

STATE OF FLORIDA
COUNTY OF LEON

PLAN MANAGER SERVICES AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____, 2011, by and between **THE FLORIDA HEALTH MAINTENANCE ORGANIZATION CONSUMER ASSISTANCE PLAN** (the “HMOCAP”), whose address for this purpose is c/o Lisa Davies, AvMed, Inc., 4300 N.W. 89th Blvd., Gainesville, FL 32606 and Akerman Senterfitt, whose address is 106 East College Ave., Suite 1200, Tallahassee, FL 32301-7748.

STATEMENT OF BACKGROUND INFORMATION

The HMOCAP is created pursuant to Part IV of chapter 631, Florida Statutes for the purpose of protecting subscribers of HMOs, subject to certain limitations, against the failure of the HMO to perform its contractual obligations due to its insolvency. Akerman Senterfitt desires to provide Plan Manager Services (the “Services”), as described in this Agreement, to the HMOCAP. The HMOCAP desires to engage the services of Akerman Senterfitt for the Services. The parties desire to state their intentions with respect to such engagement in this Agreement.

STATEMENT OF AGREEMENT

In consideration of the mutual benefits to the HMOCAP and Akerman Senterfitt provided in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the HMOCAP and Akerman Senterfitt agree:

1. Engagement: The HMOCAP hereby engages Akerman Senterfitt to assist the HMOCAP by providing the Services to assist it in carrying out its duties pursuant to Part IV of Chapter 631, Florida Statutes. The Services are more particularly described both in the “Scope of Routine Plan Manager Services” attached to this Agreement as Exhibit “A” and incorporated

hereby by reference, and in the “Scope of Non-Routine Plan Manager Services” attached to this Agreement as Exhibit “B” and incorporated herein by reference. Akerman Senterfitt accepts such engagement and agrees to perform the Services as set forth herein. Plan Manager Services shall not include services that require an attorney and that are more particularly described in the “Scope of Legal Services” attached to this Agreement as Exhibit “C” and incorporated herein by reference; the HMOCAP shall enter into a separate agreement with legal counsel for the performance of such legal services, and Akerman Senterfitt shall be responsible for the day-to-day HMOCAP oversight and communications with such counsel as necessary.

2. Akerman Senterfitt’s Responsibilities: Akerman Senterfitt’s responsibilities shall include, without limitation, those matters referred to in the Scope of Routine Plan Manager Services attached hereto as Exhibit “A” and in the Scope of Non-Routine Plan Manager Services attached to this Agreement as Exhibit “B” and such further services on which the HMOCAP and Akerman Senterfitt subsequently may agree.

3. Fees, Costs and Expenses: For all of those Services described in Exhibit “A”, the Scope of Routine Plan Manager Services, Akerman Senterfitt shall receive a monthly fee of \$5,000. For those Services described in Exhibit “B”, the Scope of Non-Routine Plan Manager Services, Akerman Senterfitt shall be paid on an hourly rate of \$135, except that, for bookkeeping and accounting services described in the Scope of Non-Routine Plan Services, the hourly rate shall be \$75. Akerman Senterfitt will maintain detailed time keeping records documenting the Non-Routine Plan Manager Services provided and shall render an invoice for these Services on a monthly basis to the HMOCAP for review. After review and provided there is no dispute regarding the Services, payment shall be made by the HMOCAP on a monthly basis.

In addition to payments for the Services described above, the HMOCAP will pay separately for certain costs including the cost of photocopies, long distance telephone calls, facsimile transmissions and messenger or courier costs. The HMOCAP will also pay separately for out-of-pocket expenses including overnight express charges, travel required and other non-standard office expenses. Akerman Senterfitt will obtain approval from the chair of the HMOCAP Board of Directors for any expense greater than \$500. In the event of one or more HMO insolvencies, all costs and fees associated with each insolvency shall be billed separately and shall be accounted for separately on the unaudited financial statements.

All payments shall be made to Akerman Senterfitt at 106 East College Ave., Suite 1200, Tallahassee, FL 32301.

