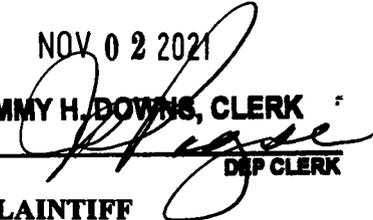


FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

NOV 02 2021

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

TAMMY H. DOWNS, CLERK
By: 
DJP CLERK

**EMPOWER HEALTHCARE
SOLUTIONS, LLC**

PLAINTIFF

vs.

NO. 4:21cv1016-JM

BEACON HEALTH OPTIONS, INC.

DEFENDANT

VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

Empower Healthcare Solutions, LLC (“Empower” or “Plaintiff”) through its attorneys, Friday, Eldredge & Clark, LLP, submits this Complaint against Beacon Health Options, Inc. (“Beacon” or “Defendant”):

NATURE OF THIS ACTION

1. This action seeks relief, including injunctive relief, arising from Beacon’s unlawful conduct that jeopardizes the business continuity of Empower and the continuity of behavioral healthcare to Empower’s members.

2. Empower was formed in 2017 for the purpose of participating as a Provider-led Arkansas Shared Savings Entity (“PASSE”) under the Medicaid Provider-Led Organized Care Act codified at Arkansas Code Annotated section 20-77-2701 *et seq.* (“PASSE Act”). PASSE’s coordinate and pay for medical, specialty, and home and community based services, uniquely tailored to the needs of Arkansans with behavioral health and/or intellectual or developmental disabilities (“BH / IDD Members”).

3. Beacon is a behavioral health and substance abuse disorder management company offering access to a network of providers and facilities encompassing all levels of specialty mental health and addiction services. Beacon is not a PASSE but is one of six members or owners of Empower.

This case assigned to District Judge Moody
and to Magistrate Judge Harvill Page 1 of 24

4. In 2019, Beacon began taking actions clearly designed to harm Empower. Those actions, which have continued through the date of the filing of this Complaint, began, not coincidentally, shortly after the acquisition of Beacon by Anthem, Inc. (“Anthem”), a direct competitor of Empower in the PASSE market via Anthem’s ownership in another PASSE, Summit Community Care (“Summit”).

5. Since the merger, Beacon has engaged in conduct that suggests that it is functioning as a Trojan-horse for Anthem seeking to destroy Empower, Summit’s competitor, from within.

6. Empower brings this action to redress through injunctive relief Beacon’s ongoing misconduct, to obtain specific performance of Beacon’s contractual obligations under a Memorandum of Agreement entered into between the parties on or about June 24, 2020 (the “Restructuring Agreement”) and to recover damages arising from Beacon’s bad faith violations of the Restructuring Agreement. A true and correct copy of the Restructuring Agreement, as amended several times, is attached hereto as Exhibit A and incorporated herein by reference.

7. Empower also has substantial claims against Beacon arising at common law and from Beacon’s breach of other written agreements, including several agreements that are mentioned in later allegations of this Complaint. Claims not asserted here are reserved and will be the subject of subsequent proceedings, either in this action, or, to the extent required, in arbitration proceedings.

PARTIES

8. Plaintiff Empower is a limited liability company organized and existing under the laws of the State of Arkansas, having a principal place of business at 1401 West Capitol Avenue, Suite 430, Little Rock, Arkansas.

9. Defendant Beacon is a corporation organized and existing under the laws of the

State of Virginia, having a principal place of business at 200 State Street, Suite 302, Boston, Massachusetts.

JURISDICTION AND VENUE

10. This Court has original jurisdiction over this action because there is complete diversity of citizenship as between the parties pursuant to 28 U.S.C. § 1332, and the amount in controversy exceeds the jurisdictional amount of \$75,000, exclusive of interest and costs. Beacon has also agreed in contracts from which the asserted claims arise to submit to the jurisdiction of any state or federal court in Arkansas.

11. This Court is the proper venue for this action pursuant to 28 U.S.C. § 1391, as a substantial part of the events involved in this dispute took place in this judicial district including but not limited to: the formation of Empower, business meetings, the awarding of government licenses and the negotiation of agreements pertinent to the legal claims asserted herein.

12. This Court is vested with jurisdiction under 28 U.S.C. § 2201 to fashion the remedy requested by Empower.

THE CREATION, PURPOSE, STRUCTURE AND GROWTH OF EMPOWER

13. Through the passage of the PASSE Act in 2017, the Arkansas General Assembly authorized an innovative organized care model through which PASSE's seek to address the total health care needs of Medicaid beneficiaries who have behavioral health disorders or intellectual or developmental disabilities while reducing the overall cost of such care to taxpayers. As risk-based provider organizations, PASSE's perform the administrative functions of managed care. These new business organizations function as an insurance product and are, therefore, certified and regulated by the Arkansas Insurance Department ("AID"). The purpose of the PASSE model is to improve the health of BH / IDD Members by integrating providers of physical health care

with specialty providers in order to deliver managed care tailored to the unique needs of this population.

14. Empower was registered as a domestic, for-profit limited liability company with the Arkansas Secretary of State on February 3, 2017. The purpose of Empower as recited in the company's operating agreement adopted on or about June 22, 2017 (the "Operating Agreement") was to "establish the company under the laws of the State of Arkansas as a provider-led entity for the purpose of managing and providing certain medical, behavioral and developmental disability health services to beneficiaries of public programs . . . in the State of Arkansas." Ex. B., Op. Agmt., p. 1. A true and correct copy of the Operating Agreement, as amended several times, is attached hereto as Exhibit B and incorporated herein by reference. This Complaint asserts no claims for damages under the Operating Agreement but such claims are expressly reserved. Empower and Beacon agreed that as to disputes arising under or related to the Operating Agreement that no "party shall be required to submit to arbitration any claim for injunctive relief. . . ." Ex. B, Operating Agmt. § 15.12.

15. Empower applied for, and received, a PASSE license from AID and the required approval from the Arkansas Department of Human Services ("DHS").

16. Empower's participation in the PASSE program is governed by the terms of a PASSE contract between Empower and DHS (the "PASSE Contract").

17. Beacon is one of six equity members of Empower, owning 16.66% of the initial membership interests in the company. The remaining five members represent various types of healthcare providers. The business affairs of Empower are entrusted under the Operating Agreement to a six person Board of Managers comprised of one designee appointed by each member.

18. Under the Operating Agreement, members are indemnified from certain claims against them with respect to the management of Empower. However, claims, such as those asserted against Beacon herein, arising from, among other things, transactions between a member and Empower that produce an improper personal benefit to a particular member, breaches of loyalty, bad faith conduct and intentional misconduct are expressly excluded from the Operating Agreement's indemnification provision.

19. In addition to being a member of Empower, with a designee serving on the six person Board of Managers, Beacon has been compensated handsomely (more than \$52 Million in 2020 alone) to provide certain administrative services to Empower pursuant to a management services agreement entered into between Beacon and Empower on or about August 31, 2017 (the "Services Agreement"). A true and correct copy of the Services Agreement, including amendments thereto, is attached hereto as Exhibit C and incorporated herein by reference. This Complaint asserts no claims for damages under the Services Agreement but such claims are expressly reserved.

20. The Services Agreement provided for an initial one-year term subject to automatic renewal for successive one-year terms thereafter unless and until either party terminated the agreement or provided timely notice of non-renewal at least sixty days prior to the end of the applicable term. *See* Exhibit C, Services Agreement, § 6.1. The parties allowed the Services Agreement to renew in 2018, 2019 and 2020 for successive terms.

21. Amendments to the Services Agreement entered into by the parties contemporaneous with the Restructuring Agreement, and its amendments, entrusted "disputes arising out of or relating to" such amendments "to the jurisdiction of the state and federal courts of Arkansas. . . ." Ex. C, Third Am. § 7.

22. The Services Agreement established Beacon as essentially the operations manager for Empower by obligating Beacon, in exchange for monthly flat fees (determined by the number of BH / IDD Members enrolled in Empower and subject to tiered revenue-based caps) to provide all “services required for [Empower’s] performance of the PASSE Contract [including] all staffing and administrative services required for [Empower’s] operations” Ex. C, Services Agmt., § 1.1.

23. The terms of the Services Agreement expressly prohibit Beacon and/or its subcontractors from purporting to act unilaterally on behalf of Empower thereby usurping the role and authority of the Board of Managers. Ex. C, Services Agmt., § 2.1.

24. Empower has developed a substantial business coordinating care and paying for services to more than 19,900 Arkansas BH/IDD Members in the past 2 ½ years with such services generating annual revenues in excess of \$460,000,000 in 2020.

25. The management services provided by Beacon under the Services Agreement from 2017 until 2020 were central to Empower’s operation, development and growth plans and to maintaining legal compliance with the requirements of the PASSE program. During this time period, Beacon was entrusted with, and/or was paid to procure or develop for Empower’s benefit, landline phone numbers and related accounts, cell phone numbers and related accounts, care coordinator phone numbers and related accounts, an @empowerhcs.com email domain, network, account and system, and provider databases housing credentialing applications and verification documents for Empower’s network of facilities, clinics, practice groups and each member of their medical staff (hereinafter referred to as “Empower’s Business Data and Systems.”)

26. In recognition of the fact that Beacon also operated a separate managed care health organization that included providers in Arkansas, the Services Agreement required that all

intellectual property, records and data (including electronic data) related to Beacon's work as a contractor for Empower was to be maintained *separately* from other records belonging to Beacon. Exhibit C, Services Agmt., § 5.2.

27. Beacon further promised in the Services Agreement that Empower would, at all times, have complete access to Empower's Business Data and Systems sufficient to fully disclose the nature of extent of Beacon's services to Empower in conformance with the applicable standards of care, licensing requirements and the provisions of the PASSE Contract. Exhibit C, Services Agmt., §§ 5.2, 5.3.

28. Empower secures traditional health services for its BH/IDD Members related to physical injuries, conditions and diseases, through a provider network of medical doctors, clinics and hospitals assembled by a company called Access Health. Empower's BH/IDD Members receive health care directly related to their behavioral health and intellectual and developmental disabilities ("IDD and Behavioral Health Services") from a network of providers with specialized education, training and experience in IDD and Behavioral Health Services ("Empower's BHS Provider Network"). Empower's BHS Provider Network is comprised of hundreds of clinics, practice groups or facilities staffed by thousands of individual professionals. Empower's BHS Provider Network is central to Empower's business operations and profitability given that the PASSE program focuses exclusively upon BH/IDD Members, all of which need IDD and Behavioral Health Services.

29. As Empower's contractor, Beacon has been primarily responsible from 2017 until the present time for compliance matters and for the recruitment and contracting necessary to expand and maintain Empower's BHS Provider Network including the negotiation and execution of contracts, on Empower's behalf, and the collection, organization, verification and submission

of credentialing data required by DHS for each individual professional included in the Empower's BHS Provider Network.

BEACON JOINS TEAM ANTHEM

30. Anthem, through its subsidiaries, is a health benefits company servicing more than 40 Million medical members through its affiliated health plans. Anthem is an independent licensee of the Blue Cross and Blue Shields Association. It is one of the largest players in the health insurance market and has a well-earned reputation for anti-competitive conduct including violations of antitrust laws. *See, e.g., <https://www.healthcarefinancenews.com/news/anthem-paying-594-million-settle-blues-antitrust-settlement>* (Nov. 3, 2020); <https://www.justice.gov/opa/pr/us-district-court-blocks-anthem-s-acquisition-cigna> (Feb. 8, 2017).

31. Anthem has been, and is, a direct competitor of Empower by virtue of its equity ownership in, and governance of, Summit, which, like Empower is a PASSE offering services to BH / IDD Members in Arkansas. Summit, and, therefore, Anthem will benefit directly from any service disruptions or operational failures that result in either a termination by DHS of Empower's PASSE Contract or the reallocation by DHS of BH / IDD Members of Empower among the remaining two PASSEs, one of which is Summit.

32. Through a merger agreement entered into on or about June 4, 2019 between Beacon, and its affiliated entities and a wholly-owned subsidiary of Anthem, Beacon agreed to merge its operations and assets with, and be acquired by, Anthem.

33. Empower learned of the merger agreement with Anthem when it was announced in the news on June 6, 2019 after it was fully negotiated by Beacon, its business partner.

34. Based upon Beacon's representations, now known to be false, that Empower would continue to receive services in a similar manner despite the proposed merger, Empower and its other members did not exercise their change of control rights against Beacon under the Operating Agreement.

35. Empower later learned that most of the services Beacon was contractually obligated to provide under the Services Agreement (including, but not limited to, finance, personnel / human resources, risk management, legal, operations, fraud, waste and abuse, and the special investigation unit) would be provided by Anthem employees working in a "Shared Services Unit" rather than by the Beacon employees with whom Empower had worked closely in recent years. The transfer and/or realignment of these services created a substantial, and unacceptable, risk of Empower's proprietary information being inevitably disclosed to Anthem, its competitor.

36. The Beacon-Anthem merger was consummated, and publicly announced, on or about March 4, 2020.

37. The press release announcing the Beacon-Anthem merger spotlighted Beacon's provider relationships and expertise in IDD and Behavioral Health Services as the primary goal of the merger stating:

Beacon Health Options (Beacon) . . . [is] the largest independently held behavioral health organization in the country serving more than 36 million people across all 50 states. The acquisition offers Anthem the opportunity to combine its current behavioral health capabilities with Beacon's successful model and support services in order to enhance whole person care.

<https://www.beaconhealthoptions.com/anthem-inc-completes-acquisition-of-beacon-health-options/> (May 2, 2020).

THE FAILED "RESTRUCTURING"

38. After learning of the Beacon-Anthem merger, Empower made numerous requests

to restructure its relationships with Beacon given the potential conflicts of interests presented by Anthem's ownership of Beacon. Empower raised concerns about substandard performance by Beacon and the Anthem "Shared Services Unit. Empower also continued to question the apparent lack of "firewalls" between Anthem and Beacon with respect to Empower's Business Data and Systems over which Beacon had unrestricted access by virtue of its responsibilities under the Services Agreement. Empower also expressed grave concerns about a potential misappropriation or conversion of Empower's BHS Provider Network upon discovering that the contractual relationships that Beacon had been establishing in recent years, while being paid by Empower, were actually established in Beacon's name rather than with Empower.

39. The restructuring conversations between Empower and Beacon quickly became acrimonious.

40. The parties eventually agreed to a restructuring plan which was detailed in the Restructuring Agreement entered into between the parties on or about June 24, 2020 (the "Restructuring Agreement"). Among other terms, Beacon agreed in the Restructuring Agreement to:

- a. establish appropriate firewalls and measures;
- b. reconfigure the Empower BHS Provider Network to ensure direct contractual relationships with Empower;
- c. transition relationships with key subcontractors directly to Empower;
- d. bring certain key staff and functions under the direct control of Empower;

e. provide ongoing annual accountings of all staff and costs attributable to Beacon's services under the Services Agreement;

f. not withhold any consent required of Beacon as a member of Empower for the company to modify or terminate the Services Agreement in the future if necessary; and

g. obtain prior approval from Empower before terminating relationships with any subcontractors involved in Beacon's work under the Services Agreement.

See Exhibit A, Restructuring Agreement, Ex. A, Restructuring Terms. Beacon further promised in the Restructuring Agreement to "work diligently, and in good faith, to conclude negotiations regarding additional details of the restructuring . . . [and] to enter into comprehensive amendments to the [Services Agreement] and Operating Agreement, as necessary, to facilitate the restructuring . . .". Ex. A, Restructuring Agmt., § 2.

41. The Restructuring Agreement further provided that in the event that Beacon refused to agree to the Operating Agreement and Service Agreement modifications deemed necessary by Empower to adequately address the conflict of interest concerns, the parties would "work together in good faith to wind down and terminate their various relationships, including the [Services Agreement] and Beacon's ownership in [Empower] no later than December 31, *such that [Empower] will remain, at its discretion, as a participant in the [Arkansas PASSE program].*" Exhibit A, Restructuring Agmt., § 3 (emphasis added).

42. Despite having agreed upon the material terms necessary to restructure their relationships, Beacon steadfastly refused thereafter to perform the tasks necessary to implement the terms of the parties' agreement. Beacon refused to bring critical staff and functions under

Empower's direct control. Instead, Beacon continued to delegate critical service functions to *Anthem* employees within the "Shared Services Unit" who in turn provided incomplete, defective and generic work-product that was not appropriately tailored to Empower's business needs. Beacon's "interim CEO" refused to make decisions without first coordinating with Anthem's Shared Services Unit. Financial reports produced by this unit were inaccurate. Data compilations prepared by this unit were incomplete. And, Beacon failed to timely transfer key subcontractor relationships directly to Empower and reconfigure the provider network as required by the Restructuring Agreement.

BEACON SABOTAGES EMPOWER'S ATTEMPTS TO SEPARATE

43. After months of stonewalling by Beacon, all members of Empower's Board of Managers (except for the member designated by Beacon) voted unanimously to abandon attempts to restructure the parties' relationships and to instead begin implementing an orderly unwinding of the contractual and ownership relationships with Beacon. The Board of Managers agreed to target December 31, 2021 as the completion date for the unwinding.

44. Beacon responded to the Board of Manager's vote by making unilateral demands for a more expedited conclusion to their relationships. On April 30, 2021, Empower received notice from Beacon purporting to terminate the Services Agreement effective as of August 31, 2021 and to withdraw as a member of Empower effective as of October 31, 2021. Beacon subsequently altered the effective date of its purported termination of the Services Agreement to be October 31, 2021, but then tried to renege on that extension by informing DHS on June 30th that Beacon would cease providing administrative services to Empower on August 31, 2021. The withdrawal and termination dates were later extended by the parties to December 31, 2021.

45. Beacon's false claims about an August 31 termination of the Service Agreement alarmed DHS who had been previously told by Empower that it would not be ready to assume Beacon's administrative role for the Empower BHS Provider Network until December 31, 2021, the deadline included in the Restructuring Agreement. Those concerns resulted in DHS threatening to begin immediately transitioning BH / IDD Members from Empower to other PASSEs. Empower eventually assuaged DHS's concerns and narrowly avoided a potentially disastrous interruption in its business due to Beacon's misrepresentations to the agency. However, DHS informed Empower that its continued participation in the PASSE program would remain contingent upon demonstrating its "readiness" in a comprehensive review of its people, system, processes, internal controls and operating procedures to be conducted by DHS from October 1 to December 31, 2021 (the "DHS Readiness Review").

46. Beacon made false representations about Empower to DHS, which representations (if believed by DHS) could jeopardize Empower's future participation in the PASSE program. As just one example, in an August 26, 2021 letter, Beacon asserted to DHS that Empower has no credentialing authority over the providers within its network and that Empower had adopted credentialing policies and procedures that are "inconsistent with regulatory requirements of the PASSE program." Nowhere in this letter, does Beacon identify any actual regulatory requirement which is supposedly not satisfied by the credentialing policies submitted by Empower to DHS. Nevertheless, Beacon asks DHS to "disregard the policies adopted and submitted by Empower." A true and correct copy of the August 26, 2021 letter is attached hereto as Exhibit D and incorporated herein by reference. These misleading communications continue to occur in spite of the fact that Empower has formally notified Beacon on multiple occasions that its representatives

are not to communicate with DHS regarding Empower matters without the participation of a duly authorized Empower representative.

47. Upon information and belief, Beacon's August 26, 2021 letter was prompted by its recognition that its prior regulatory submissions to DHS improperly conflated Beacon's provider network with Empower's BHS Provider Network and treated them as one in the same.

