

MERITAIN HEALTH, INC.
ADMINISTRATIVE SERVICES AGREEMENT

This Administrative Services Agreement (this “**Agreement**”), effective as of **April 01, 2019** (the “**Effective Date**”), is by and between **Meritain Health, Inc.**, (including any of its affiliates performing Services hereunder) having its principal office at **300 Corporate Parkway, Amherst, New York 14226** (“**Meritain**”) and **City of Valdez** having its principal office at **212 Chenega Avenue, Valdez, AK 99686** (“**Client**”). This Agreement applies to services to be provided by Meritain to Client in connection with Client’s self-funded employee welfare benefit plan(s) formally known as: **City of Valdez Health Care Plan** (the “**Plan**”). In consideration of the mutual covenants and promises stated herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each party, the parties agree as follows:

1. DEFINITIONS.

The following words and phrases have the meanings set forth below:

- a. **Applicable Law** means any laws, codes, legislative acts and regulations, including but not limited to the Employee Retirement Income Security Act, as amended (“**ERISA**”) and the Health Insurance Portability and Accountability Act, as amended (“**HIPAA**”) (collectively the “**Applicable Laws**”) to the extent applicable to a party’s performance under this Agreement (and in the case of Client, applicable to the Plan).
- b. **Claim** means a request by any person or entity for payment or reimbursement for Covered Services.
- c. **Claims Payment Account** means an account established, owned and funded by Client for payment or reimbursement of Covered Services, which account constitutes an asset of Client and not the Plan.
- d. **Covered Services** means the care, treatments, services or supplies described in the Plan Document as eligible for payment or reimbursement under the terms of the Plan. Covered Services may include at Client’s request, but are not limited to, utilization review services (including pre-admission certification, second surgical opinion, concurrent review and discharge planning) and case management services (including those related to transplants, premature births, spinal cord injuries, multiple trauma, chemotherapy claims, medical appropriateness, end stage cancer patients, AIDS and large claims over \$50,000 in the aggregate per year).
- e. **Participant** means any person who is eligible, properly enrolled and entitled to benefits under the terms of the Plan.
- f. **Plan Document(s)** means the instrument(s), including the Summary Plan Description, if applicable, that set forth and govern the duties of Client, as the designated Plan administrator, as well as the eligibility and benefit provisions that provide for the payment or reimbursement of Covered Services.
- g. **Provider** means a preferred provider network, physician, dentist, pharmacy, hospital, laboratory or other medical practitioner, or medical care facility, or a vendor of supplies or services, who or which is authorized to receive payment or reimbursement for Covered Services under the terms of the Plan.
- h. **Summary Plan Description (“SPD”)** means the written materials that describe the terms and conditions under which the Plan operates, including without limitation coverage limits and procedures of the Plan (as described in Section 102 of ERISA if applicable).

2. SERVICES.

- a. Scope of Services. Meritain shall provide only those services expressly described in the attached schedules (the “**Services**”), which are incorporated herein. Meritain’s obligations apply only to Claims incurred on or after the Effective Date and prior to the date this Agreement terminates or expires in

accordance with its terms (the “**Termination Date**”). In its performance of the Services, Meritain shall be entitled to rely, without investigation or inquiry, upon any written or oral information or communication of Client, its agents or its third-party medical management vendor or third-party pharmacy benefits manager, if any.

- b. Subcontractors. Any of the Services may, at Meritain’s discretion, be performed directly by it or wholly or in part through an affiliate of Meritain, or by another entity with which Meritain has an arrangement.
- c. Suspension of Services. If Client fails to pay Fees (as hereinafter defined) when due or fund its Claims Payment Account as required under Section 7.c. of this Agreement, in addition to any other remedies under this Agreement, at law or in equity, Meritain shall have the right to suspend Services including without limitation the processing of Claims until the Fees have been paid or the Claims Payment Account has been funded in accordance with Section 7.c. of this Agreement.
- d. Exclusivity. Meritain shall be the sole and exclusive provider to Client of each of the Services with respect to the Plan.

3. TERM; TERMINATION.

- a. Term; Renewal. The initial term of this Agreement begins as of the Effective Date and continues through and including **March 31, 2020** (the “**Initial Term**”), unless sooner terminated as provided in this Section. Unless a party provides the other with at least forty-five (45) days notice of non-renewal prior to the end of the Initial Term or any renewal term (a “**Renewal Term**”), and the Initial Term and any Renewal Terms, (collectively, the “**Term**”) this Agreement will automatically renew in each instance for successive twelve (12) month Renewal Terms.
- b. Renewal Fees. Meritain may increase the Administrative Rates (as defined and set forth in the Fee Schedule) for each Renewal Term subject to Client’s agreement as to such Administrative Rates. If the parties fail to agree upon new Administrative Rates, the existing Administrative Rates for the immediately prior Initial or Renewal Term, plus a percentage amount equal to the change in the Consumer Price Index for all Urban Areas for the previous twelve (12) months, shall apply for each such Renewal Term, and the parties agree that notwithstanding anything to the contrary herein, this Agreement shall be deemed amended to reflect such increase without further action by either party.
- c. Termination. This Agreement may be terminated:
 - i. by Meritain: (A) upon five (5) business days written notice to Client for Client’s failure to pay any Fees when due if not paid in full within such notice period; (B) subject to the following subsection, upon five (5) business days written notice to Client for Client’s failure to fund the Claims Payment Account as required under Section 7.c. of this Agreement if not funded in full within such notice period; (C) immediately upon written notice to Client for Client’s failure to fund the Claims Payment Account as required under Section 7.c. of this Agreement two (2) or more times within any three (3) month period; or (D) immediately upon notice to Client for Client’s failure to promptly sign and deliver stop loss insurance applications and disclosures, or any information or data necessary for Meritain’s to perform the Services;
 - ii. by either party upon thirty (30) days written notice to the other party for the other party’s material breach of this Agreement, if such breach is not cured during such thirty (30) day period;
 - iii. by either party upon thirty (30) days written notice after the other party: (A) becomes insolvent; (B) is, or states in writing that it is, unable to pay its debts as they become due; (C) makes an assignment for the benefit of its creditors; (D) files or has filed against it any proceeding in United States Bankruptcy Court; (E) is subject to a levy, seizure or sale of a

substantial part of its property or assets on behalf of creditors; or (F) is subject to the appointment of a receiver for at least thirty (30) days.

- d. **Early Termination.** If Client terminates this Agreement prior to the expiration of the Initial Term or any Renewal Term, other than as permitted under Section 3.c. of this Agreement (an “**Early Termination**”), Client acknowledges that such Early Termination will cause damages to Meritain, and agrees to compensate Meritain for such damages as provided in this Section.
- i. Client further acknowledges that the actual damages likely to result from an Early Termination are difficult to estimate as of the Effective Date and may be difficult for Meritain to prove. Accordingly, Client agrees that it shall pay, within thirty (30) days of any notice of termination on or before the effective date of such Early Termination, whichever occurs first, an amount as calculated below under Section 3.d.iii of this Agreement (the “**Early Termination Fee**”).
- ii. The parties intend that Client’s payment of the Early Termination Fee is to be a reasonable measure of the anticipated probable harm to Meritain arising as a result of any Early Termination, would serve to compensate Meritain for any such Early Termination, and, although the actual damages incurred by Meritain as a result of such Early Termination (including actual, direct, indirect, consequential, special, and other damages) might exceed or be less than the Early Termination Fee, they do not intend for it to serve as punishment or penalty for any such Early Termination.
- iii. The Early Termination Fee will be calculated in accordance with the chart set forth below:

Duration of Initial Term or Renewal Term (the “In-Force Term”) at Date of Termination	Number of Months of the In-Force Term Fulfilled	Early Termination Fee
3 Years	0-23 Months	9% of the current total Administrative Rates multiplied by the number of covered employees at the time of termination, multiplied by the number of months of the In-Force Term that has been fulfilled.
	24-35 Months	5% of the current total Administrative Rates multiplied by the number of covered employees at the time of termination multiplied by the number of months of the In-Force Term that has been fulfilled.
2 Years	0-23 Months	5% of the current total Administrative Rates multiplied by the number of covered employees at the time of termination multiplied by the number of months of the In-Force Term that has been fulfilled.
1 Year	0-11 Months	100% of the current total Administrative Rates multiplied by the number of covered employees at the time of termination multiplied by the number of months remaining in the In-Force Term.