4. HMOCAP's Direction: Akerman Senterfitt shall perform the Services in accordance with directions from the HMOCAP Board of Directors. Such directions may come from either the Chair of the HMOCAP Board of Directors, appropriate subcommittees of the Board of Directors or the Board of Directors. Akerman Senterfitt shall not be compensated for any Services performed which are not within the scope of Services included in Attachment "A" and Attachment "B", unless such additional Services are the subject of a written directive from the HMOCAP or the subject of a subsequent written agreement.

5. Contracts: Akerman Senterfitt shall not enter into any contracts with accountants, auditors, attorneys, actuaries, administrators (including licensed third party administrators) or any other party in the name of the HMOCAP without the HMOCAP's written direction to do so. Akerman Senterfitt shall have no authority to bind the HMOCAP to any contract or agreement, or to acquiesce in any action on behalf of the HMOCAP, without permission from the Board of Directors or an appropriate designee of the Board of Directors. Akerman Senterfitt shall have no

authority to obligate the HMOCAP for any cost, expense or indebtedness without such permission.

6. Books and Records: Akerman Senterfitt shall maintain for the HMOCAP current and accurate books, records and accounts regarding Akerman Senterfitt's activities with respect to the Services. Such records and accounts shall be maintained at the office of Akerman Senterfitt in Tallahassee, Florida or at such other place as the HMOCAP and Akerman Senterfitt shall agree, and shall be available to the HMOCAP during normal business hours, and shall be maintained an appropriate amount of time in accordance with state and federal law. All personal subscriber information shall remain confidential and shall only be released to the extent necessary for the HMOCAP to perform its statutory duties.

7. Terms of Agreement: Either party may terminate this Agreement by written notice to the other, executed and delivered no later than ninety (90) days prior to the day of intended termination. Either party may terminate this Agreement immediately for "cause" which shall mean a material breach of this Agreement or, in the case of Akerman Senterfitt, an adjudication of misfeasance, misappropriation, embezzlement or other turpitude which would adversely affect the ability of Akerman Senterfitt to perform its duties hereunder. In the event that such termination occurs before the end of the Services, any prepaid fees, expenses or other items shall be prorated between the HMOCAP and Akerman Senterfitt as of the date of termination, and Akerman Senterfitt shall receive a prorata amount of compensation as referred to above.

8. Procedure on Termination: On the termination of this Agreement, Akerman Senterfitt shall account to and deliver to the HMOCAP all materials, supplies, equipment, contracts, documents and other items related to the Services and furnish all information and take

all further action that the HMOCAP may reasonably request to effectuate an orderly and systematic termination of Akerman Senterfitt's responsibilities hereunder.

9. No Partnership: The HMOCAP and Akerman Senterfitt shall not and do not by this Agreement in any way or for any purpose become partners, nor shall either be or become a joint venturer or member of a joint enterprise with the other. Akerman Senterfitt is an independent contractor and not an employee of the HMOCAP.

10. Notices: All notices required, permitted or given under this Agreement shall be in writing and shall be deemed given when personally delivered or deposited in the United States Mail, postage prepaid, return receipt requested and addressed to the parties at their address stated above.

11. Indemnification: Each party shall be solely responsible for, and agrees to defend, indemnify, and hold harmless the other, including its affiliates, shareholders, directors, officers and employees, from and against any and all legal or regulatory claims, causes of action, obligations, liability, liens, indebtedness, debts, judgments, damages, losses, costs, expenses, and fees (including, without limitation, reasonable attorney fees) to the extent arising from or related to such party's failure to fulfill all of the terms and conditions applicable to it under, or arising from, this Agreement, provided, however, that the indemnifying party shall not be obligated to defend, indemnify, or hold harmless the other from claims arising from such other party's willful, wanton or negligent act or omission. In addition, the HMOCAP agrees to defend, indemnify, and hold harmless Akerman Senterfitt, its shareholders, directors, officers and employees, from and against any and all legal or regulatory claims, causes of action, obligations, liability, liens, indebtedness, debts, judgments, damages, losses, costs, expenses, and fees (including, without limitation, reasonable attorney fees) to the extent arising from or related

to acts or omissions of Akerman arising from directions or instructions given to Akerman by the HMOCAP Board of Directors or an appropriate designee of the Board of Directors.

12. Effective Date: The effective date of this Agreement shall be the date that the HMOCAP and Akerman Senterfitt execute this Agreement.

