

**AGREEMENT
BETWEEN
HEALTH AND HUMAN SERVICES COMMISSION
AND
MEDICARE ADVANTAGE DUAL ELIGIBLE SPECIAL NEEDS PLAN**

Article I.	Background	2
Article II.	Definitions	2
Article III.	MA Dual SNP's Obligations	4
Section 3.01	Plan Offer to Dual Eligibles Residing in CMS-approved Service Areas.	4
Section 3.02	Enrollment.	4
Section 3.03	Healthcare Services.	5
Section 3.04	Copies of MA Agreement.	5
Section 3.05	Coordination of Care.	6
Section 3.06	Cost Sharing Protections for Dual Eligible Members.	6
Section 3.07	Information Sharing.	7
Section 3.08	Compliance with Laws.	8
Article IV.	State Obligations.	8
Section 4.01	Payment.	8
Section 4.02	Eligibility Verification.	8
Article V.	Compensation	8
Section 5.01	Payment.	8
Section 5.02	Rights of Set-off.	9
Section 5.03	Modification of Payment.	9
Article VI.	Term.	9
Section 6.01	Term.	9
Article VII.	Remedies	9
Section 7.01	Understanding and expectations.	9
Section 7.02	Tailored remedies.	9
Section 7.03	Termination.	12
Article VIII.	Dispute Resolution	13
Section 8.01	General Agreement of the Parties.	13
Section 8.02	Duty to Negotiate in Good Faith.	13
Section 8.03	Claims for Breach of Agreement.	13
Article IX.	Miscellaneous Provisions	14
Section 9.01	Non-Debarment.	14
Section 9.02	Severability.	14
Section 9.03	Successors and Assigns.	14
Section 9.04	Assignment.	14
Section 9.05	Modification, Amendment, or Waiver.	14
Section 9.06	Notices.	14
Section 9.07	Record Retention and Audit.	15
Section 9.08	SAO Audit.	15
Section 9.09	Access to records, books, and documents.	15
Section 9.10	Governing Law & Venue.	16
Section 9.11	Publicity.	16
Section 9.12	Anti-trust.	16
Section 9.13	CMS Approval.	17
Section 9.14	Requests for public information.	17
Section 9.15	Privacy, Security, and Breach Notification.	17

ATTACHMENT A: PROPOSED MA PRODUCT SERVICE AREAS
ATTACHMENT B: TEXAS MEDICAID SUMMARY OF BENEFITS

THIS AGREEMENT is made and entered into by the Health and Human Services Commission (HHSC), an administrative agency within the executive department of the State of Texas, having its principal office at 4900 North Lamar Boulevard, Austin, Texas, 78751, and _____ a corporation that offers or administers a Medicare Advantage Dual Eligible Special Needs Plan (Medicare Advantage Dual Eligible Special Needs Plan or MA Dual SNP), organized under the laws of the State of Texas and having a principal place of business at _____. HHSC and MA Dual SNP may be referred to herein as a "Party" or, collectively, as the "Parties." This Agreement supersedes and replaces any version of an agreement between the Parties that affects the subject matter of this Agreement and that was signed before the date on which this Agreement is signed.

Article I. BACKGROUND

The MA Dual SNP has entered into a Medicare Advantage Plan Agreement (MA Agreement) with the Centers for Medicare and Medicaid Services (CMS). Pursuant to the Texas State Plan, HHSC is financially responsible for the Cost Sharing Obligations attributable to Dual Eligible Members enrolled in the MA Dual SNP's Medicare Advantage Product. HHSC will pay the MA Dual SNP a monthly capitated payment in exchange for the MA Dual SNP's payment of Cost Sharing Obligations to healthcare service providers.

Article II. DEFINITIONS

Coinsurance is a percentage of costs normally paid by a MA Dual SNP member for medical services provided under an MA Product. Coinsurance amounts must comply with the terms of the MA Agreement.

Coordination of Care means, for the purposes of this agreement, the MA Dual SNP's mechanisms that promote increased coordination between the services provided by the MA Dual SNP and the Long-Term Services and Supports ("LTSS") the Member receives from Medicaid.

Co-payments are fixed dollar amounts that an MA Dual SNP member normally must pay for a medical service provided under a Medicare Advantage Product. Co-payment amounts must comply with the terms of the MA Agreement.

Cost Sharing Obligations mean those financial payment obligations incurred by HHSC in satisfaction of the Deductibles, Coinsurance, and Co-payments for the Medicare Part A and Part B programs with respect to Dual Eligible Members. For purposes of this Agreement, Cost Sharing Obligations do not include: (1) Medicare premiums that HHSC is required to pay under the Texas State Plan on behalf of Dual Eligible Members or Other Dual SNP Members, (2) Deductibles, Coinsurance, and Co-payments for the Medicare Part A and Part B programs with respect to Other Dual SNP Members, (3) wrap-around services that are covered by Medicaid, and (4) effective March 1, 2015, Coinsurance for Part A-like services provided during a Dual Eligible Member's Medicare-covered stay in a nursing facility.

Deductible means fixed dollar amounts that an MA Dual SNP member normally must pay out-of-pocket before the costs of services are covered by an MA Dual SNP. Deductibles must comply with the terms of the MA Agreement.

Dual Eligible means a Medicare managed care recipient who is also eligible for Medicaid, and for whom HHSC has a responsibility for payment of Cost Sharing Obligations under the Texas State Plan. For purposes of this Agreement, Dual Eligibles are limited to the following categories of recipients: QMB Only, QMB Plus, and SLMB Plus.

Dual Eligible Member means a Dual Eligible who is eligible to participate in, and voluntarily enrolled in, the MA Dual SNP's MA Product.

Long-Term Services and Supports (LTSS) means services and supports provided through Medicaid for individuals who are elderly or have a chronic disability that requires ongoing services and supports for their functional and medical needs. The goal of long-term services and supports is to help these individuals remain as independent as possible and live in the residential setting of their choice which may include living in one's own home, living with their family, living in a group home setting, or wanting institutional placement. LTSS under Medicaid include but are not limited to: assistance with Activities of Daily Living (ADLs); attendant services; nursing; occupational/speech/physical therapies; homemaker services; home modifications; adaptive aids; adult day care; and other rehabilitative and habilitative services and supports that help individuals maximize their independence.