- e. **Effect of Termination.**
- i. **Run-Out.** Upon termination of this Agreement, for any reason other than termination by Meritain under Section 3.c. of this Agreement and subject to Client’s payment of the Fees for run-out services set forth under the Fee Schedule, Meritain will continue to process Claims that were incurred prior to, but not processed as of, the Termination Date, which are received by Meritain not more than six (6) months following the Termination Date (the “**Run-Out Period**”). The terms and conditions of this Agreement including without limitation Client’s obligation to fund the Claims Payment Account, will survive the termination of this

Agreement and remain in effect with respect, and to the extent applicable, to such Claims during the Run-Out Period. Meritain will have no obligation with respect to Claims received after the expiration of the Run-Out Period. For the avoidance of doubt, Meritain may terminate or suspend its obligations under this Section pursuant to Section 2.c. or Section 3.c. of this Agreement.

- ii. Subrogation. Unless Client directs Meritain, within sixty (60) days of the Termination Date, to send it all cases in the Meritain subrogation process, Meritain will continue subrogation and recovery efforts on all such cases and will remit to Client all proceeds it receives, less applicable fees under the Fee Schedule and Disclosures Exhibit. If Client requests to receive subrogation cases from Meritain, it will: (A) be deemed to have released Meritain and its subrogation vendor from and against any and all suits, claims, losses, fees and expenses related to the subrogation cases; and (B) reimburse Meritain for all out-of-pocket expenses.
- iii. Records. Upon termination of this Agreement, following payment to Meritain of all Fees due Meritain will release to Client or to a successor administrator, in Meritain's standard format, claims data and records in accordance with Meritain's then-standard policies and procedures within a reasonable time period following the Termination Date. Any other records requests by Client will be subject to Meritain's agreement to such request and Client's payment of any costs or other charges associated with such request.

4. STANDARD OF CARE.

Meritain will discharge its obligations under this Agreement with that level of reasonable care which a similarly situated services provider would exercise under similar circumstances. In connection with fiduciary powers and duties under this Agreement set forth in the Administrative Services Schedule, if any, Meritain shall observe the standard of care and diligence required of a fiduciary under ERISA Section 404(a)(1)(B).

5. FIDUCIARY DUTY.

Client is the "plan sponsor," "plan administrator" and "named fiduciary" with respect to the Plan, as such terms are interpreted under Applicable Law. Client, as Plan Administrator, retains complete authority and responsibility for the Plan, its operation, and the benefits provided thereunder. Meritain is empowered to act on behalf of Client in connection with the Plan only to the extent expressly stated in this Agreement, and that unless otherwise expressly set forth in the Administrative Services Schedule, and if so to the limited extent so set forth in the Administrative Services Schedule: (i) the Services will not include the power to exercise discretionary authority over Plan operations or Plan assets (if any), and (ii) Meritain will not for any purpose be deemed to be the "Plan Administrator" of the Plan or a "fiduciary" with respect to the Plan. Meritain's non-fiduciary services under this Agreement are intended to and will consist only of those "ministerial functions" described in 29 C.F.R. 2509.75-8, D-2 and will be performed within the framework of policies and interpretations established by Client. Client has the sole and complete authority to determine eligibility of persons to participate in the Plan, and has selected and is solely responsible for the Plan's benefit and coverage design.

6. FEES.

- a. Client shall pay Meritain all fees, costs, and other charges as set forth in the Fee Schedule, and any other fees, costs, or charges that may be set forth in this Agreement including any Schedule or Exhibit (collectively, the "Fees") on the first (1st) day of the month or on such other date agreed to in writing by the parties in accordance with Meritain's then-standard policies. Meritain will provide appropriate documentation regarding the Fees due and owed prior to the due date for that month's Services based on eligible employees at the time the invoice is generated. If Client elects electronic funds transfer withdrawal from Meritain for the payment of Fees, Client authorizes Meritain to withdraw the Fees from its bank account on the due date. Adjustments to eligibility will be accounted for in the next invoice

processing period. If the Fees are not received by Meritain within ten (10) days of due date, then in addition to any other remedies under this Agreement, at law or in equity, Meritain may charge a one and one-half percent (1.5%) late charge per month calculated from the first day of the month on all unpaid amounts.

- b. If Client is in default of paying any Fees under this Agreement, Meritain shall have the right to set-off such amounts against any monies due Client, including without limitation subrogation recoveries.

7. CLIENT'S RESPONSIBILITIES.

Client shall:

- a. maintain and furnish to Meritain current, accurate Plan eligibility and coverage information, and submit to Meritain written notice of any changes with respect to the status of any of the Participants within fifteen (15) days after the Client becomes aware of any such change. When dependents reach the maximum age specified in the Plan Document, such dependent will no longer be a Participant, and Client hereby directs Meritain to automatically terminate such dependents from eligibility under the Plan without notice or further instruction from Client. Upon termination of dependent under this Section, Meritain will provide notice of such termination to Client. Such information shall be provided in a format reasonably acceptable to Meritain and shall include the following with respect to each Participant: name and address, social security number, date of birth, type of coverage, sex, relationship to employee, changes in coverage, date coverage begins or ends, and any other information necessary to determine eligibility and coverage levels under the Plan;
- b. resolve all ambiguities and disputes relating to eligibility of Participants; and adjudicate all appeals of denials of Claims;
- c. with respect to the Claims Payment Account:
 - i. establish the Claims Payment Account and execute and deliver to Meritain and to a mutually agreed-upon depository any and all documents necessary to empower Meritain to act as a signatory on such account, if requested;
 - ii. deposit into the Claims Payment Account, within two (2) business days (or as otherwise agreed to in writing by the parties, but no more than four (4) business days) of receipt of a funding request, all monies required for the satisfaction of Claims;
 - iii. upon Meritain's request, fund claims within one (1) business day if necessary in Meritain's sole discretion for reasons including without limitation, meeting stop-loss funding obligations and meeting prompt pay deadlines; and
 - iv. agree that Meritain will not be responsible for any consequences resulting from Client's untimely funding of Claims, and that failure to fund Claims in a timely manner may result in claim denials by its stop-loss carrier, lost discounts from Providers, and/or interest and penalties, all of which may require Client to fund any such additional sums.
- d. provide Meritain with copies of any and all revisions or changes to the Plan at least thirty (30) days prior to the effective date of the changes;
- e. maintain and operate the Plan in accordance with all Applicable Laws;
- f. as required under Applicable Law: (i) provide and timely distribute to Participants all notices, information, materials and documents, (ii) maintain all recordkeeping, and file all forms relative to the Plan, and (iii) timely prepare or cause to be prepared, and timely execute, any documents, forms or contracts with respect to the Plan;

- g. timely pay: (i) any and all taxes, licenses and fees levied, if any, by any local, state or federal authority in connection with the Plan, and (ii) any payments, underpayments, fines, penalties, interest, surcharges, assessments, or other fees or charges assessed or levied by any governmental or regulatory entity on or in connection with the Plan ("**Regulatory Fees**"); Client shall be solely liable for any Regulatory Fees and shall indemnify Meritain if any are assessed against Meritain; and
- h. perform those other obligations as set forth in this Agreement including without limitation any Schedule.

8. CONFIDENTIALITY.

- a. Confidential Information. Each party acknowledges that it may gain access to business proprietary data, rates, provider discounts, procedures, materials, lists, systems and information of the other party ("**Confidential Information**") under this Agreement. Confidential Information does not include Protected Health Information as defined by HIPAA. Neither party may use Confidential Information of the other for its own purpose, nor disclose such Confidential Information to any third party other than a party's representative who has a need to know such information in relation to the administration of the Plan, and provided that such representatives are informed of the confidentiality provisions of this Agreement and agree to abide by them. Notwithstanding the foregoing, Client shall not disclose preferred Provider network ("**PPN**") discount information to any third party, including without limitation Client's representatives, without Meritain's prior written consent, which may be withheld in Meritain's sole discretion, and until each recipient has executed a confidentiality agreement reasonably satisfactory to Meritain.
- b. Plan Participant Information. Each party will maintain the confidentiality of Participant-identifiable information in accordance with Applicable Law and the terms of the HIPAA business associate agreement attached hereto as the Health Insurance Portability and Accountability Act (HIPAA) Schedule and incorporated herein.
- c. Upon Termination. Upon termination of this Agreement a party, upon the request of the other, will return or destroy all copies of all of the other's Confidential Information in its possession or control except to the extent such Confidential Information must be retained pursuant to Applicable Law or in Meritain's case cannot be disaggregated from Meritain's databases. Meritain may retain copies of any such Confidential Information it deems necessary for the defense of litigation concerning the Services, for use in the processing of run-out Claims and for regulatory purposes.
- d. Injunctive Relief. The parties each acknowledge that compliance with this Section is necessary to protect the business and goodwill of each party and its affiliates and that any actual or potential breach will cause irreparable harm to the non-breaching party or its affiliates for which money damages may not be adequate. Each party therefore agrees that if a party or its representatives' breach or attempt to breach this Section, the non-breaching party may request for temporary, preliminary and permanent equitable relief, without bond, to restrain such breach. The prevailing party shall be entitled to recover from the other party the attorneys' fees and costs it expends in any action related to such breach or attempted breach.

