMS or other third party and/or is otherwise not within OptumRx's reasonable control. OptumRx will maintain commercially reasonable business continuity and disaster recovery plans.
- 7.8 **Relationship of the Parties; No Third Party Beneficiaries.** The sole relationship between the parties is that of independent contractors. This Agreement will not create a joint venture, partnership, agency, employment or other relationship between the parties. Except for the indemnification and arbitration obligations in this Agreement, nothing in this Agreement will be construed to create any rights or obligations except among the parties and no person or entity will be regarded as a third party beneficiary of this Agreement.

- 7.9 **Survival.** Any term of this Agreement that contemplates performance after termination of this Agreement will survive expiration or termination and continue until fully satisfied, including section 5 (Data Protection and Ownership), which will survive so long as the information is Confidential Information or the data is proprietary to either party or its successors, successors-in-interest or assigns, and section 6 (Indemnification; Limitation of Liability; Insurance), which will survive indefinitely.
- 7.10 **Dispute Resolution.** If a dispute occurs between the parties, the complaining party shall provide written notice of the dispute. The parties, through their respective executive officers shall then meet to attempt to resolve the dispute in good faith before pursuing litigation. If the parties' executive officers do not resolve the dispute within thirty (30) days after the written notice, then litigation or mediation may be commenced.
- 7.11 **Compliance with Laws.** Each party will comply with all Laws applicable to its respective business and the performance of its obligations under this Agreement. Each party will maintain all necessary licenses and permits required in connection with the performance of the Services under this Agreement or will arrange for the provision of such Services by others that maintain such licenses and permits. If any Governmental Authority or Laws require that this Agreement be amended, including to incorporate specific required terms, OptumRx may amend this Agreement to comply with this requirement by providing thirty (30) days' prior notice to Client. This amendment will become effective at the end of the thirty (30)-day notice period or a shorter period if necessary to comply with the requirement, unless Client can demonstrate conclusively in writing that the amendment is not necessary to comply with the Governmental Authority or Laws. Client acknowledges that OptumRx does not provide legal, regulatory or tax advice to Client.
- 7.12. **Government Program Reporting.** To the extent applicable, the parties acknowledge and agree that any discount, rebate, Manufacturer Administrative Fee, credit or allowance provided to Client under this Agreement and any rebate retained by OptumRx under this Agreement shall constitute and shall be treated as a discount, within the meaning of 42 U.S.C. §1320a-7b(b)(3)(A), provided to Client against the price of Prescription Drugs provided under this Agreement. To the extent required by Laws or contractual commitment, Client agrees to fully and accurately disclose and report any such discount, rebate, Manufacturer Administrative Fee, credit or allowance to Medicare, Medicaid or other government health care programs as a discount against the price of the Prescription Drugs provided under this Agreement. Upon Client's request, OptumRx will provide additional information necessary to support Client's government reporting requirements.
- 7.13. **Taxes and Assessments.**
- 7.13.1. **Payment of Taxes and Expenses.** If any Taxes are assessed against OptumRx as a claim administrator in connection with the Services, including all topics identified in section 7.3 (Waiver; Severability), Client will reimburse OptumRx for the Client's proportionate share of the Taxes (but not Taxes on OptumRx's net income). "**Tax**" means a charge imposed, assessed or levied by any federal, state, local or other governmental entity. OptumRx has the authority and discretion to reasonably determine whether the Tax should be paid or disputed. Client also will reimburse OptumRx for a proportionate share of any cost or expense reasonably incurred by OptumRx in disputing the Tax, including costs and reasonable attorneys' fees and any interest, fines or penalties relating to the Tax, unless caused by OptumRx's unreasonable delay or determination to dispute the Tax.
- 7.13.2. **Tax Reporting.** If the reimbursement of any benefits to Members in connection with this Agreement is subject to Benefit Plan or employer-based tax reporting requirements, Client will comply with these requirements.

7.13.3. **State and Federal Surcharges, Fees and Assessments.** The Benefit Plan will remain responsible for state or federal surcharges, assessments or similar Taxes imposed on the Benefit Plan or OptumRx, including those imposed pursuant to The Patient Protection and Affordable Care Act of 2010.

7.14. **Integrated Agreement; Interpretation; Execution.** This Agreement, with its exhibits, constitutes the final and complete expression of the terms of the agreement between the parties regarding the subject matter of this Agreement. This Agreement replaces any prior written or oral communications or agreements between the parties regarding its subject matter. The language in this Agreement will be construed in accordance with its fair meaning, as if prepared by all parties and not strictly for or against any party. When approval of a party is required under this Agreement, the approval will not be unreasonably withheld or delayed. For all terms in this Agreement, unless otherwise specified: (a) a term has the meaning assigned to it in the Schedule of Definitions attached as **Exhibit A** or defined elsewhere in this Agreement; (b) "or" is not exclusive; (c) "including" means including without limitation; (d) "party" and "parties" refer only to a named party to this Agreement; (e) any reference to an agreement, instrument or statute means that agreement, instrument or statute as from time-to-time amended, modified or supplemented and any applicable corresponding provisions of successor statutes or regulations; and (f) an electronic signature of this Agreement, or a signature on a copy of this Agreement that a party receives by facsimile, email or other means, is binding as an original, and the parties will treat an electronic or photo copy of this signed Agreement as an original. The headings in this Agreement are provided for convenience only and do not affect its meaning. The parties may sign this Agreement in two (2) or more counterparts, and as so signed this Agreement will constitute one and the same Agreement binding on the parties.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]


The undersigned duly authorized representatives have executed this Agreement as of the date indicated below.

OptumRx, Inc.

1600 McConnor Parkway
Schaumburg, IL, 60173-6801

Monroe County School Board

241 Trumbo Road
Key West, FL 33040

By:  13B02EB7E323416
Name: Jeffrey Grosklags
Title: Chief Financial Officer
Date: 7/19/2019
Agreement No.: #00572803.0

By: _____
Name: _____
Title: _____
Date: _____

EXHIBITS. The Exhibits listed below and attached hereto are incorporated into and made part of this Agreement:

Exhibit A, Schedule of Definitions
Exhibit B, PBM Services
Exhibit C, Compensation
Exhibit D, Business Associate Agreement
Exhibit E, Performance Guarantees

EXHIBIT A

SCHEDULE OF DEFINITIONS

Capitalized terms used in this Agreement are defined below or elsewhere in this Agreement.

“AWP” means the average wholesale price, as reflected on the Pricing Source, of a Prescription Drug or other pharmaceutical products or supplies based on the eleven (11)-digit National Drug Code (NDC) of the Prescription Drug on the date dispensed. OptumRx will rely on the Pricing Source as updated by OptumRx no less frequently than every seven (7) days to determine AWP for purposes of establishing the pricing provided to Client under this Agreement. OptumRx will not establish AWP, and OptumRx will have no liability to Client arising from use of the Pricing Source.

“Authorized Generic Drug Claims” means a drug with a unique NDC that is the bioequivalent of a Brand Drug that is under patent and which is manufactured by the patent holder or affiliate or a third party under a license, whether or not identified as a Brand Drug or Generic Drug by the manufacturer or Pricing Source. Authorized Generics are considered Generic Drugs for the purposes of this Agreement and shall be priced in accordance with the Generic pricing including Generic guarantees set for in this Agreement.

“Benefit Plan(s)” means the benefit plan(s) indicated on the Plan Specifications that are sponsored by Client and that include the Covered Prescription Services for which OptumRx has agreed to provide the Services under this Agreement.

“Brand Drug” means a single-source or multi-source Prescription Drug designated by OptumRx as a “Brand Drug” based upon factors including indicators included in the Pricing Source. A drug with a Medi-Span code of “Y” on the date dispensed will be considered a generic; all other Medi-Span codes (“M”, “N”, “O”) will be considered brands. House generics (claims with the DAW 5) are considered generic.

“Client Information” means (a) all information Client provides to OptumRx, including information about Benefit Plan(s), Plan Specifications, Members and Client’s other services, products and plans; (b) any information provided to OptumRx by a Governmental Authority or other third party about Client or Benefit Plan(s); (c) information OptumRx generates that relates directly to OptumRx performing Services for Client under this Agreement, exclusive of information OptumRx generates for use in its business generally or for use with multiple clients; and (d) all Client Intellectual Property and related derivative works. Client Information means information in any form. Client Information does not include information that is: (i) generated by or relates to OptumRx or its business, operations or activities; (ii) relates to another OptumRx client or contractor; (iii) generated or used by OptumRx other than in performing Services under this Agreement; or (iv) information disclosed, sold, or otherwise provided to third parties where the Client Information cannot be identified and has been aggregated with other client information.

“Clinical Documentation Form” means the document describing the clinical services elected by Client to be provided by OptumRx as mutually agreed to by the parties. OptumRx may update standard clinical programs from time to time.

“Compound Prescription Drug” means a Prescription Drug that is prepared by a pharmacist who mixes or adjusts one (1) or more Prescription Drugs to customize a medication to meet a Member’s individual medical needs.

