

**Health Mart Atlas DIR Assist (“HMA DIR Assist”)  
Terms & Conditions  
Effective Date – April 13, 2023**

Beginning January 1, 2024, PBMs will be required to assess direct and indirect remuneration (DIR) fees at the point-of-sale instead of retroactively. To assist HMA member pharmacies during the transition period when both retroactive and point-of-sale DIR fees will be due after the new rule becomes effective, Health Mart Atlas (HMA) has created HMA DIR Assist (the “Program”). Under HMA DIR Assist, HMA will withhold, at the pharmacy’s request, a portion of the pharmacy’s reimbursement through the Consolidated Reimbursement Program to pay DIR fees for claims filled by your pharmacy from July through December 2023. By opting in and agreeing to these Terms & Conditions, you hereby agree to participate in HMA DIR Assist.

**SCOPE**

These HMA DIR Assist Terms & Conditions of use are conditional upon you completing the steps required to enroll in HMA DIR Assist. HMA retains the right both to refuse your enrollment and to terminate these HMA DIR Assist Terms & Conditions of use at its sole discretion upon notice to you. If you do not wish to set aside funds to satisfy DIR obligations, please do not enroll in HMA DIR Assist. By agreeing to the HMA DIR Assist Terms & Conditions of use you acknowledge that HMA may use other business associates, vendors, and subcontractors in providing the services contemplated hereunder.

By agreeing to these HMA DIR Assist Terms & Conditions of use, which you will do by electronically checking a box or signing to indicate your acceptance of the terms contained herein, you acknowledge and agree that you have carefully read, and fully understand all of the terms and conditions of HMA DIR Assist, and enter into this HMA DIR Assist Terms & Conditions on behalf of the legal entity you represent freely, knowingly, and without coercion, intending to be legally bound thereby.

You hereby acknowledge and agree that you authorize HMA to withhold a portion of your pharmacy’s reimbursement under the Consolidated Reimbursement Program for HMA DIR Assist. The total amount to be withheld is determined solely by you, without influence from HMA. The total amount will be collected by withholding a percentage from each reimbursement under the Consolidated Reimbursement Program from July through December 2023. Once the full amount that you have requested has been withheld, it will be used to satisfy remaining 2023 DIR fees for Caremark and Prime Therapeutics, as applicable to your pharmacy. You acknowledge and agree that HMA may be unable to withhold the amount that you request for the HMA DIR Assist program if your pharmacy’s payor reimbursements are not sufficient. If the amount withheld is insufficient to satisfy outstanding 2023 DIR obligations, the balance due will be offset against incoming payments to you from funds that HMA receives from payors on your behalf under the Consolidated Reimbursement Program. Conversely, if the funds withheld exceed the amount needed to satisfy total outstanding 2023 DIR obligations, the excess funds will be returned to you.

You authorize Health Mart, and their designees, including their business associates, vendors, and subcontractors to use and disclose all necessary pharmacy data to provide the HMA DIR Assist services.

HMA may modify, in its sole discretion, the information required from you for your enrollment in HMA DIR Assist. Upon such a modification by HMA and notice to you, you must provide the additional or updated information to HMA within a reasonable period of time, as requested.

Through the end of the enrollment period, you may modify the amount that you choose to have withheld for HMA DIR Assist by visiting the HMA DIR Assist enrollment portal and completing a new enrollment for the new amount that you elect to have withheld. After enrollment closes, you may modify the amount withheld by sending your request in writing to [operations.hmatlas@mckesson.com](mailto:operations.hmatlas@mckesson.com), and such request will be processed within fifteen (15) days.

#### **APPOINTMENT OF HMA AS ATTORNEY IN FACT**

You hereby constitute and appoint HMA as the true, lawful, sole and exclusive attorney for your pharmacy, with full power of substitution, in the name of the pharmacy for the following purposes: to withhold a percentage of funds received under the Consolidated Reimbursement Program from future payments to your pharmacy to be applied to meet your pharmacy's DIR obligations, and for other purposes related to the administration of HMA DIR Assist.