48. Upon information and belief, Beacon used the payments provided by Empower under the Services Agreement to expand its own provider network and now that the relationship between it and Empower is being unwound, Beacon wants to deprive its soon-to-be-former partner, and now-competitor, of those valuable relationships.

49. Beacon has asserted, and continues to assert, that the relationships it established with providers during, and as part of, its work for Empower under the Services Agreement belong to Beacon and not to Empower. These assertions have created, and continue to create, substantial confusion with members of Empower's BHS Provider Network.

50. Beacon has made demands upon Evolent (a subcontractor to whom Beacon delegated a substantial portion of its duties to Empower under the Services Agreement) in furtherance of its attempts to disrupt the business relationships between Empower and its BHS Network Providers. For example, Beacon asserted to Evolent that after December 31, 2021 it could no longer utilize the provider information configured and loaded in Evolent's own systems in performing claims management services for Empower. Beacon asserted that it "owned" the network and information. In fact, the information over which Beacon was asserting exclusive rights was the provider's information, not Beacon's. The provider supplied it to Evolent for use in processing claims to be paid by Evolent on behalf of Empower.

51. For several months immediately preceding the filing of this Complaint, Empower attempted, both through business-to-business discussions and formal demand letters between legal counsel for the parties, to obtain unrestricted access to and a transfer of control over Empower's Business Data and Systems.

52. Beacon has obstinately refused those efforts and instead engaged in a months-long game of obfuscation and stall tactics some, but not all of which, is described hereinafter.

53. Empower has made multiple requests for copies of its own policies, templates, member handbooks and training materials and historical business records relating to operational and compliance areas such as quality assurance, utilization management, grievances, fraud, waste and abuse and care coordination ("Empower's Records").

54. With respect to Empower's Records that exist in paper form, Beacon has argued that even though it was required to separately maintain records related to the services Beacon performed under the Services Agreement, that does not mean that all of the requested records must be made available to Empower for inspection and copying.

55. Beacon's position as to electronic copies of Empower's Records is even more unreasonable. After months of denials and feigned confusion as to what Empower was seeking, Beacon has recently taken the position that Empower must send a representative to "Beacon's Little Rock Office" to access and download those records electronically. This response disregards the fact that Empower's representatives work in, and have since 2020 worked in, that very same office. Had Beacon desired to turn over these electronic records in this manner it could have done so at any time in the past few months. Instead, Beacon stalled and now wants to delay the process even further pending an unscheduled meeting between representatives who literally work in the very same physical office.

56. With respect to the Empower website (<https://www.getempowerhealth.com>) constructed with Empower's money and under Empower's supervision that is visited and used daily by Empower's BH / IDD Members and the health care professionals within Empower's BHS Provider Network, Beacon initially asserted that the website belongs to it and not Empower. It later abandoned that position and now asserts that it is simply not feasible for Beacon to grant administrator rights' access for the website to Empower until December 31, 2021.

57. With respect the @empowerhcs.com email domain network, Beacon has consistently maintained that Empower must create its own separate email domain and network and develop an unnecessary plan to give new email address notices to thousands of people who previously communicated with Empower representatives using the current @empowerhcs.com email addresses. Beacon's attempt to wedge Empower and its members into a new email domain and platform puts upwards of 19,000 Empower members at risk of having their care interrupted by having to hunt and peck for a new email address, and for those who are fortunate enough to find the correct new address, to communicate with a care coordinator who has no written history of their care. These care coordinators all have an @empowerhcs.com email address that is used for all day-to-day correspondence with members, DHS, DCFS, and providers on a daily basis. The majority of the care coordinators will transition to Empower beginning January 1, but under the Beacon plan, will lose all historical emails, correspondence, and other important information regarding patient care and the continuation thereof. These innocent and vulnerable members suffering from significant mental illness and/or developmental disabilities should not be subjected to Beacon's attempt to harm Empower.

58. Beacon takes a similarly disruptive stance with respect to employee and care coordinator phone numbers, sim cards, accounts and history. It outrageously claims that the phone

numbers, sim cards, accounts and history are part of a corporate account and cannot be transferred to Empower. Instead, Beacon is attempting to force all individuals who will remain as Empower representatives after Beacon's December 31, 2021 withdrawal to obtain a new phone number and communicate their new contact information to approximately 19,000 people accustomed to contacting them on the current business phone numbers. Just as with the emails, Beacon's attempt to wedge Empower and its members into new phone numbers and history, without the historical text communications and voicemails, puts upwards of 19,000 Empower members at risk of having their care interrupted by having to hunt and peck for a new telephone number, and for those who are fortunate enough to find the correct new number, to communicate with a care coordinator who has no written history of their care. These care coordinators all have phone numbers and accounts that are used for all day-to-day correspondence with members, DHS, DCFS, and providers on a daily basis, including a vast history of text and voice messages. The majority of the care coordinators will transition to Empower beginning January 1, but under the Beacon plan, will lose all historical voice and text messages, and other important information regarding patient care and the continuation thereof. These innocent and vulnerable members suffering from significant mental illness and/or developmental disabilities should not be subjected to Beacon's attempt to harm Empower.

59. With respect to credentialing information, Beacon claims to have turned over its full database of provider information, but the transferred files do not include the individual provider credentialing that is required DHS contract and manual

60. Beacon's misconduct described herein is designed to impair Empower's transition schedule for the end of 2021.

COUNT I: INJUNCTIVE RELIEF

61. Empower repeats, realleges, and incorporates the allegations in the preceding Paragraphs as if fully restated herein.

62. Beacon's improper withholding of Empower's Records and Empower's Business Data and Systems is prejudicial to Empower's plan to emerge from this unwinding as a full-ready and formidable competitor of Beacon and Anthem in the Arkansas market.

63. Beacon continues to wrongfully assert dominion and control over Empowers' BHS Provider Network thereby creating doubt and confusion among providers, vendors, and regulators as to Empowers' ability to continue to meet its obligations as a PASSE after December 31, 2021.

64. Beacon has not complied with Empower's repeated demands to relinquish Empower's Records and Empower's Business Data and Systems which are essential to Empower's continued operations and its ability to prepare for the DHS Readiness Review.

65. Empower and its members are likely to suffer irreparable harm, including (a) an impairment to its ability to properly and timely meet its obligations to its provider network and enrolled members, (b) disruption to enrollees' continuity of care, and (c) harm to Empower's goodwill with providers and enrollees, in the absence of the issuance of an injunction by this Court ordering Beacon to immediately and fully relinquish Empower's Records and Empower's Business Data and Systems to Empower.

66. The balance of the equities and the public interest favor entry of an injunction in this case.

67. The issuance of an injunction is necessary to prevent irreparable harm that has yet to occur and for which no other adequate remedy exists at law.

68. Empower is substantially likely to prevail on the merits of the legal claims asserted hereinafter.

**COUNT II: BREACH OF RESTRUCTURING AGREEMENT –
SPECIFIC PERFORMANCE**

69. Empower repeats, realleges, and incorporates the allegations in the preceding Paragraphs as if fully restated herein.

70. The Restructuring Agreement constitutes a valid and enforceable contract between Beacon and Empower.

71. Empower has substantially performed in accordance with the terms of the Restructuring Agreement.

72. In the Restructuring Agreement, Beacon agreed to work together in good faith to terminate the parties' relationships in the event that they could not agree upon additional details necessary to restructure those relationships in a manner acceptable to the "non-Beacon members" of Empower.

73. The "non-Beacon members" of Empower have determined that Beacon's conduct precludes a satisfactory restructuring of the parties' relationships.

74. Beacon has refused to cooperate in Empower's attempts to plan and implement an orderly winding down of their relationship and that refusal to cooperate is ongoing as of the filing of this Complaint.

75. Beacon continues to wrongfully assert control over Empower's BHS Provider Network, Empower's Records and Empower's Business Data and Systems. Such conduct is in contravention of its promise in the Restructuring Agreement that it would act in "good faith" in all matters related to unwinding the parties' relationships.

76. Beacon's refusal to relinquish Empower's Records and Empower's Business Data and Systems jeopardizes the stated goal of Paragraph 3 of the Restructuring Agreement in which the parties mutually agreed to act "such that "Empower will remain . . . as a participant in the [PASSE] Program."

77. Beacon is intentionally attempting to sabotage Empower in order to benefit a competitor of Empower, Summit.

78. Monetary compensation alone will not be sufficient to remedy the harm presented by Beacon's ongoing misconduct.

COUNT III: BREACH OF RESTRUCTURING AGREEMENT - DAMAGES

79. Empower repeats, realleges, and incorporates the allegations in the preceding Paragraphs as if fully restated herein.

80. The Restructuring Agreement constitutes a valid and enforceable contract between Beacon and Empower.

81. In addition to the express terms of the Restructuring Agreement, the law implies a promise between the parties to that contract that they act in good faith and deal fairly with one another in performing and enforcing their obligations under the contract.

82. Empower has substantially performed in accordance with the terms of the Restructuring Agreement including the implied covenant of good faith and fair dealing.

83. Beacon materially breached the contract by refusing for over a year to implement the restructuring terms detailed in Exhibit A to the Restructuring Agreement. Such breaches during this time included, among other things, the following acts or omissions:

- a. failing to establish appropriate firewalls and measures;

- a. refusing to reconfigure Empower's BHS Provider Network to ensure direct contractual relationships with Empower;
- b. refusing to transition relationships with key subcontractors directly to Empower;
- c. refusing to bring certain key staff and functions under the direct control of Empower;
- d. failing to provide ongoing annual accountings of all staff and costs attributable to Beacon's services under the Services Agreement; and
- e. refusing to work diligently, and in good faith, to conclude negotiations regarding additional details of the restructuring.

84. After the "non-Beacon members" of Empower determined that restructuring was impossible because of Beacon's misconduct, the parties were contractually obligated to work together in good faith to unwind their relationships in an orderly manner to facilitate Empower's continued participation in the PASSE Program. Beacon breached this contractual commitment through the following acts or omissions:

- a. asserting control over and ownership of the Empower BHS Provider Network that Beacon was paid to develop for Empower;
- b. refusing to timely and fully relinquish Empower's Records and Empower's Business Data and Systems to Empower;
- c. refusing to cooperate in Empower's efforts to transition away from Beacon; and
- d. making misrepresentations and disparaging comments about Empower to DHS and AID.

85. Beacon's breaches have required Empower to retain and pay for services from third parties that would have been unnecessary had Beacon fulfilled its legal duties and honored its commitments.

86. Beacon's breaches have required Empower to recreate, at substantial cost, systems, data, policies, provider profiles, credentialing records, websites, intellectual property and other work-product that Beacon was previously paid to develop but which Beacon refuses to turnover to Empower.

87. The damages proximately caused by Beacon's contractual breaches are continuing to accumulate and will be determined at trial but are in no event less than the amount required for federal diversity jurisdiction.

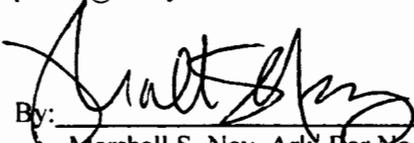
88. Empower, pursuant to Rule 38 of the Federal Rules of Civil Procedure, respectfully demands a jury trial on all issues so triable.

WHEREFORE, Empower respectfully prays for the following relief:

- A. An order of specific performance directing Beacon to immediately and fully comply with its obligations under the Restructuring Agreement;
- B. A preliminary and permanent injunction ordering Beacon to provide immediate access to and/or return Empower's Records and Empower's Business Data and Systems;
- C. A preliminary and permanent injunction enjoining, Beacon, its officers, employees, agents, servants, attorneys, instrumentalities, and/or those in privity or acting in concert or participation with Beacon from continuing to assert dominion or control over the assets and/or Empower's BHS Provider Network;
- D. An award of damages caused by Beacon's unlawful conduct, in an amount to be proven at trial, plus costs and interest;
- E. An award of Empower's costs and reasonable attorneys' fees incurred in prosecuting this case; and
- F. Such further other relief as the Court may deem proper and just.

Respectfully submitted,

FRIDAY, ELDREDGE & CLARK, LLP
3350 S. Pinnacle Hills Parkway, Suite 301
Rogers, AR 72758
Office: (479) 695-2118
Facsimile: (501) 244-5333
mney@fridayfirm.com
rgeorge@fridayfirm.com
pbrick@fridayfirm.com

By: 
Marshall S. Ney, Ark. Bar No. 91108

VERIFICATION

I, Mitch Morris, Chief Executive Officer of Empower Health Solutions, LLC, having read the foregoing Verified Complaint for Injunctive Relief and Damages, do swear and affirm that the facts as presented are true and correct to the best of my knowledge and affix my signature hereto as a testament thereof on this 2nd day of November, 2021.

Mitch Morris
Mitch Morris

STATE OF ARKANSAS)
)
COUNTY OF PULASKI)

Subscribed and sworn to before me, a Notary Public, on this 2nd day of November, 2021.

Brad Bowman
Notary Public

My Commission Expires:
2-4-29

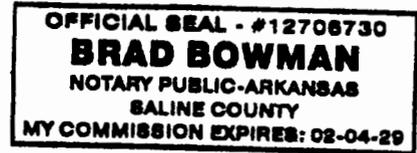


Exhibit A

Restructuring Agreement

MEMORANDUM OF AGREEMENT

**BY AND BETWEEN
EMPOWER HEALTHCARE SOLUTIONS, LLC
AND
BEACON HEALTH OPTIONS, INC.**

THIS MEMORANDUM OF AGREEMENT (“MOA”), by and between Empower Healthcare Solutions, LLC, an Arkansas limited liability company (“Company”), and Beacon Health Options, Inc., a Virginia corporation (“Beacon”), is entered into effective as of the last date of signature set forth below (“Effective Date”).

WHEREAS, the parties have certain contractual and ownership relationships between one another, generally relating to the Arkansas DHS PASSE program (“Program”), including, but not limited to, being parties to a Management Services Agreement, originally dated as of August 31, 2017, as amended from time to time (“MSA”), and Beacon’s 1/6 ownership of the Company, the terms and provisions of which are governed by the Operating Agreement of Empower Healthcare Solutions, LLC (“Operating Agreement”); and

WHEREAS, the Empower Board of Managers has determined that the existing relationship between the parties must be restructured, and has adopted a Board Recommendation in this regard at the May 21 Empower BOM meeting; and

WHEREAS, the parties are agreeing to restructure the contractual and ownership relationships between the parties, as described herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including the promises and covenants made hereunder and the separate agreement of the parties to extend the time for non-renewal of the MSA, the parties hereby agree as follows:

- 1. Restructuring.** The parties hereby agree to restructure their contractual / ownership relationships as described in Exhibit A, which is attached hereto and incorporated herein by reference. Beacon agrees to the terms set forth on Exhibit A.
- 2. Additional Agreements.** The parties intend to be bound by the agreements made in this MOA. In addition, the parties will work diligently, and in good faith, to conclude negotiations regarding additional details of the restructuring on or before July 15, 2020. The parties further agree to enter into comprehensive amendments to the MSA and Operating Agreement, as necessary, to facilitate the restructuring described in this MOA, on or before July 22, 2020.

3. **Unwinding.** In the event that the terms and provisions of the amendments to the MSA and Operating Agreement are not acceptable to the non-Beacon members of the Company, in their discretion, the parties agree to work together in good faith to wind down and terminate their various relationships, including the MSA and Beacon's ownership in Company, no later than December 31, 2021, such that Company will remain, at its discretion, as a participant in the Program.
4. **Execution and Delivery.** It is the intent of the parties that this Amendment may be executed in multiple counterparts and that PDF or other electronic delivery of signatures shall be sufficient to bind the parties hereto.
5. **Execution Authority.** The undersigned Beacon representative / agent hereby represents and warrants to the Company that he / she has the authority to execute and deliver this Agreement on behalf of Beacon.
6. **Beacon Board Representative.** For purposes of signing and approving this MOA, Beacon hereby appoints Susan Coakley as its Board Representative to the Company.
7. **Jurisdiction / Venue.** Each party hereby submits to the jurisdiction of the state and federal courts of Arkansas for any disputes arising out of or relating to this MOA. Moreover, each party agrees that any dispute arising out of or relating to this MOA and leading to litigation shall be litigated in the state or federal courts of the State of Arkansas.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties have entered into this MOA effective as of the Effective Date, which is the last date of signature set forth below, each through the respective signature of its duly authorized officer.

BEACON HEALTH OPTIONS, INC.



(Signature)

Susan Coakley, Interim President

(Print Name and Title)

06/24/2020

(Date)

[Empower signature page follows.]

EMPOWER HEALTHCARE SOLUTIONS, LLC

By: Its Board of Managers


(Signature)

Thomas G. Harbuck
(Print Name)

6/25/2020
(Date)


(Signature)

Bess Heisler Ginty
(Print Name)

6/25/2020
(Date)


(Signature)

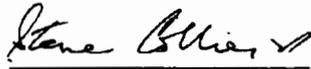
Cindy Alberding
(Print Name)

6/25/2020
(Date)


(Signature)

David Norsworthy
(Print Name)

6/25/2020
(Date)


(Signature)

Steven Collier
(Print Name)

6/25/2020
(Date)


(Signature)

Susan Coakley, Interim President
As Beacon Board
Representative

06/24/2020
(Date)

[Exhibit A follows.]

EXHIBIT A

RESTRUCTURING TERMS

The MSA and/or Operating Agreement will be amended to accomplish each of the following items:

1. Establishment of appropriate firewalls and measures.
2. Address approval of any future “change in control” of Beacon.
3. Require Empower’s approval prior to termination of any subcontractor; lower the threshold for approval of new subcontractor.
4. Make Evolent and Access direct contractors of Empower, versus Beacon subcontractors.
5. Bring certain staff and functions under the direct control of Empower.
6. Require key Empower and Beacon staff share office or be adjacent / close proximity.
7. Notify and seek Empower input before any key Beacon staff change.
8. Preventing Beacon Board representative from direct responsibility of MSA performance.
9. Provide Empower an annual accounting of all staff and cost attributable to the MSA.
10. Require key Beacon staff to execute and deliver a confidentiality agreement.
11. Remove Beacon from unanimous consent to modify / terminate MSA.
12. Renegotiate the MSA:
 - a. Carve-out certain services.
 - b. More specifics, transparency, and details.
 - c. Reduced rates.
13. Empower to have the right, by a simple majority of the BOM, prior to the implementation and / or use of any Anthem or non-Beacon shared service unit or service delivery that closely resembles that concept.
14. Significant personnel changes by Beacon (contractually, operationally, and Board representation).
15. The long-term reconfiguration of the provider network to ensure direct contractual relationships with Empower.

Exhibit B

Operating Agreement

**OPERATING AGREEMENT
OF
EMPOWER HEALTHCARE SOLUTIONS, LLC
AN ARKANSAS limited liability company**

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**OPERATING AGREEMENT
OF
EMPOWER HEALTHCARE SOLUTIONS, LLC
an Arkansas limited liability company**

THIS OPERATING AGREEMENT ("Agreement") of EMPOWER HEALTHCARE SOLUTIONS, LLC, an Arkansas limited liability company ("Company"), is made among the Company and the persons or entities whose names are set forth on Schedule 1 attached hereto (each individually a "Member" and collectively the "Members"), and shall be effective as of June 21, 2017.