MA Agreement means the Medicare Advantage Plan Agreement between the MA Dual SNP and CMS to provide an MA Product.

MA Product means the Medicare Part C and other health plan services provided to MA Dual SNP members pursuant to an MA Agreement.

Medicaid Only means an individual who is eligible for Medicaid either categorically or through optional coverage groups such as medically needy or special income levels for institutionalized or home and community-based waivers, but who does not meet the federal income or resource criteria for QMB or SLMB.

Medicare Advantage Dual Eligible Special Needs Plan or MA Dual SNP means a Medicare Advantage coordinated care plan that is filed and approved as a dual eligible special needs plan by CMS. The plan must be designed for and offered to individuals who are eligible for Medicare under Title XVIII of the Social Security Act ("SSA") and entitled to medical assistance under the Texas State Plan, in accordance with Title XIX of the SSA.

Network Provider means all providers who have a contract with the MA Dual SNP, or its subcontractor, for the delivery of healthcare services to the MA Dual SNP's members.

Other Dual SNP Member means a Medicare managed care recipient who is also eligible for Medicaid, but for whom HHSC does not have a responsibility for payment of Deductibles, Coinsurance, or Co-payments under the Texas State Plan. To qualify as an Other Dual SNP Member, the recipient must be eligible to participate in, and voluntarily enrolled in, the MA Dual SNP's MA Product. For purposes of this Agreement, Other Dual SNP Members are limited to the following categories of recipients ***[check all that apply under the terms of the MA Agreement]***. If the Plan does not check any of the below categories and has no such members in its MA Dual SNP, then Plan will have no obligations under this Agreement with respect to Other Dual SNP Members.

☐ SLMB Only

☐ Medicaid Only

☐ QI

☐ QDWI

Qualified Disabled and Working Individual (QDWI) means an individual who lost Medicare Part A benefits due to returning to work, but who is eligible to enroll in the purchase of Medicare Part A. The individual must meet federal income and resource criteria, and may not be otherwise eligible for Medicaid. A QDWI is eligible only for Medicaid payment of Part A premiums.

Qualified Medicare Beneficiary (QMB) means an individual who is entitled to Medicare Part A, meets federal income criteria, and whose resources do not exceed twice the Supplemental Security Income (SSI) limit. A QMB is eligible for Medicaid payment of Medicare premiums, Deductibles, Coinsurance, and Co-payments (except for Medicare Part D) (collectively, these benefits are called "QMB Medicaid Benefits"). Categories of QMBs are:

- **QMB Only** – means a QMB who does not qualify for any additional QMB Medicaid Benefits.

- **QMB Plus** – means a QMB who also meets the financial criteria for full Medicaid coverage. QMB Plus individuals are entitled to QMB Medical Benefits, plus all benefits available under the Texas State Plan for fully eligible Medicaid recipients.

Qualifying Individual (QI) means an individual who is entitled to Medicare Part A, meets federal income and resource criteria, and who is not otherwise eligible for Medicaid. A QI is eligible only for Medicaid payment of Medicare Part B premiums.

Specified Low-income Medicare Beneficiary (SLMB) means an individual who is entitled to Medicare Part A, and meets federal income and resource criteria. A SLMB is eligible for payment of Medicaid payment of Medicare Part B premiums. Categories of SLMBs are:

- **SLMB Only** – means a SLMB does not qualify for any additional Medicaid benefits.
- **SLMB Plus** – means a SLMB who also meets the financial criteria for full Medicaid Coverage. SLMB Plus individuals are entitled to payment of Medicare Part B premiums, plus all benefits available under the Texas State Plan for fully eligible Medicaid recipients.

Article III. MA DUAL SNP'S OBLIGATIONS

Section 3.01 Plan Offer to Dual Eligibles Residing in CMS-approved Service Areas.

(a) The MA Dual SNP will offer the MA Product to Dual Eligibles who: (1) reside in a Texas service area where the MA Dual-SNP has been authorized, per CMS, to offer the MA Dual SNP plan, and (2) are otherwise eligible to receive the MA Product.

(b) The MA Dual SNP has applied to the CMS to provide the MA Product in the Texas service areas described in **Attachment A, "Proposed MA Product Service Areas,"** which is attached to and incorporated into this Agreement. No later than 15 business days after CMS approves or denies the MA Dual SNP's application to provide the MA Product in a Texas service area, the MA Dual SNP must provide the HHSC point-of-contact identified in Section 9.06 with written notice of such CMS action. **MA Dual SNP represents and agrees that the information included in Attachment A is accurate and complete as of the date of MA Dual SNP's execution of this Agreement.** Additionally, the MA Dual SNP must notify the HHSC point-of-contact of all amendments to the MA Agreement's Texas service areas including but not limited to the addition, deletion, or modification to a Texas service area, CMS contract code, plan identification, or plan name. The MA Dual SNP must notify the HHSC point-of-contact no later than 15 business days after the effective date of such an amendment to the MA Agreement.

(c) No later than 15 business days after receiving the MA Dual SNP's notice of CMS' approval of or amendment to one or more Texas service areas, HHSC will notify the MA Dual SNP of the effective date of coverage of the Texas service area(s) under this Agreement. All modifications requiring changes to HHSC's system(s) will be effective prospectively. The MA Dual SNP will begin covering Cost Sharing Obligations for Dual Eligible Members in the Texas service areas that are added to the scope of this Agreement on the effective date identified in HHSC's notice, and HHSC will pay for these Dual Eligible Members in accordance with Article V.

(d) HHSC authorizes the MA Dual SNP to add the MA Product to Texas service areas that are not identified in Attachment A, provided it receives prior CMS approval and complies with the notice requirements specified in this Agreement.

Section 3.02 Enrollment.

