CITY OF PORTLAND
AGREEMENT FOR PHARMACY BENEFIT MANAGEMENT SERVICES

CONTRACT NUMBER 30005232

TITLE OF WORK PROJECT
Health Plan Pharmacy Benefit Management Contract

This contract is between the City of Portland ("City," or "Bureau") and Express Scripts, Inc., hereafter called Consultant. The City's Project Manager for this contract is the City of Portland Health & Financial Benefits Manager.

Effective Date and Duration
This contract shall become effective on July 1, 2016. This contract shall expire, unless otherwise terminated or extended, on June 30, 2021.

Consideration
(a) City agrees to pay Consultant a sum not to exceed $9,000,000 for Pharmaceutical Benefit Management Services during plan year 2016-17. Future annual costs will be mutually agreed by both parties based on plan utilization on an annual basis through the contract period. For internal tracking requirements, the cost of the 5 year contract period based upon the 5-year forecast is estimated to be $48,000,000. The parties do not intend for the Consultant to continue to provide services without compensation once the total compensation sum is reached.
(b) Payments shall be made to Contractor according to the schedule identified in the STATEMENT OF THE WORK AND PAYMENT SCHEDULE.

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CONSULTANT DATA AND CERTIFICATION

Name (print full legal name): _____

Address: _____

Employer Identification Number (EIN): _____
[INDEPENDENT CONSULTANTS: DO NOT PROVIDE SOCIAL SECURITY NUMBER (SSN) – LEAVE BLANK IF NO EIN]

City of Portland Business Tax Registration Number: _____

Citizenship: Nonresident alien ☐ Yes ☐ No

Business Designation (check one): ☐ Individual ☐ Sole Proprietorship ☐ Partnership ☐ Corporation
☐ Limited Liability Co (LLC) ☐ Estate/Trust ☐ Public Service Corp. ☐ Government/Nonprofit

Payment information will be reported to the IRS under the name and taxpayer I.D. number provided above. Information must be provided prior to contract approval.

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TERMS AND CONDITIONS

1. Standard of Care
Consultant shall perform all services under this contract using that care, skill, and diligence that would ordinarily be used by similar professionals in this community in similar circumstances.

2. Effect of Expiration
Passage of the contract expiration date shall not extinguish, prejudice, or limit either party's right to enforce this Contract with respect to any default or defect in performance that has not been corrected.

3. Order of Precedence
This contract consists of these Terms and Conditions, the Statement of Work and Payment Schedule, and any exhibits that are attached. Any apparent or alleged conflict between these items will be resolved by using the following order of precedence: a) These Terms and Conditions; b) Statement of Work and Payment Schedule; and c) any exhibits attached to the contract.

4. Early Termination of Contract

(a) Either party may terminate this Contract in the event of a material breach by the other party that is not cured. Before termination is permitted, the party seeking termination shall give the other party written notice of the breach, its intent to terminate, and thirty (30) calendar days to cure the breach. If the breach is not cured within 30 days, the party seeking termination may terminate immediately by giving written notice that the Contract is terminated.

5. Remedies and Payment on Early Termination

(a) If the City terminates pursuant to 4(a) above, the City shall pay the Consultant for work performed in accordance with the Contract prior to the termination date. No other costs or loss of anticipated profits shall be paid.

(b) If the City terminates pursuant to 4(b) above, the City is entitled all remedies available at law or equity. In addition, Consultant shall pay the City all damages, costs, and sums incurred by the City as a result of the breach.

(c) If the Consultant justifiably terminates the contract pursuant to subsection 4(b), the Consultant's only remedy is payment for work prior to the termination. No other costs or loss of anticipated profits shall be paid.

(d) If the City's termination under Section 4(b) was wrongful, the termination shall be automatically converted to one for convenience and the Consultant shall be paid as if the Contract was terminated under Section 4(a).

6. Assignment

Consultant may subcontract, assign, or transfer any of the work scheduled under this agreement, without the prior written consent of the City. The Consultant shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Consultant hereunder. The Consultant agrees that if subconsultants are employed in the performance of this Agreement, the Consultant and its subconsultants shall comply with all applicable law.

7. Compliance with Applicable Law

Consultant shall comply with all applicable federal, state, and local laws and regulations. Consultant agrees it currently is in compliance with all tax laws. Consultant shall comply with Title VI of the Civil Rights Act of 1964 and its corresponding regulations.

8. Indemnification for Property Damage and Personal Injury

Consultant shall indemnify, defend, and hold harmless the City, its officers, agents, and employees, from all claims, losses, damages, and costs (including reasonable attorney fees) for personal injury and property damage arising out of the intentional or negligent acts or omissions of the Consultant, its Subconsultants, suppliers, employees or agents in the performance of services required by this Contract. Nothing in this paragraph requires the Consultant or its insurer to indemnify the City for claims of personal injury or property damage caused by the negligence of the City. This duty shall survive the expiration or termination of this contract.

9. Insurance

Consultant shall obtain and maintain in full force at Consultant expense, throughout the duration of the Contract and any warranty or extension periods, the required insurance identified below. The City reserves the right to require additional insurance coverage as required by statutory or legal changes to the maximum liability that may be imposed on Oregon cities during the term of the Contract.

(a) Workers' compensation insurance as required by ORS Chapter 656 and as it may be amended. Unless exempt under ORS Chapter 656, the Consultant and all subconsultants shall maintain coverage for all subject workers.

☑ Required and attached // ☐ Proof of exemption (i.e., completion of Workers' Compensation Insurance Statement)

(b) General commercial liability (CGL) insurance covering bodily injury, personal injury, property damage, including coverage for independent consultant's protection (required if any work will be subcontracted), premises/operations, contractual liability, products and completed operations, in per occurrence limit of not less than $1,000,000, and aggregate limit of not less than $2,000,000.

☑ Required and attached // ☐ Waived by Bureau Director or designee // ☐ Reduce by Bureau Director or designee

(c) Automobile liability insurance with coverage of not less than $1,000,000 each accident, and an umbrella or excess liability coverage of $2,000,000. The insurance shall include coverage for any auto or all owned, scheduled, hired and non-owned auto. This coverage may be combined with the commercial general liability insurance policy.

☑ Required and attached // ☐ Waived by Bureau Director or designee // ☐ Reduce by Bureau Director or designee

(d) Professional Liability and/or Errors & Omissions insurance to cover damages caused by negligent acts, errors or omissions related to the professional services, and performance of duties and responsibilities of the Consultant under this contract in an amount with a combined single limit of not less than $1,000,000 per occurrence and aggregate of $3,000,000 for all claims per occurrence. In lieu of an occurrence based policy, Consultant may have claims-made policy in an amount not less than $1,000,000 per claim and $3,000,000 annual aggregate, if the Consultant obtains an extended reporting period or tail coverage for not less than three (3) years following the termination or expiration of the Contract.

☑ Required and attached // ☐ Waived by Bureau Director or designee // ☐ Reduce by Bureau Director or designee

Continuous Coverage; Notice of Cancellation: The Consultant agrees to maintain continuous, uninterrupted coverage for the duration of the Contract. There shall be no termination, cancellation, material change, potential exhaustion of aggregate limits or non renewal of coverage without thirty (30) days written notice from Consultant to the City. If the insurance is canceled or terminated prior to completion of the Contract, Consultant shall immediately notify the City and provide a new policy with the same terms. Any failure to comply with this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract.

Certificate(s) of Insurance: Consultant shall provide proof of insurance through acceptable certificate(s) of insurance, to the City prior to the award of the Contract if required by the procurement documents (e.g., request for proposal), or at execution of Contract and prior to any commencement of work or delivery of goods or services under the Contract. Insurance coverages required under this Contract shall be obtained from insurance companies having a rating of not less than A minus VIII or better as published in the latest edition of A.M. Best. The Consultant shall pay for all deductibles and premium.

Subconsultant(s): Consultant shall provide evidence that any subconsultant, if any, performing work or providing goods or service under the Contract has the same types and amounts of coverages as required herein or that the subconsultant is included under Consultant's policy.

11. EEO Certification
In the event Consultant provides in excess of $2,500.00 for services to the City in any fiscal year, Consultant shall obtain EEO certification from the City.

12. Equal Benefits
Consultant must comply with the City's Equal Benefits program as prescribed by Chapter 3.100 of the Code of the City of Portland. The required documentation must be filed with Procurement Services, City of Portland, prior to contract execution.

13. Successors in Interest
The provisions of this contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and approved assigns.

14. Severability
The parties agree that if any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

15. Waiver
The failure of either party to enforce any provision of this contract shall not constitute a waiver by such party of that or any other provision.

16. Errors
The Consultant shall promptly perform such additional services as may be necessary to correct errors in the services required by this contract without undue delays and without additional cost.

17. Governing Law/Venue
The provisions of this contract shall be interpreted, construed and enforced in accordance with, and governed by, the laws of the State of Oregon without reference to its conflict of laws provisions that might otherwise require the application of the law of any other jurisdiction. Any action or suits involving any question arising under this contract must be brought in the appropriate court in Multnomah County Oregon.

18. Amendments
All changes to this contract, including changes to the scope of work and contract amount, must be made by written amendment and approved by the Human Resource Director to be valid. Any amendment that increases the original contract amount by more than 25% must be approved by the City Council to be valid.

19. Business Tax Registration
The Consultant shall obtain a City of Portland business tax registration number as required by PCC 7.02 prior to beginning work under this Contract.

20. Prohibited Conduct
The Consultant shall not hire any City employee who evaluated the proposals or authorized the award of this Contract for two years after the date the contract was authorized without the express written permission of the City and provided the hiring is permitted by state law.

21. Payment to Vendors and Subconsultants
The Consultant shall timely pay all subconsultants and suppliers providing services or goods for this Contract.

22. Access to Records
The Consultant shall maintain all records relating to this Contract for three (3) years after final payment. The City may examine, audit and copy the Consultant's books, documents, papers, and records relating to this contract at any time during this period pursuant to Consultant's Audit Protocol attached hereto as Exhibit B.

23. Audits
(a) The City may conduct financial and performance audits of the billings and services specified in this agreement pursuant to Consultant's Audit Protocol attached hereto as Exhibit B. Audits will be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States Government Accountability Office.
(b) If an audit discloses that payments to the Consultant exceed the amount to which the Consultant was entitled, the Consultant shall repay the amount of the excess to the City.

24. Electronic Signatures
The City and Consultant may conduct this transaction, including any contract amendments, by electronic means, including the use of electronic signatures.

25. Merger Clause
This Contract encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether verbal or written.

26. Dispute Resolution/Work Regardless of Disputes
The parties shall participate in mediation to resolve disputes before conducting litigation. The mediation shall occur at a reasonable time after the conclusion of the Contract with a mediator jointly selected by the parties. Notwithstanding any dispute under this Contract, the Consultant shall continue to perform its work pending resolution of a dispute, and the City shall make payments as required by the Contract for undisputed portions of the work. In the event of litigation no attorney fees are recoverable. No different dispute resolution paragraph(s) in this contract or any attachment hereto shall supersede or take precedence over this provision.

27. Progress Reports: ☐ / Applicable ☑ / Not Applicable
If applicable, the Consultant shall provide monthly progress reports to the Project Manager as described in the Statement of the Work and Payment Schedule.

28. Consultant's Personnel: ☐ / Applicable ☑ / Not Applicable

If applicable, the Consultant shall assign the personnel listed in the Statement of the Work and Payment Schedule for the work required by the Contract and shall not change personnel without the prior written consent of the City, which shall not be unreasonably withheld.

29. Subconsultants
The Consultant may use the subconsultants identified in its proposals or those selected by Consultant after the submission of its proposal with prior written notice to the Benefits Administrator. However, if Consultant uses subcontractors for any of the work under this agreement only for the City, Consultant will first obtain the prior written consent of the City's Benefits Administrator. The City will enforce all social equity contracting and Minority, Women and Emerging Small Business (M/W/ESB) subcontracting commitments submitted by the Consultant in its proposals. Failure to use the identified M/W/ESB subconsultants without prior written consent is a material breach of contract.

30. Third Party Beneficiaries
There are no third party beneficiaries to this contract. Enforcement of this contract is reserved to the parties.

31. Conflict of Interest
Consultant hereby certifies that, if applicable, its contract proposal is made in good faith without fraud, collusion or connection of any kind with any other proposer of the same request for proposals or other City procurement solicitation(s), that the Consultant as a proposer has competed solely on its own behalf without connection or obligation to, any undisclosed person or firm. Consultant certifies that it is not a City official/employee or a business with which a City official/employee is associated, and that to the best of its knowledge, Consultant, its employee(s), its officer(s) or its director(s) is not a City official/employee or a relative of any City official/employee who: i) has responsibility in making decisions or ability to influence decision-making on the contract or project to which this contract pertains; ii) has or will participate in evaluation or management of the contract; or
iii) has or will have financial benefits in the contract. Consultant understands that should it elect to employ any former City official/employee during the term of the contract then that the former City official/Consultant employee must comply with applicable government ethics and conflicts of interest provisions in ORS Chapter 244, including but not limited to ORS 244.040(5) and ORS 244.047, and the City's Charter, Codes and administrative rules, including lobbying prohibitions under Portland City Code Section 2.12.080.

32. Respectful Workplace Behavior
The City of Portland is committed to a respectful work environment, free of harassment, discrimination and retaliation and other inappropriate conduct. Every individual has a right to work in a professional atmosphere where all individuals are treated with

respect and dignity. The City's HR Rule 2.02 covers all employees with the City of Portland as well as consultants, vendors or consultants who provide services to the City of Portland. By signing this Contract/Agreement, the Consultant indicates it will comply with its workplace harassment, discrimination, and retaliation policy that is substantially similar to that contained in HR 2.02.

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STATEMENT OF THE WORK
AND PAYMENT SCHEDULE

SCOPE OF WORK

[ESI proposes utilizing its Pharmacy Benefits Management Agreement, included with its proposal, as the basis for the Statement of Work and Payment Schedule.]

CONSULTANT PERSONNEL

The Consultant shall assign the following personnel to do the work in the capacities designated:

NAME	ROLE ON PROJECT

SUBCONSULTANTS

The Consultant shall assign the following subconsultants to perform work in the capacities designated:

NAME	ROLE ON PROJECT	SUBCONTRACT AMOUNT
		$
		$
		$
		$

The City will enforce all social equity contracting and Minority, Women and Emerging Small Business (M/W/ESB) subcontracting commitments submitted by the Consultant in its Proposal. For contracts valued $50,000 or more, the Consultant shall submit a Monthly Subconsultant Payment and Utilization Report (MUR), made part of this contract by reference, reporting ALL subconsultants employed in the performance of this agreement.

COMPENSATION

Progress Payments

Payment related to this contract is outlined in Pharmacy Benefit Management Agreement between Consultant and City, incorporated herein by reference in Exhibit B. Payment of any bill, however, does not preclude the City from later determining that an error in payment was made.

The Consultant shall make full payment to its subconsultants within 10 business days following receipt of any payment made by the City to Consultant.

ACH Payments

It is the City's policy to pay its Consultant invoices via electronic funds transfers through the automated clearing house (ACH) network. To initiate payment of invoices, Consultants shall execute the City's standard ACH Vendor Payment Authorization Agreement.
Upon verification of the data provided, the Payment Authorization Agreement will authorize the City to deposit payment for services rendered directly into Consultant accounts with financial institutions. All payments shall be in United States currency.

WORKERS' COMPENSATION INSURANCE STATEMENT

IF YOUR FIRM HAS CURRENT WORKERS' COMPENSATION INSURANCE, CONSULTANT MUST SIGN HERE:

I, undersigned, am authorized to act on behalf of entity designated below, and I hereby certify that this entity has current Workers' Compensation Insurance.

Consultant Signature:_____Date:_____Entity: _____

IF YOUR FIRM DOES NOT HAVE CURRENT WORKERS' COMPENSATION INSURANCE, CONSULTANT MUST COMPLETE THE FOLLOWING INDEPENDENT CONSULTANT CERTIFICATION STATEMENT:

As an independent Consultant, I certify that I meet the following standards:

1. The individual or business entity providing labor or services is registered under ORS Chapter 701, if the individual or business entity provides labor or services for which such registration is required;

2. Federal and state income tax returns in the name of the business or a business Schedule C or form Schedule F as part of the personal income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent Consultant in the previous year; and

3. The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. Except when an individual or business entity files a Schedule F as part of the personal income tax returns and the individual or business entity performs farm labor or services that are reportable on Schedule C, an individual or business entity is considered to be engaged in an independently established business when four or more of the following circumstances exist. Consultant: check four or more of the following:

_____ A. The labor or services are primarily carried out at a location that is separate from the residence of an individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;

_____ B. Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the individual or business entity has a trade association membership;

_____ C. Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or services;

_____ D. Labor or services are performed only pursuant to written contracts;

_____ E. Labor or services are performed for two or more different persons within a period of one year; or

_____ F. The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

_____ _____
Consultant Signature Date

FOR CITY USE ONLY

PROJECT MANANGER-COMPLETE ONLY IF CONSULTANT DOES NOT HAVE WORKER'S COMPENSATION INSURANCE
ORS 670.600 Independent Consultant standards. As used in various provisions of ORS Chapters 316, 656, 657, and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent consultant" if the standards of this section are met. The contracted work meets the following standards:

1. The individual or business entity providing the labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;

2. The individual or business entity providing labor or services is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for the individual or business entity to conduct the business;

3. The individual or business entity providing labor or services furnishes the tools or equipment necessary for performance of the contracted labor or services;

4. The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services;

5. Payment for the labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodic retainer.

_____ _____
City Project Manager Signature Date

CONSULTANT SIGNATURE:

This contract may be signed in two (2) or more counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same Agreement.

The parties agree the City and Consultant may conduct this transaction, including any contract amendments, by electronic means, including the use of electronic signatures.

I, the undersigned, agree to perform work outlined in this contract in accordance to the STANDARD CONTRACT PROVISIONS, the terms and conditions, made part of this contract by reference, and the STATEMENT OF THE WORK made part of this contract by reference; hereby certify under penalty of perjury that I/my business am not/is not in violation of any Oregon tax laws; hereby certify that my business is certified as an Equal Employment Opportunity Affirmative Action Employer and is in compliance with the Equal Benefits Program as prescribed by Chapter 3.100 of Code of the City of Portland; and hereby certify I am an independent consultant as defined in ORS 670.600.