RECITALS

WHEREAS, the Members have established the Company under the laws of the State of Arkansas as a provider led entity for the purpose of managing and providing certain medical, behavioral and developmental disability health services to beneficiaries of public programs ("Services") in the State of Arkansas; and

WHEREAS, the Members have determined that entering into this Operating Agreement and participating in the Company will enable them to more efficiently and effectively provide the Services; and

WHEREAS, the Members have decided to join together in the undertaking contemplated in the foregoing recitals and wish to set forth in this Agreement the terms and conditions of their agreement for the formation and operation of the Company, which Agreement shall be an operating agreement within the meaning of the Arkansas Limited Liability Company Act.

AGREEMENT

NOW, THEREFORE, the Members hereby make this Agreement to reflect and effectuate the foregoing and to cause the affairs of the Company and the relationship of the Members to the Company and to each other to be governed by the terms and provisions of this Agreement and the Arkansas Limited Liability Company Act as it may be amended ("Act"), and the Act shall be applicable to the Company and its Members only to the extent there is no governing provision in this Agreement or any provision in this Agreement that is in conflict the Act.

**ARTICLE 1
FORMATION AND PURPOSES OF THE COMPANY**

1.1 **Company Name.** The name of this Company shall be EMPOWER HEALTHCARE SOLUTIONS, LLC.

1.2 **Purposes.** The purposes of the Company are as follows:

1.2.1 to manage and provide certain medical, behavioral and developmental disability health services to meet the needs of residents in Arkansas and to administer state contracts or funds dedicated to these services; and

1.2.2 to be licensed for purposes of the foregoing; and

1.2.3 to undertake any other business or activity approved by the Members that is authorized by law and consistent with the Company's Certificate of Formation, this Agreement and the Act.

1.3 **Registered Office; Principal Place of Business.** The principal place of business of the Company shall be located at 1401 W. Capitol, Suite 330, Little Rock AR 72201. The name of the Company's registered agent is Corporation Service Company and the street and mailing address of the registered office of the Company and the registered agent is Corporation Service Company. The Members may change the Company's registered agent or address of the Company's registered office as the Members may from time to time determine.

1.4 **Representations of the Members.**

1.4.1 Each Member hereby represents and warrants to the Company and to the Members that such Member has acquired such Member's Membership Interest in the Company for investment solely for such Member's own account, without any intention of participating directly or indirectly in any distribution of any portion of such Membership Interest and without the financial participation of any other person in acquiring such Membership Interest in the Company.

1.4.2 Each Member hereby acknowledges that such Member is aware that such Member's Membership Interest in the Company has not been registered (i) under the Securities Act of 1933, as amended (the "Federal Act"), (ii) under applicable Arkansas securities laws, or (iii) under any other state securities laws. Each Member further understands and acknowledges that its representations and warranties contained in this Section 1.4.2 are being relied upon by the Company and by the Members as the basis for the exemption of the Member's Membership Interest in the Company from the requirements of the Federal Act and from the requirements of applicable Arkansas securities laws and all other state securities laws. Each Member further acknowledges that the Company will not and has no obligation to recognize any sale, transfer, or assignment of all or any part of such Member's Membership Interest in the Company to any person unless and until the provisions of this Agreement hereof have been fully satisfied.

1.4.3 Each Member hereby acknowledges that prior to his or its execution of this Agreement, such Member received a copy of this Agreement and that such Member has examined this Agreement or caused this Agreement to be examined by such Member's representative or attorney. Each Member acknowledges that no other Member has acted as a promoter or issuer of Membership Interests in the Company and that the Members have

negotiated the terms of this Agreement at arms length and have equally participated in the organizational and financial planning for the Company. Each Member hereby further acknowledges that such Member or such Member's representative or attorney is familiar with this Agreement and with the Company's business plans. Each Member acknowledges that such Member or such Member's representative or attorney has made such inquiries and requested, received, and reviewed any additional documents necessary for such Member to make an informed investment decision. Each Member acknowledges that such Member understands that the purchase of such Member's Membership Interest in the Company is speculative and involves a high degree of risk and hereby represents that such Member has a net worth sufficient to bear the risk of such Member's participation in the Company and to justify such Member's participation in a highly speculative venture of this type.

1.4.4 Each Member hereby acknowledges that the representations made in this **Section 1.4.4** apply to acquisition of the Member's Membership Interest, to the Member's initial capital contribution and to any Additional Capital Contributions of the Member.

ARTICLE 2 **TERM OF COMPANY**

The Company commenced on the date of filing the Certificate of Formation with the Arkansas Secretary of State. The business of the Company shall continue uninterrupted from such date until terminated in accordance with the provisions of this Agreement.

ARTICLE 3 **MEMBERS**

3.1 **Membership Interest.** Each Member of the Company shall be deemed to own a "Membership Interest" which shall represent a Member's entire interest in the Company, including such Member's share of the Company's profits and losses and distributions of the Company's equity or assets pursuant to this Agreement and the Act; the right to participate in the management and affairs of the Company as permitted by this Agreement or the Act; the right to vote on, consent to, or otherwise participate in any decision or action of the Members; and such other rights conferred upon the Members by this Agreement or the Act. A Member's Membership Interest shall be reflected by the Member's Percentage Interest (defined in **Section 4.1**).

3.2 **Qualifications.** To be Member of the Company a person or entity must be an initial signatory of this Agreement or must be admitted as an additional Member pursuant to Article 7.

3.3 **Board of Managers.** Each Member shall designate one (1) individual who shall represent the Member in all respects as its designated manager on the Company's Board of Managers (such individuals being sometimes referred to in this Agreement as the "Designated Representatives" or as the "Board of Managers" and each individually as a "Designated Representative" or as a "Manager"). A Member may change its Designated Representative from

time to time in its discretion and shall promptly inform the other Members upon such change. The Designated Representatives of the Members shall represent such Members on the Board of Managers of the Company. The meetings of the Board of Managers shall constitute the meetings of the Members of the Company for purposes of this Agreement and compliance with the Act.

3.4 **Annual Meetings.** The annual meeting of the Board of Managers shall be held annually on such date as shall be determined by resolution of the Board of Managers, beginning with the year 2017. The purpose of the annual meeting shall be to transact such business as may come before the meeting. If an annual meeting of the Board of Managers has not been held within fifteen (15) months after the last annual meeting, any Member may call an annual meeting by giving notice as provided in Section 3.7 below.

3.5 **Special Meetings.** Special meetings of the Board of Managers, for any purpose or purposes appropriate for action by the Members, may be called by any Designated Representative by providing notice of the meeting in accordance with Section 3.7 below.

3.6 **Place of Meetings.** Meetings of the Board of Managers shall be held at the Company's principal place of business or at any other place in Arkansas designated by the Designated Representative(s) calling the meeting.

3.7 **Notice; Waiver of Notice.** Except as may be otherwise provided in this Agreement, written or electronic notice stating the time, place, and purpose of a Board of Managers meeting shall be delivered to each Designated Representative not less than ten (10) nor more than fifty (50) days before the date of the meeting. Notwithstanding the foregoing, each Designated Representative waives notice if before or after the meeting the Designated Representative signs a waiver of the notice which is filed with the records of Board of Managers meetings or the Designated Representative is present at the meeting in person or by proxy and fails to object to the lack of notice.

3.8 **Meeting of all Designated Representatives.** If all of the Designated Representatives shall meet at any time and place, either within or outside of the State of Arkansas, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

3.9 **Quorum.** A quorum of the Board of Managers shall consist of the presence in person or by proxy of five (5) Managers. If a quorum is not present at any meeting of the Board of Managers, such meeting may be adjourned for a period not to exceed thirty (30) days. When a meeting is adjourned to another designated time or place, notice of the adjourned meeting need be given only to those Designated Representatives who were not in attendance in person or by proxy at the original meeting. At the resumed meeting, the Designated Representatives may transact any business which might have been transacted at the original meeting, provided that a quorum is then present.

3.10 **Voting.** Except for Supermajority Transactions and Extraordinary Transactions as set forth below, the vote of a majority of the Designated Representatives on a matter at a meeting

of the Board of Managers where a quorum is present shall constitute the act of the Members unless the vote of a greater number is required by the Articles of Organization, this Agreement or the Act. Each Member shall have the number of votes set forth in Schedule 1. Each Member's votes shall be cast by its Designated Representative at a meeting of the Board of Managers. A vote by a Member's Designated Representative shall be the vote of that Member. All actions of the Board of Managers shall be subject to the limitations set forth in Section 3.20.

3.11 General Powers of Managers. The business and affairs of the Company shall be managed by the Board of Managers in accordance with this Article. The Managers shall have the full, exclusive, and complete discretion, power, and authority to manage, control, administer, and operate the business and affairs of the Company for the purposes herein stated and to make all decisions concerning its business and affairs, subject in all cases to the other provisions of this Agreement and the requirements of applicable law. The Managers' powers shall include, without limitation, the power to:

3.11.1 acquire by purchase, lease, or otherwise, any real or personal property, tangible or intangible;

3.11.2 construct, use, maintain, finance, and improve real property;

3.11.3 enter into, make, and perform such contracts, agreements, joint ventures, and other undertakings, and to do such other acts as the Managers may deem necessary or advisable for, or as may be incidental to, the conduct of the business and furtherance of the purposes of the Company;

3.11.4 execute any and all other instruments and documents which may be necessary, or in the opinion of the Managers, desirable to carry out the intent and purpose of this Agreement;

3.11.5 delegate to one or more of the Managers or to such other employees of the Company, whether hired or leased, the authority to execute on behalf of the Company such contracts, agreements, instruments, and documents as the Managers may deem appropriate from time to time;

3.11.6 delegate to one or more of the Managers such administrative duties and responsibilities as the Managers may deem appropriate from time to time;

3.11.7 delegate to the Executive Director or equivalent position, chief financial officer, administrator, or such other employees of the Company, whether hired or leased, such administrative duties and responsibilities as the Managers may deem appropriate from time to time;

3.11.8 establish bank accounts for the Company;

3.11.9 purchase liability and other insurance to protect the Company's Managers, employees, properties, and business as required by the Arkansas Department of Human Services

(“DHS”) pursuant to the agreement between DHS and the Company or as otherwise required in the sole discretion of the Managers;

3.11.10 make any and all expenditures which the Managers may deem necessary or appropriate in connection with the management of the affairs of the Company and the carrying out of its obligations and responsibilities, including, without limitation, all legal, accounting, and other related expenses incurred in connection with the organization, financing, and operation of the Company;

3.11.11 reimburse any Member, affiliate, or related person for any reasonable cost or expense incurred on behalf of the Company and pre-approved by the Managers in a manner authorized by this Agreement;

3.11.12 except as qualified by Sections 3.12 & 3.13, enter into any kind of activity necessary to, in connection with, or incidental to the accomplishment of the purposes of the Company;

3.11.13 declare a Deadlock Event and refer such matter to mediation as set forth in Section 14.2;

3.11.14 generally, to possess and exercise any and all of the rights, powers, and privileges of a Manager under the Act.

3.11.15 approve the annual budget of the Company;

3.11.16 adopt or reject any recommendations from any advisory committee established under Section 3.28; and

3.11.17 approve, amend or terminate, without cause, any provider agreement, delegated service agreement, sub capitation agreement, management agreement, or administrative services agreement between the Company and any third parties which are not Members.

3.12 Supermajority Transactions. The following actions shall require the affirmative vote of a majority plus one of the total number of Managers of the Company:

3.12.1 develop plans for distribution of revenue and cost or expense;

3.12.2 approve the Company’s response to the request for proposals from the DHS for certain medical, behavioral and developmental disability health services as a Provider Owned Arkansas Shared Savings Entity (“PASSE”);

3.12.3 establish and monitor service utilization risk pools;

3.12.4 approve distributions to the Members;

3.12.5 approve additional contributions to capital reserves as required by the Arkansas Department of Insurance, as required by the DHS pursuant to the agreement between the Company and DHS, or as otherwise required in the sole discretion of the Managers under Section 4.2;

3.12.6 appoint, remove and determine the compensation of the Executive Director of the Company;

3.12.7 approval of any borrowing which when aggregated with any other loans obtained during the same calendar year would exceed one hundred thousand dollars (\$100,000.00);]

3.12.8 approval of all policies referenced in this Agreement including, but not limited to, the conflict of interest policy referenced in Section 3.19.

3.12.9 approve, amend or terminate, with cause, any provider agreement, delegated service agreement, sub capitation agreement, management agreement, or administrative services agreement between the Company and a Member;

3.13 Extraordinary Transactions. The following actions shall require the affirmative vote of all of the Managers of the Company:

3.13.1 adoption of Amendments to the Company's Certificate of Formation;

3.13.2 the sale, exchange, other transfer, lease or mortgage of all or substantially all of the Company's assets;

3.13.3 a merger or consolidation involving the Company;

3.13.4 adoption of amendments to this Operating Agreement;

3.13.5 a change in control of the Company whereby the holders of 100% of the number of votes entitled to vote on matters before the Board of Managers prior to the change in control hold 50% or less of the number of votes entitled to vote on matters before the Board of Managers after the change in control;

3.13.6 approval of calls for additional capital contributions (but not contributions to capital reserves) by Members which will exceed in the aggregate one hundred thousand dollars (\$100,000.00) per calendar year;

3.13.7 any other action that is reserved to the Members pursuant to this Agreement, the Act, or the Certificate of Formation;

3.13.8 approve, amend or terminate, without cause, any provider agreement, delegated service agreement, sub capitation agreement, management agreement, or administrative services agreement between the Company and a Member;

3.13.9 approve and adopt changes to allocations and distributions set forth in Section 5.2; and

3.13.10 approve the admission of a new member to the Company.

3.14 Informal Action by Board of Managers. Any action required or permitted to be taken at a meeting of the Board of Managers may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken and signed by the Designated Representative representing the number of votes required to approve the matter if the action were taken at a meeting of the Board of Managers. A signature by a Member's Designated Representative shall be a vote of all the Member's votes. Action taken under this Section is effective when all Members representing the number of Member votes required to approve the matter have signed the consent, unless the text of the consent specifies a different effective date. Such consent has the same force and effect as a vote of the Members and may be stated as such in any document. If action is taken under this Section 3.14 where less than all of the Members sign such consent or consents, written notice stating the time, place, and the actions taken, including a full and complete copy of any such written consents, shall be delivered to each Designated Representative who did not sign such consent or consents within five (5) days from the date on which the actions were approved.

3.15 Participation by Electronic Means. A Member's Designated Representative(s) may participate in a meeting of the Board of Managers by means of telephone or video conference or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at the meeting.

3.16 Proxies. A Manager may give another officer or director of such Manager's Member organization, but no other person, a written proxy authorizing such person to cast the delegating Manager's vote at any regular or special meeting of the Board of Managers. The delegating Manager's presence at the meeting by proxy shall be counted for purposes of determining a quorum, and a proxy vote shall be counted as a vote of the Manager who gave the proxy. A photocopy or facsimile transmitted copy of the proxy bearing the delegating Manager's signature shall be presented to the other Managers attending the meeting and such photocopy or facsimile transmitted copy shall be included with the minutes of the meeting in the Company's record book.

3.17 Financial Reporting. The Board of Managers shall be provided with year-to-date financial statements on a monthly basis.

3.18 Company Debts, Obligations, and Liabilities. Except as otherwise specifically provided in this Agreement, a Member shall not be liable for any debt, obligation, or liability of

the Company except to the extent of the Member's capital account, any obligation of the Member under this Agreement or the Act to make a capital contribution to the Company, any written obligation of a Member to contribute to capital reserves or any obligation of the Member pursuant to this Agreement or the Act to return to the Company any part of the Member's capital contribution which has been previously distributed to the Member by the Company.

3.19 **Other Business of Member.** Subject to Article 12 of this Agreement, a Member may engage independently or with others in other business ventures of any kind, render advice or services of any kind to other investors or ventures, or make or manage other investments or ventures, provided that such business ventures are in accordance with any conflict of interest policy adopted by the Board of Managers to further the Company's interests.

3.20 **Limitation of Powers.** The Designated Representatives shall not take any action or fail to approve any action if such action is reasonably likely, based on the written opinion of counsel, to jeopardize the tax exempt status of any Member or any Member composed of tax exempt entities. Counsel appointed by the tax exempt Member (or Member composed of tax exempt entities) whose tax exemption is at issue, must be experienced in analyzing such matters, and must render an opinion that is reasonable under the then-current interpretive standards of the health care industry.

3.21 **Liability for Certain Acts.** Recognizing that individual Managers may also have certain duties and fiduciary obligations to the Member that appointed the Manager, Managers shall use their reasonable best efforts to perform their duties to the Company in good faith, in a manner they reasonably believe to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A Manager who so performs such duties shall not have any liability to the Company, its Members, or third parties by reason of being or having been a Manager of the Company. Further, Managers shall not be liable to the Company or any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of: (i) a breach of the Manager's duty of loyalty to the Company, (ii) acts or omissions of the Manager not in good faith or which involve intentional misconduct or a knowing violation of the law, (iii) a transaction from which the Manager receives an improper personal benefit, or (iv) any other acts which Managers of limited liability companies are expressly prohibited from performing by applicable law.

3.22 **Indemnification of Managers.** The Company shall indemnify and hold harmless the Managers, and a Manager shall be entitled to the advance of reasonable expenses, including attorneys' fees, in the defense of a claim or prosecution against him or her in the capacity of Manager. Such indemnification and hold harmless shall include any claims for financial losses, negligence, or breach of fiduciary duty, except to the extent any actual liability of the Manager is the result of: (i) a breach of the Manager's duty of loyalty to the Company, (ii) acts or omissions of the Manager not in good faith or which involve intentional misconduct or a knowing violation of the law, (iii) a transaction from which the Manager receives an improper personal benefit, or (iv) any other acts which Managers of limited liability companies are expressly prohibited from performing by applicable law.

3.23 **Insurance.** The Company may purchase and maintain insurance on behalf of the Managers for costs of defense (as available) and against any liability asserted against the Managers, as well as the Company's Members, Designated Representatives, agents and employees, and incurred by such person(s) or entities in such capacity, or arising out of such person's or entity's status as a Manager, Member, Designated Representative, agent or employee.

3.24 **Resignation.** A Manager may resign at any time by giving written notice to the Company, the other Managers and to the Member appointing such Manager. The resignation of a Manager shall be effective upon the date specified in the notice. If no date is specified in the notice, the resignation shall be effective upon receipt of the notice by the Company.

3.25 **Removal.** A Manager may be removed from office only by the Member that appointed the Manager. Removal of a Manager shall also constitute removal from all officer and committee positions within the Company for which the position of Manager is a prerequisite under this Agreement or the written policies of the Company.

3.26 **Vacancies.** Any vacancy caused by the death, resignation, or removal of a Manager shall be filled by the appointment of a successor Manager by the Member that appointed the Manager who has died, resigned, or been removed. Each Manager appointed to fill a vacancy shall hold office until the expiration of the term of the replaced Manager.

3.27 **Compensation.** The Managers may by resolution approved by a Super Majority (as defined in [Section 3.12](#)) authorize the payment of reasonable compensation for service as a Manager. Managers shall be reimbursed by the Company for expenses reasonably incurred by a Manager in or as a result of the performance of his or her duties as a Manager.

