



**BOARD COORDINATOR  
GENESEE COUNTY BOARD OF COMMISSIONERS**

1101 BEACH STREET, ROOM 312  
FLINT, MICHIGAN 48502

TELEPHONE: (810) 257-3020  
FAX: (810) 257-3008

JON CARE  
COORDINATOR

**PUBLIC WORKS COMMITTEE  
Monday, March 9, 2015, 9:15 a.m.  
AGENDA**

- I. CALL TO ORDER**
- II. ROLL CALL**
- III. MINUTES** – February 23, 2015
- IV. PUBLIC COMMENT TO COMMITTEE**
- V. COMMUNICATIONS**
- VI. OLD BUSINESS**
- VII. NEW BUSINESS**
  - A. P030915VIIA: Equalization: Request approval of the City of Mt. Morris request for a lease of computer equipment to allow the City to upgrade to BS&A.NET software – Attached
  - B. P030915VIIB: Purchasing: Request approval of a contract with Attorneys for Indigent Fathers, PLLC for the purpose of providing legal service for indigent fathers to the Genesee County Family Division of the 7<sup>th</sup> Judicial Circuit Court for one (1) year with 3 additional one (1) year extensions – Attached
  - C. P030915VIIC: Purchasing: Request approval of a contract with Express Scripts, Inc., for the purpose of providing pharmacy benefits management services for a three (3) year contract, with three (3) additional one (1) year extensions – Attached
  - D. P030915VIID: Purchasing: Request approval to contract with Staples for office supplies for Genesee County and other local agencies including office supplies and accessories, janitorial supplies and equipment, and furniture and facilities services, supplies and accessories, for a four (4) year contract with a one (1) year extension – Attached
- VIII. OTHER BUSINESS**
- IX. ADJOURNMENT**



**GENESEE COUNTY DEPARTMENT OF EQUALIZATION**  
1101 BEACH STREET-SUITE 206, FLINT, MICHIGAN, 48502-1468  
TELEPHONE (810) 257-3017 FAX (810) 768-7954

Peggy L. Nolde, MMAO (4), CAE, PPE

DIRECTOR

**M E M O R A N D U M**

**DATE:** February 24, 2015

**TO:** Mike Lynch, Chairman, Public Works Committee

**CC:** Keith Francis, Controller  
Vicki Fishell, Treasurer, City of Mt. Morris

**FROM:** Peggy L. Nolde, Equalization Director

**SUBJECT:** *City of Mt. Morris – BS&A.NET and Computers –Request*

This memo is being drafted to request funding in the form of a loan for no more than \$10,000, be approved for the City of Mt. Morris. This funding would allow them to purchase the BS&A.NET program and be able to upgrade their outdated computers and server. At the present time this small city is unable to afford full payment to have the proper equipment in order to run the BS&A.NET system. The City of Mt. Morris would pay back this loan, over the period of time as agreed to by both Genesee County and the City of Mt. Morris. Page 3 of this memo has the email request from Mt. Morris City and Page 4 has the memo with the full estimated cost. As you can see, the City of Mt. Morris is willing to invest monies over and above this request.

I am aware this is not a common request, and Genesee County is not in the lending business but now and then there comes a time when doing such an arrangement would benefit both units of government tremendously. This is that time.

**BS&A - History**

There are 28 units of government in Genesee County and 100% of them use the BS&A program for both assessment and tax functions. Several years ago (2005+/-) Genesee County started using the BS&A program in the “pervasive” form. Over the course of the years the “pervasive” program became basically obsolete and presently 27 of the 28 units of government have switched over to the newer BS&A.NET programs. Genesee County is using the BS&A.NET for both Equalization and the County Treasurers office. The only unit not on the BS&A.NET version is the City of Mt. Morris, and this is due to lack of funds to upgrade equipment in order to run the .NET version.

## **CHALLENGES -- Equalization & MIS Department**

### **Equalization Department Issues –**

Kim Moors handles all of the uploading of databases from the local units and has additional steps she must do in order to convert and standardize the City of Mt. Morris database for import to the county database. The monthly database generally takes an hour to process, and the final (after March Board of Review) database takes a minimum of two (2) hours to convert/standardize and process. The processing time increases substantially if there is a balancing issue, since Kim cannot run a database compare, and the reporting/querying functions are much weaker in Pervasive.

Access to the Pervasive program. The program is installed on Kim's computer, and it is still working on the one computer in the small office. None of the other computers in our department have access to that version of the program which is an issue for the appraiser who works that jurisdiction.

### **MIS Department Issues –**

- 1.) always having to convert databases for summer tax and delinquent tax every Time we need to merge databases or write file to history
- 2.) Delays the responsiveness of the website to display what is due on current as well as historical information. No one stop for a true picture for status of taxes.
- 3.) In near future changes to historical information will be increasingly difficult.

As you can see, this would be a win-win situation for all parties concerned as everyone would benefit from this partnership. Your support to approve this request would be greatly appreciated.

Respectfully submitted.

Peggy Nolde

Page 3

City of Mt. Morris – Request

■ ***EMAIL REQUEST FROM CITY OF MT. MORRIS***

**From:** Vicki Fishell [<mailto:vfishell@cityofmtmorris.org>]

**Sent:** Tuesday, February 24, 2015 9:46 AM

**To:** Nolde, Peggy

**Subject:** Computer & Software Loan

Peggy,

After discussing this with our city manager the city is asking the county for a loan of \$10,000 for a new server, 4 new computers, and the BSA.NET software upgrades. If the county approves this the city will order everything and have everything installed. The city is asking that our first payment be made payable after our new budget year which begins on July 1<sup>st</sup> and then 2 remaining payments made in the following 2 years. If you need anything else please let me know. Thanks.

Vicki L. Fishell, MiCPT  
Treasurer  
City of Mt. Morris  
(810) 686-2160 – phone  
(810) 686-7330 – fax  
[vfishell@cityofmtmorris.org](mailto:vfishell@cityofmtmorris.org)

Treasurer  
City of Mt. Morris  
(810) 686-2160 – phone  
(810) 686-7330 – fax

■ **ESTIMATED TOTAL COST OF BS&A.NET AND UPGRADES TO EQUIPMENT**

**From:** Nolde, Peggy [<mailto:PNolde@co.genesee.mi.us>]

**Sent:** Thursday, February 19, 2015 10:48 AM

**To:** Fishell, Vicki (Mt. Morris City)

**Subject:** BS&A.NET AND UPGRADES OF SERVER AND PC'S - Estimated Costs

Hi Vicki:

Here is the updated information and estimated cost for this project.

The BS&A.NET package for Assessing/Tax/Delinquent Tax programs – proposal	=	\$ 6,725
Server Quote from I.T. Right	=	\$ 2,758
PC Costs Quote from I.T. Right (4)	=	<u>\$ 3,639</u>
<b>TOTAL ESTIMATED – EQUIPMENT &amp; BSA.NET COST</b>	=	<b>\$13,122</b>



## GENESEE COUNTY PURCHASING DEPARTMENT

ROOM 343, COUNTY ADMINISTRATION BLDG.  
1101 BEACH STREET  
FLINT, MICHIGAN 48502  
TELEPHONE (810) 257-3030  
FAX (810) 257-3380  
[www.gc4me.com](http://www.gc4me.com)

### MEMORANDUM

**TO:** Michael Lynch, Chairperson  
Public Works Committee

**FROM:** Cindy Carnes,  
Purchasing Manager

**DATE:** February 25, 2015

**SUBJECT:** Attorneys for Indigent Fathers, PLLC

RFP #15-040 was issued for the purpose of providing, Legal Service for Indigent Parents – Fathers to the Genesee County Family Division of the 7th Judicial Circuit Court. The firm will provide legal services for the representation of indigent fathers in Child Protective Proceedings and respondent representation at Domestic Personal Protection Order (PPO) Violation Hearings, Friend of the Court Show Cause Hearings and in the specialty courts of the Family Division of the 7th Judicial Circuit Court.

