EXPRESS SCRIPTS, INC.
PHARMACY BENEFIT MANAGEMENT AGREEMENT

THIS PHARMACY BENEFIT MANAGEMENT AGREEMENT ("Agreement") will be effective as of the date set forth in Section 7.1 and is entered into by and between EXPRESS SCRIPTS, INC., a Delaware corporation on behalf of itself and its subsidiaries ("ESI"), and OKLAHOMA CITY MUNICIPAL FACILITIES AUTHORITY, a public trust ("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, and formulary and rebate 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 self-funded welfare benefit Plans offering a prescription benefit 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

“Average Wholesale Price” or “AWP” means the average wholesale price of a prescription drug as identified by drug pricing services such as First Data Bank or other source recognized in the retail prescription drug industry selected by ESI for all clients. The applicable AWP for prescriptions filled in (a) Participating Pharmacies and CuraScript will be the AWP for the package size from which the prescription drug was dispensed, and (b) in the Mail Service Pharmacy the AWP for the lesser of: (i) the NDC code for the package size from which the prescription drug was dispensed, or (ii) package sizes of 100 units or 16 ounce quantities, or the next larger quantity if such specified quantities are not available.

“Brand Drug” means a prescription drug product that is not a Generic Drug.

“CareLogic Drug List” means the standard list of Specialty Products and their reimbursement rates under the applicable (exclusive or open) option (described in Exhibit A-1) provided to Sponsor with this Agreement and as updated from time to time.

“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 (if applicable), and other items that are covered under the Plan, each as indicated on the Set-Up Forms.

“CuraScript” means CuraScript, Inc. or another pharmacy wholly-owned or operated by ESI or its wholly-owned subsidiaries that primarily dispenses Specialty Products.

“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.
“Formulary” means the list of FDA-approved prescription drugs and supplies developed by ESI’s Pharmacy and Therapeutics Committee and/or customized by Sponsor, which is selected and adopted by Sponsor.

“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.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended.

“Mail Service Pharmacy” means a duly licensed pharmacy operated by ESI or its subsidiaries, other than CuraScript, where prescriptions are filled and delivered to Members via mail delivery service.

“Manufacturer Administrative Fees” means those administrative fees paid by pharmaceutical manufacturers to, or otherwise retained by, ESI pursuant to a contract between ESI and the manufacturer and directly in connection with ESI’s administering, invoicing, allocating and collecting the Rebates.

“MAC List” means a list of prescription drug products identified as readily available as a Generic Drug, generally equivalent to a Brand Drug (in which case the Brand Drug may also be on the MAC List) and which are deemed to require pricing management due to the number of manufacturers, utilization and pricing volatility. The MAC List is intended to result in a weighted average discount range of 56% to 64%, but Sponsor’s actual experience may vary within, or above or below this range depending upon Sponsor’s Generic Drug and Brand Drug mix and plan design.

“MRA” or “Maximum Reimbursement Amount” is the price charged to Sponsor for a prescription drug product on the MAC List.

“Medicaid Subrogation Claim” means subrogation claims submitted by any state under Medicaid or similar United States or state government health care programs for which Sponsor is the primary payor.

“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 other than a Participating Pharmacy or for which the Member paid cash.

“Participating Pharmacy” means any licensed retail pharmacy with which ESI has executed an agreement to provide Covered Drugs to Members.

“Plan” means Sponsor’s welfare benefit plan(s) that contains a prescription drug benefit.

“Prescription Drug Claim” means a Member Submitted Claim, Medicaid Subrogation Claim or claim for payment submitted to ESI by a Pharmacy as a result of dispensing Covered Drugs to a Member.

“Protected Health Information” or “PHI” has the meaning ascribed to it under HIPAA.

“Rebates” means retrospective rebates that are paid to ESI, or otherwise retained by ESI, pursuant to the terms of a rebate contract negotiated independently by ESI with a pharmaceutical manufacturer, and directly attributable to the utilization of certain pharmaceuticals by Members. Rebates do not include Manufacturer Administrative Fees, or product discounts or similar remuneration received by subsidiary pharmacies of ESI as more fully described in Exhibit E.
“Set-Up Forms” means any standard ESI document or form, which when completed and signed by Sponsor, will describe the essential benefit elements and coverage rules adopted by Sponsor for its prescription drug program.

“Specialty Products” means those injectable and non-injectable drugs on the CareLogic Drug List and typically having 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; specialized product handling and/or administration requirements and/or cost in excess of $500 for a 30 day supply.

“Sponsor” means the Oklahoma City Municipal Facilities Authority, a public trust organized under the public trust laws of the State of Oklahoma, whose sole beneficiary is The City of Oklahoma City. Sponsor does not directly represent the interest of the individual Members and this Agreement is not entered into on behalf of the individual Plan Members. The City of Oklahoma City retains at all times the sole discretion whether to continue or extend healthcare benefits, including the prescription drug benefits offered through this Agreement, to Members. The City of Oklahoma City is ultimately the entity that must agree to provide funds, through Sponsor, for the prescription drug benefit, which may be withdrawn at any given time, for any reason.

“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.

“UM Company” means an independent, third party utilization management company as further described in Section 3.2(d).

ARTICLE II - ESTABLISHMENT OF THE PRESCRIPTION DRUG PROGRAM

2.1 Eligibility/Set Up. Sponsor will submit completed Set-Up Forms and Eligibility Files (initial and updated) on a mutually determined basis, and ESI will accurately implement the Set-Up Forms and Eligibility Files. 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 and requiring any of the additional ESI services for a fee as described on Exhibit A-2, may be subject to additional fees set forth on Exhibit A-2. Sponsor will be responsible for all Prescription Drug Claims during the period of the Member’s eligibility as indicated on the Eligibility File, except in the event of ESI’s negligence. ESI will not be responsible for Prescription Drug Claims for retroactively termed Members.

2.2 Performance Standards. ESI will conform to the performance standards set forth on Exhibit G hereto. The payments set forth in Exhibit G 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.

ARTICLE III - PBM SERVICES

3.1 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 periodically consolidates networks or migrates clients to other networks, in order to capitalize on certain operational efficiencies and other benefits associated with a streamlined network offering. ESI will notify Sponsor of any changes that would materially adversely affect Member access to Participating Pharmacies (e.g., a reduction of Participating Pharmacies in the network causing
Sponsor’s Members’ access to in-state Participating Pharmacies to decrease by fifteen percent (15%) or more, and ESI will work with Sponsor in good faith to mitigate any such effects.

(i) ESI will require each Participating Pharmacy to meet ESI’s participation requirements, including but not limited to licensure, insurance and provider agreement requirements. ESI also performs electronic and on-site audits of Participating Pharmacies to determine compliance with provider agreements with ESI. 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. To compensate ESI for the cost of conducting audits, ESI charges an audit fee in the amount set forth in Exhibit A upon recovery of overpayments attributable to the Plan. Copies of the Participating Pharmacy participation requirements and auditing processes are available upon request.

(ii) ESI does not direct or exercise any control over the professional judgment exercised by any pharmacist in dispensing prescriptions or otherwise providing pharmaceutical related services at a Participating Pharmacy.

(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. If the prescription and applicable law do not prohibit substitution of a Generic Drug for the prescribed Brand Drug, or if the Mail Service Pharmacy obtains the consent of the prescriber, the Mail Service Pharmacy will dispense the Generic Drug substitute to the Member.

(c) Specialty Products. Members may have prescriptions filled through CuraScript on an exclusive basis, or through CuraScript and Participating Pharmacies (each as described in Exhibit A-1). ESI will assist in the transfer of prescriptions to, or assist Members to obtain new prescriptions to be filled at, CuraScript for Members filling Specialty Products through the Mail Service Pharmacy (if applicable). Sponsor hereby authorizes ESI and CuraScript to communicate with Members and physicians regarding the transition from Mail Service Pharmacy (or other pharmacies) to CuraScript, as well as to advise Members filling Specialty Products at Participating Pharmacies of the availability of filling prescription through CuraScript.

(d) Pharmacy Help Desk. ESI will provide 24-hours a day, 7-days a week toll-free telephone support and Internet site to assist Pharmacies with Member eligibility verification and questions regarding reimbursement, Covered Drug benefits under the Plan or other related concerns.

3.2 Claims Processing.

(a) On-Line Claims Processing. ESI will perform claims processing services for Covered Drugs dispensed by Participating Pharmacies, Mail Service and CuraScript. ESI will perform a standard concurrent drug utilization review ("DUR") analysis of each prescription submitted for processing on-line by a Pharmacy 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. 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) Member Submitted and Medicaid Subrogation Claims. If elected by Sponsor, ESI will process Member Submitted Claims and/or Medicaid Subrogation Claims in accordance with the Plan rules set forth in the Set-Up Forms and ESI’s standard procedures.
(c) **Prior Authorization.** For the fees set forth on 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. Sponsor 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, unless Sponsor directs that Sponsor be provided such issue for determination. 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 sources deemed reliable to ESI. ESI will not undertake to determine medical necessity, to make diagnoses or substitute ESI’s judgment for the professional judgment and responsibility of the physician.

(d) **Appeals.** ESI shall perform a first level of review of written requests for appeal from Members or Participating Pharmacies who maintain that individual Prescription Drug Claims were incorrectly adjudicated. ESI’s review shall consist of the ministerial verification that the claim or claims in question were properly adjudicated according to the Sponsor’s Plan (including whether properly denied or covered), provided that ESI shall not have or exercise discretionary authority to deviate from the Plan. ESI shall follow Sponsor-approved procedures for such appeals, and shall make adjustments in payment in accordance with Sponsor’s policies.

(e) **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 Pharmacies or other related Member concerns.

3.3 **Formulary Support and Rebate Management.**

(a) **Formulary Adherence and Clinical Programs.** Upon written election of Sponsor, ESI will provide the then available Formulary management, clinical, safety and/or trend programs identified on Exhibit A-2, or such other programs as ESI may introduce from time to time, some of which may require payment of additional fees.

(b) **Rebate Program.** The parties acknowledge that Sponsor’s adoption of the Formulary shall have no adverse impact on Members’ access to prescription drug benefits under Sponsor’s existing Plan design. By adoption of the Formulary and subject to all terms and conditions of this Agreement, Sponsor qualifies for and shall be paid by ESI the amounts set forth on Exhibit B.