3.28 **Advisory Committees.** The Managers may establish one or more advisory committees to carry out the interests of the Company. The members of such advisory committees may be any natural persons, but the Beacon Health Options Manager and at least one other Manager must serve on any advisory committee, one of whom shall serve as chairperson of such advisory committee. Unless otherwise specifically granted by the Managers pursuant to a resolution adopted by the Managers, such advisory committees shall not have the authority of the Managers with regard to the management of the business of the Company under Article 3 and shall at all times be subject to the direction and control of the Managers. The responsibilities of the advisory committees may include, but are not limited to, the following matters, as designated by the Managers:

- i) Best Practices
 - Review best & promising practices
 - Evaluate utilization within the Arkansas continuum
 - Evaluate outcomes

- ii) **Network Development**
 - Tracking of quality in critical incidents
 - Provider analysis gaps
 - Value-based payment initiatives
- iii) **Performance Improvement**

3.29 **Officers.** The Managers shall elect a Manager as Chair of the Managers and may establish any of the following additional positions: Vice-Chair of the Managers, Treasurer, Secretary or such other office as determined in the discretion of the Managers. Each person filling such office shall be appointed annually by the Managers. The Vice-Chair of the Managers shall be a Manager. The Treasurer and Secretary may be a Manager or the Executive Director or equivalent position, or other executive staff of the Company.

3.30 **Chair of the Managers.** The Chair of the Managers shall preside at meetings of the Managers; shall see that all orders and resolutions of the Managers are carried into effect by the appropriate officers or employees in accordance with said orders and resolutions; shall have authority to sign and deliver in the name of the Company any deeds, mortgages, bonds, contracts, agreements, or other instruments pertaining to the business of the Company, unless such authority has been expressly delegated by the Managers to some other Manager, employee, or agent of the Company; may maintain records of and certify proceedings of the Managers and Members; and shall perform such other duties as may from time to time be prescribed by the Managers.

3.31 **Vice-Chair.** Unless provided otherwise by a resolution adopted by the Managers, the Vice-Chair shall, during the absence or disability of the Chair of the Managers, perform the duties of the Chair of the Managers and perform such other duties as the Managers may from time to time prescribe or as may be delegated by the Chair of the Managers.

3.32 **Treasurer.** Unless provided otherwise by a resolution adopted by the Managers, the Treasurer or his or her designee shall keep or cause to be kept accurate financial records for the Company; shall cause the deposit of all monies, drafts, and checks in the name of and to the credit of the Company in such banks and depositories as the Managers shall designate from time to time; shall render to the Chair of the Managers and the Managers, whenever requested, an account of all Company transactions and of the financial condition of the Company; and shall perform such other duties as may be prescribed by the Managers or the Chair of the Managers from time to time.

3.33 **Secretary.** The Secretary or his or her designee shall attend all meetings of the Managers and shall maintain records of, and whenever necessary, certify, all proceedings of the Managers. The Secretary shall keep the required records of the Company (including those

described in this Agreement and the Act), and when so directed by the Managers or other person or persons authorized to call such meetings, shall give or cause to be given notice of meetings of Managers and shall perform such other duties as may be prescribed by the Managers or the Chair of the Managers from time to time.

3.34 **Executive Director; Delegation to Paid Staff.** The Managers shall appoint an Executive Director, or equivalent position, who shall serve at the pleasure of the Managers. The Managers may delegate some or all of the duties of the officers as described above to the Executive Director or to other personnel, who may be employed directly by the Company or by a Member or third party that contracts with the Company to provide services to the Company. The Executive Director shall carry out the administrative duties delegated by the Managers.

ARTICLE 4

COMPANY CAPITAL, CAPITAL RESERVES AND DISTRIBUTIONS

4.1 **Initial Capital Contributions.** The initial capital contributions to be made by each of the Members are set forth in Schedule 1 attached hereto and incorporated herein. The percentage of each such Member's capital contribution of the total capital contributions made to the Company by the Members shall be determined by a ratio of a Member's total capital contribution to the total capital contributions of all Member's (exclusive of capital reserves required by the Arkansas Department of Insurance which shall be computed and accounted for separately as provided in Section 4.2) and shall be referred to as the Member's "Percentage Interest." Such Percentage Interests shall be set forth opposite each Member's name on Schedule 1.

4.2 **Capital Reserves.** The Members shall contribute to the capital reserves of the Company required by the Arkansas Department of Insurance in the amounts set forth in Schedule 2. In the event that any reserve accounts are required to be paid or increased, the Members on Schedule 2 shall provide their proportionate share of the capital required for such additional reserve accounts. The Beacon Health Options Member will adjust the reserve amounts quarterly in order to comply with Arkansas Department of Insurance requirements. At the termination or expiration of any contract, or the Company, all amounts paid into the capital reserve account by the Members on Schedule 2 shall be refunded to those Members. A Member contributing to the capital reserve shall not have any special or extraordinary voting rights.

4.3 **Additional Capital Contributions.** Additional capital contributions may be required of the Members subsequent to the execution of this Agreement as determined by the Board of Managers in accordance with Section 3.13.6. Unless otherwise agreed by the vote of the Board of Managers, a Member's proportionate contribution of the total additional capital contribution approved by the Board of Managers shall be equal to the product obtained by multiplying the Member's Percentage Interest times the total capital contribution to be obtained from all Members. Upon the contribution of any additional capital contributions by a Member, Schedule 1 shall be amended to reflect the aggregate capital contributions made by each such Member.

4.4. Failure to Make Additional Contribution.

4.4.1 In the event Member (the "Defaulting Member") fails to make an additional contribution to capital ("Additional Contribution") as required by this Agreement, the Non-Defaulting Member(s) may, after giving the Defaulting Member written notice and thirty (30) additional days to cure such default, require the withdrawal of the Defaulting Member. In the event of such withdrawal, the Company shall not be required to pay any amounts to the Defaulting Member, including without limitation, the Defaulting Member's capital account or capital reserve contributions.

4.4.2 In lieu of requiring the Defaulting Member to withdraw, the non-Defaulting Member(s), upon the vote of the majority of the votes of the non-Defaulting Members, may waive the Defaulting Member's obligation to make the Additional Contribution and make the Additional Contribution of the Defaulting Member in such proportions as agreed upon by the majority of the votes of the non-Defaulting Members. The non-Defaulting Member's Percentage Interest in the Company shall be increased in proportion to the amount contributed or paid on behalf of the Defaulting Member.

4.4.3 In addition to any of the options set forth in this Section 4.4, the Company and the non-Defaulting Member(s) shall be entitled to exercise all available remedies in this Agreement or at law or in equity to collect the Additional Contributions, including, without limitation, enforcement of any security interest granted to the Company by the Defaulting Member to secure such Member's obligation, and shall be entitled to recover all expenses incurred in connection therewith, including reasonable attorney's fees. Any amount past due shall bear interest from the due date of the contribution until paid at the highest rate per annum allowed under Arkansas law.

4.5 Capital Accounts. A capital account shall be maintained for each Member in accordance with the appropriate Treasury Regulations. The capital account of each Member shall consist of such Member's original capital contribution increased by: (i) all additional contributions to capital by such Member; (ii) such Member's distributive interest in the Company profits (including items of Company income and gain) which distributive interest shall be determined as provided for in the allocation of profit and loss in Section 5.2 of this Agreement; and (iii) Company liabilities assumed by such Member; and decreased by: (i) the amount of any distributions to such Member; (ii) such Member's distributive interest in Company losses (including items of Company deduction and loss) as provided in Section 5.2; and (iii) liabilities of such Member specifically assumed in writing by the Company. Throughout the term of the Company, such capital accounts shall be maintained in accordance with Section 704 of the Internal Revenue Code of 1986, as amended ("Code") and the regulations promulgated thereunder. Notwithstanding the foregoing, each Member shall be allocated tax deductions arising from Company costs directly incurred and paid on behalf of the Company by such Member.

4.6 Interest on Capital Contributions or Capital Reserves. Members shall not be entitled to accrue interest on their capital contribution(s) nor on their capital reserves. Members

shall be credited with investment earnings earned on funds invested by the Company including investment of capital reserves. Such investment earnings shall be allocated to the Members as set forth in Section 5.2.

4.7 Return of Capital Contributions. A Member's capital contribution shall not be returned to the Member except as provided in this Agreement.

4.8 Liability for Return of Capital Contributions.

4.8.1 A Member shall not receive out of the Company's property a return of any part of the Member's capital contribution until all liabilities of the Company, except liabilities to Members on account of their capital contributions, have been paid or there remains property of the Company sufficient to pay them.

4.8.2 If a Member has received the return of any part of the Member's capital contribution in violation of this Agreement or the Act, the Member shall be liable to the Company for a period of six (6) years thereafter for the amount of the capital contribution wrongfully returned.

4.9 Loans by Members to Company. With the consent of a majority of the votes of the Designated Representatives, not including the vote(s) of the Member making a proposed loan or acting as surety on the Company's behalf, a Member may loan money to, act as surety for, or transact other business with the Company and, subject to other applicable law, shall have the same rights and obligations with respect thereto as a person who is not a Member, but no such transaction shall be deemed to constitute a capital contribution to the Company or increase the capital account of any Member engaging in any such transaction.

4.10 No Loans to Members. Neither the Company nor any Member shall make or guaranty a loan to any Member for the purpose of making any capital contribution or satisfying a personal guaranty required by this Agreement.

4.11 Distributions. Except as otherwise provided in this Agreement, all distributions of cash and other property shall only be made if and as determined and authorized by the Board of Managers. Distributions authorized by the Board of Managers shall be distributed to the Members in accordance with the allocation of profit and loss as set forth in Section 5.2. The Company shall have no obligation to distribute cash or property to Members on an annual basis or otherwise.

4.12 Limitation on Distributions. Distributions shall not be made to the Members unless, after the distribution is made, the fair market value of the assets of the Company are in excess of all liabilities of the Company, except liabilities to Members on account of their capital contributions.

ARTICLE 5
ALLOCATION OF PROFITS AND LOSSES

5.1 **Intentionally Omitted.**

5.2 **Allocation and Distribution of Profits and Losses.** The Board of Managers shall allocate the Company's profits, losses, income, gain, deduction and credit (the "Plan") in the following manner. Any changes to the Plan shall require unanimous approval of the Board of Managers. Seventy-five percent (75%) of the Company's profit and loss shall be allocated and distributed (proportionately) to the members shown in the capital reserve pool set out in **Schedule 2**. The remainder of all profits (twenty-five percent (25%)) shall be allocated and distributed (proportionately) to the Members set out in Schedule 1 and all remaining losses shall be allocated to the Beacon Health Options Member. This Plan will be subject to amendment and revision each fiscal year under this **Section 5.2** to be voted on and approved in accordance with **Section 3.13.9**.

5.3 **Other Allocation Rules.** For purposes of determining the profits, losses, or any other item allocable to any period, profits, losses, and other items will be determined on a daily, monthly, or other basis, as determined by the Board of Managers using any permissible method under Internal Revenue Code Section 706 and the related Treasury Regulations.

5.4 **Member Acknowledgment.** The Members shall comply with applicable tax laws and regulations in reporting their shares of Company income and loss for federal, state and local income tax purposes.

5.5 **Qualified Income Offset.** Notwithstanding the provisions set forth in Section 5.2, in the event any member unexpectedly received any adjustments, allocations, or distributions described in Treas. Reg. § 1.704-1(b)(2)(ii)(d)(4), (5), or (6), items of Company profit shall be specifically allocated to such member as quickly as possible and in an amount and manner sufficient to eliminate (to the extent required by the Treasury Regulations) the total of the deficit balance in such member's capital account created by such adjustments, allocations, or distributions, provided that an allocation pursuant to this section shall be made if and only to the extent that the member would have a deficit in its capital account after all other allocations provided for in Section 5.2 have been made as if this section were not in this Agreement.

ARTICLE 6
LIABILITY AND INSURANCE

6.1 **Liability for Certain Acts.** Subject to the terms and conditions of **Section 3.22** and recognizing that individual Designated Representatives may also have duties and fiduciary obligations to the Member that appointed the Designated Representative, Members through their Designated Representatives shall use their reasonable best efforts to perform their duties to the Company in good faith, in a manner they reasonably believe to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. It is recognized that for decisions covered by **Sections 3.13.2, 3.13.3 and**

3.13.6, a Designated Representative may have to act in the best interest of the Member that appointed the Designated Representative. In the case of a decision covered by such sections, the Designated Representative may act in a manner to represent the interest of the Member that appointed the Designated Representatives, but will use reasonable best efforts to balance the interest of the Member with the interest of the Company. A Member or Designated Representative who so performs such duties shall not have any liability to the Company, its Members, or third parties by reason of being or having been a Member of the Company or a Designated Representative. A Member or a Designated Representative shall not be liable to the Company or any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, deceit, gross negligence or willful misconduct by the Member or Designated Representative.

6.2 Indemnification of Members, Employees, Agents and Designated Representatives. The Company shall indemnify and hold harmless the Members and their Designated Representatives to the full extent permissible under applicable laws, and a Member or its Designated Representative shall be entitled to the advance of reasonable expenses, including attorneys' fees, in the defense of a claim or prosecution against him or her in the capacity of Member or Designated Representative with respect to the management of the Company. Such indemnification and hold harmless shall include any claims for financial losses, negligence, or breach of fiduciary duty, except to the extent any actual liability of the Member or Designated Representative is the result of: (i) a breach of the Member's duty of loyalty to the Company, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, (iii) a transaction from which the Member or Designated Representative receives an improper personal benefit, or (iv) any other acts for which Members of limited liability companies are expressly prohibited by applicable law from being indemnified and/or held harmless. The Company may indemnify its employees and agents to the fullest extent permitted by law, provided that such indemnification in any given situation is first approved by the Members in their sole discretion.

ARTICLE 7 TRANSFERABILITY

7.1 Admission of New Members. No additional Members shall be admitted without the affirmative vote of all Managers entitled to vote on the matter. In the event the Members agree to admit a new member, such member shall be admitted on the terms agreed to by the existing Members, as applicable to the new member of the Company, and this Agreement may be amended as necessary to reflect the participation of the newly admitted member in the Company.

7.2 No Transfer Without Consent

7.2.1 A Member shall not have the right to sell, assign, exchange, convey, pledge, mortgage, hypothecate, gift, bequeath, or otherwise transfer, dispose, or encumber all or any part of such Member's Membership Interest in the Company without obtaining the written consent of all other Members which consent may be given or withheld for any reason or no

reason. To obtain such consent, the Member shall provide to the non-transferring Members written notice of its request to transfer its Membership Interest, identifying the reason for the requested transfer, the qualifications for Membership of the transferee, the proposed date of the transfer, the price and the terms (the "Transfer Notice"), which shall be no sooner than 100 days from the date of delivery of the notice unless otherwise mutually agreed by the Members. If the non-transferring Members do not respond in writing to the request for authority to transfer its Membership Interest within ninety (90) days after the date of the Members' Transfer Notice, the non-transferring Members shall be presumed to have denied consent to the transfer.

7.2.2 Irreparable Harm. Each Member specifically acknowledges that a breach of Section 7.2.1 would cause the Company and the Members to suffer immediate and irreparable harm, which could not be remedied by the payment of money. In the event of a breach or threatened breach by a Member of the provisions of Section 7.2.1, the Company or other Members shall be entitled to injunctive relief to prevent or end such breach, without the requirement to post bond. Nothing herein shall be construed to prevent the Company or other Members from pursuing any other remedies available for such breach or such threatened breach, including the recovery of damages, reasonable attorneys' fees and expenses.

7.3 Transfer With Consent. If the non-transferring Members consent, as provided in this Article 7, to the transfer of a Member's Membership Interest and to the transferee becoming a Member, the transferee shall become a Member of the Company and the transferee's interest in the Company shall be a Membership Interest. A transferor Member shall remain liable for any obligations that such Member may have to the Company under this Agreement to make additional capital contributions, contributions to capital reserves, to fulfill the obligations of a previously required capital contribution or contribution to capital reserves, or to fulfill any other agreement to pay or be responsible for the obligations of the Company which are reflected in the records of the Company, unless the transferee assumes those obligations and the non-transferring Members and 75% of the Member votes held by non-transferring Members consent in writing to release the transferor from those obligations.

7.4 Right of First Refusal.

7.4.1 Prior to any transfer required to be approved by the non-transferring Members, the Company shall have the right, in its sole discretion, to purchase all, or any portion, of the transferring Member's Membership Interest at the price and on the same terms as offered by the bona fide third party transferee. A copy of the Transfer Notice shall be submitted to the Company. The Company shall then have thirty (30) days from the date the Transfer Notice is received by the Company to determine whether to purchase the Membership Interest. A purchase hereunder shall be made by the Company no later than forty-five (45) days from the date the Company notifies the transferring Member of the Company's determination to purchase the transferring Member's Membership Interest at the price and on the same terms as offered by a bona fide third party transferee.

7.4.2 In the event the Company does not elect to purchase all of the transferring Member's Membership Interest, it shall give written notice to the non-transferring Members on

or prior to the thirty (30) days the Company has to determine whether to purchase such Membership Interest specifying the Membership Interest not to be acquired. The non-transferring Members may elect to acquire pro rata among themselves, based on their respective Percentage Interest, any or all of the remaining transferring Member's Membership Interest. If not all non-transferring Members elect to acquire their pro rata portion of the transferring Member's Membership Interest, the non-transferring Members electing to acquire may elect to acquire their pro rata portion determined among the non-transferring Members electing to acquire. Non-transferring Members electing to acquire shall then have fifteen (15) days from receipt of notice from the Company to determine whether to purchase a pro rata portion of any or all of the remaining Membership Interest of the transferring Member. A purchase hereunder by the non-transferring Members shall be made by no later than forty-five (45) days from the date the non-transferring Members determine to purchase the transferring Member's Membership Interest on the price and on the same terms as offered by the bona fide third party transferee.

7.4.3 In the event the Company and/or the non-transferring Members do not elect to purchase all the Membership Interest of the transferring Member, during the ninety (90) day period following expiration of the period that non-transferring Members have to determine whether to purchase a pro rata portion of all or any portion of the Membership Interest of the transferring Member, provided that the transferring Member has first obtained the approvals required under Sections 7.1, 7.2 and/or 7.3 of this Agreement, the transferring Member may transfer the Membership Interest specified in the written proposal from a bona fide third party transferee to acquire the transferring Member's Membership Interest at the price and on the same terms specified in such notice. Any Membership Interest not transferred within such ninety (90) day period shall again be subject to Section 7.4 in connection with any proposed transfer thereof.

7.4.4 In the event a Member undergoes a Change In Control, the Company and then the Members, other than the Member undergoing a Change In Control, shall have the right to purchase the Membership Interest of the Member undergoing a Change In Control. The Member undergoing a Change In Control shall provide notice to the Company of the Change In Control. Such notice shall describe the Change In Control and specify when the Change In Control is expected to be effective. The price to be paid for acquisition of such Membership Interest shall be the balance of the Member's capital account, the balance of the Member's capital reserves and, to the extent not already included in such Member's capital account, investment earnings earned on funds invested by the Company including investment of capital reserves, allocated as set forth in Section 5.2. The process for acquisition of the Membership Interest of the Member undergoing a Change In Control shall follow the process specified in Sections 7.4.1, 7.4.2 and 7.4.3. For purposes of this Section 7.4.4, "Change In Control" shall mean: (i) sale, exchange or other disposition of fifty percent (50%) in fair market value or more of the Member's assets; (ii) any agreement for merger, consolidation, reorganization, recapitalization, joint venture, share exchange, or similar transaction where the holders of the outstanding voting securities or other ownership interest of the Member prior to the Change In Control, continue to hold less than fifty percent (50%) of the outstanding voting securities or other ownership interest of the Member after the Change In Control; (iii) any transaction including reorganization or recapitalization where those holding the voting power to elect Directors of the Member, or the equivalent of Directors prior to the Change In Control continue

to hold less than fifty percent (50%) of the voting power to elect Directors of the Member, or the equivalent of Directors, after the Change In Control; or (iv) a plan of dissolution or liquidation of the Member. In the event the Company and Members do not exercise the above right to purchase then the Change of Control is subject to Sections 7.2.1 and 7.2.2 regarding transfers without consent.