(a) Unless a Dual Eligible is otherwise not eligible to enroll in the MA Product under federal Medicare Advantage plan rules, the MA Dual SNP will accept all Dual Eligibles who select the MA Dual SNP's MA Product without regard to physical or mental condition, health status or need for or receipt of healthcare services, claims experience, medical history, genetic information, disability, marital status, age, sex, national origin, race, color, or religion, and will not use any policy or practice that has the effect of such discrimination.

(b) MA Dual SNP will provide enrollment files of Dual Eligible Members and Other Dual SNP Members covering monthly reporting periods. The files must comply with State formatting requirements. After the conclusion of a monthly reporting period, the MA Dual SNP will submit the enrollment file no earlier than the first business day and no later than 20 calendar days following the expiration of a 3-month lag period. HHSC will then verify eligibility of the Dual Eligible Members with HHSC's eligibility system and CMS enrollment information, and return the validated enrollment information to MA Dual SNP by the fifth business day of the month following receipt of the enrollment file.¹ If the enrollment file does not include a Dual Eligible Member by the 20th calendar day deadline, the MA Dual SNP: (1) will lose the opportunity to receive the per-member-per-month ("PMPM") capitation payment for such Dual Eligible Member for the reporting period, and (2) will be responsible for all Cost Sharing Obligations for such Dual Eligible Member for the reporting period.

Section 3.03 Healthcare Services.

(a) The MA Dual SNP will provide the MA Product to all Dual Eligible Members and Other Dual SNP Members who are qualified to receive such services under the terms of the MA Agreement.

(1) The MA Dual SNP will pay all eligible Network Providers and out-of-network providers the Cost Sharing Obligations incurred on behalf of Dual Eligible Members. Nothing in this Agreement precludes the MA Dual SNP from entering into agreements with Network Providers or out-of-network providers that vary the amount or method of payment for the Cost Sharing Obligations or from utilizing the MA Dual SNP's coordination of benefits procedures.

(2) The MA Dual SNP is not responsible for paying Network Providers or out-of-network providers for the Deductibles, Coinsurance, and Co-payments incurred by Other Dual SNP Members.

(b) Unless the healthcare service or benefit is also covered under the MA Product, and is thus considered to be a Medicare benefit, the MA Dual SNP is not responsible for providing Medicaid-only wrap services or benefits to Dual Eligible Members or Other Dual SNP Members and is not expected to assume any obligations to provide Medicaid services or benefits other than those outlined in this Agreement. This provision does not limit or otherwise restrict the MA Dual SNP's obligation to provide Coordination of Care pursuant to Section 3.05.

Section 3.04 Copies of MA Agreement.

Upon execution of this Agreement, the MA Dual SNP will provide the HHSC point-of-contact, identified in Section 9.06, with a copy of the MA Agreement and all attachments. The MA Dual SNP will provide the actuarial value for Medicare Cost Sharing Obligations for the projection period consistent with the CMS bid submission. The MA Dual SNP agrees to provide HHSC a summary of its benefit designs for Dual Eligible Members and Other Dual SNP Members as well as financial data in a set and

¹ By way of example, the MA Dual SNP must submit the January 2016 enrollment file no earlier than May 2, 2016 (the first business day of the month) and no later than May 20, 2016. HHSC will return validated enrollment information to the MA Dual SNP no later than June 6, 2016 (the fifth business day of the month).

format that will enable HHSC to determine the cost of services and utilization experience in order to calculate the PMPM rates. In addition, the MA Dual SNP will also provide all amendments to the MA Agreement or the Bid Pricing Tool to the HHSC point-of-contact within 15 business days of receiving a request for this information.

Section 3.05 Coordination of Care.

(a) The MA Dual SNP will provide Coordination of Care for Dual Eligible Members and Other Dual SNP Members who are eligible for LTSS, making reasonable efforts to coordinate Medicare Advantage benefits provided by the MA Dual SNP with LTSS provided through the Texas Department of Aging and Disability Services (DADS) and the STAR+PLUS HMOs. Coordination of Care must include the following for these members:

- (1) identify providers of covered Medicaid LTSS in the Texas service areas identified in Attachment A;
- (2) help access needed Medicaid LTSS, to the extent they are available to the member;
- (3) help coordinate the delivery of Medicaid LTSS and Medicare benefits and services; and
- (4) provide training to its Network Providers regarding Medicaid LTSS so that they may help members receive needed LTSS that are not covered by Medicare. The MA Dual SNP will inform Network Providers of the Medicare benefits and Medicaid LTSS available to Dual Eligible Members and Other Dual SNP Members.

(b) The MA Dual SNP's Coordination of Care efforts for LTSS may include protocols for working with STAR+PLUS service coordinators or DADS caseworkers, as well as protocols for reciprocal referral and communication of data and clinical information regarding Dual Eligible Members with the coordinators and caseworkers.

(c) The MA Dual SNP will notify the STAR+PLUS service coordinator or DADS caseworker, as applicable, no later than 5 business days after receiving notice that a Dual Eligible Member or Other Dual SNP Member has been admitted to a nursing facility.

Section 3.06 Cost Sharing Protections for Dual Eligible Members.

(a) The MA Dual SNP must notify its Network Providers (via a provider manual, provider bulletin, or other contractual document) that Network Providers:

- (1) will not hold a Dual Eligible Member liable for the Cost Sharing Obligations; and
- (2) will accept as payment in full the MA Dual SNP's payment of the Cost Sharing Obligations and will not seek additional payment from HHSC or a Dual Eligible Member for healthcare services covered under the MA Product offered by the MA Dual SNP and provided to the Dual Eligible Member.

The MA Dual SNP must provide the HHSC point-of-contact identified in Section 9.06 with a copy of such written notice.

(b) The MA Dual SNP will not impose cost sharing on a Dual Eligible Member that exceeds the amount of cost sharing that would be permitted with respect to the Dual Eligible Member under Medicaid if the Dual Eligible Member were not enrolled in an MA Product.

Section 3.07 Information Sharing.