9. RECORDS; AUDIT RIGHTS.

- a. Meritain shall maintain records of Claims made and benefits paid in such form and format as is convenient for Meritain for at least seven (7) years, or longer if required by Applicable Laws.
- b. Subject to the provisions of this Section and the remainder of this Agreement, Client may audit Meritain's records in connection with the administration of the Plan no more frequently than once every twelve (12) months, provided that any such audit be commenced within one (1) year following the period being audited.

- c. Meritain shall provide Client with reasonable access to such records. Meritain shall only provide access to information that is: (i) in its possession; (ii) reasonably necessary to administer the Plan; and (iii) not restricted from disclosure under Applicable Law or any agreement between Meritain and a third party.
- d. Client shall give Meritain at least four (4) weeks prior written notice, which must include: (i) a statement explaining its need to perform the audit; (ii) a description of the type(s) of information within the scope of the audit, including dates, a complete and accurate listing of the transactions to be pulled for the audit, and identification of the potential auditor; and (iii) a representation that the information to be disclosed by Meritain is reasonably necessary for the administration of the Plan.
- e. Audits shall occur at a reasonable time and place, in a manner that does not unreasonably interfere with Meritain's ability to conduct its normal business, and at Client's sole expense. Client shall reimburse Meritain its costs for an audit which, with Meritain's approval: (i) cannot be completed within five (5) business days, or (ii) otherwise imposes exceptional administrative demands. Meritain reserves the right to review and approve the sample size, the objectives of the audit and the sampling methodology proposed by the auditors
- f. Subject to Meritain's approval, which may be withheld in its reasonable discretion, Client may designate a third party to conduct an audit or receive information hereunder, further subject to Client and such third party's written agreement, in a form acceptable to Meritain, that: (i) no portion of the audit is based upon a contingency fee arrangement; (ii) each shall only use the minimally necessary amount of audit information solely for purposes of administering the Plan and that each shall protect and maintain such information as confidential and shall not disclose the information to any other person or entity other than Meritain; and (iii) each shall provide Meritain with copies of all reports and summaries compiled as a result of the audit, including any draft report. Upon Meritain's request, the auditors shall meet with Meritain to discuss any finding contained in a draft report. Meritain may, in its discretion, include a supplementary statement in any final audit report.
- g. Client will utilize individuals to conduct audits on its behalf that are qualified by appropriate training and experience for such work, and will perform its review in accordance with Applicable Law. Client and such individuals will not make or retain any record of Provider negotiated rates included in the audited transactions, or payment identifying information concerning treatment of drug or alcohol abuse, mental/nervous or HIV/AIDS or genetic markers, in connection with any audit.

10. OVERPAYMENTS.

- a. Meritain shall reprocess any identified errors in Plan benefit payments (other than errors Meritain reasonably determines to be de minimis), and, subject to Applicable Law, seek to recover any resulting overpayment by attempting to contact the party receiving the overpayment twice via letter, phone, or email. Client may direct Meritain not to seek recovery of overpayments from Participants, and if so then Meritain shall have no further responsibility with respect to those overpayments. Meritain is not responsible for pursuing overpayment recovery through litigation.
- b. If Meritain elects to use a third-party recovery vendor, collection agency, or attorney to pursue the recovery, the overpayment recoveries will be credited to Client less the Fees for non-subrogation recovery services as set forth under the Fee Schedule and Disclosures Exhibit. Client shall cooperate with Meritain in recovering all overpayments of Plan benefits.

11. INDEMNIFICATION.

- a. Each party shall indemnify, defend, and hold harmless the other party and its affiliates, and their officers, directors, employees and agents from and against any and all claims, suits, actions, liabilities, losses, fines, penalties, damages and expenses of any kind (including, but not limited to, actual attorneys' fees) which the indemnified party may incur by reason of a third-party claim arising out of the

other party's: (i) gross negligence or willful misconduct; or (ii) breach of its fiduciary duties, if any, with respect to the Plan.

- b. Client shall indemnify, defend and hold harmless Meritain and its affiliates, and their officers, directors, employees and agents from and against any and all claims, suits, actions, liabilities, losses, fines, penalties, damages and expenses of any kind (including, but not limited to, actual attorneys' fees) which Meritain may incur by reason of a third-party claim arising out of:
 - i. Client's failure to fund Claims as required under this Agreement;
 - ii. Client's failure to maintain and operate the Plan in accordance with Applicable Law;
 - iii. the adjudication, denial, or partial payment of a Claim by Client or its stop-loss carrier, third-party medical management vendor or third-party pharmacy benefits manager, if any;
 - iv. any action taken by Meritain at the direction of Client;
 - v. Meritain's inability to comply with PPN or State prompt pay requirements due to circumstances beyond its control including without limitation additional information needed to process a Claim, incomplete eligibility or coverage information, or untimely Claim repricing from the vendor.
- c. Meritain shall indemnify, defend and hold harmless Client and its affiliates, and their officers, directors, employees and agents from and against any and all claims, suits, actions, liabilities, losses, fines, penalties, damages and expenses of any kind (including, but not limited to, actual attorneys' fees) which Client may incur by reason of a third-party claim arising out of Meritain's fraud, embezzlement or other willful financial misconduct.
- d. The party seeking indemnification under this Section (the "**Indemnified Party**") shall promptly notify the other (the "**Indemnifying Party**") in writing of its claim for indemnification. Such written notice shall set forth in reasonable detail the third-party claim for which indemnification is sought (the "**Third-Party Claim**") and the basis for indemnification. Failure to so notify the Indemnifying Party shall relieve the Indemnifying Party of its obligations hereunder only to the extent such failure adversely prejudiced the Indemnifying Party.
- e. The Indemnifying Party shall be entitled to control and appoint lead counsel with respect to the Third-Party Claim at its own expense. If the Indemnifying Party assumes control of the defense of any Third-Party Claim in accordance with this Section the Indemnifying Party may settle the Third-Party Claim without the Indemnified Party's consent if the settlement: (i) does not require any admission against interest by the Indemnified Party; (ii) provides that any monetary damages shall be paid in full by the Indemnifying Party; and (iii) includes a release of the Indemnified Party from all liability alleged in the Third-Party Claim. Each Party shall cooperate, and cause its respective Indemnitees to cooperate, in the defense or prosecution of any Third-Party Claim.
- f. This Section shall survive any expiration or termination of this Agreement with respect to any matter concerning which a claim has been asserted by notice to the other party during the Term or within one (1) year after the Termination Date.

12. DEFENSE OF CLAIM LITIGATION.

In the event of a legal, administrative or other action arising out of the administration, processing or determination of a Claim, the party designated in this Agreement as the fiduciary which rendered the decision in the appeal last exercised by the Participant which is being appealed to the court ("**appropriate named fiduciary**") shall undertake the defense of such action at its expense and settle such action when in its reasonable judgment it appears expedient to do so. If the other party is also named as a party to such action, the appropriate named fiduciary will defend the other party if the action relates solely and directly to

actions or failure to act by the appropriate named fiduciary and there is no conflict of interest between the parties. Client shall pay the amount of Plan benefits included in any judgment or settlement in such action. The non-fiduciary party shall not be liable for any other part of such judgment or settlement, including but not limited to legal expenses and punitive damages, except to the extent, if any, provided under Section 11 of this Agreement.