ARTICLE 8 WITHDRAWAL OF A MEMBER

8.1 Withdrawal of a Member.

8.1.1 Except as provided in Article 7, no Member may withdraw or resign from the Company during the term of a contract with DHS for the provision of any services except upon at least six (6) months prior written notice from the Member to the Company. In the event the Company, in good faith, cannot recruit a replacement Member within such six (6) month period, the Company may request that the withdrawing Member delay its withdrawal for an additional three (3) month period, which the withdrawing Member may accept or decline, its sole discretion. Such Member may withdraw prior to the expiration of the notice period if approved by a majority vote of the Board of Managers, excluding the withdrawing Member's Board Member. Otherwise, should a Member withdraw or resign in violation of this Section 8.1.1, that Member shall not be entitled to any payment for such Member's Membership Interest including, without limitation, the Member's capital account or capital reserve. An Event of Withdrawal, as defined in Section 8.2, other than an event described in Section 8.2.2, occurring at any time shall constitute a withdrawal in violation of this Section 8.1.1. The Company may offset any damages due to such a breach against any amounts otherwise owed to such Member in addition to any remedies otherwise available to the Company. An event described in Section 8.2.2 shall entitle the withdrawing Member to the return of all of its capital account or capital reserve.

8.1.2 If a Member shall withdraw from the Company in a manner that does not violate Section 8.1.1 above, the withdrawing Member ("Withdrawing Member") shall be entitled to receive from the Company, in full satisfaction and redemption of the Member's Membership Interest, the balance of the Member's capital account, the balance of the Member's capital reserves and, to the extent not already included in such Member's capital account, investment earnings earned on funds invested by the Company including investment of capital reserves, allocated as set forth in Section 5.2. ("Purchase Price") and the Member's Contribution to capital reserves, unless the withdrawal is pursuant to Sections 4.3 and 8.2.2(d) in which case the withdrawing Member shall receive no payment. The Purchase Price shall be paid, without any accrued interest, within ninety (90) days after the effective date of withdrawal. The Member's contribution to capital reserves shall be paid with any investment earnings earned, accrued and unpaid on capital reserves allocated to the Member as set forth in Section 5.2 within ninety (90) days following the end of the calendar year in which the Member withdraws. Upon the withdrawal of a Member, Schedule 1 shall be amended to reflect the withdrawal of the Member. The withdrawal of a Member from the Company pursuant to this Section 8.1.2 (exclusive of a withdrawal required by Sections 4.3 and 8.2.2(d)) shall not be considered to be a breach or default of this Agreement.

8.2 **Events Causing Withdrawal.** The following events shall constitute an Event of Withdrawal:

8.2.1 A Member shall be required to withdraw from the Company upon the affirmative vote of a majority of the Member votes of the other Members entitled to vote on the matter in the event (a) the Member has violated the terms of this Agreement, another agreement between the Member and the Company, or a fiduciary duty owed by the Member to the Company; (b) the Member, any executive officer of such Member, or an equity owner of such Member who owns or controls 20% or more of the Member's equity interests, has been indicted, arrested for a felony, or convicted of or pled guilty or pled *nolo contendere* to a felony; (c) the Member, any executive officer of such Member, or an equity owner of such Member who owns or controls 20% or more of the Member's equity interests, has been barred or excluded from the Medicare or Medicaid programs; (d) the Member has failed to make an additional capital contribution pursuant to **Section 4.3** above; (e) the Company cannot obtain or maintain a license as a PASSE with the continued membership of a Member; or (f) upon written notice and a failure to cure within thirty (30) days of such written notice, the Member has failed to maintain a current service agreement between the Member and the Company. The effective date of withdrawal shall be the last day of the calendar quarter in which the event causing the withdrawal occurred.

8.2.2 A tax exempt Member or a Member composed of tax exempt entities, may withdraw immediately from the Company if, in the Member's sole discretion, its continued participation as a Member of the Company is reasonably likely to jeopardize the tax exempt status of the Member or its constituent entities and amendment of this Agreement will not remove such jeopardy (or the other Members do not approve amendment of this Agreement). A hospital Member or Member composed of hospitals may withdraw due to the disallowance of CMS supplemental payments. Any withdrawal made pursuant to the § 8.2.2 shall be made without a penalty or premium of any kind.

8.2.3 The Bankruptcy of the Member (as defined hereunder. The effective date of withdrawal shall be the date the notice of bankruptcy is delivered to the Company(s) in writing ("Date of Bankruptcy"). "Bankruptcy" shall mean the filing by a Member of a petition commencing a voluntary case under the Bankruptcy Code; a general assignment by a Member for the benefit of creditors; an admission in writing by a Member of the Member's inability to pay the Member's debts as they become due; the filing by a Member of any petition or answer in any proceeding seeking for the Member, or consenting to, or acquiescing in, any insolvency, receivership, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, or the filing by a Member of an answer or other pleading admitting or failing to deny, or to contest, the material allegations of the petition filed against the Member in any such proceeding; the seeking of, consenting to, or acquiescence by a Member in, the appointment of any trustee, receiver, or liquidator for the Member, or for any part of the Member's property; and the commencement against a Member of an involuntary case under the Bankruptcy Code, or a proceeding under any receivership, composition, readjustment, liquidation, insolvency, dissolution, or like law or statute, which case or proceeding is not

dismissed or vacated within sixty (60) days. A Member shall be required to notify the other Member(s) promptly upon any event of Bankruptcy.

8.3 Amendment of Schedule 1. Upon the withdrawal of a Member, Schedule 1 shall be amended to reflect the current Members and the change in their Percentage Interests as of the effective date of the Member's withdrawal or expulsion.

ARTICLE 9

BOOKS, RECORDS, AND ACCOUNTING

9.1 Accounting Principles. The Company shall use the method of accounting as determined by the Managers.

9.2 Books of Account and Records. The Managers shall maintain or cause to be maintained complete and accurate books of account of all operations, receipts, and expenditures of the Company. The Managers also shall cause to be kept at the Company's principal place of business the following records:

9.2.1 A current list of the full name and last known business, residence, or mailing address of each Member, both past and present;

9.2.2 A copy of the Certificate of Formation and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;

9.2.3 Copies of the Company's federal, state, and local income tax returns and reports, if any, for the four most recent years;

9.2.4 Copies of the Company's currently effective written Operating Agreement, copies of any writings permitted or required with respect to a Member's obligation to contribute cash, property, or services to the Company, and copies of any financial statements of the Company for the four most recent years;

9.2.5 Minutes of every meeting and any court ordered meeting; and

9.2.6 Any written consents obtained from the Board of Managers or Managers for actions taken without a meeting.

Such records shall be maintained for the time periods required by applicable Arkansas or Federal law or any longer period stated by written Company policy. Any Member shall have the right to inspect and copy any or all of such books of account or records at such Member's expense upon reasonable notice and during ordinary business hours.

9.3 Returns and Reports.

9.3.1 The Managers shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary or required in each jurisdiction in which the Company does business.

9.3.2 The Company's books of account shall be closed promptly after the end of each fiscal year. Within seventy-five (75) days after the end of the fiscal year, the Managers shall furnish a written report to each Member which includes a statement of each Member's capital account, a statement of each Member's share of the profits and losses, and such additional statements as are considered necessary by the Members to properly advise the Members of their interests in the Company. The foregoing reporting requirement may be satisfied by providing each Member with a copy of the Company's tax returns and the Member's respective Schedule K-1.

9.3.3 Tax Matters Partner. The Board of Managers shall appoint the Beacon Health Options Member as the "tax matters partner" (as defined in the Code) of the Company who is authorized and required to represent the Company (at the expense of the Company) in connection with all examinations of the affairs of the Company by any federal, state, or local tax authorities, including any resulting administrative and judicial proceedings, and to expend funds of the Company for professional services and costs associated therewith. The "tax matters partner" shall keep all Members fully informed of the progress of any such examination, audit or other proceeding, and any Member shall have the right to participate in such examination, audit or other proceeding. Each Member and former Member agrees to cooperate with the "tax matters partner" and to do or refrain from doing any or all things reasonably required by the Board of Managers in connection with the conduct of such proceedings.

ARTICLE 10
DISSOLUTION AND TERMINATION

10.1 Dissolution. The Company shall be dissolved upon the affirmative vote of all Managers. Such vote shall be taken at a Board of Managers meeting called for such purpose. As soon as possible following the occurrence of such vote of dissolution, one or more of the Members, acting through its Designated Representatives, shall execute duplicate originals of a statement of intent to dissolve in such form as shall be prescribed by the Arkansas Secretary of State and shall deliver same to the Arkansas Secretary of State.

10.2 Effect of Filing Statement of Intent to Dissolve. Upon the filing with the Arkansas Secretary of State of the duplicate originals of the statement of intent to dissolve, the Company shall cease to carry on its business, except to the extent necessary for the winding up of its business. However, the Company's separate existence shall continue until the date on which a Statement of Dissolution has been filed with the Arkansas Secretary of State or until a decree dissolving the Company has been entered by a court of competent jurisdiction.

10.3 **Winding Up, Liquidation, and Distribution of Assets.** In the event of the dissolution of the Company, the Managers shall in an orderly manner wind up the affairs of the Company. After paying all debts and liabilities of the Company, including all costs of dissolution, the Company shall distribute the remaining assets in the following order of priority:

10.3.1 First, to the establishment of any reserves which the Managers may deem reasonably necessary for any contingent liabilities or obligations of the Company;

10.3.2 Second, to creditors including Members who are creditors to the extent otherwise permitted by law, in satisfaction of liabilities of the Company other than liabilities for distributions to Members;

10.3.3 Third, to Members and former Members of the Company in satisfaction of liabilities for distributions; and

10.3.4 Fourth, to the Members in accordance with their positive capital account balances, after taking into account all capital account adjustments for the taxable year during which the liquidation occurs, in compliance with applicable Treasury Regulations.

10.4 **No Obligation to Restore Deficit capital accounts.** No Member shall be obligated to restore a negative capital account balance to the Company at dissolution.

ARTICLE 11

TRANSACTIONS WITH MEMBERS AND AFFILIATES

11.1 **Permissible Transactions.** No contract, action or transaction is void or voidable with respect to the Company because it is between or affects the Company and one or more of its Members or because it is between or affects the Company and any other person in which one or more of its Members is a member, director, trustee, or officer or has a financial or personal interest, or because one or more interested Designated Representatives or Managers participates in or votes at the meeting that authorizes the contract, action or transaction, if the material facts as to the relationship or interest in the contract, action or transaction are disclosed or are known to the Designated Representatives or Managers, as appropriate, and the Designated Representatives or Managers, in good faith reasonably justified by those facts, authorizes the contract, action, or transaction.

11.2 **Quorum.** Interested Designated Representatives or Managers may be counted in determining the presence of quorum at a meeting of the Board of Managers at which a contract, action, or transaction is authorized.

ARTICLE 12
LIMITED NON-COMPETITION AGREEMENT

12.1 **Agreement Not to Compete.** Each Member agrees that it will not, directly or indirectly, compete with the Company by becoming an equity owner of another PASSE or otherwise submit a proposal other than through the Company, in responding to the request for proposals from the DHS for the management and provision of Services specific to PASSE functions pursuant to a contract to be effective on or about January 1, 2018 unless: (i) the Company is not able to obtain licensure by the Arkansas Department of Insurance. Notwithstanding the above, each Member may conduct its normal business without restriction, including service agreements, not equity ownership, in other PASSEs.

12.2 **Future Response to Proposals.** Each Member agrees that it will not, directly or indirectly, compete with the Company, or otherwise submit a proposal other than through the Company, in responding to any requests for proposals from the DHS for the provision of Services pursuant to a contract to be effective after termination of the contract described in Section 12.1 unless (i) the Company loses or is no longer licensed by the Arkansas Department of Insurance; or (ii) upon written notice from the Member to the other Members provided twenty-four (24) months before expiration of the final term, including any term or terms resulting from exercise of a renewal option by the DHS, of the contract then in effect with the Company.

12.3 **Upon Termination of Contract.** Each Member agrees that it will not, directly or indirectly, compete with the Company as an equity owner of another PASSE, for a period of six (6) months after termination of the Company's contract and any renewals or extensions thereof. Notwithstanding the foregoing, each Member shall be permitted to conduct its normal business as a service provider only with another PASSE provided the Member does not become an equity owner of the PASSE within the above-referenced six (6) month period.

12.4 **No Dispute Resolution.** Action taken by either Member under Section 12.1(i) or under Section 12.2(i) or (ii) shall not be subject to the dispute resolution provisions of Article 14 of this Agreement.

ARTICLE 13
CONFIDENTIAL INFORMATION

13.1 **Confidential Information Defined.** "Confidential Information" means any and all contracts, professional review records, managed care contracts or initiatives, patient records, fee schedules, business plans, financial, statistical and other proprietary information of the Company or of a Member. Confidential Information does not include information which: (i) was lawfully made available to or known by third persons on a non-confidential basis prior to disclosure by a Member; (ii) is or becomes publicly known through no wrongful act of a Member; or (iii) is received by a Member from a third party other than in breach of confidence.

13.2 **Disclosure of Confidential Information Prohibited.** Each Member acknowledges that the Confidential Information is valuable property of the Company, or of a Member, as appropriate, and undertakes that for so long as it is a Member, and thereafter until such information otherwise becomes publicly available other than through breach of this Section, the Member shall:

13.2.1 treat the Confidential Information as secret and confidential;

13.2.2 not disclose (directly or indirectly, in whole or in part) the Confidential Information to any third party except with the prior written consent of the Company or of the Member to whom the Confidential Information belongs;

13.2.3 not use (or in any way appropriate) the Confidential Information for any purpose other than the performance of the business of the Company and otherwise in accordance with the provisions of this Agreement; and

13.2.4 limit the dissemination of the Confidential Information to such of the Company's and the Member's officers, Managers, employees, agents, attorneys, consultants, professional advisors or representatives as may reasonably require such information for the performance of Company business and ensure that any and all such persons observe all the obligations of confidentiality contained in this Section 13.2.

ARTICLE 14 **DISPUTE RESOLUTION**

14.1 **Construction of Agreement.** This Agreement shall be construed to be in accordance with any and all federal and state statutes, including Medicare, Medicaid and all federal and state rules, regulations, principles and interpretations applicable to the Company and the Members, and the relationships among them, including without limitation, the facility or professional licensing of each Member and the tax exempt status of the Members. It is the intent of this Article to set forth a procedure so that if certain circumstances arise in which the Members should become internally deadlocked a procedure will be in place that will resolve the deadlock while preserving, to the extent possible, the economic and governance relationships set forth here.

14.2 **Deadlock Event.** In the event there is any circumstance that substantially affects the business, governance or economics of the Company and as to which the Board of Managers are deadlocked in their decision making hereunder and cannot take action (a "Deadlock Event"), upon failure of the Board of Managers to resolve the Deadlock Event, the Board of Managers shall submit the matter to mediation.

14.3 **Mediation.** The Board of Managers shall select a mediator who shall attempt to mediate an acceptable resolution of the Deadlock Event with the Board of Managers.

14.4 **Resolution by Binding Arbitration.** If the Mediator is not able to reach an acceptable resolution of the Deadlock Event within forty-five (45) days after submission to the Mediator, any Member may submit the issues (the "Dispute") to binding arbitration pursuant to the procedure set forth below. The arbitrator shall be selected in accordance with the provisions set forth below in **Section 15.12** except that the arbitrator shall have experience and expertise in the subject matter of the dispute (the "Arbitrator"). The Arbitrator will be asked to determine the following: (a) whether there is a bona fide Deadlock Event; (b) if so, to determine a resolution of the Deadlock Event ("Resolution") that is legal and will resolve the Dispute in a manner that substantially maintains the then existing economic and governance relationships of the Members.

ARTICLE 15

MISCELLANEOUS PROVISIONS

15.1 **Notices.** Unless otherwise stated herein, any notice, demand, or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be deemed to have been given when delivered personally to the party to whom it is directed, or when it is received if such notice is sent by U.S. certified mail, return receipt requested, with postage prepaid, and addressed to the last known address of the party to whom the notice is directed. If notice is sent by U.S. regular mail, the sender of the notice shall prepare a certificate of mailing identifying the names and addresses to whom notice was sent and certifying that the sender deposited the notices in the U.S. Postal Service system on the date such notices were mailed. The certificate of mailing shall be filed by the Secretary in the Company's record book. Each Member shall notify the Company of any change of address.

15.2 **Counterparts.** This Agreement may be executed in counterparts, and so executed shall constitute one Agreement, binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterpart. The executed signature pages from each counterpart shall be affixed to the Operating Agreement maintained in the Company's records at the office of the Company.

15.3 **Governing Law.** This Agreement shall be construed and governed by the laws of the State of Arkansas.

15.4 **Headings.** The article and section headings in this Agreement have been used for convenience only and shall not be used in interpreting the meaning of this Agreement.

15.5 **Severability.** If any provision of this Agreement is determined to be invalid or illegal, such provision shall be deemed automatically amended to conform to the law or if such amendment is not possible, such provision shall be deemed to have no further force or effect. In either event the other provisions of this Agreement shall remain applicable to the parties and be given full effect.

15.6 **Creditors.** None of the provisions of this Agreement are for the benefit of any creditors of the Company or of any Member and none of those creditors shall have the right to enforce any of the provisions of this Agreement.

15.7 **Rights of a Creditor Against a Member.** On application to a court of competent jurisdiction by any judgment creditor of a Member, the court may charge the Membership Interest of the Member with payment of the unsatisfied amount of the judgment, with interest as provided by law or applicable contract. After a judgment creditor has obtained a charging order against a Membership Interest, such judgment creditor shall be entitled to receive only those distributions of cash or property which are made pursuant to this Agreement and to which such Membership Interest is entitled, subject to any applicable exemptions. Such judgment creditor shall have no other rights whatsoever regarding such Membership Interest.

15.8 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of all of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors, and assigns.

15.9 **Partnership Taxation.** The Members have agreed that the Company shall be treated as a partnership for income tax purposes.

15.10 **Section 754 Election and Other Partnership Elections.** The Members shall make any and all elections required of or for the benefit of the Company, including any election under Section 754 of the Code.

15.11 **Fiscal Year.** The fiscal year of the Company shall begin on January 1 of each year and end on December 31 of each year.

15.12 **Arbitration.** Any and all disputes arising under or related to this Operating Agreement which cannot be resolved through the dispute resolution process set forth in Article 14 of this Agreement shall be submitted to binding arbitration. For any disputes not covered by Article 14, if the parties fail to reach a settlement of their dispute within thirty (30) days after the earliest date upon which one of the parties notifies the other in writing of the existence and nature of a dispute and the party's desire to attempt to resolve such dispute under such dispute resolution process, the dispute shall be promptly submitted for arbitration by a single arbitrator through an arbitration service that can provide a former judge to conduct the arbitration. The arbitrator shall be selected by mutual agreement of the parties, or if the parties cannot agree on an arbitrator, by the arbitration service on the basis of the arbitrator's expertise in the subject matter(s) of the dispute or by the parties based on the arbitration services selection procedures. The arbitrator shall allow reasonable discovery which the arbitrator determines is necessary for determination of the issues presented. The decision of the arbitrator shall be final, non-appealable, and binding upon the parties, and it may be entered as a judgment in and enforced by any court of competent jurisdiction; provided, however, that any party to the arbitration proceeding may seek a court order vacating the decision of the arbitrator in accordance with the provisions of and upon the grounds set forth in applicable law. The arbitration shall take place in Pulaski County, Arkansas, or such other location as the parties may agree. A party shall not be obligated to submit to arbitration any claim for injunctive relief, except that any claim for damages related to the requested injunctive relief shall be submitted to arbitration. The successful party in an arbitration pursuant to this Section 15.12 shall be awarded attorney's fees.