3.4 **Program Operations.**

(a) **Reporting.** ESI will make available to Sponsor ESI’s on-line standard management information reporting applications. At the request of Sponsor, 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-2.

(b) **Claims Data.**

(i) **Claims Data Retention.** ESI will retain Sponsor’s claims data in media and formats determined by ESI for a total of seven (7) 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-2.
(iii) **De-Identified Claims Data.** ESI may use both during and after the Term of this Agreement and/or transfer to third parties the anonymized PHI (de-identified in accordance with HIPAA) drug and related medical data collected by ESI or provided to ESI by Sponsor for research, provider profiling and other databases for benchmarking, drug trend, cost analyses, cost comparisons or other business purposes of ESI.

(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 written request, audit the prescription management services provided pursuant to this agreement on an annual basis (unless additional audits are warranted), consistent with the Audit Protocol set forth in Exhibit C. Sponsor may use the City Auditor for the City of Oklahoma City or an independent third party auditor ("Auditor"), so long as such Auditor does not have a conflict of interest with ESI (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.

**ARTICLE IV - FEES; BILLING AND PAYMENT**

4.1 **Fees.** In consideration of the PBM Services provided by ESI, Sponsor will pay the applicable claims reimbursement amounts and other administrative fees ("Fees") set forth in Exhibit A. Fees and Rebates are conditioned on ESI’s exclusive status hereunder.

4.2 **Billing and Payment.**

(a) **Billing.** ESI will invoice Sponsor twice per month for all applicable Fees.

(b) **Payment.** Sponsor will pay ESI by wire, ACH transfer or pre-authorized debit within fifteen (15) 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, but only to the extent that such interest is permitted under applicable law, 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 7.2, 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 V – HIPAA; CONFIDENTIAL INFORMATION**

5.1 **HIPAA.** The parties agree that as relates to use and disclosure of PHI, electronic transaction standards and security of electronic PHI under HIPAA, they are subject to the terms of the Business Associate Agreement set forth in Exhibit D.

5.2 **Confidential Information.**

(a) **ESI Proprietary Information.** Sponsor agrees that certain information provided by ESI is considered confidential and proprietary information, as agreed between the parties, including but not limited to, 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, information and contracts relating to Rebates and Manufacturer Administrative Fees, prescription drug evaluation criteria, drug pricing information, and Participating Pharmacy agreements (collectively "ESI Proprietary Information"), which is considered to be confidential and proprietary to ESI. Unless otherwise needed for litigation purposes related to this Agreement or required by law, Sponsor agrees that ESI Proprietary Information will not be disclosed to third parties except as provided herein. Sponsor shall not use ESI Proprietary Information or disclose it to any third party, at any time during or after termination of the Agreement, except as specifically contemplated by this Agreement or upon ESI’s prior written consent, or as otherwise required by law or court order. Upon termination of this Agreement, Sponsor shall cease using all ESI Proprietary Information along with other ESI systems, manuals, procedures, or equipment provided to Sponsor by ESI, and all such information and property shall be returned to ESI immediately upon ESI's request. This obligation of Sponsor shall not apply, however, if and to the extent that:

(i) The ESI Proprietary Information was already known to Sponsor at the time of receipt from ESI; or

(ii) The ESI Proprietary Information is lawfully obtained by Sponsor from a third party not under any obligation not to disclose it; or

(iii) The ESI Proprietary Information was either published or otherwise available to the public at the time of its receipt by Sponsor from ESI or later became published or available to the public other than by breach of this Agreement; or

(iv) To the extent that disclosure is required by federal, state or local laws (including the Oklahoma Open Records Act, 51 Okla. Stat. § 24A, et seq.), Sponsor and The City of Oklahoma City shall make a good faith effort to protect ESI Proprietary Information by promptly and timely advising ESI of any request or demand for disclosure, and to the extent allowed by law, cooperate with ESI in defending against a claim for disclosure. Sponsor and The City of Oklahoma City agree to provide prompt written notice to ESI of any such demand for disclosure prior to disclosure of ESI Proprietary Information.

ESI specifically acknowledges that Sponsor and The City of Oklahoma City are public entities and therefore ESI Confidential Information, through Sponsor and The City of Oklahoma City, may be subject to a public records request under the Oklahoma Open Records Act.

(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: (i) 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 (ii) probe, scan, audit or test the vulnerability of ESI’s Systems, nor breach the security or authentication measures of ESI’s Systems.

ARTICLE VI - COMPLIANCE WITH LAW; PRICING BENCHMARKS; FIDUCIARY ACKNOWLEDGEMENTS; FINANCIAL DISCLOSURE

6.1 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 the services provided hereunder, other than taxes based on the net income of ESI. Sponsor acknowledges and agrees that it is 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, Rebates or provider discounts referred to in Section 6.4 hereof. If there is a change in federal or state laws or regulations or the interpretation thereof, regulatory, 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, then there shall be an appropriate modification of the services, reimbursement rates, administrative fees and/or Rebates such that the parties are returned to their comparable economic position as of the Effective Date. If the parties cannot agree on a modification or adjusted fee or rates, then either party may terminate the Agreement on ninety (90) days prior written notice to the other; provided, however, ESI reserves the right to implement its modification to the services, reimbursement rates, administrative fees and/or Rebates as set forth above in this paragraph throughout the ninety (90) day notice period and until termination of the Agreement.

6.2 Pricing Benchmarks. The parties understand that pricing indices historically used, (and that are the basis in this Agreement), for determining the financial components of pharmacy billing rates are outside the control of Sponsor and ESI. The parties also agree that said pricing indices are not considered proprietary information of either party. The parties also understand there are extra-market industry, legal, government and regulatory activities which may lead to changes relating to, or elimination of, these pricing indices that could alter the financial positions of the parties as intended under this Agreement. The parties agree that, upon entering into this Agreement and thereafter, their mutual intent has been and is to maintain pricing stability as intended and not to advantage either party to the detriment of the other. Accordingly, to preserve this mutual intent, if ESI undertakes any or all of the following:

(a) changes the AWP source across its book of business (e.g., from First DataBank to MediSpan); or

(b) maintains AWP as the pricing index with an appropriate adjustment as described below, in the event the AWP methodology and/or its calculation is changed, whether by the existing or alternative sources; or

(c) transitions the pricing index from AWP to another index or benchmark (e.g., to Wholesale Acquisition Cost),

Participating Pharmacy, CuraScript and Mail Service Pharmacy rates, rebates and guarantees, as applicable, will be modified as reasonably and equitably necessary to maintain the pricing intent under this Agreement. ESI shall provide Sponsor with at least ninety (90) days notice of the change (or if such notice is not practicable, as much notice as is reasonable under the circumstances), and written illustration of the financial impact of the pricing source or index change (e.g., specific drug examples). If Sponsor disputes the illustration or the financial impact of the pricing source, the parties agree to cooperate in good faith to resolve such disputes.

6.3 Fiduciary Acknowledgements. In providing services under this Agreement, Sponsor acknowledges and agrees that neither it nor the Plan will name ESI or any of ESI’s wholly-owned subsidiaries as a “plan fiduciary.” Sponsor further acknowledges and agrees that neither ESI nor any of ESI’s wholly-owned subsidiaries: (i) are acting on behalf of any employee welfare benefit plan (as defined in Section 3(1) of ERISA or under state law) or participants in such plans, or as a fiduciary (as defined in Section 3.21(a) of ERISA or under state law) of any Plan; (ii) have any discretionary authority or control respecting management of the Plan’s prescription benefit program, but rather provides administrative services for the drug benefit program within a framework of policies, interpretations, rules, practices, and procedures chosen by Sponsor; or (iii) exercise any authority or control respecting management or disposition of the assets of the Plan or Sponsor, if any exist. Sponsor further acknowledges that all such discretionary authority and control with respect to the management of the Plan and plan assets, if any, is retained by Sponsor, the Plan or some other person or entity. Upon ninety (90) days written notice (or if such notice is not practicable, as much notice as is reasonable under the circumstances), 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.

6.4 Disclosure of Certain Financial Matters. In addition to the administrative fees paid to ESI by Sponsor, if any, ESI and ESI’s wholly-owned subsidiaries derive margin from fees and revenue in one or more of the ways as further described in the Financial Disclosure to ESI PBM Clients set forth in Exhibit E hereto (“Financial Disclosure”). In negotiating any of the fees and revenues described in the Financial
Disclosure or in this Agreement, ESI and ESI's wholly-owned subsidiaries 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 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 B. Nothing in the Financial Disclosure is intended to supersede any of the specific financial terms and conditions agreed to under this Agreement.

ARTICLE VII - TERM AND TERMINATION; DEFAULT AND REMEDIES

7.1 Term.

(a) This Agreement will commence effective as of January 1, 2008 (“Effective Date”), and will continue for a period of five (5) year(s) (“Term”), and may be terminated earlier in accordance with the terms of Section 7.2 below.

(b) If the continuation of this Agreement is contingent upon appropriation of adequate government funds and continuation of the Plan’s pharmacy benefit by The City of Oklahoma City, then this Agreement may be terminated on the date beginning on the first fiscal year for which funds are not appropriated or at the exhaustion of the appropriation, or at any time the City Council for The City of Oklahoma City determines, for any reason, to discontinue said benefit to its employees and/or retirees. The Sponsor may terminate the Agreement by giving ESI written notice of such determination or non-appropriation. All payment of obligations of Sponsor will cease on the effective date of termination; provided that Sponsor shall be responsible for payment of any and all Fees due to ESI incurred hereunder up to the date of termination and ESI shall be responsible for payment to Sponsor of any and all Rebate amounts generated up to the Termination Date. Sponsor will make all reasonable efforts to provide written notice to ESI in the event of non-appropriation at least forty-five (45) days prior to the end of the fiscal year in which such non-appropriation for the next fiscal year occurs.