“Cost-Sharing Amount” means the coinsurance, copay, or other cost-sharing amount that a pharmacy may collect from a Member for Covered Prescription Services in accordance with the Member’s Benefit Plan.

“Covered Prescription Services” means Prescription Drugs or other pharmaceutical products, services or supplies dispensed by a pharmacy to a Member for which coverage is provided in accordance with the Member’s Benefit Plan.

“Drug Manufacturer” means an entity that manufactures, sells, markets or distributes Prescription Drugs; provided “Drug Manufacturer” shall not include wholesalers engaged in the sale and distribution of Prescription Drugs.

“ERISA” means the Employee Retirement Income Security Act, as amended, 29 U.S.C. § 1001 *et seq.*

“FDA” means the United States Food and Drug Administration or any successor Governmental Authority.

“Formulary” means the list of Prescription Drugs or other pharmaceutical products, services or supplies as developed by OptumRx and approved and adopted by Client for use with and as covered by the Benefit Plan(s).

“Generic Drug” means a Prescription Drug, whether identified by its chemical, proprietary or non-proprietary name, that is therapeutically equivalent and interchangeable with a Prescription Drug having an identical amount of the same active ingredient(s). For purposes of this Agreement, the Generic Drug determination is made based upon factors including indicators included in the Pricing Source. A drug with a Medi-Span code of "Y" on the date dispensed will be considered a generic; all other Medi-Span codes ("M", "N", "O") will be considered brands. House generics (claims with the DAW 5) are considered generic.

“Governmental Authority” means the Federal government or any state or local government or any department, agency, authority, or instrumentality thereof (including any court) that regulates the applicable party's activities or operations.

“Home Delivery Pharmacy” means a facility that is duly licensed to operate as a pharmacy and dispense Prescription Drugs via postal or commercial courier delivery to individuals, including Members. Home Delivery Pharmacy includes pharmacies that OptumRx, or its affiliates, owns or operates.

“House Generic” means a Claim dispensed with a DAW Code of 5. House Generics shall be considered Generic Drugs and shall be priced in accordance with the Generic Drug pricing, including Generic Drug guarantees, set forth in the compensation exhibit of this Agreement.

“Intellectual Property” means any patent, invention, discovery, know-how, moral, technology, software, copyright, authorship, trade secret, trademark, trade dress, service mark, confidentiality, proprietary, privacy, intellectual property or similar rights (including rights in applications, registrations, filings and renewals) that are protected or legally enforceable under state or federal common laws or statutory laws or laws of foreign jurisdictions.

“Laws” means all applicable common law and any and all state, federal or local statutes, ordinances, codes, rules, regulations, orders, procedures, standards, directives, guidelines, instructions, bulletins, policies or requirements enacted, promulgated, or applied by any Governmental Authority, as amended, replaced, interpreted or enforced by any Governmental Authority.

“Limited Distribution Drugs” means Specialty Drugs which are distributed to either one (1) or a very limited number of pharmacies, distributors or wholesalers.

“MAC” means the maximum allowable cost of a Prescription Drug as specified on a list established by OptumRx. OptumRx may have multiple MAC lists, each of which is subject to OptumRx's periodic review and modification in its sole discretion.

“Manufacturer Administrative Fees” means the administrative fees paid by Drug Manufacturers to OptumRx for OptumRx's provision of Rebate administration services.

“Member” means an individual who is eligible to receive Covered Prescription Services as identified in Client's eligibility data.

“NCPDP” means that National Counsel for Prescription Drug Programs.

“NDC” means the eleven (11) digit National Drug Code that is the identifying Prescription Drug number maintained by the FDA.

“Network Pharmacy” means a retail pharmacy, Home Delivery Pharmacy, Specialty Pharmacy or other facility that is duly licensed to operate as a pharmacy and is owned or operated by OptumRx (or an affiliate) or has entered into a Network Pharmacy Agreement.

“Network Pharmacy Agreement” means the agreement between a Network Pharmacy and OptumRx or Client to provide Covered Prescription Services.

“OptumRx Information” means: (a) all information OptumRx provides to Client regarding OptumRx or its P&T Committee, OptumRx’s formularies, Network Pharmacies or Pharmacy Network, services or products OptumRx offers directly or indirectly, and all information generated in OptumRx’s business, including information licensed from subcontractors, vendors and/or affiliates and information received or generated by OptumRx’s Home Delivery or Specialty Pharmacies in connection with dispensing Prescription Drugs; and (b) all OptumRx Intellectual Property and related derivative works. OptumRx Information means information in any form. OptumRx Information does not include information that relates exclusively to Client or its business.

“P&T Committee” means the pharmacy & therapeutics committee formed by OptumRx or Client that reviews a legend drug for inclusion on the Formulary and creates criteria, policies and procedures for such inclusion including, but not limited to, clinically-appropriate quantity restrictions, step therapies and prior authorizations.

“Protected Health Information” or “PHI” shall be defined as set forth in **Exhibit D** (Business Associate Agreement).

“Plan Specifications” means the Benefit Plan elements and coverage rules adopted by Client as provided to OptumRx using the OptumRx benefit design template and approved in writing by both parties. The OptumRx benefit design template as so approved shall constitute a “plan document” that is a constituent component of Client’s Benefit Plan.

“Prescription Claim” or “Claim” means a single request for payment for a Covered Prescription Service.

“Prescription Drug” means an FDA approved drug required to be dispensed or administered only by prescription from a licensed health care professional in accordance with Laws.

“Pricing Source” means the Medi-Span Prescription Pricing Guide.

“Rebate” means any discount, rebate, price protection amount or Manufacturer Administrative Fee that OptumRx receives from Drug Manufacturers, in OptumRx’s capacity as a group purchase organization for Client, that is contingent upon and related directly to Member use of a Prescription Drug during the Term. “Rebate” does not include any discount, price concession or other direct or indirect compensation OptumRx receives for the purchase of a Prescription Drug or for the provision of any product or service..

“Single Source Generic Drugs” are Generic Drugs that have either recently come off patent and do not generate discounts traditionally delivered by Generic Drugs, or have an exclusive Drug Manufacturer. “Non-MAC Generic Drugs” are Generic Drugs where market conditions do not allow for MAC prices to be used. Single Source Generic Drugs and Non-MAC Generic Drugs will be included in the overall Generic Drug guarantees.

“Specialty Drug List” means the list(s) of Specialty Drugs. The Specialty Drug List is maintained and updated by OptumRx from time to time. The Specialty Drug List(s) applicable to the Plan shall be provided to Client upon request.

“Specialty Drugs” means the Prescription Drugs that include at least one (1) or more of the following: (a) biotechnology drugs; (b) orphan drugs used to treat rare diseases; (c) typically high-cost drugs; (d) drugs administered by oral or injectable routes, including infusions in any outpatient setting; (e) drugs requiring on-going frequent patient management or monitoring or focused, in-depth Member education; (f) drugs that require specialized coordination, handling and distribution services for appropriate medication administration; (g) infusion or injectable drugs professionally administered by a healthcare professional or in a healthcare setting (but excluding supplies or the cost of administration); or (h) therapy requiring management and/or care coordination by a healthcare provider specializing in the Member's condition. Specialty Drugs shall not include any Prescription Drugs that: (x) require nuclear pharmacy sourcing; (y) are preventive immunizations; or (z) are administered only in the inpatient setting.

“Specialty Pharmacy” means a facility that is duly licensed to operate as a pharmacy and dispense Specialty Drugs. Specialty Pharmacy includes pharmacies that OptumRx, or its affiliates, owns or operates.

“Usual and Customary Charge” means the price, including all applicable customer discounts that a cash paying customer pays a Network Pharmacy for Prescription Drugs as reported to OptumRx by such Network Pharmacy.

“Zero Balance Claims” means Paid Claims where the gross cost associated with the covered product, including sales tax, is paid in full by the Member and results in no amount due to PBM from the Plan Sponsor.

EXHIBIT B

PBM SERVICES

Client has engaged OptumRx and OptumRx has agreed to provide the Services set forth in this Exhibit.