Express Scripts, Inc.

BY: _____ Date: _____

Name: _____

Title: _____

CONTRACT NUMBER: 30005232

CONTRACT TITLE: Health Plan Pharmacy Benefit Management Contract

CITY OF PORTLAND SIGNATURES:

By: _____ Date: _____
Bureau Director

By: _____ Date: _____
Elected Official

Approved as to Form:

By: _____ Date: _____
Office of City Attorney

EXPRESS SCRIPTS, INC.
PHARMACY BENEFIT MANAGEMENT AGREEMENT

THIS PHARMACY BENEFIT MANAGEMENT AGREEMENT ("Agreement") will be effective as of the date set forth in Section 6.1 and is entered into by and between EXPRESS SCRIPTS, INC., a Delaware corporation ("ESI"), and City of Portland, organized under the laws of the state of Oregon ("Sponsor").

RECITALS

A. ESI, either directly or through its subsidiaries, engages in pharmacy benefit management services, including, among other things, pharmacy network contracting; pharmacy claims processing; mail and specialty drug pharmacy; cost containment, clinical, safety, adherence, and other like programs; and formulary administration ("PBM Services").

B. Sponsor provides or arranges for the provision of health benefits, including a prescription drug benefit.

C. ESI and Sponsor desire that ESI be the exclusive provider of PBM Services for Sponsor's Plan (as defined below) under the terms and conditions set forth herein.

THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

TERMS OF AGREEMENT

ARTICLE I - DEFINITIONS

"Ancillary Supplies, Equipment, and Services" or "ASES" means ancillary supplies, equipment, and services provided or coordinated by ESI Specialty Pharmacy in connection with ESI Specialty Pharmacy's dispensing of Specialty Products. ASES may include all or some of the following: telephonic and/or in-person training, nursing/clinical services, in-home infusion and related support, patient monitoring, medication pumps, tubing, syringes, gauze pads, sharps containers, lancets, test strips, other supplies, and durable medical equipment. The aforementioned list is illustrative only (not exhaustive) and may include other supplies, equipment, and services based on the patient's needs, prescriber instructions, payer requirements, and/or the Specialty Product manufacturer's requirements.

"Average Wholesale Price" or "AWP" means the average wholesale price of a prescription drug as identified by drug pricing services such as Medi-Span or other source recognized in the retail prescription drug industry selected by ESI (the "Pricing Source"). The applicable AWP shall be the 11-digit NDC for the product on the date dispensed, and for prescriptions filled in Participating Pharmacies, Mail Pharmacy, and ESI Specialty Pharmacy will be the AWP for the package size from which the prescription drug was dispensed. If the Pricing Source discontinues the reporting of AWP or Multi-Source Indicator code identifiers or materially changes the manner in which AWP is calculated or its Multi-Source Indicator code identifiers are reported, then ESI reserves the right to make an equitable adjustment as necessary to maintain the parties' relative economics and the pricing intent of this Agreement.

"Brand/Generic Algorithm" or "BGA" means ESI's standard and proprietary brand/generic algorithm, a copy of which may be made available for review by Sponsor or its Auditor upon request. The purposes of the algorithm are to utilize a comprehensive and logical algorithm to determine the brand or generic status of products in the ESI master drug file using a combination of industry standard attributes, to stabilize products "flipping" between brand and generic status as may be the case when a single indicator is used from industry pricing sources, and to reduce Sponsor, Member and provider confusion due to fluctuations in brand/generic status. Sponsor or its Auditor may audit ESI's application of its BGA to confirm that ESI is making brand and generic drug determinations consistent with such algorithm.

"Brand Drug" means a prescription drug identified as such in ESI's master drug file using indicators from First Databank (or other source nationally recognized in the prescription drug industry) on the basis of a standard Brand/Generic Algorithm, a copy of which may be made available for review by Sponsor or its Auditor upon request. Notwithstanding the foregoing, certain prescription drug medications that are licensed and then

currently marketed as brand name drugs, where there exists at least one (1) competing prescription medication that is a generic equivalent and interchangeable with the marketed brand name drug, may process as "Generic Drugs" for Prescription Drug Claim adjudication and Member Copayment purposes.

"Copayment" means that portion of the charge for each Covered Drug dispensed to the Member that is the responsibility of the Member (e.g., copayment, coinsurance and/or deductible) as indicated on the Set-Up Forms.

"Covered Drug(s)" means those prescription drugs, supplies, Specialty Products and other items that are covered under the Plan, each as indicated on the Set-Up Forms.

"Eligibility Files" means the list submitted by Sponsor to ESI in reasonably acceptable electronic format indicating persons eligible for drug benefit coverage services under the Plan.

"ESI National Plus Network" means ESI's broadest Participating Pharmacy network.

"ESI Specialty Pharmacy" means CuraScript, Inc., Accredo Health Group, Inc., Express Scripts Specialty Distribution Services, Inc., or another pharmacy or home health agency wholly-owned or operated by ESI or one or more of its affiliates that primarily dispenses Specialty Products or provides services related thereto; provided, however, that when the Mail Service Pharmacy dispenses a Specialty Product, it shall be considered an ESI Specialty Pharmacyhereunder.

"Formulary" means the list of FDA-approved prescription drugs and supplies developed by ESI's Pharmacy and Therapeutics Committee and/or customized by Sponsor, and which is selected and/or adopted by Sponsor. The drugs and supplies included on the Formulary will be modified by ESI from time to time as a result of factors, including, but not limited to, medical appropriateness, manufacturer Rebate arrangements, and patent expirations. Additions and/or deletions to the Formulary are hereby adopted by Sponsor, subject to Sponsor's discretion to elect not to implement any such addition or deletion through the Set-Up Form process, which such election shall be considered a Sponsor change to the Formulary.

"Generic Drug" means a prescription drug, whether identified by its chemical, proprietary, or non-proprietary name, that is therapeutically equivalent and interchangeable with drugs having an identical amount of the same active ingredient(s) and approved by the FDA, and which is identified as such in ESI's master drug file using indicators from First Databank (or other source nationally recognized in the prescription drug industry) on the basis of a standard Brand/Generic Algorithm, a copy of which may be made available for review by Sponsor or its Auditor upon request.

"Ingredient Cost Charge" means the ingredient cost portion of the amount charged by ESI to Sponsor for each Prescription Drug Claim, subject to the "lesser of" logic set forth on Exhibit A, as applicable.

"MAC List" means a list of off-patent prescription drugs or supplies subject to maximum reimbursement payment schedules developed or selected by ESI.

"Mail Service Pharmacy" means a pharmacy wholly-owned or operated by ESI or one or more of its affiliates, other than an ESI Specialty Pharmacy, where prescriptions are filled and delivered to Members via mail delivery service.

"Manufacturer Administrative Fees" means those administrative fees paid by manufacturers to ESI in connection with ESI's invoicing, allocating and collecting the Rebates under the Rebate program.

"Maximum Reimbursement Amount" or "MRA" means the maximum unit ingredient cost payable by Sponsor for a drug on the MAC List based on maximum reimbursement payment schedule(s) developed or selected by ESI. The application of MRA pricing may be subject to certain "dispensed as written" (DAW) protocols and Sponsor defined plan design and coverage policies.

"Member" means each person who Sponsor determines is eligible to receive prescription drug benefits as indicated in the Eligibility Files.

"Member Submitted Claim" means a paper claim submitted by a Member for Covered Drugs dispensed by a pharmacy for which the Member paid cash.

"Participating Pharmacy" means any licensed retail pharmacy with which ESI or one or more of its affiliates has executed an agreement to provide Covered Drugs to Members, but shall not include any mail order or specialty pharmacy affiliated with any such Participating Pharmacy. Participating Pharmacies are independent contractors of ESI.

"Pass-Through" means the actual ingredient cost and dispensing fee amount paid by ESI for the Prescription Drug Claim when the claim is adjudicated to the Participating Pharmacy, as set forth in the specific Participating Pharmacy remittances related to Sponsor's claims.

"Plan" means any self-funded prescription drug benefit plan(s) administered by Sponsor or a subsidiary or affiliate of Sponsor (including any retiree or Medicare employer group waiver plans).

"Prescription Drug Claim" means a Member Submitted Claim, Subrogation Claim or claim for payment submitted to ESI by a Participating Pharmacy, Mail Service Pharmacy, or ESI Specialty Pharmacy as a result of dispensing Covered Drugs to a Member.

"Rebates" mean retrospective formulary rebates that are paid to ESI pursuant to the terms of a formulary rebate contract negotiated independently by ESI and directly attributable to the utilization of certain Covered Drugs by Members. For sake of clarity, Rebates do not include, for example, Manufacturer Administrative Fees; product discounts or fees related to the procurement of prescription drug inventories by ESI Specialty Pharmacy or the Mail Service Pharmacy; fees received by ESI from pharmaceutical manufacturers for care management or other services provided in connection with the dispensing of products; or other fee-for-service arrangements whereby pharmaceutical manufacturers generally report the fees paid to ESI or its wholly-owned subsidiaries for services rendered as "bona fide service fees" pursuant to federal laws and regulations (collectively, "Other Pharma Revenue"). Such laws and regulations, as well as ESI's contracts with pharmaceutical manufacturers, generally prohibit ESI from sharing any such "bona fide service fees" earned by ESI, whether wholly or in part, with any ESI client.

"Set-Up Forms" means any standard ESI document or form, which when completed and signed by Sponsor (electronic communications from Sponsor indicating Sponsor's approval of a Set-Up Form shall satisfy the foregoing), will describe the essential benefit elements and coverage rules adopted by Sponsor for its Plan.

"Specialty Product List" means the standard list of Specialty Products and their reimbursement rates applicable to Sponsor and maintained and updated by ESI from time to time. The Specialty Product List is available to Sponsor upon request.

"Specialty Products" means those injectable and non-injectable drugs on the Specialty Product List. Specialty Products, which may be administered by any route of administration, are typically used to treat chronic or complex conditions, and typically have one or more of several key characteristics, including frequent dosing adjustments and intensive clinical monitoring to decrease the potential for drug toxicity and increase the probability for beneficial treatment outcomes; intensive patient training and compliance assistance to facilitate therapeutic goals; limited or exclusive product availability and distribution (if a drug is only available through limited specialty pharmacy distribution it is always considered a Specialty Product); specialized product handling and/or administration requirements.

"Subrogation Claim" means subrogation claims submitted by any state or a person or entity acting on behalf of a state under Medicaid or similar United States or state government health care programs, for which Sponsor is deemed to be the primary payor by operation of applicable federal or state laws.

"UM Company" means MCMC, LLC or other independent third party utilization management company contracted by ESI, subject to and as further described in Sections 2.3 (d) and (e).

"Usual and Customary Price" or "U&C" means the retail price charged by a Participating Pharmacy for the particular drug in a cash transaction on the date the drug is dispensed as reported to ESI by the Participating Pharmacy.

"Vaccine Claim" means a claim for a Covered Drug which is a vaccine.

"Vendor Transaction Fee" means the data interchange fee that ESI is charged by its third party vendor to convert Vaccine Claims submitted electronically by physicians to NCPDP 5.1 format in order for ESI to process the claim.

ARTICLE II - PBM SERVICES

2.1 Eligibility/Set Up. Sponsor will submit completed Set-Up Forms and Eligibility Files (initial and updated) on a mutually determined basis, which ESI will accurately implement. Changes to the Set-Up Forms must be documented on ESI's standard amendment forms. Eligibility performed manually by ESI for Sponsor, or material changes to the Eligibility File processes requested by Sponsor during the term may be subject to additional fees set forth on Exhibit A. Sponsor will be responsible for all Prescription Drug Claims during the period of the Member's eligibility as indicated on the Eligibility File including for retroactively termed Members, except in the event of ESI's negligence.

2.2 Pharmacy Network.

(a) Participating Pharmacies. ESI will maintain a network(s) of Participating Pharmacies as identified in Exhibit A, and will make available an updated list of Participating Pharmacies on-line. ESI maintains multiple networks and subnetworks, and periodically consolidates networks or migrates clients to other networks and subnetworks. If, due to an access concern, Sponsor requests that ESI attempt to add a particular retail pharmacy to the network of Participating Pharmacies serving Sponsor and its Members hereunder, ESI will make commercially reasonable efforts to add any such pharmacy to the Participating Pharmacy network for Sponsor, provided that such pharmacy meets ESI's network participation requirements and agrees to ESI's standard terms and conditions. If any such pharmacy meets ESI's network participation requirements and agrees to ESI's standard terms and conditions except for ESI's standard network rates (i.e., the particular pharmacy will only agree to higher than standard reimbursement rates), and Sponsor nevertheless requests that ESI add such pharmacy, the rate charged to Sponsor for Prescription Drug Claims processed through such pharmacy (assuming ESI agrees to contract with such pharmacy) will be the net ingredient cost plus the dispensing fee paid by ESI to such Participating Pharmacy (plus applicable sales or excise tax or other governmental surcharge, if any). All such Prescription Drug Claims will be excluded from the pricing guarantees set forth in Exhibit A.

(i) ESI will require each Participating Pharmacy to meet ESI's network participation requirements, including but not limited to licensure, insurance and provider agreement requirements. ESI also provides a standard suite of pharmacy audit services to determine Participating Pharmacies' compliance with their provider agreement billing requirements. ESI will attempt recovery of identified overpayments through offset, demand or other reasonable means; provided that ESI will not be required to institute litigation. Recovered overpayments are credited to Sponsor. Copies of participation requirements and auditing processes are available upon request.

(ii) ESI does not direct or exercise any control over the Participating Pharmacies or the professional judgment exercised by any pharmacist in dispensing prescriptions or otherwise providing pharmaceutical related services at a Participating Pharmacy. ESI shall have no liability to Sponsor, any Member or any other person or entity for any act or omission of any Participating Pharmacy or it agents or employees.

(b) Mail Service Pharmacy. Members may have prescriptions filled through the Mail Service Pharmacy. Subject to applicable law, ESI may communicate with Members regarding benefit design, cost savings, availability and use of the Mail Service Pharmacy, as well as provide supporting services. ESI may suspend Mail Service Pharmacy services to a Member who is in default of any Copayment amount due ESI. Sponsor will be responsible for any unpaid Member Copayment amounts if payment has not been received from the Member within one hundred twenty (120) days following dispensing. Sponsor will be billed following the one hundred twenty (120) day collection period, with payment due in accordance with the payment terms set forth in Section 3.2 of this Agreement.

(c) Specialty Products and ASES. Members may have prescriptions filled through ESI Specialty Pharmacy. Subject to applicable law, ESI and ESI Specialty Pharmacy may communicate with Members and physicians to advise Members filling Specialty Products at Participating Pharmacies of the availability of filling prescriptions through ESI Specialty Pharmacy. Specialty Products will be excluded from any price guarantees set forth in the Agreement. In no event will the Mail Service Pharmacy or Participating Pharmacy pricing specified in the Agreement apply to Specialty Products.

(i) ESI will notify Sponsor no more frequently than monthly of new Specialty Products that are introduced to the market on or after the Effective Date of this Agreement with their applicable reimbursement rates ("Notice"). The parties agree as follows:

(A) If Sponsor has expressly excluded a specific therapy class or product on a Set-Up Form, Specialty Products in such excluded classes will automatically be deemed excluded from coverage and will reject as "NDC Not Covered" through Participating Pharmacies, Mail Service Pharmacy and ESI Specialty Pharmacy; otherwise, subject to (B) below, all other Specialty Products will be implemented as Covered Drugs at the rate specified in the applicable Specialty Drug list or Notice. If Sponsor desires to cover otherwise excluded Specialty Products, Sponsor must notify ESI in writing that it desires to cover the Specialty Product before ESI will adjudicate as a Covered Drug, and if ESI receives such confirmation of coverage from Sponsor such Specialty Product will be loaded thereafter as a Covered Drug at the applicable reimbursement rate set forth in the Notice.

(B) Sponsor must notify ESI in writing if it wants to exclude the Specialty Product from coverage. The exclusion will be implemented within seven (7) business days after the date of ESI's receipt of such notification. There will not be any retroactive denials for Prescription Drug Claims processed prior to ESI's receipt of the rejection notice and implementation of the exclusion as provided above and Sponsor will be responsible for the payment of such Prescription Drug Claims processed prior to the rejection of coverage.

(ii) For Specialty Products filled through ESI Specialty Pharmacy only, Members may receive the following services from ESI Specialty Pharmacy, depending on the particular therapy class or disease state: ASES; patient intake services; pharmacy dispensing services and/or social services (patient advocacy, hardship reimbursement support, and indigent and patient assistance programs).

(iii) Subject to Sponsor's prior authorization requirements, if applicable, at the rates set forth in Exhibit A, ESI will provide or coordinate ASES for Members through ESI Specialty Pharmacy or through other specialty pharmacies or other independent third party providers of ASES when ASES is required. If ESI or ESI Specialty Pharmacy engages a third party provider of ASES, ESI or ESI Specialty Pharmacy shall contractually obligate such third party provider of ASES to comply with all applicable laws, including, without limitation, all applicable laws relating to professional licensure. ESI does not direct or exercise any control over any third party provider of ASES in administering Specialty Products or otherwise providing ASES.

(iv) Ancillary supplies, equipment, and services provided or coordinated in connection with the dispensing of Specialty Products at Participating Pharmacies (for example, limited distribution products not then available through ESI Specialty Pharmacy or overrides) will be billed to Sponsor at the cost charged to ESI for such ancillary supplies, equipment, and services provided or coordinated, unless such ancillary supplies, equipment, and services provided or coordinated are included in the ingredient cost of the Specialty Product.

2.3 Claims Processing.

(a) Claims Processing.

(i) ESI will perform claims processing services for Covered Drugs dispensed by Participating Pharmacies, Mail Service and ESI Specialty Pharmacy.

(ii) In connection with each prescription submitted for processing on-line by a Participating Pharmacy, ESI will perform standard drug utilization review ("DUR") in order to assist the dispensing pharmacist and prescribing physician in identifying potential drug interactions, incorrect prescriptions or dosages, and certain other circumstances that may be indicative of inappropriate prescription drug usage. ESI's DUR processes are not intended to substitute for the professional judgment of the prescriber, the dispensing pharmacist or any other health care professional providing services to the Member.