13. LIMITATION OF LIABILITY; NO WARRANTIES.

- a. **IN NO EVENT SHALL MERITAIN HAVE ANY LIABILITY OR OBLIGATION TO CLIENT IN EXCESS OF THE ADMINISTRATIVE FEES ACTUALLY PAID BY CLIENT TO MERITAIN FOR THE TWELVE (12) MONTHS PRIOR TO THE ACT OR OMISSION GIVING RISE TO ANY SUCH LIABILITY OR OBLIGATION.**
- b. **IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, OR INCIDENTAL DAMAGES, OR FOR LOST PROFITS, LOSS OF USE, LOSS OF REPUTATION OR GOODWILL, COST OF PROCUREMENT OF SUBSTITUTE SERVICES OR ANY SIMILAR CLAIM OR DEMAND, AND EACH PARTY EXPRESSLY WAIVES ITS RIGHT TO MAKE ANY CLAIMS TO THE CONTRARY.**
- c. Client expressly agrees and acknowledges that: (i) Meritain does not render medical services or treatments to Participants; (ii) Meritain is not responsible for the health care that is delivered by Providers, or for a Provider's refusal to provide health care; (iii) Providers are solely responsible for the health care they deliver to Participants; (iv) Providers are not the agents or employees of Meritain and Meritain shall not be liable for the actions or lack thereof by Providers including without limitation under any theories of vicarious liability, agency, ostensible authority, respondeat superior or imputed liability; and (v) the indemnification obligations under Section 11 of this Agreement do not apply to any portion of any loss, liability, damage, expense, settlement, cost or obligation caused by the acts or omissions of Providers with respect to Participants.
- d. **MERITAIN MAKES NO WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND EXPRESSLY DISCLAIMS ALL SUCH WARRANTIES INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

14. DISPUTE RESOLUTION.

If there is a dispute between the parties related to this Agreement, the parties shall first attempt to resolve such dispute by having the parties' Chief Executive Officers (or their designees) meet in person within thirty (30) days of written notice of dispute issued by either party. If the dispute is not resolved after reasonable efforts by the Chief Executive Officers within such thirty (30) day period, either party may then proceed to arbitration under this Section. All disputes, controversies or claims arising out of or relating to the operation or interpretation of this Agreement shall be settled by arbitration before one arbitrator, administered by JAMS in accordance with its standard procedures for arbitration between domestic commercial parties. The arbitrator shall be jointly selected by Client and Meritain and shall be a former federal judge. Any award rendered by the arbitrator shall be final and binding upon the parties and judgment upon any such award may be entered in any court having jurisdiction thereof. Arbitration shall take place in Buffalo, New York. The expenses of the arbitrator shall be borne equally by the parties. Each party shall pay its own fees and costs relating to any arbitral proceedings, including experts' and attorneys' fees. The arbitrator shall render its determination in a manner consistent with the terms of this Agreement.

15. MISCELLANEOUS.

- a. **No Insurance; Claims Payment.** This Agreement shall not be deemed a contract of insurance under Applicable Law. Meritain does not insure, guarantee or underwrite the liability of Client under the Plan. **Notwithstanding anything to the contrary herein, Client, and not Meritain, shall remain solely liable for the payment of Claims and all other expenses incidental to the Plan.** Without limiting the

foregoing, if the Centers for Medicare and Medicaid Services (“**CMS**”) determines that the Plan has underpaid a claim under Medicare secondary payor laws, Plan assets will be used to correct such underpayment, and Meritain will not be required to make such payment with its funds, regardless of when CMS requires such payment.

- b. Use of Trade Names. Meritain may make lawful references to Client and use of its logo in its marketing activities and in informing health care providers as to the organizations and plans for which Services are to be provided.
- c. Force Majeure. With the exception of Client’s obligations under Sections 6.a. and 7.c. of this Agreement, neither party shall be deemed to have breached this Agreement, or be liable for any failure or delay in its performance under this Agreement, if prevented from doing so by a cause(s) beyond its reasonable control, including without limitation acts of God; acts of terrorism; natural disasters; wars; riots; labor disputes or shortages; and governmental laws, ordinances, rules, regulations, or the opinions rendered by any court, whether valid or invalid.
- d. Subsequent Documents. Each party shall timely execute or provide any further documents reasonably necessary to effect any term of this Agreement.
- e. Assignment. Client may not assign this Agreement, in whole or in part, without the prior written consent of Meritain, which consent shall not be unreasonably withheld. Any attempted assignment in violation of this Section shall be void and of no effect.
- f. Miscellaneous. The parties have entered into this Agreement as independent contractors and not as agents of one another, and neither shall have any authority to act as the representative of the other, or to bind the other to any third party, except as specifically set forth herein. This Agreement shall be construed and enforced in accordance with the laws of the State of New York without reference to its conflicts of laws principles, to the extent such laws are not preempted by ERISA. The courts located in Erie County, New York shall have sole and exclusive jurisdiction of any dispute related hereto or arising hereunder. **EACH PARTY EXPRESSLY WAIVES ANY RIGHT TO A JURY TRIAL IN ANY LEGAL PROCEEDING ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.** No delay or failure of either party in exercising any right hereunder shall be deemed to constitute a waiver of that right. There are no intended third-party beneficiaries of this Agreement (including without limitation Participants). The headings in this Agreement are for reference only and shall not affect the interpretation or construction of this Agreement. This Agreement (including without limitation incorporated attachments, schedules and exhibits) constitutes the complete and exclusive contract between the parties and supersedes any and all prior or contemporaneous oral or written communications or proposals not expressly included herein. Unless expressly provided for otherwise, if there is any conflict between the terms of this Agreement and any schedule, the terms of this Agreement will control. If any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason or in any respect, such invalidity, illegality or unenforceability shall in no event affect, prejudice or disturb the validity of the remainder of this Agreement, which shall be in full force and effect, enforceable in accordance with its terms. No modification or amendment of this Agreement shall be valid unless in a writing signed by each party. This Agreement may be executed in two or more counterparts, each and all of which shall be deemed an original and all of which, together, shall constitute one and the same instrument. A party’s electronic signature on this Agreement shall be binding and of the same force and effect as an original signature. By executing this Agreement, Client acknowledges and agrees that it has reviewed all terms of and conditions incorporated into this Agreement and intends to be legally bound by the same.
- g. Notices. Any notice or other communication permitted or required to be given under this Agreement shall be in writing and shall be: (i) delivered in person, (ii) mailed, by certified mail, return receipt requested, postage prepaid, or (iii) sent by recognized overnight courier,

If to Meritain:

Meritain Health, Inc.
300 Corporate Parkway
Amherst, New York 14226
Attn: Regional President

and

Meritain Health, Inc.
300 Corporate Parkway
Amherst, New York 14226
Attn: Corporate Counsel

If to Client:

City of Valdez
212 Chenega Avenue
Valdez, AK 99686

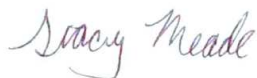
Attention: **Brian Carlson, Finance Director**

- h. Survival. Notwithstanding anything herein to the contrary, the following sections shall survive the expiration or termination of this Agreement: Section 3.d. in accordance with its terms, Section 3.e. in accordance with its terms, Section 8, Section 9.a. in accordance with its terms, Section 11, Section 12, and those terms that by their nature are intended to survive by their nature or in accordance with their express terms.

In Witness Whereof, the parties have executed this Agreement on the dates set forth below.

MERITAIN HEALTH, INC.

CITY OF VALDEZ



Name: Stacey Meade
Title: Regional President
Date: April 3, 2019

Name: _____
Title: _____
Date: _____

ADMINISTRATIVE SERVICES SCHEDULE

Subject to the terms and conditions of this Agreement including without limitation this Administrative Services Schedule, the terms and conditions of the Services are set forth below.

1. MEDICAL CLAIMS ADMINISTRATION.

a. Meritain shall:

- i. receive, on behalf of Client, Claims data and documentation from Participants and Providers, process Claims incurred during the Term that contain all information necessary for Meritain to process such Claims, using Meritain's normal claim determination procedures in a manner consistent with the Plan and this Agreement, and prepare and send explanation of benefits forms to Participants as required by and consistent with Applicable Law.
- ii. process, issue and distribute payments from the Claims Payment Account to Participants, Providers or others as applicable. Meritain shall not be obligated to disburse more than the amount made available by Client for disbursement from the Claims Payment Account, nor, under any circumstance, be responsible to use its own assets to satisfy any Claim.
- iii. Meritain shall make employee identification cards available to Participants and provide Participants with a toll-free telephone number for servicing; and
- iv. provide out-of-network discount program and cost management services, and reasonable assistance to Client in pursuing rights of recovery arising from subrogation services and non-subrogation recovery services.

2. CLAIM FIDUCIARY.

- a. Client and Meritain agree that with respect to Section 503 of ERISA, Client will be the "appropriate named fiduciary" of the Plan for the purpose of reviewing denied Claims under the Plan. Meritain shall refer to Client, for its exclusive and final resolution: (a) any questions concerning the meaning of any part of the Plan Documents and Summary Plan Description; (b) the validity of any questionable or disputed Claims; and (c) any appeals of any denial of a Claim, pursuant to Applicable Law.

