



NOW, THEREFORE, the parties desiring to fully and finally resolve all matters alleged and in consideration of the mutual undertakings established herein, the CSI and Prime enter into the following:

### STIPULATIONS AND CONSENTS

Without admitting or denying any of the CSI's allegations, Prime stipulates and consents with the CSI to the following:

1. Prime agrees to pay the costs of an independent third-party examination by Remedy Analytics, Inc. ("Remedy"), as provided in the Stipulation, in an amount not to exceed \$375,000. Remedy will invoice Prime directly and Prime will pay Remedy directly for the costs of the examination. Such payment is not a fine or penalty but shall be used to pay for the independent examination by Remedy.

2. Within three (3) business days of execution of this Consent Agreement and the Final Order attached hereto and execution of the Stipulation, the CSI will approve Prime's pending application for and issue Prime its certificate of registration as an administrator.

3. Prime will comply with the RFI and the Subpoena as set forth in the Stipulation between the parties dated as of even date herewith (the "Stipulation"). Additionally, Prime will promptly provide any additional information requested by Remedy that may not have been addressed in the RFI or Stipulation but that may be necessary for complete examination as set forth in Remedy's Scope of Work approved by CSI as part of the Review Contract, so long as the additional information is related to the RFI, as amended by-Exhibit A to the Stipulation.

4. Prime acknowledges that its authorized representative signing this Consent Agreement has read and understands each term of this Consent Agreement and that this Consent Agreement is entered into voluntarily and without reservation.

5. Prime and the CSI agree that this Consent Agreement resolves the alleged violations relating to this action.

6. Prime and the CSI hereby acknowledge and agree that this Consent Agreement and the Stipulation constitute the entire agreement between the parties and that no other promises or agreements, either express or implied, have been made by the CSI or by any member, officer, agent, or representative of the CSI to induce Prime to enter into this Consent Agreement.

7. With respect to the allegations herein, Prime specifically and affirmatively waives a contested case hearing and its right to appeal under the Montana Administrative Procedure Act, including Title 2, Chapter 4, Part 7, and elects to resolve this matter on the terms and conditions set forth herein.

8. The CSI warrants and represents that it does not now have any intent to bring further action against Prime for the conduct alleged during the relevant period relating to this action.

9. Prime fully and forever releases and discharges the CSI, and all CSI employees and agents from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of the CSI's allegations.

10. The parties acknowledge and agree that this Consent Agreement may not be modified orally, and any subsequent modifications to this Consent Agreement must be mutually agreed upon in writing with the same formality of this Consent Agreement to be effective.

11. The CSI and Prime agree that this Consent Agreement shall be incorporated into and made a part of the attached Final Order issued by the Montana State Auditor, Commissioner of Securities and Insurance ("Commissioner") herein.

12. Prime further understands that, upon the signing of the Final Order by the Commissioner or his representative, this Consent Agreement and Final Order will be an Order of the CSI and failure to comply with it may constitute a separate violation of the Montana Insurance Code, as provided in Mont. Code Ann. § 33-1-318, and may result in subsequent legal action by the CSI.

13. Upon execution of this Consent Agreement and the Stipulation, the CSI shall fully and forever release and discharge Prime, Prime's employees, and Prime's agents from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of the allegations herein, and will not commence any further administrative, civil, or other legal action based upon the regulatory non-compliance alleged herein.

14. This Consent Agreement shall be effective upon signing of the Final Order.

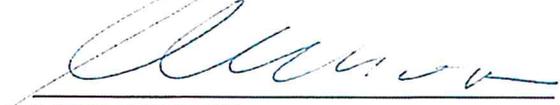
15. Prime acknowledges that this Consent Agreement and Final Order are public records under Montana law and as such may not be sealed or otherwise withheld from the public.

*[Consent Agreement signature page follows]*

[Consent Agreement Signature Page]

DATED this 14 day of December, 2018.

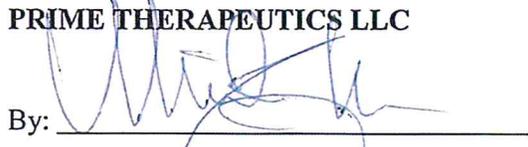
OFFICE OF THE  
MONTANA STATE AUDITOR



MIKE WINSOR  
Attorney

DATED this 17 day of December, 2018.

PRIME THERAPEUTICS LLC



By: \_\_\_\_\_

Its: SVP, GENERAL COUNSEL

**FINAL ORDER**

Pursuant to the authority vested by Mont. Code Ann. § 2-4-603, and the Montana Insurance Code, Mont. Code Ann. § 33-1-101 et seq., and upon review of the foregoing Consent Agreement and good cause appearing,

IT IS HEREBY ORDERED that the foregoing Consent Agreement between the CSI and Prime is hereby adopted as set forth fully herein.