7.2 Termination.

(a) Termination Without Cause. Sponsor may terminate this Agreement at any time prior to the expiration of the Term without cause and for any or no reason upon one hundred eighty (180) days’ prior written notice to ESI; provided, however, in the event of such termination by Sponsor without cause, Sponsor shall pay to ESI on the termination date an early termination fee (the “Termination Fee”) equal to $3.00 per Member (with the number of Members determined as the average number of Members per month during the twelve-month period immediately preceding the date of Sponsor’s notice of termination) multiplied by the number of months remaining throughout the Term as of the effective date of termination. The parties acknowledge and agree that the Termination Fee is a reasonable forecast of the harm ESI will sustain in the event of such early termination of this Agreement by Sponsor, and not a penalty. Sponsor’s payment of the Termination Fee shall be in addition to and not in lieu of any other rights or remedies ESI may have in connection with a breach of this Agreement by Sponsor, including monetary or other damages; provided, however, that an early termination by Sponsor hereunder shall not be a breach of this Agreement.

(b) Termination for Convenience. Although Sponsor’s intent is to enter into a five-year Agreement with ESI to provide its PBM Services, the Sponsor, as a public trust, was enacted and enabled to serve its sole beneficiary, The City of Oklahoma City (“The City”). The parties further agree that Sponsor’s sole source of revenue for funding this Agreement is from the general fund of The City. The parties further agree that no other source of revenue available to Sponsor shall be used or available to fund this Agreement. Under the laws of the State of Oklahoma, The City cannot enter into multi-year agreements, and therefore, the parties agree that The City is not a party to this Agreement. However, The City’s ability to or willingness to fund the Plan’s pharmacy benefit is a critical component of the Sponsor’s ability to continue this Agreement from Plan year to Plan year. Sponsor therefore reserves the
right to terminate this Agreement if The City is unable, unwilling or fails for any reason to appropriate adequate funding during any subsequent fiscal year upon sixty (60) calendar days written notice to ESI.

(c) 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.

(d) 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 ninety-six (96) hours written notice if Sponsor fails to pay ESI or provide a deposit, if required, in accordance with the terms of this Agreement, provided ESI attempts collection through written and verbal communications with Sponsor prior to sending the notice described herein.

(e) Obligations Upon Termination. Upon notice of termination of this Agreement, the parties will mutually develop a run-off plan providing for: (a) 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; (b) 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 (c) whether Sponsor elects for ESI to process Participating Pharmacy, Member Submitted and/or Medicaid Subrogation 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 pay Sponsor Rebates for such claims in accordance with the Rebate payment schedule set forth in Exhibit B.

7.3 Remedies.

(a) Remedies Not Exclusive. A party’s right to terminate this Agreement under Article VII 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 strikes, labor disputes, riots, earthquakes, storms, floods or other extreme weather conditions, fires, explosions, 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 7.3(d) and except in the event of fraud by ESI, 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 ESI's negligent acts or omissions or willful misconduct. Notwithstanding the preceding, Sponsor disclaims all liability in connection with, and ESI shall not attempt to recover from Sponsor, any Costs for Claims which may be asserted against, imposed upon or incurred by ESI and arising as a result of ESI's negligent acts or omissions or willful misconduct.

(ii) To the extent permitted by 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 Sponsor's (A) negligent acts or omissions or willful misconduct, (B) benefit design and coverage decisions, or (C) from any use Sponsor may make of PHI provided to Sponsor by ESI. Notwithstanding the preceding, ESI disclaims all liability in connection with, and Sponsor shall not attempt to recover from ESI, any Costs for Claims which may be asserted against, imposed upon or incurred by Sponsor and arising as a result of (ii)(A-C) above.

(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.

7.4 **Survival.** The parties' rights and obligations under the provisions of Sections 3.4(b)(i) and (iii), Articles IV, V and VI; and Sections 7.2(e), 7.3 and 7.4 will survive the termination of this Agreement for any reason.

**ARTICLE VIII – MISCELLANEOUS**

8.1 **Insurance.** The minimum insurance requirements set forth below shall not be deemed to limit or define the obligations of ESI from the provisions listed in this Agreement. Prior to the Effective Date of this Agreement, ESI shall obtain and furnish to the Contract Administrator of The City and the Clerk for The City and Sponsor, current copies of certificates of insurance as evidence of workers' compensation, general and personal liability insurance for ESI, its officers, agents and employees in the minimum amounts as set forth below. The required insurance shall be maintained in full force and effect until conclusion of this Agreement. ESI shall maintain insurance written with a company acceptable to the Sponsor, which acceptance shall not be unreasonably withheld by Sponsor. The insurance certificates shall provide that carrier will endeavor to provide thirty (30) calendar days prior written notice to Sponsor of termination or non-renewal of such coverage. As set forth in Sponsor's Request for Proposals, the amount of such coverages shall be:

(a) Adequate workers' compensation coverage to comply with state law and employer's liability coverage in the minimum amount of $100,000.00.

(b) Commercial general liability coverage sufficient to meet the Sponsor's maximum liability under the Governmental Tort Claim Act (51 Okla. Stat. Section 151 et seq.) and any amendment or addition thereto. The current required minimum commercial general liability coverage is: $150,000.00 per person for bodily injury or death, $25,000.00 for property damage and $1,000,000.00 for any number of claims arising out of a single accident or occurrence.
(c) Comprehensive automobile liability coverage sufficient to meet the Sponsor’s maximum liability under the Governmental Tort Claims Act (51 Okla. Stat. Section 151 et seq.) and any amendment or addition thereto. The current required comprehensive automobile liability coverage is: $150,000.00 per person for bodily injury or death, $25,000.00 for property damage and $1,000,000.00 for any number of claims arising out of a single accident or occurrence.

(d) During the Term of this Agreement, and for a period of one year thereafter, ESI shall maintain in effect Professional Liability insurance in the amount of one million dollars ($1,000,000.00). A certificate of insurance shall be provided to Sponsor immediately upon each renewal. The certificate shall provide that carrier will endeavor to provide thirty (30) calendar days prior written notice to Sponsor of cancellation or modification of the policy to reduce coverage.

The requirements of the insurance provisions listed above shall survive the completion, expiration, cancellation or termination of this Agreement. The lapse of the insurance requirements set forth above shall be deemed a breach of this Agreement. The Sponsor may, at its option, suspend, cancel or terminate the Agreement until there is full compliance with the insurance requirements or cancel or seek damages for breach of the Agreement. To the extent not covered by the foregoing insurance provisions, ESI also agrees, at its sole expense, to maintain during the term of this Agreement or any renewal hereof, pharmacists professional liability insurance for the Mail Service and CuraScript pharmacies, and managed care liability with limits, excess of a self insured retention, in the minimum amounts set forth above; provided, however, that ESI is not required to maintain liability insurance on behalf of any Participating Pharmacy, but will contractually require such Participating Pharmacies to maintain a minimum amount of commercial liability insurance or, when deemed acceptable by ESI, to have in place a self-insurance program.

8.2 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

Oklahoma City Municipal Facilities Authority
Attn: Colin Fonda
420 West Main, Suite 110
Oklahoma City, Oklahoma 73102

With copy to:
City Clerk
200 N. Walker, 2nd Floor
Oklahoma City, Oklahoma 73102

8.3 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.
8.4 **Successors and Assigns.** 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; provided that this Agreement may not be assigned by Sponsor without the prior written consent of ESI following a standard credit review, which consent will not unreasonably be withheld. In as much as the Agreement is a personal and professional service agreement that relies upon the independent and professional integrity, financial standing and unique ability and expertise of ESI to provide professional and personal services to the Sponsor, the parties agree that ESI may not assign its obligations, rights or interests in the Agreement without the express written consent of Sponsor; provided, however, that ESI may assign certain obligations to its subsidiaries and affiliates if and only to the extent expressly provided for in this Agreement.

8.5 **Integration; Amendments.** This Agreement, including its Exhibits, Attachments, or Appendices, and the Response to Request for Proposal, constitutes the complete understanding of the parties with respect to the subject matter hereof and may not be amended except upon written agreement of the parties. The terms of the body of the Agreement shall apply to the Exhibits, Attachments or Appendices. In regard to the payment of benefits, in the event of a conflict between the terms of this Agreement and any Exhibit, Attachment or Appendix, the terms of the Exhibit, Attachment, Appendix will control over the terms of the Agreement or the Response to Request for Proposals. In regard to contract administrative matters and issues, in the event of a conflict between the terms of this written Agreement and any Exhibit, Attachment or Appendix thereto or the Response to Request for Proposals, the terms of this Agreement will control over the Response to Request for Proposals, or any Exhibit, Attachment or Appendix. 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.

8.6 **Governing Laws, Construction and Enforcement.** This Agreement shall be construed and enforced in accordance with the laws and regulations of the State of Oklahoma, exclusive of its choice of law rules. Any litigation brought under this Agreement shall be conducted in the State of Oklahoma in State District Court in Oklahoma County or the Federal District Court for the Western District of Oklahoma. In the event of ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party on the basis that such party did or did not author the same.

8.7 **Alignment of Interests.** ESI acknowledges and agrees (as represented in materials submitted in ESI’s Response to Request for Proposals) that its business model is to align its interests with those of Sponsor. ESI does not engage in any business with any pharmaceutical manufacturer that is designed to manipulate the price or cost of any Brand Drug or Generic Drug in a manner that adversely impacts the cost to Sponsor of providing pharmacy benefits to Members under this Agreement. In this regard, “adversely impacts” is intended to mean that Sponsor would be required to pay a higher price for a Brand Drug or Generic Drug than the market would otherwise provide if it were not for ESI’s business arrangement with such pharmaceutical manufacturer.

8.8 **Financial Responsibility and Taxes.** Sponsor shall be solely financially responsible for making payments of Fees to ESI, including any applicable and legally required tax imposed. The parties acknowledge and agree that the provision of such funding to ESI satisfies the Sponsor’s obligations for payment of those claims and administrative fees. Sponsor is exempt from sales and use taxes and shall not pay any sales or use tax pursuant to this Agreement.

8.9 **ERISA Exception.** The parties acknowledge and agree that the Sponsor is currently exempt from the Employee Retirement Income Security Act of 1974, as amended from time to time, 29 U.S.C. § 1001, et seq.

8.10 **Prohibition Against Collusion.** Sponsor will pay no commissions. ESI warrants that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for ESI, any fee, commission, percentage, gift or any other consideration...
contingent upon or resulting from the award or making of the Agreement. This warrant is in addition to the Anti-collusion Affidavit submitted with the Response to Request for Proposals.