(iii) If elected by Sponsor, ESI will process Member Submitted Claims in accordance with the rules in the Set-Up Forms and ESI's standard procedures.

(iv) If authorized by Sponsor on the Set-Up Forms, ESI will process Subrogation Claims in accordance with applicable federal and state laws, in which case Sponsor will pay such Subrogation Claims in accordance with Article III and Exhibit A. If Sponsor does not authorize ESI to process Subrogation Claims, ESI will reject the claim and refer claimants to Sponsor regarding such claims, in accordance with applicable federal and state laws. ESI is not legally responsible to pay Subrogation Claims to the extent Sponsor is not timely paying ESI with respect to such Subrogation Claims.

(v) Sponsor or its third party designee (as applicable) will have the final responsibility for all decisions with respect to coverage of a Prescription Drug Claim and the benefits allowable under the Plan, including determining whether any rejected or disputed claim will be allowed.

(b) Prior Authorization. For the fees set forth in the Clinical Addendum described in Exhibit A-2 (if applicable), ESI will provide prior authorization ("PA") services as specified and directed by Sponsor for drugs designated on the Set-Up Form. Prior authorized drugs must meet Sponsor-approved guidelines ("Guidelines") before they are deemed to be Covered Drugs. Unless Sponsor otherwise directs, Sponsor hereby authorizes coverage for an otherwise excluded use in the event of co-morbidities, complications and other factors not otherwise expressly set forth in the Guidelines. In determining whether to authorize coverage of such drug under the PA Program, ESI will apply only the Guidelines and may rely entirely upon information about the Member and the diagnosis of the Member's condition provided to it from the prescriber. ESI will not undertake to determine medical necessity, make diagnoses or substitute ESI's judgment for the professional judgment and responsibility of the prescriber.

(c) Claims for Benefits. ESI will process initial "claims for benefits" for Member Submitted Claims and PA requests consistent with the ERISA claims rules set forth in 29 CFR Part 2560 (or applicable state law if a non-ERISA plan) ("Claims Rules"). Sponsor may elect to have ESI perform appeals services in connection with denied "claims for benefits" for the fees set forth in Exhibit A, or facilitate such services through Sponsor or a third party of Sponsor's choice. If Sponsor elects to conduct its own appeals or facilitate through a third party of Sponsor's choice, ESI will route Member appeals to Sponsor or other Sponsor designated entity. If Sponsor elects to have ESI perform appeals services, Sponsor agrees that ESI may perform such services through the UM Company. Through its contract with ESI, the UM Company has agreed to be, and will serve as, the named fiduciary for its performance of such appeals. ESI also agrees to accept fiduciary status solely with respect to its performance of any appeal.

(d) UM Company. In the event ESI performs appeals services, or facilitates the performance of appeals services through the UM Company, ESI or the UM Company, as applicable, will be responsible for conducting the appeal on behalf of Sponsor in accordance with the Claims Rules. ESI represents to Sponsor that UM Company has contractually agreed that: (A) UM Company will conduct appeals in accordance with the Claims Rules and Sponsor's plan, (B) Sponsor is a third party beneficiary of UM Company's agreement with ESI (a copy of which is available upon request) and the remedies set forth therein, and (C) UM Company will indemnify Sponsor for third party claims caused by the UM Company's negligence or willful misconduct in providing the appeal services.

(e) External Review Services.

ESI will not conduct any external review services (as defined in the Patient Protection and Affordable Care Act of 2010 and its implementing regulations ("PPACA")); provided, however, Sponsor may elect to have

UM Company facilitate the provision of external review services through UM company contracted IROs (as such term is defined in PPACA), for the fees set forth on Exhibit A below (if applicable). Sponsor must execute a standard ESI "External Appeals Services" Set-Up Form, which may be requested through ESI Account Management, in order to receive such services from UM Company.

In the event that Sponsor elects to utilize UM Company to facilitate the provision of external review services through UM Company contracted IROs, UM Company will be responsible for facilitating all such appeals (and the IROs will be responsible for providing all such appeals) in accordance with PPACA and all other applicable federal and state laws, and Sponsor hereby acknowledges and agrees that:

(i) UM Company (with respect to facilitating the external reviews) and the IROs (with respect to performing the external reviews), and not ESI, will be providing external review services; UM Company is an independent contractor of ESI; the IROs are independent contractors of UM Company and not ESI; and ESI does not in any way control or direct either UM Company or the IROs with respect to facilitation or performance of external review services provided by each respectively.

(ii) ESI represents to Sponsor that UM Company has contractually agreed that: (A) UM Company will facilitate all external review services in accordance with PPACA and all other applicable federal and state laws; (B) UM Company will contractually require its contracted IROs to perform all external reviews in accordance with PPACA and all other applicable federal and state laws; (C) to the extent not prohibited by law, UM Company will indemnify, defend and hold Sponsor harmless from and against any and all losses, damages, injuries, causes of action, claims, demands and expenses (including reasonable attorney's fees, costs and expenses), arising out of, resulting from, or related to any act, omission or default by the IROs in their performance of the external reviews; and (D) Sponsor has third party beneficiary rights to enforce the preceding indemnification and hold harmless provision.

(f) Call Center. ESI will provide 24-hours a day, 7-days a week toll-free telephone, IVR and Internet support to assist Sponsor, Sponsor's agents and Members with Member eligibility and benefits verification, location of Participating Pharmacies or other related Member concerns.

2.4 Formulary Support and Rebate Management.

(a) Formulary Adherence and Clinical Programs. ESI may provide clinical, safety, adherence, and other like programs as appropriate. The Clinical Addendum described in Exhibit A-2 sets forth certain available adherence, clinical, safety and/or trend programs that require additional fees hereunder. ESI will not implement any program for which Sponsor may incur an additional fee without Sponsor's prior written approval and election of such program.

(b) Rebate Program. Subject to the remaining terms of this Agreement, ESI will pay to Sponsor the amounts set forth on Exhibit A.

2.5 Program Operations.

(a) Reporting. ESI will make available to Sponsor ESI's on-line standard management information reporting applications. Upon Sponsor's request, ESI may develop special reporting packages or perform custom programming at ESI's standard hourly rate for such services, as set forth in Exhibit A.

(b) Claims Data.

(i) Claims Data Retention. ESI will retain Sponsor's claims data for a total of ten (10) years from the date the prescription is filled. Thereafter ESI will dispose of such data in accordance with its standard policies and practices and applicable state and federal law. Disposition of PHI shall be in accordance with the Business Associate Agreement.

(ii) Claims Data to Vendors. Upon Sponsor's written request and at no additional charge, ESI will provide regular prescription claims data in ESI's standard format(s) to Sponsor's vendors ("Vendors") for disease management, flexible savings account and other "payment," "treatment" and

"healthcare operations" purposes (as defined under HIPAA). Requests for retrieval of data beyond thirty (30) months are subject to the hourly custom programming charge set forth in Exhibit A.

(iii) De-Identified Claims Data. ESI or its affiliates may use and disclose both during and after the term of this Agreement the anonymized claims data (de-identified in accordance with HIPAA) including drug and related medical data collected by ESI or provided to ESI by Sponsor for research; provider profiling; benchmarking, drug trend, and cost and other internal analyses and comparisons; clinical, safety and/or trend programs; ASES; or other business purposes of ESI or its affiliates, in all cases subject to applicable law.

(c) Sponsor Audits. Provided that this Agreement has been duly executed by Sponsor and Sponsor is current in the payment of invoices under this Agreement, Sponsor may, upon no less than thirty (30) days prior written request, audit ESI's provision of services hereunder, the scope of which shall be to verify compliance with the financial terms of this Agreement, on an annual basis consistent with the Audit Protocol set forth in Exhibit B. Sponsor may use an independent third party auditor ("Auditor"), so long as such Auditor is not engaged in providing services for Sponsor or otherwise that conflict with the scope or independent nature of the audit (as determined by ESI acting reasonably and in good faith), and provided that Sponsor's Auditor executes a mutually acceptable confidentiality agreement. Any request by Sponsor to permit an Auditor to perform an audit will constitute Sponsor's direction and authorization to ESI to disclose PHI to the Auditor.

(d) Performance Standards. ESI will conform to the performance standards set forth on Exhibit E hereto. The payments set forth in Exhibit E will be Sponsor's sole monetary remedy for any failure by ESI to meet a performance standard in addition to any correction or reimbursement associated with payment or billing errors.

2.6 Pharmacy Management Funds ("PMF").

(a) ESI will provide up to $9 per Member implemented as of the Effective Date to reimburse the actual, fair market value of: (i) expense items and services related to transitioning, administering, and implementing the pharmacy benefit initially and throughout the term, such as, custom ID Cards, IT programming, custom formulary letters, member communications, and benefit set-up quality assurance; and/or (ii) mutually agreed upon expense items and services related to implementation of additional clinical or other similar programs provided by ESI throughout the Term; in either case subject to submission of adequate documentation to support reimbursement within 180 days of incurring the applicable expense. Both Sponsor and ESI (upon agreement from Sponsor) may use the PMF to cover the fair market value of expenses for projects requiring joint resources. All reimbursement under the PMF is subject to ESI's standard PMF business practices for all clients.

(b) Sponsor represents and warrants that: (i) it will only request reimbursement under the PMF for its actual expenses incurred in transitioning, administering, and implementing the pharmacy benefit managed by ESI hereunder, and/or the additional clinical or other similar program provided by ESI throughout the Term; (ii) that the applicable service, item or program was actually performed or provided; (iii) the amount of the reimbursement is equal to or less than the reasonable fair market value of the actual expenses incurred by Sponsor; (iv) it will notify and disclose the amount and the terms of any PMF reimbursements to Members and other third parties to the extent required by applicable laws and regulations. In addition, if the Sponsor and the Plan are subject to ERISA, Sponsor represents and warrants that it will only request reimbursement under the PMF for items or services for which Sponsor, in the absence of the PMF, would be allowed reimbursement from the Plan (i.e., not "settlor functions").

(c) Sponsor shall comply with all applicable federal and state requirements, including, but not limited to, all applicable federal and state reporting requirements with respect to any expense, item or service reimbursed under this Section 2.6. ESI reserves the right to periodically audit the books and records of Sponsor on-site, during normal business hours and after giving reasonable advance notice, for the purposes of verifying Sponsor's compliance with the PMF requirements set forth in this Agreement.

(d) ESI intends to amortize the PMF over the Initial Term of the Agreement on a straight-line basis. In the event of a termination of this Agreement for any reason other than ESI's uncured material breach prior to the expiration of the Initial Term, Sponsor will reimburse ESI an amount equal to any paid but unamortized

portion of the PMF. Reimbursement to ESI by Sponsor pursuant to this Section will not be in lieu of any other rights or remedies ESI may have in connection with the termination of this Agreement, including monetary or other damages. PMF reimbursements shall not be paid prior to the Effective Date of this Agreement and are not payable until this Agreement is executed. Sponsor will have no right to interest on, or the time value of, any PMF, and unused funds shall be retained by ESI.

ARTICLE III - FEES; BILLING AND PAYMENT

3.1 Fees. In consideration of the PBM Services provided by ESI, Sponsor will pay the applicable claims reimbursement amounts ("Claims Reimbursements") and other administrative fees ("Administrative Fees") pursuant to the terms set forth on Exhibit A ("Claims Reimbursements," "Administrative Fees" and any other charge or fee that is the responsibility of Sponsor as may be described elsewhere in this Agreement are hereinafter referred to collectively as "Fees"). ESI may use any excess achieved in any guarantee offered pursuant to this Agreement to make up for, and offset, a shortfall in any other guarantee set forth in this Agreement.

3.2 Billing and Payment.

(a) Billing. ESI will invoice Sponsor bi-weekly for all applicable Fees.

(b) Payment. Sponsor will pay ESI by wire, ACH transfer or pre-authorized debit within five (5) business days from the date of Sponsor's receipt of each ESI invoice. Sponsor will be responsible for all costs of collection, and agrees to reimburse ESI for such costs and expenses, including reasonable attorneys' fees. All amounts not paid by the due date thereof will bear interest at the rate of 1.5% per month or, if lower, the highest interest rate permitted by law. In addition to any rights under Section 6.2, ESI may apply Rebate amounts otherwise owed to Sponsor against any unpaid Fees.

(c) Deposit. If, at any time: (i) Sponsor has two or more invoices past due and outstanding, or (ii) ESI has reasonable grounds to believe Sponsor may be delinquent in payment of fees based on Sponsor's financial data (e.g., persistent negative cash flow, bankruptcy or insolvency), ESI may require that the Sponsor provide to ESI a deposit in an amount equal to the average of the last three (3) months of billing history as the basis for determining the one (1) month deposit amount or, if three (3) months billing history is not available, the most recent month of billing history as the basis. ESI will retain the deposit until the earlier of termination of this Agreement (following any run-off period), or six (6) consecutive months of timely payments of all Fees following submission of the deposit, and may apply the deposit to delinquent fees until return of the deposit.

ARTICLE IV – HIPAA; CONFIDENTIAL INFORMATION

4.1 HIPAA. The parties agree that as relates to use and disclosure of PHI, electronic transaction standards and security of electronic PHI under the Health Insurance Portability and Accountability Act of 1996, as amended, they are subject to the terms of the Business Associate Agreement set forth in Exhibit C. Notwithstanding the foregoing, the parties acknowledge that in providing services to Members, ESI Specialty Pharmacy and the Mail Service Pharmacy are acting as separate health care provider covered entities under HIPAA and not as business associates to the Plan covered by the Business Associate Agreement. In providing services, ESI Specialty Pharmacy and the Mail Services Pharmacy shall abide by all HIPAA requirements applicable to covered entities and shall safeguard, use and disclose Member PHI accordingly.

4.2 Confidential Information.

(a) Each party agrees that the terms of this Agreement and information of the other party, including, but not limited to the following, will constitute confidential and proprietary information ("Confidential Information"): (i) with respect to ESI: ESI's reporting and other web-based applications, eligibility and adjudication systems, system formats and databanks (collectively, "ESI's Systems"), clinical or formulary management operations or programs, fraud, waste and abuse tools and programs, anonymized claims data (de-identified in accordance with HIPAA); ESI Specialty Pharmacy and Mail Service Pharmacy data; information and contracts relating to Rebates and Manufacturer Administrative Fees, prescription drug evaluation criteria, drug pricing information, and Participating Pharmacy agreements; and (ii) with respect to Sponsor: Participating Pharmacy Sponsor and

Member identifiable health information and data, Eligibility Files, Set-Up Form information, business operations and strategies. Neither party will use the other's Confidential Information, or disclose it or this Agreement to any third party (other than Sponsor attorneys and accountants), at any time during or after termination of this Agreement, except as specifically contemplated by this Agreement or upon prior written consent, which will not unreasonably be withheld. Upon termination of this Agreement, each party will cease using the other's Confidential Information, and all such information will be returned or destroyed upon the owner's direction. Confidential Information does not include information which is or becomes generally available to the public; was within the recipient's possession or knowledge prior to its being furnished to the recipient pursuant to this Agreement, or is independently developed by the recipient under circumstances not involving a breach of this Agreement.

(b) Sponsor will not, and will not permit any third party acting on Sponsor's behalf to, access, attempt to access, test or audit ESI's Systems or any other system or network connected to ESI's Systems. Without limiting the foregoing, Sponsor will not: access or attempt to access any portion or feature of ESI's Systems, by circumventing ESI's Systems access control measures, either by hacking, password "mining" or any other means; or probe, scan, audit or test the vulnerability of ESI's Systems, nor breach the security or authentication measures of ESI's Systems.

ARTICLE V - COMPLIANCE WITH LAW; FIDUCIARY ACKNOWLEDGEMENTS; FINANCIAL DISCLOSURE

5.1 Compliance with Law; Change in Law. Each party shall be responsible for ensuring its compliance with any laws and regulations applicable to its business, including maintaining any necessary licenses and permits. Sponsor shall be responsible for any governmental or regulatory charges and taxes imposed upon or related to the services provided hereunder. With respect to any Plan that is subject to the provisions of ERISA, the Sponsor or the plan sponsor shall ensure that its activities in regard to such program are in compliance with ERISA, and shall be responsible for disclosing to Members any and all information relating to the Plan and this Agreement as required by law to be disclosed, including any information relating to Plan coverage and eligibility requirements, commissions, rebates, discounts, or provider discounts referred to in Section 5.3 hereof. If there is a new or change in federal or state laws or regulations or the interpretation thereof, or any government, judicial or legal action that, among other things, materially burdens ESI, requires ESI to increase payments or shorten payment times for Covered Drugs to Participating Pharmacies, or materially changes the scope of services hereunder (a "Change in Law"), then there shall be an appropriate modification of the services, reimbursement rates, Administrative Fees and/or Rebates hereunder. If the parties cannot agree on a modification or adjusted fee or rates, then either party may terminate the Agreement on thirty (30) days prior written notice to the other.

5.2 Fiduciary Acknowledgements. ESI offers pharmacy benefit management services, products and programs ("PBM Products") for consideration by all clients, including Sponsor. The general parameters of the PBM Products, and the systems that support these products, have been developed by ESI as part of ESI's administration of its business as a PBM. The parties agree that they have negotiated the financial terms of this Agreement in an arm's-length fashion. Sponsor acknowledges and agrees that, except for the limited purpose set forth in Section 2.3(c), neither it nor the Plan intends for ESI to be a fiduciary (as defined under ERISA or state law) of the Plan, and, except for the limited purpose as set forth in Section 2.3(c), neither will name ESI or any of ESI's wholly-owned subsidiaries or affiliates as a "plan fiduciary." Sponsor further acknowledges and agrees that neither ESI nor any of ESI's wholly-owned subsidiaries or affiliates: (a) have any discretionary authority or control respecting management of the Plan's prescription benefit program, except as set forth in Section 2.3(c), or (b) exercise any authority or control respecting management or disposition of the assets of the Plan or Sponsor. Sponsor further acknowledges that all such discretionary authority and control with respect to the management of the Plan and plan assets is retained by Sponsor or the Plan. Upon reasonable notice, ESI will have the right to terminate PBM Services to any Plan (or, if applicable, Members) located in a state requiring a pharmacy benefit manager to be a fiduciary to Sponsor, a Plan, or a Member in any capacity.