#### **COMPANY RECOUPMENT RIGHTS**

You acknowledge and agree that if you, either directly or as a result of participation in a network, is or is reasonably anticipated by HMA to become subject to a negative charge, recoupment, true-up or other fee or clawback from a Payor, or otherwise has a debit balance for one or more Participating Provider Locations, HMA may, at its option, use funds set aside for HMA DIR Assist to satisfy such network obligations.

#### **DISCLAIMERS & LIMITATIONS**

Neither HMA nor its business associate or vendors are a party to, nor is HMA or its business associate or vendors otherwise involved in, any transactions entered into by you. Furthermore, neither HMA nor its business associate or vendors shall be liable for any dispute that arises between you and any third party.

#### **LIMITATION OF LIABILITY**

You acknowledge and agree that in no event shall HMA, its owners, its owners' parents, and the affiliates and subsidiaries of its owners and its owners' parents, or any of their respective officers, directors, employees, subcontractors or representatives, be liable to you for any special, indirect, incidental or consequential, punitive or exemplary damages, loss of profits, or loss of goodwill, upon any cause of action even if HMA has been notified of the likelihood of such damages occurring. You agree that the sole and exclusive remedy available to you shall be limited to the recovery of actual direct damages not in excess of the total member fees actually paid to HMA in the most recent six (6) months, reduced by any amounts paid, credited, or refunded to you by HMA. You agree that this limitation of liability shall survive and continue in full force and effect despite any failure of an exclusive remedy. Such limitation of liability shall survive expiration or termination of these Terms & Conditions.

You understand that these limitations form a part of the basis of the bargain in allowing you to enroll in and use HMA DIR Assist.

### **REPRESENTATIONS & COVENANTS**

YOU REPRESENT, WARRANT AND COVENANT THAT: (I) YOU HAVE THE AUTHORITY TO ENTER INTO THESE TERMS & CONDITIONS; (II) YOU ARE A BONA FIDE PHARMACY IN BUSINESS UNDER THE APPROPRIATE STATE AND/OR FEDERAL LAWS AND REGULATIONS AND HOLD ALL NECESSARY LICENSES REQUIRED TO OPERATE LAWFULLY; (III) YOU, AND NOT HMA, HAVE DETERMINED THE DOLLAR AMOUNT, EXPRESSED AS A PERCENTAGE, TO BE WITHHELD FROM CONSOLIDATED REIMBURSEMENT PAYMENTS FOR HMA DIR ASSIST.

### **INDEMNITY**

YOU AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS HMA, ITS BUSINESS ASSOCIATES, ITS OWNERS, ITS OWNERS' PARENTS, AND THE AFFILIATES AND SUBSIDIARIES OF ITS OWNERS AND ITS OWNERS' PARENTS, AND ALL OF THEIR RESPECTIVE DIRECTORS, OFFICERS AND REPRESENTATIVES, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, LOSSES, DAMAGES, CAUSES OF ACTION OR INJURIES, TOGETHER WITH COST AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING OUT OF YOUR PARTICIPATION IN HMA DIR ASSIST AND THESE TERMS & CONDITIONS. THE OBLIGATIONS STATED HEREIN SHALL SURVIVE EXPIRATION OR TERMINATION OF THESE TERMS & CONDITIONS.

### **SEVERABILITY**

Any provision of these Terms & Conditions that is illegal, invalid or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such illegality, invalidity or unenforceability and will be modified to the minimum extent necessary to make such provision legal, valid and enforceable while maintaining the intentions of the parties. Should such modification prove to be impractical or impermissible, the offending provision will be severed from the balance of these Terms & Conditions, without affecting the remaining provisions of these Terms & Conditions or affecting the legality, validity or enforceability of such provision in any other jurisdiction.

### **FORCE MAJEURE**

HMA has no obligation to perform under these Terms & Conditions to the extent and for the period that HMA is prevented from doing so by any cause beyond its reasonable control.

### **TERMINATION**

These Terms & Conditions commence as of the date that you opt-in to HMA DIR Assist and will continue until July 31, 2024, or until otherwise terminated in accordance with these Terms & Conditions. Either party may terminate these Terms & Conditions without cause upon fifteen (15)

days' prior written notice. These Terms & Condition will automatically terminate in the event your participation as a member of HMA terminates.