1. CORE PRESCRIPTION DRUG BENEFIT SERVICES

1.1 Administrative Support

- 1.1.1 General. OptumRx will provide administrative services to and support the Benefit Plan(s) in accordance with Client's most recent Plan Specifications and as set forth in this Agreement.
- 1.1.2 Reporting. OptumRx will make available to Client OptumRx's standard online reports.
- 1.1.3 Client Benefit Plan Responsibility. Client retains complete and exclusive discretionary authority over, and is ultimately responsible for, all aspects of the administration, management and operation of the Benefit Plan(s), including the authority to delegate such responsibility to OptumRx or other third party service providers, and Benefit Plan interpretation. Client or its delegate (and not OptumRx) is the "administrator" (as defined in ERISA, to the extent applicable) of the Benefit Plan(s) and will comply fully with ERISA, if applicable.
- 1.1.4 OptumRx Benefit Plan Responsibility. Client acknowledges that except as set forth in section 1.4.3 (Appeals), neither OptumRx nor any of its affiliates will: (a) be named as a "plan fiduciary" for purposes of ERISA (with respect to claims under a Benefit Plan that is subject to ERISA); (b) have any discretionary authority or control respecting management or administration of the Benefit Plan(s); or (c) exercise any authority or control respecting the management or disposition of the assets of the Benefit Plan(s). Except as set forth in Section 1.4.3 (Appeals), Client retains all discretionary authority and control with respect to the management and administration of the Benefit Plan(s) and the management or disposition of all plan assets. Upon reasonable notice, OptumRx will have the right to terminate PBM Services to the Benefit Plan(s) (or, if applicable, Members of the Benefit Plan(s) located in a specific state) to the extent applicable state law would require OptumRx to act as a fiduciary with respect to Client, such Benefit Plan(s), or a Member in any capacity.
- 1.1.5 Contraceptive Coverage. Client represents that it has not invoked a waiver to exclude contraceptive coverage under its Plan Specifications pursuant to Public Health Service Act section 2713 and any related regulations. If Client has the right to opt out of providing contraceptive coverage, and elects to do so, OptumRx may terminate this Agreement upon notice to Client.
- 1.1.6. Benefit Plan Eligibility Data. Client will provide OptumRx with electronic eligibility data in NCPDP format, or another format agreed to by the parties, as well as Member personal address, phone number and email and work email, for all Members. OptumRx will load correctly formatted Member eligibility within twenty-four (24) hours of receipt. OptumRx is not liable for any Prescription Claims processed for any ineligible persons due to incorrect, incomplete or untimely eligibility data provided by Client to OptumRx.
- 1.1.7. Member Notification. Client will make available to Members the type, scope, restrictions, limitations and duration of Covered Prescription Services to which Members are entitled. Client will provide and distribute, as appropriate, ID cards, a list of Network Pharmacies, Home Delivery brochures, the Formulary and other pharmacy benefit related materials to Members, providers and other appropriate third parties.

- 1.1.8. Plan Specifications. Client will provide OptumRx with the technical assistance and information OptumRx reasonably needs to perform the Services, including information regarding Members, Benefit Plan(s) and Plan Specifications. Client will provide OptumRx with the Plan Specifications no later than forty-five (45) days before the Effective Date, unless the parties otherwise agree. Client's failure to provide the Plan Specifications within the time periods stated in this section may delay OptumRx's implementation of the Services and guarantees. Client is responsible for the accuracy, completeness and timeliness of all Plan Specifications and conformity of all Plan Specifications with other constituent plan documents pursuant to which the Benefit Plan(s) was established and is maintained, and acknowledges OptumRx's right to rely on the Plan Specifications as a constituent document of the Benefit Plan(s) in providing Services under this Agreement.

1.2 Pharmacy Network Administration

- 1.2.1 Pharmacy Network. OptumRx will establish and maintain a network of pharmacies to provide the Services to Client ("**Pharmacy Network**"). Upon request, OptumRx will make available to Client a current list of Network Pharmacies in the Pharmacy Network. OptumRx may add or remove Network Pharmacies from the Pharmacy Network. OptumRx will retain cash management responsibilities to help support prompt payment of Network Pharmacies.
- 1.2.2 Network Pharmacy Credentialing. OptumRx will establish and maintain a reasonable process for credentialing Network Pharmacies.
- 1.2.3 Standard Pharmacy Audit Services. OptumRx will, in accordance with its standard audit program and as required by Laws, for the fees set forth in **Exhibit C** (Compensation), conduct real-time and retrospective desk audits and selected on-site audits of the Network Pharmacies to determine whether the Network Pharmacies are submitting appropriate billings for payment by Client or Members. OptumRx will report the results of the audits to Client. OptumRx will pay Client, or apply as a credit to Client's invoices, the amounts OptumRx recovers from these audits. If Client requests additional audits of specific Network Pharmacies, then Client will be financially responsible for all expenses incurred in connection with such audits. OptumRx will use commercially reasonable efforts to collect amounts owing as a result of pharmacy audits. OptumRx may, but is not required to, initiate collection action against a Network Pharmacy. If OptumRx initiates a collection action, OptumRx may offset against any recovered amounts owing to Client any reasonable costs, including reasonable attorneys' fees and expenses, arising from any such action.

- 1.3 **Claims Processor Fees.** OptumRx may retain any Claims processor or other fees received from Network Pharmacies in connection with the Prescription Drugs dispensed to Members under the Benefit Plan(s), including: (a) a per Claim communications charge for on-line electronic Claims processing by point-of-service communication; (b) a charge for each Claim submitted to OptumRx via paper, tape or a medium other than point-of-service communication; (c) surcharges for canceled or reversed Claims; (d) a charge if a Network Pharmacy requests an evidence of benefits report in a tape medium; and (e) charges for marketing and administrative services.

1.4 Claims Process

- 1.4.1 Claims Adjudication. OptumRx will adjudicate, process and pay Prescription Claims for Covered Prescription Services in accordance with the Plan Specifications. OptumRx will pay in accordance with Plan Specifications and applicable Laws, only Prescription Claims (a) that are prepared in accordance with the NCPDP-

promulgated standard format that contains all information necessary for processing of a Prescription Claim and are submitted by the Network Pharmacies in a timely manner (no later than one hundred eighty (180) days after the date of service, or a longer period of time if required by Laws) through OptumRx's point-of-service system; and (b) properly submitted by Members as requests for reimbursement for Covered Prescription Services.

- 1.4.2 Subrogated Claims Processing. Client acknowledges that Medicaid agencies and other programs operated by Governmental Authorities have legal rights and obligations to pursue Claims reimbursement ("**Subrogated Claims**") and confirm eligibility from applicable third parties. As such, OptumRx will cooperate with Governmental Authorities in connection with such matters and Client will reimburse OptumRx for Subrogated Claims in accordance with Laws.
- 1.4.3 Appeals. Client has elected for OptumRx to provide appeals services in connection with denied Claims for benefits for the fees set forth in **Exhibit C** (Compensation). To the extent the Benefit Plan(s) are subject to ERISA, Client hereby delegates fiduciary responsibility pursuant to section 405(c)(1) of ERISA to OptumRx to make final benefit determinations with respect to such delegated appeals. In all cases, OptumRx will exercise such responsibility in accordance with Plan Specifications, the ERISA claims and appeals regulations set forth in 29 C.F.R. Part 2560 (the "**Claims Rules**"), if applicable, and this section. Client agrees that OptumRx may perform such services itself or through an independent third party contracted by OptumRx ("**Appeals Vendor**") and that OptumRx is authorized to delegate such fiduciary responsibility to the Appeals Vendor. In resolving all such appeals, OptumRx or its Appeals Vendor are hereby delegated full and complete discretion to determine eligibility for benefits under the Benefit Plan(s) and to interpret the terms of the Benefit Plan(s). OptumRx or its Appeals Vendor will perform up to two (2) levels of internal appeals as elected by Client, which will include a review of benefit coverage, as well as a review of medical necessity, as necessary. To the extent the Benefit Plan(s) are subject to ERISA, OptumRx agrees to accept fiduciary status solely with respect to its performance of any internal appeal. The review of benefit coverage will be based on the Plan Specifications, including the plan design document provisions and criteria approved by Client. The decision of OptumRx or the Appeals Vendor at the last level of internal appeal shall be final, subject to a Member's right to External Review (as defined below) or judicial review with the standard of review being the abuse of discretion standard.

If an appeal requires external review services (as defined in the Patient Protection and Affordable Care Act of 2010 and its implementing regulations or applicable state Law, such services are referred to "**External Review**"), OptumRx shall arrange for the assignment of an independent review organization ("**IRO**") through the appropriate regulatory agency. In accordance with applicable Law, the decision of the IRO shall be final and binding on Client and the Member, subject only to any right of judicial review.

1.5 Benefits Administration and Support

- 1.5.1. Clinical Services. In addition to the clinical services set forth on the Clinical Documentation Form, OptumRx will provide the following clinical services to Client:
- 1.5.1.1. Development and Support. Client will implement OptumRx's standard or custom, if applicable, utilization management programs for the Benefit Plan(s) designed to promote cost-effective drug utilization management and to discourage Prescription Drug over and under-utilization. Additional fees may apply for non-standard utilization management programs requested by Client and agreed to by OptumRx.