Two proposals were received and reviewed by the 7<sup>th</sup> Circuit Court staff and Attorneys for Indigent Fathers, PLLC was selected to provide the service.

Approval is requested to enter into a one (1) year contract, with 3 additional one (1) year extensions. The contract will substantially conform to the attached contract, with Attorneys for Indigent Fathers, PLLC, whose principal place of business is located at 5091 Miller Rd, Flint, MI 48507. This is new contract.

Approval will serve as authorization for the chairperson of the Board of Commissioners to sign the contract on behalf of Genesee County.

Attachments  
g:\pw\2015\ 15-038

# CONTRACT FOR LEGAL SERVICES

This Contract for Professional Services (the "Contract") is by and between the County of Genesee, a Michigan Municipal Corporation, whose principal place of business is located at 1101 Beach Street, Flint, Michigan 48502 (the "County"), and Attorneys for Indigent Fathers, PLLC, a Michigan, Professional Domestic Limited Liability Company, whose principal place of business is located at 5091 Miller Rd, Flint, MI 48507 (the "Contractor") (the County and the Contractor together, the "Parties").

## 1. Agreement and Authority

This Agreement is entered into pursuant to RFP # 15-040 issued by the Genesee County Purchasing Department, and execution of this Agreement is authorized by Resolution # \_\_\_\_\_ issued by the Genesee County Board of Commissioners.

## 2. Term

### 2.1 Initial Term

The initial term of this Contract commences on April 1, 2015 and shall be effective through March 31, 2016 (the "Initial Term").

### 2.2 Extension Terms

Renewable for three (3) successive one (1) year extensions, by mutual agreement between the Court, Genesee County and the successful contractor

## 3. Purpose

This Contract is entered into for the purpose of providing, Legal Service for Indigent Parents – Fathers to the Genesee County Family Division of the 7th Judicial Circuit Court. To provide legal services for the representation of indigent mothers in Child Protective Proceedings and respondent representation at Domestic Personal Protection Order (PPO) Violation Hearings, Friend of the Court Show Cause Hearings and in the specialty courts of the Family Division of the 7th Judicial Circuit Court.

## 4. Scope of Work

The Contractor agrees to perform the services described on Exhibit A (the "Services").

## 5. Compensation

*Unit Rate.* The Contractor shall be paid according to the rates identified on Exhibit C. The total amount paid to the Contractor shall not exceed \$234,000. The Contractor must provide to the County monthly invoices in a form acceptable to the County, along with any necessary supporting documentation such as time sheets. The County will pay the Contractor within sixty (60) days of the County's acceptance of the invoice and supporting documentation.

## 6. Taxes.

The County is a Michigan Municipal Corporation. The Contractor acknowledges that the County is exempt from Federal Excise Tax and Michigan Sales Tax.

## 7. Contract Administrator

The contract administrator for this Contract is Circuit Court Administrator Barbara A, Menear (the "Contract Administrator"). The Contractor acknowledges that the Contract Administrator is the primary County contact for notices and instructions related to this Contract. The Contractor agrees to provide a copy of all notices related to this Contract to the Contract Administrator.

## **8. Reporting Requirements**

During the term of this Contract, the Contractor must provide to the Contract Administrator the reports identified and described on Exhibit B.

## **9. Inspection and Acceptance**

All goods provided with the Services are received subject to inspection and testing. If goods are defective or fail to meet the specifications, the County shall have the right to reject the goods or to require the Contractor to correct the defects. The Contractor shall correct the defects at no cost to the County or pay the County for expenses incurred by the County in correcting the defects. Rejected goods will be held for forty-five days after delivery awaiting instructions from the Contractor. After the forty-five day period, the County will dispose of the goods and the County shall have no further liability to the Contractor. The Contractor is responsible for the costs of handling, packing, and transportation incurred in returning or disposing of defective or non-conforming goods.

## **10. Warranties**

The Contractor warrants that:

- 10.1 The Services will be performed in a good and workmanlike manner and in accordance with generally acceptable practices in the industry.
- 10.2 For a period of one (1) year following completion of the Services, the Services and any goods provided with the Services shall conform to the representations made by the Contractor.
- 10.3 The Contractor will comply with all federal, state, and local laws in the performance of the Services.
- 10.4 The Contractor will comply with the requirements of any federal or state grants used to fund or support this Contract.
- 10.5 The Contractor will obtain and maintain all applicable licenses and permits necessary to provide the Services for the entire term of this Contract.

The Contractor agrees to indemnify and hold the County, its officials, officers, agents, and employees harmless from any and all claims, damages, or liability, including defense costs, arising out of the Contractor's breach of these warranties.

## **11. Suspension of Work**

### **11.1 Order to Suspend Performance**

Upon written order of the Contract Administrator, the Contractor agrees to immediately suspend performance of the Services. The Contractor shall not be entitled to compensation for any Services performed during any period in which the Contract Administrator has directed that the Services be suspended.

### **11.2 Necessary Actions Before Suspension**

If immediate suspension of the Services would cause harm, injury, or damage to persons or property, the Contractor must immediately notify the Contract Administrator of the nature of such harm, injury, or damage, and obtain written authorization from the Contract Administrator to take such necessary action as to prevent or minimize such harm, injury or damage. Actions authorized by the Contract Administrator pursuant to this paragraph are compensable.



## **12. Termination**

### **12.1 Termination for Cause**

If the Contractor is in breach of any provision of this Contract, and such breach continues for fourteen (14) days after written notice is issued to the Contractor by the County of the breach, the County may terminate this Contract. Such termination for cause is effective upon receipt of the notice of termination by the Contractor.

In addition to any other remedies provided by law or this Contract, the Contractor shall be responsible for all costs incurred by the County as a result of the Contractor's breach and termination, including any costs to obtain substitute performance.

### **12.2 Immediate Termination**

If the County, in its discretion, determines that the Contractor's breach of this Contract constitutes a threat to public health, safety, or welfare, the County may terminate this Contract immediately upon notice to the Contractor.

In addition to any other remedies provided by law or this Contract, the Contractor shall be responsible for all costs incurred by the County as a result of the Contractor's breach and termination, including any costs to obtain substitute performance.

### **12.3 Termination for Convenience**

If the County determines that it is in the County's best interests, the County may terminate this Contract upon thirty (30) days written notice to the Contractor.

The County shall pay for all work properly performed up to the effective date of the notice of termination.

### **12.4 Termination for Lack of Funding**

If this Contract is funded by public funds or a grant from a public or private entity, and the funds are not appropriated or the grant is discontinued, the County may terminate this Contract by written notice specifying the date of termination.

The County shall pay for all work properly performed up to the effective date of the notice of termination.

## **13. Equipment Purchased with County Funds**

### **13.1 Reporting**

The Contractor agrees that any Equipment purchased for the performance of the Services with funds supplied by the County under this Contract must be reported to the Contract Administrator upon purchase. For the purposes of this paragraph, Equipment is defined as tangible, non-expendable, personal property having useful life of more than 1 year and an acquisition cost of \$5,000 or more per unit.

### **13.2 Conveyance to the County**

Upon the County's request at the termination of this Contract for any reason, the Contractor agrees to convey to the County all title in any Equipment purchased for the performance of the Services with funds supplied by the County under this Contract.