(a) HHSC will provide the MA Dual SNP with resources regarding the LTSS covered by Medicaid. These resources will include websites and similar resources to educate Network Providers about Medicaid eligibility rules and LTSS covered by Medicaid for which Dual Eligible Members and Other Dual SNP Members may be eligible. Within 30 business days after receiving such information, the MA Dual SNP must post a link to this information on its website.

(b) Texas Medicaid benefits are described in **Attachment B, Texas Medicaid Summary of Benefits**. The MA Dual SNP must include the Texas Medicaid Summary of Benefits in its Member Handbook for the MA Product.

(c) HHSC and the MA Dual SNP will identify and share information on Medicaid provider participation as follows.

(1) HHSC will provide the MA Dual SNP with links to online Medicaid LTSS provider information for the traditional fee-for-service and STAR+PLUS programs. Within thirty (30) business days after receiving such information, the MA Dual SNP must post a link to this information on its website.

(2) The MA Dual SNP must notify Dual Eligible Members and Other Dual SNP Members, via member communication materials, that information concerning Medicaid provider participation is available on the MA Dual SNP's and HHSC's websites, and that Dual Eligible Members may request written copies of Medicaid provider directories by contacting the Texas Medicaid enrollment broker. The MA Dual SNP must ensure this information is provided directly to members by the MA Dual SNP or through the MA Dual SNP's providers. In addition, the MA Dual SNP must assist Dual Eligible Members and Other Dual SNP Members in obtaining printed copies of Medicaid Provider Directories from the Texas Medicaid enrollment broker or STAR+PLUS health plans if requested by the member or his or her representative.

(3) The MA Dual SNP must notify Network Providers that information concerning Medicaid provider participation is available on the MA Dual SNP's and HHSC's websites. The MA Dual SNP must provide this notice in the Network Provider agreement, Network Provider manuals, bulletins, blast faxes, policies and procedures, provider manual updates, or other contractual documents.

(4) The MA Dual SNP must have written procedures for ensuring that Dual Eligible Members and Other Dual SNP Members have access to the services identified in the MA Product, including policies regarding network adequacy that are consistent with the requirements of the MA Agreement. The MA Dual SNP must provide HHSC with a copy of these policies no later than 5 business days after a request.

(d) The MA Dual SNP will provide the HHSC point-of-contact identified in Section 9.06 with the MA SNP HEDIS report submitted to CMS involving the Texas MA Product(s) within 45 calendar days of submission to CMS. Reports should be in the same format submitted to CMS.

(e) The MA Dual SNP must furnish HHSC point-of-contact identified in Section 9.06 with a copy of the complaint tracking module ("CTM") report created by CMS for all members within 30 business days of the MA Dual SNP's receipt of this report from CMS.

(f) The MA Dual SNP must encourage Network Provider skilled nursing facilities to electronically submit to the HHSC Medicaid claims administrator a resident transaction notice within 72 hours after a Dual Eligible Member's admission or discharge from the nursing facility, in accordance with 40 Tex. Admin. Code § 19.2615.

Section 3.08 Compliance with Laws.

(a) The MA Dual SNP will comply with all applicable laws, rules, and regulations governing this Agreement. This includes all applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended or modified.

(b) Additionally, the MA Dual SNP must comply with HIPAA notification requirements, including those set forth in the Health Information Technology for Economic and Clinical Health Act (HITECH Act) at 42 U.S.C. § 17931 *et. seq.*, as amended or modified. If, in HHSC's determination, the MA Dual SNP has not provided notice in the manner or format prescribed by the HITECH Act, then HHSC may require the MA Dual SNP to provide this notice.

(c) The MA Dual SNP must notify HHSC immediately of all breaches or potential breaches of unsecured protected health information, as defined by the HITECH Act.

Article IV. STATE OBLIGATIONS

Section 4.01 Payment.

HHSC will pay the MA Dual SNP in accordance with Article V of this Agreement.

Section 4.02 Eligibility Verification.

(a) HHSC will verify Medicaid eligibility for Dual Eligible Members by the fifth business day of the month following the receipt of the MA Dual SNP's monthly enrollment file, in accordance with Section 3.02(b).

(b) HHSC will allow the MA Dual SNP to make queries on a person-by-person basis to HHSC's claims administrator's Medicaid eligibility verification system.

Article V. COMPENSATION

Section 5.01 Payment.

(a) HHSC will pay the MA Dual SNP a per member per month (PMPM) capitation payment of **\$10.00** as payment for the Cost Sharing Obligations for each Dual Eligible Member who is enrolled in the MA Product in a CMS-authorized Texas service area and confirmed by HHSC as eligible to participate, regardless of whether the Dual Eligible Member receives healthcare services during the period covered by the payment. HHSC will pay each PMPM capitation payment to MA Dual SNP within a reasonable time, not to exceed 30 calendar days after HHSC returns the validated enrollment file to the MA Dual SNP in accordance with Section 3.02(b).

(b) If the MA Dual SNP includes a Dual Eligible Member on the monthly enrollment file by the deadline set forth in Section 3.02 and HHSC fails to pay the PMPM capitation payment for such Dual Eligible Member based on State error, HHSC will pay the MA Dual SNP any undisputed PMPM capitation payment owed the later of: (1) 30 calendar days after receiving written notice of the error from the MA Dual SNP, or (2) 30 calendar days after the resolution of the dispute.

(c) The PMPM capitation payment will be payment in full for the Cost Sharing Obligations attributable to a Dual Eligible Member as well as all costs associated with the administration of this

Agreement. Neither the MA Dual SNP nor its Network Providers will seek additional payment from HHSC, Dual Eligible Members, or healthcare providers for such Cost Sharing Obligations.

(d) The MA Dual SNP will not be entitled to receive a PMPM capitation payment for Other Dual SNP Members. The MA Dual SNP has agreed to provide services relating to Other Dual SNP Members, as identified in this Agreement, as part of the consideration for receiving the PMPM capitation payment for Dual Eligible Members.

Section 5.02 Rights of Set-off.