3. NETWORK ACCESS.

Provide access to Client's selected preferred Provider network (the "PPN"), as identified under the Fee Schedule. Client acknowledges and agrees that: (a) Meritain makes no representations regarding the value or cost effectiveness of the PPN; (b) the PPN, and not Meritain, is responsible for provider credentialing, Provider contracting, recruiting and retention, network composition, licensing, accreditation, maintaining adequate staffing, practice and professional standards and all other activities pertinent to the responsibilities of PPNs; (c) Meritain does not own, direct or control the PPN and makes no guarantee and disclaims any obligation to make any specific Providers or any particular number of Providers available for use by Participants or that any level of discounts or savings will be afforded to or realized by Client, the Plan or Participants. Access to the PPN and PPN discounts is at all times contingent on Client's compliance with the terms of the PPN and Provider contracts, including without limitation timely funding of Claims in accordance with the Provider's contracted rates. Without limiting the foregoing, Sutter Health and Affiliates, the dominant health system in much of Northern California, uses its bargaining power to insist on unique requirements to participate in preferred provider networks. Aetna's contract with Sutter requires payment of claims by the Plan that Sutter deems medically necessary or not experimental or investigational regardless of the Plan's determination (but does not require payment for services the Plan expressly excludes from coverage). Sutter also requires that the Client agree to be bound by the terms of Aetna's contract with Sutter, including, but not limited to, the dispute resolution and binding arbitration provisions. The Client agrees to be bound by the

terms of the Sutter contract, including future amendments. The Client may request a copy of the Sutter contract for its own use, upon completion of a confidentiality agreement. If a copy is furnished to the Client, the Client will hold the terms of the Sutter agreement in strict confidence in accordance with its confidentiality provisions and the Sutter agreement will also be deemed to be confidential information under this Agreement.

4. REPORTING.

- a. Meritain will provide direct access to Client's Claims data and eligibility data and standard Claims and statistical reporting.
- b. Prepare a monthly written account report, which shall include but not limited to: (i) the funding provided by Client; (ii) the name of each Participant or Provider that submitted a Claim to Meritain; (iii) the value of each Claim submitted; (iv) the amount paid for each of the Claims satisfied; and (v) the total amount of all of the Claims satisfied.
- c. Prepare Meritain's standard claim and statistical reports as reasonably requested.
- d. If applicable and requested by Client, to the extent maintained by Meritain timely provide Client with the information ERISA requires to enable Client to file the Plan's Annual Report (IRS Form 5500), and provide the Internal Revenue Service an annual report of tax reportable Claim payments made to Providers.
- e. If Client utilizes an external Pharmacy Benefits Manager ("**External PBM**") and if mutually agreed upon by the parties, Meritain shall provide: (i) eligibility information to such External PBM on behalf of the Client; and (ii) cost-sharing accumulator reporting; and (iii) data to the External PBM.

5. STOP-LOSS.

- a. Upon request by Client, Meritain shall:
 - i. use commercially reasonable efforts to procure stop-loss insurance proposals (specific and aggregate) from selected stop-loss carriers for Client's consideration, which stop-loss insurance (the "**Policy**") shall be an asset of Client and not of the Plan;
 - ii. remit premiums for the Policy on behalf of Client, subject to Client's timely remittance of funds for such premiums to Meritain; and
 - iii. prepare and file reinsurance claims with Client's carrier, provided that in no event shall Meritain have any obligation to file a reinsurance claim or otherwise pursue or investigate any potential claim prior to the receipt of any actual Claim for which reimbursement would be sought from the carrier.
- b. Client shall: (i) provide Meritain a copy of the insurance binder or Policy promptly upon request; (ii) promptly notify Meritain if any information provided to the Stop-Loss Insurance carrier on behalf of Client is incomplete or inaccurate; and (iii) timely forward to Meritain all funds required to satisfy Client's Policy premiums on or before the first (1st) day of each month.
- c. Client agrees and acknowledges that:
 - i. Meritain shall not be liable for any acts or omissions in connection with the placement or administration of stop-loss insurance including the Policy;
 - ii. quotations and the terms of the Policy, including but not limited to the premiums, specific and aggregate retention levels, and limitations of coverage for certain Participants issued by

the carrier are subject to the carrier's final review and such quotations and terms may change based on the carrier's underwriting guidelines after coverage is placed; and

- iii. Meritain shall not be liable for Client's failure to provide full, complete and timely information to secure stop-loss insurance coverage, or for changes made by the insurer arising out of final underwriting.
- d. Meritain does not insure or otherwise provide any guarantees with respect to the adequacy of the Policy, nor does Meritain make any representations regarding a carrier's obligation to reimburse Client for any Claims or other Plan costs under the Policy, including state-imposed surcharges, taxes, or assessments. Client agrees and acknowledges that its obligation to pay Claims pursuant to its Plan Documents, this Agreement, and as required under Applicable Law, is not dependent or contingent on any acts or omissions of its stop-loss carrier regarding the Policy, including without limitation any potential or expected reimbursement or any denial of same.

6. OTHER SERVICES.

- a. Plan Documents. If requested by Client, assist in the setting of Plan contribution levels and provide drafts of the Plan Document (including the SPD) in accordance with Client's instructions for review and approval by Client and its counsel. Client remains at all times responsible for the Plan's compliance with Applicable Law, including without limitation the timely distribution of Plan Documents (including SPDs).
- b. SBC Services. If requested by Client, Meritain shall prepare draft Summaries of Benefits and Coverage ("**SBC**"), provided that Client remains responsible to ensure the Plan's compliance with Applicable Law, including without limitation the compliance and timely distribution of such documents.
- c. State Reporting and Remittance. Meritain shall file, on Client's behalf, State Reports, and shall remit Client's payments of State Assessments, under Applicable State Law, to the extent that Meritain's then-current policies and procedures support a particular State Report or State Assessment. For the purposes of this Section 6.c: (i) "**State Reports**" means those reports required to be filed under Applicable State Law with respect to a Plan's eligible Participants or Claims activity other than any required by any State department of revenue; (ii) "**State Assessments**" means assessments or surcharges related to a Plan's Participants or Claims activity levied directly on Client or the Plan other than any required by any State department of revenue; and (iii) "**Applicable State Law**" means the Applicable Laws of any State. Client acknowledges and agrees that: (i) neither Meritain nor its affiliates process or adjudicate claims covered under any pharmacy benefits plan, and any such claims will not be included within the scope of Meritain's obligations under this clause; and (ii) Meritain's obligations under this clause are at all times contingent upon Client's timely provision of all information and funding required for State Reports and State Assessments.

7. ADDITIONAL SERVICES.

Additional Services, if any, are as described in the accompanying Schedule(s) for such Services.

COBRA SERVICES SCHEDULE

Subject to the terms and conditions of this Agreement including without limitation this COBRA Services Schedule (this “**COBRA Schedule**”), the COBRA administration Services (the “**COBRA Services**”) provided by Meritain are described below.

1. DEFINITIONS.

For the purposes of this COBRA Schedule, the following phrases shall have the meaning set forth below:

- a. **Benefit Plan** means the Plan and any other benefit plan for which Meritain is providing COBRA administration Services under this COBRA Schedule.
- b. **COBRA Qualifying Event** means a "qualifying event" as defined in Section 4980(f)(3) of the Internal Revenue Code.
- c. **COBRA Participant** means a qualified beneficiary (as defined in Internal Revenue Code sec. 4980B(g)(1)) who is covered under a Benefit Plan by reason of having elected coverage and has made the required payments.