## **14. Nondiscrimination**

The Contractor covenants that it will not discriminate against an employee or applicant of employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin,

age, sex, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position, and that it will require the same non-discrimination assurances from any subcontractor who may be used to carry out duties described in this contract. Contractor covenants that it will not discriminate against businesses that are owned by women, minorities or persons with disabilities in providing services covered by this Contract, and that it shall require the same assurances from subcontractors. Breach of this covenant shall be regarded as a material breach of this contract.

## **15. Freedom of Information Act**

This Contract and all attachments, as well as all other information submitted by the Contractor to the County, are subject to disclosure under the provisions of MCL 15.231, *et seq.*, known as the "Freedom of Information Act".

## **16. Intellectual Property**

Any intellectual property created by the Contractor in the performance of the Services shall be considered a work made for hire, and any and all rights in such intellectual property shall belong solely to the County. Upon the County's request, the Contractor agrees to execute any documents necessary to convey ownership of such intellectual property to the County.

## **17. Audit Rights**

### **17.1 Certification of Accurate Information**

Contractor certifies that all information provided to the County by the Contractor relating to the award or modification of this Contract, or any payment or dispute related to this Contract, is true and correct. The Contractor further certifies that its accounting system conforms to generally accepted accounting principles.

### **17.2 Inspection**

The Contractor agrees that the County may inspect the Contractor's plant, place of business, or worksite to ensure compliance with the terms of this Contract. If this Contract is funded or supported with any state or federal grant funds, the state or federal agencies responsible for administering the applicable grants may examine the Contractor's plant, place of business, or worksite to ensure compliance with the terms of this Contract and the terms of the applicable grant.

### **17.3 Audit**

The Contractor agrees that the County may examine the Contractor's records to ensure compliance with the terms of this Contract. If this Contract is funded or supported with any state or federal grant funds, the state or federal agencies responsible for administering the applicable grants may examine the Contractor's records to ensure compliance with the terms of this Contract and the terms of the applicable grant.

### **17.4 Records Retention**

The Contractor agrees to maintain any business records related to this Contract or the Contractor's performance under this Contract for a period of at least three (3) years after final payment.

## **18. Identity Theft Prevention**

18.1 In the event that the Contractor will obtain identifying information during the performance of the Services, the Contractor must take reasonable precautions to ensure that such

identifying information is protected from unauthorized disclosure and is used only for the purpose of performing the Services.

- 18.2 For the purposes of this Paragraph, "identifying information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including but not limited to name, address, telephone number, social security number, date of birth, driver's license number, taxpayer identification number, or routing code.

## **19. Insurance Requirements and Indemnification**

The Contractor agrees to obtain insurance coverage of the types and amounts required as set forth in the Insurance Checklist attached as Exhibit C and keep such insurance coverage in force throughout the life of this Contract.

### **19.1 Insurance Certificate and Additional Insured Coverage**

The Contractor further agrees to provide certificates of insurance to the County evidencing the coverages specified in the Insurance Checklist, and including the County as an additional insured. Additional insured coverage is to be by proof of blanket additional insured coverage within the general liability policy or as provided by an endorsement specifying the County as an additional insured to the policy. Contractor's agent must provide a copy of the endorsement or language from the policy with the certificate of insurance.

### **19.2 Indemnification**

The Contractor agrees to indemnify and hold the County, its officials, officers, agents, and employees harmless from any and all claims, damages, or liability, including defense costs, arising out of the Contractor's performance of the Services or presence on the County's property or worksite.

## **20. Independent Contractor**

The Contractor and its agents and employees are independent contractors and are not the employees of the County.

## **21. General Provisions**

### **21.1 Entire Contract**

This Contract, consisting of the following documents and Exhibits, embodies the entire Contract between the Parties.

21.1.1. The Contract – This Professional Services Contract

21.1.2. Exhibit A – The Scope of Work

21.1.3. Exhibit B – Required Reports

21.1.4. Exhibit C – The Contractor's Budget

21.1.5. Exhibit D – Insurance Checklist

There are no promises, terms, conditions, or obligations relating to the Services other than those contained herein. In the event of a conflict between this Contract and any Exhibit, the terms of this Contract shall control.

21.2 No Assignment

The Contractor may not assign or subcontract this Contract without the express written consent of the County.

21.3 Modification

This Contract may be modified only in writing executed with the same formalities as this Contract.

21.4 Binding Effect

The provisions of this Contract shall apply to and bind the heirs, executors, administrators, and assigns all of the parties hereto.

21.5 Headings

The paragraph headings in this Contract are used only for ease of reference, and do not limit, modify, construe, and or interpret any provision of this Contract.

21.6 Governing Law and Venue

This Contract is entered into under the laws of the State of Michigan. Any litigation between the Parties arising out of this Contract must be initiated within two years of the cause of action accruing and must be brought in a court of competent jurisdiction in Genesee County, Michigan.

21.7 Severability and Survival

In the event that any provision of this Contract is deemed by any court of competent jurisdiction to be legally ineffective, such decision shall have no effect on the remaining provisions of this Contract.

21.8 Interpretation

Each Party has had opportunity to have this Contract reviewed by legal counsel and has had equal opportunity to contribute to its contents. In the event of any dispute concerning the interpretation of this Contract, there shall be no presumption in favor of any interpretation solely because the form of this Contract was prepared by the County.

21.9 Remedies

All remedies specified in this Contract are non-exclusive. The County reserves the right to seek any and all remedies available under this Contract and applicable law in the event that the Contractor fails to abide by the terms of this Contract.

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed by their duly authorized agents.

Attorneys for Indigent Defense, PLLC

COUNTY OF GENESEE

By: \_\_\_\_\_  
Shayla D. Blankenship  
Managing Attorney

By: \_\_\_\_\_  
Jamie Curtis, Chairperson  
Board of County Commissioners

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Corporation Counsel

Date: \_\_\_\_\_

EXHIBIT A  
Description of the Services

Provide legal services to indigent parents consistent with MCR3.915 (B) (1). The services include representation at preliminary hearings, all other court hearings, appeals and out of court conferences related to original or supplemental petitions that may be filed.

In addition, legal services for indigent respondents involved in Domestic Personal Protection Order (PPO) violation hearings or Friend of the Court Show Cause Hearings are included in the scope of work for the so-called "father panel."

EXHIBIT B

Reports Required from the Contractor

Description of Report  
NONE.

Frequency

EXHIBIT C  
Contractor's Projected Budget  
Date to Date



EXHIBIT D  
Insurance Checklist

**Bid Title** LEGAL SERVICES FOR INDIGENT PARENTS - MOTHERS

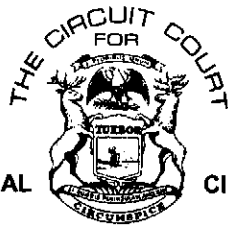
**Bid Number** 15-038

**Coverages Required**

**Limits (Figures denote minimums)**

---

<input checked="" type="checkbox"/> 1. Workers' Compensation	Statutory limits of Michigan
<input checked="" type="checkbox"/> 2. Employers' Liability	\$100,000 accident/disease
<input checked="" type="checkbox"/> 3. General Liability	\$500,000 policy limit, disease Including Premises/operations
<input checked="" type="checkbox"/> 4. Professional liability aggregate	\$1,000,000 per occurrence with \$2,000,000 aggregate
<input type="checkbox"/> 5. Products/Completed operations	Including errors and omissions \$1,000,000 per occurrence with \$2,000,000 Aggregate [If applicable]
<input checked="" type="checkbox"/> 6. Automobile liability nonowned	\$1,000,000 combined single limit each accident- Owned, hired,
<input checked="" type="checkbox"/> 7. Umbrella liability/Excess Coverage	\$ 3,000,000 BI & PD and PI Including Professional Liability
<input type="checkbox"/> 8. Owners and Contractors Protective	
<input checked="" type="checkbox"/> 9. <u>Genesee County named as an additional insured on <b>other</b> than Workers' Compensation and Professional Liability via endorsement. A copy of the endorsement or evidence of blanket Additional Insured language in the policy must be included with the certificate.</u>	
<input type="checkbox"/> 10. Other insurance required: _____	
<input checked="" type="checkbox"/> 11. Cancellation Notice is to read: Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will mail 30 days written notice to the certificate holder named to the left or 10 day notice for non-payment of premium.	
<input checked="" type="checkbox"/> 12. Best's rating: A VIII or better, or its equivalent (Retention Group Financial Statements)	
<input checked="" type="checkbox"/> 15. The certificate must state bid number and title	