With respect to any amount that HHSC in good faith determines should be reimbursed to it or is otherwise payable to it by the MA Dual SNP pursuant to this Agreement, HHSC may deduct the entire amount owed against the charges otherwise payable or expenses owed to it under this Agreement until such time as the entire amount determined to be owed has been paid. HHSC will provide the MA Dual SNP with written notice of and supporting information concerning such offsets, and will be relieved of its obligation to make any payments to the MA Dual SNP until such time as all such amounts have been paid to HHSC.

Section 5.03 Modification of Payment.

The PMPM capitation rate is subject to modification in accordance with Section 9.07 if HHSC reasonably determines that: (1) changes in state or federal laws, rules, regulations, or policies materially affect the rate; (2) an amendment, modification, or change to the MA Agreement materially affects the rate; or (3) other information justifies a modification to the rate. HHSC will provide the MA Dual SNP notice of a modification to the rate 60 days prior to the effective date of the change, unless HHSC determines that circumstances warrant a shorter notice period. If the MA Dual SNP does not accept the rate change, the parties may terminate this Agreement in accordance with Section 7.03.

Article VI. TERM

Section 6.01 Term.

The term of this Agreement will begin on January 1, 2016 (the “Effective Date”) and end the earlier of: (1) December 31, 2016, or (2) when terminated by a party in accordance with Section 7.03.

Article VII. REMEDIES

Section 7.01 Understanding and expectations.

The remedies described in this Article are directed to MA Dual SNP’s timely and responsive performance of this Agreement, and the creation of a flexible and responsive relationship between the parties. The MA Dual SNP will be subject to performance evaluation by HHSC. Performance reviews may be conducted at the discretion of HHSC at any reasonable time and may relate to any responsibility or requirement of the MA Dual SNP under this Agreement. Any responsibilities or requirements not fulfilled by the MA Dual SNP may be subject to the remedies set forth in this Agreement.

Section 7.02 Tailored remedies.

(a) Understanding of the Parties.

The MA Dual SNP agrees and understands that HHSC may pursue tailored contractual remedies for material noncompliance with this Agreement, to the extent that noncompliance is not due to adherence with the requirements of the MA Agreement. At any time and at its discretion, HHSC may impose or pursue one or more remedies for each item of material noncompliance and will determine remedies on a case-by-case basis. HHSC's pursuit or non-pursuit of a tailored remedy does not constitute a waiver of any other remedy that HHSC may have at law or equity.

(b) Corrective action plan.

(1) At its option, HHSC may require the MA Dual SNP to submit a written plan (Corrective Action Plan) to correct or resolve a deficiency or breach of this Agreement, as determined by HHSC.

(2) The Corrective Action Plan must provide:

- (A) A detailed explanation of the reasons for the cited deficiency;
- (B) The MA Dual SNP's assessment or diagnosis of the cause; and
- (C) A specific proposal to cure or resolve the deficiency; and
- (D) The MA Dual SNP's timeline for cure or resolution of the deficiency.

(3) The Corrective Action Plan must be submitted by the deadline set forth in HHSC's request for a Corrective Action Plan. The Corrective Action Plan is subject to approval by HHSC, which will not be withheld unreasonably.

(4) HHSC will notify the MA Dual SNP in writing of HHSC's final disposition of HHSC's concerns. If HHSC accepts MA Dual SNP's proposed Corrective Action Plan, HHSC may:

- (A) Condition such approval on completion of tasks in the order of priority that HHSC may reasonably prescribe;
- (B) Disapprove portions of the MA Dual SNP's proposed Corrective Action Plan; or
- (C) Require additional or different corrective actions relating to the breach.

Notwithstanding the submission and acceptance of a Corrective Action Plan, the MA Dual SNP remains responsible for achieving all contractual requirements.

(5) HHSC's acceptance of a Corrective Action Plan under this Section will not:

- (A) Excuse the MA Dual SNP's prior substandard performance;
- (B) Relieve the MA Dual SNP of its duty to comply with performance standards; or
- (C) Prohibit HHSC from assessing additional tailored remedies or pursuing other appropriate remedies for continued substandard performance.

(c) Administrative remedies.

(1) At its discretion, HHSC may impose one or more of the following remedies for each item of material noncompliance and will determine the scope and severity of the remedy on a case-by-case basis:

- (A) Assess liquidated damages up to \$500 per month or portion of the month the MA Dual SNP fails to provide a complete copy of the MA Agreement and all amendments, modifications, or changes as required by Section 3.05, or, in the case of all other material breaches of this Agreement, assess liquidated damages up to \$100 per day until the breach is cured to the satisfaction of HHSC;

(B) Conduct accelerated monitoring of the MA Dual SNP. Accelerated monitoring includes more frequent or more extensive monitoring by HHSC or its agent;

(C) Require additional, more detailed data or reports to be submitted by the MA Dual SNP;

(D) Withhold or recoup payment to the MA Dual SNP; or

(E) Terminate the Contract in accordance with Section 7.03.

(2) For purposes of this Agreement, an item of material noncompliance means a specific action of the MA Dual SNP that:

(A) Violates a material provision of this Agreement;

(B) Represents a failure of MA Dual SNP to be reasonably responsive to a reasonable request of HHSC for information, assistance, or support relating to this Agreement within the timeframe specified by HHSC.

(3) HHSC will provide notice to the MA Dual SNP of its assessment of an administrative remedy, with the exception of accelerated monitoring, which may be unannounced.

(d) Damages.

(1) HHSC will be entitled to actual, consequential, direct, indirect, special, and liquidated damages resulting from the MA Dual SNP's failure to comply with any of the terms of this Agreement. In some cases, the actual damage to HHSC as a result of the MA Dual SNP's failure to meet any aspect of the responsibilities of this Agreement is difficult or impossible to determine with precise accuracy. Therefore, liquidated damages will be assessed in writing against and paid by the MA Dual SNP in accordance with Section 7.02(c)(1)(A)–(B). Liquidated damages may be assessed if HHSC determines such failure is the fault of the MA Dual SNP (including the MA Dual SNP's subcontractors or agents) and is not materially caused or contributed to by HHSC or its agents. If at any time, HHSC determines the MA Dual SNP has not met any aspect of the responsibilities of this Agreement due to mitigating circumstances, HHSC reserves the right to waive all or part of the liquidated damages. All such waivers must be in writing, contain the reasons for the waiver, and must be signed by the appropriate executive of HHSC.