5.3 Disclosure of Certain Financial Matters. In addition to the Administrative Fees paid to ESI by Sponsor, ESI and ESI's wholly-owned subsidiaries or affiliates derive revenue in one or more of the ways as further described in the Financial Disclosure to ESI PBM Clients set forth in Exhibit D hereto ("Financial Disclosure"), as updated by ESI from time to time. Unlike the Administrative Fees, the revenues described in the Financial Disclosure are not direct or indirect compensation to ESI from Sponsor for services rendered to Sponsor or the Plan under this Agreement. In negotiating any of the fees and revenues described in the Financial Disclosure or in this Agreement, ESI and ESI's wholly-owned subsidiaries and affiliates act on their own behalf, and not for the

benefit of or as agents for Sponsor, Members or the Plan. ESI and ESI's wholly-owned subsidiaries and affiliates retain all proprietary rights and beneficial interest in such fees and revenues described in the Financial Disclosure and, accordingly, Sponsor acknowledges that neither it, any Member, nor the Plan, has a right to receive, or possesses any beneficial interest in, any such fees or revenues; provided, that ESI will pay Sponsor amounts equal to the amounts expressly set forth on Exhibit A.

ARTICLE VI - TERM AND TERMINATION; DEFAULT AND REMEDIES

6.1 Term.

(a) This Agreement will commence effective as of July 1, 2016. ("Effective Date"), and will continue for a period of three (3) years ("Initial Term"), and may be terminated earlier or extended in accordance with the terms of Section 6.2 below. Thereafter, this Agreement will automatically renew with the same terms and conditions as set forth herein for successive one (1) year renewal terms, subject to the right of termination as otherwise provided herein.

(b) Not less than ninety (90) days prior to the end of the Initial Term or any renewal term of this Agreement either party may notify the other party in writing that it desires to terminate this Agreement effective as of the end of the then current term.

(c) Market Check. Following the initial twenty-one (21) months of this Agreement (but not before), Sponsor or its designee may provide ESI with a written comparison, prepared by an independent pharmacy benefit management consultant, for pharmacy benefit management services offered by a third party PBM provider which includes and takes into account similar plan design, Formulary, clinical and trend programs, retail pharmacy, mail pharmacy, and specialty pharmacy mix and utilization, demographics and other relevant factors necessary to provide an appropriate comparison ("Sponsor's Current Market Price"). Sponsor's Current Market Price will be measured on the basis of a total, aggregate comparison of the pricing terms offered by a single vendor to a single plan, and not on the basis of individual or best price points available from multiple vendors to a single plan or a single vendor to multiple plans. A copy Sponsor's Current Market Price analysis prepared by the consultant will be submitted to both Sponsor and to ESI. The consultant will also provide a reasonably detailed description of the methods and assumptions used in the analysis including the methods and assumptions related to the calculation of the individual pricing components and the Net Plan Costs, as defined below. At ESI's request, Sponsor or Sponsor's consultant will provide ESI with a list of specific, individual clients (on a blinded basis to address confidentiality restraints) used for the comparison that will show, on an individual client basis, a comparison of each of the plan design and other factors outlined above. ESI shall have a reasonable opportunity (i.e., not less than ten (10) business days) to evaluate Sponsor's Current Market Price. If the comparison analysis concludes that Sponsor's Current Market Price would yield an annual five percent (5%) or more savings of "Net Plan Costs" (with Net Plan Costs defined as the sum of the cost of Covered Drugs, dispensing fees, and claims Administrative Fees, less Rebates received by Sponsor) under the Agreement, then the parties shall negotiate in good faith a modification of the pricing terms herein. The revised pricing terms will become effective on the first day of the contract year following the issuance of the report or sixty (60) days following a fully executed amendment or agreement memorializing the revised pricing terms, whichever is later. The market check shall be at Sponsor's expense, except that ESI shall be responsible for its costs related to responding to the market check. If ESI is unable or unwilling to offer revised pricing terms and conditions that provide Sponsor the percentage of savings of Net Plan Costs as described above, then Sponsor may terminate this Agreement upon ninety (90) days prior written notice to ESI.

6.2 Termination.

(a) Breach or Default. Either party may give the other written notice of a material, substantial and continuing breach of this Agreement. If the breaching party has not cured said breach within thirty (30) days from the date such notice was sent, this Agreement may be terminated at the option of the non-breaching party. If the amount of time commercially reasonable for the breach to be cured is longer than thirty (30) days, this Agreement may not be terminated by the non-breaching party pursuant to this provision until such commercially reasonable period of time has elapsed; provided, however, that in no event will such period exceed sixty (60) days.

(b) Without Cause. Following the initial twelve (12) months of this Agreement (but not before), either party may terminate this Agreement for any reason or for no reason upon one hundred and eighty (180) days prior written notice of such termination to the other party.

(c) Non-Payment. Notwithstanding anything to the contrary herein, ESI (and its wholly-owned subsidiaries) may terminate or suspend their performance hereunder and cease providing or authorizing provision of Covered Drugs to Members upon forty-eight (48) hours written notice if Sponsor fails to pay ESI or provide a deposit, if required, in accordance with the terms of this Agreement. ESI attempts collection through written and verbal communications with Sponsor prior to sending the notice described herein.

(d) Obligations Upon Termination. Upon notice of termination of this Agreement, the parties will mutually develop a run-off plan providing for: (i) Sponsor notification to Members of the timing of any transition to a successor pharmacy benefit manager at least thirty (30) days prior to the effective date of such termination; (ii) ESI provision of open Mail Service Pharmacy refill files and standard claims data and PA files for transition to the successor pharmacy benefit manager in accordance with then existing industry protocol; and (iii) whether Sponsor elects for ESI to process Participating Pharmacy or Member Submitted Claims for prescriptions filled during the Term but filed with ESI after the effective date of termination ("Termination Date"). Sponsor will continue to pay ESI in accordance with this Agreement for any Fees for PBM Services provided during the term and any run-off period. ESI will continue filing for Rebates for claims incurred prior to the Termination Date and will, subject to final reconciliation of any outstanding amounts owed by Sponsor to ESI, pay Sponsor Rebates for such claims in accordance with the Rebate payment schedule set out herein. Notwithstanding anything in this Agreement to the contrary, ESI shall not be obligated to provide post-transition services following the transition to the successor pharmacy benefit manager and conclusion of the run-off period, including, but not limited to, the provision of continued data reporting, reporting, consultation, or analysis.

6.3 Remedies.

(a) Remedies Not Exclusive. A party's right to terminate this Agreement under Article VI will not be exclusive of any other remedies available to the terminating party under this Agreement or otherwise, at law or in equity.

(b) Force Majeure. Neither party will lose any rights under this Agreement or be liable in any manner for any delay to perform its obligations under this Agreement that are beyond a party's reasonable control, including, without limitation, any delay or failure due to riots, earthquakes, storms, floods or other extreme weather conditions, fires, acts of terrorism, epidemics, embargoes, war or other outbreak of hostilities, government acts or regulations, the failure or inability of carriers, suppliers, or telecommunications providers to provide services necessary to enable a party to perform its obligations hereunder, or any other reason where failure to perform is beyond the party's reasonable control, and is not caused by the negligence, intentional conduct or misconduct of the defaulting party; *provided, however*, that this clause may not be invoked to excuse a party's payment obligations hereunder. ESI represents that it maintains and continually updates a business continuity plan designed to mitigate any disruption to the services provided by ESI under this Agreement.

(c) Limitation of Liability. Except for the indemnification obligations set forth in Section 6.3(d), each party's liability to the other hereunder will in no event exceed the actual proximate losses or damages caused by breach of this Agreement. In no event will either party or any of their respective affiliates, directors, employees or agents, be liable for any indirect, special, incidental, consequential, exemplary or punitive damages, or any damages for lost profits relating to a relationship with a third party, however caused or arising, whether or not they have been informed of the possibility of their occurrence.

(d) Indemnification.

(i) In addition to any indemnification obligations set forth in the Business Associate Agreement, ESI will indemnify and hold Sponsor harmless from and against any loss, cost, damage, expense or other liability, including, without limitation, reasonable costs and attorney fees ("Costs") incurred in connection with any and all third party claims, suits, investigations or enforcement actions ("Claims") which may be asserted against, imposed upon or incurred by Sponsor and arising as a result

of (A) ESI's negligent acts or omissions or willful misconduct (including those of the Mail Service Pharmacy and ESI Specialty Pharmacy), or (B) ESI's breach of this Agreement.

(ii) To the extent permitted by Oregon law, Sponsor will indemnify and hold ESI harmless from and against any Costs for Claims which may be asserted against, imposed upon or incurred by ESI and arising as a result of (A) Sponsor's negligent acts or omissions or willful misconduct, benefit design and coverage decisions, or breach of this Agreement, or (B) any improper use Sponsor, an Auditor or Vendor may make of PHI or ESI System access provided to such party.

(iii) As a condition of indemnification, the party seeking indemnification will notify the indemnifying party in writing promptly upon learning of any Claim for which indemnification may be sought hereunder, and will tender the defense of such claim to the indemnifying party. No party will be obligated to indemnify the other with respect to any claim settled without the written consent of the other.

6.4 Survival. The parties' rights and obligations under the Sections 2.5, Articles III, IV and V; and Sections 6.2(c), 6.3, 6.4, 7.2, 7.3, 7.4 and 7.6 will survive the termination of this Agreement for any reason.

ARTICLE VII – MISCELLANEOUS

7.1 Liability Insurance. Each party will maintain such policies of general liability, professional liability and other insurance of the types, including self-insurance, and in amounts customarily carried by their respective businesses. Proof of such insurance will be available upon request. ESI agrees, at its sole expense, to maintain during the term of this Agreement or any renewal hereof, commercial general liability insurance, pharmacists professional liability insurance for the Mail Service and ESI Specialty Pharmacy pharmacies, and managed care liability with limits, excess of a self-insured retention, in amounts of not less than $5,000,000 per occurrence and in the aggregate. ESI does not maintain liability insurance on behalf of any Participating Pharmacy, but does contractually require such pharmacies to maintain a minimum amount of commercial liability insurance or, when deemed acceptable by ESI, to have in place a self-insurance program

7.2 Notice. Any notice or document required or permitted to be delivered pursuant to this Agreement must be in writing and will be deemed to be effective upon mailing and must be either (a) deposited in the United States Mail, postage prepaid, certified or registered mail, return receipt requested, or (b) sent by recognized overnight delivery service, in either case properly addressed to the other party at the address set forth below, or at such other address as such party will specify from time to time by written notice delivered in accordance herewith:

Express Scripts, Inc.
Attn: President
One Express Way
St. Louis, Missouri 63121
With copy to Legal Department
Fax No. (800) 417-8163

City of Portland
Attn: Cathy Bless
1120 Southwest Fifth Avenue, Fourth Floor
Portland, Oregon 97204

7.3 Independent Parties. No provision of this Agreement is intended to create or will be construed to create any relationship between ESI and Sponsor other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. Neither party, nor any of their respective representatives, will be construed to be the partner, agent, fiduciary, employee, or representative of the other and neither party will have the right to make any representations concerning the duties, obligations or services of the other except as consistent with the express terms of this Agreement or as otherwise authorized in writing by the party about which such representation is asserted.

7.4 Assignment and Subcontracting. Sponsor may assign this Agreement upon first obtaining ESI's written consent, which consent will not be unreasonably withheld following a standard credit review of the proposed

assignee. Sponsor acknowledges and agrees that ESI may perform certain services hereunder (e.g., mail service pharmacy and specialty pharmacy services) through one or more ESI subsidiaries, affiliates, or designees. ESI is responsible and liable for the performance of its subsidiaries and affiliates in the course of their performance of any such service. To the extent that ESI subcontracts any PBM Service under this Agreement to a third party, ESI is responsible and liable for the performance of any such third party. In addition, ESI may contract with third party vendors to provide information technology support services and other ancillary services, which services are not PBM Services hereunder, but rather are services that support ESI's conduct of its business operations. This Agreement will be binding upon, and inure to the benefit of and be enforceable by, the respective successors and permitted assigns of the parties hereto.

7.5 Integration; Amendments. This Agreement and any Exhibits hereto constitute the entire understanding of the parties hereto and supersedes any prior oral or written communication between the parties with respect to the subject matter hereof. If there is a separate Business Associate Agreement between the parties, such an agreement will be incorporated herein for all applicable purposes. No modification, alteration, or waiver of any term, covenant, or condition of this Agreement will be valid unless in writing and signed by the parties or the agents of the parties who are authorized in writing, except as may be otherwise permitted pursuant to the terms and conditions of this Agreement or any Exhibit hereto.

7.6 Choice of Law. This Agreement will be construed and governed in all respects according to the laws in the State of Oregon, without regard to the rules of conflict of laws thereof.

7.7 Waiver. The failure of either party to insist upon the strict observation or performance of this Agreement or to exercise any right or remedy will not be construed as a waiver of any subsequent breach of this Agreement or impair or waive any available right or remedy.

7.8 Trademarks. Each party acknowledges each other party's sole and exclusive ownership of its respective trade names, commercial symbols, trademarks, and servicemarks, whether presently existing or later established (collectively "Marks"). No party shall use the other party's Marks in advertising or promotional materials or otherwise without the owner's prior written consent.

7.9 Taxes and Assessments. Any applicable sales, use, excise, or other similarly assessed and administered tax, surcharge, or fee imposed on items dispensed, or services provided hereunder, or the fees or revenues generated by the items dispensed or services provided hereunder, or any other amounts ESI or one or more of its subsidiaries or affiliates may incur or be required to pay arising from or relating to ESI's or its subsidiaries' or affiliates' performance of services as a pharmacy benefit manager, third-party administrator, or otherwise in any jurisdiction, will be the sole responsibility of Sponsor or the Member. If ESI is legally obligated to collect and remit, or to incur or pay, any such sales, use, excise, or other similarly assessed and administered tax, surcharge, or fee in a particular jurisdiction, such amount will be reflected on the applicable invoice or subsequently invoiced at such time as ESI becomes aware of such obligation or as such obligation becomes due. ESI reserves the right to charge a reasonable administrative fee for collection and remittance services provided on behalf of Sponsor.

7.10 Third Party Beneficiary Exclusion. This Agreement is not a third party beneficiary contract, nor will this Agreement create any rights on behalf of Members as against ESI. Sponsor and ESI reserve the right to amend, cancel or terminate this Agreement without notice to, or consent of, any Member.

7.11 Authority to Contract. Sponsor hereby represents and warrants that it has obtained due and proper authority to enter into this Agreement through its governing body.

7.12 Open Records Requests. ESI acknowledges that Sponsor, as a government agency, may be subject to applicable freedom of information or open records laws and must, upon request, disclose such materials as are covered by and not exempted from such laws. Pursuant to Section 4.2 hereof, Sponsor acknowledges that certain information contained herein or subject to this Agreement is proprietary and confidential to ESI and shall be exempt from that Act to the fullest extent permitted by law. Sponsor agrees to give ESI notice and the minimum statutory or regulatory period of time to oppose, request redactions or limitations on any disclosures under a third party freedom of information or open records request pertaining to this Agreement or any proposal related hereto. This provision shall survive termination of the Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Pharmacy Benefit Management Agreement as of the day and year below set forth.

EXPRESS SCRIPTS, INC.

By:_____

Printed Name: _____

Title:_____

Date:_____

CITY OF PORTLAND

By:_____

Printed Name:_____

Title:_____

Federal ID Number:_____

Date:_____

EXHIBIT A

PHARMACY PROGRAM FEES

ESI shall be Sponsor's exclusive provider of PBM Services for Sponsor's Plans offering a prescription benefit. The financial terms set forth in Exhibit A are conditioned on such exclusive arrangement and all other specified conditions expressly incorporated in such exhibits, including, but not limited to the adoption by Sponsor of the specified network, qualifying co-payment structures, Formulary, a minimum of 8,400 Members implemented on the Effective Date of this Agreement, and no Members in a 100% co-payment plan. In the event one or more of the following occurs (whether between the date of the Cost Proposal and the Effective Date, or during the Term), ESI will have the right, upon notice, to make an equitable adjustment to the rates, Administrative Fees and/or Rebates, solely as necessary to return ESI to its contracted economic position as of the effective date of such event:

(a) There is a material change in: (i) the conditions or assumptions stated in this Agreement; or (ii) the size, demographics or gender distribution of Sponsor's Membership compared to data provided by Sponsor; and/or

(b) Sponsor changes its Formulary, benefit designs, implements OTC plans, clinical or trend programs or otherwise takes an action that has the effect of lowering the amount of Rebates earned hereunder or materially impacting any guarantee; and/or

(c) Sponsor elects to use on-site clinics or pharmacies to dispense prescription drugs to Members which materially reduces Rebates and/or the number of Covered Drug claims submitted on-line; and/or

(d) More than 5% of claims are incurred in Massachusetts, Hawaii, Alaska, or Puerto Rico; and/or

(e) Rebate revenue is materially decreased because Brand Drugs move off-patent to generic status or due to a Change in Law.

Exhibit A includes the following:

Exhibit A-1

Pharmacy Reimbursement Rates

Exhibit A-2

Administrative and Clinical Program Fees

Exhibit A-3

Rebates – Non-Specialty Products

Exhibit A-4

Rebates – Specialty Products

Exhibit A-1

Pharmacy Reimbursement Rates

I. Annual Average Ingredient Cost Discount Guarantees (Does Not Apply to Specialty Products)

	Brand	Generic
Participating Pharmacy ESI National Plus Network (1-83 Days Supply)	Pass-Through guarantee average: Year 1: AWP – 16.30% Year 2: AWP – 16.70% Year 3: AWP – 17.10%	Pass-Through guarantee average: Year 1: AWP – 79.00% Year 2: AWP – 79.25% Year 3: AWP – 79.50%
Participating Pharmacy ESI National Plus Network (84-90 Days Supply)[1]	Pass-Through guarantee average: Year 1: AWP – 20.90% Year 2: AWP – 21.30% Year 3: AWP – 21.80%	
Mail Service Pharmacy	AWP – 24.25%	Year 1: AWP – 81.50% Year 2: AWP – 81.75% Year 3: AWP – 82.00%

(1) Certain Participating Pharmacies have agreed to participate in the extended (84 – 90) day supply network ("Maintenance Network") for maintenance drugs. Pricing in the 84 – 90 Days' Supply column in the table set forth above is applicable only if Sponsor implements a plan design that requires Members to fill such days' supply at a Maintenance Network Participating Pharmacy (i.e., Sponsor must implement a plan design whereby Members who fill extended days' supply prescriptions at a Participating Pharmacy other than a Maintenance Network Participating Pharmacy do not receive benefit coverage under the Plan for such prescription). If no such plan design is implemented, the pricing for such days' supply will be the same as for Prescription Drug Claims for less than an 84 days' supply, and pricing for an 84 – 90 days' supply in the table set forth above shall not apply, even if a Maintenance Network Participating Pharmacy is used.