- 1.5.1.2. Prior Authorization. At Client's request, OptumRx shall administer a prior authorization program applying rules and conditions applicable to the Benefit Plan(s). Client shall have discretionary authority to establish prior authorization criteria, provided that non-standard criteria are subject to OptumRx's prior approval. If Client chooses to perform benefit overrides, then OptumRx will provide Client access to the necessary information in OptumRx's possession.
 - 1.5.1.3. Changes Due to Shortages, Recall or Public Health and Safety Concern. In the event of a Prescription Drug shortage or recall or public health and/or other material safety concerns impacting or related to the distribution or dispensing of Prescription Drugs, OptumRx is authorized by Client to make temporary clinically appropriate changes to the Formulary status and/or tiering of Prescription Drugs, days' supply limitations, Pharmacy Network access, utilization management programs or similar programs or initiatives to address such concerns. Prescriptions Drugs impacted by such changes shall be excluded from all financial and performance guarantees.
 - 1.5.1.4. Member Communication. Upon Client's request, OptumRx will communicate Client's utilization program requirements to Members through Client-approved information and outreach materials. OptumRx may, on behalf of Client: (a) communicate with Members to describe health-related products or services (or payment for the products or services) included in the Benefit Plan(s), including communications about Network Pharmacies, replacement or enhancement to the Benefit Plan(s), and health-related products or services available only to Members that add value to and are not part of the Benefit Plan; (b) conduct population-based activities relating to improving the health of Members and reducing their healthcare costs; and (c) contact Members with health education information and information about Prescription Drugs, treatment alternatives, and related functions.
- 1.6. **E-Prescribing.** Upon Client's request, OptumRx will provide prescribers with electronic access to Member Benefit Plan information, including: (a) Member eligibility status; (b) Member medication history; (c) Formulary status of the Prescription Drug being prescribed; (d) listing of Generic Drug or Brand Drug Formulary alternative medications; (e) Member coverage information where applicable; (f) applicable Cost-Sharing Amount; and (g) drug classification information required by the Centers for Medicare & Medicaid Services or successor Governmental Authority.
- 1.7. **Formulary**
- 1.7.1. Formulary Adoption. Client will adopt as the Formulary one (1) or more of OptumRx's formularies as designated in **Exhibit C** (Compensation). Any requested customization of an OptumRx Formulary must be reviewed and approved by the P&T Committee, and shall be subject to additional fees and may impact Rebates.
 - 1.7.2. Formulary Management. OptumRx will make the Formulary available to Client, or other appropriate parties. Except as provided in this Agreement, Client will not copy, distribute, sell or otherwise provide OptumRx's formularies, including the Formulary, to another party without OptumRx's prior written approval. Provided that OptumRx agrees, Client may post the Formulary on Client's Member health care website.
 - 1.7.3. Formulary Changes. OptumRx will include in the Formulary new Prescription Drugs or other pharmaceutical products, services or supplies as specified in the Plan Specifications according to the following schedule: (a) if an open formulary, all new Prescription Drugs or other pharmaceutical products, services or supplies will be

included in the Formulary upon publication in the Pricing Source and loading into OptumRx's systems; or (b) if a closed formulary, all new covered Prescription Drugs or other pharmaceutical products, services or supplies (Formulary only) will be included in the Formulary after review and addition to the Formulary by OptumRx's P&T Committee. Following changes to the Formulary, OptumRx, at Client's request, will provide or make available appropriate notifications of negative Formulary changes to Client, Members, prescribers, and state pharmaceutical assistance programs as required by Laws and agreed by the parties.

- 1.7.4. P&T Committee. OptumRx's P&T Committee will develop and maintain OptumRx's Formularies, which, in general, may include selecting Prescription Drugs to include in OptumRx's formularies and making recommendations on associated utilization management programs. OptumRx's P&T Committee's functions, deliberations and results, including development and maintenance of OptumRx's formularies, constitute opinions only of OptumRx's P&T Committee and will not bind OptumRx.
- 1.7.5. No Endorsement. OptumRx's development and maintenance of its formularies will not be construed as an endorsement of any prescription drug product or Drug Manufacturer. OptumRx's P&T Committee is an external advisory committee and OptumRx will not be responsible for any actions or omissions of its P&T Committee or any adverse consequences that may relate, directly or indirectly, to Client's or a Member's reliance on OptumRx's P&T Committee.

1.8. Rebate Management

- 1.8.1. Rebate Eligibility. Client will be eligible to receive Rebates subject to: (i) the terms set forth in **Exhibit C** (Compensation); and (ii) Client's Benefit Plan(s), Formulary and Prescription Claim utilization satisfying the Drug Manufacturer's Rebate contract criteria. Client authorizes OptumRx to contract with Drug Manufacturers for Rebates as a group purchasing organization. Client acknowledges that OptumRx negotiates Rebates with Drug Manufacturers based on OptumRx's book of business and not on a client specific basis. Client understands that not all Brand Drugs and not all Prescription Drugs are eligible for Rebates, and OptumRx is not obligated to submit Rebates for Prescription Claims that it does not believe are eligible to receive Rebates.
- 1.8.2. Rebate Guarantees. Except for any Rebate guarantees described in **Exhibit C** (Compensation), OptumRx has no obligation to obtain any particular amount of Rebates for Client. Rebate guarantees are subject to the terms and conditions described in this section 1.8 (Rebate Management) and **Exhibit C** (Compensation).
- 1.8.3. Collection. OptumRx will use commercially reasonable efforts to process, invoice and collect Rebates. OptumRx will not be responsible for any non-payments or partial payments of amounts owing under an agreement for Rebates. OptumRx may, but is not required to, initiate action to seek to collect Rebates from a Drug Manufacturer. If OptumRx initiates such a collection action, OptumRx may offset against the Rebates any reasonable costs, including reasonable attorneys' fees and expenses, arising from any such action. To the extent of any overpayment or erroneous payment to Client by OptumRx, Client will refund the payment or OptumRx may recoup the payment from other sums due Client in accordance with section 3.5 (Right of Recoupment) of this Agreement.
- 1.8.4. Disbursement. Provided Client is in compliance with the terms of this Agreement, OptumRx will reconcile, allocate and credit or disburse all Rebates in accordance with this Agreement. Client acknowledges that it has no right to receive a payment of Rebates until such reconciliation and allocation has been completed and agrees that it does not have a right to interest on any Rebate payments received by OptumRx.

Client's first Rebate payment will be remitted no later than one hundred and eighty (180) days after the end of the incurred quarter following implementation, based on actual amounts received. Thereafter, Rebate payments are made within ninety (90) days after the end of each quarter, which will include true ups on all prior quarters. An annual reconciliation will be performed one hundred and eighty (180) days after the end of each contract year. Rebate reporting will be provided at the time of payment.

- 1.8.5. Other Pharmaceutical Relationships. Nothing in this Agreement shall preclude OptumRx from pursuing other sources of revenue from Drug Manufacturers or engaging in other revenue-producing relationships with Drug Manufacturers. OptumRx and its affiliates may receive and retain payments from Drug Manufacturers for items and services provided, including, without limitation, Manufacturer Administrative Fees of up to five percent (5%) of the Wholesale Acquisition Cost (WAC) of the products dispensed or administered. Additionally, OptumRx or its affiliates, acting as a Home Delivery Pharmacy or a Specialty Pharmacy, purchase Prescription Drugs from Drug Manufacturers and receive certain discounts and purchase rebates from Drug Manufacturers in connection with these purchases. OptumRx retains these discounts and purchase rebates and does not pass them on to Client.
- 1.8.6. Client Rebate Contracting Prohibited. If Client, or its affiliates, contracts with or receives payment from another party, including a Drug Manufacturer, for a discount, utilization limit, rebate or other incentive associated with the utilization of a Prescription Drug, Client will be in material breach of this Agreement. Upon such breach, OptumRx, in its sole discretion, may adjust or eliminate any guarantees described in **Exhibit C** (Compensation). Upon request, Client will cooperate fully with OptumRx or a Drug Manufacturer to verify Client's participation in any Rebate program and that all Rebate-related payments were made solely for Covered Prescription Services to eligible Members.

2. HOME DELIVERY PHARMACY SERVICES

- 2.1. **Home Delivery Services.** Home Delivery Pharmacies will provide Covered Prescription Services to Members in accordance with the Plan Specifications for the Compensation established in **Exhibit C** (Compensation). Home Delivery Pharmacies will provide customer service support for Members who use Home Delivery Pharmacy Services. Upon request, OptumRx will make available to Client Home Delivery brochures for distribution to Members.
- 2.2. **Control by OptumRx.** OptumRx's Home Delivery Pharmacies and their duly authorized personnel will exclusively supervise and control the provision of Home Delivery Covered Prescription Services provided by OptumRx's Home Delivery Pharmacies. The relationship between a Member and a Home Delivery Pharmacy will be subject to the Laws, limitations and privileges incident to the pharmacist-patient relationship. OptumRx may exclude from coverage by a Home Delivery Pharmacy under this Agreement a Prescription Drug that cannot be dispensed under OptumRx's Home Delivery pharmacy dispensing protocols or requires special record-keeping procedures.
- 2.3. **Home Delivery Rates.** Specialty Drug pricing guarantees and terms apply to Specialty Drugs, even if dispensed by a Home Delivery Pharmacy. If Client or Members request or require expedited or alternative shipping methods other than OptumRx's standard method, Client will be solely responsible for those costs. If shipping rates increase, OptumRx may pass these cost increases on to Client.

3. SPECIALTY PHARMACY SERVICES

- 3.1. **Specialty Services.** OptumRx will provide Client with Specialty Drug Covered Prescription Services as set forth in **Exhibit C** (Compensation).