15.13 Gender/Number. Whenever the context of this Agreement requires, the gender of all words shall include the masculine, feminine and neuter and the number of all words shall include the singular and plural.

IN WITNESS WHEREOF, the undersigned Members have executed this Operating Agreement with the intent that it shall be effective as of the date first above written and that this signature page shall be affixed to the Operating Agreement maintained in the Company's records at the office of the Company.

MEMBERS

ARKANSAS COMMUNITY HEALTH NETWORK, LLC

By: *J. Harbeck*
Its: *Executive Director*

PREFERRED FAMILY HEALTHCARE, INC.

By: *Nancy N. [Signature]*
Its: *CEO*

WOODRUFF HEALTH GROUP, LLC

By: *Steve Collier*
Its: *CEO*

INDEPENDENT CASE MANAGEMENT, INC. d/b/a ICM, INC.

By: *[Signature]*
Its: *CEO*

ARKANSAS HEALTHCARE ALLIANCE, LLC

By: *Bes [Signature]*
Its: *President*

STATERA, LLC

By: *[Signature]*
Its: *member*

BEACON HEALTH OPTIONS, INC.

By: *[Signature]*
Its: SVP Beacon

COMPANY:

EMPOWER HEALTHCARE SOLUTIONS, LLC

By: *[Signature]*
Its: Organizer

SCHEDULE 1
MEMBERS, CAPITAL CONTRIBUTIONS, PERCENTAGE INTERESTS, AND VOTES

<u>Members</u>	Capital Contributions	<u>Percentage Interest</u>	<u>Votes</u>
Arkansas Community Health Network, LLC	\$5,000	14.285%	1
Preferred Family Healthcare, Inc.	\$5,000	14.285%	1
Woodruff Health Group, LLC	\$5,000	14.285%	1
Independent Case Management, Inc. d/b/a ICM, Inc.	\$5,000	14.285%	1
Arkansas Healthcare Alliance, LLC	\$5,000	14.285%	1
Statera, LLC	\$5,000	14.285%	1
Beacon Health Options, Inc.	\$5,000	14.285%	1

**SCHEDULE 2
CAPITAL RESERVES**

<u>MEMBER</u>	<u>AMOUNT</u>	<u>PERCENT OF CAPITAL RESERVES</u>
Beacon Health Options, Inc.	\$6 million	100%

Exhibit C
Management Services Agreement

EXECUTION VERSION

**EMPOWER HEALTHCARE SOLUTIONS, LLC
MANAGEMENT SERVICES AGREEMENT**

This Management Services Agreement ("Agreement") is made and entered into, by and between Beacon Health Options, Inc., a Virginia corporation ("Contractor") and Empower Healthcare Solutions, LLC ("COMPANY"), an Arkansas limited liability company, and shall be effective as of August 31, 2017 (the "Effective Date").

PURPOSE OF AGREEMENT

WHEREAS, COMPANY is a Provider-owned Arkansas Shared Savings Entity ("PASSE") and anticipates holding a PASSE contract with the State of Arkansas;

WHEREAS, Contractor is a managed care health organization with experience in providing management services for health programs; and

WHEREAS, Contractor has been providing certain administrative services to COMPANY consistent with the terms of the proposed PASSE Contract (defined below) and the terms and conditions of this Agreement;

WHEREAS, Contractor and COMPANY wish to document the terms of Contractor's agreement to provide services to COMPANY in accordance with the terms of the proposed PASSE contract with the State of Arkansas and the final PASSE contract, as such may be amended from time to time (collectively the "PASSE Contract");

NOW, THEREFORE, in consideration of the mutual covenants specified in this Agreement, COMPANY and Contractor agree as follows:

1.0 CONTRACTOR'S SERVICES

Section 1.1 Services to Be Rendered. Except as specifically limited by this Agreement and except as a reserved Company action under the Operating Agreement (as may be amended from time to time, the "Operating Agreement"), Contractor agrees to provide the services required for performance of the PASSE Contract and all of the staffing and administrative services required for COMPANY's operations including but not limited to those services that are described in **Exhibit A** to this Agreement (the "Services"). All such Services shall be provided in a manner that fully complies with the specifications, terms and conditions of the PASSE Contract and is consistent with the terms of COMPANY's provider and participation agreements. The Services shall include an interim Executive Director of COMPANY, who shall report to the COMPANY Board, until such time as COMPANY recruits and directly employs a permanent Executive Director and notifies Contractor of such. After such notice, COMPANY shall employ such permanent Executive Director at its own expense and shall not reduce any compensation to Contractor under Section 3.0. Services shall not include any functions to be exercised by the COMPANY boards of managers under the terms of this Agreement, the governing documents of COMPANY, or applicable law, or any functions delegated to COMPANY's participating providers under applicable provider agreements.

Handwritten initials and date: CJH 11/15/17

Section 1.2 Performance Standards. Contractor shall perform all obligations and provide all services required by this Agreement in accordance with the requirements of the PASSE Contract, COMPANY's standards and procedures; generally accepted industry standards and all applicable laws and regulations including but not limited to all Arkansas claims processing requirements applicable to COMPANY as a PASSE. In the performance of the Services, Contractor shall not discriminate against any individual on the basis of race, color, gender, sexual orientation, age, religion, national origin, handicap or disability, health status including Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related condition, or source of payment in providing services under this Agreement. Furthermore, Contractor shall not discriminate with respect to the provision of the Services against patients who are participants in a publicly financed program.

Section 1.3 Inspections. In accordance with applicable law and the PASSE Contract, Contractor shall permit and cooperate with any inspections or evaluations of the quality, appropriateness and timeliness of the services provided by Contractor under this Agreement which are initiated or conducted by COMPANY, the Arkansas Insurance Department, the Arkansas Department of Human Services or other any payor under the PASSE Contract ("Payor"), the United States Department of Health and Human Services, and/or the Centers for Medicare and Medicaid Services.

Section 1.4 Subcontractors and Agents. Notwithstanding any contrary provision in the Operating Agreement, if Contractor performs any of the Services through a subcontractor which is not an equity member of the COMPANY at a cost of One Million Five Hundred Thousand Dollars (\$1,500,000) or more annually, or through a subcontractor which is an equity member of the COMPANY, for any amount, only then must such subcontractor be approved by the COMPANY pursuant to the terms of the COMPANY's Operating Agreement. COMPANY shall not unreasonably withhold its approval. Contractor shall require such subcontractor to agree in writing to perform the Services in accordance with all of the terms and conditions of this Agreement, the PASSE Contract and the COMPANY's policies and procedures adopted from time to time. Contractor shall remain fully responsible to COMPANY for the performance of any subcontracted Services and for the acts and omissions of the subcontractor.

2.0 OBLIGATIONS OF COMPANY

Section 2.1 Governance and Oversight. COMPANY, acting through its Board of Managers shall be responsible for the governance of COMPANY in accordance with the Operating Agreement, shall be responsible for approving all policies and procedures of COMPANY including the Provider Handbook and any policies recommended by Contractor, shall evaluate the performance of Contractor under this Agreement, shall be responsible for reviewing and taking such actions as it deems necessary and appropriate on all reports and information provided by Contractor hereunder, and shall maintain ultimate implementing authority over the functions delegated to Contractor under this Agreement.

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Section 2.2 Contract Negotiation. COMPANY, with the assistance of the personnel provided by Contractor under this Agreement, shall negotiate all modifications and renewals of the PASSE Contract.

Section 2.3 Compensation. COMPANY shall compensate Contractor for its services as provided in this Agreement.

3.0 COMPENSATION ARRANGEMENT

Contractor shall be compensated for its Services in accordance with the provisions of **Exhibit B.**

4.0 WARRANTIES AND REPRESENTATIONS

Section 4.1 Contractor's Qualifications. Contractor represents and warrants that it is authorized to do business in the State of Arkansas and throughout the term of this Agreement it shall continue to maintain compliance with all requirements of the State of Arkansas and all applicable requirements of the PASSE Contract.

Section 4.2 Notifications to COMPANY. Contractor shall promptly notify COMPANY in writing of:

- a. Any changes in its ownership, control, or business address;
- b. Any legal or government action initiated that could affect the rendering of Services in connection with this Agreement;
- c. Any sanctions, disbarment, exclusion, declaration of ineligibility by any governmental body that could affect the rendering of Services in connection with this Agreement;
- d. Any legal action commenced by any third party in connection with the Services provided under this Agreement;
- e. Any initiation of bankruptcy or insolvency proceedings with regard to Contractor whether voluntary or involuntary;
- f. Any loss of the qualifications described in Section 4.1;
- g. Any other occurrence known to Contractor that could negatively affect the rendering of services in connection with this Agreement;
- h. Any known default in Contractor's performance under Section 6.2; and
- i. Any of the events described in Section 6.3.

Section 4.3 Insurance.

4.3.1 Contractor shall procure and maintain the following insurance coverage throughout the term of this Agreement:

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- (a) Comprehensive general liability insurance with commercially reasonable limits or limits required by the PASSE Contract, whichever is higher;
- (b) Workers compensation and employer liability insurance meeting the requirements of applicable law; and
- (c) Managed care errors and omissions insurance.

4.3.2 Contractor shall (i) supply certificates of insurance reflecting the insurance coverages required by this Section 4.3 and as to the liability insurance, both endorsed to and naming COMPANY as an additional insured; (ii) supply a certificate of insurance for each annual renewal of such insurance; (iii) ensure that COMPANY receives such certificate of insurance within ten (10) days of each annual renewal; and (iv) ensure that COMPANY is notified at least thirty (30) days prior to the expiration, non-renewal, termination, cancellation or material change to such coverages.

5.0 RECORDS AND INFORMATION

Section 5.1 Retention Period for Records. Contractor shall retain all data, records and information related to the Services provided pursuant to this Agreement for the greater of: (i) the time required by applicable federal or state law; and (ii) the record retention requirements of the PASSE Contract.

Section 5.2 Required Records. Contractor shall maintain a complete file of all records, documents, communications and other materials which pertain to the Services provided by Contractor under this Agreement. Such records shall be sufficient to disclose fully the nature and extent of Services provided to COMPANY, shall conform with applicable standards of care, licensing requirements, and the provisions of the PASSE Contract; and shall be maintained separately from other Contractor records. Contractor's records shall be sufficient to properly reflect all direct and indirect costs of labor, materials, equipment, supplies and services and other costs of whatever nature for which payments are made under the PASSE Contract; records of all payments received for the provision of such services or goods; and any other records required by applicable law including but not limited to 45 C.F.R. Part 74.

Section 5.3 Access to and Production of Records. Contractor shall provide records to any payor or governmental body in accordance with the requirements and time periods set forth in the PASSE Contract. Furthermore, upon reasonable notice and during Contractor's regular business hours, COMPANY, its authorized representatives, and duly authorized third parties (such as governments and payors) shall have the right to inspect and/or be given copies of records directly related to services rendered by Contractor under the terms of this Agreement. Contractor shall provide COMPANY with access to electronic data as appropriate and feasible, including upon the termination of this Agreement for any reason for the period of time required by PASSE or any governing laws or regulations. Contractor shall, upon request, provide access to the Arkansas Insurance Department for examination purposes.

Section 5.4 Confidentiality and HIPAA Compliance. Contractor shall ensure that the confidentiality of each Enrollee's medical records and protected health information (as defined by the Health Insurance Portability and Accountability Act of 1996 and applicable regulations ("HIPAA")) shall be maintained in accordance with HIPAA and all other applicable state and federal laws and regulations regarding the confidentiality of patient information. Contractor shall also ensure that all protected health information is maintained and transmitted in a manner that satisfies federal and state laws and regulations related to the security, storage, transmission and maintenance of such information. Contractor shall comply with the terms of the Business Associate Agreement that is attached to this Agreement as **Exhibit C**.

Section 5.5 Disclosure of Information. Contractor agrees to disclose information on ownership and control and related business transactions in accordance with 42 C.F.R. §§ 455.100 - 455.106. Contractor shall disclose such required information at least ten days prior to any scheduled change in ownership of Contractor or within thirty-five (35) days of request, whichever occurs first. The parties shall comply with the terms of the Operating Agreement as such may be amended in the event of a change or ownership or control.

Section 5.6 Survival of Provisions. The provisions of this Article 5.0, including but not limited to the requirements for access to and production of records, shall survive the non-renewal or termination of this Agreement.

6.0 TERM AND TERMINATION

Section 6.1 Term Generally. The term of this Agreement shall be for a period of one (1) year commencing on the Effective Date specified on the Execution Page of this Agreement and will renew automatically for additional one (1) year terms unless: (i) either party notifies the other party sixty (60) days prior to the renewal date that the Agreement will not be renewed; or (ii) this Agreement is terminated in accordance with the termination provisions. COMPANY shall notify the Arkansas Insurance Department immediately upon sending or receiving notice of the non-renewal or termination of this Agreement.

Section 6.2 Corrective Actions for Breach. If Contractor defaults in the performance of any material terms of this Agreement in COMPANY's reasonable discretion, including, but not limited to, based on the notifications provided under section 4.2 of this Agreement which are deemed material by the COMPANY in its reasonable discretion, COMPANY shall give Contractor written notice of such default. If Contractor does not cure the default within thirty (30) days after the written notice, COMPANY shall adopt a ninety (90) day corrective action plan and provide that the cost of implementation (which may equal or exceed the compensation payable to Contractor under this Agreement) shall be deducted from Contractor's next monthly contract payment and such deduction shall continue until the performance standard has been fully met. If the Contractor fails to meet the performance standard under the terms and time limits of the corrective action plan, COMPANY may terminate the Agreement for cause in accordance with the Operating Agreement on sixty (60) days' written notice. As used above, the term "default in the performance of any material terms" shall mean any default which would violate state or Federal law, or would negatively affect the COMPANY's ability to perform under the PASSE Contract.

Section 6.3 Immediate Termination. Notwithstanding anything else in this Agreement, this Agreement may be terminated or suspended immediately by COMPANY upon the occurrence of: (i) suspension or revocation of Contractor's license or other credentials required by Arkansas law or the PASSE Contract in order to provide any of the Services; or (ii) termination of the PASSE Contract.

7.0 AMENDMENTS

This Agreement shall be automatically amended as necessary to comply with the PASSE Contract or change in law. All other amendments to this Agreement shall require the written agreement of the parties.

8.0 MISCELLANEOUS

Section 8.1 Confidentiality. Each party or its employees or agents may, in the course of the relationship established by this Agreement have access to the other party's confidential and proprietary information concerning the other party's business, marketing plans, policies and procedures, contracts, credentialing criteria, patient treatment and/or finances, such party's earnings, volume of business, methods, systems, practices, plans and other proprietary information of the disclosing party (collectively, the "Confidential Information" of the party). Each party acknowledges that it shall use its best efforts, consistent with the manner in which it protects its own Confidential Information, to preserve the confidentiality of the other party's Confidential Information. Neither party shall use or disclose the Confidential Information of the other party except for the limited purpose of performing the party's obligations under this Agreement, including as required by governing laws or regulations, without such other party's written consent. For purposes of this Agreement, the Confidential Information of COMPANY shall include all of the data, policies, procedures, reports, and accounts prepared by or for COMPANY, including but not limited to information prepared by Contractor, under the terms of this Agreement or the PASSE Contract.

Section 8.3 Entire Agreement. This Agreement and all of its Exhibits, which are hereby incorporated by reference herein, constitutes the entire understanding and agreement of the parties hereto and supersedes any prior written or oral agreement pertaining to the subject matter hereof. Notwithstanding the foregoing and even in the event of non-renewal or termination of this Agreement, as long as Contractor is a member of COMPANY, Contractor shall retain its membership rights under the Operating Agreement.

Section 8.4 Compliance with Terms. No breach in the performance of this Agreement shall be waived except by a written waiver signed by the non-breaching party. Failure to insist upon strict compliance with any of the terms of this Agreement by either party hereto shall not be deemed to be waiver of any term of this Agreement.

Section 8.5 Assignment. This Agreement, being intended to secure the services of the parties hereto, shall not in any manner be assigned, delegated, or transferred by either party without the prior written consent of the other party; provided, however, that upon written notice

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to Contractor. COMPANY may assign this Agreement to any entity that controls, is controlled by, or is under common control of COMPANY.

Section 8.6 Legal Compliance. Each party shall comply with all applicable local state and federal laws in performing its obligations hereunder and in interpreting the terms of this Agreement.

Section 8.7 Independent Contractors. None of the provisions of this Agreement is intended to create, nor shall be deemed or construed to create, any relationship between COMPANY and Contractor other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. Nothing in this Agreement shall create, or be construed to create, any employment, joint venture, or partnership relationship between COMPANY and Contractor. COMPANY shall neither have nor exercise any control or direction over the methods by which Contractor performs its Services except that all such services shall be performed in accordance with the terms, conditions, and specifications of this Agreement. The interest of COMPANY is to have the Services required hereunder rendered in a competent, efficient, timely and professional manner, in conformance with accepted professional practices and applicable laws and regulations and the requirements of the PASSE Contract.

Section 8.8 Dispute Resolution Procedure. In the event Contractor shall have any dispute with respect to the performance or interpretation of this Agreement that cannot be resolved pursuant to the corrective actions procedures in Section 6.2, the dispute shall be first referred to nonbinding mediation, and if not resolved through mediation, shall be resolved through binding arbitration pursuant to the Rules of the American Arbitration Association for Arbitration of Commercial Disputes, except there shall be a single arbitrator. The final decision of such arbitrator shall be enforceable in any court of competent jurisdiction.

Section 8.9 Indemnification. COMPANY agrees to indemnify and to hold Contractor harmless from any costs, claims, judgments, losses, damages or expenses, including reasonable attorneys' fees (collectively "Liabilities") to the extent that such Liabilities are incurred because of the negligent acts or omissions of COMPANY, its employees, agents, directors, trustees and/or representatives (other than Contractor). Contractor agrees to indemnify and to hold COMPANY harmless from any Liabilities to the extent that such Liabilities are incurred because of the negligent acts or omissions of Contractor, its employees, agents, directors, trustees and/or representatives. Where both parties, or their respective employees or agents, participated in the liability causing event, each party shall contribute to the common liability a pro rata share based upon its relative degree of fault. This section shall survive non-renewal or termination of this Agreement.

Section 8.10 No Third Party Beneficiary. This Agreement does not create any third party beneficiary rights in any person or entity, including, without limitation, an Enrollee or Payor.

Section 8.11 Notice. Any notice required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be sent by certified or registered mail, return receipt requested, postage prepaid, or by hand delivery, to the receiving party at the address set

Handwritten signature and date "11/9/21" in the bottom right corner.

forth on the Execution Page of this Agreement. If mailed, such notice shall be deemed given and received upon deposit in the U.S. Mail.

Section 8.12 Survival of Provisions. Any covenant or provision herein that requires or might require performance after the non-renewal or termination of this Agreement, including, but not limited to the provisions set forth in Article 3.0, Article 5.0, Section 8.1, Section 8.7, Section 8.8 and Section 8.9 shall survive the non-renewal or termination of this Agreement.