(2) The liquidated damages prescribed in Section 7.02(c)(1)(A)–(B) are not intended to be in the nature of a penalty, but are intended to be reasonable estimates of HHSC's projected financial loss and damage resulting from the MA Dual SNP's nonperformance, including financial loss as a result of project delays. Accordingly, in the event the MA Dual SNP fails to perform in accordance with this Agreement, HHSC may assess liquidated damages as provided in this Article.

(3) If the MA Dual SNP fails to perform any of the responsibilities described in this Agreement, HHSC may assess liquidated damages for each occurrence of a liquidated damages event, to the extent consistent with HHSC's tailored approach to remedies and Texas law.

(4) HHSC may elect to collect liquidated damages:

(A) Through direct assessment and demand for payment delivered to the MA Dual SNP;

or

(b) By deduction of amounts assessed as liquidated damages as set-off against payments then due to the MA Dual SNP or that become due at any time after assessment of the liquidated damages. HHSC will make deductions until the full amount payable by the MA Dual SNP is received by HHSC.

(e) Equitable Remedies.

(1) The MA Dual SNP acknowledges that, if the MA Dual SNP breaches (or attempts or threatens to breach) its material obligation under this Agreement, HHSC may be irreparably harmed. In such a circumstance, HHSC may proceed directly to court to pursue equitable remedies.

(2) If a court of competent jurisdiction finds that the MA Dual SNP breached (or attempted or threatened to breach) any such obligations, the MA Dual SNP agrees that without any additional findings of irreparable injury or other conditions to injunctive relief, it will not oppose the entry of an appropriate order compelling performance by the MA Dual SNP and restraining it from any further breaches (or attempted or threatened breaches).

Section 7.03 Termination.

(a) This Agreement may be terminated by mutual written agreement of the parties.

(b) HHSC may terminate the Agreement in whole or in part and at any time when, in its sole discretion, it determines that termination is in the best interests of HHSC. The termination will be effective on the date specified in HHSC's notice of termination. HHSC will provide the MA Dual SNP written notice of this termination at least 30 calendar days prior to the effective date of termination, unless HHSC determines that circumstances warrant a shorter notice period.

(c) In addition to the reasons set forth above or as otherwise provided by the U.S. Bankruptcy Code, or any successor law, HHSC may terminate this Agreement upon the following conditions:

(1) HHSC may terminate this Agreement at any time if a court of competent jurisdiction finds MA Dual SNP failed to adhere to any laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of MA Dual SNP's duties under this Agreement.

(2) HHSC may terminate this Agreement at any time following the determination by a competent judicial or quasi-judicial authority and MA Dual SNP's exhaustion of all legal remedies that MA Dual SNP, its employees, agents, subcontractors, or representatives have either offered or given anything of value to an officer or employee of HHSC or the State of Texas in violation of state law. For purposes of this Section, a "thing of value" means any item of tangible or intangible property that has a monetary value of more than \$50.00 and includes, but is not limited to, cash, food, lodging, entertainment, and charitable contributions. The term does not include contributions to holders of public office or candidates for public office that are paid and reported in accordance with state or federal law.

(3) HHSC may terminate the Agreement if funds for the continued fulfillment of this Agreement by HHSC are at any time not forthcoming or are insufficient, through failure of any entity to appropriate funds or otherwise. HHSC will provide the MA Dual SNP written notice of such termination at least 120 calendar days prior to termination, unless circumstances warrant a shorter notice period.

(4) HHSC will have the right to terminate the Agreement at any time and in whole or in part if it determines, at its sole discretion, that the MA Dual SNP has materially breached the Agreement.

(d) The MA Dual SNP may terminate this Agreement by providing HHSC written notice at least 30 calendar days prior to termination. The termination will be effective on the date specified in the MA Dual SNP's notice of termination.

(e) In the event of termination pursuant to this Section, HHSC will pay the PMPM capitation payment for Cost Sharing Obligations incurred through the effective date of termination, provided the MA Dual SNP has complied with the submission requirements set forth in Section 3.02(b). All pertinent

provisions of the Agreement will form the basis of settlement. This provision will survive the termination of the Agreement.

Article VIII. DISPUTE RESOLUTION

Section 8.01 General Agreement of the Parties.

The parties mutually agree that the interests of fairness, efficiency, and good business practices are best served when the parties employ all reasonable and informal means to resolve any dispute under this Agreement. The parties express their mutual commitment to using all reasonable and informal means of resolving disputes prior to invoking a remedy provided elsewhere in this Section.

Section 8.02 Duty to Negotiate in Good Faith.

Any dispute that in the judgment of any party to this Agreement may materially or substantially affect the performance of this Agreement will be reduced to writing and delivered to the other party within ten business days. The parties must then negotiate in good faith and use every reasonable effort to resolve such dispute and the parties shall not resort to any formal proceedings unless they have reasonably determined that a negotiated resolution is not possible. The resolution of any dispute disposed of by agreement between the parties shall be reduced to writing and delivered to all parties within ten business days.

Section 8.03 Claims for Breach of Agreement.

(a) *General Requirement.* As required by Tex. Gov't Code Chapter 2260, any claim by the MA Dual SNP for breach of this Agreement must be resolved in accordance with the dispute resolution process established by HHSC in accordance with Tex. Gov't Code Chapter 2260.

(b) *Negotiation of Claims.* The parties expressly agree that any claim by the MA Dual SNP for breach of this Agreement that the parties cannot resolve in the ordinary course of business or through the use of all reasonable and informal means will be submitted to the negotiation process provided in Tex. Gov't Code Chapter 2260, Subchapter B.