Subject to annual reconciliation of the above average guarantees, Sponsor will pay to ESI on a per Prescription Drug Claim basis amounts determined pursuant to the following, net of applicable Copayments:

Participating Pharmacy – Brand: The lesser of the Ingredient Cost Charge or U&C plus the applicable dispensing fee

Participating Pharmacy – Generic: The lesser of the Ingredient Cost Charge, MRA, or U&C plus the applicable dispensing fee

Mail Service Pharmacy – Brand: The Ingredient Cost Charge plus the applicable dispensing fee

Mail Service Pharmacy – Generic: The lesser of the Ingredient Cost Charge or MRA plus the applicable dispensing fee

A Member's Copayment charged for a Covered Drug will be the lesser of the applicable Copayment, Ingredient Cost Charge, or U&C.

Applicable dispensing fees as well as additional per/Rx Administrative Fees, if any, are set forth in the table in Section II. below. Sales or excise tax or other governmental surcharge, if any, will be the responsibility of Sponsor.

All compound Prescription Drug Claims shall be excluded from the average annual ingredient cost discount guarantees set forth in the table above and will be paid by Sponsor at the lesser of U&C or combined AWP plus applicable service fee for Participating Pharmacy.

Application of the average annual ingredient cost discount guarantees set forth in the table above shall be subject to the following criteria and reconciliation provisions:

A. **Guarantee Exclusions.** Prescription Drug Claims for OTCs, compounds, Member Submitted Claims, Subrogation Claims, vaccines, Specialty Products, biosimilar products, long term care pharmacy claims, home infusion, I/T/U, IHS, and products filled through in-house or 340b pharmacies (if applicable) shall be excluded from the reconciliation of all guarantees.

B. **Guarantee Calculation.** Separately for each pricing component in the table above, the following calculation will be performed on an aggregated basis for all Prescription Drug Claims processed during the applicable contract year in order to reconcile against the average annual ingredient cost discount guarantees set forth in the table above:

$$1 - (A/B)$$

A = For Participating Pharmacy – Brand Prescription Drug Claims, the lesser of the Ingredient Cost Charge or U&C, and prior to application of Copayments

For Participating Pharmacy – Generic Prescription Drug Claims, the lesser of the Ingredient Cost Charge, MRA, or U&C, and prior to application of Copayments

For Mail Service Pharmacy – Brand Prescription Drug Claims, the Ingredient Cost Charge, and prior to application of Copayments

For Mail Service Pharmacy – Generic Prescription Drug Claims, the lesser of the Ingredient Cost Charge or MRA, and prior to application of Copayments

B = The actual AWP for the Covered Prescription

C. **Guarantee Reconciliation.** Guarantees will be measured and reconciled on an annual basis within ninety (90) days of the end of each contract year. The above guarantees are annual guarantees - if this Agreement is terminated prior to the completion of the then current contract year (hereinafter, a "Partial Contract Year"), then the above guarantees will not apply for such Partial Contract Year. To the extent Sponsor changes its benefit design or Formulary during the term of the Agreement, the guarantee will be equitably adjusted if there is a material impact on the discount achieved. Subject to the remaining terms of this Agreement, ESI will pay the difference attributable to any shortfall between the actual result and the guaranteed result; provided however, that ESI may use an excess achieved in one or more of the above guarantees to make up for, and offset, a shortfall in another guarantee. ESI may also use any excess achieved in any other guarantee offered pursuant to this Agreement to make up for, and offset, a shortfall in any other guarantee(s) within the same channel, excluding Rebate guarantees.

II. **Per Prescription Drug Claim Dispensing Fee Guarantees and Administrative Fees (Does Not Apply to Specialty Products).**

ESI National Plus Network	**Brand**	**Generic**
Participating Pharmacy	Pass-Through guarantee average:	Pass-Through guarantee average:
(1-83 Days Supply)	Year 1: $0.72	Year 1: $0.82
Dispensing Fee/Rx	Year 2: $0.66	Year 2: $0.75
	Year 3: $0.62	Year 3: $0.71

Participating Pharmacy (84-90 Days Supply)[1] Dispensing Fee/Rx	Pass-Through guarantee average: Year 1: $0.26 Year 2: $0.22 Year 3: $0.18
Participating Pharmacy Administrative Fee/Rx	$1.95
Mail Service Pharmacy Dispensing Fee/Rx*	$0.00
Mail Service Pharmacy Administrative Fee/Rx	$1.95

*Dispensing Fee Guarantee are inclusive of shipping and handling. If carrier rates (i.e., U.S. mail and/or applicable commercial courier services) increase during the term of this Agreement, the Dispensing Fee Guarantee will be increased to reflect such increase(s).

(1) Certain Participating Pharmacies have agreed to participate in the extended (84 – 90) day supply network ("Maintenance Network") for maintenance drugs. Pricing in the 84 – 90 Days' Supply column in the table set forth above is applicable only if Sponsor implements a plan design that requires Members to fill such days' supply at a Maintenance Network Participating Pharmacy (i.e., Sponsor must implement a plan design whereby Members who fill extended days' supply prescriptions at a Participating Pharmacy other than a Maintenance Network Participating Pharmacy do not receive benefit coverage under the Plan for such prescription). If no such plan design is implemented, the pricing for such days' supply will be the same as for Prescription Drug Claims for less than an 84 days' supply, and pricing for an 84 – 90 days' supply in the table set forth above shall not apply, even if a Maintenance Network Participating Pharmacy is used.

Guarantee Exclusions. Prescription Drug Claims for OTCs, compounds, Member Submitted Claims, Subrogation Claims, vaccines, Specialty Products, biosimilar products, long term care pharmacy claims, home infusion, I/T/U, IHS, and products filled through in-house or 340b pharmacies (if applicable) shall be excluded from the reconciliation of all guarantees.

III. Generic Dispensing Rate Guarantee. ESI will guarantee that Generic Drugs will be dispensed from Participating Pharmacies and the Mail Service Pharmacy at the percentages reflected below:

Generic Drug Dispensing Rate Guarantee		
Contract Year	Participating Pharmacies	Mail Service Pharmacy
July 1, 2016 through June 30, 2017	83.50%	81.50%
July 1, 2017 through June 30, 2018	84.00%	82.00%
July 1, 2018 through June 30, 2019	84.00%	82.50%

The guarantees will be calculated as follows:

(a) The total Participating Pharmacy Generic Prescription Drug Claims divided by total Participating Pharmacy Generic and Brand Prescription Drug Claims (and the same for Mail Service Pharmacy Prescription Drug Claims).

(b) The Generic Drug dispensing guaranteed percentage baseline in contract years two and three will be set to the preceding year's actual Generic Drug dispensing percentage *plus* the increment guaranteed for Participating Pharmacies and Mail Service Pharmacy, respectively.

(c) ESI will pay a penalty for any shortfall between the actual percentage result and the guaranteed percentage for each of the Participating Pharmacy and Mail Service Pharmacy guarantees, respectively. If the actual Generic Drug dispensing percentage for a contract year is below the guaranteed percentage, the penalty will be calculated as the guaranteed Generic Drug dispensing percentage for the contract year minus the actual Generic Drug dispensing percentage for the contract year times the actual claims volume times the applicable Payment Factor below. Separate calculations will be performed for Participating Pharmacies and Mail Service Pharmacy and for each contract year.

Payment Factor		
Contract Year	Participating Pharmacies	Mail Service Pharmacy
July 1, 2016 through June 30, 2017	$165.00	$275.00
July 1, 2017 through June 30, 2018	$177.00	$290.00
July 1, 2018 through June 30, 2019	$194.00	$310.00

(d) Guarantees will be measured and reconciled separately for Participating Pharmacy and Mail Service Pharmacy on an annual basis within ninety (90) days of the end of each contract year. Any excess achieved in either the Participating Pharmacies or Mail Service Pharmacy guarantee will be used to offset a shortfall in the other guarantee, if any, or a shortfall in ingredient cost guarantees, if any. To the extent Sponsor changes its utilization management programs, benefit design or Formulary, or there are material changes to the demographics and geography of the Members during the term of the Agreement, the guarantee will be equitably adjusted if there is a material impact on the Generic Drug dispensing percentage achieved.

(e) Specialty Products shall not be included in the calculation of the Generic Dispensing Rate Guarantee.

IV. Specialty Products

(a) Exclusive Care. ESI Specialty Pharmacy is the exclusive provider of Specialty Products for the reimbursement rates shown on the Exclusive ESI Specialty Pharmacy Specialty Product List. Any Specialty Product dispensed at a Participating Pharmacy (for example, limited distribution products not then available through ESI Specialty Pharmacy or overrides) will be reimbursed at the standard Participating Pharmacy Specialty Product rates shown below. Upon ESI Specialty Pharmacy acquisition of limited distribution products, Members will obtain prescriptions through ESI Specialty Pharmacy.

	Ingredient Cost	Dispensing Fee	Administrative Fee/Rx
Exclusive ESI Specialty Pharmacy	See Exclusive Specialty Product List Lesser of AWP discount or MRA (as applicable)	$0.00	$0.00
Participating Pharmacy Specialty Products	Participating Pharmacy Specialty Product List Lesser of AWP discount, U&C or MRA (as applicable)	$0.70	$1.95

(b) For Specialty Products needing an additional charge to cover costs of all ASES required to administer the Specialty Products, the following standard per diem and nursing fee rates shall apply.

Therapeutic Class	Brand Name	Nursing & Per Diem
Immune Deficiency	All	$65.00 / Infusion
Metabolic Disorder	All	$65.00 / Infusion
PAH	Flolan , Veletri and Remodulin	$65.00 / Day
PAH	Epoprostenol Sodium (Generic Flolan)	$65.00 / Day

PAH	Ventavis	$65.00 / Day
PAH	Tyvaso	$30.00 / Day
Pulmonary	All	$55.00 / Infusion
Nursing Rates	All drugs / therapies requiring nursing	$150.00 per Initial Visit up to two(2) hours / $75.00 per addt'l hour or a fraction thereof

(c) In no event will the Mail Service Pharmacy or Participating Pharmacy pricing terms specified in the Agreement, including, but not limited to, the annual average ingredient cost discount guarantees, apply to Specialty Products.

(d) Unless otherwise set forth in an agreement directly between ESI Specialty Pharmacy and Sponsor, if a Specialty Product dispensed or ASES provided by ESI Specialty Pharmacy is billed to Sponsor directly by ESI Specialty Pharmacy instead of being processed through ESI, Sponsor agrees to timely pay ESI Specialty Pharmacy for such claim pursuant to the rates above and within thirty (30) days of Sponsor's, or its designee's, receipt of such electronic or paper claim from ESI Specialty Pharmacy. ESI Specialty Pharmacy shall have 360 days from the date of service to submit such electronic or paper claim.

(e) Notwithstanding the Specialty Product pricing terms set forth above, ESI will guarantee an average aggregate annual ingredient cost discount for Specialty Product dispensed through ESI Specialty Pharmacy as follows:

Type of Guarantee	ESI Specialty Pharmacy	Claims Excluded
Average Aggregate Annual Ingredient Cost Discount Guarantee	AWP – 16.50%(1)	All Specialty Products Prescription Drug Claims except Specialty Product Prescription Drug Claims dispensed through ESI Specialty Pharmacy (excluding Limited Distribution medications dispensed through ESI Specialty Pharmacy, which are also excluded)

(1)This guarantee shall only apply if Sponsor elects the ESI Specialty Pharmacy "exclusive" option.

The above Specialty Product guarantee will be reconciled in accordance with the terms of Section I above.

IV. Vaccine Claims (No vaccine claims will be included in any pricing or rebate guarantee set forth in the Agreement).

(a) General Terms applicable to Vaccine Claims

(i) Vaccine Claims shall adjudicate at the lower of U&C or the amounts shown in the table below. In the case of Vaccine Claims, the U&C shall be the retail price charged by a Participating Pharmacy for the particular vaccine, plus administration and dispensing fees, in a cash transaction on the date the vaccine is dispensed as reported to ESI by the Participating Pharmacy.

(ii) The Vaccine Administration Fee for Vaccine Claims for Members enrolled in Sponsor's Medicaid programs, if any, will be capped at the maximum reimbursable amount under the state Medicaid program in which the Member is enrolled.

(iii) All Vaccine Claims will be subject to any Administrative Fees set forth in the Agreement.

(iv) Vaccine Claims will be charged a program fee of $2.50 per Vaccine Claim. The Vaccine Program Fee will be billed separately to Sponsor as part of the administrative invoice according to the billing frequencyset forth in this Agreement.

(b) Vaccine Claim Pricing

	Participating Pharmacy INFLUENZA	Participating Pharmacy ALL OTHER VACCINES	Member Submitted Vaccine Claims (excluding foreign claims)
Vaccine Administration Fee	Pass-Through (capped at $15 per vaccine claim)	Pass-Through (capped at $20 per vaccine claim)	Submitted amount
Ingredient Cost	Participating Pharmacy Ingredient Cost as set forth in the Agreement	Participating Pharmacy Ingredient Cost as set forth in the Agreement	Submitted amount
Dispensing Fee	Participating Pharmacy Dispensing Fee as set forth in the Agreement	Participating Pharmacy Dispensing Fee as set forth in the Agreement	Submitted amount
Administrative Fee/Vaccine Claim	Administrative Fee per Prescription Drug Claim as set forth in the Agreement		Administrative Fee per Prescription Drug Claim (plus manual claim administrative fee) as set forth in the Agreement
Vaccine Program Fee	$2.50 per vaccine claim		

Exhibit A-2

Administrative Services and Clinical Program Fees

I. Commercial Administrative Services

PBM Services – No Additional Fee	
Customer service for Members	Electronic claims processing
Electronic/on-line eligibility submission	Plan setup
Standard coordination of benefits (COB) (reject for primary carrier)	Software training for access to our on-line system(s)
FSA eligibility feeds	
Network Pharmacy Services	
Pharmacy help desk	Pharmacy reimbursement
Pharmacy network management	Network development (upon request)
Network Pharmacy Audit Program	Network Pharmacy Reporting
Home Delivery Services	
Benefit education	Prescription delivery – standard
Reporting Services	
Web-based client reporting – produced by Sponsor	Web-based client reporting – produced by ESI
Ad-hoc desktop parametric reports	Annual Strategic Account Plan report
Claims detail extract file electronic (NCPDP format)	Billing reports
Load 12 months claims history for clinical reports and reporting	Inquiry access to claims processing system
Website Services	
Sponsor Website — eService Delivery (Eligibility, Claims, and Benefit Administration), Coverage Management and Appeals, Eligibility File Transfer, Reporting Solutions and Resources Area.	My Rx Choices – helps members make informed medication choices based on cost, health and safety. Member website portion only.
Express-Scripts.com for Members — access to benefit, drug, health, and wellness information; prescription ordering capability; and customer service.	Online Benefit Management – eService web-based application with Claims History, Eligibility Maintenance, and Prior Authorization Add.
Mobile App for Members – includes My Rx Choices, My Medicine Cabinet, Pharmacy Care Alerts, Refills and Renewals, and virtual prescription ID card.	
Implementation Package and Member Communications	
New Member packets (includes two standard resin ID cards) Member replacement cards printed via web	Implementation support
Clinical	
Concurrent Drug Utilization Review (DUR)	Prior Authorization – Administrative • Non-clinical Prior Authorization • Lost/stolen overrides • Vacation supplies

PBM Services	**Fees**
Manual/hardcopy eligibility submission	$10.00/update (includes initial entry)
Member-submitted paper claims processing fee Medicaid subrogation claims fee	$3.00/claim $3.00/claim
Electronic Prescribing	Pass-through charge for ePrescribing Eligibility and Formulary transaction fees charged to Sponsor at ESI's preferred rate with data switch such as Surescripts.
Reporting Services	
Custom ad-hoc reporting	$150/hour, with a minimum of $500

Replacement Member Communication Packets	
Member requested replacement packets Sponsor requested re-carding	$1.50 + postage per packet $1.50 + postage per packet
Communication Fee	
Smart90 and Mail (EHD, SHD & HDE) Programs	$2.50 per employee upon implementation of program (one-time charge)
Reviews and Appeals Management	
Initial Determinations (i.e. coverage reviews) and Level One Appeals for the Coverage Authorization Program, consisting of: • Prior Authorization • Step Therapy • Drug Quantity Management	Included in the existing UM PMPM charge
Initial Determinations and Level One Appeals for the Benefit Review Program, consisting of reviews known as: • Plan Design Related Requests • Plan Exclusion Reviews (clinical or administrative reviews of non-covered drugs) • Copay Reviews • Plan Limit Reviews (e.g. age, gender, days' supply limits) • Plan Rule/Administrative Reviews/Non-clinical Reviews • Clinical Benefit Reviews • Direct Claim Reject Reviews	$55 per review
Final and Binding Appeals – Level Two Appeals * and/or Urgent Appeals** *Level One for clients with only one level of appeal ** Appeals can be urgent at Level One or Level Two and decisions are final and binding.	$10.00 per review* (incremental to PMPM fees or per review fees above) *** this additional fee is applied to each initial determination.**
External Reviews by Independent Review Organizations - for non-grandfathered plans	$800 per review
Comprehensive Consumer Driven Health (CDH) Solution	
Required Services and Fee for all CDH enrolled Members	
Foundational Services ● Technical Bi-directional data exchange; dedicated operations; 24-hour a day, seven-days a week monitoring and quality control; performance reporting; and analytics ● Member Advocacy Dedicated CDH member services, My Rx Choices Plus, open enrollment tools and member communications library, robust online features, and preventive care	Technical and Member Advocacy: $0.35 PMPM Additional services will be quoted upon request. Postage charges are not included and will be billed to Sponsor.