IT IS FURTHER ORDERED that the administrative proceeding in this matter is dismissed.

DATED this 17<sup>th</sup> day of December, 2018.

**MATTHEW M. ROSENDALE, SR.**  
Montana State Auditor  
Commissioner of Securities and Insurance

By:   
\_\_\_\_\_  
**KRISTIN HANSEN**  
Chief Legal Counsel

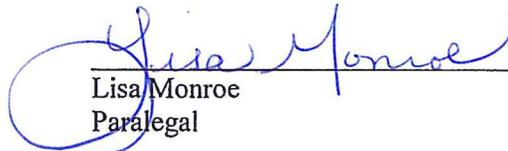
cc. Mike Winsor and Derek Oestreicher, CSI  
Greg Gould, Prime

**CERTIFICATE OF SERVICE**

This is to certify that a true and accurate copy of the foregoing document was hand delivered, picked up by courier, emailed, or sent by U.S. Mail, postage paid, this 17<sup>th</sup> day of December, 2018, to the following:

PRIME THERAPEUTICS LLC  
c/o Greg Gould  
Luxan & Murfitt, PLLP  
P.O. Box 1144  
24 West 6<sup>th</sup> Avenue, 4<sup>th</sup> Floor  
Helena, MT 59624

PRIME THERAPEUTICS LLC  
c/o Mike Kolar, Senior VP, General Counsel  
1305 Corporate Center Dr.  
Eagan, MN 55121

  
\_\_\_\_\_  
Lisa Monroe  
Paralegal

## STIPULATION

The Stipulation is entered into by and between Prime Therapeutics LLC (“Prime”) and the Office of the Montana State Auditor, Commissioner of Securities and Insurance (“CSI”).

## RECITALS

WHEREAS, CSI is statutorily required to enforce the Montana Insurance Code, Mont. Code Ann. § 33-1-311, and is responsible to regulate administrators, § 33-17-602 *et seq.*;

WHEREAS, on October 3, 2017, CSI sent a written Request for Information to Prime, pursuant to § 33-1-315, for the production of information and documentation, and CSI has amended the Request for Information to add additional information requests (the amended Request for Information is referred to herein as the “RFI”);

WHEREAS, on October 26, 2017, the CSI served a subpoena duces tecum upon HCSC encompassing certain of the information requested in the RFI;

WHEREAS, a person who knowingly fails to produce records, documents, or other evidence requested by CSI is subject to the provisions of §§ 33-1-317 and 33-1-318;

WHEREAS, Prime contends that the information it is producing in response to the RFI (“Responsive Information”) constitutes confidential and proprietary information subject to constitutional and statutory protections, as set forth in its affidavits referenced in ¶ 3, below;

WHEREAS, § 33-17-611 requires the CSI to protect the confidentiality of trade secrets contained in the books and records produced to the CSI by Prime;

WHEREAS, *Great Falls Tribune v. Montana Public Service Commission*, 2003 MT 359, 319 Mont. 38, 82 P.3d 876, specifies a process for requesting and granting trade secret status to materials filed with a governmental agency;

WHEREAS, the parties have agreed that Prime will produce the Responsive Information, as defined herein below, to an independent third-party examiner (“Examiner”) as provided in this Stipulation, rather than to CSI;

NOW, THEREFORE, Prime and the CSI hereby agree as follows:

1. A categorized list of Responsive Information is attached hereto as Exhibit A and incorporated herein by reference. Prime will produce the Responsive Information to the CSI’s Examiner by means of a rolling production schedule, beginning within 14 days after the Commencement Date, which shall be the date as of which all of the following documents are fully executed: (a) this Stipulation; (b) the Consent Agreement and Final Order described in ¶ 7, below; (c) the Review Contract described in ¶ 2, below; and (d) the Confidentiality Agreement(s) between Prime and the Examiner described in ¶ 2,

below. Prime shall make all commercially reasonable efforts to complete production no later than eight weeks after the Commencement Date.