(1) To initiate the process, the MA Dual SNP must submit written notice to HHSC that specifically states that the MA Dual SNP invokes the provisions of Tex. Gov't Code Chapter 2260, Subchapter B. The notice must comply with the requirements of Tex. Gov't Code Chapter 2260, Subchapter B and Tex. Admin. Code Chapter 392, Subchapter B.

(2) The parties agree that the MA Dual SNP's compliance with Tex. Gov't Code Chapter 2260, Subchapter B, will be a condition precedent to the filing of a contested case proceeding under Tex. Gov't Code Chapter 2260, Subchapter C.

(c) *Contested Case Proceedings.* The contested case process provided in Tex. Gov't Code Chapter 2260, Subchapter C, will be the MA Dual SNP's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by HHSC if the parties are unable to resolve their disputes under Section 8.03(b). The parties expressly agree that compliance with the contested case process provided in Tex. Gov't Code Chapter 2260, Subchapter C, will be a condition precedent to seeking consent to sue HHSC from the Texas Legislature under Chapter 107, Texas Civil Practices and Remedies Code. Neither the execution of this Agreement by HHSC nor any other conduct of any representative of HHSC relating to this Agreement will be considered a waiver of HHSC's sovereign immunity to suit.

(d) *HHSC Rules.* The submission, processing, and resolution of MA Dual SNP's claim is governed by 1 Tex. Admin. Code Chapter 392, Subchapter B, in addition to the provisions of Tex. Gov't Code Chapter 2260.

(e) *MA Dual SNP's Duty to Perform.* Neither the occurrence of an event constituting an alleged breach of contract nor the pending status of any claim for breach of contract is grounds for the suspension of performance, in whole or in part, by the MA Dual SNP of any duty or obligation with respect to the performance of this Agreement. Any changes to the Agreement as a result of a dispute resolution will be implemented in accordance with Section 9.05.

Article IX. MISCELLANEOUS PROVISIONS

Section 9.01 Non-Debarment.

The MA Dual SNP represents that neither it nor any of its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any state or federal healthcare program.

Section 9.02 Severability.

If any provision of the Agreement is for any reason held to be unenforceable, the rest of it remains fully enforceable.

Section 9.03 Successors and Assigns.

This Agreement binds all parties and their respective heirs, personal representatives, and, to the extent permitted by Section 9.04, successors and assigns.

Section 9.04 Assignment.

(a) The MA Dual SNP must not assign all or any portion of its rights under or interests in this Agreement or delegate any of its duties without prior written consent of HHSC. Any written request for assignment or delegation must be accompanied by written acceptance of the assignment or delegation by the assignee or delegation by the delegate. Except where otherwise agreed in writing by HHSC, assignment or delegation will not release the MA Dual SNP from its obligations under this Agreement.

(b) The MA Dual SNP understands and agrees HHSC may in one or more transactions assign, pledge, or transfer this Agreement. This assignment will only be made to another state agency or a non-state agency that is contracted to perform agency support.

Section 9.05 Modification, Amendment, or Waiver.

This Agreement may only be modified, amended, or waived by mutual written agreement or in accordance with Section 8.03 (e). No course of dealing between the parties will modify, amend, or waive any provision of this Agreement or any rights or obligations of any party under this Agreement.

Section 9.06 Notices.

All notices, consents, requests, instructions, approvals, or other communications provided for in this Agreement will be in writing and delivered by personal delivery, overnight courier, mail, e-mail or electronic facsimile addressed to the receiving party at the address listed in this Section. All communications will be effective when received.

HHSC: Medicaid/CHIP Contract Compliance	MA Dual SNP:
Sandra Faske	Name
4900 West 49th Street, Mail Code M-320	Address
Austin, Texas -78751	City, State, Zip
Fax 512-730-7452	Fax

A party may change the contact information in this Section by giving written notice to the other party.

Section 9.07 Record Retention and Audit.

(a) The MA Dual SNP agrees to maintain, and require its subcontractors to maintain, supporting information and documents that are adequate to ensure that payment is made in accordance with applicable federal and state requirements. These documents, including all original claims forms, will be maintained and retained by the MA Dual SNP or its subcontractors for a period of 10 years from the date the medical service or benefit is provided or until the resolution of all litigation, claim, financial management review, or audit pertaining to this Agreement, whichever is longer. The MA Dual SNP agrees to timely repay any undisputed audit exceptions taken by HHSC in any audit of the Agreement.

(b) If HHSC determines that it has overpaid the MA Dual SNP, HHSC will provide the MA Dual SNP with written notice of the overpayment, including the amount of overpayment and supporting information. The MA Dual SNP will promptly pay HHSC the amount of any undisputed overpayment the MA Dual SNP owes HHSC, plus interest. Interest on this amount will be calculated from the date of receipt by the MA Dual SNP of the undisputed overpaid amount until the date of payment to HHSC, and will be calculated at the Department of Treasury's Median Rate (resulting from the Treasury's auction of 13-week bills) for the week in which liability is assessed. In the event an audit reveals an overpayment caused in whole or in part by the MA Dual SNP's, its subcontractors' or agents' error, MA Dual SNP will reimburse HHSC for all costs of the audit.

(c) For purposes of this Section 9.07 only, the term "subcontractor" does not include Network Providers.

Section 9.08 SAO Audit.

The MA Dual SNP understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office (SAO), or any successor agency, to conduct an investigation in connection with those funds. The MA Dual SNP further agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. The MA Dual SNP will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through MA Dual SNP and the requirement to cooperate is included in any subcontract it awards.

Section 9.09 Access to records, books, and documents.

(a) Upon reasonable notice, MA Dual SNP must provide, and require its subcontractors to provide, the officials and entities identified in this Section with prompt, reasonable, and adequate access to any records, books, documents, and papers that are directly pertinent to the performance of this Agreement.

(b) MA Dual SNP and its subcontractors must provide the access described in this Section upon HHSC's request. This request may be for, but is not limited to, the following purposes: examination; audit; investigation; contract administration; or the making of copies, excerpts, or transcripts.