Optional Service and Fee for all CDH enrolled Members	
Comprehensive Member Engagement Services ● Health Choices ● Medication Adherence Monitoring and Outreach and proactive, personalized member communications ● Drug Choices ● Benefit Coaching, Prescription Benefit Review Statements, proactive, personalized member communications	Comprehensive Services: $0.30 PMPM All Services (Foundational & Comprehensive): $0.65 PMPM Additional services will be quoted upon request. Postage charges are not included and will be billed to Sponsor.

Required Service and Fee for all Non-CDH enrolled Members – If Sharing Data Only	
Combined Benefit Management Services to manage combined medical-pharmacy benefits that are not a consumer-directed health (CDH) plan. Services include ongoing management of the data exchange platform with the medical vendor/TPA, production monitoring and quality control, and dedicated operations team. Combined benefit types may include deductible, out of pocket, spending account, and lifetime maximum.	$0.10 PMPM per combined accumulator up to maximum of $0.20 PMPM for existing connection with medical carrier or TPA. Fees to establish connection with new medical carrier or TPA will be quoted upon request. Additional services will be quoted upon request. Postage charges are not included and will be billed to Sponsor.
Medicare Part D – Retiree Drug Subsidy (RDS)	
RDS enhanced service (ESI sends reports to CMS on behalf of Sponsor) • Notice of Creditable Coverage	$1.12 PMPM for Medicare-qualified Members with a minimum annual fee of $7,500 $1.35/letter + postage
RDS standard service (ESI sends reports to Sponsor) • Notice of Creditable Coverage	$0.62 PMPM for Medicare-qualified Members with a minimum annual fee of $5,000 $1.35/letter + postage
Electronic Medicare Part D EOB	
Electronic Medicare EOB is an e-mail notification to the Member informing them at the time of EOB production that their Medicare Part D Explanation of Benefits is available for viewing. Members can opt in/opt out at any time. Electronic EOB includes: • Email notification to the Member • Solicitation e-mail sent to registered Members • Prominent Web messaging	$0.15/per EOB
Cost Exceeds Maximum	
ESI-Managed Cost Exceeds Maximum (CEM) edit (For non-compound drugs)	$10,000 CEM limit – included in pricing Custom CEM limit less than $10,000 - $0.01PMPM fee
ESI-Managed Cost Exceeds Maximum (CEM) edit (For compound drugs)	Included in pricing
Client Managed Cost Exceeds Maximum (CEM) edit (For non-compound and compound drugs)	Included in pricing
Standard SSO	$20,000
Add Web Services • Enables client to display actionable alerts from ESI to their home website • Integrates certain functions such as claims summary, pharmacy location	Minimum $15,000 upcharge, depending on web service
• Add Single Identifier • Includes a single identifier value (SSO ID) that must map pass-through eligibility	$5,000 upcharge

II. Clinical/Trend Programs.

ESI offers a comprehensive suite of trend and integrated health management programs. These offerings may change or be discontinued from time to time as ESI updates its offerings to meet the needs of the marketplace.

The programs (and corresponding pricing and guarantees) outlined in the Clinical Addendum (executed separately by Sponsor) represent the programs currently adopted by Sponsor as of the Effective Date. ESI also offers additional programs, as well as savings guarantees, under certain conditions. Information concerning such programs, guarantees, and fees, if applicable, is available on request. In addition, the ESI Account Management Team will periodically discuss new programs, guarantees, and fees with Sponsor, which Sponsor may adopt through ESI's standard Set-Up Form process.

Sponsor will select clinical/trend programs during implementation by checking selected options on the Clinical Addendum and on the applicable Set-Up Form. Such Set-Up Forms are incorporated herein by reference as and when executed by the parties.

Please refer to the Clinical Addendum for a listing of Sponsor's programs.

EXHIBIT A-3

Rebates
(Does Not Apply to Specialty Products)

1. Rebate Amounts

A. Subject to the conditions set forth in Sections 2. – 4. below and elsewhere in this Agreement, ESI will pay to Sponsor an amount equal to the greater of:

(i) 100% of the Rebates and Manufacturer Administrative Fees received by ESI, excluding Rebates received by ESI for Specialty Products;

Or

(ii) Subject to Sponsor meeting the Plan design conditions identified in the table below, the following guaranteed amounts, excluding claims for Specialty Products:

Formulary:	ESI National Preferred			
Copayment Design:	Less than $15 Copayment differential		Minimum $15 Copayment differential	
	Participating Pharmacies (1-83 Days Supply)	Participating Pharmacies (84-90 Days Supply)[1] And Mail Service Pharmacy	Participating Pharmacies (1-83 Days Supply)	Participating Pharmacies (84-90 Days Supply)[1] And Mail Service Pharmacy
Per Brand Claim				
Year 1:	$72.97	$225.46	$91.21	$281.83
Year 2:	$90.52	$278.03	$113.15	$347.54
Year 3:	$108.18	$333.58	$135.23	$416.98

(1) Certain Participating Pharmacies have agreed to participate in the extended (84 – 90) day supply network ("Maintenance Network") for maintenance drugs. Rebate Amounts in the 84 – 90 Days' Supply column in the table set forth above are applicable only if Sponsor implements a plan design that requires Members to fill such days' supply at a Maintenance Network Participating Pharmacy (i.e., Sponsor must implement a plan design whereby Members who fill extended days' supply prescriptions at a Participating Pharmacy other than a Maintenance Network Participating Pharmacy do not receive benefit coverage under the Plan for such prescription). If no such plan design is implemented, Rebate Amounts for such days' supply will be the same as for Prescription Drug Claims for less than an 84 days' supply, and Rebate Amounts for an 84 – 90 days' supply in the table set forth above shall not apply, even if a Maintenance Network Participating Pharmacy is used.

B. If the Plan design conditions identified in the table in Section 1.A.(ii) above are not met, the "greater of" methodology and the guaranteed amounts shall not apply, and ESI will, subject to the remaining terms of this Agreement, pay Sponsor Rebate amounts pursuant to the percentage set forth in Section 1.A.(i) above.

2. Exclusions

Member Submitted Claims, Specialty Products, Subrogation Claims, biosimilar products, OTC products, claims older than 180 days, claims through Sponsor-owned, in-house, or on-site pharmacies, 340b pharmacies, and claims pursuant to a 100% Member Copayment plan are not eligible for the guaranteed Rebate amounts set forth in Section 1.A.(ii) above.

3. Rebate Payment Terms

A. Subject to the conditions set forth herein, ESI shall pay Sponsor the percentage amount set forth in Section 1.A.(i) above for Rebates and Manufacturer Administrative Fees collected by ESI during each calendar quarter hereunder within approximately one hundred and fifty (150) days following the end of such calendar quarter. ESI shall also pay Sponsor the percentage amount set forth in Section 1.A.(i) above for residual Rebates and Manufacturer Administrative Fees collected by ESI, if any, related to such calendar quarter, which are collected by ESI in subsequent quarters.

B. On an annual and aggregate basis, ESI shall reconcile the guaranteed amounts set forth in Section 1.A.(ii) above (against the percentage amount paid to Sponsor quarterly) within two hundred and forty (240) days following the end of each calendar year and shall credit Sponsor for any deficit on the next invoice immediately following the reconciliation to the extent such deficit is not offset by ESI against excesses achieved in other guarantees offered pursuant to this Agreement. If, upon reconciliation, the annual aggregate percentage amount paid to Sponsor for the calendar year pursuant to Section 1.A.(i) and 3.A. above is greater than the guaranteed aggregate amounts set forth in Section 1.A.(ii) above, ESI shall be entitled to make up for, and offset, a shortfall in other Rebate guarantee(s) set forth in this Agreement with such excess annual aggregate percentage amount, and such excess amount shall be applied either directly to the other shortfall Rebate guarantee(s) or applied as a credit against future Rebate payments and Manufacturer Administrative Fee payments (or as a direct invoice amount to be paid by Sponsor, if a credit is not feasible).

4. Conditions

A. ESI contracts for Rebates and Manufacturer Administrative Fees on its own behalf and for its own benefit, and not on behalf of Sponsor. Accordingly, ESI retains all right, title and interest to any and all actual Rebates and Manufacturer Administrative Fees received. ESI will pay Sponsor amounts equal to the Rebate and Manufacturer Administrative Fees amounts allocated to Sponsor, as specified above, from ESI's general assets (neither Sponsor, its Members, nor Sponsor's plan retains any beneficial or proprietary interest in ESI's general assets). Sponsor acknowledges and agrees that neither it, its Members, nor its Plan will have a right to interest on, or the time value of, any Rebate payments or Manufacturer Administrative Fee payments received by ESI during the collection period or moneys payable under this Section. No amounts for Rebates or Manufacturer Administrative Fees will be paid until this Agreement is executed by Sponsor. ESI will have the right to apply Sponsor's allocated Rebate amount and Manufacturer Administrative Fees amount to unpaid Fees.

B. Sponsor acknowledges that it may be eligible for Rebate amounts and Manufacturer Administrative Fee amounts under this Agreement only so long as Sponsor, its affiliates, or its agents do not contract directly or indirectly with anyone else for discounts, utilization limits, rebates or other financial incentives on pharmaceutical products or formulary programs for claims processed by ESI pursuant to the Agreement, without the prior written consent of ESI. In the event that Sponsor negotiates or arranges for Rebates or similar discounts for any Covered Drugs hereunder, but without limiting ESI's right to other remedies, ESI may immediately withhold any Rebate amounts or Manufacturer Administrative Fee amounts earned by, but not yet paid to, Sponsor as necessary to prevent duplicative rebates on Covered Drugs. To the extent Sponsor knowingly negotiates and/or contracts for discounts or rebates on claims for Covered Drugs without prior written approval of ESI, such activity will be deemed to be a material breach of this Agreement, entitling ESI to suspend payment of Rebate amounts and Manufacturer Administrative Fee amounts hereunder and to renegotiate the terms and conditions of this Agreement.

C. Under its Rebate program, ESI may implement ESI's Formulary management programs and controls, which may include, among other things, cost containment initiatives, and communications with Members, Participating Pharmacies, and/or physicians. ESI reserves the right to modify or replace such programs from time to time. Guaranteed Rebate amounts, if any, set forth herein, are conditioned on adherence to various Formulary management controls, benefit design requirements, claims volume, and other factors stated in the applicable pharmaceutical manufacturer agreements, as communicated by ESI to Sponsor from time to time. If any government action, change in law or regulation, change in the interpretation of any law or regulation, or any action by a pharmaceutical

manufacturer has an adverse effect on the availability of Rebates, then ESI may make an adjustment to the Rebate terms and guaranteed Rebate amounts, if any, hereunder.

D. Rebate and Manufacturer Administrative Fee amounts paid to Sponsor pursuant to this Agreement are intended to be treated as “discounts” pursuant to the federal anti-kickback statute set forth at 42 U.S.C. §1320a-7b and implementing regulations. Sponsor is obligated if requested by the Secretary of the United States Department of Health and Human Services, or as otherwise required by applicable law, to report the Rebate amounts and to provide a copy of this notice. ESI will refrain from doing anything that would impede Sponsor from meeting any such obligation.

EXHIBIT A-4

Rebates (Specialty Products)

1. **Rebate Amounts**

Subject to: (i) the conditions set forth in Sections 2. – 4. below and elsewhere in this Agreement; and (ii) Sponsor meeting the Plan design conditions identified in the table below, ESI will pay to Sponsor the following guaranteed amounts:

Formulary:	**ESI National Preferred**	
Copayment Design:	**Less than $15 Copayment differential**	**Minimum $15 Copayment differential**
	ESI Specialty Pharmacy	
Per Brand Claim	$450.00	

2. Exclusions

Member Submitted Claims, Subrogation Claims, biosimilar products, OTC products, claims older than 180 days, claims through Sponsor-owned, in-house, or on-site pharmacies, 340b pharmacies, and claims pursuant to a 100% Member Copayment plan are not eligible for the guaranteed Rebate amounts set forth in Section 1.A.(ii) above.

3. Rebate Payment Terms

Subject to the conditions set forth herein, ESI shall pay Sponsor the guaranteed amounts set forth in Section 1 above within approximately one hundred and fifty (150) days following the end of each calendar quarter for utilization occurring during such quarter.

4. Conditions

A. ESI contracts for Rebates on its own behalf and for its own benefit, and not on behalf of Sponsor. Accordingly, ESI retains all right, title and interest to any and all actual Rebates received. ESI will pay Sponsor amounts equal to the Rebate amounts allocated to Sponsor, as specified above, from ESI's general assets (neither Sponsor, its Members, nor Sponsor's plan retains any beneficial or proprietary interest in ESI's general assets). Sponsor acknowledges and agrees that neither it, its Members, nor its Plan will have a right to interest on, or the time value of, any Rebate payments received by ESI during the collection period or moneys payable under this Section. No amounts for Rebates will be paid until this Agreement is executed by Sponsor. ESI will have the right to apply Sponsor's allocated Rebate amount to unpaid Fees.

B. Sponsor acknowledges that it may be eligible for Rebate amounts under this Agreement only so long as Sponsor, its affiliates, or its agents do not contract directly or indirectly with anyone else for discounts, utilization limits, rebates or other financial incentives on pharmaceutical products or formulary programs for claims processed by ESI pursuant to the Agreement, without the prior written consent of ESI. In the event that Sponsor negotiates or arranges for Rebates or similar discounts for any Covered Drugs hereunder, but without limiting ESI's right to other remedies, ESI may immediately withhold any Rebate amounts earned by, but not yet paid to, Sponsor as necessary to prevent duplicative rebates on Covered Drugs. To the extent Sponsor knowingly negotiates and/or contracts for discounts or rebates on claims for Covered Drugs without prior written approval of ESI,

such activity will be deemed to be a material breach of this Agreement, entitling ESI to suspend payment of Rebate amounts hereunder and to renegotiate the terms and conditions of this Agreement.

C. Under its Rebate program, ESI may implement ESI's Formulary management programs and controls, which may include, among other things, cost containment initiatives, and communications with Members, Participating Pharmacies, and/or physicians. ESI reserves the right to modify or replace such programs from time to time. Guaranteed Rebate amounts, if any, set forth herein, are conditioned on adherence to various Formulary management controls, benefit design requirements, claims volume, and other factors stated in the applicable pharmaceutical manufacturer agreements, as communicated by ESI to Sponsor from time to time. If any government action, change in law or regulation, change in the interpretation of any law or regulation, or any action by a pharmaceutical manufacturer has an adverse effect on the availability of Rebates, then ESI may make an adjustment to the Rebate terms and guaranteed Rebate amounts, if any, hereunder.

D. Rebate amounts paid to Sponsor pursuant to this Agreement are intended to be treated as "discounts" pursuant to the federal anti-kickback statute set forth at 42 U.S.C. §1320a-7b and implementing regulations. Sponsor is obligated if requested by the Secretary of the United States Department of Health and Human Services, or as otherwise required by applicable law, to report the Rebate amounts and to provide a copy of this notice. ESI will refrain from doing anything that would impede Sponsor from meeting any such obligation.

EXHIBIT B

AUDIT PROTOCOL

1. AUDIT PRINCIPLES

ESI recognizes the importance of its clients ensuring the integrity of their business relationship by engaging in annual audits of their financial arrangements with ESI, and, where applicable (i.e., Medicare Part D), by auditing compliance with applicable regulatory requirements. ESI provides this audit right to each and every client. In granting this right, ESI's primary interest is to facilitate a responsive and responsible audit process. In order to accomplish this goal, for all clients, ESI has established the following Protocol. Our intent is in no way to limit Sponsor's ability to determine that ESI has properly and accurately administered the financial aspects of the Agreement or complied with applicable regulatory requirements, but rather to create a manageable process in order to be responsive to our clients and the independent auditors that they may engage.

ESI strongly encourages clients to have their auditors, without jeopardizing the independent nature of the audit, review the auditor's initial findings and reports with ESI prior to discussing with the client in order to avoid any unnecessary client confusion. In addition, clients should not initiate a new audit until all parties have agreed that the prior audit is closed. We have found often times that items identified as issues during the initial audit turn out to be non-findings once a dialogue takes place between the auditor and ESI. In other words, we believe it is in everyone's interest to ensure that the auditor and ESI are not simply "missing each other" in the exchange of information prior to the auditor reviewing its findings with the client.

2. AUDIT PREREQUISITES

A. There are four components of your arrangement with ESI eligible for audit on an annual basis from February through October:
   - Retrospective Claims
   - Rebates
   - Performance Guarantees
   - Compliance with Regulatory Requirements (i.e., Medicare Part D)

   Balancing the need to adequately support the audit process for all ESI clients, with an efficient allocation of resources, we encourage clients to audit all four components, as applicable, through a single annual audit. If you choose to audit the above components separately throughout the year, rather than combining all components into a single annual audit, you will be subject to ESI's standard charges for each additional audit. All such fees shall be reasonable and based on ESI's costs for supporting such additional audits.

B. ESI will provide all data reasonably necessary for Sponsor to determine that ESI has performed in accordance with contractual terms. ESI will use commercially reasonable best efforts to provide the retrospective claims and benefit information in no more than fifteen (15) days from audit kickoff call and having an executed confidentiality agreement. Our pledge to respond within the foregoing timeframe is predicated on a good faith and cooperative effort between Sponsor and/or its Auditor and ESI.

C. ESI engages a national accounting firm, at its sole cost and expense, to conduct a SSAE 16 audit on behalf of its clients. Upon request, ESI will provide the results of its most recent SSAE 16 audit. Testing of the areas covered by the SSAE 16 is not within the scope of Sponsor's audit rights (i.e., to confirm the financial aspects of the Agreement) and is therefore not permitted. However, if requested, ESI will explain the SSAE 16 audit process and findings to Sponsor in order for Sponsor to gain an understanding of the SSAE 16.

3. AUDITS

A. ESI recommends that the initial audit period for a claims audit cover a timeframe not to exceed twenty-four (24) months immediately preceding the request to audit (the "Audit Period"). This Audit Period allows a reasonable amount of time for both parties to conclude the audit before claims data is archived off the adjudication system. ESI will accommodate reasonable requests to extend the Audit Period, but this may delay ESI's response time to audit findings due to the age of the claims. Due to the additional resources necessary to pull claims data older than twenty-four (24) months, if you request to extend the Audit Period, you will be subject to ESI's standard charges for such additional data pulls. All such fees shall be reasonable and based on ESI's additional costs associated with retrieval and reporting of such data. If the parties mutually determine, acting in good faith, that the initial audit demonstrates in any material respects that ESI has not administered the financial arrangement consistent with the contract terms of the Agreement, then ESI will support additional auditing beyond the Audit Period at no additional charge.