8.11 Compliance with Laws, Ordinances and Regulations. ESI and Sponsor shall comply with all applicable existing federal, state and local laws, standards, codes, ordinances, administrative regulations and all amendments and additions thereto, pertaining in any manner to the work and/or services provided by this Agreement. ESI agrees to obtain and maintain all patents, licenses, permits, and any other permissions required to provide and perform the services required under this Agreement.

8.12 Nondiscrimination. In connection with the performance of work and/or services under this Agreement, ESI agrees as follows:

(a) ESI shall not discriminate against any employee or applicant for employment because of age, race, creed, color, sex, national origin, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3(2). ESI shall take affirmative action to ensure that employees or applicants for employment are treated without regard to their age, race, creed, color, national origin, sex, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3(2). Such action shall include, but not limited to, the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff, termination or cancellation, rates of pay or other forms of compensation and selection for training, including apprenticeship.

(b) In the event of ESI’s noncompliance with this nondiscrimination clause, this Agreement maybe suspended, canceled or terminated by Sponsor. ESI may be declared by the Sponsor ineligible for further contract or agreements until compliance, and/or satisfactory proof of intent to comply shall be made by ESI.

8.13 Descriptive Headings. The descriptive headings of the sections and subsections of this Agreement are inserted or annexed for convenience of reference only and shall not affect the meaning, construction, interpretation or effect of this Agreement.

8.14 Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

8.15 Immigration Compliance. The “Oklahoma Taxpayer and Citizen Protection Act of 2007,” (Act) codified in part at 25 O.S. §§ 1312 and 1313 prohibits any public employer, including political subdivisions of the State from entering into a contract for physical performance of services within the State of Oklahoma, unless the contractor agrees to register and participate in the Status Verification System, as defined in the Act, to verify the work eligibility status of all new employees hired on or after July 1, 2008. The parties currently agree that the provisions of this Act do not appear to be applicable to this Agreement since it is made or entered into prior to July 1, 2008.

However, if at any time during the term of this Agreement the Sponsor, in its sole discretion, determines that this Agreement must comply with the provisions of the Act, ESI agrees that it will complete and submit to the Sponsor an Immigration Affidavit, on a form submitted by the Sponsor and reasonably acceptable to ESI, stating that ESI has registered and will participate in the Status Verification System, as defined in the Act, to verify the work eligibility status of all new employees hired on or after July 1, 2008 to perform services on this Agreement within the State of Oklahoma. ESI agrees that it will timely complete and submit the Immigration Affidavit to the Sponsor. ESI’s failure to timely complete and tender the Immigration Affidavit will be a basis for termination of the Agreement.

ESI’s statement in any Immigration Affidavit submitted (if required) pursuant to this section will be deemed to be incorporated into this Agreement and will be deemed to be material to the Agreement. Any misrepresentation by ESI in the Immigration Affidavit will be deemed to be a material breach of the Agreement.
8.16 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.

8.17 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.

8.18 Freedom of Information Act and the Oklahoma Open Records Act. ESI acknowledges that Sponsor, as a government agency, may be subject to applicable freedom of information laws and must, upon request, disclose such materials as are covered by and not exempted from such laws. Pursuant to Section 5.2 hereof, Sponsor acknowledges that certain information contained herein or subject to this Agreement is considered 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 a reasonable amount of time to oppose any freedom of information request pertaining to this Agreement or any proposal related hereto.

8.19 Medicare (QRDP) Services. The parties agree that as relates to any qualified retiree prescription drug plan ("QRDP") established by Sponsor under Medicare for the purpose of applying for subsidy payments as defined under 42 CFR §423.885, ESI will provide the services under the terms and conditions set forth in Exhibit F.

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: Sponsor, signing by and through its duly authorized representative, authorized to execute same by Sponsor's action on the ______ day of ________, 2008; and Express Scripts, Inc., signing by and through its authorized agent, duly authorized to execute same.

Express Scripts, Inc

By: [Signature]

Printed Name: [Name]

Title: [Title]

Date: 7-21-08

Attest:

[Signature]

Witness

Oklahoma City Municipal Facilities Authority

By: [Signature]

Printed Name: Mick Cornett

Title: Chairman

Phone: [Number]

Fax: [Number]

Federal ID Number: [Number]

Date: April 1, 2008

Attest:

[Signature]

Secretary

Reviewed as to form and legality:

Wiley L. Williams

Assistant Municipal Counselor
EXHIBIT A

PHARMACY PROGRAM FEES

Sponsor will pay to ESI the amounts set forth below, net of applicable Copayments. Sales or excise tax or other governmental surcharge, if any, will be the responsibility of Sponsor. If ESI pays a particular Participating Pharmacy a higher rate because Sponsor has requested such pharmacy be included in the network, the rate charged to Sponsor will be the net ingredient cost plus the dispensing fee paid by ESI to such pharmacy, plus applicable sales or excise tax or other governmental surcharge, if any. A Member’s Copayment charged for a Covered Drug will be the lesser of the applicable Copayment or the U&C.

ESI shall be Sponsor’s exclusive provider of PBM Services for Sponsor’s self-funded welfare benefit Plans offering a prescription benefit. The financial terms set forth in Exhibits A and B 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 5,000 Members implemented on the Effective Date of this Agreement and no Members in a 100% co-payment plan. To the extent:

(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;

(b) Sponsor changes its Formulary, benefit designs, implements clinical programs or otherwise takes an action that has the effect of lowering the amount of Rebates earned by Sponsor (whether between the date of the Cost Proposal and the Effective Date, or during the Term); 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; then

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. If Rebate revenue is materially decreased because Brand Drugs move off-patent to generic status, then ESI will have the right, upon notice, to make an equitable adjustment to the amounts relating to Rebates, solely as necessary to return ESI to its contracted economic position as of the effective date of such event; and, if Sponsor rejects ESI’s adjustment, then Sponsor may terminate this Agreement upon not less than sixty (60) days’ prior written notice to ESI; provided, however, that in such circumstances, ESI still maintains the right to implement its adjustment effective immediately upon the date of ESI’s notice and continuing through the date of Sponsor’s termination. In addition, and notwithstanding the foregoing, ESI shall have the right to make an equitable adjustment to the Rebates in the event Sponsor (without the knowledge of ESI) has in place as of the Effective Date of this Agreement, any clinical or trend programs, and/or the drugs within the programs that increase Generic or OTC utilization.
Exhibit A-1
Pharmacy Reimbursement Rates

I. Participating Pharmacy Reimbursement Rates (Does Not Apply to Specialty Products)

<table>
<thead>
<tr>
<th>Network</th>
<th>Minimum 50,000 Participating Pharmacy Network</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Ingredient Cost - Brand</strong></td>
<td></td>
</tr>
<tr>
<td>Single Source Generic Drugs are priced as brands</td>
<td>Lesser of AWP – 16.75%, or U&amp;C</td>
</tr>
<tr>
<td><strong>Ingredient Cost - Generic</strong></td>
<td></td>
</tr>
<tr>
<td>Single Source Generic Drugs are priced as brands</td>
<td>Lesser of AWP – 16.75%, MRA or U&amp;C</td>
</tr>
<tr>
<td><strong>Ingredient Cost - Compound Drugs</strong></td>
<td>Lesser of U&amp;C or combined AWP plus applicable service fee</td>
</tr>
<tr>
<td><strong>Dispensing Fee/Rx</strong></td>
<td>$1.50</td>
</tr>
<tr>
<td><strong>Administrative Fee/Rx</strong></td>
<td>$0.00</td>
</tr>
</tbody>
</table>

II. Mail Service Pharmacy Pricing (Does Not Apply to Specialty Products)

<table>
<thead>
<tr>
<th>2-Tier Plan Design or 3-Tier Plan Design</th>
<th>Less than $15.00 Copay Differential</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Ingredient Cost - Brand Drugs</strong></td>
<td></td>
</tr>
<tr>
<td>Single Source Generic Drugs are priced as brands</td>
<td>AWP – 16.75%</td>
</tr>
<tr>
<td><strong>Ingredient Cost – Generic Drugs</strong></td>
<td>AWP - 16.75% or, if lower, MRA</td>
</tr>
<tr>
<td><strong>Ingredient Cost – Compound Drugs</strong></td>
<td>Combined AWP plus applicable service fee</td>
</tr>
<tr>
<td><strong>Dispensing Fee/Rx</strong> Subject to change for changes in delivery rates</td>
<td>$1.50</td>
</tr>
<tr>
<td><strong>Administrative Fee/Rx</strong></td>
<td>$0.00</td>
</tr>
<tr>
<td><strong>Minimum Rate / Rx</strong></td>
<td>$8.99</td>
</tr>
</tbody>
</table>

III. Specialty Products. Sponsor may elect the CuraScript exclusive or open option as described below:

(a) **Exclusive.** CuraScript is the exclusive provider of Specialty Products for the reimbursement rates shown on the CareLogic Drug List for CuraScript - Exclusive. Any Specialty Product dispensed from a pharmacy other than CuraScript (for example, limited distribution products not then available through CuraScript or overrides) will be reimbursed at ESI’s standard “open” network Specialty Product rates shown below. Upon CuraScript acquisition of limited distribution products, Members will obtain prescriptions through CuraScript.

(b) **Open.** Specialty Products shall be available through CuraScript and Participating Pharmacies for the CareLogic Drug List for CuraScript – Open and Participating Pharmacy reimbursement rates.
<table>
<thead>
<tr>
<th>Ingredient Cost</th>
<th>Dispensing Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exclusive CuraScript</td>
<td>See Exclusive CareLogic Drug List</td>
</tr>
<tr>
<td>Open CuraScript and Participating Pharmacy</td>
<td>See Open CareLogic Drug List</td>
</tr>
</tbody>
</table>

(c) Specialty Products will be excluded from any price guarantees set forth in the Agreement. CuraScript or ESI will be entitled to charge a reasonable fuel surcharge fee to cover fuel surcharges imposed by carriers in connection with the delivery of Specialty Products by CuraScript. In no event will the Mail Service Pharmacy or Participating Pharmacy pricing specified in the Agreement apply to Specialty Products.