THE SEVENTH JUDICIAL CIRCUIT OF MICHIGAN

BARBARA A. MENEAR  
COURT ADMINISTRATOR

900 SOUTH SAGINAW STREET  
FLINT, MICHIGAN 48502

PHONE: (810) 424-4355  
FAX: (810) 239-9280

To: Cindy Carnes  
Purchasing Manager

From: Barbara A. Menear

Re: Legal Services for Indigent Fathers  
Child Protective Proceedings  
RFP #15-040

Date: 2.25.15

Please be advised that the Family Division Judges have reviewed bid responses received.

It is the recommendation of the Family Division Judges that the contract be awarded to Attorneys for Indigent Fathers (ATIF), PLLC, Shayla D. Blankenship, Managing Attorney.

The annual amount of the contract is \$234,000.

No appropriation is needed for this contract. The court budget will support the expense.

Your assistance and consideration is appreciated.



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**LIMITED LIABILITY COMPANY DETAILS**

**Searched for:** ATIF, PLLC  
**ID Num:** D6920W  
**Name:** ATIF, PLLC  
**Type:** Professional Domestic Limited Liability Company  
**Resident Agent:** SHAYLA D BLANKENSHIP  
**Registered Office Address:** 5091 MILLER RD FLINT MI 48507  
**Mailing/Office Address:**  
**Formation/Qualification Date:** 1-3-2012  
**Jurisdiction of Origin:** MICHIGAN  
**Managed by:** Members  
**Status:** ACTIVE **Date:** Present

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## GENESEE COUNTY PURCHASING DEPARTMENT

ROOM 343, COUNTY ADMINISTRATION BLDG.  
1101 BEACH STREET  
FLINT, MICHIGAN 48502  
TELEPHONE (810) 257-3030  
FAX (810) 257-3380  
[www.gc4me.com](http://www.gc4me.com)

### MEMORANDUM

**TO:** Michael Lynch, Chairperson  
Public Works Committee

**FROM:** Cindy Carnes,  
Purchasing Manager

**DATE:** February 27, 2015

**SUBJECT:** Approval to Contract with Express Scripts, Inc.

RFP #14-034 was issued for the purpose of providing Pharmacy Benefits Management services

Six proposals were received, one was non-responsive, the five proposals were reviewed by the evaluation team. The evaluation process and results are presented by Buck Consultants.

Approval is requested to enter into a three (3) year contract, with 3 additional one (1) year extensions. The contract will substantially conform to the attached contract with Express Scripts, Inc., whose principal place of business is located at One Express Way, St. Louis, MO 63121. This is new contract.

Approval will serve as authorization for the chairperson of the Board of Commissioners to sign the contract on behalf of Genesee County.

#### Attachments

g:\pw\2015\ 14-034 award ESI

THIS SAMPLE FORM OF PBM AGREEMENT IS FOR INFORMATIONAL PURPOSES ONLY AND MAY NOT REPRESENT THE FINAL TERMS AND CONDITIONS AGREED TO BY ESI AND SPONSOR.

**EXPRESS SCRIPTS, INC.  
PHARMACY BENEFIT MANAGEMENT AGREEMENT**

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

**RECITALS**

A. ESI, either directly or through its subsidiaries, engages in pharmacy benefit management services, including, among other things, pharmacy network contracting; pharmacy claims processing; mail and specialty drug pharmacy; cost containment, clinical, safety, adherence, and other like programs; and formulary 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 Plan (as defined below) under the terms and conditions set forth herein.

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

**TERMS OF AGREEMENT**

**ARTICLE I - DEFINITIONS**

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

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

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

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“Brand Drug” means a prescription drug identified as such in ESI’s master drug file using indicators from First Databank (or other source nationally recognized in the prescription drug industry used by ESI for all clients) on the basis of a standard Brand/Generic Algorithm utilized by ESI for all of its clients, a copy of which may be made available for review by Sponsor or its Auditor upon request.

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

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

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

“ESI National Network” means a Participating Pharmacy network that provides broad access balanced with selective pharmacy participation aimed at increased cost savings, and which does not include at least one retail pharmacy chain consisting of greater than six thousand retail pharmacy locations.<sup>1</sup> The foregoing description and composition of the ESI National Network is a material assumption hereunder.

“ESI National Plus Network” means ESI’s broadest Participating Pharmacy network.<sup>2</sup>

“ESI Prime Network” means ESI’s Participating Pharmacy network aimed at maximizing cost savings through limited provider participation.<sup>3</sup>

“Express Advantage Network” means ESI’s Participating Pharmacy network aimed at maximizing cost savings through limited provider participation.

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

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

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

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

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<sup>1</sup> The ESI National Network was historically referred to as the “EN40 Network” in ESI’s network provider agreements with Participating Pharmacies, and is subject to future name change.

<sup>2</sup> The ESI National Plus Network was historically referred to as the “EN50 Network” in ESI’s network provider agreements with Participating Pharmacies, and is subject to future name change.

<sup>3</sup> The ESI Prime Network was historically referred to as the “EN30 Network” in ESI’s network provider agreements with Participating Pharmacies, and is subject to future name change.

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

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

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

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

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

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

“PEPM” means per employee per month, if applicable, as determined by ESI from the Eligibility Files.

“PMPM” means per Member per month fee, if applicable, as determined by ESI from the Eligibility Files.

“Plan” means the self-funded prescription drug benefit plan(s) administered and/or sponsored by Sponsor.

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

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

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

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

“Specialty Products” means those injectable and non-injectable drugs on the Specialty Product List. Specialty Products typically have one or more of several key characteristics, including frequent dosing adjustments

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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.

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

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

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

## **ARTICLE II - PBM SERVICES**

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

### 2.2 Pharmacy Network.

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

(i) ESI will require each Participating Pharmacy to meet ESI’s network participation requirements, including but not limited to licensure, insurance and provider agreement requirements. ESI also performs audits (i.e., electronic or on-site) of Participating Pharmacies to determine compliance with their provider agreement billing requirements. ESI will attempt recovery of identified overpayments through offset, demand or other reasonable means; provided that ESI will not be required to institute litigation. Recovered overpayments are credited to Sponsor. To compensate ESI for the cost of conducting audits and audit-related services, ESI charges a standard fee in the amount set forth in Exhibit A upon recovery of overpayments. Copies of participation requirements and auditing processes are available upon request.

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



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employees.

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

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

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

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

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

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

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

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

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ESI for such ancillary supplies, equipment, and services provided or coordinated, unless such ancillary supplies, equipment, and services provided or coordinated are included in the ingredient cost of the Specialty Product.

2.3 Claims Processing.

(a) Claims Processing.

(i) ESI will perform claims processing services for Covered Drugs dispensed by Participating Pharmacies, Mail Service and ESI Specialty Pharmacy. The “per Rx” administrative fees set forth in Exhibit A shall be charged for all claims processing services, including initial, rejected, reversed and reprocessed Prescription Drug Claim processing.