B. CMS generally modifies its requirements for administering the Medicare Part D annually. For this reason, ESI recommends that the initial audit period for a Medicare Part D compliance audit cover a timeframe not to exceed the twelve (12) months immediately preceding the request to audit (collectively, the "Medicare Part D Audit Period"). This Medicare Part D Audit Period is intended to assist our clients with the CMS annual oversight requirements. Due to the additional resources necessary to pull data older than twelve (12) months, if you request

to extend the Audit Period, you will be subject to ESI's standard charges for such additional data pulls. All such fees shall be reasonable and based on ESI's additional costs associated with retrieval and reporting of such data.

C. When performing a Rebate audit, Sponsor may perform an on-site review of the applicable components of manufacturer agreements, selected by Sponsor, as reasonably necessary to audit the calculation of the Rebate payments made to Sponsor by ESI. Our ability to drive value through the supply chain and in our negotiations with manufacturers is dependent upon the strict confidentiality and use of these agreements. Providing access to these agreements to third parties that perform services in the industry beyond traditional financial auditing jeopardizes our ability to competitively drive value. For this reason, unless otherwise agreed by the Parties, access to and audit of manufacturer agreements is restricted to a mutually agreed upon CPA accounting firm whose audit department is a separate stand-alone division of the business, which carries insurance for professional malpractice of at least Two Million Dollars ($2,000,000).

D. ESI recommends that Sponsor select an initial number of manufacturer contracts to enable Sponsor to audit fifty percent (50%) of the total Rebate payments due to Sponsor for two (2) calendar quarters during the twelve (12) month period immediately preceding the audit (the "Rebate Audit Scope and Timeframe"). ESI will accommodate reasonable requests to extend this Rebate Audit Scope and Timeframe, but this may delay ESI's on-site preparation time as well as response time to audit findings. Due to the additional resources necessary to support a Rebate audit beyond the Rebate Audit Scope and Timeframe, if you request to extend the Rebate Audit Scope and Timeframe, you will be subject to ESI's standard charges for such additional audit support. All such fees shall be reasonable and based on ESI's additional costs. If the parties mutually determine, acting in good faith, that the initial Rebate audit demonstrates in any material respects that ESI has not administered Rebates consistent with the contract terms of the Agreement, then ESI will support additional auditing beyond the Rebate Audit Scope and Timeframe at no additional charge.

E. If you have a Pass-Through pricing arrangement for Participating Pharmacy claims, ESI will provide the billable and payable amount for a sampling of claims provided by you or your auditor (i.e., ESI will provide the actual documented claim record) during the audit to verify that ESI has administered such Pass-Through pricing arrangement consistent with the terms of the Agreement. If further documentation is required, ESI may provide a statistically valid sample of claims remittances to the Participating Pharmacies to demonstrate ESI's administration of Pass-Through pricing. In any instance where the audit demonstrates that the amount billed to you does not equal the Pass-Through amount paid to the Participating Pharmacy, you or your auditor may perform an on-site audit of the applicable Participating Pharmacy contract rate sheet(s).

4. AUDIT FINDINGS

A. Following Sponsor's initial audit, Sponsor (or its Auditor) will provide ESI with suspected errors, if any. In order for ESI to evaluate Sponsor's suspected errors, Sponsor shall provide an electronic data file in a mutually agreed upon format containing up to 300 claims for further investigation by ESI. ESI will use commercially reasonable best efforts to respond to the suspected errors in no more than sixty (60) days from ESI's receipt of such findings. Our pledge to respond within the foregoing timeframe is predicated on a good faith and cooperative effort between Sponsor and/or its Auditor and ESI.

B. Following Sponsor's initial audit of Medicare Part D compliance, Sponsor (or its Auditor) will provide ESI with a written report of suspected non-compliant issues, if any. In order for ESI to evaluate Sponsor's suspected errors, Sponsor shall provide ESI with specific regulatory criteria and Medicare Part D program requirements used to cite each suspected non-compliant and payment reconciliation issue. ESI will use commercially reasonable best efforts to respond to the audit report in no more than thirty (30) days from ESI's receipt of the report. Please be aware, however, that audits that require evaluation of six (6) or more findings typically require additional time to respond. Our pledge to respond within the foregoing timeframe is predicated on a good faith and cooperative effort between Sponsor and/or its Auditor and ESI.

C. Upon receipt and review of ESI's responses to Sponsor (or its Auditor), Sponsor (or its Auditor) will provide ESI with a written report of draft findings and recommendations. ESI will use commercially reasonable best efforts to respond to the audit report in no more than fifteen (15) days from ESI's receipt of the report. Our pledge to respond within the foregoing timeframe is predicated on a good faith and cooperative effort between Sponsor and/or its Auditor and ESI.

D. Sponsor agrees that once audit results are accepted by both parties, the audit shall be considered closed and final. To the extent the mutually accepted audit results demonstrate claims errors, ESI will reprocess the claims and make corresponding adjustments to Sponsor through credits to a future invoice(s). If we are unable to reprocess claims and issue corresponding credits to Sponsor through this process, ESI will make adjustments to Sponsor via a check or credit.

5. AUDITS BY GOVERNMENT ENTITIES

A. In the event CMS, the OIG, MEDIC, or another government agency has engaged in an audit of Sponsor and/or its "first tier" and "downstream entities", Sponsor shall contact the ESI Account Management team and provide a written copy of the audit notice or request from the government agency promptly upon receipt.

B. Sponsor agrees that CMS may have direct access to ESI's and any such "downstream entity's" pertinent contracts, books, documents, papers, records, premises and physical facilities, and that ESI and such "downstream entity" will provide requested information directly to CMS unless otherwise agreed upon by ESI and Sponsor.

C. Following the government audit of Sponsor and its "first tier" and "downstream entities", Sponsor shall provide ESI with a written report of suspected non-compliant issues noted in the government audit that relate to services provided by ESI, if any. If there are such findings, ESI will work with Sponsor and/or government agency to respond to any suspected non-compliant issues.

D. Support for all such audits by government entities will be subject to ESI's standard charges. All such fees shall be reasonable and based on ESI's costs for supporting such audits.

6. CONFIDENTIALITY

ESI's contracts are highly confidential and proprietary. For this reason, ESI only permits on-site review rather than provide copies to our clients. During on-site contract review, Sponsor (or its Auditor) may take and retain notes to the extent necessary to document any identified errors, but may not copy (through handwritten notes or otherwise) or retain any contracts (in part or in whole) or related documents provided or made available by ESI in connection with the audit. ESI will be entitled to review any notes to affirm compliance with this paragraph.

EXHIBIT C

BUSINESS ASSOCIATE AGREEMENT

Express Scripts, Inc. and one or more of its subsidiaries ("ESI"), and Sponsor or one of its affiliates ("Sponsor"), are parties to an agreement ("PBM Agreement") whereby ESI provides certain pharmacy benefit management services to the Sponsor's prescription drug plan (Sponsor and Sponsor's prescription drug plan collectively referred to hereinafter as "Plan"). The PBM Agreement addresses the parties' rights and obligations concerning the use and disclosure of patients' protected health information. The HIPAA Rules (as defined below) require ESI and Plan to enter into a "business associate agreement" to comply with applicable sections of the HIPAA Rules.

1. Definitions.

(a) "Breach" shall have the same meaning as the term "breach" in 45 C.F.R. § 164.402.

(b) "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. § 164.501.

(c) "Electronic Health Record" shall mean an electronic record of health-related information on an Individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

(d) "Electronic PHI" shall have the same meaning as the term "electronic protected health information" in 45 C.F.R. § 160.103.

(e) "HIPAA Rules" means the collective privacy, transaction and code sets, and security regulations promulgated pursuant to the Health Insurance Portability and Accountability Act, as codified at 45 C.F.R. Parts 160, 162 and 164, as amended from time to time.

(f) "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

(g) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart E, as amended from time to time.

(h) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to the information created or received by ESI from or on behalf of Plan.

(i) "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.

(j) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.

(k) "Security Incident" shall have the same meaning as "security incident" in 45 C.F.R. § 164.304

(l) "Security Standards" shall mean the Security Standards, 45 C.F.R. Part 164, Subpart C, as amended from time to time.

(m) "Transactions Standards" shall mean the Standards for Electronic Transactions, 45 C.F.R. Part 162, Subpart I, as amended from time to time.

(n) "Unsecured PHI" shall have the same meaning as the term "unsecured protected health information" in 45 C.F.R. § 164.402.

Capitalized terms used, but not otherwise defined, in this Business Associate Agreement shall have the same meaning as those terms in the HIPAA Rules.

2. **General Use and Disclosure Provisions.** ESI and Plan acknowledge and agree as follows:

(a) *Use or Disclosure.* ESI agrees not to use or further disclose PHI other than as expressly permitted or required by this Business Associate Agreement or the HIPAA Rules or as Required by Law.

(b) *Minimum Necessary*. ESI will take reasonable efforts to limit requests for, use and disclosure of PHI to

the minimum necessary to accomplish the intended request, use or disclosure.

(c) *Specific Use or Disclosure Provisions.* Except as otherwise limited in this Business Associate Agreement, ESI may use and disclose PHI to properly provide, manage and administer the services required under the PBM Agreement and consistent with applicable law to assist Plan in its operations, as long as such use or disclosure would not violate the HIPAA Rules if done by Plan, or such use or disclosure is expressly permitted in (i) through (iii) below:

(i) ESI may use PHI for the proper management and administration of ESI or to carry out ESI's legal responsibilities.

(ii) ESI may disclose PHI to third parties for the proper management and administration of ESI or to carry out the legal responsibilities of ESI provided that the disclosures are Required by Law, or ESI obtains reasonable assurances from the person to whom the information is disclosed that: (A) the information will remain confidential, (B) the information will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and (C) the person notifies ESI of any instances of which it is aware in which the confidentiality of the information has been breached.

(iii) ESI may use PHI to perform Data Aggregation services on behalf of Plan as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

(d) *Reporting.* ESI agrees to promptly notify the Plan if ESI has knowledge that PHI has been used or disclosed by ESI in a manner that violates this Business Associate Agreement. To the extent that ESI creates, receives, maintains or transmits Electronic PHI, ESI agrees to report promptly to the Plan any Security Incident, as determined by ESI, involving PHI of which ESI becomes aware. ESI shall comply with 45 C.F.R. § 164.402 and shall, following the discovery of a Breach of Unsecured PHI, notify the Plan of such Breach, in accordance with 45 C.F.R. § 164.410.

(e) *Safeguards.* ESI agrees to use appropriate safeguards, consistent with applicable law, to prevent use or disclosure of PHI in a manner that would violate this Business Associate Agreement. ESI shall provide Plan with such information concerning such safeguards as Plan may reasonably request from time to time. To the extent that ESI creates, receives, maintains or transmits Electronic PHI, ESI agrees to use appropriate administrative, physical and technical safeguards, and comply with the Security Standards, to protect the confidentiality, integrity and availability of the Electronic PHI that ESI creates, receives, maintains or transmits on behalf of Plan.

(f) *Mitigation.* ESI agrees to mitigate, to the extent practicable, any harmful effect that is known to ESI of a use or disclosure of PHI by ESI in violation of this Business Associate Agreement or the PBM Agreement.

(g) *Subcontractors and Agents.* ESI agrees to ensure that any agent, including a Subcontractor, to whom it provides PHI received from, or created or received by ESI on behalf of Plan, agrees, in writing, to the same restrictions, terms and conditions that apply through this Agreement to ESI with respect to such information, including the requirement that it implement reasonable and appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164, to protect any Electronic PHI that is disclosed to it by ESI.

(h) *Access.* Within fifteen (15) business days of a request by Plan, ESI shall provide access to Plan to PHI in a Designated Record Set in order to meet the requirements under 45 C.F.R. § 164.524. If ESI receives a request directly from an Individual, or if requested by Plan that access be provided to the Individual, ESI shall provide access to the Individual to PHI in a Designated Record Set within thirty (30) days in order to meet the requirements under 45 C.F.R. § 164.524.

(i) *Amendment.* Within sixty (60) days of a request by Plan or subject Individual, ESI agrees to make any appropriate amendment(s) to PHI in a Designated Record Set that Plan directs or agrees to pursuant to 45 C.F.R. § 164.526.

(j) *Accounting*. Within thirty (30) days of a proper request by Plan, ESI agrees to document and make available to Plan, for a reasonable cost-based fee (under conditions permitted by HIPAA if an Individual requests an accounting more than once during a twelve month period), such disclosures of PHI and information related to such disclosures necessary to respond to such request for an accounting of disclosures of PHI, in accordance with 45 C.F.R. § 164.528. Within sixty (60) days of proper request by subject Individual, ESI agrees to make available to the Individual the information described above. ESI shall retain copies of any accountings for a period of six (6) years from the date the accounting was created.

(k) *Restrictions on Use or Disclosure*. Within fifteen (15) business days of a request of Plan, ESI agrees to consider restrictions on the use or disclosure of PHI agreed to by Plan on behalf of an Individual in accordance with 45

C.F.R. § 164.522.

(l) *Audit and Inspection.* ESI agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by ESI on behalf of Plan, available to Plan within ten (10) business days, or at the request of Plan or the Secretary, to the Secretary in a time and manner directed by the Secretary, for purposes of the Secretary determining Plan's compliance with the HIPAA Rules. Any release of information regarding ESI's practices, books and records is proprietary to ESI and shall be treated as confidential and shall not be further disclosed without the written permission of ESI, except as necessary to comply with the HIPAA Rules.

(m) *Privacy of Individually Identifiable Health Information*. To the extent ESI is to carry out one or more of Plan's obligations under Subpart E of 45 C.F.R. Part 164, ESI agrees to comply with the requirements of subpart E that apply to the covered entity in the performance of such obligations.

3. Plan Obligations.

(a) Plan shall notify ESI of any limitation(s) in the notice of privacy practices of Plan in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect ESI's use or disclosure of PHI.

(b) Plan shall notify ESI of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect ESI's use or disclosure of PHI.

(c) Plan shall notify ESI of any restriction to the use or disclosure of PHI that Plan has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect ESI's use or disclosure of PHI.

(d) Plan shall not request that ESI use or disclose PHI in any manner that would exceed that which is minimally necessary under the HIPAA Rules or that would not be permitted by a Covered Entity.

(e) Plan agrees that it will have entered into "Business Associate Agreements" with any third parties (e.g., case managers, brokers or third party administrators) to which Plan directs and authorizes ESI to disclose PHI.

4. Transactions Standards. The HIPAA Rules provide for certain Transactions Standards for transfer of data between trading partners. While certain of the standards may or may not be adopted by Plan (e.g., for eligibility), ESI will be prepared to accept the following in accordance with 45 C.F.R. Part 162.1502: ASC X12N 834 – Benefit Enrollment and Maintenance. In addition, to the extent applicable, ESI shall comply with other applicable transactions standards for claims processing functions between ESI and provider pharmacies. Each party hereby agrees that it shall not change any definition, data condition or use of a data element or segment in a standard, add any data elements or segment to the maximum defined data set, use any code or data elements that are either marked "not used" in the standard's implementation specification or are not in the implementation specification, or change the meaning or intent of the implementation specification.

5. Material Breach of Business Associate Agreement; Termination.

(a) Without limiting the termination rights of the parties pursuant to the PBM Agreement, upon either party's knowledge of a material breach by the other of this Business Associate Agreement, the non-breaching party shall notify the breaching party of such material breach and the breaching party shall have thirty (30) days to cure such material breach. In the event the breach is not cured, or cure is infeasible, the non-breaching party shall have the right to immediately terminate this Business Associate Agreement and the PBM Agreement or if cure of the material breach is infeasible, report the violation to the Secretary.

(b) To the extent feasible, upon termination of the PBM Agreement for any reason, ESI shall, and shall cause any subcontractors and agents to, return or destroy and retain no copies of all PHI received from, or created or received by ESI on behalf of, Plan. If ESI determines, in its sole discretion, that return or destruction of such information is not feasible, ESI shall continue to limit the use or disclosure of such information as set forth in this Agreement as if the PBM Agreement had not been terminated.

6. Indemnification. Each party (the "Indemnifying Party") shall indemnify and hold the other party and its officers, directors, employees and agents (each an "Indemnified Party") harmless from and against any claim, cause of action, liability, damage, cost or expense ("Liabilities") to which the Indemnified Party becomes subject to as a result of third party claims (including reasonable attorneys' fees and court or proceeding costs) brought against the Indemnified Party, which arise as a result of: (i) the material breach of this Business Associate Agreement by the Indemnifying Party; or (ii) the gross negligence or willful misconduct of the Indemnifying Party, except to the extent such Liabilities were caused by the

Indemnified Party. A party entitled to indemnification under this Section 6 shall give prompt written notification to the Indemnifying Party of the commencement of any action, suit or proceeding relating to a third party claim for which indemnification is sought, subject to applicable confidentiality constraints. The Indemnifying Party shall be entitled to assume control of the defense of such action, suit, proceeding or claim with competent counsel of its choosing. Indemnification shall not be required if any claim is settled without the Indemnifying Party's consent, which such consent shall not be unreasonably withheld. **NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SECTION 6, IN NO EVENT WILL AN INDEMNIFYING PARTY BE LIABLE TO AN INDEMNIFIED PARTY UNDER CONTRACT, TORT, OR ANY OTHER LEGAL THEORY FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR SPECIAL LOSSES OR DAMAGES OF ANY KIND.**

7. Miscellaneous.

(a) **Amendment**. The parties acknowledge that the foregoing provisions are designed to comply with the mandates of the HIPAA Rules. ESI shall provide written notice to Plan to the extent that any regulation or amendment to regulations promulgated by the Secretary requires changes to this Business Associate Agreement. Such written notice shall include any additional amendment required by any such final regulation and the Business Associate Agreement shall be automatically amended to incorporate the changes set forth in such amendment provided by ESI to Plan, unless Plan objects to such amendment in writing within fifteen (15) days of receipt of such written notice. In the event that Plan objects timely to such amendment, the parties shall work in good faith to reach agreement on an amendment to the Business Associate Agreement that complies with the final regulations. If the parties are unable to reach agreement regarding an amendment to the Business Associate Agreement within thirty (30) days of the date that ESI receives any written objection from Plan, either ESI or Sponsor may terminate this Business Associate Agreement upon ninety (90) days written notice to the other party. Any other amendment to this Business Associate Agreement unrelated to compliance with applicable law and regulations shall be effective only upon execution of a written agreement between the parties.