Section 8.13 Severability. If any portion(s) of this Agreement shall, for any reason, be invalid or unenforceable, such portions shall be ineffective only to the extent of any such invalidity or unenforceability, and the remaining portion or portions shall nevertheless be valid, enforceable and of full force and effect; provided however, that if the invalid provision is material to the overall purpose and operation of this Agreement, then this Agreement shall terminate upon the severance of such provision.

Section 8.14 Interpretation. This Agreement shall be interpreted and applied in accordance with the laws of the State of Arkansas.

Section 8.15 Force Majeure. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Agreement if and to the extent that such party's performance of this Agreement is prevented by reason of force majeure.

- a. Force majeure means an occurrence that is beyond the reasonable control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; terrorism; mobilization; labor disputes; civil disorders; fire; flood; lockouts; or failure or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence. Force majeure shall not include the inability of either party to acquire or maintain any required insurance, bond, licenses or permits.
- b. Force majeure shall be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with this Agreement. In no event may a party claim force majeure for more than one hundred and twenty (120) days.
- c. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that, such delay or failure is caused by force majeure.

Section 8.16 Conflicts. Except as expressly provided herein, any conflict between the performance standards and requirements of this Agreement and the PASSE Contract shall be resolved by applying the provisions of the PASSE Contract.

Section 8.17 Certification. Contractor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from providing services required by the PASSE Contract by any state or federal department or agency.

{THIS SPACE INTENTIONALLY LEFT BLANK – SIGNATURE PAGE FOLLOWS}

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EXECUTION PAGE

IN WITNESS WHEREOF, intending to be legally bound, the parties hereto have executed this Agreement as of the dates specified.

Contractor:

Beacon Health Options, Inc.
Name of Contractor (Please Print or Type)

[Signature] 9-7-17
Authorized Signature Date

Rebecca White
Name (Please Print or Type)

Asst. Secretary
Title (Please Print or Type)

Address: 240 Corporate Blvd
Street N. Gle, VA 23502
City

757-459-5486 757-393-8677
Phone Fax

54-1919194
TIN#

Empower Healthcare Solutions, LLC

[Signature]
Authorized Signature

Cindy Aberding
Name (Please Print or Type)

Title (Please Print or Type)

Address:

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[Handwritten initials]

EXHIBIT A

DESCRIPTION OF SERVICES

The Services provided by Contractor shall include but not be limited to the following:

Staffing.

Subject to the exceptions set forth in Section 1.1 of the Agreement, Contractor shall supply all of the personnel required to perform the Services (the "Personnel"). Notwithstanding anything else in the Agreement, Personnel employed by Contractor to perform the Services shall be and remain employees of Contractor, not COMPANY, and Contractor shall have the sole authority to direct, supervise, hire or fire such individuals. Contractor shall consult with COMPANY on proper staffing size. Contractor shall be solely responsible for complying with all employment laws applicable to the Personnel and for paying the wages, benefits, taxes, contributions and all other costs related to such Personnel and shall indemnify and hold COMPANY harmless from any such costs and expenses.

Office Space, Furnishings, Supplies.

Contractor shall provide and maintain all of the office space, equipment, supplies, IT systems, and other items, and services reasonably required for the performance of the Services by contractor personnel.

Financial Services. Contractor shall:

- Receive payments and deposit them into an account established in the name of COMPANY as provided in the Operating Agreement;
- Receive and review for accuracy all payment reports from payors;
- Establish a system to identify overpayments or underpayments and correct any overpayments or underpayments which are discovered;
- Forward payments to Providers who are not members of the COMPANY ("External Providers") for services provided to Enrollees entitled to services under the PASSE Contract ("Enrollees") in accordance with the terms of the External Providers' practitioner agreements;
- Calculate and forward payment to COMPANY Member ("Members") providers for services provided in accordance with the terms of the Members' participation agreements;
- Perform all accounting functions required for the effective operation of COMPANY and the administration of the PASSE Contract;

- Prepare monthly financial reports to COMPANY as reasonably requested by COMPANY. Such reports shall include but not be limited to reports regarding costs and expenditures, the number of Enrollees served in the month, the utilization of External Providers and Members during the month, and the compensation received from the Payor during the month;
- Collect financial data for and prepare all financial reports and data required to be submitted by COMPANY and its providers under the PASSE Contract including but not limited to the financial and statistical report;
- Provide information and support for contract negotiations, including for all, subcontractors, including notice deadlines for contract renewals and amendment recommendations;
- Develop recommended budgets for COMPANY for the review and approval of COMPANY Board;
- Manage reserve funds and investments in accordance with investment policies established by COMPANY Board;
- Ensure that the COMPANY Board is notified of the minimum level of deposits required for its license and coordinate applicable payments with COMPANY Members;
- Prepare all tax reports and documents as required and make arrangements for payment by COMPANY; and
- Participate in and provide leadership to Members at monthly Financial and Audit Committee meetings, particularly with issues involving any encounter data submission.

Information Technology Services.

- Coordinate with Members' IT Departments to produce data extracts for state agencies on a regular basis;
- Provide feedback about all Members' data submissions to Members' IT Departments, Finance Directors and Executive Directors via monthly Data Report Card deliverables;
- Feedback will include aggregate summaries for reconciliation, dates of delivery to COMPANY and dates of delivery to state agencies;
- Maintain the integrity and security of all data pertaining to the operations, billing, and reimbursement of COMPANY ("COMPANY Data");
- Maintain back up files of all COMPANY Data so that all Data can be readily and completely recovered within eight hours and hold same in archives for Seven (7) years following non-renewal or termination of this Agreement;

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- Provide and maintain appropriate information systems to meet clinical, quality, financial and operating information and data requirements for the COMPANY and under the PASSE Contract;
- Respond to reasonable requests from Members for ad-hoc reports or data extracts; and
- Work with Members and their IT Departments to improve processes, reports and data quality.

Reporting.

Contractor shall compile all data and reports required by the PASSE Contract and subject to review and approval of the COMPANY Board, shall submit such information to applicable entities on a timely basis.

- Participate in and represent Members' interests at state agency meetings; and
- Participate in and provide support to Members at Board Meetings.

Clinical.

- Conduct utilization management ("UM") for outpatient services and higher levels of care for the external network, and UM for the internal network's higher levels of care;
- Maintain authorization records and clinical records on Enrollees;
- Maintain level of care guidelines;
- Maintain diagnosis based treatment guidelines;
- Follow Board policies and procedures related to Enrollee care,
- Maintain policies and procedures for UM and all operational requirements;
- Work with providers in clinical collaboration on treatment plans;
- Provide reports to Members to include denial/appeal reports, daily census reports for hospitals, etc;
- Collaborate with discharge planners on inpatient client care, and post discharge;
- Recommend referrals to Enrollees;

- Conduct chart audits and reviews under the PASSE Contract for provider monitoring and medical necessity or review;
- Staff customer service and clinical areas with availability 24/7;
- Report potential fraudulent activity to appropriate agencies;
- Audit PASSE Contract for compliance in clinical areas;
- Conduct care coordination services under the PASSE Contract, and Contractor may consider the sub-contracting of care coordination services to contracted services providers, as permitted under the Agreement and the PASSE contract and any other applicable state or federal rules and regulations. Prior to sub-contracting any such services, Contractor shall review and approve such provider based on its capabilities, quality of care, and documented policies, which policies must be consistent with COMPANY policies and procedures. As appropriate, such care coordination services shall be subject to reasonable reimbursement.
- Do critical incident and adverse incident investigation as assigned; and
- Provide clinical trainings and provider forums across the COMPANY.

Quality Management ("QM").

- Coordinate documentation submission and overall site review process;
- Coordinate/conduct and submit performance improvement projects as required by the PASSE Contract;
- Prepare and coordinate implementation of site visit corrective action plan(s);
- Conduct and attend quality meetings; respond to state agency inquiries;
- Prepare and submit required reports to state agencies that are assigned to the QM Department;
- Conduct QM Meetings on a regular basis;
- Prepare Compliance Program Description and Work Plan annually; conduct Compliance Meetings as required;
- Conduct contract compliance audits as directed by the COMPANY Board; and
- Prepare and distribute QM Data reports/compliance reports/trending reports that reflect performance of the COMPANY.


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Credentialing.

- Review and process credentialing and recredentialing applications for practitioners and facilities;
- Conduct provider network development services;
- Conduct background, NPDB, licensure, and Medicare/Medicaid sanctions checks on all providers in accordance with NCQA and Contractor standards and with COMPANY consultation;
- Regularly gather and enter updated information into the Contractor credentialing database on providers; compile reports for use in the network adequacy report to state agencies;
- Conduct meetings to recredential providers, address provider quality issues, and evaluate network capacity;
- Conduct provider recruitment and contracting services;
- Conduct provider education and retention services;
- Ensure provider contracts are implemented and conduct provider site visits as required by NCQA/PASSE contract standards; and
- Initiate single case agreements with out of network providers as required.

Medical.

- Provide medical oversight of UM process to include training and consultation to clinical care managers ("CCMs");
- Determine medical necessity and clinical appropriateness of care decisions and treatment plans;
- Conduct peer review;
- Provide medical consultation to quality management functions including participation in quality, clinical, compliance, and credentialing committees;
- Review adverse incidents, complaints, and grievances;
- Conduct medical review of policies, procedures and guidelines;
- Provide consultation to the medical budget process;

- Perform medical analysis of reports;
- Conduct provider recruitment, training, and consultation;
- Perform complex case reviews and staffings; and
- Attend applicable state and regional meetings as scheduled; attend ad hoc meetings/work groups as required.

Claims

- Process all claims within state, Federal, COMPANY's and Contractor's timeliness and accuracy standards;
- Research and resolve claims appeals and disputes; and
- Maintain and report claims performance statistics.

Enrollee Services

- Provide Enrollee and customer marketing, recruitment and retention services.

Compliance

Subject to any restrictions or prohibitions under state or Federal law, Contractor will establish and implement an effective compliance plan which shall address compliance with applicable laws and regulations including but not limited to federal and state laws, fraud and abuse laws and the Federal False Claims Act as set forth at 31 U.S.C. §3729. Contractor shall perform all Services in a manner consistent with such laws and regulations.

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CASH

EXHIBIT B

COMPENSATION

Period 1

Care Coordination Go-Live through Go-Live of Full Risk:

99% of administrative fees (meaning fees per Enrollee) received by COMPANY under the PASSE Contract

Either party may request, and the other party shall agree to negotiate an adjustment to compensation within thirty (30) days of written notice, if any of the following events occur during Period 1.

A significant change (as determined by either party) to the attribution methodology from that previously published and distributed by AID or DHS as of the date of this Management Services Agreement.

A change of 25% or greater to the care coordination ratio (currently 1:50) established by AID/DHS as of the date of this Management Services Agreement.

A significant change (as determined by either party) to the skill definition and requirement for care coordination from that previously published and distributed by AID/DHS as of the date of this Management Services Agreement.

Any factual evidence that indicates and supports the negotiated fee is unreasonable or excessively beneficial to either party.

Period 2

Go Live of Full Risk: 9% of revenues (meaning revenues per Enrollee) received by COMPANY under the PASSE Contract.

Either party may request, and the other party shall agree, to negotiate an adjustment to compensation within thirty (30) days of written notice, if any of the following events occur during Period 2:

If actual PASSE enrollment is less than 7,500 or more than 12,500 Enrollees as of October 31, 2018 (which varies from the assumed number of 9,000 Enrollees as of such date). If the average monthly per member rate required under the PASSE Contract varies by plus or minus 10% of the assumed rate of \$4,150 as of October 31, 2018.

Issuance of the PASSE Contract with terms and/or conditions that either party reasonably considers materially different from anticipated based on the information published and distributed by AID/DHS as of the date of this Management Services Agreement.

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The determination and publication of the global payment rate by AID/DHS, which either party considers unreasonable based on the information available by AID/DHS as of the date of this Management Services Agreement.

Any factual evidence that indicates and supports the negotiated fee is unreasonable or excessively beneficial to either party.

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EXHIBIT C

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") is made this 7th day of August (the "Effective Date"), by and between Berenson Health Corp. a Virginia corporation ("Contractor") and Empower Healthcare Subs, LLC ("COMPANY").

WITNESSETH:

WHEREAS, COMPANY operates a limited service licensed provider network that may be a Covered Entity subject to federal privacy rules promulgated under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); and

WHEREAS, Contractor may be deemed a "Business Associate" of COMPANY as defined by HIPAA regulations and Contractor provides services for COMPANY that may require the use, disclosure, or creation of Protected Health Information (as such term is defined below); and

WHEREAS, COMPANY and Contractor are committed to complying with HIPAA and desire to set forth the rights and responsibilities of the parties with respect to Protected Health Information;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which is hereby acknowledged by the parties, the parties agree as follows:

1. DEFINITIONS.

1.1 "Designated Record Set" means a group of records containing Protected Health Information maintained by or for COMPANY which fall within one of the following categories: (a) a health care provider's medical and billing records; (b) a health plan's enrollment, payment, claims adjudication and case management records; or (c) records used in whole or in part by COMPANY to make decisions about the individuals to whom the information relates.

1.2 "Individual" means the person who is the subject of Individually Identifiable Health Information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

1.3 "Privacy Regulations" mean the Standards for Privacy of Individually Identifiable Health Information promulgated by the U.S. Department of Health and Human Services at 45 C.F.R. Part 160 and Part 164, and includes any amendments and additions thereto as may be enacted from time to time.

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[Handwritten signature]

1.4 "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium, that is (a) created or received by a health care provider, health plan, employer, or health care clearinghouse; (b) relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual, and (c) identifies an individual with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

1.5 "Required by Law" means a provision contained in law that compels a Covered Entity or Business Associate to use or disclose PHI that is enforceable in a court of law, including, but not limited to, court orders, subpoenas, summonses, court-ordered warrants and statutes and regulations that require such information if payment is sought under a government health care program.

1.6 All other terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 C.F.R. §§ 160.103 and 164.501.

2. SERVICES PERFORMED BY CONTRACTOR.

Contractor provides services to COMPANY pursuant to a Management Services Agreement ("MSA") between the parties having an effective date of August 31, 2017.

3. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR.

3.1 Non-disclosure. Contractor agrees not to use or further disclose PHI other than as permitted or required by this Agreement or as required by law.

3.2 Safeguards. Contractor agrees to use appropriate safeguards to prevent the use or disclosure of the PHI other than as provided for by this Agreement. Contractor will document to COMPANY its safeguards and keep the safeguards current.

3.3 Mitigation. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of this Agreement, and to consult promptly within two (2) business days with _____ when any such wrongful use or disclosure is detected.

3.4 Reporting. Contractor agrees to report in writing to the Privacy Officer of COMPANY any use or disclosure of PHI by Contractor which is not provided for by this Agreement and of which Contractor becomes aware. Such report shall be made as soon as reasonably possible but in no event more than five (5) business days after discovery or request by Contractor of such unauthorized use or disclosure. This reporting obligation shall include breaches by Contractor, its employees, subcontractors and/or agents. Each such report of a breach will: (i) identify the nature of the unauthorized use or disclosure; (ii) identify the PHI used or disclosed; (iii) identify who made the unauthorized use or disclosure; (iv) identify who received the unauthorized use or disclosure of PHI; (v) identify what corrective action Contractor

took or will take to prevent further unauthorized uses or disclosures; (vi) identify what Contractor did or will do to mitigate any deleterious effect of the unauthorized use or disclosure; and (vii) provide such other information as COMPANY may reasonably request.

3.5 Agents and Subcontractors. Contractor agrees to ensure that any agent or subcontractor to whom it provides PHI received from, or created or received by Contractor on behalf of, COMPANY agrees in writing to the same restrictions and conditions that apply to Contractor through this Agreement with respect to such information.

3.6 Access. Contractor agrees to provide access to PHI in a Designated Record Set to COMPANY or, as directed by COMPANY, to an Individual within five (5) days of receiving a written request from COMPANY in order to meet the requirements of 45 C.F.R. § 164.524. This provision does not apply if Contractor and its employees, subcontractors or agents have no PHI from a Designated Record Set of COMPANY or do not maintain PHI in a Designated Record Set on behalf of COMPANY.

3.7 Amendments. Contractor agrees to make any amendment(s) to PHI in a Designated Record Set that COMPANY directs or agrees to pursuant to 45 C.F.R. § 164.526 within five (5) days of receiving a written request from COMPANY. Such amendment shall be made by addition to the PHI record, and under no circumstances shall PHI be deleted as part of the amendment process. This provision does not apply if Contractor and its employees, subcontractors or agents have no PHI from a Designated Record Set of COMPANY or do not maintain PHI in a Designated Record Set on behalf of COMPANY.

3.8 Records. Contractor agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, COMPANY available to COMPANY or, at the request of COMPANY, to the Secretary of the Department of Health and Human Services ("Secretary"), during regular business hours within five (5) business days of receiving a written request from COMPANY, or sooner if requested by the Secretary, including for purposes of the Secretary determining COMPANY's compliance with the Privacy Regulations.

3.9 Accounting of Disclosures. Contractor agrees to document all disclosures of PHI by Contractor, its employees, subcontractors or agents in a record maintenance form which shall include: (a) the date of the disclosure; (b) the name and address (if known) of the person or entity who received the disclosure; (c) a brief description of the PHI disclosed, and (d) a brief statement of the purpose of the disclosure or a copy of the consent to the disclosure signed by the individual to whom the PHI relates. Contractor agrees to provide COMPANY or, at COMPANY's request, an Individual within three (3) days business days of receiving a written request from COMPANY, information collected in accordance with the preceding sentence, to permit COMPANY to respond to a request by an Individual for such an accounting of disclosures.

3.10 "Trading Partner" Provisions: Use and Disclosure in Connection with Standard Transactions. If Contractor conducts Standard Transactions (as defined in 45 C.F.R. Part 162)

for or on behalf of COMPANY, Contractor will comply, and will require each subcontractor or agent involved with the conduct of such Standard Transactions to comply, with each applicable requirement of 45 C.F.R. Part 162. Contractor will not enter into, or permit its subcontractors or agents to enter into, any trading partner agreement in connection with the conduct of Standard Transactions for or on behalf of COMPANY that: (i) changes the definition, data condition, or use of a data element or segment in a Standard Transaction; (ii) adds any data elements or segments to the maximum defined data set; (iii) uses any code or data element that is marked "not used" in the Standard Transaction's implementation specification or is not in the Standard Transaction's implementation specification; or (iv) changes the meaning or intent of the Standard Transaction's implementation specification.

4. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION.

4.1 Upon execution of this Agreement and subject to its terms, from time to time, COMPANY may disclose PHI to Contractor and allow Contractor to create or receive PHI on behalf of COMPANY.

4.2 Except as otherwise limited in this Agreement, Contractor may use PHI received from or created on behalf of COMPANY to carry out the responsibilities imposed upon Contractor under the Management Services Agreement provided that such use or disclosure would not violate the Privacy Regulations if done by COMPANY or the minimum necessary policies and procedures of COMPANY. Contractor may use PHI in connection with the proper management and administration of Contractor or to carry out legal requirements and responsibilities of Contractor. Contractor may disclose PHI in connection with the proper management and administration of Contractor if (a) the disclosure is Required By Law, or (b) Contractor receives adequate assurances from the person to whom the information is properly disclosed that the information will be held confidentially, used or further disclosed only as Required By Law or for the purposes for which the disclosure was made, and the person notifies Contractor of any instance of which it is aware in which the confidentiality of the information has been breached.