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

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

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

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

(b) Prior Authorization. For the fees set forth in the Clinical 360 Addendum described in Exhibit A-2 (if applicable), ESI will provide prior authorization (“PA”) services as specified and directed by Sponsor for drugs designated on the Set-Up Form. Prior authorized drugs must meet Sponsor-approved guidelines (“Guidelines”) before they are deemed to be Covered Drugs. Unless Sponsor otherwise directs, Sponsor hereby authorizes coverage for an otherwise excluded use in the event of co-morbidities, complications and other factors not otherwise expressly set forth in the Guidelines. In determining whether to authorize coverage of such drug under the PA Program, ESI will apply only the Guidelines and may rely entirely upon information about the Member and the diagnosis of the Member’s condition provided to it from the prescriber. ESI will not undertake to determine medical necessity, make diagnoses or substitute ESI’s judgment for the professional judgment and responsibility of the prescriber.

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

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

(e) External Review Services.

ESI will not conduct any external review services (as defined in the Patient Protection and Affordable Care Act of 2010 and its implementing regulations ("PPACA")); provided, however, Sponsor may elect to have UM Company facilitate the provision of external review services through UM company contracted IROs (as such term is defined in PPACA), for the fees set forth on Exhibit A below (if applicable). Sponsor must execute a standard ESI "External Appeals Services" Set-Up Form, which may be requested through ESI Account Management, in order to receive such services from UM Company.

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

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

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

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

## 2.4 Formulary Support and Rebate Management.

(a) Formulary Adherence and Clinical Programs. ESI may provide clinical, safety, adherence, and other like programs as appropriate. The Clinical 360 Addendum described in Exhibit A-2 sets forth certain available adherence, clinical, safety and/or trend programs that require additional fees hereunder. ESI will not implement any program for which Sponsor may incur an additional fee without Sponsor's prior written approval and election of such program.

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

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2.5 Program Operations.

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

(b) Claims Data.

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

(ii) Claims Data to Vendors. Upon Sponsor's written request and at no additional charge, ESI will provide regular prescription claims data in ESI's standard format(s) to Sponsor's vendors ("Vendors") for disease management, flexible savings account and other "payment," "treatment" and "healthcare operations" purposes (as defined under HIPAA). Requests for retrieval of data beyond thirty (30) months are subject to the hourly custom programming charge set forth in Exhibit A.

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

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

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

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

3.2 Billing and Payment.

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

(b) Payment. Sponsor will pay ESI by wire, ACH transfer or pre-authorized debit within two (2) days from the date of Sponsor's receipt of each ESI invoice. Sponsor will be responsible for all costs of collection, and agrees to reimburse ESI for such costs and expenses, including reasonable attorneys' fees. All amounts not paid by the due date thereof will bear interest at the rate of 1.5% per month or, if lower, the highest interest rate permitted by law. In addition to any rights under Section 6.2, ESI may apply Rebate amounts otherwise owed to Sponsor against any unpaid Fees.

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

**ARTICLE IV – HIPAA; CONFIDENTIAL INFORMATION**

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

4.2 Confidential Information.

(a) Each party agrees that the terms of this Agreement and information of the other party, including, but not limited to and the following, will constitute confidential and proprietary information ("Confidential Information"): (i) with respect to ESI: ESI's reporting and other web-based applications, eligibility and adjudication systems, system formats and databanks (collectively, "ESI's Systems"), clinical or formulary management operations or programs, fraud, waste and abuse tools and programs, anonymized claims data (de-identified in accordance with HIPAA); ESI Specialty Pharmacy and Mail Service Pharmacy data; information and contracts relating to Rebates and Manufacturer Administrative Fees, prescription drug evaluation criteria, drug pricing information, and Participating Pharmacy agreements; and (ii) with respect to Sponsor: Participating Pharmacy Sponsor and Member identifiable health information and data, Eligibility Files, Set-Up Form information, business operations and strategies. Neither party will use the other's Confidential Information, or disclose it or this Agreement to any third party (other than Sponsor attorneys and accountants), at any time during or after termination of this Agreement, except as specifically contemplated by this Agreement or upon prior written consent, which will not unreasonably be withheld. Upon termination of this Agreement, each party will cease using the other's Confidential Information, and all such information will be returned or destroyed upon the owner's direction. Confidential Information does not include information which is or becomes generally available to the public; was within the recipient's possession or knowledge prior to its being furnished to the recipient pursuant to this Agreement, or is independently developed by the recipient under circumstances not involving a breach of this Agreement.

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

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

5.1 Compliance with Law; Change in Law. Each party shall be responsible for ensuring its compliance with any laws and regulations applicable to its business, including maintaining any necessary licenses and permits. Sponsor shall be responsible for any governmental or regulatory charges and taxes imposed upon or related to the services provided hereunder. With respect to any Plan that is subject to the provisions of ERISA, the Sponsor or the plan sponsor shall ensure that its activities in regard to such program are in compliance with ERISA, and shall be responsible for disclosing to Members any and all information relating to the Plan and this Agreement as required by law to be disclosed, including any information relating to Plan coverage and eligibility requirements,

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commissions, rebates, discounts, or provider discounts referred to in Section 5.4 hereof. If there is a new or change in federal or state laws or regulations or the interpretation thereof, or any government, judicial or legal action that, among other things, materially burdens ESI, requires ESI to increase payments or shorten payment times for Covered Drugs to Participating Pharmacies, or materially changes the scope of services hereunder (a "Change in Law"), then there shall be an appropriate modification of the services, reimbursement rates, Administrative Fees and/or Rebates hereunder. If the parties cannot agree on a modification or adjusted fee or rates, then either party may terminate the Agreement on thirty (30) days prior written notice to the other.

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

**5.3 Disclosure of Certain Financial Matters.** In addition to the Administrative Fees paid to ESI by Sponsor, ESI and ESI's wholly-owned subsidiaries or affiliates derive revenue in one or more of the ways as further described in the Financial Disclosure to ESI PBM Clients set forth in Exhibit D hereto ("Financial Disclosure"), as updated by ESI from time to time. Unlike the Administrative Fees, the revenues described in the Financial Disclosure are not direct or indirect compensation to ESI from Sponsor for services rendered to Sponsor or the Plan under this Agreement. In negotiating any of the fees and revenues described in the Financial Disclosure or in this Agreement, ESI and ESI's wholly-owned subsidiaries and affiliates act on their own behalf, and not for the benefit of or as agents for Sponsor, Members or the Plan. ESI and ESI's wholly-owned subsidiaries and affiliates retain all proprietary rights and beneficial interest in such fees and revenues described in the Financial Disclosure and, accordingly, Sponsor acknowledges that neither it, any Member, nor the Plan, has a right to receive, or possesses any beneficial interest in, any such fees or revenues; provided, that ESI will pay Sponsor amounts equal to the amounts expressly set forth on Exhibit A.

**ARTICLE VI - TERM AND TERMINATION; DEFAULT AND REMEDIES**

**6.1 Term.**

(a) This Agreement will commence effective as of \_\_\_\_\_, 20\_\_ ("Effective Date"), and will continue for a period of three (3) years ("Initial Term"), and may be terminated earlier or extended in accordance with the terms of Section 6.2 below. Thereafter, this Agreement will automatically renew with the same terms and conditions as set forth herein for successive one (1) year renewal terms, subject to the right of termination as otherwise provided herein.