(b) **Effect on PBM Agreement**. Except as relates to the use, security and disclosure of PHI and electronic transactions, this Business Associate Agreement is not intended to change the terms and conditions of, or the rights and obligations of the parties under, the PBM Agreement.

(c) **No Third-Party Beneficiaries**. Nothing express or implied in the PBM Agreement or in this Business Associate Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations or liabilities whatsoever.

(d) **Interpretation**. Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits both parties to comply with the HIPAA Rules.

(e) **Effective Date**. This Business Associate Agreement shall be effective as of the effective date of the PBM Agreement.

EXHIBIT D
FINANCIAL DISCLOSURE TO ESI PBM CLIENTS

This disclosure provides an overview of the principal revenue sources of Express Scripts, Inc. and Medco Health Solutions, Inc. (individually and collectively referred to herein as "ESI"), as well as ESI's affiliates. In addition to administrative and dispensing fees paid to ESI by our clients for pharmaceutical benefit management ("PBM") services, ESI and its affiliates derive revenue from other sources, including arrangements with pharmaceutical manufacturers, wholesale distributors, and retail pharmacies. Some of this revenue relates to utilization of prescription drugs by members of the clients receiving PBM services. ESI may pass through certain manufacturer payments to its clients or may retain those payments for itself, depending on the contract terms between ESI and the client.

Network Pharmacies – ESI contracts for its own account with retail pharmacies to dispense prescription drugs to client members. Rates paid by ESI to these pharmacies may differ among networks (e.g., Medicare, Worker's Comp, open and limited), and among pharmacies within a network, and by client arrangements. PBM agreements generally provide that a client pays ESI an ingredient cost, plus dispensing fee, for drug claims. If the rate paid by a client exceeds the rate contracted with a particular pharmacy, ESI will realize a positive margin on the applicable claim. The reverse also may be true, resulting in negative margin for ESI. ESI also enters into pass-through arrangements where the client pays ESI the actual ingredient cost and dispensing fee amount paid by ESI for the particular claim when the claim is adjudicated to the pharmacy. In addition, when ESI receives payment from a client before payment to a pharmacy, ESI retains the benefit of the use of the funds between these payments. ESI may maintain non-client specific aggregate guarantees with pharmacies and may realize positive margin. ESI may charge pharmacies standard transaction fees to access ESI's pharmacy claims systems and for other related administrative purposes.

Brand/Generic Classifications – Prescription drugs may be classified as either a "brand" or "generic;" however, the reference to a drug by its chemical name does not necessarily mean that the product is recognized as a generic for adjudication, pricing or copay purposes. For the purposes of pharmacy reimbursement, ESI distinguishes brands and generics through a proprietary algorithm ("BGA") that uses certain published elements provided by First DataBank (FDB) including price indicators, Generic Indicator, Generic Manufacturer Indicator, Generic Name Drug Indicator, Innovator, Drug Class and ANDA. The BGA uses these data elements in a hierarchical process to categorize the products as brand or generic. The BGA also has processes to resolve discrepancies and prevent "flipping" between brand and generic status due to price fluctuations and marketplace availability changes. The elements listed above and sources are subject to change based on the availability of the specific fields. Updated summaries of the BGA are available upon request. Brand or generic classification for client reimbursement purposes is either based on the BGA or specific code indicators from Medi-Span or a combination of the two as reflected in the client's specific contract terms. Application of an alternative methodology based on specific client contract terms does not affect ESI's application of its BGA for ESI's other contracts.

Maximum Allowable Cost ("MAC")/Maximum Reimbursement Amount ("MRA") – As part of the administration of the PBM services, ESI maintains a MAC List of drug products identified as requiring pricing management due to the number of manufacturers, utilization and/or pricing volatility. The criteria for inclusion on the MAC List are based on whether the drug has readily available generic product(s), is generally equivalent to a brand drug, is cleared of any negative clinical implications, and has a cost basis that will allow for pricing below brand rates. ESI also maintains MRA price lists for drug products on the MAC List based on current price reference data provided by MediSpan or other nationally recognized pricing source, market pricing and availability information from generic manufacturers and on-line research of national wholesale drug company files, and client arrangements. Similar to the BGA, the elements listed above and sources are subject to change based on the availability of the specific fields. Updated summaries of the MAC methodology are available upon request.

Manufacturer Programs Formulary Rebates, Associated Administrative Fees, and PBM Service Fees – ESI contracts for its own account to obtain formulary rebates attributable to the utilization of certain brand drugs and supplies (and possibly certain authorized generics marketed under a brand manufacturer's new drug application). Formulary rebate amounts received vary based on client specific utilization, the volume of utilization as well as formulary position applicable to the drug or supplies, and adherence to various formulary management controls, benefit design requirements, claims volume, and other similar factors, and in certain instances also may vary based on the product's market-share. ESI often pays an amount equal to all or a portion of the formulary rebates it receives to a client based on the client's PBM agreement terms. ESI or its affiliates may maintain non-client specific aggregate guarantees and may realize positive margin. In addition, ESI provides administrative services to contracted manufacturers, which include, for example, maintenance and operation of systems and other infrastructure necessary for invoicing and processing rebates, pharmacy discount programs, access to drug utilization data, as allowed by law, for purposes of verifying and evaluating applicable payments, and for other purposes related to the manufacturer's products. ESI receives administrative fees from the participating manufacturers for these services. These administrative fees are calculated based on the price of the drug or supplies along with the volume of utilization and do not exceed the greater of (i) 4.58% of the average wholesale price, or (ii) 5.5% of the wholesale acquisition cost of the products. In its capacity as a PBM company, ESI also may receive other compensation from manufacturers for the performance of various programs or services, including, for example, formulary compliance initiatives, clinical services, therapy management services, education services, inflation protection programs, medical benefit management services, cost containment programs, discount programs, and the sale of non-patient identifiable claim information. This compensation is not part of the formulary rebates or associated administrative fees, and ESI may realize

positive margin between amounts paid to clients and amounts received from pharmaceutical manufacturers. ESI retains the financial benefit of the use of any funds held until payment is made to the client.

Copies of ESI's standard formularies may be reviewed at www.express-scripts.com/wps/portal/. In addition to formulary considerations, other plan design elements are described in ESI's Plan Design Review Guide, which may be reviewed at www.express-scripts.com/wps/portal/.

ESI Subsidiary Pharmacies – ESI has several licensed pharmacy subsidiaries, including our specialty pharmacies. These entities may maintain product purchase discount arrangements and/or fee-for-service arrangements with pharmaceutical manufacturers, wholesale distributors, and other health care providers. These subsidiary pharmacies contract for these arrangements on their own account in support of their various pharmacy operations. Many of these subsidiary arrangements relate to services provided outside of PBM arrangements, and may be entered into irrespective of whether the particular drug is on one of ESI's national formularies. Discounts and fee-for-service payments received by ESI's subsidiary pharmacies are not part of the PBM formulary rebates or associated administrative fees paid to ESI in connection with ESI's PBM formulary rebate programs. However, certain purchase discounts received by ESI's subsidiary pharmacies, whether directly or through ESI, may be considered for formulary purposes if the value of such purchase discounts is used by ESI to supplement the discount on the ingredient cost of the drug to the client based on the client's PBM agreement terms. From time to time, ESI and its affiliates also may pursue and maintain for its own account other supply chain sourcing relationships not described below as beneficial to maximize ESI's drug purchasing capabilities and efficiencies, and ESI or affiliates may realize an overall positive margin with regard to these initiatives.

The following provides additional information regarding examples of ESI subsidiary discount arrangements and fee-for-service arrangements with pharmaceutical manufacturers, and wholesale distributors:

ESI Subsidiary Pharmacy Discount Arrangements – ESI subsidiary pharmacies purchase prescription drug inventories, either from manufacturers or wholesalers, for dispensing to patients. Often, purchase discounts off the acquisition cost of these products are made available by manufacturers and wholesalers in the form of either up-front discounts or retrospective discounts. These purchase discounts, obtained through separate purchase contracts, are not formulary rebates paid in connection with our PBM formulary rebate programs. Drug purchase discounts are based on a pharmacy's inventory needs and, at times, the performance of related patient care services and other performance requirements. When a subsidiary pharmacy dispenses a product from its inventory, the purchase price paid for the dispensed product, including applicable dispensing fees, may be greater or less than that pharmacy's acquisition cost for the product net of purchase discounts. In general, our pharmacies realize an overall positive margin between the net acquisition cost and the amounts paid for the dispensed drugs.

ESI Subsidiary Fee-For-Service Arrangements – One or more of ESI's subsidiaries, including, but not limited to, its subsidiary pharmacies also may receive fee-for-service payments from manufacturers, wholesalers, or other health care providers in conjunction with various programs or services, including, for example, patient assistance programs for indigent patients, dispensing prescription medications to patients enrolled in clinical trials, various therapy adherence and fertility programs, administering FDA compliance requirements related to the drug, 340B contract pharmacy services, product reimbursement support services, and various other clinical or pharmacy programs or services. As a condition to having access to certain products, and sometimes related to certain therapy adherence criteria or FDA requirements, a pharmaceutical manufacturer may require a pharmacy to report selected information to the manufacturer regarding the pharmacy's service levels and other dispensing-related data with respect to patients who receive that manufacturer's product. A portion of the discounts or other fee-for-service payments made available to our pharmacies may represent compensation for such reporting.

Other Manufacturer Arrangements – ESI also maintains other lines of business that may involve discount and service fee relationships with pharmaceutical manufacturers and wholesale distributors. Examples of these businesses include a wholesale distribution business, group purchasing organizations (and related group purchasing organization fees), a medical benefit management company, and United BioSource Corporation ("UBC"). Compensation derived through these business arrangements is not considered for PBM formulary placement, and is in addition to other amounts described herein. Of particular note, UBC partners with life sciences and pharmaceutical companies to develop, commercialize, and support safe, effective use and access to pharmaceutical products. UBC maintains a team of research scientists, biomedical experts, research operations professionals, technologists and clinicians who work with clients to conduct and support clinical trials, create, and validate and administer pre and post product safety and risk management programs. UBC also works on behalf of pharmaceutical manufacturers to provide product and disease state education programs, reimbursement assistance, and other support services to the public at large. These service fees are not part of the formulary rebates or associated administrative fees.

Third Party Data Sales – Consistent with any client contract limitations, ESI or its affiliates may sell HIPAA compliant information maintained in their capacity as a PBM, pharmacy, or otherwise to data aggregators, manufacturers, or other third parties on a fee-for-service basis or as a condition of discount eligibility. All such activities are conducted in compliance with applicable patient and pharmacy privacy laws and client contract restrictions.

THIS EXHIBIT REPRESENTS ESI'S FINANCIAL POLICIES. ESI MAY PERIODICALLY UPDATE THIS EXHIBIT AND THE FINANCIAL DISCLOSURES CONTAINED HEREIN TO REFLECT CHANGES IN ITS BUSINESS PROCESSES; THE CURRENT FINANCIAL DISCLOSURE IS AVAILABLE UPON REQUEST AND ACCESSIBLE ON EXPRESS-SCRIPTS.COM AT WWW. EXPRESS-SCRIPTS.COM/WPS/PORTAL/.

EXHIBIT E

PERFORMANCE STANDARDS

In the event that any failure by ESI to meet any performance standard is due to a "force majeure" as defined in the Agreement, failure of Sponsor to perform its obligations under the Agreement, or actions or inactions of Sponsor that adversely impact ESI's ability to maintain the subject standard (e.g., faulty eligibility, changes in benefit design not adequately communicated to Members and benefit designs that substantially change the Members' rights under the Plan), ESI will be excused from compliance with such performance standards until such circumstances have been resolved and any existing backlogs or other related effects have been eliminated.

Within ninety (90) days after the end of each year, ESI shall report to Sponsor ESI's performance under each performance standard. Notwithstanding the foregoing, for purposes of determining whether ESI has met or failed to meet each performance standard, performance standards will be measured and reconciled on an annual basis and amounts due resulting from an ESI failure to meet any performance standard(s), if any, shall be calculated and paid to Sponsor within thirty (30) days following Sponsors receipt of reconciliation report.

No performance penalties, if any, will be paid until this Agreement is executed by Sponsor. In no event will the sum of the payments to Sponsor, as a result of ESI's failure to meet the performance standards exceed $200,000 for the implementation performance standard and $85,000 per year for the annual performance standards.

The following performance standards are based on 8,400 Members as of the Effective Date and throughout the Term. Any material change below such number may result in a renegotiation of the standards and penalties set forth below.

Performance standards for ESI's Mail Service Pharmacy assume a minimum of 1,000 Mail Service Pharmacy prescriptions submitted annually.

Service Feature	Standard	Penalty
Implementation Satisfaction	ESI agrees to provide an Implementation satisfaction assessment. The assessment will be comprised of specific implementation project plan milestones and any new solutions/business practices that were created by both parties throughout the process. A satisfaction rating of 1-5 will be used based on meeting the milestone dates and/or if the new solutions/business practices fulfilled the business requirement need. ESI guarantees an average rating of 4 or greater. This is dependent on the Sponsor providing the necessary information by the agreed upon dates. 5 – Date met or exceeded with anticipated results and/or solution better than business requirement need 4 – Date met with anticipated results and/or solution fulfilled business requirement need 3 – Date missed by one (1) business day or more, but less than seven (7) business days, due to fault of ESI and/or solution fulfilled minimal business requirement 2 – Date missed by seven (7) business days or more, but less than fourteen (14) business days, due to fault of ESI and/or solution fulfilled partial business requirement 1 – Date missed by fourteen (14) or more business days due to fault of ESI and/or solution did not fulfil any part of business requirement The implementation satisfaction survey is a one-time only guarantee valid 90 days from Sponsor's effective date.	ESI will pay $100,000 for an average rating less than 4. ESI will pay $100,000 for an average rating less than or equal to 3. ESI will pay $100,000 for an average rating less than or equal to 2. ESI will pay $200,000 for an average rating less than or equal to 1. In no event shall the total penalty exceed $200,000.
Client Services Administration		
Satisfaction Survey	One random sample member survey will be completed annually on a book-of-business basis. ESI guarantees a patient satisfaction rate of 90% or greater based on overall satisfaction. This standard will be measured and reported annually.	ESI will put $7,100 as a total amount of penalty at risk.

Contact Center		
Average Speed of Answer	ESI guarantees that calls will be answered in an average of 30 seconds or less. This standard is predicated on the installation of a toll-free number unique to the Sponsor.	ESI will pay Sponsor $3,550 for each full second above the standard 30 seconds on an annual basis. The maximum annual penalty will be $7,100. The calculation will be based on the average speed of answer.
Blockage Rate (Busy Signal)	ESI will guarantee a blockage rate of 1% or less. Blockage is defined as a caller receiving a busy signal. This Standard is predicated on the installation of a toll-free number unique to Sponsor.	ESI will pay Sponsor $3,550 for each full percentage point above the standard 1% on an annual basis. The maximum annual penalty will be $7,100. The calculation will be based on the blockage percentage.
Percent of Calls Abandoned	The Telephone Abandonment Rate of the Member Service Telephone Line will be 3% or less of all incoming calls received during each Contract Year.	ESI will pay Sponsor $3,550 for each full percentage point above the standard 3% on an annual basis. The maximum annual penalty will be $7,100. The calculation will be based on the average percentage of calls abandoned.
Customer Service — First Call Resolution	ESI guarantees that 94% or greater of patient calls will be resolved on the first call.	ESI will pay Sponsor $3,550 for each full percentage point below 94%. The maximum annual penalty will be $7,100.
Home Delivery Pharmacy		
Dispensing Accuracy_	The Dispensing Accuracy Rate for each Contract Year will be 99.996% or greater. Standard is measure at book of business.	ESI will pay Sponsor $3,550 for each full percentage point below the standard of 99.996% on an annual basis. The maximum annual penalty will be $7,100. The calculation will be based on the average prescription accuracy.
Turnaround Time for Routine (Clean) Prescriptions	ESI guarantees to dispense prescriptions not subject to intervention within an average of two (2) business days.	ESI will pay Sponsor $3,550 for each full day above the standard two (2) business days on an annual basis. The maximum annual penalty will be $7,100.
Turnaround Time for Prescriptions Subject to Intervention	ESI guarantees to dispense prescriptions subject to intervention within an average of four (4) business days.	ESI will pay Sponsor $3,550 for each full day above the standard four (4) business days on an annual basis. The maximum annual penalty will be $7,100.

Claims Adjudication Accuracy		
Claims Adjudication Accuracy	The Claims Adjudication Accuracy Rate for each Contract Year will be 99% or greater. "Claims Adjudication Accuracy Rate" means (i) the total number of claims adjudicated and paid accurately by ESI in a Contract Year, divided by (ii) the total number of claims adjudicated and paid during the measurement period. Measured on a book of business basis.	ESI will put $7,100 as a total amount of penalty at risk.
Reporting		
Timely Production of Management Reports-Quarterly	ESI guarantees access to the online Trend Central reporting suite data will be available within an annual average of thirty (30) business days after the billing cycle that contains the last day of the quarter.	ESI will put $7,100 as a total amount of penalty at risk.
Retail Pharmacy Network		
Account Management		
Account Management Satisfaction	Sponsor may assess a penalty per contract year if, after the first contract year and each successive contract year, those Sponsor employees who are members of the Sponsor benefits staff do not rate the ESI account team's performance for each contract year on average of 5 or better on a scale of 1 to 7 (7 being the best) based on a range of performance criteria agreed to between Sponsor and ESI at the beginning of such contract Year. Additional Sponsor staff members may be included in the survey at the request of ESI.	ESI will put $7,100 as a total amount of penalty at risk.
Customer Service		
Customer Service Response Time to Written Inquiries	ESI will guarantee that annually 95% or more of written inquiries will be responded to within five (5) business days and that annually 100% of written inquiries will be responded to within ten (10) business days.	ESI will put $7,100 as a total amount of penalty at risk.