(c) The access required must be provided to the following officials or entities or their designees: the United States Department of Health and Human Services; the Comptroller General of the United States; HHSC; the HHSC Office of Investigations and Enforcement; the Office of the State Auditor of Texas; Texas or federal law enforcement agencies; a special or general investigating committee of the Texas Legislature; and any other entity identified by HHSC.

(d) MA Dual SNP agrees to provide the access described wherever MA Dual SNP maintains these books, records, and supporting documentation. MA Dual SNP further agrees to provide such access in reasonable comfort and to provide any furnishings, equipment, or other conveniences deemed reasonably necessary to fulfill the purposes described in this Section. MA Dual SNP will require its subcontractors to provide comparable access and accommodations.

(e) Upon request, MA Dual SNP must provide copies of the information described in this Section free of charge to HHSC and the entities described in subsection (c).

Section 9.10 Governing Law & Venue.

This Agreement is governed by the laws of the State of Texas and interpreted in accordance with Texas law, except to the extent preempted by federal law. Provided the MA Dual SNP first complies with the procedures set forth in Article VIII, "Dispute Resolution," proper venue for a claim arising from this Agreement will be in a court of competent jurisdiction in Travis County, Texas. Additionally, any equitable remedy pursued by HHSC as referenced in Section 7.02(e) will be filed in a court of competent jurisdiction in Travis County, Texas.

Section 9.11 Publicity.

Except as otherwise required by this Agreement or by law, the MA Dual SNP must not use the name of HHSC, the State of Texas, or any other state agency, or refer to HHSC or any state agency directly or indirectly in any media release, public announcement, or public disclosure relating to the Agreement or its subject matter, including in any promotional or marketing materials, customer lists, or business presentations (other than proposals or reports submitted to HHSC, an administrative agency of the State of Texas, or a governmental agency or unit of another state or the federal government).

Section 9.12 Anti-trust.

The MA Dual SNP hereby certifies to HHSC that neither the MA Dual SNP, nor the person represented by the MA Dual SNP, nor any person acting for the represented person, has been found by a judgment of a court of law to have violated the anti-trust laws codified by Chapter 15, Texas Business and Commerce Code, or the federal anti-trust laws.

Section 9.13 CMS Approval.

This Agreement is subject to, and conditioned upon, CMS' approval of a Texas State Plan Amendment governing the use of a capitated fee arrangement with MA Dual SNPs to satisfy HHSC's Cost Sharing Obligations.

Section 9.14 Requests for public information.

(a) HHSC agrees that it will promptly notify the MA Dual SNP of a request for disclosure of information filed in accordance with the Texas Public Information Act, Tex. Gov't Code Chapter 552, that consists of information identified by the MA Dual SNP as "confidential information," including information to which the MA Dual SNP believes it has a proprietary or commercial interest. HHSC will deliver a copy of the request for public information to the MA Dual SNP.

(b) With respect to any information that is the subject of a request for disclosure, the MA Dual SNP is required to demonstrate to the Texas Office of Attorney General the specific reasons why the requested information or data is confidential or otherwise excepted from required public disclosure under law. The MA Dual SNP will provide the HHSC point-of-contact identified in Section 9.06 with copies of all communications made under this section.

(c) The MA Dual SNP must make information defined as public information not otherwise excepted from disclosure under the Texas Public Information Act, Tex. Gov't Code Chapter 552 available to HHSC in a format agreeable to HHSC, accessible by the public, and at no additional charge to HHSC.

(d) To the extent authorized under the Texas Public Information Act, HHSC agrees to safeguard from disclosure information received from the MA Dual SNP that the MA Dual SNP identifies as confidential information. The MA Dual SNP must clearly mark such information as confidential information or provide written notice to the HHSC point-of-contact identified in Section 9.06 that it considers the information confidential and must explain why the information is confidential under the recognized exceptions of the Texas Public Information Act.

Section 9.15 Privacy, Security, and Breach Notification.

(a). "HHS Confidential Information" means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to the MA Dual SNP or that the MA Dual SNP may create, receive, maintain, use, disclose or have access to on behalf of HHS that consists of or includes any or all of the following:

- (1) Client Information;
- (2) Protected Health Information in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information;
- (3) Sensitive Personal Information defined by Texas Business and Commerce Code Ch. 521;
- (4) Federal Tax Information;
- (5) Personally Identifiable Information;
- (6) Social Security Administration Data, including, without limitation, Medicaid information;
- (7) All privileged work product of HHS;

(8) All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552.

(b). Any HHS Confidential Information received by the MA Dual SNP in performing services under this Agreement may be disclosed only in accordance with applicable law. By signing this agreement, the MA Dual SNP certifies that the MA Dual SNP is, and intends to remain for the term of this agreement, in compliance with all applicable state and federal laws and regulations with respect to privacy, security, and breach notification, including without limitation, the following:

(1) The relevant portion of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) 42 U.S.C. Chapter 7, Subchapter XI, Part C;

(2) 42 CFR Part 2 and 45 CFR Parts 160 and 164;

(3) The relevant portions of The Social Security Act, 42 U.S.C. Chapter 7;

(4) The Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a;

(5) Internal Revenue Code, Title 26 of the United States Code including IRS Publication 1075;

(6) OMB Memorandum 07-18;

(7) Texas Business and Commerce Code Chapter 521;

(8) Texas Health and Safety Code Chapters 81, 181 and 611;

(9) Texas Human Resources Code § 12.003;

(10) Title 3 of the Texas Occupations Code, as applicable;

(11) Constitutional and Common Law Privacy; and

(12) Any other applicable law controlling the release of information created or obtained in the course of providing the services described in the Contract.

The MA Dual SNP further certifies that it will comply with all amendments, regulations, and guidance relating to those laws, to the extent applicable.

This Agreement is executed by the parties in their stated capacities below.

HEALTH AND HUMAN SERVICES COMMISSION

**MEDICARE ADVANTAGE DUAL ELIGIBLE
SPECIAL NEEDS PLAN**

By: _____

By: _____

Chris Traylor

Printed Name: _____

Chief Deputy Commissioner

Title: _____

Date: _____

Date: _____