

AGREEMENT CONCERNING FIDUCIARY OBLIGATIONS

THIS AGREEMENT is entered into, as of [date], between [insurer] (the “Insurer”) and [PBM] (the “PBM”).

R E C I T A L S

WHEREAS, the Insurer is authorized to do business as a health insurer in the State of Maine;

WHEREAS, the PBM is a pharmacy benefits manager that either is licensed by or applying to the Superintendent of the Maine Bureau of Insurance (the “Superintendent”) for a pharmacy benefits manager license in the State of Maine;

WHEREAS, the Insurer and the PBM have entered into an agreement dated [date] in which the PBM provides pharmacy benefits management services (the “PBM Agreement”);

WHEREAS, the parties to the Agreement want the PBM to provide pharmacy benefit management services for the Insurer in the State of Maine;

WHEREAS, 24-A M.R.S. § 4349(2) requires that an insurer contracting with a pharmacy benefits manager to perform activities in the State of Maine related to the insurer’s prescription drug benefits must ensure that the pharmacy benefits manager acts as the insurer’s agent and owes a fiduciary duty to the insurer in performing those activities; and

WHEREAS, the Insurer and the PBM wish to agree and confirm to the Superintendent that the PBM will act as the Insurer’s agent and owe a fiduciary duty to the Insurer in performing the PBM’s activities under the PBM Agreement;

NOW, THE PARTIES agree:

1. Fiduciary Duty. Notwithstanding any provision in the PBM Agreement, the PBM is the Insurer’s agent and owes a fiduciary duty, as stated in 02 031 CMR 210 § 5, to the Insurer in the PBM’s management of activities related to the Insurer’s prescription drug benefits under the PBM Agreement.

2. Superintendent’s Reliance. The Superintendent may rely on this Agreement for all purposes related to the exercise of the Superintendent’s powers under M.R.S. Title 24-A.

3. Amendment. The parties must give prior notice to the Superintendent before amending or terminating this Agreement, and no amendment or termination of this agreement shall take effect without the Superintendent’s approval unless the PBM Agreement no longer applies to coverage provided under M.R.S. Title 24-A.

[Insurer]

[PBM]

By: _____
[signature over printed/typed name]

By: _____
[signature over printed/typed name]

Its: _____
[corporate officer]

Its: _____
[corporate officer]

Date: _____

Date: _____