2. TERMS AND CONDITIONS.

- a. Client shall:
 - i. notify each active employee covered under each Benefit Plan and each COBRA Participant of the commencement and termination of these Services;
 - ii. notify COBRA Participants of open enrollments under each Benefit Plan;
 - iii. receive and process participant elections other than COBRA continuation elections;
 - iv. notify Meritain of all COBRA Qualifying Events;
 - v. set the COBRA premium “Determination Period,” the twelve (12) month period selected by Client that must be applied consistently from year to year;
 - vi. upon request in each instance, in accordance with Meritain’s then-current policies and procedures, provide an Annual Certified COBRA Rate and Reserve Analysis;
 - vii. prior to the Determination Period, notify Meritain of the applicable COBRA premiums that will be effective on the first day of the Determination Period, unless Client has retained Meritain to provide Annual Certified COBRA Rate and Reserve Analysis;
 - viii. notify Meritain forty-five (45) days prior to any change of COBRA benefits, coverage, or coverage options under the Plan (“**COBRA Changes**”) and;
 - ix. notify COBRA Participants of any COBRA Changes;
 - x. with respect to Benefit Plans other than the Plan (“**Third-Party Plans**”) notify the administrator(s) of any such Third-Party Plans (the “**Administrator(s)**”) of all changes and/or terminations of COBRA Participants’ and comply with the terms of any agreements(s) with its Administrator(s);

- xi. provide Meritain at least thirty (30) days prior notice of any change of an Administrator; payments paid by COBRA Participants to Meritain will be adjusted to reflect the change in Administrator(s) as communicated to Meritain;
- xii. resolve all ambiguities, appeals, and/or disputes with respect to eligibility of a COBRA Participant or termination of a COBRA Participant's coverage or denials of disability extension of COBRA coverage.

b. Meritain shall:

- i. with respect to the Plan only (and not any benefit plan administered by a third party), send initial COBRA notifications to new employees at the address provided by Client.
- ii. notify each COBRA Participant of the right to continue applicable coverages under COBRA within fourteen (14) days after Meritain receives notice of the occurrence of a COBRA Qualifying Event;
- iii. send payment coupons and any notices required under Applicable Law (with respect to the COBRA administration Services) to COBRA Participants to the applicable address of which Meritain was last notified by Client or such COBRA Participant;
- iv. notify each COBRA Participant of the termination of coverage under the applicable Benefit Plan for failure to timely pay the full monthly cost or upon the expiration eligibility for such coverage;
- v. if Client notifies Meritain of an increase in premiums in accordance with Applicable Law, send notices of such rate increases to COBRA Participants at least thirty (30) days prior to the effective date of the increase, provided that Client has notified Meritain of the rate increase forty-five (45) days prior to the effective date of such increase;
- vi. return any premium payments received after the termination of this Agreement, this COBRA Schedule, or a COBRA Participant's coverage, if it has not been paid to Client;
- vii. refer to Client for its exclusive and final resolution of any disputes or appeals with respect to the termination of a COBRA Participant's coverage or denials of disability extension of COBRA coverage; Meritain will not make such determination;
- viii. upon receipt of notice from Client or a COBRA Participant, determine if a covered employee or other eligible beneficiary's qualifying event, second qualifying event or a request for a disability extension, is entitled to COBRA or a COBRA extension of coverage, as applicable, and provide notice to an individual that qualifies for COBRA coverage.

c. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, MERITAIN DOES NOT ASSUME, AND SHALL NOT HAVE, ANY RESPONSIBILITY OF LIABILITY FOR ANY LOSSES OR DAMAGES INCURRED BY ANY COBRA PARTICIPANT OR CLIENT: (I) ARISING OUT OF MERITAIN'S FAILURE TO PERFORM UNDER THIS COBRA SCHEDULE IF SUCH FAILURE ARISES OUT OF CLIENT'S FAILURE TO PERFORM UNDER THIS COBRA SCHEDULE OR CLIENT'S PROVISION OF INACCURATE INFORMATION TO MERITAIN; OR (II) ANY FAILURE OF DELIVERY OF A NOTICE PROPERLY ADDRESSED AND MAILED. MERITAIN HAS NO OBLIGATION OR DUTY REGARDING THE PAYMENT OF PREMIUMS BY CLIENT NOR FOR CLIENT'S FAILURE TO REMIT MONIES RECEIVED TO MERITAIN TO ANY ADMINISTRATOR.**

TELEMEDICINE SERVICES SCHEDULE

Subject to the terms and conditions of this Agreement including without limitation this Telemedicine Services Schedule (this “**Telemedicine Schedule**”), the Telemedicine Services provided by Meritain are described below.

1. TERMS AND CONDITIONS.

a. Meritain shall:

- i. provide Participants with access to telephonic or video-conference consultations where available with licensed physicians (“**Telemedicine**”). Prescriptions for medications may be available through Telemedicine only where permitted by law and incident to the establishment of physician-patient relationship and a diagnostic consultation;
- ii. provide Client with monthly Telemedicine utilization reports;
- iii. have no obligation to offer Telemedicine in States that prohibit Telemedicine or prohibit physicians from performing such services; and
- iv. have the option, by providing written notice to Client to: (A) unilaterally amend or modify this the Telemedicine Schedule in a similar manner that Meritain’s agreement with its supplier of Telemedicine (“**Telemedicine Vendor**”) is modified or amended; and (B) immediately suspend access to Telemedicine or terminate this Telemedicine Schedule in the event Meritain’s Telemedicine Vendor is suspended or terminated. Upon the Client’s receipt of notice of modification or amendment, Client, if it does not desire to accept such modified or amended terms, either party may at its option, by providing written notice to the other, terminate this Telemedicine Schedule.

b. Client agrees:

- i. that Telemedicine will only be offered as a Covered Service under a Plan as described in the Plan Document and will not be offered to employees as a standalone or voluntary benefit not included under a Plan;
- ii. that access to Telemedicine shall commence upon the Telemedicine implementation date as agreed upon in writing by Meritain; and
- iii. that access to Telemedicine shall commence upon the Telemedicine implementation date as agreed upon in writing by Meritain; provided however, Client shall provide Meritain all necessary information required in accordance with Meritain’s then-current policies necessary for implementing Telemedicine services at least thirty (30) days before Meritain commences Telemedicine services. If the Client fails to provide any required information in accordance with Meritain’s policies at least thirty (30) days before the agreed upon commencement of services, such failure may result in a delay in the commencement of Telemedicine.

FEE SCHEDULE

1. FEES FOR ADMINISTRATIVE SERVICES.

Unless otherwise stated, the monthly fees and charges for the administrative Services (the “**Administrative Fees**”) are calculated by multiplying the listed rates in the table below (the “**Administrative Rates**”) by the applicable number of employees enrolled in the Plan each month.

Administrative Services	Fee April 01, 2019 – March 31, 2020	Frequency of Occurrence
Medical Plan Administration	\$25.50	Per Employee Per Month
Dental Plan Administration	\$2.20	Per Employee Per Month
COBRA Administration	\$1.40	Per Employee Per Month
Vision Plan Administration	\$0.80	Per Employee Per Month
PPN Network Access Fee† - Aetna Choice® POS II Network Access	15% of Savings A per claim fee cap of \$30,000	Per Network Claim
ATLAS Reporting Package	\$0.00	Per Employee Per Month
PPN Network Access Fee† - The Alaska Preferred Provider Network	25% of Savings	Per Network Claim
Telemedicine♦♣	\$3.10	Per Employee Per Month
Employee Assistance Program (EAP)~	\$1.25	Per Employee Per Month
Healthy Merits – Run Program	\$4.45	Per Employee Per Month
Interactive Health Biometrics Per Screening Fee	\$205.00	Per Screening
Summary of Benefits and Coverage (“SBC”) Production	\$250.00	Per Year
Pharmacy Benefits Manager (“PBM”) Coordination Fee	\$2.00	Per Employee Per Month
PPN Network Access Fee† - BridgeHealth	\$2.50 + 20% of Case Rates	Per Employee Per Month and Per Case

†**Selected PPN:** Aetna Choice® POS II, The Alaska Preferred Provider Network, BridgeHealth

||**Please note:** these fees do not include any incentives associated to the program offered by Client to its employees, including but not limited to gift cards, cash incentives, or employee premium reduction. Such charges or incentives are Client’s responsibility.

~ **Selected EAP Vendor:** Magellan

♦This pricing for Telemedicine may increase anytime during the Term due to a price increase by the Telemedicine Vendor. If such fee increase occurs, Meritain will notify the Client in writing of the pricing increase. If the Client does not desire to accept such new proposed fees, the Client shall have the ability to terminate the Telemedicine Services upon written notice to Meritain.

* Further, this pricing for Telemedicine is not available in relation to Participants in a Qualified High Deductible Health Plan (“QHDHP”).