- 3.2. **New Specialty Drugs.** When a new Prescription Drug is identified and categorized by OptumRx as a Specialty Drug ("**New Specialty Drug**"), OptumRx will make available the New Specialty Drug to Members as part of the Specialty Drug Covered Prescription Services. Client will compensate OptumRx for the New Specialty Drug at the default rate for New Specialty Drugs specified in **Exhibit C** (Compensation) until OptumRx determines a revised rate.
- 3.3. **Specialty Drug Administration.** OptumRx shall designate the drugs to be included in the Specialty Drug List. Upon request, OptumRx will make available to Client the Specialty Drug List. Client requested changes to the Specialty Drug List must be mutually agreed upon and may be subject to additional fees.
- 3.4. **OptumRx Control.** OptumRx's Specialty Pharmacies and their duly authorized personnel will exclusively supervise and control the provision of Specialty Pharmacy Covered Prescription Services provided by OptumRx's Specialty Pharmacies. The relationship between a Member and a Specialty Pharmacy will be subject to the Laws, limitations and privileges incident to the pharmacist-patient relationship.

EXHIBIT C
COMPENSATION

A. CREDITS AND ALLOWANCES.

1. One-Time Implementation Credit. OptumRx shall provide Client with a one-time implementation allowance of up to five dollars (\$5.00) per Net New Member to cover expenses associated with the transition of services to OptumRx. This allowance may be used by Client to offset legitimate, necessary and commercially reasonable expenses that are related to the Client's transition from its previous pharmacy benefit manager to OptumRx. Client shall be responsible for all other transition expenses in excess of the implementation credit herein provided to Client. Eligible expenses shall include any printing or postage related to special communications required for the transition, customized ID cards, customized programming or, upon mutual agreement, third-party transitional consulting expenses. The implementation allowance must be utilized within the first twelve (12) months after the Effective Date. Client will be required to submit documentation to support the expenses it may seek reimbursement for. The parties acknowledge that the implementation allowance provided by OptumRx for implementation services represent fair market value. If Client terminates this Agreement in breach before the end of the Initial Term, Client shall refund to OptumRx within thirty (30) days after the effective date of such termination the full implementation allowance. It is the intention of the parties that, for the purposes of the Federal Anti-Kickback Statute, this implementation allowance shall constitute and shall be treated as a discount against the price of drugs within the meaning of 42 U.S.C. 1320a – 7b(b)(3)(A). To the extent required by Laws or contractual commitment, Client agrees to fully and accurately disclose and report any such discount, rebate, credit or allowance to Medicare, Medicaid or other government health care programs as a discount against the price of the Prescription Drugs provided under this Agreement.
2. Pharmacy Management Allowance. Client shall receive a pharmacy management allowance ("PMA") of up to five dollars (\$5.00) per Member annually, which must be utilized within the applicable year and will not carry over to the following year. This PMA allowance is to be used by Client to offset the cost of actions intended to maximize the value of the pharmacy program. Funds may be used for items including, but not restricted to, programming for customization, design and implementation of clinical or other programs, communications, documented expenses related to staff education and industry conference attendance, auditing, data integration and analytics, consulting fees (excluding market checks), and engagement of relevant vendors that impact the pharmacy program strategy and results. Client will be required to submit documentation to support the expenses for which it seeks reimbursement. The parties acknowledge that the credit provided by OptumRx for such services represent fair market value. If Client terminates this Agreement in breach before the end of the Initial Term, Client shall refund to OptumRx within thirty (30) days after the effective date of such termination the full PMA allowance applicable to the year of termination. It is the intention of the parties that, for the purposes of the Federal Anti-Kickback Statute, this PMA allowance shall constitute and shall be treated as a discount against the price of drugs within the meaning of 42 U.S.C. 1320a-7b(b)(3)(A). To the extent required by Laws or contractual commitment, Client agrees to fully and accurately disclose and report any such discount, rebate, credit or allowance to Medicare, Medicaid or other government health care programs as a discount against the price of the Prescription Drugs provided under this Agreement.

B. SERVICE FEES. Client will pay OptumRx for the services provided herein pursuant to the following table:

Term of contract:	Year 1:	01/01/2020 to 12/30/2020
	Year 2:	01/01/2021 to 12/31/2021
	Year 3:	01/01/2022 to 12/31/2022

PASS THROUGH	
Base Administrative Fees	Retail 30: \$1.75 per Net Paid Claim Retail 90: \$1.75 per Net Paid Claim Mail Service: \$1.75 per Net Paid Claim Specialty: \$1.75 per Net Paid Claim
Paper Claim Fees	\$2.50 Per Paper Claim plus the Base Administrative Fee
Retail 30 Pharmacy Network	
Brand Drugs	AWP minus 18.50% plus \$0.75 dispensing fee
Effective Overall Generic Guarantee (ingredient cost)	Year 1: AWP minus 82.25% plus \$0.75 dispensing fee Year 2: AWP minus 82.35% plus \$0.75 dispensing fee Year 3: AWP minus 82.45% plus \$0.75 dispensing fee
Retail 90 (>83 day supply) Pharmacy Network	
Brand Drugs	AWP minus 20.00% plus \$0.00 dispensing fee
Effective Overall Generic Guarantee (ingredient cost)	Year 1: AWP minus 83.25% plus \$0.00 dispensing fee Year 2: AWP minus 83.35% plus \$0.00 dispensing fee Year 3: AWP minus 83.45% plus \$0.00 dispensing fee
Mail Service Pharmacy	
Brand Drugs	AWP minus 25.00% plus \$0.00 dispensing fee
Effective Overall Generic Guarantee (ingredient cost)	Year 1: AWP minus 86.00% plus \$0.00 dispensing fee Year 2: AWP minus 86.10% plus \$0.00 dispensing fee Year 3: AWP minus 86.20% plus \$0.00 dispensing fee
Specialty - Exclusive w/ No Grace Fills Network	
Specialty Drugs	See Specialty Pricing Schedule for Individual Drug Level Pricing Information - Dispensing Fees are \$0.00
Rebates (Select Focused Formulary)	
Client Rebate Share	Greater of 100% or
Retail 30 - Minimum	Years 1/2/3: \$120.00/\$130.00/\$140.00 Per Net Paid Brand Claim
Retail 90 - Minimum	Years 1/2/3: \$400.00/\$420.00/\$440.00 Per Net Paid Brand Claim
Mail Service - Minimum	Years 1/2/3: \$400.00/\$420.00/\$440.00 Per Net Paid Brand Claim
Specialty - Minimum	Years 1/2/3: \$1,400.00/\$1,500.00/\$1,600.00 Per Net Paid Brand Claim

C. PRICING TERMS.

- Under the Pass-Through Pricing Model, Client shall pay the actual retail pharmacy rates paid by OptumRx for claims electronically processed and dispensed to a Member through OptumRx's retail Pharmacy Network, which are estimated to be the effective rates set forth above. OptumRx's compensation for its services shall be the Claims Administration Fees set forth above and a fee in an amount agreed to by the parties for any additional services authorized by Client.
- The Member will pay the lower of (i) Member Cost-Sharing Amount, (ii) Client contracted rate, plus dispensing fee; or (iii) the pharmacy's Usual and Customary Charge for the product.
- Discounts are based on published AWP.

4. Discounted ingredient costs are based upon the actual 11 digit National Drug Code, specific to the quantity dispensed submitted by a Network Pharmacy at the time of adjudication.
5. Retail 90 pricing is for retail Claims with greater than eighty-three (83) days' supply.
6. Discount and dispensing fee guarantees are reconciled at the component level and are effective average annual rates, which may include the value of any and all other discounts, savings and reimbursements achieved. Such discount and dispensing fee guarantees are not reconciled on an individual Claim basis. Excess discounts in one line-item category cannot be credited to another category for purposes of satisfying the guarantee applicable to the other category. Any credits due to Client relating to the discount guarantees set forth above shall be issued ninety (90) days after the measurement period.
7. OptumRx will have no obligation under any financial guarantees under the contract for the contract year (that is, each 12-month period following the Effective Date) in which Client terminates, if the portion of the contract year before the effective date of Client's termination is less than twelve (12) full months.
8. The effective overall Generic Drug discount rate includes MAC and non-MAC Generic Drug Claims subject to the discount and dispensing fee guarantee exclusions set forth herein.
9. Compound Prescription Drug Claims, Specialty Drug Claims, 340B Claims, Indian health services and tribal Claims, direct member reimbursement Claims, coordination of benefit Claims, long term care Claims, infusion Claims, home infusion Claims, Claims with ancillary charges such as vaccines, Claims filled at in-house or Client-owned pharmacies, Third Party Biller Claims, fraudulent Claims, and Claims filled outside the OptumRx Pharmacy Network will be excluded from the guarantee. Additionally, Claims in Puerto Rico, Guam, Northern Mariana Islands, Virgin Islands, Hawaii, Massachusetts, Alaska, and Georgia will be excluded from the guarantees.
10. Usual & Customary Claims are excluded in the discount guarantees.
11. Zero Balance Claims are included in the discount guarantees prior to the application of Member Cost-Sharing Amount.
12. "Single Source Generic Drugs" are Generic Drugs that have either recently come off patent and do not generate discounts traditionally delivered by Generic Drugs, or have an exclusive Drug Manufacturer. "Non-MAC Generic Drugs" are Generic Drugs where market conditions do not allow for MAC prices to be used. Single Source Generic Drugs and Non-MAC Generic Drugs will be included in the overall Generic Drug guarantees.
13. Compound Prescription Drug shall be adjudicated using the standards in the most recent version of NCPDP guidelines which includes individual multi-ingredient pricing, the lower of U&C, MAC, or AWP minus and a dispensing fee of ten dollars (\$10). Multi-ingredient Compound Prescription Drugs filled through NCCP approved providers may also be charged a level of effort ("LOE") compounding fee based on the Claim's LOE code.
14. OptumRx may, from time to time, receive and retain reimbursement from pharmacies for its costs in connection with transmitting Claims and discounts on its own behalf from wholesalers and Drug Manufacturers as a purchaser of pharmaceutical products for its Home Delivery and Specialty Pharmacies.
15. Non-specialty Claims filled at OptumRx Specialty Pharmacies are reconciled under the retail guarantees.
16. OptumRx Specialty Pharmacies shall be the exclusive specialty providers under this Agreement and Members will receive Specialty Drug Covered Prescription Services only from

