

**CONFLICT OF INTEREST
DISCLOSURE FORM AND AGREEMENT**

WHEREAS the _____
("CLIENT") [Fill in name of your Plan or the retaining entity] is considering the retention of a consulting firm, or has already retained a consulting firm; and

WHEREAS CLIENT wishes to learn of all relationships a consulting firm may have in the prescription drug industry, pharmacy benefits consulting industry and/or medical consulting industry, and all monies and/or financial benefits that its consulting firm may be receiving from any entity operating in the above-described industries, and CLIENT also wishes to form a contractual agreement precluding its consulting firm from receiving any undisclosed monies from any entity operating in the above-named industries during the period of time that its consulting firm is rendering services to CLIENT; and

WHEREAS _____
("CONSULTING FIRM") [Fill in name of the consulting firm] wishes to be retained by CLIENT, or has already been retained by CLIENT, and CONSULTING FIRM is willing to provide the above-described contractual agreement, and CONSULTING FIRM is also willing to disclose all relationships it has in the above named industries, and all monies it has received or is receiving from any entity operating in the above industries, provided that all such information is kept entirely confidential, and is not disclosed by CLIENT to any third party without the express written permission of CONSULTING FIRM (other than for the reasons explicitly stated in Article VI of this CONFLICT OF INTEREST DISCLOSURE FORM AND AGREEMENT); and

WHEREAS CLIENT is hereby binding itself, and all trustees and employees, and all related and affiliated entities and their trustees and employees, to maintain all information referenced in the paragraph above as confidential information, and to not disclose said information to any third party without the prior written consent of CONSULTING FIRM (other than for the reasons explicitly stated in Article VI of this CONFLICT OF INTEREST DISCLOSURE FORM AND AGREEMENT).

CONSULTING FIRM represents and agrees as follows:

I. DEFINITION OF CONSULTING FIRM

CONSULTING FIRM, as referenced herein, shall be defined to include the following: _____,
[Fill in name of the consulting firm] all parent companies, subsidiaries, divisions, and/or related or affiliated entities, and all officers and directors and board members and partners and employees of _____,
[Fill in name of the consulting firm] and the previously described entities.

II. CONSULTING FIRM'S RELATIONSHIPS

CONSULTING FIRM hereby identifies all direct and indirect relationships CONSULTING FIRM has with any Pharmacy Benefit Management company, or drug manufacturer, or drug wholesaler or distributor or repackager, or insurance company, or any parent, subsidiary, division, or related or affiliated entity to any of the previously described entities, or any officer/director/board member/agent/partner/or employee of any of the previously described entities.

CONSULTING FIRM includes all such relationships, whether arising from written or oral agreements, whether formal or informal, whether direct or indirect, whether separate or bundled, including but not limited to all relationships arising out of: Any brokerage agreements, commission or other fee agreements, or any contracts to perform any work or services for the previously described entities or individuals.

For each relationship identified, CONSULTING FIRM hereby states (a) the name of the entity or individual with which CONSULTING FIRM has the relationship; (b) the type and basic terms of the relationship; (c) whether the relationship was or is based on an oral or on a written agreement; (d) when the relationship arose; (d) and when the relationship terminated or will terminate. (Only relationships on or after **January 1, 2018** need be identified) **[Change date as appropriate]**.

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III. CONSULTING FIRM'S RECEIPT OF MONIES

CONSULTING FIRM hereby identifies all monies or other financial benefits that CONSULTING FIRM has directly or indirectly received from any: Pharmacy Benefit Management company, or drug manufacturer, or drug wholesaler or distributor or repackager, or insurance company, or any parent, subsidiary, division, or related or affiliated entity to any of the previously described entities, or any officer/director/board member/agent/partner/or employee of any of the previously described entities.

CONSULTING FIRM includes all such monies or other financial benefits, including but not limited to: lump sum payments made in one payment or over time,

percentage payments, separate or bundled payments, “per prescription” or “per claim” or “per capita” (such as “per employee”, “per beneficiary” or “per participant”) fees or other payments, awards, gifts, trips, full or partial payments for trips, finder’s fees, placement fees, commissions, agency fees, servicing fees, stock or option awards, or float compensation or income.

If CONSULTING FIRM has received any of the above, or knows that it will be receiving any of the above in the future, CONSULTING FIRM hereby states: (a) the entity and/or individual from which the CONSULTING FIRM received or will receive said financial benefits; (b) the transaction for which the CONSULTING FIRM received or will receive the financial benefits (i.e., PBM RFP, PBM audit, PBM/CONSULTING FIRM brokerage agreement or service agreement, etc.); (c) the type of financial benefits that were received or will be received (i.e., lump-sum payment, “per prescription payment”, stock, etc.); (d) the date(s) when CONSULTING FIRM received, or will receive, the financial benefits; and (e) the aggregate amount that was received, or will be received. (Only financial benefits received on or after **January 1, 2018** need be identified) **[Change date as appropriate]**.

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IV. CONSULTING FIRM’S ADDITIONAL AGREEMENT

A. CONSULTING FIRM hereby agrees that in connection with the services that it may be retained to provide to CLIENT, or is already providing to CLIENT, CONSULTING FIRM’s only direct or indirect compensation will be the compensation stated in CLIENT’s retainer agreement with CONSULTING FIRM.