2. CSI and Prime agree that Remedy Analytics, Inc. (“Remedy”) will be the Examiner for purposes of this Stipulation. Prime will contract directly with Remedy for review and analysis of the Responsive Information and provision of a written report (the “Report”) to CSI (the “Review Contract”), provided that the scope of work, completion dates and deliverables in the Review Contract shall be subject to approval by CSI. Remedy shall invoice Prime directly and Prime shall pay Remedy directly for all amounts due and payable under the Review Contract; provided that the total of all fees, costs, charges and other amounts payable by Prime under the Review Contract shall not exceed the sum of \$375,000.00. Remedy shall also be required to enter into such commercially reasonable confidentiality, business associate and other agreements (the “Confidentiality Agreements”) with Prime as Prime may require to assure and provide for the privacy, security and nondisclosure of the Responsive Information. Prime shall make all commercially reasonable efforts to expedite negotiation and execution of the Review Contract and the Confidentiality Agreements.
3. Prime has furnished or will furnish CSI with affidavits, in accordance with the process specified in *Great Falls Tribune, supra*, with respect to the information or documentation for which Prime seeks trade secret protection. The CSI will allow Prime to supplement these affidavit submissions as necessary to provide additional information in support of its requests for trade secret protection.
4. The CSI will grant the Responsive Information trade secret status. In accordance with applicable law, including § 33-17-611, the CSI will treat and handle all trade secret and/or confidential materials as “confidential,” and protected from disclosure, including but not limited to, disclosure pursuant to a public records request or Freedom of Information Act request. Accordingly, the CSI will deny any such request and, in the event any requestor pursues legal action regarding such request, shall notify Prime of such action as soon as practicable, but in no event later than five days after receiving notice of such action. Such notice shall be made by email to [Legal@PrimeTherapeutics.com](mailto:Legal@PrimeTherapeutics.com) with attention to the Litigation Team.
5. At least ten business days prior to disclosing, publishing or otherwise making available to any non-CSI employee (including any consultant retained by the CSI) either the Responsive Information or information derived from the Responsive Information, the CSI will notify Prime of the planned disclosure and the identity of the party or parties to whom information will be disclosed. Notice will be made by email to [Legal@PrimeTherapeutics.com](mailto:Legal@PrimeTherapeutics.com) with attention to the Litigation Team.
6. Prior to making available to any non-CSI employee either the Responsive Information or information derived from the Responsive Information, the CSI shall require the non-CSI employee to enter into a non-disclosure/confidentiality agreement with the CSI and provide Prime with a copy of the executed non-disclosure/confidentiality agreement. Such non-disclosure/confidentiality agreement shall provide that any such non-CSI

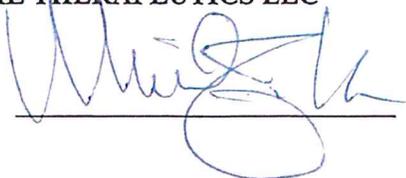
employee shall be bound by the terms of this Stipulation. The CSI may not be held liable for any breach of the non-CSI employee.

7. The parties acknowledge that Prime has entered into this Stipulation in reliance upon the terms and conditions of the Consent Agreement and Final Order between the parties in CSI Case No. INS-2018-101, dated on or about even date herewith. This Stipulation shall become effective upon execution of this Stipulation and execution of the Consent Agreement and Final Order.
8. Upon Prime's production of the Responsive Information, the parties will jointly request dismissal of Cause No. DDV 2018-328 currently pending in the Montana First Judicial District Court, with each party to bear its own fees and costs.
9. Prime's production of the Responsive Information satisfies Prime's obligations under the RFI and satisfies HCSC's obligations under the October 26, 2017, subpoena duces tecum, except in the event that the CSI notifies Prime in writing, within 30 days of Prime's completion of production under ¶ 1: that Prime's production does not satisfy Prime's obligation under the RFI; the specific deficiencies; and the documents or information must be produced to cure each such deficiency. Prime's production of the documents and information specified in such notice shall satisfy all remaining obligations of Prime and HCSC under the RFI and subpoena duces tecum.
10. The terms of this Stipulation apply to all Responsive Information produced by Prime pursuant to the October 3, 2017 RFI, or by HCSC pursuant to the October 26, 2017, subpoena, including information produced both before and after the execution of this Stipulation, however Prime agrees to transmit previously disclosed information directly to the Examiner in accordance with ¶ 1 of this Stipulation.
11. The CSI acknowledges and agrees that it has requested the Responsive Information for purposes of developing and proposing policy and law regarding prescription drug pricing and related issues. The Examiner will review and analyze the Responsive Information and provide CSI with a written report (the "Report"). The CSI agrees that Prime will be provided with a draft copy of the Report and an opportunity to comment regarding the Report before it is made final. CSI further agrees that the Report shall not identify Prime by name, by client, by market share or otherwise, and that the Report will be confidential.
12. This Stipulation may be signed in counterparts and any electronic version shall be as effective as the original.