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

(i) 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 CuraScript; otherwise, all other Specialty Products will be implemented as Covered Drugs at the rate specified in the applicable CareLogic Drug List or Notice, and Sponsor acknowledges and agrees to same. 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 CareLogic Drug List reimbursement rate set forth in the Notice.

(ii) 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 the 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.

(e) For Specialty Products filled through CuraScript only, Members may receive the following services from CuraScript, depending on the particular therapy class or disease state:

(i) Patient Intake Services: patient enrollment, initial referral processing, insurance eligibility and benefits verification, alternative coverage searches, schedule of initial Specialty Product order, and coordination of patient education and instruction for each new patient;

(ii) Pharmacy Dispensing Services: dispensing the Specialty Product pursuant to a prescription in accordance with applicable law, deposit of such Specialty Product with a third party carrier to facilitate the delivery of same per the Member’s instructions, and the provision of certain ancillary supplies (e.g., syringes, needles, and alcohol swabs) and related items in connection with the Specialty Product that may be necessary or useful to the Member in connection with the administration of the Specialty Product;

(iii) Ongoing Clinical and Specialty Pharmacy Support Services: self-injection teaching support, patient education, assessment, clinical interventions and clinical screenings, therapy adherence counseling and related clinical patient management activities and programs, physician consultations, authorization maintenance, assistance with Member coverage appeals, re-fill follow-up calls, managing ongoing medication orders, and insurance follow-up and related ongoing delivery coordination; and
(iv) **Social Services**: patient advocacy, hardship reimbursement support, and indigent and patient assistance programs.

The aforementioned services do not include home infusion supplies and related home health services and may require the payment of additional fees.
### Administrative and Clinical Program Fees

#### I. Administrative Fees

<table>
<thead>
<tr>
<th>PBM Services</th>
<th>Network Pharmacy Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>♦ Customer service for members</td>
<td>♦ Pharmacy help desk</td>
</tr>
<tr>
<td>♦ Electronic/on-line eligibility submission</td>
<td>♦ Pharmacy network management</td>
</tr>
<tr>
<td>♦ Standard coordination of benefits (COB)</td>
<td>♦ Pharmacy reimbursement</td>
</tr>
<tr>
<td>(reject for primary carrier)</td>
<td>♦ Network development (upon request)</td>
</tr>
<tr>
<td>♦ FSA eligibility feeds</td>
<td></td>
</tr>
<tr>
<td>♦ Electronic claims processing</td>
<td></td>
</tr>
<tr>
<td>♦ Plan setup</td>
<td></td>
</tr>
<tr>
<td>♦ Software training for access to our on-line system(s)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Home Delivery Services</th>
<th>Reporting Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>♦ Benefit education</td>
<td>♦ Web-based client reporting – produced by client</td>
</tr>
<tr>
<td>♦ Prescription delivery – standard</td>
<td>♦ Ad-hoc desktop parametric reports</td>
</tr>
<tr>
<td>♦ Prescription delivery</td>
<td>♦ Claims detail extract file electronic (NCPDP format)</td>
</tr>
<tr>
<td>♦ Prescription delivery</td>
<td>♦ Load 12 months claims history for clinical reports and reporting</td>
</tr>
<tr>
<td>♦ Prescription delivery</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Website Services</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>♦ Express-Scripts.com for Clients — access to reporting tools, eligibility update capability, contact directory, sales and marketing information, and benefit and enrollment support</td>
<td>♦ Annual Strategic Account Plan report</td>
</tr>
<tr>
<td>♦ Express-Scripts.com for Members — access to benefit, drug, health and wellness information; prescription ordering capability; and customer service</td>
<td>♦ Billing reports</td>
</tr>
<tr>
<td>♦ Express Preview™ enrollment option — available during open enrollment to enable members to evaluate prescription benefit plan options</td>
<td>♦ Inquiry access to claims processing system</td>
</tr>
<tr>
<td>♦ Digital Certificates (up to five certificates)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Implementation Package and Member Communications</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>♦ New member packets (includes two standard resin ID cards)</td>
<td>♦ Implementation support</td>
</tr>
<tr>
<td>♦ Member replacement cards printed via web</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Safety Management</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>♦ Concurrent Drug Utilization Review</td>
<td>♦ Emerging Therapeutics</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Trend Management</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>♦ Prior Authorization – Administrative</td>
<td>♦ Prior Authorization – Clinical Base List</td>
</tr>
<tr>
<td>• Non-clinical Prior Authorization</td>
<td>♦ Blood Glucose Meter program</td>
</tr>
<tr>
<td>• Lost/stolen overrides</td>
<td>♦ Therapeutic Interchange</td>
</tr>
<tr>
<td>• Vacation supplies</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Care Management</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>♦ Care Management (Level 1) Member Portal</td>
<td></td>
</tr>
</tbody>
</table>

In addition to the foregoing administrative services, at no cost to Sponsor, ESI once annually will provide a guided tour of ESI’s Mail Service Pharmacy fulfillment center, member service center, or any ESI location that provides services to Sponsor. ESI also hosts an annual Outcomes Conference, and ESI will provide Sponsor with a minimum of one invitation to that event annually. If acceptable, ESI will pay for the invitee’s travel expenses and lodging for the annual Outcomes Conference, provided such payment does not violate any applicable law or regulation.
<table>
<thead>
<tr>
<th>PBM Services</th>
<th>Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>♦ Manual/hardcopy eligibility submission</td>
<td>$1.00/update (includes initial entry)</td>
</tr>
<tr>
<td>♦ Member-submitted paper claims processing</td>
<td>$2.50/claim</td>
</tr>
<tr>
<td>♦ Medicaid subrogation claims</td>
<td>$2.50/claim</td>
</tr>
<tr>
<td><strong>Network Pharmacy Services</strong></td>
<td></td>
</tr>
<tr>
<td>♦ Pharmacy audit recoveries</td>
<td>20% of audit recoveries</td>
</tr>
<tr>
<td><strong>Reporting Services</strong></td>
<td></td>
</tr>
<tr>
<td>♦ Web-based client reporting – produced by Express Scripts</td>
<td>$100/report</td>
</tr>
<tr>
<td>♦ Custom ad-hoc reporting</td>
<td>$150/hour, with a minimum of $500</td>
</tr>
<tr>
<td><strong>Replacement Member Communication Packets</strong></td>
<td></td>
</tr>
<tr>
<td>♦ Member requested replacement packets</td>
<td>$1.50 + postage per packet</td>
</tr>
<tr>
<td>♦ Client requested re-carding</td>
<td>$1.50 + postage per packet</td>
</tr>
<tr>
<td><strong>Appeals by MCMC</strong></td>
<td></td>
</tr>
<tr>
<td>♦ Clinical appeals</td>
<td>$350/review</td>
</tr>
<tr>
<td>♦ Non-clinical appeals</td>
<td>$160/review</td>
</tr>
<tr>
<td></td>
<td>* Plans subject to state law (non-ERISA plans) will be charged a retainer fee of $1000 per month for appeals handled by MCMC</td>
</tr>
<tr>
<td><strong>Medicare Part D Subsidy</strong></td>
<td></td>
</tr>
<tr>
<td>♦ Enhanced reporting (Express Scripts sends reports to CMS on behalf of client)</td>
<td>$0.62 PMPM for Medicare-qualified members with a minimum annual fee of $5,000</td>
</tr>
<tr>
<td></td>
<td>* Notice of Creditable Coverage</td>
</tr>
</tbody>
</table>
II. **Selected Clinical/Trend Programs.**

ESI offers a comprehensive list of trend, safety, care and disease management programs, a limited number of which are identified below, and which may change or be discontinued from time to time. ESI also offers savings guarantees under certain conditions. Information concerning such programs, guarantees and fees, if applicable, is available from the ESI Account Team.

<table>
<thead>
<tr>
<th>Programs</th>
<th>Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Safety Management</strong></td>
<td></td>
</tr>
<tr>
<td>♦ Retrospective DUR</td>
<td>$0.03/Rx</td>
</tr>
<tr>
<td>♦ Retrospective DUR – Seniors</td>
<td>$0.02/Rx</td>
</tr>
<tr>
<td><strong>Trend Management</strong></td>
<td></td>
</tr>
<tr>
<td>♦ Drug Quantity Management *</td>
<td>$0.02 PMPM</td>
</tr>
<tr>
<td>♦ Prior Authorization – Clinical Supplemental List *</td>
<td>$0.03 PMPM</td>
</tr>
<tr>
<td>♦ Prior Authorization – Other Clinical Overrides (e.g. non-standard prior authorization medications, medical exceptions)</td>
<td>$20/request $25/physician review</td>
</tr>
<tr>
<td>♦ Step Therapy – Individual modules and packages available Over 25 modules available. The most utilized include: ACE inhibitors and angiotensin-2 receptor blockers (ARBs), non-steroidal anti-inflammatory drugs (NSAIDS) and COX-2s, proton pump inhibitors (PPIs), selective serotonin reuptake inhibitors (SSRIs), HMG – enhanced, calcium channel blockers, leukotriene pathway inhibitors, topical immunomodulators, other antidepressants. Formulary Rapid Response $0.01 PMPM Pricing varies by module $1.25/member mailing or $1,000 for member identification and authorization $0.05 PMPM for six months each time the report is run (e.g. 100,000 members * $0.05 PMPM * 6 months). A subsequent charge will occur with the second report. There is a minimum charge of $3,000.</td>
<td></td>
</tr>
<tr>
<td>♦ $0 Generic Copay</td>
<td></td>
</tr>
<tr>
<td>♦ RxPredict$</td>
<td></td>
</tr>
<tr>
<td><strong>Care Management</strong></td>
<td></td>
</tr>
<tr>
<td>♦ Care Management (Level 2)</td>
<td>$0.01/claim – Asthma</td>
</tr>
<tr>
<td></td>
<td>$0.01/claim – Cardiovascular Disease</td>
</tr>
<tr>
<td></td>
<td>$0.02/claim – CHF</td>
</tr>
<tr>
<td></td>
<td>$0.02/claim – Depression</td>
</tr>
<tr>
<td></td>
<td>$0.01/claim – Diabetes</td>
</tr>
<tr>
<td></td>
<td>$0.03/claim – GI Disease</td>
</tr>
<tr>
<td></td>
<td>$0.02/claim – Hypertension</td>
</tr>
<tr>
<td></td>
<td>$0.02/claim – Migraine</td>
</tr>
</tbody>
</table>