OptumRx Specialty Pharmacies and not any other retail, Home Delivery, or specialty pharmacy. Notwithstanding the foregoing, Limited Distribution Drugs not dispensed by OptumRx's Specialty Pharmacy may be obtained from other Network Pharmacies. Under an exclusive arrangement, grace fills at retail will not be allowed. The Specialty Drug List will be provided to Client upon request and may be updated from time to time.

17. Retail and Mail guarantees exclude specialty claims.
18. Newly introduced pharmaceutical products will be added to OptumRx's systems and to Client's Prescription Drug coverage (provided the new product is in a category covered by the Client) promptly following receipt by OptumRx from the Pricing Source. Newly FDA-approved Specialty products will be billed and reimbursed at the default rate of AWP – 14%.
19. "Rebate" means any discount, rebate, price protection amount or Manufacturer Administrative Fee that OptumRx receives from Drug Manufacturers, in OptumRx's capacity as a group purchase organization for Client, that is contingent upon and related directly to Member use of a Prescription Drug during the Term. "Rebate" does not include any discount, price concession or other direct or indirect compensation OptumRx receives for the purchase of a Prescription Drug or for the provision of any product or service.
20. OptumRx will remit to Client one hundred percent (100%) of the Rebates received by OptumRx. OptumRx guarantees that the Rebates remitted to Client during a contract year shall not be less than the per Net Paid Brand Claim Rebate amounts specified in the Rebate table above ("Guaranteed Rebate Amount"). In the event that the Rebates paid to Client during a contract year are less than the Guaranteed Rebate Amount, OptumRx shall pay to Client, as an additional rebate from OptumRx, the amount of such deficiency within one hundred eighty (180) days following the end of the contract year. OptumRx may withhold Rebates until this Agreement is signed.
21. Select Focused Rebates: Rebates and the Guaranteed Rebate Amount are contingent upon Client's adoption, without deviation, of OptumRx's Formulary, as well as any changes OptumRx makes to its Formulary; and implementation of the following of OptumRx's step therapy program(s): Diabetes, Respiratory, Specialty, Miscellaneous; and a minimum of ten dollars (\$10) difference in copayment, or ten percent (10%) difference in coinsurance between preferred and non-preferred Brand Drugs.
22. Rebates and the Guaranteed Rebate Amount excludes ineligible Claims, such as Claims with invalid service provider identification or Prescription Drug numbers; Claims with an invalid submit date; Claims with zero days supplied; Claims with zero quantity; Claims where the plan is not the primary payer; Claims for plans where, after meeting the deductible, the Member's Cost-Sharing Amount under the applicable Benefit Plan requires the Member to pay more than fifty percent (50%) of the Claim when evaluated in aggregate at the therapeutic class level; Generic Drug Claim; vaccines; Sythroid; Limited Distribution products; non-FDA approved products regardless of indication; products not covered by the Client's benefit design or formulary; Grandfathered products for as long as the Client chooses to Grandfather; fraudulent Claims; multi-source Brands with a DAW code (DAW 1 or DAW 2) requiring the substitution of a brand product over a generic product; House Generics Drug Claims; direct member submitted Claims; Claims for devices without a Prescription Drug component or Claims that are not for Prescription Drugs (except for insulins or diabetic test strips); Claims for re-packaged NDCs; stale dated Claims over one hundred eighty (180) days old; Compound Prescription Drug Claims; Authorized Generic Drug Claims; Claims from 340B which typically receive a discount or rebate directly from Drug Manufacturers under section 340B of the Public Health Service Act; Claims from entities eligible for federal supply schedule prices (for example, Department of Veterans Affairs, U.S. Public Health Service, Department of Defense, Indian Health Services); long term care facility Claims; products in the PCSK9 and HIV therapeutic class; Medicaid Managed Care Claims in states where the state law prohibits OptumRx from collecting supplemental Rebates; or for utilization pursuant

to a consumer card or discount card program where the plan had no cost liability on the Claim or Claims that are otherwise not eligible for Rebates under the Rebate Agreement with the applicable Drug Manufacturer.

23. The Guaranteed Rebate Amount is reconciled in the aggregate annually.
24. The effective date of any changes to Rebate arrangements shall be at the beginning of a calendar quarter following the Effective Date of this Agreement.
25. OptumRx reserves the right to modify or amend the financial provisions of this Agreement in the event of an external event or industry change impacting OptumRx's performance under the Agreement, including but not limited to: (a) any government imposed change in federal, state or local laws or interpretation thereof or industry wide change that makes OptumRx's performance of its duties hereunder materially more burdensome or expensive, including changes to the AWP benchmark or methodology; or (b) the unexpected movement of a branded product to off-patent or if Generic Drugs, authorized Generic Drugs, low priced Brand Drugs or over-the-counter substitutes become available; or (c) if there is a change impacting the availability or amount of Rebates offered by Drug Manufacturers, including changes related to the elimination or material modification of a Drug Manufacturer's historic models or practices related to the provision of Rebates. For modifications or amendment made pursuant to (a), (b), or (c) above, OptumRx agrees to modify the pricing in an equitable manner to preserve the financial interests of both parties and provide documentation that the revised pricing terms are equitable.
26. OptumRx reserves the right to modify or amend the financial provisions of this Agreement if any of the following occur: (a) a change in the scope of services to be performed under this Agreement upon which the financial provisions included in this Agreement are based, including a change in the Plan Specifications or the exclusion of a service line (i.e. retail & Home Delivery) from Client's service selection; (b) a reduction of greater than ten percent (10%) in the total number of Members from the number provided to OptumRx during pricing negotiations upon which the financial provisions included in this Agreement are based; (c) implementation or addition of a one hundred percent (100%) Member paid Claims Plan Specifications; (d) any substantive change in Client's formulary, exclusions, utilization management programs, or administrative edits, which may impact Rebates from Drug Manufacturers; or (e) OptumRx is no longer the exclusive Specialty Pharmacy provider. For modifications or amendments made pursuant to (a), (b), (c), (d), or (e), above, Client agrees to provide OptumRx at least ninety (90) days' notice prior to making any changes. In the event the pricing needs to be modified, within forty-five (45) days of Client's notice, OptumRx shall provide Client with any modified pricing to ensure Client is aware of pricing modifications prior to implementation.
27. The financial guarantees set forth in this exhibit are subject to all of the terms contained in this exhibit.

- D. ADDITIONAL SERVICES.** Certain services as indicated below are not included in the standard Administrative Fee and are available for an additional charge. This is not an inclusive list. OptumRx may charge for any products or services not specifically represented herein. Clinical Services are listed in the most recently executed Clinical Documentation Form.

ADDITIONAL FEES AS APPLICABLE	
Clinical Program Fees	Please refer to the Clinical Documentation Form for associated fees
Print Services and Fees	Print services and fees can be found on the Print Services Form which is signed by the Client.
PreCheck MyScript ePrescribing	Included
Client Website Additional Users	Two included, \$400 per year per additional user
Direct Member Reimbursement (DMR)	\$2.50 per processed paper claim plus the Administrative Fee
Ad-hoc Reporting	\$150 per hour, with a minimum of \$500
Manual Eligibility Maintenance	\$0.50 per record
ID cards - Subsequent mailings, replacements, or additional	\$2 per ID card plus postage, shipping and handling
Explanation of Benefits (EOB)	\$2 per EOB plus postage, shipping and handling
Custom Mailings	Production plus postage, shipping and handling
Retail Pharmacy Audit Administration	
· Onsite	25 percent of recovered amount
· Desktop	100 percent of recovered amount
RxTRACK License Fee	\$500 per seat annual fee
Integrated Accumulator - Near Real Time Method	\$0.15 PMPM
<i>This is not an inclusive list. OptumRx may charge for any products or services not specifically represented herein.</i>	

EXHIBIT D

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("**BAA**") is incorporated into and made part of the services Agreements (collectively, the "**Agreement**"), by and between OptumRx, Inc., on behalf of itself and its subsidiaries and affiliates ("**Business Associate**"), and Monroe County School Board ("**Covered Entity**"), that involve the use or disclosure of PHI (as defined below). The parties agree as follows.