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

**6.2 Termination.**

(a) Breach or Default. Either party may give the other written notice of a material, substantial and continuing breach of this Agreement. If the breaching party has not cured said breach within thirty (30) days from the date such notice was sent, this Agreement may be terminated at the option of the non-breaching party. If the amount of time commercially reasonable for the breach to be cured is longer than thirty (30) days, this Agreement

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may not be terminated by the non-breaching party pursuant to this provision until such commercially reasonable period of time has elapsed; provided, however, that in no event will such period exceed sixty (60) days.

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

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

### 6.3 Remedies.

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

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

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

(d) Indemnification.

(i) In addition to any indemnification obligations set forth in the Business Associate Agreement, ESI will indemnify and hold Sponsor harmless from and against any loss, cost, damage, expense or other liability, including, without limitation, reasonable costs and attorney fees ("Costs") incurred in connection with any and all third party claims, suits, investigations or enforcement actions ("Claims") which may be asserted against, imposed upon or incurred by Sponsor and arising as a result of (A) ESI's negligent acts or omissions or willful misconduct (including those of the Mail Service Pharmacy and ESI Specialty Pharmacy), or (B) ESI's breach of this Agreement.

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

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

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

## **ARTICLE VII – MISCELLANEOUS**

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

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

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

NAME AND ADDRESS OF SPONSOR

Attn:

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

7.4 Assignment and Subcontracting. Sponsor may assign this Agreement upon first obtaining ESI's written consent, which consent will not be unreasonably withheld following a standard credit review of the proposed assignee. Sponsor acknowledges and agrees that ESI may perform certain services hereunder (e.g., mail service pharmacy and specialty pharmacy services) through one or more ESI subsidiaries, affiliates, or designees. ESI is responsible and liable for the performance of its subsidiaries and affiliates in the course of their performance of any



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such service. To the extent that ESI subcontracts any PBM Service under this Agreement to a third party, ESI is responsible and liable for the performance of any such third party. In addition, ESI may contract with third party vendors to provide information technology support services and other ancillary services, which services are not PBM Services hereunder, but rather are services that support ESI's conduct of its business operations. This Agreement will be binding upon, and inure to the benefit of and be enforceable by, the respective successors and permitted assigns of the parties hereto.

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

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

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

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

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

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

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

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

EXPRESS SCRIPTS, INC.

SPONSOR NAME

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Federal ID Number: \_\_\_\_\_

Date: \_\_\_\_\_

DRAFT

**EXHIBIT A**

**PHARMACY PROGRAM FEES**

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

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

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

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

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

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

Exhibit A includes the following:

**Exhibit A-1**

Pharmacy Reimbursement Rates

**Exhibit A-2**

Administrative and Clinical Program Fees

**Exhibit A-3**

Rebates

**Exhibit A-1**

**Pharmacy Reimbursement Rates**

Sponsor will pay to ESI the amounts set forth below, net of applicable Copayments. The application of brand and generic pricing below may be subject to certain “dispensed as written” (DAW) protocols and Sponsor defined plan design and coverage policies for adjudication and Member Copayment purposes. Sales or excise tax or other governmental surcharge, if any, will be the responsibility of Sponsor.

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

TBD

**II. Mail Pharmacy Reimbursement Rates (Does Not Apply to Specialty Products).**

TBD

**III. Specialty Products**

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

	<b>Ingredient Cost</b>	<b>Dispensing Fee</b>
<b>Exclusive ESI Specialty Pharmacy</b>	See Exclusive Specialty Product List Lesser of AWP discount or MRA (as applicable)	\$0.00
<b>Participating Pharmacy Specialty Products</b>	Participating Pharmacy Specialty Product List Lesser of AWP discount, U&C or MRA (as applicable)	\$2.00

(b) Pricing for ASES is as follows:

- (i) For Specialty Products needing an additional charge to cover costs of all ASES required to administer the Specialty Products, the following standard per diem and nursing fee rates shall apply. Exceptions to the standard per diem and nursing rates are set forth in (ii), below, which list may be updated from time to time by ESI. Pricing for home infusion supplies and services provided at Participating Pharmacies (for example, limited distribution products not then available through ESI Specialty Pharmacy or overrides) will be pass through.

Standard Per Diem	\$65/dose
Standard Nursing Fee/ First 2 Hours	\$150
Standard Nursing Hourly	\$75

- (ii) Additional exceptions to AWP Discount Rates and Standard Per Diem & Nursing Fees

<b>Brand Name</b>	<b>AWP Discount</b>	<b>Per Diem</b>
EPOPROSTENOL	1.0%	\$65/day
REMODULIN	5.0%	\$65/day

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The AWP discount includes Phone Support Nursing, Supplies, Pump, first two training visits, and Coordination of In-Person Nursing. In-home nursing that is requested/needed beyond the first two training visits will be charged at a rate of \$150 for the first two hours and \$75 for every hour after.

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

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

**IV. Influenza and Other Vaccinations**

Vaccinations shall adjudicate at the lower of:

(a)

	<b>Participating Pharmacy INFLUENZA</b>	<b>Participating Pharmacy OTHER VACCINES</b>
<b>Ingredient Cost</b>	Participating Pharmacy Ingredient Cost as set forth in the Agreement	Participating Pharmacy Ingredient Cost as set forth in the Agreement
<b>+</b>		
<b>Dispensing Fee</b>	Participating Pharmacy Dispensing Fee as set forth in the Agreement	Participating Pharmacy Dispensing Fee as set forth in the Agreement
<b>+</b>		
<b>Professional Service Fee (PSF); cost for pharmacist to inject the vaccine</b>	Pass-Through (capped at \$15 per vaccine claim)	Pass-Through (capped at \$20 per vaccine claim)
<b>Vaccine Program Administrative Fee *</b>	\$2.50 per vaccine claim	\$2.50 per vaccine claim

\* The Vaccine Program Administrative Fee will be manually billed to Sponsor on a monthly basis or at such other intervals as agreed between ESI and Sponsor. Manual billing is subject to change to electronic billing. ESI will provide Sponsor prior written notice of any change to electronic billing. This Vaccine Program Administrative Fee will apply to any vaccine claims, whether at contracted rates or U&C, and is in addition to any per Prescription Drug Claim administrative fee set forth in the Agreement.

**or**

(b) the combined ingredient cost, dispensing fee (if any) and professional service fee (if any) that the Participating Pharmacy generally charges an individual paying cash, without coverage for prescription drug benefits, plus the Vaccine Program Administrative Fee set forth above.

Coverage is subject to Plan provisions. No vaccine claims will be included in any guarantees set forth in the Agreement and/or amendments thereto.

**Exhibit A-2**

**Administrative Services and Clinical Program Fees**

**I. Administrative Services**

TBD

**II. Clinical/Trend Programs.**

ESI offers a comprehensive suite of trend and integrated health management programs. With a 360-degree view of the patient, ESI promotes changes that maximize health outcomes and value – reducing prescription waste, enabling better overall health and value, enriching the care continuum and managing medication therapy and safety. These offerings may change or be discontinued from time to time as ESI updates its offerings to meet the needs of the marketplace.

The programs (and corresponding pricing and guarantees) outlined in the Clinical 360 Addendum (executed separately by Sponsor) represent the programs currently adopted by Sponsor as of the Effective Date. ESI also offers additional programs, as well as savings guarantees, under certain conditions. Information concerning such programs, guarantees, and fees, if applicable, is available on request. In addition, the ESI Account Management Team will periodically discuss new programs, guarantees, and fees with Sponsor, which Sponsor may adopt through ESI's standard Set-Up Form process.

Sponsor will select clinical/trend programs during implementation by checking selected options on the Clinical 360 Addendum on the applicable Set-Up Form. Such Set-Up Forms are incorporated herein by reference as and when executed by the parties.