* List of drugs subject to change at the discretion of Express Scripts.
EXHIBIT B

REBATES

A. Subject to the terms and conditions set forth below, ESI will pay an amount equal to the greater of 90% of Rebates paid to ESI with respect to qualifying Covered Drugs dispensed to Members, or the following:

<table>
<thead>
<tr>
<th>ESI National Preferred Formulary</th>
<th>Participating Pharmacies and CuraScript</th>
<th>Mail Service Pharmacy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Per Brand Prescription Drug Claim Contract Years 1 and 2</td>
<td>$6.50</td>
<td>$25.00</td>
</tr>
<tr>
<td>Per Brand Prescription Drug Claim Contract Years 3 and 4</td>
<td>$7.00</td>
<td>$28.00</td>
</tr>
<tr>
<td>Per Brand Prescription Drug Claim Contract Year 5</td>
<td>$7.50</td>
<td>$31.00</td>
</tr>
</tbody>
</table>

B. Conditions of the Rebate Program.

1. Rebates are conditioned upon (i) Sponsor’s election of, and conformance to, the identified Formulary and qualifying co-payment benefit designs; (ii) distribution of the Formulary (or a summary thereof) to Members and/or physicians; and (iii) compliance with other reasonable, generally applicable requirements for participation by all clients in the Rebate program, as are communicated by ESI to Sponsor from time to time. In addition, Rebates do not apply to claims processed through staff model / hospital pharmacies where such pharmacy is subject to its own manufacturer contracts (rebate or purchase discounts), or through pharmacies that participate in the Federal government pharmaceutical purchasing program.

2. Certain Member Submitted Claims and OTC products, Plans that do not meet eligibility requirements set forth herein, claims older than 180 days, as well as claims for 100% copayment (cash and carry) plans not offered in connection with a health plan benefit, may not be eligible for Rebates.

3. Guaranteed amounts are calculated in the aggregate and reconciled annually. ESI retains Rebates in excess of such amount or percentage, if any. Amounts representing the Rebates allocated to Sponsor pursuant to the terms of this Agreement will be paid on a quarterly basis approximately 150 days following the end of each quarterly period. ESI retains all right, title and interest to any and all actual Rebates received from manufacturers, except that 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 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 and will have the right to delay payment of Rebates to allow for final adjustments upon termination of this Agreement.

4. Sponsor acknowledges that it may be eligible for Rebates 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 with a pharmaceutical manufacturer for Rebates or similar discounts for any Covered Drugs hereunder, but without limiting ESI’s right to other remedies, ESI may immediately withhold any Rebates 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 Rebates hereunder and to renegotiate the terms and conditions of this Agreement.
EXHIBIT C
AUDIT PROTOCOL

1. AUDIT PRINCIPLES
ESI recognizes the importance of its clients ensuring the integrity of their business relationship by engaging in periodic audits of their financial arrangements with ESI. 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, but rather to create a manageable process in order to be responsive to our clients and the independent auditors that they may engage. If Sponsor has any concern that this Protocol will prohibit Sponsor from fully confirming its financial arrangement with ESI, we encourage Sponsor to express such concern at the audit kick-off meeting.

2. AUDIT PREREQUISITES
A. The financial aspects of the Agreement can be broken down into the following three main components. Sponsor has the right to audit any or all three of these components, if applicable:
   - Claims
   - Rebates
   - Performance Guarantees
   At Sponsor’s discretion, Sponsor may conduct an audit of each component separately, or may combine all three components in one audit. In addition to the above audit rights, Sponsor may address general claim inquiries, which do not require an audit, by contacting Sponsor’s ESI Account Management team at any time.
B. ESI will provide all data reasonably necessary for Sponsor to determine that ESI has performed in accordance with contractual terms.
C. ESI engages a national accounting firm, at its sole cost and expense, to conduct a SAS 70 audit on behalf of its clients. Upon request, ESI will provide the results of its most recent SAS 70 audit. Testing of the areas covered by the SAS 70 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 SAS 70 audit process and findings to Sponsor in order for Sponsor to gain an understanding of the SAS 70.

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.
B. When performing a Rebate audit, Sponsor may perform an on-site review of the applicable Rebate rate components of manufacturer agreements, selected by Sponsor, as reasonably necessary to audit the calculation of the Rebate payments made to Sponsor by ESI.
C. 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. ESI will accommodate reasonable requests to extend this audit scope, but this may delay ESI’s on-site preparation time as well as response time to audit findings. Sponsor will be allowed to select the manufacturer contracts that will be subject to audit.

4. AUDIT FINDINGS
A. Following Sponsor’s initial audit, Sponsor (or its Auditor) will provide ESI with a written report of suspected errors, if any. In order for ESI to evaluate Sponsor’s audit report, Sponsor shall provide an electronic data file in a mutually agreed upon format containing either a representative sample of claims, or the entire suspected error population, and the dollar amount associated with the suspected errors.
B. If Sponsor provides the entire suspected error population, consistent with generally accepted industry audit standards, ESI will evaluate a statistically valid sample of claims in order to provide a timely response. 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 due to the complex nature of such audits. 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. Following ESI's evaluation of Sponsor's (or its Auditor's) audit report, if the audit findings warrant an increase in the Audit Period or the number of contracts reviewed, then ESI and Sponsor will mutually determine the scope of further analysis.

D. Sponsor agrees that once audit results are accepted by both parties, the audit shall be considered closed and final.

E. ESI shall promptly pay overpayments (or Sponsor shall promptly pay underpayments, if applicable) upon closure of the audit.

5. 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 manufacturer or Participating Pharmacy agreements (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.
a) **EXHIBIT D**

b) **BUSINESS ASSOCIATE AGREEMENT**

this business associate agreement is made for the purpose of delineating the terms and conditions under which esi ("business associate") and sponsor ("covered entity") shall comply with obligations under hipaa relating to the pbm services esi provides to sponsor under the pbm agreement.

1. **Definitions.**

   (a) “designated record set” will mean a group of records maintained by or for plan that is (i) the medical records and billing records about individuals maintained by or for plan, (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for plan to make decisions about individuals.

   (b) “hipaa rules” means the collective privacy, transaction and security regulations promulgated pursuant to the health insurance portability and accountability act, as codified at 45 cfr parts 160, 162 & 164.

   (c) “health plan” or “plan” will have the same meaning as the term “health plan” in 45 cfr 160.103.

   (d) “individual” will have the same meaning as the term “individual” in 45 cfr § 164.501 and will include a person who qualifies as a personal representative in accordance with 45 cfr § 164.502(g).

   (e) “pbm agreement” means the pharmacy benefit management agreement to which this business associate agreement is attached.

   (f) “protected health information” or “phi” will have the same meaning as the term “protected health information” in 45 cfr § 164.501, limited to the information created or received by esi from or on behalf of plan.

   (g) “privacy rule” will mean the standards for privacy of individually identifiable health information at 45 cfr part 160 and part 164, as they exist now or as they may be amended.

   (h) “required by law” will have the same meaning as the term “required by law” in 45 cfr § 164.501.

   (i) “secretary” will mean the secretary of the department of health and human services or his designee.

   (j) “security standards” will mean the security standards, 45 c.f.r. parts 160, 162 and 164, as they exist now or as they may be amended.

   (k) “transaction standards” will mean the standards for electronic transactions, 45 c.f.r. 160 and 162, as they exist now or as they may be amended.

   terms used, but not otherwise defined, in this addendum will have the same meaning as those terms in 45 cfr §§ 160.103 and 164.501.

2. **general use and disclosure provisions.** esi and the plan acknowledge and agree as follows:

   (a) except as otherwise limited in this 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 the plan in its operations, as long as such use or disclosure would not violate the hipaa rules if done by the plan.

   (b) 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) except as otherwise limited in this agreement:

      (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 it will remain
confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and 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 the Plan as permitted by 45 CFR 164.504(e)(2)(i)(B).

(d) 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 applicable law.

(e) ESI agrees to use appropriate safeguards, consistent with applicable law, to prevent use or disclosure of PHI in a manner that would violate this Agreement. ESI will provide the Plan with such information concerning such safeguards as the Plan may reasonably request from time to time.

(f) 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 Agreement or the PBM Agreement.

(g) 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 the Plan agrees to the same restrictions and conditions that apply through this Agreement to ESI with respect to such information.

(h) Within fifteen (15) business days of a request from the Plan, ESI will provide access to the Plan to PHI in a Designated Record Set in order to meet the requirements under 45 CFR 164.524. If ESI receives a request directly from an Individual, or if the Plan requests that access be provided to the Individual, ESI will provide access to the Individual to PHI in a Designated Record Set within thirty (30) days in order to meet the requirements under 45 CFR 164.524.

(i) Within sixty (60) days of a request of the Plan or subject Individual, ESI agrees to make any appropriate amendment(s) to PHI in a Designated Record Set that the Plan directs or agrees to pursuant to 45 CFR 164.526.

(j) ESI agrees to document disclosures of PHI and information related to such disclosures as would be required for the Plan to respond to a request by an Individual for an accounting of disclosures in accordance with 45 CFR §164.528.

(k) Within thirty (30) business days of a proper request by the Plan, ESI agrees to document and make available to the 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, exclusive of those disclosures for payment, treatment or healthcare operations, in accordance with 45 CFR 164.528. Within sixty (60) days of proper request by subject Individual, ESI agrees to document and make available to the Individual the information described above. ESI will retain copies of any accountings for a period of six (6) years from the date the accounting was created.

(l) Within fifteen (15) business days of a request of the Plan, ESI agrees to evaluate a request to restrict the use or disclosure of PHI on behalf of an Individual in accordance with 45 CFR 164.522.

(m) 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, the Plan available to the Plan within ten (10) business days, or at the request of the Plan or the Secretary of HHS ("Secretary"), to the Secretary in a time and manner directed by the Secretary, for purposes of the Secretary determining the Plan’s compliance with the HIPAA Rules.