2. ADDITIONAL FEES:

- a. Out-of-Network Discount Program Fees: Fees to be paid to out-of-network discount programs will be billed by Meritain on a contingent fee basis, based on the program’s percentage fee of savings resulting from the discount program.
- b. Other Fees and Services: The Client agrees to pay vendors’ fees for certain additional services including, but not limited to (i) fees for independent case review, (ii) contingency fees for subrogation services, (iii) contingency fees for non-subrogation recovery services; and (iv) contingency fees and other fees for cost management vendors, claim auditors, bill negotiators and discount programs.
- c. With respect to Section 2.a. and 2.b. of this Fee Schedule, the Disclosures Exhibit sets forth a description of contingency fees, other administrative fees or similar compensation which Meritain may receive in connection with these vendor services.
- d. Run-Out Fees:
 - i. one-hundred percent (100%) of three (3) months of the then-current Administrative Rates based upon enrollment at the time of termination due on or before the Termination Date, plus;
 - ii. fifty percent (50%) of three (3) months of the then-current Administrative Rates based upon enrollment at the time of termination due by the end of the second month after the Termination Date.
 - iii. In addition to Meritain’s run-out fees due, Meritain will also bill Client any applicable PPN access, integration or run-out fees charged by the PPN, if any, for Claims processed during the Run-Out Period.
- e. Additional Fees and Services:
 - i. Printing Fees: billed at cost;
 - ii. AdHoc Reporting and/or Custom I.T. Services: billed at Meritain’s then-current rate for such Services.
 - iii. Records Expense: billed at cost for obtaining records to investigate Claims.
 - iv. Translation Services of the Plan Document or Summary of Benefits and Coverage (“SBC”): If requested by the Client, Pricing varies based on document, word count, and target language. Quoted pricing requires approval by Client prior to the commencement of any requested translation services.

3. REMITTANCE SERVICES:

Upon written request and if agreed to by Meritain, Meritain may collect certain fees and premiums from Client for remittance to a third party with whom Client has a direct relationship, e.g. a broker commission. In these instances, Meritain will pass-through all fees and will not collect or retain an administrative or service fee. Meritain has no relationship with any such third parties, and assumes no risk or liability with respect to such third parties’ services or Client’s payment of such fees. Those amounts known to Meritain as of the Effective Date are set forth below, and are subject to change predicated upon Client’s agreement with such third-parties.

	April 01, 2019 – March 31, 2020	Frequency of Occurrence
Broker Fee(s)	\$4,720.83	Per Month
Case Management (MRC)	\$155.00	Per Hour
Utilization Management (MRC)	\$2.55	Per Employee Per Month

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) SCHEDULE

This Health Insurance Portability and Accountability Act (HIPAA) Schedule to the Administrative Services Agreement between Meritain and Client (the “**HIPAA Agreement**”) is incorporated by reference therein and is hereinafter referred to as this “**BA Agreement**”. Client represents that it has the authority to agree to the terms and conditions of this BA Agreement for and on behalf of Covered Entity for which Business Associate provides plan administration services (“**Covered Entity**”) under current and future agreements between the parties (“**Services Agreement**”). For purposes of this BA Agreement, “**Business Associate**” includes Meritain and those subsidiaries and affiliates of Meritain that create, receive, transmit or otherwise maintain Protected Health Information, as defined below, in connection with this BA Agreement.

In conformity with the regulations at 45 C.F.R. Parts 160-164 (the “**Privacy and Security Rules**”) Business Associate will under the following conditions and provisions have access to, maintain, transmit, create and/or receive certain Protected Health Information:

1. DEFINITIONS.

Capitalized terms used and not otherwise defined in this Agreement shall have the meanings assigned to such terms by HIPAA. The following terms shall have the meaning set forth below:

- a. **Individual** shall have the same meaning as the term “individual” in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502 (g).
- b. **Protected Health Information** shall have the same meaning as the term “Protected Health Information”, as defined by 45 C.F.R. § 160.103, limited to the information created, maintained, transmitted or received by Business Associate from or on behalf of Covered Entity.
- c. **Standard Transactions** means the electronic health care transactions for which HIPAA standards have been established, as set forth in 45 C.F.R., Parts 160-162.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.

- a. Business Associate agrees to not use or disclose Protected Health Information other than for purposes of performing its obligations under the Services Agreement, or permitted or required by this BA Agreement or as Required By Law.
- b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this BA Agreement.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this BA Agreement.
- d. Business Associate agrees to report to Covered Entity any use or disclosure of Protected Health Information not provided for by this BA Agreement, of which it becomes aware, including a Breach of Unsecured Protected Health Information.
- e. Business Associate agrees to report to Covered Entity any Security Incident without unreasonable delay, and in no event later than thirty (30) calendar days after becoming aware that such Security Incident affects Covered Entity’s Information.
- f. Business Associate agrees to report to Covered Entity any Breach of Unsecured Protected Health Information without unreasonable delay and in no case later than thirty (30) calendar days after

becoming aware that such Breach affects Covered Entity's Protected Health Information. Such notice shall include the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate, to have been, accessed, acquired, or disclosed in connection with such Breach. In addition, Business Associate shall provide any additional information reasonably requested by Covered Entity for purposes of investigating the Breach. Business Associate's notification of a Breach under this Section shall comply in all respects with each applicable provision of Section 13400 of Subtitle D (Privacy) of ARRA, 45 C.F.R. 164.410, and related guidance issued by the Secretary from time to time.

- g. Business Associate shall require that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of Business Associate agree in writing to the restrictions and conditions that are no less protective than those that apply through this BA Agreement to Business Associate with respect to such information, in accordance with 45 C.F.R. § 164.502(e) (1) (ii) and 164.308(b) (2), if applicable.
- h. Business Associate shall provide access directly to an Individual, at the request of Covered Entity or an Individual and in a prompt and reasonable manner, including in the electronic form or format requested by the Individual, to Protected Health Information in a Designated Record Set, subject to and consistent with the timing and other provisions of 45 C.F.R. § 164.524.
- i. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set at the request of Covered Entity or an Individual subject to and consistent with the timing and other provisions of 45 C.F.R. § 164.526, and in the time and manner designated by Covered Entity.
- j. Business Associate agrees to make (i) internal practices, books, and records, including policies and procedures, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity, and (ii) policies, procedures, and documentation relating to the safeguarding of Electronic Protected Health Information available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's or Business Associate's compliance with the Privacy and Security Rules.
- k. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information with 45 C.F.R. § 164.528.
- l. Business Associate agrees to provide to an Individual, at the request of Covered Entity or an Individual, an accounting of disclosures of Protected Health Information subject to and consistent with the timing and other provisions of 45 C.F.R. § 164.528.
- m. With respect to Electronic Protected Health Information, Business Associate shall implement and comply with the administrative safeguards set forth at 45 C.F.R. § 164.308, the physical safeguards set forth at 45 C.F.R. § 164.310, the technical safeguards set forth at 45 C.F.R. § 164.312, and the policies and procedures set forth at 45 C.F.R. § 164.316 to reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity. Business Associate acknowledges that, (i) the foregoing safeguards, policies and procedures requirements shall apply to Business Associate in the same manner that such requirements apply to Covered Entity, and (ii) Business Associate shall be subject to HIPAA enforcement provisions, as amended from time to time, for failure to comply with the Security Rule safeguards, policies and procedures requirements and any guidance issued by the Secretary from time to time with respect to such requirements.

- n. If Business Associate conducts any Standard Transactions on behalf of Covered Entity, Business Associate shall comply with, and require any Subcontractor to comply with, the applicable requirements of 45 C.F.R. Parts 160-162.
- o. Business Associate acknowledges that it shall be subject to the HIPAA enforcement provisions, as amended from time to time, for (i) impermissible uses and disclosures, (ii) failure to provide breach notification to Covered Entity, (iii) failure to provide access to a copy of Electronic Protected Health Information to either Covered Entity or the Individual, or the Individual's designee, (iv) failure to disclose Protected Health Information where required by the Secretary to investigate or determine Covered Entity's compliance with HIPAA, and (v) failure to provide the accounting of disclosures required in this BA Agreement.
- p. To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

- a. General Use and Disclosure. Except as otherwise provided in this BA Agreement, Business Associate may use or disclose Protected Health Information to perform its obligations under this Agreement, provided that such use or disclosure would not violate the Privacy and Security Rules if done by Covered Entity.
- b. Specific Use and Disclosure Provisions
 - i. Except as otherwise provided in this BA Agreement, Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
 - ii. Except as otherwise provided in this BA Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached in accordance with the Breach and Security Incident notifications requirements of this BA Agreement.
 - iii. Business Associate shall not directly or indirectly receive remuneration in exchange for any Protected Health Information of an Individual without Covered Entity's prior written approval and notice from Covered Entity that it has obtained from the Individual, in accordance with 45 C.F.R. § 164.508, a valid authorization that includes a specification of whether the Protected Health Information can be further exchanged for remuneration by Business Associate.
 - iv. Except as otherwise provided in this BA Agreement, Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
 - v. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j).
 - vi. The provisions of this BA Agreement notwithstanding, Business Associate is permitted to de-identify Protected Health Information, provided that it does so in accordance with HIPAA de-identification rules. De-identified information does not constitute Protected Health Information, and

may be used and disclosed by Business Associate for its own purposes, including, without limitation, for purposes of developing comparative databases, performing statistical analysis and research, and improving the quality of Business Associate's products and services.