Please refer to the Clinical 360 Addendum for a listing of Sponsor's programs.

**EXHIBIT A-3**

**Rebates**

1. **Rebate Amounts**

TBD

2. **Exclusions**

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

3. **Rebate Payment Terms**

- A. Subject to the conditions set forth herein, ESI shall pay Sponsor the percentage amount set forth in Section 1.A.(i) above for Rebates collected by ESI during each calendar quarter hereunder within approximately one hundred and fifty (150) days following the end of such calendar quarter. ESI shall also pay Sponsor the percentage amount set forth in Section 1.A.(i) above for residual Rebates collected by ESI, if any, related to such calendar quarter, which are collected by ESI in subsequent quarters.
- B. On an annual and aggregate basis, ESI shall reconcile the guaranteed amounts set forth in Section 1.A.(ii) above (against the percentage amount paid to Sponsor quarterly) within two hundred and forty (240) days following the end of each calendar year and shall credit Sponsor for any deficit on the next invoice immediately following the reconciliation to the extent such deficit is not offset by ESI against excesses achieved in other guarantees offered pursuant to this Agreement. If, upon reconciliation, the annual aggregate percentage amount paid to Sponsor for the calendar year pursuant to Section 1.A.(i) and 3.A. above is greater than the guaranteed aggregate amounts set forth in Section 1.A.(ii) above, ESI shall be entitled to make up for, and offset, a shortfall in other guarantee(s) set forth in this Agreement with such excess annual aggregate percentage amount, and such excess amount shall be applied either directly to the other shortfall guarantee(s) or applied as a credit against future Rebate payments (or as a direct invoice amount to be paid by Sponsor, if a credit is not feasible).

4. **Conditions**

- A. ESI contracts with pharmaceutical manufacturers for Rebates on its own behalf and for its own benefit, and not on behalf of Sponsor. Accordingly, ESI retains all right, title and interest to any and all actual Rebates received from manufacturers. ESI will pay Sponsor amounts equal to the Rebate amounts allocated to Sponsor, as specified above, from ESI's general assets (neither Sponsor, its Members, nor Sponsor's plan retains any beneficial or proprietary interest in ESI's general assets). Sponsor acknowledges and agrees that neither it, its Members, nor its Plan will have a right to interest on, or the time value of, any Rebate payments received by ESI during the collection period or moneys payable under this Section. No amounts for Rebates will be paid until this Agreement is executed by Sponsor. ESI will have the right to apply Sponsor's allocated Rebate amount to unpaid Fees.
- B. Sponsor acknowledges that it may be eligible for Rebate amounts under this Agreement only so long as Sponsor, its affiliates, or its agents do not contract directly or indirectly with anyone else for discounts, utilization limits, rebates or other financial incentives on pharmaceutical products or formulary programs for claims processed by ESI pursuant to the Agreement, without the prior written consent of ESI. In the event that Sponsor negotiates or arranges 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 Rebate amounts earned by, but not yet paid to, Sponsor as necessary to prevent duplicative rebates on Covered Drugs. To the extent Sponsor

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knowingly negotiates and/or contracts for discounts or rebates on claims for Covered Drugs without prior written approval of ESI, such activity will be deemed to be a material breach of this Agreement, entitling ESI to suspend payment of Rebate amounts hereunder and to renegotiate the terms and conditions of this Agreement.

- C. Under its Rebate program, ESI may implement ESI's Formulary management programs and controls, which may include, among other things, cost containment initiatives, and communications with Members, Participating Pharmacies, and/or physicians. ESI reserves the right to modify or replace such programs from time to time. Guaranteed Rebate amounts, if any, set forth herein, are conditioned on adherence to various Formulary management controls, benefit design requirements, claims volume, and other factors stated in the applicable pharmaceutical manufacturer agreements, as communicated by ESI to Sponsor from time to time. If any government action, change in law or regulation, change in the interpretation of any law or regulation, or any action by a pharmaceutical manufacturer has an adverse effect on the availability of Rebates, then ESI may make an adjustment to the Rebate terms and guaranteed Rebate amounts, if any, hereunder.
- D. Reporting. Rebate paid to Sponsor pursuant to this Agreement are intended to be treated as "discounts" pursuant to the federal anti-kickback statute set forth at 42 U.S.C. §1320a-7b and implementing regulations. Sponsor is obligated if requested by the Secretary of the United States Department of Health and Human Services, or as otherwise required by applicable law, to report the Rebate amounts and to provide a copy of this notice. ESI will refrain from doing anything that would impede Sponsor from meeting any such obligation.



## EXHIBIT B

### AUDIT PROTOCOL

#### 1. AUDIT PRINCIPLES

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

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

#### 2. AUDIT PREREQUISITES

A. There are four components of your arrangement with ESI eligible for audit on an annual basis:

- Retrospective Claims
- Rebates
- Performance Guarantees
- Compliance with Regulatory Requirements (i.e., Medicare Part D)

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

B. ESI will provide all data reasonably necessary for Sponsor to determine that ESI has performed in accordance with contractual terms.

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

#### 3. AUDITS

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

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

C. When performing a Rebate audit, Sponsor may perform an on-site review of the applicable components of manufacturer agreements, selected by Sponsor, as reasonably necessary to audit the calculation of the Rebate payments made to Sponsor by ESI. Our ability to drive value through the supply chain and in our negotiations with manufacturers is dependent upon the strict confidentiality and use of these agreements. Providing access to these agreements to third

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parties that perform services in the industry beyond traditional financial auditing jeopardizes our ability to competitively drive value. For this reason, access to and audit of manufacturer agreements is restricted to a mutually agreed upon national CPA accounting firm whose audit department is a separate stand-alone division of the business, which carries insurance for professional malpractice of at least Two Million Dollars (\$2,000,000).

- D. ESI recommends that Sponsor select an initial number of manufacturer contracts to enable Sponsor to audit fifty percent (50%) of the total Rebate payments due to Sponsor for two (2) calendar quarters during the twelve (12) month period immediately preceding the audit (the "Rebate Audit Scope and Timeframe"). ESI will accommodate reasonable requests to extend this Rebate Audit Scope and Timeframe, but this may delay ESI's on-site preparation time as well as response time to audit findings. Due to the additional resources necessary to support a Rebate audit beyond the Rebate Audit Scope and Timeframe, if you request to extend the Rebate Audit Scope and Timeframe, you will be subject to ESI's standard charges for such additional audit support. All such fees shall be reasonable and based on ESI's additional costs. If the parties mutually determine, acting in good faith, that the initial Rebate audit demonstrates in any material respects that ESI has not administered Rebates consistent with the contract terms of the Agreement, then ESI will support additional auditing beyond the Rebate Audit Scope and Timeframe at no additional charge.
- E. If you have a Pass-Through pricing arrangement for Participating Pharmacy claims, ESI will provide the billable and payable amount for a sampling of claims provided by you or your auditor (i.e., ESI will provide the actual documented claim record) during the audit to verify that ESI has administered such Pass-Through pricing arrangement consistent with the terms of the Agreement. If further documentation is required, ESI may provide a statistically valid sample of claims remittances to the Participating Pharmacies to demonstrate ESI's administration of Pass-Through pricing. In any instance where the audit demonstrates that the amount billed to you does not equal the Pass-Through amount paid to the Participating Pharmacy, you or your auditor may perform an on-site audit of the applicable Participating Pharmacy contract rate sheet(s).