3. **Plan Obligations**

(a) Plan will 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 will 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 will 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 will not request that ESI use or disclose PHI in any manner that would exceed which is minimally necessary under the HIPAA Rules or that would not be permitted by a Covered Entity.
4. **Transactions Standards.** To the extent applicable, ESI will comply with the applicable transactions standards for claims processing functions between ESI and provider pharmacies. The parties each hereby agree that it will 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. **Security Standards.** To the extent that ESI creates, receives, maintains or transmits electronic PHI, ESI will:

   (a) Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that ESI creates, receives, maintains or transmits on behalf of the Plan as required by the Security Standards;

   (b) Ensure that any agent, including a subcontractor, to whom ESI provides Electronic PHI agrees to implement reasonable and appropriate safeguards to protect the PHI; and

   (c) Report to Plan any Security Incident involving Electronic PHI of which ESI becomes aware.

6. **Breach; Termination.**

   (a) Without limiting the termination rights of the parties pursuant to the PBM Agreement, upon the Plan's knowledge of a material breach by ESI of this Agreement, the Plan will notify ESI of such breach and ESI will have thirty (30) days to cure such breach. In the event ESI does not cure the breach, or cure is infeasible, the Plan will have the right to immediately terminate this Agreement and the PBM Agreement. If cure of the material breach is infeasible, Plan will report the violation to the Secretary.

   (b) To the extent feasible, upon termination of the PBM Agreement for any reason, ESI will, and will 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, the Plan. If return or destruction of such information is not feasible, ESI will 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.

7. **Indemnification.** ESI will indemnify and hold harmless Plan from and against any claim, cause of action, liability, damage, cost or expense, including reasonable attorneys’ fees and court or proceeding costs, arising out of or in connection with any (a) unauthorized use or disclosure of PHI, (b) failure in security measures affecting PHI; or (c) other material breach of the terms of this Agreement by ESI or any person or entity under ESI control. Indemnification is conditioned upon the Plan notifying ESI in writing promptly upon learning of any claim for which indemnification may be sought hereunder, and will tender the defense of such claim to ESI. ESI will not be required to indemnify Plan if any claim is settled without ESI’s written consent.

8. **Miscellaneous.**

   (a) **Amendment.** The parties acknowledge that the foregoing provisions are designed to comply with the mandates of the HIPAA Rules. Should the provisions of the HIPAA Rules change or be amended after the date of this Agreement, the parties will engage in negotiations to amend the provisions of this Agreement to comply with such changes or amendments. If the parties fail to agree on reasonable amendment to the provisions of this Agreement, either party may terminate this Agreement upon ninety (90) days written notice.

   (b) **Effect on PBM Agreement.** Except as relates to the use, security and disclosure of PHI and electronic transactions, this 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 Agreement is intended to confer, nor will 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 Agreement will be resolved in favor of a meaning that permits the Plan to comply with the HIPAA Rules.
Express Scripts is a provider of pharmaceutical benefits management ("PBM") and other related services to thousands of client groups including managed care organizations, health insurers, employer groups, third party administrators and government entities. Express Scripts' subsidiary companies, some of which provide services related to supporting our PBM services, include ESI Mail Pharmacy Service, Inc., CuraScript, Inc., Express Scripts Specialty Distribution Services, Inc., and Phoenix Marketing Group, LLC. This disclosure provides an overview of the revenue sources that allow us to deliver competitive pricing arrangements to our clients.

Express Scripts offers its clients, either directly or through its subsidiary companies, a variety of services related to the management of prescription drug benefits. The specific services provided to each client are documented under the Pharmacy Benefit Management Agreement, or other similar agreement, with our client. Express Scripts' PBM services typically include claims processing and adjudication, pharmacy network contracting and management, formulary development and management, rebate management and administration, trend management, and clinical program development and fulfillment. Some of our clients also utilize our mail service pharmacy to provide their members with convenient access to safe and affordable prescription drugs through home delivery. In addition to the administrative fees paid to us by our clients for these core PBM services, Express Scripts derives revenue from other sources, including arrangements with pharmaceutical manufacturers and retail pharmacies. Some of this revenue relates to utilization of products by members of the clients for whom we provide PBM services.

Network Pharmacies – Express Scripts contracts for its own account with retail pharmacies to dispense prescription drugs to members of the clients for whom we provide PBM services. The rates paid by Express Scripts to these pharmacies differ from one network of pharmacies to the next, and among pharmacies within a network. Express Scripts generally contracts with clients to be paid an ingredient cost for drugs dispensed in a given retail network selected by the client at a uniform rate that applies to all pharmacies in the selected network. Thus, where the rate paid by a client exceeds the rate negotiated with a particular pharmacy, Express Scripts will realize a positive margin on the applicable prescription. The reverse may also be true, resulting in negative margin for Express Scripts. In addition, when Express Scripts receives payment from a client before payment to a pharmacy is due, Express Scripts retains the benefit of the use of the funds between these payments.

Manufacturer Rebates and Associated Administrative Fees – Express Scripts contracts for its own account with pharmaceutical manufacturers to obtain rebates attributable to the utilization of certain prescription products by individuals who receive benefits from clients for whom we provide PBM services. Rebate amounts vary based on the volume of utilization as well as the benefit design and formulary position applicable to utilization of a product. Express Scripts often pays all or a portion of the rebates it receives to a client based on the client's PBM services agreement. Express Scripts retains the financial benefit of the use of any funds held until payment is made to a client. In connection with our maintenance and operation of the systems and other infrastructure necessary for managing and administering the rebate process, Express Scripts also receives administrative fees from pharmaceutical manufacturers participating in the rebate program discussed above. The services provided to participating manufacturers include making certain drug utilization data available, as allowed by law, for purposes of verifying and evaluating the rebate payments. The administrative fees paid to Express Scripts by manufacturers for participation in the rebate program do not exceed 3.5% of the AWP of the rebated products.

Pharmacy Dispensing and Distribution – Express Scripts has several licensed pharmacy subsidiaries, including our specialty pharmacies. These entities purchase prescription drug inventories, either directly from manufacturers or from drug wholesalers, for dispensing to patients or for distribution to physician offices. Purchase discounts off the acquisition cost of these products are made available by manufacturers in the form of both up-front and retrospective discounts. Such discounts are not considered part of the rebates paid to Express Scripts by manufacturers in connection with our rebate program. While rebates are directly attributable to the utilization of pharmaceutical products by individuals who receive benefits from clients for whom we provide PBM services, product acquisition price discounts are based on a pharmacy's inventory needs and, in the case of specialty pharmacies, the performance of related patient care service obligations. The purchase discounts obtained by these facilities are not based on any client's benefit design. When an Express Scripts subsidiary pharmacy dispenses or distributes a product from its inventory, the purchase price paid for the dispensed product, including applicable dispensing fees, may be greater or less than the pharmacy's acquisition cost for the product net of purchase discounts. In general, our pharmacies realize an overall positive margin between this net acquisition cost and the amounts paid for the dispensed products.
**Pharmaceutical Program Services** – Our specialty pharmacies, including CuraScript, Inc. and Express Scripts Specialty Distribution Services, Inc., receive compensation from manufacturers for their administration of programs related to the distribution of certain pharmaceutical products. This compensation is based on the fair market value of the services provided and is unrelated to the drug formulary development process or drug utilization applicable to the clients for whom we provide PBM services. Examples of these services include (i) administering patient assistance programs for indigent patients; (ii) administering product sample distribution programs; and (iii) dispensing prescription medications to patients enrolled in clinical trials.

**Data Reporting** – Express Scripts sells certain data resulting from its PBM and pharmacy services to healthcare data aggregators and similar entities from time to time. We do not sell any data unless we are permitted to do so by the terms of our client contract and by applicable patient privacy laws. In addition, as a condition to receiving access to certain products, a specialty pharmaceutical manufacturer often will require a purchasing specialty pharmacy to report selected information to the manufacturer regarding the pharmacy’s service levels and other de-identified dispensing-related data with respect to patients who receive such manufacturer’s product. A portion of the discounts or other compensation made available to our specialty pharmacies represents compensation for such reporting. All such reporting activities are conducted in compliance with applicable patient privacy laws.

**Other Pharmaceutical Manufacturer Services** – Phoenix Marketing Group, LLC specializes in the provision of sample fulfillment, sample accountability, alternative sampling, direct mail fulfillment, and literature fulfillment services for pharmaceutical manufacturers. Because its services involve only warehousing and fulfillment-related functions, this subsidiary entity does not review products clinically and it never uses, sells or has access to Express Scripts’ client or member information. Compensation paid to Phoenix Marketing Group, LLC by pharmaceutical manufacturers is based on the fair market value of such services, as established most often through an “RFP” process, and any such compensation is unrelated to the drug formulary development process or drug utilization applicable to the clients for whom Express Scripts provides PBM services.

_July, 2005_

**THIS EXHIBIT REPRESENTS ESI’S CURRENT FINANCIAL POLICIES. THIS EXHIBIT MAY NOT BE REVISED OR MODIFIED. ESI MAY PERIODICALLY UPDATE ITS FINANCIAL DISCLOSURES TO REFLECT CHANGES IN ITS BUSINESS PROCESSES.**
EXHIBIT F

MEDICARE QR-PDP ADDENDUM

THIS MEDICARE QR-PDP ADDENDUM (the “QR-PDP Addendum”) is made for the purpose of delineating the terms and conditions under which Express Scripts Senior Care, Inc., a wholly owned subsidiary of ESI (“Senior Care”) will provide certain QR-PDP services to Sponsor as set forth below.

A. Under the Medicare Prescription Drug Benefit Program set forth in Part D of The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (the “Act”), employers may establish a Qualified Retiree Prescription Drug Plan (as defined below) in order to continue to provide prescription drug benefits for its Medicare-eligible Members;

B. ESI has established a subsidiary, Senior Care, that is responsible for providing certain services related to Medicare Plans, including Qualified Retiree Prescription Drug Plans under the Act; and

1. Definitions. Unless otherwise defined below, capitalized terms used herein will have the same meaning assigned to such terms in the Agreement or the Medicare Drug Rules, as appropriate.

“CMS” means the Centers for Medicare and Medicaid Services.