*[Stipulation signature page follow]*

*[Stipulation signature page]*

**PRIME THERAPEUTICS LLC**

By: \_\_\_\_\_

Its: SVP, GENERAL COUNSEL

**OFFICE OF THE MONTANA STATE AUDITOR  
COMMISSIONER OF SECURITIES AND INSURANCE**

By: \_\_\_\_\_  
KRISTIN HANSEN  
Chief Legal Counsel

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## EXHIBIT A

Below is a categorized list of Responsive Information produced, or required and agreed to be produced, in response to the Request for Information issued to Prime Therapeutics LLC by the Montana Commissioner of Securities and Insurance on or about October 3, 2017, for information from "October 1, 2012, to present," as amended (the "RFI"). Accordingly, the information below spans October 1, 2012, through October 3, 2017. The Responsive Information will be produced directly to the CSI's independent examiner ("Examiner") as specified in the Stipulation into which this Exhibit A is incorporated.

### **Request No. 1**

Health Care Service Corporation, a Mutual Legal Reserve Company ("HCSC"), is the only Montana licensed insurer transacting insurance in Montana, whose pharmacy benefits are managed by Prime. Prime has already produced all contracts between HCSC and Prime. Prime has already produced the requested claims data via HCSC. Prime will produce all previously produced contracts with HCSC and requested claims data to the Examiner.

### **Request No. 2**

Prime has already produced a list of Montana pharmacies with whom Prime has contractual agreements. Prime will produce the contracts it has with the previously identified pharmacies and/or with PSAOs representing Montana pharmacies.

### **Request No. 3**

Prime will produce all contracts it has with pharmaceutical manufacturers. Prime, as a pharmacy benefit manager, has no contracts with wholesalers.

### **Request No. 4**

Prime does not have responsive information with respect to pharmacy benefit managers as it does not contract with any pharmacy benefit managers licensed in Montana. Prime contracts with HCSC, which performs third-party administrator services for self-funded plans in Montana. Prime has already produced all contracts between HCSC and Prime pursuant to Request No. 1.

### **Request No. 5**

Prime will produce all MAC lists. All formulary agreements also fall within the scope of Request No. 3 and will be produced pursuant to Request No. 3.

### **Request No. 6**

Prime will produce an accounting of pharmaceutical rebates received from the manufacturers identified in Request No. 3. Prime, as a pharmacy benefit manager, has no contracts with wholesalers and thus has received no pharmaceutical rebates from wholesalers.

**Request No. 7**

Prime will produce the requested documentation and/or a narrative responsive to the following Request:

Please identify the business entity relationship(s) between Prime, Prime Mail and Prime Specialty. If Prime Mail and/or Prime Specialty are separate business entities from Prime, identify the structure, relationship to Prime, and ownership of the respective entities. If Prime Mail and/or Prime Specialty provide services to Prime in fulfilling Prime's contractual obligations to HCSC affecting Montana insurance consumers, please provide contracts between Prime and the respective entities, list(s) of services provided to Prime, claims data identified in Request 1 and 8, and the entity providing claims adjudication services for Prime Mail and Prime Specialty

**Request No. 8**

Prime will produce the requested documentation and/or a narrative responsive to the following Request:

For claims data produced in response to Request No. 1, include: (1) fields for the amount billed to HCSC for pharmacy claims paid by Prime on behalf of BCBSMT and (2) all fields used to calculate the final dollar amount due and paid to the pharmacies.

# COMMISSIONER OF SECURITIES & INSURANCE

MATTHEW M. ROSENDALE, SR.  
COMMISSIONER



OFFICE OF THE MONTANA  
STATE AUDITOR

Prime Therapeutics, LLC  
c/o Greg Gould, Esq.  
Luxan & Murfit, PLLP  
P.O. Box 1144  
24 West 6<sup>th</sup> Avenue, 4<sup>th</sup> Floor  
Helena, MT 59624

*Served via email attachment*

Dear Mr. Gould:

As per our discussions, the Request for Information to Prime Therapeutics, LLC dated October 3, 2017, is hereby amended as follows:

Request 7: Please identify the business entity relationship(s) between Prime, Prime Mail and Prime Specialty. If Prime Mail and/or Prime Specialty are separate business entities from Prime, identify the structure, relationship to Prime, and ownership of the respective entities. If Prime Mail and/or Prime Specialty provide services to Prime in fulfilling Prime's contractual obligations to HCSC affecting Montana insurance consumers, please provide contracts between Prime and the respective entities, list(s) of services provided to Prime, claims data identified in Request 1 and 8, and the entity providing claims adjudication services for Prime Mail and Prime Specialty.

Request 8: For claims data produced in response to Request No. 1, include: (1) fields for the amount billed to HCSC for pharmacy claims paid by Prime on behalf of BCBSMT and (2) all fields used to calculate the final dollar amount due and paid to the pharmacies.

Best regards,

A handwritten signature in blue ink, appearing to read "Mike Winsor".

Mike Winsor  
Attorney