4.3 Any use or disclosure of PHI which is not specifically permitted in this Agreement is prohibited.

4.4 Contractor may use PHI to report violations of law to appropriate authorities consistent with 45 C.F.R. § 164.502(j)(1).

5. OBLIGATIONS OF COMPANY.

COMPANY shall provide Contractor with its privacy notices, any relevant privacy policies or other information, and any restrictions on the use or disclosure of PHI voluntarily agreed to by COMPANY that may impact the permissible uses or disclosures of PHI by Contractor. Throughout the term of this Agreement, COMPANY shall notify Contractor of any changes or additions to such notices, policies, information or agreements.

6. SECURITY OF ELECTRONIC DATA.

If PHI is transmitted to or maintained by Contractor in electronic format, Contractor agrees to:

- (a) Develop, implement, maintain, and use administrative, technical and physical safeguards that reasonably and appropriately protect the integrity, confidentiality, and availability of the electronic PHI that Contractor creates, receives, maintains or transmits on behalf of COMPANY, as required by 45 C.F.R. Part 164, Subpart C;
- (b) Ensure that any agent or subcontractor to whom Contractor properly provides electronic PHI agrees to implement reasonable and appropriate safeguards to protect such PHI;
- (c) Report to COMPANY any security incident of which Contractor becomes aware; and
- (d) Provide reasonable access to and/or permit inspection of its systems to allow COMPANY to determine Contractor's compliance with this provision.

7. TERM AND TERMINATION.

7.1 The term of this Agreement shall commence on the Effective Date and shall continue until terminated as permitted herein

7.2 Termination for Cause. Upon COMPANY's reasonable determination that Contractor has breached a material term of this Agreement, COMPANY shall be entitled to do any one or more of the following:

(a) Give Contractor written notice of the existence of such breach and give Contractor a reasonable period, which shall not be less than thirty (30) days, to cure the breach. If Contractor does not cure the breach or end the violation within such period, COMPANY may immediately terminate this Agreement. If termination of this Agreement is not feasible, COMPANY shall report the breach to the Secretary of DHHS.

(b) Immediately stop all further disclosures of PHI to Contractor pursuant to the Management Services Agreement or other arrangement which is the subject of such breach.

7.3 Termination by Agreement. This Agreement shall terminate upon any such date as COMPANY and Contractor may agree in a writing signed by both parties.

7.4 Termination of Management Services Agreement. This Agreement shall terminate upon the termination or non-renewal of the Management Services Agreement.

7.5 Effect of Termination.

(a) Upon termination of this Agreement for any reason, Contractor shall return to COMPANY, or destroy, all PHI received, created or maintained in any form by Contractor on behalf of COMPANY. Contractor shall retain no copies of such information. This section shall also apply to PHI that is in possession of subcontractors or agents of Contractor.

(b) In the event that Contractor determines that return or destruction of PHI is not feasible, Contractor shall provide to COMPANY written notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible, Contractor shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such PHI.

(c) Contractor shall cooperate with COMPANY to the extent reasonably necessary for COMPANY to determine that all PHI has been properly returned, destroyed or protected upon termination of this Agreement. Such cooperation shall include allowing COMPANY to review and audit electronic and computer systems for data and deleting electronic access paths and codes which allow Contractor to receive or transmit PHI in electronic formats.

(d) Contractor's obligation to protect the privacy of PHI is continuous and survives any termination, cancellation, non-renewal, or other conclusion of this Agreement or any other agreement between Contractor and COMPANY. The respective rights and obligations of Contractor under this Section 7 regarding the return, destruction or protection of PHI after non-renewal or termination shall survive the termination of this Agreement.

8. MISCELLANEOUS.

8.1 Scope of Agreement. This Agreement relates only to the use, disclosure and protection of PHI if it is disclosed to, created or received by Contractor in connection with any relation between Contractor and COMPANY. This Agreement is the sole understanding between the parties relating such matters, and supersedes all prior agreements and understandings, whether oral or written. Nothing herein requires Contractor to accept any PHI or to provide any particular services in contravention of the MSA.

8.2 Assignment. No assignment of this Agreement or of the rights and obligations hereunder by any party shall be valid, without the prior written consent of the other party, except upon written notice to Contractor, COMPANY may assign this Agreement to any entity that controls, is controlled by, or is under common control of COMPANY. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and each of their respective successors, heirs and permitted assigns, if any.

8.3 Severability. In the event that any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall not be affected thereby.

8.4 Waiver and Breach. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provisions hereof.

8.5 Notice. All notices required or permitted under this Agreement shall be in writing and shall be delivered in person or deposited in the United States mail, postage prepaid, addresses as follows:

If for COMPANY: Empower Healthcare Solutions, LLC
400 West Capitol Avenue, Suite 1711
Little Rock AR 72201
Attn: Nicole May, Interim Executive Director

If for Contractor: Beacon Health Options, Inc.
400 West Capitol Avenue, Suite 1711
Little Rock AR 72201
Attn: Daniel Risku, General Counsel

Such addresses may be changed from time to time by either party by providing written notice to the other in the manner set forth above. Any notice hereunder shall be deemed given and received forty-eight (48) hours after mailing, if given by mailing in the manner provided above, or upon actual receipt of the information if given by hand, facsimile or telegraph.

8.6 Amendments. This Agreement may only be amended or modified by written agreement executed by all parties. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for COMPANY to comply with the requirements of the Privacy Regulations and HIPAA.

8.7 Governing Law/Construction. This Agreement shall be governed by applicable federal law and the laws of the State of Arkansas, without regard to conflict of laws principles. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits COMPANY to comply with the Privacy Regulations.

8.8 No Third Party Beneficiaries. Contractor and COMPANY agree that Individuals who are the subject of PHI are not third party beneficiaries of this Agreement.

8.9 Further Acts. The parties agree that the intent of this Agreement is to comply with the Business Associate provisions of the Privacy Regulations. Each of the parties shall execute and deliver all documents, papers and instruments reasonably necessary or convenient to carry out the terms of this Agreement. The parties shall, upon request at any time after the date

of this Agreement, execute, deliver and/or furnish all such documents and instruments, and do or cause to be done all such acts and things as may be reasonable to effectuate the purpose and intent of this Agreement as set forth herein.

639575



Handwritten signature and date: 11/11/21

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

COMPANY

By: 

Its: _____

Date: 9/5/17

CONTRACTOR

By: 

Its: Asst. Secretary

Date: 9-7-17

**FIRST AMENDMENT TO MANAGEMENT SERVICES AGREEMENT
BETWEEN
BEACON HEALTH OPTIONS, INC. AND EMPOWER HEALTHCARE SOLUTIONS,
LLC**

THIS FIRST AMENDMENT TO THE MANAGEMENT SERVICES AGREEMENT (the "Amendment") is entered into effective as of March 1, 2019 by and between Beacon Health Options, Inc. ("Contractor") and Empower Healthcare Solutions, LLC ("Company").

WHEREAS, Company and Contractor entered into an Agreement for the provision of managed care administrative services (the "Agreement") as of August 31, 2017;

WHEREAS, the parties have executed the Agreement and have performed in accordance with the terms thereof; and

WHEREAS, the parties now wish to amend the Agreement to reflect the current understanding of the parties;

NOW THEREFORE, the parties hereby amend the Agreement as follows:

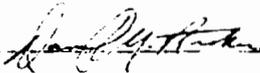
1. **Amendments.** Exhibit B, "Compensation" is deleted in its entirety and replaced by the attached Exhibit B.
2. **Ratification.** The parties ratify, affirm and approve the Agreement, with the amendment thereto set forth herein, and agree that the Agreement as so amended shall continue in full force and effect.
3. **Effect.** Other than as modified by this Amendment, the Agreement shall remain in effect as set forth therein. Any conflict between this Amendment and the Agreement shall be resolved in favor of this Amendment.

This Amendment may be executed in counterparts, or counterpart pages, each one of which shall be deemed an original, and all the counterparts together shall constitute one and the same Amendment.

IN WITNESS WHEREOF, the undersigned have executed this Amendment on the dates indicated below.

BEACON HEALTH OPTIONS, INC.

**EMPOWER HEALTHCARE
SOLUTIONS, LLC**

By: 
Title: EVP & General Counsel
Date: 2/25/2019

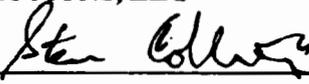
By: 
Title: _____
Date: _____

EXHIBIT B
COMPENSATION

Effective March 1, 2019 or on the effective date of the PASSE Phase II contract between Company and the Arkansas Department of Human Services (whichever is later) and for a term of 36 months thereafter, CONTRACTOR will be paid pursuant to a tiered pricing model based on enrollment as follows:

Group A: Zero to 7,500	\$378.00 PMPM
Group B: 7,501 to 12,500	\$255.00 PMPM
Group C: 12,501 to 17,500	\$225.00 PMPM
Group D: >17,500	\$220.00 PMPM

Under this methodology, the tiers and PMPM rates are applied to the aggregate number of Tier 2 and Tier 3 members enrolled with COMPANY. The rates for each Membership Group would apply only to those members that fall in that specific group (e.g. if enrollment was 7,501 COMPANY would pay the Group A rate for 7,500 members and the Group B rate for 1 member).

The above compensation shall be subject to a percentage ceiling above which CONTRACTOR's compensation shall not exceed. This ceiling would be applied on a monthly basis as a lower of methodology (i.e. the lower of the calculated, blended PMPM based on the tiered rates OR the percentage ceiling applied to the actual blended global capitation rate COMPANY received). The ceiling will be adjusted based on the aggregate membership in a given month. The following table outlines the ceilings at different levels of membership.

Table 1: Administrative Rate % Ceiling

Up to 12,500	12.5%
>12,500 to 17,500	12.0%
>17,500	11.0%

After February 28, 2021 or at the end of the 36 month term (whichever is later), the compensation rates shall be adjusted to 9% of global capitation payment revenue. Beacon shall have the option to accept the adjusted capitation rates, or decline and request the parties enter into good faith negotiations. Such request for negotiations shall be submitted in writing at least 60 days prior to the end of the 36 month term, and parties agree to best efforts to complete negotiations prior to the end of the initial term.

During the contract term, should total membership fall below 6,000 members; blended global capitation fall below \$2,150; the parties agree to good faith negotiations to address needed changes to the reimbursement model within thirty (30) days of written notice by one of the parties.

Further, the parties agree that the compensation shall be subject to good faith renegotiations should DHS modify the PASSE Phase II contract requirements in a manner that materially impacts that costs to operate services under this MSA. Such circumstances shall include modification to the Care Coordination ratios.

**SECOND AMENDMENT TO
MANAGEMENT SERVICES AGREEMENT BETWEEN
CONTRACTOR HEALTH OPTIONS, INC. AND
EMPOWER HEALTHCARE SOLUTIONS, LLC**

This Second Amendment to the Management Services Agreement (the “Second Amendment”) is entered into effective August 1, 2019 (the “Effective Date”) by and between Beacon Health Options, Inc. (“Contractor”) and Empower Healthcare Solutions, LLC (“Company”).

WHEREAS, Contractor and Company entered into an Agreement for the provision of managed care administrative services as of August 31, 2017, which agreement was subsequently amended (as amended, “Agreement”);

WHEREAS, the parties wish to adjust the compensation paid to Contractor pursuant to the terms and conditions set forth in this Amendment.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties amend the Agreement as follows:

1. As of the Effective Date, compensation due to Contractor shall be reduced by twenty-seven thousand, five hundred (\$27,500) dollars per month. This amount shall be adjusted to reflect the CEOs actual salary plus twenty (20) percent for applicable benefits, but at no time shall not exceed thirty thousand dollars (\$30,000) per month.

2. In the event of a conflict between a provision of this Second Amendment and any obligation in the Agreement, the terms of this Second Amendment shall govern for the purposes of the subject matter herein.

3. This Second Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Parties further agree that an electronically scanned email signature or facsimile signature shall have the same legal significance (for this document and any counter parts only) as an original signature.

4. The parties ratify, affirm and approve that the Agreement, as amended by this Second Amendment, and agree that the Agreement as so further amended shall continue in full force and effect.

IN WITNESS THEREOF, the parties hereunto set their hands to this Second Amendment

as of the day and year first written above.

Company: **EMPOWER HEALTHCARE SOLUTIONS, LLC**

Contractor: **BEACON HEALTH OPTIONS, INC.**

By: *Bess Heisler Ginty*

Name: Bess Heisler Ginty

Title: Chair of the Managers

Date: 8.20.19

By: *Daniel M. Risku*

Name: Daniel M. Risku

Title: EVP & General Counsel

Date: 9/3/2019

**THIRD AMENDMENT TO THE MANAGEMENT SERVICES AGREEMENT
BY AND BETWEEN
EMPOWER HEALTHCARE SOLUTIONS, LLC
AND
BEACON HEALTH OPTIONS, INC.**

THIS THIRD AMENDMENT ("Third Amendment") to that certain Management Services Agreement, as previously amended by the First and Second Amendments ("MSA"), by and between Empower Healthcare Solutions, LLC, an Arkansas limited liability company ("Company"), and Beacon Health Options, Inc., a Virginia corporation ("Contractor"), is entered into effective as of the last date of signature set forth below ("Effective Date").

WHEREAS, the MSA was originally effective as of the 31st day of August, 2017, and has since been amended by the First Amendment thereto, which First Amendment was entered into on or around the 1st day of March 2019 ("First Amendment"), and the Second Amendment thereto, which Second Amendment was entered into effective as of the 1st day of August, 2019 ("Second Amendment"); and

WHEREAS, each party currently has a right to provide notice of non-renewal of the MSA to the other party no less than sixty (60) days in advance of August 31, 2020, which notice of non-renewal would cause the MSA to expire on August 31, 2020 ("Expiration Date"); and

WHEREAS, the parties desire to extend the time period for giving notice of non-renewal under the MSA and also to extend the Expiration Date (each on a one-time basis only for 2020), as more particularly described herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including the promises and covenants made hereunder, the parties agree to amend the MSA, as follows:

1. **Extension of Time Period to Provide Notice of Non-Renewal.** The parties hereby agree that (for the current year of the MSA only, 2020) either party may provide notice of non-renewal of the MSA to the other party at any time on or before July 31, 2020. This amendment specifically amends Section 6.1 of the MSA accordingly.
2. **Extension of Expiration Date.** In the event that either party provides notice of non-renewal of the MSA on or before July 31, 2020 (as described in Section 1 of this Third Amendment), the Expiration Date of the MSA shall no longer be August 31, 2020, but shall be extended to September 30, 2020, instead.
3. **Term of Amendment.** These amendments are applicable to the current year only, and the rights and obligations described under this Third Amendment shall expire if not exercised as described herein.

4. **Execution and Delivery.** It is the intent of the parties that this Amendment may be executed in multiple counterparts and that PDF or other electronic delivery of signatures shall be sufficient to bind the parties hereto.
5. **Execution Authority.** The undersigned Contractor representative / agent hereby represents and warrants to Company that he / she has the authority to execute and deliver this Agreement on behalf of Contractor.
6. **Beacon Board Representative.** For purposes of signing and approving this Third Amendment, Contractor hereby appoints Susan Coakley as its Board Representative to the Company.
7. **Jurisdiction / Venue.** Each party hereby submits to the jurisdiction of the state and federal courts of Arkansas for any disputes arising out of or relating to this Third Amendment. Moreover, each party agrees that any dispute arising out of or relating to this Third Amendment and leading to litigation shall be litigated in the state or federal courts of the State of Arkansas.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties have entered into this Third Amendment effective as of the Effective Date, which is the last date of signature set forth below, each through the respective signature of its duly authorized officer.

BEACON HEALTH OPTIONS, INC.



(Signature)

Susan Coakley, Interim President

(Print Name and Title)

06/24/2020

(Date)

[Empower signature page follows.]

EMPOWER HEALTHCARE SOLUTIONS, LLC

By: Its Board of Managers

Thomas G. Harbuck
(Signature)

Thomas G. Harbuck
(Print Name)

6/25/2020
(Date)

Bess Heisler Ginty
(Signature)

Bess Heisler Ginty
(Print Name)

6/25/2020
(Date)

Cindy Alberding
(Signature)

Cindy Alberding
(Print Name)

6/25/2020
(Date)

David Norsworthy
(Signature)

David Norsworthy
(Print Name)

6/25/2020
(Date)

Steven Collier
(Signature)

Steven Collier
(Print Name)

6/25/2020
(Date)

Susan Coakley
(Signature)

Susan Coakley, Interim President
As Beacon Board
Representative

06/24/2020
(Date)

Exhibit D

August 26, 2021 Letter to DHS



VIA EMAIL ONLY:

Ms. Jenna Goldman, Assistant Director
Arkansas DHS, Division of Medical Services
700 Main Street
Little Rock, AR 72201

August 26, 2021

RE: Provider Credentialing - Empower

Dear Ms. Goldman,

As you know Beacon Health Options (Beacon), as delegate for Empower Healthcare Solutions (Empower), is responsible for credentialing all Beacon contracted network providers who serve Empower members pursuant to the requirements in Empower's PASSE contract. Effective January 1, 2021 Beacon adopted credentialing policies and procedures consistent with NCQA standards which were deemed complaint by DHS and continue to be compliant.

Over the objections of Beacon, the Board of Empower adopted the attached credentialing policies and charter today (August 26, 2021). See Draft "Document ID: CRED 1" and Draft "Empower Credentialing Review Committee Charter". For the reasons detailed below, Beacon objected to the proposed policies both at the Committee meeting on August 19, 2021 and today's Board meeting. Despite Beacon's offers to discuss these matters outside of the Board meeting (see Beacon's letter of August 26, 2021, attached) the Board refused to acknowledge Beacon and adopted the policies.

Specifically, Empower has no authority over Beacon's credentialing of its network. The proposed Credentialing policy could have the effect of invalidating the credentialing decisions of our existing network. Beacon obviously cannot agree to any policy that will have this result. Empower has been combative and non-cooperative in addressing these concerns.

For the reasons detailed below, we object to the proposed policies:

1. They are contradictory to Beacon's network duties delegated under the Management Services Agreement ("MSA"). Per the MSA, Beacon adopted policies and procedures consistent with NCQA standards, which were approved by DHS. All providers contracted with Beacon who provide services to Empower's members were credentialed under these policies in early 2021, as required by the PASSE Contract.



2. While Empower can choose to adopt credentialing policies for providers contracted by Empower going forward, it has no authority over Beacon's credentialing of its own contracted providers. The proposed new policies imply that Empower seeks to negate Beacon's credentialing of its own network. Empower has no such authority and the adoption of such policies will be ineffective. Moreover, such adoption would be contrary to the policies previously submitted to, and approved by DHS, possibly placing Empower in breach of the PASSE Contract. Any actions by the newly proposed Empower credentialing committee, should be solely focused on Empower's independent build of a BH/IDD network and will not pertain to the existing Beacon provider network.
3. Further, credentialing records obtained by Beacon through its contractual relationship with CAQH for the purpose of credentialing its network will be ineffective in satisfying Empower's responsibility to credential its own network. Empower can obtain the credentialing information on the providers directly from CAQH in the same manner as every other health plan/payer obtains such information for their network providers.

In summary, because the new policies are inconsistent with the terms of the MSA and regulatory requirements of the PASSE program, we are asking that DHS reaffirm Beacon's continued compliance with DHS credentialing standards under the existing policies and disregard the policies adopted today which are inconsistent with such standards

Sincerely,

Melissa Ortega

cc: Daniel Risku
Susan Coakley
Briana Duffy
Dennis Smith
Cindy Gillespie