“Medicare Manufacturer Administrative Fees” means those administrative fees of up to 3.5% of the AWP of certain Covered Drugs paid by pharmaceutical manufacturers to, or otherwise retained by, Senior Care pursuant to a contract between Senior Care or an affiliate, and the manufacturer and directly in connection with Senior Care’s administering, invoicing, allocating and collecting the Rebates for Medicare plans operating under the Act, including QR-PDPs.

“Medicare Drug Rules” means the Act and any and all related rules, guidance, interpretations and operational directives adopted by CMS or other governmental agency with jurisdiction over the enforcement of the Act.

“Medicare Member” means a Member eligible for benefits through the QR-PDP in accordance with the Medicare Drug Rules as identified by Sponsor through the Eligibility Files.

“Medicare Rebates” means retrospective rebates that are paid to Senior Care, or otherwise retained by Senior Care, pursuant to the terms of a rebate contract negotiated independently by Senior Care or an affiliate with a manufacturer, and directly attributable to the utilization of certain pharmaceuticals by Medicare Members. Rebates do not include Medicare Manufacturer Administrative Fees, or product discounts or similar remuneration received by subsidiary pharmacies of ESI or Senior Care.

“Subsidy Payment” means the subsidy amount paid to sponsors of QR-PDPs under 42 CFR § 423.886 of the Medicare Drug Rules.

“Subsidy Reports” means the following reports in a format and with content consistent with the requirements of the Medicare Drug Rules: (i) monthly eligibility file (list of individuals believed to be enrolled as defined by the Medicare Drug Rule or other CMS guidance); and (ii) cost data extract (covered retiree plan-related prescription drug costs) for monthly, quarterly, or annual reporting for payment of subsidy.

2. QR-PDP Services.

(a) Services. In consideration of the fees set forth below, ESI and Senior Care will provide Sponsors and Medicare Members the same services then presently provided under the Agreement to Eligible Enrollees. If selected below, Senior Care will provide the Subsidy Reports to enable Sponsor to file for Subsidy Payments and meet its QR-PDP reporting obligations under the Medicare Drug Rules (collectively, the “QR-PDP Services”). The then applicable financial terms and conditions of the Agreement relating to Participating Pharmacy, Mail Service Pharmacy, Specialty Products, administrative fees, Member communication fees will apply to the QR-PDP. The Medicare Pharma Revenue will reflect the same Rebate and Manufacturer Administrative Fee terms set forth in the Agreement. Notwithstanding the terms of the Agreement, no commissions, marketing fees or other remuneration will be paid by ESI or Senior Care to brokers, TPAs or consultants relating to Prescription Drug Claims attributable to Medicare Members.

(b) QR-PDP Fees. Sponsor agrees to pay the applicable fee if electing Senior Care to provide services to its QR-PDP. Sponsor elects QR-PDP services at the Enhanced Option with communications to CMS at the rates specified
below. Sponsor may choose the additional options below at the applicable rates.

- **ENHANCED OPTION:** $0.62 Per Medicare Member per Month ($5,000 minimum annual charge); Senior Care submits reports to CMS.
- **Member Materials (Notices of Creditable coverage)** - $1.35 per piece plus postage.
- **No Subsidy Reports; Medicare Rebate Filing Only** – No charge.

(c) **QR-PDP Subsidy Reports.** If elected above, Senior Care will timely provide to Sponsor Subsidy Reports. In order for Senior Care to be able to prepare the Subsidy Reports, Sponsor will provide to Senior Care in a timely manner any elements and data now and hereafter required under the Medicare Drug Rules (e.g., Member social security numbers, the CMS issued RDS Plan Sponsor ID and Application ID) in a format reasonably required by Senior Care.

(d) **Senior Care.** Senior Care hereby assumes all responsibility and obligation for the preparation of Subsidy Reports, and the contracting, administration, allocation and collection of Medicare Rebates under the Agreement as relates solely to the eligible utilization of Medicare Members.

(e) **Federal Funds.** Senior Care hereby acknowledges, in accordance with 42 CFR 423.884(c)(3)(ii) that information provided to CMS in connection with the RDS Plan Sponsor Application is for purposes of obtaining Federal funds.

(f) **Certification.** Senior Care certifies that the information it provides to Sponsor hereunder and pursuant to the Agreement is accurate and complete. Senior Care agrees that it will assist the Sponsor in complying with its obligation to disclose information to CMS as necessary for Sponsor to obtain the subsidy.

3. **Term.** The term of this QR-PDP Addendum will be coterminous with the Agreement.
EXHIBIT G

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 forty-five (45) business days after the end of each measurement period, ESI will provide Sponsor with a report (i) assessing ESI’s performance under each performance standard, and (ii) if ESI did not meet a performance standard, calculating the applicable amount due to Sponsor. Amounts due, if any, will be paid to Sponsor on an annual basis within ninety (90) days of each anniversary of the Agreement. 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 $30,000 annually. The following performance standards are based on a minimum Member count of 5,000 as of the Effective Date. Any material change below such number may result in a renegotiation of the standards and penalties set forth below.

<table>
<thead>
<tr>
<th>Service Feature</th>
<th>Standard</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Contact Center</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Customer Service Call – Average Speed of Answer</td>
<td>ESI guarantees that the customer service average call response time will be 30 seconds or less with the exception of a failure in a third-party communication system. This standard excludes call volume for the month of January. ESI’s Member Choice Center calls will be excluded from this standard. This standard is predicated on the installation of a toll-free telephone number unique to Sponsor.</td>
<td>The maximum annual penalty will be $4,500. Based on the annual average speed of answer result, ESI will pay Sponsor according to the following penalty scale:</td>
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<tr>
<td></td>
<td></td>
<td>Avg. Speed</td>
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<td>46+</td>
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<tr>
<td>Customer Service Response Time – Blockage Rate (Busies)</td>
<td>ESI will guarantee a blockage rate of 3% or less with the exception of a failure in a third-party communication system. Blockage is defined as a caller receiving a busy signal. ESI’s Member Choice Center calls will be excluded from this standard. This standard is predicated on the installation of a toll-free number unique to Sponsor.</td>
<td>The maximum annual penalty will be $4,500. Based on the annual blockage percentage result, ESI will pay Sponsor according to the following penalty scale:</td>
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<tr>
<td></td>
<td></td>
<td>Blockage</td>
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<tr>
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<td></td>
<td>Less than or equal to 3%</td>
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<td></td>
<td></td>
<td>&gt;3% and less than or equal to 4%</td>
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<tr>
<td></td>
<td></td>
<td>&gt;4% and less than or equal to 6%</td>
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<td>Greater than 6%</td>
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<tr>
<td>Customer Service Response Time – Percent of Calls Abandoned</td>
<td>ESI guarantees that the call abandonment rate will be 5% or less unless the failure is due to a failure in a third-party telecommunication system. The abandonment rate does not include calls terminated by members in less than 30 seconds. This standard is predicated on the installation of a toll-free number unique to Sponsor.</td>
<td>The maximum annual penalty will be $4,500. Based on the annual percentage of calls abandoned, ESI will pay Sponsor according to the following penalty scale:</td>
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<tr>
<td></td>
<td></td>
<td>Abandonment</td>
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<tr>
<td></td>
<td></td>
<td>Less than or equal to 5%</td>
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<tr>
<td></td>
<td></td>
<td>&gt;5% and less than or equal to 10%</td>
</tr>
<tr>
<td>Service Feature</td>
<td>Standard</td>
<td>Penalty</td>
</tr>
<tr>
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<td>--------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>ESI's Member Choice Center calls will be excluded from this standard.</td>
<td>&gt;10% and less than or equal to 15% $3,000</td>
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<tr>
<td></td>
<td></td>
<td>Greater than 15% $4,500</td>
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<td></td>
<td></td>
<td>This standard will be monitored and reported quarterly. Any applicable penalties will be paid annually based on the annual average.</td>
</tr>
</tbody>
</table>

**Mail Service**

<table>
<thead>
<tr>
<th>Dispensing Accuracy</th>
<th>Whereas ESI strives for 100% accuracy, ESI guarantees 99.9% accuracy in dispensing the correct drug, strength, and dosage, unless the error is a prescriber error.</th>
<th>ESI will pay Sponsor $2,250 for each full percentage point in which the annual dispensing accuracy is below 100%. The maximum annual penalty will be $4,500.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>This standard will be monitored and reported quarterly. Any applicable penalties will be paid annually based on the annual average.</td>
</tr>
<tr>
<td>Turnaround Time for Routine Mail Service Prescriptions</td>
<td>ESI guarantees dispensing and shipping (or return) of prescriptions not subject to intervention with an annual average of three (3) business days of receipt of the order at ESI's Pharmacy. “Interventions” include calls to members or prescribers to clarify the prescriber’s direction, to obtain consent for formulary programs, generic or therapeutic substitution, or otherwise.</td>
<td>ESI will pay Sponsor $2,250 for each full day the annual average turnaround time for mail service prescriptions not subject to intervention exceeds three (3) business days. The maximum annual penalty will be $4,500.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>This standard will be monitored and reported quarterly. Any applicable penalties will be paid annually based on the annual average.</td>
</tr>
<tr>
<td>Turnaround Time for Mail Service Prescriptions Subject to Intervention</td>
<td>ESI guarantees dispensing and shipping (or return) of prescriptions subject to intervention within an average of five (5) business days of receipt of the order at ESI's Pharmacy.</td>
<td>ESI will pay Sponsor $2,250 for each full day the annual average turnaround time for mail service prescriptions subject to intervention exceeds five (5) business days. The maximum annual penalty will be $4,500.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>This standard will be monitored and reported quarterly. Any applicable penalties will be paid annually based on the annual average.</td>
</tr>
</tbody>
</table>

**Data Systems**

<table>
<thead>
<tr>
<th>Data Systems Availability and Adjudication</th>
<th>ESI guarantees 99% availability of the point-of-sale adjudication system, except for daily scheduled maintenance and telecommunications failure.</th>
<th>For each full percentage point which the yearly average of the online computer systems availability is below 99%, ESI will pay Sponsor $2,250. The maximum annual penalty for availability and adjudication will be $4,500.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>This standard will be monitored and reported quarterly. Any applicable penalties will be paid annually based on the annual average.</td>
</tr>
</tbody>
</table>