1. **DEFINITIONS.** All capitalized terms used in this BAA not otherwise defined herein have the meanings established for purposes of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, as amended and supplemented (collectively, "**HIPAA**").
 - 1.1 "**Breach**" means the acquisition, access, use or disclosure of PHI in a manner not permitted by the Privacy Rule that compromises the security or privacy of the PHI, subject to the exclusions in 45 C.F.R. § 164.402.
 - 1.2 "**PHI**" means Protected Health Information, as defined in 45 C.F.R. § 160.103, and is limited to the Protected Health Information received from, or received, created, maintained or transmitted on behalf of, Covered Entity.
 - 1.3 "**Privacy Rule**" means the federal privacy regulations, and "**Security Rule**" means the federal security regulations, as amended, issued pursuant to HIPAA and codified at 45 C.F.R. Parts 160 and 164 (Subparts A, C & E).
 - 1.4 "**Services**" means the services provided by Business Associate to Covered Entity to the extent they involve the receipt, creation, maintenance, transmission, use or disclosure of PHI.
2. **RESPONSIBILITIES OF BUSINESS ASSOCIATE.** With regard to its use and/or disclosure of PHI, Business Associate agrees to:
 - 2.1 not use and/or further disclose PHI except as necessary to provide the Services, as permitted or required by this BAA and in compliance with the applicable requirements of 45 C.F.R. § 164.504(e), or as Required by Law; provided that, to the extent Business Associate is to carry out Covered Entity's obligations under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of those obligations.
 - 2.2 implement and use appropriate administrative, physical and technical safeguards and comply with applicable Security Rule requirements with respect to ePHI, to prevent use or disclosure of PHI other than as provided for by this BAA.
 - 2.3 without unreasonable delay, report to Covered Entity (i) any use or disclosure of PHI not provided for in this BAA and/or (ii) any Security Incident of which Business Associate becomes aware in accordance with 45 C.F.R. § 164.314(a)(2)(i)(C). For the purposes of reporting under this BAA, a reportable "**Security Incident**" shall not include unsuccessful or inconsequential incidents that do not represent a material threat to confidentiality, integrity or availability of PHI (such as scans, pings, or unsuccessful attempts to penetrate computer networks).
 - 2.4 report to Covered Entity within ten (10) business days: (i) any Breach of Unsecured PHI of which it becomes aware in accordance with 45 C.F.R. § 164.504(e)(2)(ii)(C). Business Associate shall provide to Covered Entity a description of the Breach and a list of Individuals affected (unless Covered Entity is a plan sponsor ineligible to receive PHI). Business Associate shall provide required notifications to Individuals and the Media and Secretary, where appropriate, in accordance with the Privacy Rule and with Covered Entity's approval of the notification text. Business Associate shall pay for the reasonable and actual costs associated with those notifications and with credit monitoring, if appropriate.

- 2.5 in accordance with 45 C.F.R. § 164.502(e)(1)(ii) and 45 C.F.R. § 164.308(b)(2), ensure that any subcontractors of Business Associate that create, receive, maintain or transmit PHI on behalf of Business Associate agree, in writing, to the same restrictions on the use and/or disclosure of PHI that apply to Business Associate with respect to that PHI, including complying with the applicable Security Rule requirements with respect to ePHI.
- 2.6 make available its internal practices, books and records relating to the use and disclosure of PHI to the Secretary for purposes of determining Covered Entity's compliance with the Privacy Rule, in accordance with 45 C.F.R. § 164.504(e)(2)(ii)(I).
- 2.7 within ten (10) business days after receiving a written request from Covered Entity or an Individual, make available to Covered Entity or an Individual information necessary for an accounting of disclosures of PHI about an Individual, in accordance with 45 C.F.R. § 164.528.
- 2.8 provide access to Covered Entity or an Individual, within ten (10) business days after receiving a written request from Covered Entity or an Individual, to PHI in a Designated Record Set about an Individual, sufficient for compliance with 45 C.F.R. § 164.524.
- 2.9 to the extent that the PHI in Business Associate's possession constitutes a Designated Record Set, make available, within ten (10) business days after a written request by Covered Entity or an Individual, PHI for amendment and incorporate any amendments to the PHI as requested in accordance with 45 C.F.R. § 164.526.

3. RESPONSIBILITIES OF COVERED ENTITY. Covered Entity:

- 3.1 shall identify the records it furnishes to Business Associate that it considers to be PHI for purposes of the Agreement, and provide to Business Associate only the minimum PHI necessary to accomplish the Services.
- 3.2 in the event that the Covered Entity honors a request to restrict the use or disclosure of PHI pursuant to 45 C.F.R. § 164.522(a) or makes revisions to its notice of privacy practices of Covered Entity in accordance with 45 C.F.R. § 164.520 that increase the limitations on uses or disclosures of PHI or agrees to a request by an Individual for confidential communications under 45 C.F.R. § 164.522(b), Covered Entity agrees not to provide Business Associate any PHI that is subject to any of those restrictions or limitations, unless Covered Entity notifies Business Associate of the restriction or limitation and Business Associate agrees in writing to honor the restriction or limitation.
- 3.3 shall be responsible for using administrative, physical and technical safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Business Associate pursuant to the Agreement, in accordance with the requirements of HIPAA.
- 3.4 shall obtain any consent or authorization that may be required by applicable federal or state laws prior to furnishing Business Associate the PHI for use and disclosure in accordance with this BAA.
- 3.5 if Covered Entity is an employer sponsored health plan, Covered Entity represents that to the extent applicable, it has ensured and has received certification from the applicable Plan Sponsor that the Plan Sponsor has taken the appropriate steps in accordance with 45 C.F.R. § 164.504(f) and 45 C.F.R. § 164.314(b) to enable Business Associate on behalf of Covered Entity to disclose PHI to Plan Sponsor, including but not limited to amending its plan documents to incorporate the requirements set forth in 45 C.F.R. § 164.504(f)(2) and 45 C.F.R. § 164.314(b). Covered Entity shall ensure that only employees authorized under 45 C.F.R. § 164.504(f) shall have access to the PHI disclosed by Business Associate to Plan Sponsor.

4. PERMITTED USES AND DISCLOSURES OF PHI. Business Associate may:

- 4.1 use and disclose PHI as necessary to provide the Services to Covered Entity.
- 4.2 use and disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that any disclosures are Required by Law or any third party to which Business Associate discloses PHI provides written assurances that: (i) the information will be held confidentially and used or further disclosed only for the purpose for which it was disclosed to the third party or as Required by Law; and (ii) the third party promptly will notify Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been breached, in accordance with 45 C.F.R. § 164.504(e)(4).
- 4.3 De-identify any PHI received or created by Business Associate under this BAA in accordance with the Privacy Rule.
- 4.4 provide Data Aggregation services relating to the Health Care Operations of the Covered Entity in accordance with the Privacy Rule.
- 4.5 use PHI for Research projects conducted by Business Associate, its Affiliates or third parties, in a manner permitted by the Privacy Rule, by obtaining documentation of individual authorizations, an Institutional Review Board, or a privacy board waiver that meets the requirements of 45 C.F.R. § 164.512(i)(1), and providing Covered Entity with copies of such authorizations or waivers upon request.
- 4.6 make PHI available for reviews preparatory to Research in accordance with the Privacy Rule at 45 C.F.R. § 164.512(i)(1)(ii).
- 4.7 use the PHI to create a Limited Data Set ("**LDS**") and use or disclose the LDS for the health care operations of the Covered Entity or for Research or Public Health purposes as provided in the Privacy Rule.
- 4.8 use and disclose PHI for Covered Entity's health care operations purposes in accordance with the Privacy Rule.

5. TERMINATION

- 5.1 Covered Entity may terminate this BAA and the Agreement if Business Associate materially breaches this BAA, Covered Entity provides written notice of the breach to Business Associate, and Business Associate fails to cure the breach within the reasonable time period set by Covered Entity.
- 5.2 Within thirty (30) days after the expiration or termination for any reason of the Agreement and/or this BAA, Business Associate shall return or destroy all PHI, if feasible to do so, including all PHI in possession of Business Associate's subcontractors. In the event that return or destruction of the PHI is not feasible, Business Associate may retain the PHI subject to this section 5.2. Business Associate shall extend any and all protections, limitations and restrictions contained in this BAA to Business Associate's use and/or disclosure of any PHI retained after the expiration or termination of the Agreement and/or this BAA, and shall limit any further uses and/or disclosures solely to the purposes that make return or destruction of the PHI infeasible.