13. Miscellaneous: This Agreement has been made and entered into under the laws of the State of Florida and shall be enforced and construed in accordance with Florida law. This Agreement shall be binding upon and inure to the benefit of the HMOCAP and Akerman Senterfitt and their respective legal representatives, successors and assigns. This Agreement, together with the attachments hereto, constitutes the sole agreement between the HMOCAP and Akerman Senterfitt with respect to the matters contained herein and shall not be modified except by a writing signed by both parties.

This Agreement has been executed by the HMOCAP and Akerman Senterfitt as of the day written above.

Signed, sealed and delivered
in the presence of:

The Florida Health Maintenance
Organization Consumer Assistance Plan

By: _____
Lisa Davies, Chair
HMOCAP Board of Directors

Akerman Senterfitt

By: _____

Exhibit "A"

Scope of Routine HMOCAP Manager Services

Routine HMOCAP Manager services shall include:

Financial Categories

- Arrange for (but not conduct) annual financial audits of the HMOCAP and the preparation of the HMOCAP's tax statements;
- Maintain the HMOCAP's operating finances, consistent with clearly established policy of the HMOCAP Board of Directors (the "Board") pertaining to investment and signature requirements, and communicate with the investment manager regarding transfers between accounts to maximize earnings on investments;
- Maintain the general ledger and electronic accounting system, process and deposit payments received by the HMOCAP, make disbursements of HMOCAP funds with Board approval and maintain records of all transactions (including the HMOCAP's bank accounts), and perform monthly bank reconciliations; and
- Prepare and distribute to the Board an annual budget and periodic comparative financial statements, including a periodic budget reconciliations, subject to review and approval by the Board.

Non-Financial Categories

- Represent the HMOCAP in dealings with the Department of Financial Services ("Department") and the Office of Insurance Regulation ("Office"), including routine consultations with the Department and the Office regarding the status of the HMO industry in Florida and potential HMO insolvencies in Florida;
- Review and forward to the Board reports from the Department and the Office that provide HMO enrollment and financial information, and review and forward information on proposed Florida statutes and rules that may affect HMO solvency; attend Department and Office hearings and workshops on HMO acquisitions or other HMO solvency issues, and draft and forward reports to the Board regarding same;
- Organize and attend meetings of the Board and various Board committees as directed;
- Prepare agendas and related information and material, and provide same to members of the Board of Directors and designated Department and/or Office representatives in accordance with the HMOCAP Plan of Operations, and prepare and provide minutes of such meetings;

- Supervise and, to the extent possible, assist the HMOCAP's legal counsel in its performance of Legal Services, such as the review of the HMOCAP Plan of Operations;
- Assist the Board, the Chair of the Board or appropriate Board subcommittees in the selection of legal counsel, administrators, auditors, accountants or any other person necessary for the performance of the HMOCAP's routine duties, and assist in the negotiations of the contracts for such persons as directed by the Board;
- Provide, at its own expense, an office and all routine supplies and materials necessary for the performance of the services required under the Plan Manager Agreement and the normal operations of a business office including without limitation telephone(s) and telephone lines, computer(s), copy machine(s), facsimile machine(s), voice mail capabilities, internet access and electronic mail, furnishings and supplies, and other day-to-day office material.
- Without performing Legal Services, address and respond to general questions that may arise from time to time from the public, Florida HMOs, the Department, the Office or the Agency for Health Care Administration, or from Board members regarding the HMOCAP and its duties and obligations; and
- Perform other administrative duties assigned by the Board or the Chair of the Board that are consistent with the Plan Manager's experience and abilities and are determined to be within the Scope of Routine Plan Manager Services by the Board or its Chair.

Exhibit "B"

Scope of Non-Routine Plan Manager Services

Non-routine Plan Manager services shall include:

- **Services Associated with a Potentially Insolvent HMO**

When informed by the Department of Financial Services (the "Department") that there is a reasonable likelihood of an HMO insolvency, the Plan Manager shall notify the Chair of the HMOCAP Board of Directors (the "Board") and, upon direction from the Chair, arrange a meeting of the Board (should the Chair be affiliated with the potentially insolvent HMO, the Plan Manager shall notify the Vice-Chair). Working with the Department and the Office, the Plan Manager shall assist the Board in preparing for the insolvency such preparation shall include obtaining information on the membership, provider contracts, coverage area and types of coverage of the HMO; helping to arrange short-term coverage solutions for the subscribers (e.g., through a third-party administrator) and engaging such solution (including assisting in the selection of a carrier or third-party administrator and assist in the negotiation of contracts with such entity); preparing notifications of the insolvency to the HMO subscribers and to the Florida HMO industry; and upon direction from the Board, assist in the engagement of and beginning to explore potential long-term subscriber coverage solutions.