- vii. Plan Sponsor may identify, in writing, certain Plan Sponsor employees or third parties who Covered Entity has authorized to receive Protected Health Information from Business Associate in connection with plan administration. Subject to more restrictive state and federal law, Business Associate will disclose Protected Health Information to Plan Sponsor designated employees or third parties. In the case of Plan Sponsor designated employees, the Plan Sponsor must represent and warrant compliance with 45 C.F.R. § 164.504(f). In the case of a third party, Business Associate may require specific written authorization from Plan Sponsor in each instance and execution by the third party of a non-disclosure agreement reasonably acceptable to Business Associate.

4. OBLIGATIONS OF COVERED ENTITY.

- a. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions.
 - i. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices agreed to in accordance with 45 C.F.R. § 164.520(b)(2), to the extent that such limitation(s) may affect Business Associate's use or disclosure of Protected Health Information.
 - ii. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes affect Business Associate's uses or disclosures of Protected Health Information.
 - iii. Covered Entity agrees that it will not impose special limits or restrictions on the uses and disclosures of its Protected Health Information that may impact in any manner the use and disclosure of Protected Health Information by Business Associate under the Services Agreement and this BA Agreement, including, but not limited to, restrictions on the use and/or disclosure of Protected Health Information as provided for in 45 C.F.R. § 164.522(a), unless such restrictions are required by 45 C.F.R. § 164.522(a). The foregoing notwithstanding, Business Associate agrees to accommodate reasonable requests for alternative means of communications pursuant to 45 C.F.R. § 164.522(b).
- b. Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy and Security Rules if done by Covered Entity except that Business Associate may use Protected Health Information in its possession (i) for Business Associate's proper management and administrative services, or (ii) to provide Data Aggregation services to the Covered Entity as permitted by 45 C.F.R. § 164.504(e) (2) (i) (B).

5. TERM AND TERMINATION.

- a. Term. The provisions of this BA Agreement shall take effect on the Effective Date and shall terminate upon expiration or termination of the Services Agreement, except as otherwise provided herein.
- b. Termination for Cause. Without limiting the termination rights of the parties pursuant to the Services Agreement and upon either party's knowledge of a material breach by the other party, the non-breaching party shall either:
 - i. Provide an opportunity for the breaching party to cure the breach or end the violation, or terminate the Services Agreement, if the breaching party does not cure the breach or end the violation within the time specified by the non-breaching party, or

- ii. Immediately terminate the Services Agreement, if cure of such breach is not possible.
- c. Effect of Termination. The parties mutually agree that it is essential for Protected Health Information to be maintained after the expiration of the Services Agreement for regulatory and other business reasons. Notwithstanding the expiration of the Services Agreement, Business Associate shall extend the protections of this BA Agreement to such Protected Health Information, and limit further use or disclosure of the Protected Health Information to those purposes that make the return or destruction of the Protected Health Information infeasible.

6. MISCELLANEOUS.

- a. Regulatory References. A reference in this BA Agreement to a section in the Privacy and Security Rules means the section as in effect or as amended, and for which compliance is required.
- b. Amendment. The Parties agree to take such action to amend this BA Agreement from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of HIPAA.
- c. Survival. The respective rights and obligations of Business Associate under Section 5.c. of this BA Agreement shall survive the termination of this BA Agreement.
- d. Interpretation. Any ambiguity in this BA Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy and Security Rules. In the event of any inconsistency between this BA Agreement and the Services Agreement, including any other appendices, Schedules and attachments, the terms and conditions of this BA Agreement shall control.

DISCLOSURES EXHIBIT

DISCLOSURE NOTICE REGARDING INSURANCE COMMISSIONS AND OTHER COMPENSATION

U.S. Department of Labor rules permit the receipt of insurance commissions and other compensation by service providers such as Meritain (and its affiliates) if proper disclosure is given and an appropriate independent Plan fiduciary acknowledges in writing receipt of the information and approves the transaction. The commissions and other compensation to be paid to Meritain are set forth in this Agreement. By signing this Agreement and renewal documents or amendments, Client certifies that it is an independent fiduciary of the Plan and that it acknowledges in writing receipt of the following information and approves the transactions (including the receipt of commissions and other compensation by Meritain and its affiliates) as described below.

1. STATEMENT OF AFFILIATION.

Prodigy Health Group, Inc. is a diversified health care services holding company whose subsidiaries include American Health Holding, Inc., Scrip World, LLC, Precision Benefit Services, Inc., Meritain Health, Inc. and PERFORMAX, Inc. (referred to herein collectively as “**affiliates**” or individually as an “**affiliate**”). Each affiliate is free to recommend to a client, products and services offered by other companies, which may include another affiliate; however, no affiliate is required to recommend an affiliate and no affiliate is limited or restricted in recommending the products and/or services of any vendor. Affiliates may be entitled to reasonable compensation (including commissions and fees) from other companies, including affiliates, and such compensation is earned in the ordinary course of business in arms’ length transactions. In addition, certain inter-company agreements exist amongst the affiliates to provide for the exchange of certain goods and services and leases of real property at market-based rates of compensation.

2. DESCRIPTION OF CHARGES, FEES, DISCOUNTS, PENALTIES AND ADJUSTMENTS APPLICABLE TO ANY CONTRACTS WITH MERITAIN.

Meritain may receive compensation from insurance carriers (“**Carriers**”) and managing general underwriters (“**MGUs**”) in the form of fixed or contingent commissions and administrative fees. In some instances, the broker is entitled to a portion of the fixed or contingent commissions and administrative fees paid to Meritain. In those instances, Meritain will remit those amounts to the broker.

The parties acknowledge and agree that stop-loss insurance policies are issued for one year terms, and therefore, Meritain is unable to disclose future commissions as of execution of this Agreement. Meritain will disclose future commissions (if any) at such time the policy is renewed or reissued.

Fixed Sales Commissions on Gross Insurance Premiums Payable to Meritain Per Year (if applicable):

Carrier	Commission type	Commission %
Sun Life / Sun Life	Meritain Commission	0%
Prudential	Meritain Life Insurance Commission	0%

Contingent Commissions

Contingent commissions may depend on a combination of factors such as growth, profitability, volume, retention and increased services that Meritain provides under agreements with certain Carriers and MGUs. There is no guarantee that Meritain will receive any contingent commissions. Also, in cases where Meritain agrees to provide administrative services that would otherwise be provided by a Carrier or MGU, some Carriers and MGUs pay administrative fees for these services. Below are descriptions of such commissions and fees that Meritain may receive:

Carrier: Sun Life

When Meritain is the broker of record, Sun Life provides additional compensation to Meritain based on annualized premiums collected. If paid, the current rate of such additional compensation is 2.5% of annualized premiums collected.

Other Fees

From time to time, Meritain may engage third party vendors to perform or provide services in connection with this Agreement. In some cases Meritain will pay the vendor as a subcontractor out of fees it has collected pursuant to this Agreement.

Subrogation Recovery Fee: When Meritain provides or arranges for subrogation services, Client agrees to pay Meritain a contingency fee of 25% of the gross savings resulting from such services.

Non-Subrogation Recovery Services Fee: When Meritain provides or arranges for non-subrogation recovery services, Client agrees to pay Meritain a contingency fee of up to 25% of the gross recovery, which shall include vendor fee, resulting from such services.

In the event Client selects IHS to provide blood and/or nicotine screening to Participants, Client agrees that Meritain shall be entitled to receive from IHS an administrative fee of \$25.00 per screening.

In the event Meritain engages an out-of-network discount program, claim auditor or bill review services, independent case reviewer, cost management vendor, bill negotiator, discount program or other contingency fee vendor to provide services on behalf of the Plan, Meritain shall be entitled to retain a contingency fee up to 28% of the net savings resulting from the engagement, and such contingency fee of the net savings does not include any additional third-party vendor fee that may be assessed for such services.

In cases where Meritain, itself or through an affiliate, provides direct negotiation services to reduce claim amounts to increase savings on behalf of the Plan, Meritain shall be entitled to retain a contingency fee up to 35% of the savings resulting from such services.

The disclosures set forth in this Disclosures Exhibit represent Meritain's best reasonable estimate of the total amount of all direct and indirect compensation Meritain may receive in connection with this Agreement. The actual amount may vary during the course of this Agreement based upon changes in the number of participants, utilization and other factors external to this Agreement. With respect to all direct and indirect compensation Meritain actually receives as a result of this Agreement, Meritain will disclose such amounts to Client annually, upon request, to the extent required to assist Client in filing its Form 5500.