6. MISCELLANEOUS. The terms of this BAA shall be construed to allow Covered Entity and Business Associate to comply with HIPAA. Nothing in this BAA shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever. Sections 4 and 5.2 shall survive the expiration or termination of this BAA for any reason.

7. **NOTICES.** Notwithstanding the notice provision in the Agreement, all notices given in connection with this BAA shall be provided to the contact(s) set forth below. In the event Covered Entity does not have a contact set forth below, then all notices given in connection with this BAA shall be provided in accordance with the notice provision in the Agreement.

To Covered Entity:

Monroe County School Board
241 Trumbo Road
Key West, FL 33040
Phone: 305-293-1400

To Business Associate:

OptumRx, Inc.
1600 McConnor Parkway
Schaumburg, IL 60183-6801
Phone: 877-598-3646
Email: privacy@optum.com

EXHIBIT E

PERFORMANCE GUARANTEES

OptumRx is placing ten dollars (\$10.00) per member at risk for all implementation guarantees and fifteen dollars (\$15.00) per member at risk annually for ongoing performance guarantees.

Client can reallocate ongoing performance guarantee dollars each year, but allocations must be mutually agreed upon no later than thirty (30) days prior to the anniversary of the Effective Date of the agreement. Client may allocate up to twenty percent (20%) on one (1) guarantee, with a minimum of three percent (3%) allocated on all other guarantees, provided that the total allocations do not exceed one hundred percent (100%) of the aggregate amount at risk.

Unless otherwise specified, the following performance guarantees apply to pharmacy benefits for the period beginning on the Effective Date of the Agreement ("Guarantee Period"). These guarantees will become effective upon the later of (1) the first day of the Guarantee Period, if the Effective Date is the first day of a calendar quarter; or (2) the first day of the next calendar quarter after the agreement is signed by both parties. With respect to the aspects of OptumRx's performance addressed in this exhibit, these penalty amounts are Client's exclusive remedies under this agreement.

Unless otherwise indicated, ongoing guarantees will be monitored internally, reported quarterly and penalties will be assessed annually based upon aggregate annual results. Ongoing performance guarantees will be reconciled/settled annually and will be paid within thirty (30) calendar days following the completion of annual reconciliation/settlement activities. Partial year guarantees will be prorated.

If the implementation time period is less than ninety (90) days, implementation guarantees will not apply. Otherwise, implementation guarantee penalties will be reported and paid within one hundred twenty (120) days after the later of the first day of the Guarantee Period or the date the agreement is signed by both parties.

OptumRx reserves the right from time to time to replace or change the format of any report referenced in these guarantees. In such an event, the guarantees will be modified to the extent reasonably necessary to carry out the intent of the parties. OptumRx shall not be required to meet any of the guarantees provided for in this agreement to the extent OptumRx's failure is due to the action or inaction of Client or other third party, change in law or due to any other cause beyond OptumRx's reasonable control, including any act of God, fire, casualty, flood, earthquake, war, strike, lockout, epidemic, destruction of production facilities, riot or insurrection.

Guarantee Name	Definition	Target	Measurement	Amount at Risk
Implementation Guarantees				
Implementation Client Satisfaction	<p>OptumRx guarantees it will achieve an average rating, across all responses, of "satisfied" or greater.</p> <p>OptumRx will survey a minimum of three contacts who participate in the implementation activity to assess our performance relative to the implementation of the plan.</p> <p>Results are based on the average of all implementation process scores or the overall implementation satisfaction score, whichever is greater.</p> <p>A minimum of three survey responses received by OptumRx within 15 days of Client's receipt of the survey is required to qualify for this guarantee.</p>	>=Satisfied	Client-specific.	100%

Guarantee Name	Definition	Target	Measurement	Amount at Risk
Ongoing Performance Guarantees				
Client Meeting Frequency	OptumRx will make an client management representative available for a minimum of four account management meetings per year, or such other number as is agreed to by both OptumRx and your organization, and upon timely notice of such meeting by your organization.	Compliant	Client-specific. Measured quarterly and reported annually. Penalty based upon quarterly results.	7%
Satisfaction with Client Management	OptumRx guarantees it will achieve an average rating, across all responses, of "satisfied" or greater. OptumRx reserves the right to cure any service level issues and will not be required to pay any of the failure penalty specified should Client fail to complete all of the surveys sent within the survey period. Results are based on the average of all Client Management Satisfaction scores (the Client Management teams you work with on a regular basis). Client must provide a minimum of three survey participants to OptumRx. Participants must respond to OptumRx within 15 days of Client's receipt of the survey in order to qualify for this guarantee.	>=Satisfied	Client-specific. Measured and reported annually.	5%
Redlined Contract Turnaround Time	OptumRx will provide a written redline in response to each redline received from Client within 10 business days, measured from the time OptumRx receives all information from Client needed to complete OptumRx's redline to the time OptumRx transmits its redline to Client. OptumRx will not be deemed to have failed to meet this commitment if the failure is due to circumstances caused by Client or other third party or otherwise not within OptumRx's reasonable control. OptumRx's obligations under this performance guarantee are conditional upon Client's execution of a written agreement with OptumRx for the provision of pharmacy benefit management services.	Compliant	Client-specific. Measured quarterly and reported annually. Penalty based upon quarterly results.	7%
Annual Benefit Plan Review	OptumRx agrees to conduct an annual benefit plan review 45 days prior to effective date of any plan benefit plan modifications. OptumRx's obligations under this performance guarantee are conditional upon development of a mutually agreed upon process.	Compliant	Client-specific. Measured and reported annually.	5%
Notification of Negative Formulary Changes	Within 60 days of a negative formulary change OptumRx will notify members who have had prescriptions filled for select medications in the previous 120 days.	Compliant	Client-specific. Measured and reported annually.	4%
ID Card Production Timeliness (Ongoing)	ID cards will be mailed within an average of five business days, provided use of the standard member communication packets. Measured as the time from receipt of complete and accurate eligibility information to the time OptumRx mails ID cards.	≤5 business days average	Client-specific	7%
Direct Member Reimbursement Processing Timeliness	At least 95 percent of all clean direct member reimbursement claims will be processed within 10 business days from receipt.	>=95% within ≤10 business days	Book-of-business	7%

Guarantee Name	Definition	Target	Measurement	Amount at Risk
Home Delivery Prescription Dispensing Timeliness - Routine	Routine prescription orders will be shipped within an average of two business days. Measured in whole business days from the date a prescription order is received by OptumRx (either by mail, phone, fax, or Internet) to the date the prescription order is shipped. Calculated by taking the total number of whole business days to ship divided by the total number of prescription orders.	≤2 business days average	Book-of-business	7%
Home Delivery Prescription Dispensing Timeliness - Non-routine	Non-routine prescription orders will be shipped within an average of five business days. Measured in whole business days from the date a prescription order is received by OptumRx (either by mail, phone, fax, or Internet) to the date the prescription order is shipped. Calculated by taking the total number of whole business days to ship divided by the total number of prescription orders. Contact with prescriber or Client not achieved as a result of unresponsiveness for an intervention prescription order will be excluded from calculation.	≤5 business days average	Book-of-business	7%
Consulting Pharmacist/ Support Average Speed of Answer	OptumRx Consulting Pharmacist shall answer calls transferred from a CSA or direct from the portal "Click to Call Pharmacist" within an average of 45 seconds or less. (Excludes Prior Authorization Pharmacist or other clinical staff).	≤45 second ASA	Book-of-business.	5%
Average Speed of Answer	OptumRx's personnel shall answer calls within an average of 30 seconds or less.	≤30 second ASA	Book-of-business.	7%
Percent of Calls Abandoned	Three percent or less of calls to OptumRx's member service center will be abandoned.	≤3%	Book-of-business.	7%
First Call Resolution	At least 90 percent of member calls will be resolved during initial customer service advocate (CSA) call. Defined by the number of ensuing calls by the same member with the same "reason for call" within a five day period. Calculated as the percent of calls resolved divided by the total number of calls answered by a CSA.	≥90% First Call Resolution	Book-of-business.	5%
Written Inquiry Timeliness	OptumRx shall respond to 95 percent or greater of written inquiries from members within five business days of email receipt date. Member inquiries received via designated email box.	≥95% ≤5 business days	Book-of-business.	7%
Member Satisfaction	OptumRx guarantees "Overall Member Satisfaction" survey results of "Satisfied" or greater for 90 percent of respondents. Member satisfaction results will be measured by the responses to OptumRx's member post-call "Voice of the Customer" satisfaction survey.	≥90% of respondents ≥Satisfied	Book-of-business.	4%
Quarterly Standard Report Timeliness	Standard Prescription Drug Plan reporting package will be available on line to Client within 45 calendar days of the end of the billing cycle that includes the last calendar day of the reporting quarter.	Compliant	Client-specific. Penalty based upon quarterly results.	5%
Timeliness of AWP Discount and Dispensing Fee Guarantee Reconciliations	OptumRx will calculate and report AWP discount and dispensing fee guarantee reconciliations within 90 days from the end of the reporting year.	Compliant	Client-specific. Measured and reported annually at the end of 2Q each year for the previous year.	4%