- **Services Associated with an Insolvent HMO**

Upon a finding that an HMO is insolvent, the Plan Manager, working with the Board of Directors, the Office and the Department shall immediately take all necessary steps to ensure the continuous coverage of the insolvent HMO's former subscribers. At the direction of the Board and working with the Office and the Department, the Plan Manager shall provide day-to-day guidance to any third party administrator or carrier regarding coverage decisions. The Plan Manager shall participate in periodic telephone conferences with the Office and the Department, the Agency for Health Care Administration, the third party administrator and carriers to ensure the uniform communication of Board decisions to the public, former subscribers of the HMO, carriers and to any other necessary persons. Consistent with these conferences and Board direction, the Plan Manager shall respond to consumer, carrier, and provider questions and concerns. At the direction of the Board and with the assistance of the Office and the Department, the Plan Manager shall take all steps necessary to select one or more carriers to provide continuing coverage to the former subscribers and to transfer coverage of such subscribers to the carrier(s) selected by the Board and, at the direction of the Board, shall monitor the selected carrier(s) to ensure appropriate coverage is provided and that appropriate payments are made to any selected third party administrator and to any selected carrier, if such payments are necessary. The Plan Manager shall develop an estimate and advise the Board as to the estimated amount necessary to provide coverage to such members, and at the Direction of the Board and working with the Department, the Office and legal counsel, the Plan Manager shall develop and forward appropriate assessments and assessment notices to member HMOs.

The Plan Manager shall also review each claims register report to ensure, to the extent possible, that the claims are for eligible members for appropriate dates of services. For all claims greater than \$10,000, the Plan Manager shall also review the claim information with the third party administrator to help ensure that the services were appropriately authorized and that appropriate provider contract discounts were taken.

- Insolvent HMO Accounting Related Functions

The Plan Manager shall review weekly claims registers submitted by the third party administrator, handle and process related claims check requests, compare and reconcile claims payment records to the third party administrator records, fund claims payment checking accounts, handle and process premium refund requests, assist in the determination of amounts of assessments, prepare quarterly claims against the various insolvent estates and assist in the determination of accruals for estimated claims to be paid.

- Services Associated with Audits Conducted by the Department, the Office or Other Regulatory Entities

In addition to assisting the auditor selected to perform the annual financial audit as part of the Routine Plan Manager Responsibilities, the Plan Manager shall assist to the extent possible in any financial or operational audit of the HMOCAP required by the Department, the Office or any other regulatory entity.

- Other Non-Routine Services as Specifically Directed by the Board or its Designee

From time to time the Board, the Board Chair or other Board designee may assign the Plan Manager non-recurring tasks that it believes fall outside of the Scope of Routine Plan Manager Services. Prior to beginning these tasks, or as soon as is reasonably possible thereafter, the Plan Manager shall confirm with the Board Chair in writing that these duties are not within the Scope of Routine Plan Manager Services and are to be paid at an hourly billing rate.

Exhibit "C"

Scope of Legal Services

Legal services shall include:

- Providing analysis of the statutory duties and responsibilities of the HMOCAP
- Defending and initiating HMOCAP litigation;
- Defending former subscribers of an insolvent HMO from actions by providers for the collection of payment for services that were covered by the insolvent HMO ("balance billing");
- Periodic review of the Plan of Operations to ensure compliance with Chapter 631, Florida Statutes and to ensure consistency with directions from the Board of Directors;
- Drafting and assisting in the negotiations of contracts with various vendors including, as necessary, the Plan Manager, third party administrators and HMOs;
- Assisting in the development of notices of Assessments and other notices to HMOs, former subscribers of insolvent HMOs or the public;
- Other legal duties as instructed by the Board or the Plan Manager at the direction of the Board.