B. CONSULTING FIRM further agrees that during the period that CONSULTING FIRM is providing services to CLIENT, CONSULTING FIRM will not directly or indirectly receive any monies or other compensation or financial benefit in connection with said services – or in connection with any other services - from any: Pharmacy Benefit Management company, or drug manufacturer, or drug wholesaler or distributor or repackager, or insurance company, or any parent, subsidiary, division, or related or affiliated entity to any of the previously described entities, or any officer/director/board member/agent/partner/or employee of any of the previously described entities.

C. CONSULTING FIRM further agrees that during the period that CONSULTING FIRM is providing services to CLIENT, CONSULTING FIRM will not directly or indirectly agree to receive any monies or other compensation or financial benefit in the future (including after CONSULTING FIRM completes its work for CLIENT), for the services provided to CLIENT, from any: Pharmacy Benefit Management company, or drug manufacturer, or drug wholesaler or distributor or repackager, or insurance company, or any parent, subsidiary, division, or related or affiliated entity to any of the previously described entities, or any officer/director/board member/agent/partner/or employee of any of the previously described entities.

V. MATERIAL CHANGES TO INFORMATION DISCLOSED AND AGREEMENTS CONTAINED HEREIN

CONSULTING FIRM hereby agrees that it will execute this CONFLICT OF INTEREST DISCLOSURE FORM AND AGREEMENT on an **annual basis**, [Change to quarterly or biannual, if desired] beginning on _____ 202_ until the completion of its work for CLIENT, and thereby keep current its disclosures to CLIENT, and its agreements with CLIENT.

VI. DAMAGES and PENALTIES FOR INACCURATE DISCLOSURES, and FOR FAILURE TO PERFORM AS AGREED UPON HEREIN

CONSULTING FIRM hereby acknowledges that CLIENT is reasonably relying on all disclosures made herein, and all agreements entered into herein, and any inaccuracies or misrepresentations or omissions by CONSULTING FIRM, or any failure by CONSULTING FIRM to perform as agreed upon, will result in damages to CLIENT. CONSULTING FIRM hereby agrees to compensate CLIENT for all such damages, including all consequential damages.

CONSULTING FIRM further agrees that to the extent CONSULTING FIRM failed to accurately disclose all relevant information that is required to be disclosed by the terms of this CONFLICT OF INTEREST DISCLOSURE FORM AND AGREEMENT, and/or failed to honor all agreements contained in this CONFLICT OF INTEREST DISCLOSURE FORM AND AGREEMENT, CLIENT shall be free to make CONSULTING FIRM's failures publicly known, including without limitation in any arbitration or lawsuit, meaning CONSULTING FIRM WILL NOT AND CANNOT assert that said information is confidential or privileged.

CONSULTING FIRM further agrees that should CLIENT discover and prove in any arbitration or in any lawsuit that CONSULTING FIRM failed to disclose accurately any and all CONSULTING FIRM relationships, as described in Article II, or any and all monies and other financial benefits that CONSULTING FIRM has received or will receive, as described in Article III, CONSULTING FIRM will be obligated to disgorge all fees that CLIENT has paid to CONSULTING FIRM. CONSULTING FIRM will also be obligated to pay to CLIENT a liquidated damages

penalty of _____ million dollars (\$___). The parties represent and agree that said amount represents a reasonable estimate of the actual damages that CLIENT will incur as a result of the above-described CONSULTING FIRM's wrongful actions.

VII. MISCELLANEOUS

A. The parties have mutually agreed that any dispute arising out of, or in connection with, this CONFLICT OF INTEREST DISCLOSURE FORM AND AGREEMENT may be resolved by final and binding arbitration, conducted _____ under the rules of the American Arbitration Association. The parties shall in good faith attempt to mutually agree upon an arbitrator, within thirty (30) days of the filing of an arbitration request by either party. If the parties are unable to reach such agreement, each party shall select one arbitrator, and the two arbitrators thus selected shall select a third arbitrator. Any judgment upon any award rendered by an arbitrator or arbitration panel may be entered by any state or federal court having jurisdiction to do so. [Change this paragraph if another dispute resolution process is preferred]

B. This CONFLICT OF INTEREST DISCLOSURE FORM AND AGREEMENT may be executed in counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument.

C. This CONFLICT OF INTEREST DISCLOSURE FORM AND AGREEMENT may be amended only with the written consent of both parties.

D. Each of the persons signing below on behalf of a signatory entity warrants that he or she has the authority to execute this CONFLICT OF INTEREST DISCLOSURE FORM AND AGREEMENT on behalf of such entity. CLIENT warrants that by signing this CONFLICT OF INTEREST DISCLOSURE FORM AND AGREEMENT, CLIENT is binding itself, and all trustees and employees, and all related and affiliated entities and their trustees and employees to all terms contained herein. CONSULTING FIRM warrants that by signing this CONFLICT OF INTEREST DISCLOSURE FORM AND AGREEMENT, CONSULTING FIRM is binding itself, and all entities and individuals defined to be included in the term CONSULTING FIRM, to all terms contained herein.

E. This Agreement shall be governed by and construed under the laws of _____ . If any provision of this Agreement is

determined to be unenforceable under applicable law, such provision shall be severed from this Agreement, and the remainder of the Agreement shall remain in full force and effect.

CONSULTING FIRM: _____

Signed: _____ Date: _____
Name: _____
Title: _____

CLIENT: _____

Signed: _____ Date: _____
Name: _____
Title: _____