Without limiting any other rights or remedies available to HMA under these Terms & Conditions, at law or in equity, these Terms & Conditions shall immediately terminate if any of the following occurs:

- Bankruptcy or insolvency proceedings are taken by or against you or if a receiver, trustee or other similar person is appointed over your assets;
- After receiving notice in writing from HMA, you fail to immediately observe or perform any of your obligations under these Terms & Conditions; or
- You do not complete the opt-in process accurately or your request is not accepted by HMA for any reason.

### **ENTIRE AGREEMENT**

These HMA DIR Assist Terms & Conditions are incorporated into and amend the agreement entered into between your pharmacy and HMA for PSAO services (the "Participation Agreement"), and constitute the entire agreement between the parties with respect to participation in HMA DIR Assist. These Terms & Conditions supersede all prior written or oral negotiations, agreements, representations and other communications between the parties with respect to HMA DIR Assist. To the extent that there is a conflict between these Terms & Conditions and your Participation Agreement, these Terms & Conditions will control only with respect to HMA DIR Assist. All other terms and conditions in the Participation Agreement shall remain in full force and effect.

### **ASSIGNMENT OF TERMS & CONDITIONS**

You may not assign these Terms & Conditions without the prior written consent of HMA. HMA may assign these Terms & Conditions without your prior written consent. These Terms & Conditions shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

### **INDEPENDENT CONTRACTORS**

The parties acknowledge that each is an independent contractor, and neither is the agent, representative, partner, fiduciary or trustee of the other party and neither party has the authority to act as or represent itself as an agent of the other party.

### **GOVERNING LAW**

These Terms & Conditions shall be governed by and construed in accordance with the laws of the State of Ohio and the federal laws of the United States, without regard to conflicts of laws principles. These Terms & Conditions shall be deemed to have been performed and occurred in the State of Ohio and the courts of that State shall have exclusive jurisdiction to entertain any action arising under these Terms & Conditions. You hereby irrevocably submit to the exclusive jurisdiction and venue of the state courts of the State of Ohio, located in Franklin County, and the

federal courts located in Franklin County and waive any objections as to personal jurisdiction, venue and forum non conveniens.

## **NOTICES**

Any notice required to be given under these Terms & Conditions to HMA shall be sent to [operations.hmatlas@mckesson.com](mailto:operations.hmatlas@mckesson.com) and/or to HMA at Health Mart Atlas, CoverMyMeds Building, 910 John Street, Columbus, OH 43222, unless otherwise notified by HMA. Any notice required to be given under these Terms & Conditions to you shall be sent to the contact information set forth on NCPDP. Notice may be given by (i) hand delivery, (ii) certified mail, return receipt requested, postage prepaid, (iii) by national overnight courier with delivery charges prepaid; (iv) email; or (v) other means specifically permitted under these Terms & Conditions. With respect to the preceding sentence, notice shall be deemed to be sufficient and effective immediately when delivered by hand or email, or three (3) business days after being mailed or couriered. Notwithstanding the foregoing, any notice required to be given pursuant to these Terms & Conditions, may be given by HMA by posting such notice on the HMA network portal(s), and such notice shall be deemed to be sufficient and effective fifteen (15) calendar days following posting of such notice on the network portal(s).

## **INTERPRETATION**

The division of these Terms & Conditions into sections and the insertion of headings are for convenience or reference only and shall not affect the construction or interpretation of the Terms & Conditions. Unless the context otherwise requires, words using the singular include the plural and vice versa, and words importing gender includes all genders. When used in these Terms & Conditions, the word “including” (or includes) means “including (or includes) without limitation.” Any reference in these Terms & Conditions to a “person” will be deemed to include an individual, corporation, partnership, trust, unincorporated organization, government and the heirs, executors, administrators or other legal representation of an individual.

## **AMENDMENT AND WAIVER OF THESE TERMS & CONDITIONS**

HMA may modify any provision of these Terms & Conditions upon fifteen (15) days’ written notice to you. You shall be deemed to have accepted HMA’s modification if you fail to object to such modification, in writing, within the fifteen (15) day notice period. If the modifications materially affect your responsibilities or rights, you shall have the right to terminate these Terms & Conditions. Notwithstanding the foregoing, amendments required by legislative, regulatory, or other legal authority, as determined by HMA, do not require your consent and shall be effective immediately upon your receipt of notice of amendment.