**4. AUDIT FINDINGS**

- A. Following Sponsor's initial audit, Sponsor (or its Auditor) will provide ESI with 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 up to 300 claims for further investigation by ESI.
- B. Following Sponsor's initial audit of Medicare Part D compliance, Sponsor (or its Auditor) will provide ESI with a written report of suspected non-compliant issues and payment reconciliation issues, if any. In order for ESI to evaluate Sponsor's audit report, Sponsor shall provide ESI with specific regulatory criteria and Medicare Part D program requirements used to cite each suspected non-compliant and payment reconciliation issue.
- C. ESI will use commercially reasonable best efforts to respond to the audit report in no more than sixty (60) 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.
- D. Sponsor agrees that once audit results are accepted by both parties, the audit shall be considered closed and final. To the extent the mutually accepted audit results demonstrate claims errors, ESI will reprocess the claims and make corresponding adjustments to Sponsor through credits to a future invoice(s). If we are unable to reprocess claims and issue corresponding credits to Sponsor through this process, ESI will make adjustments to Sponsor via a check or credit.

**5. CONFIDENTIALITY**

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

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**EXHIBIT C**

**BUSINESS ASSOCIATE AGREEMENT**

Express Scripts, Inc. (“ESI”) and Sponsor are parties to an agreement (“PBM Agreement”) whereby ESI provides certain pharmacy benefit management services to the Sponsor’s prescription drug plan (Sponsor and Sponsor’s prescription drug plan collectively referred to hereinafter as “Plan”). This Business Associate Agreement addresses the parties’ rights and obligations concerning the use and disclosure of patients’ protected health information. The HIPAA Rules (as defined below) require ESI and the Plan to enter into a “business associate agreement” to comply with applicable sections of the HIPAA Rules as of the applicable Compliance Dates. If Sponsor or a third party authorized by Sponsor provides health information related to Sponsor’s medical plan to ESI to perform PBM Services, and to the extent such information constitutes PHI, the parties agree that the terms of this Business Associate Agreement shall also apply with respect to such medical plan PHI.

**1. Definitions.**

(a) “Breach” shall mean the unauthorized acquisition, access, use, or disclosure of Protected Health Information that compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information. “Breach” shall not include:

- (i) any unintentional acquisition, access, or use of PHI by an employee or individual acting under the authority of Plan or ESI, as long as such acquisition, access, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual with Plan or ESI and such information is not further acquired, accessed, used, or disclosed by any person; or
- (ii) an inadvertent disclosure from an individual who is otherwise authorized to access PHI at a facility operated by Plan or ESI to another similarly situated individual at the same facility, provided that any such information received as a result of such disclosure is not further acquired, accessed, used, or disclosed by any person.

(b) “Compliance Date(s)” shall mean the date established by HHS or the United States Congress for effective date of applicability and enforceability of the HIPAA Rules and HITECH Standards.

(c) “Designated Record Set” shall 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.

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

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

(f) “Health Plan” or “Plan” shall have the same meaning as the term “Health Plan” in 45 C.F.R. § 160.103.

(g) “HIPAA Rules” means the collective privacy, transaction and code sets, and security regulations promulgated pursuant to the Health Insurance Portability and Accountability Act, as codified at 45 C.F.R. Parts 160, 162 & 164.

(h) “HITECH Standards” means the privacy, security and security Breach notification provisions applicable to a Business Associate under Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH”), which is Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and any regulations promulgated thereunder.

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

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

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- (k) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart E, as they exist now or as they may be amended.
- (l) "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
- (m) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- (n) "Security Incident" shall have the same meaning as "security incident" in 45 C.F.R. § 164.304
- (o) "Security Standards" shall mean the Security Standards, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart C, to be effective no later than April 20, 2005, as they exist now or as they may be amended.
- (p) "Transactions Standards" shall mean the Standards for Electronic Transactions, 45 C.F.R. Parts 160 and 162, as they exist now or as they may be amended.

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

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

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

(b) *Minimum Necessary.* ESI will take reasonable efforts to limit requests for, use and disclosure of PHI to the minimum necessary to accomplish the intended request, use or disclosure.

(c) *Specific Use or Disclosure Provisions.* Except as otherwise limited in this Business Associate Agreement, ESI may use and disclose PHI to properly provide, manage and administer PBM Services 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, or such use or disclosure is expressly permitted in (i) through (iii) below:

- (i) ESI may use PHI for the proper management and administration of ESI or to carry out ESI's legal responsibilities.
- (ii) ESI may disclose PHI to third parties for the proper management and administration of ESI or to carry out the legal responsibilities of ESI provided that the disclosures are Required by Law, or ESI obtains reasonable assurances from the person to whom the information is disclosed that: (A) the information will remain confidential, (B) the information will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and (C) the person notifies ESI of any instances of which it is aware in which the confidentiality of the information has been breached.
- (iii) ESI may use PHI to perform Data Aggregation services on behalf of the Plan as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

(d) *Reporting.* ESI agrees to promptly notify Plan if ESI has knowledge that PHI has been used or disclosed by ESI in a manner that violates this Business Associate Agreement. To the extent that ESI creates, receives, maintains or transmits Electronic PHI, ESI agrees to report promptly to Plan any Security Incident, as determined by ESI, involving PHI of which ESI becomes aware. Effective thirty (30) calendar days after the effective date of applicable regulations issued by the Secretary, ESI shall, following the discovery of a Breach of Unsecured PHI, notify Plan of such Breach without unreasonable delay and in no event later than sixty (60) calendar days after the discovery, including the identification of each individual whose Unsecured PHI has been, or is reasonably believed to have been, accessed, acquired or disclosed during the Breach. A Breach shall be treated as discovered as of the first day on which such Breach is known or reasonably should have been known by ESI.

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

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

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

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

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

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

(k) *Restrictions on Use or Disclosure.* Within fifteen (15) business days of a request of the Plan, ESI agrees to consider restrictions on the use or disclosure of PHI agreed to by the Plan on behalf of an Individual in accordance with 45 C.F.R. § 164.522.

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

(m) *Compliance with the HITECH Standards.* Notwithstanding any other provision in this Business Associate Agreement, no later than February 17, 2010, unless a separate effective date is specified by law or this Business Associate Agreement for a particular requirement (in which case the separate effective date shall be the effective date for that particular requirement), ESI shall comply with the HITECH Standards, including, but not limited to: (i) compliance with the requirements regarding minimum necessary under HITECH § 13405(b); (ii) requests for restrictions on use or disclosure to health plans for payment or health care operations purposes when the provider has been paid out of pocket in full consistent with HITECH § 13405(a); (iii) the prohibition of sale of PHI without authorization unless an exception under HITECH § 13405(d) applies; (iv) the prohibition on receiving remuneration for certain communications that fall within the exceptions to the definition of marketing under 45 C.F.R. § 164.501 unless permitted by this Agreement and Section 13406 of HITECH; (v) the requirements relating to the provision of access to certain information in electronic access under HITECH § 13405(e); (vi) compliance with each of the Standards and Implementation Specifications of 45 C.F.R. §§ 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards) and 164.316 (Policies and Procedures and Documentation Requirements); and (vii) as of the separate compliance date set forth in regulations promulgated under HITECH on this topic, the requirements regarding accounting of certain disclosures of PHI maintained in an Electronic Health Record under HITECH § 13405(c) to the extent that ESI discloses any PHI maintained in an Electronic Health Record on behalf of the Plan pursuant to this Business Associate Agreement.

**3. Plan Obligations.**

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

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

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

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

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

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

**5. Breach; Termination.**

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

(b) As of February 17, 2010 and without limiting the termination rights of the parties pursuant to the PBM Agreement, upon ESI's knowledge of a material breach by the Plan of this Business Associate Agreement, ESI shall notify Plan of such breach and the Plan shall have thirty (30) days to cure such breach. In the event the Plan does not cure the breach, or cure is infeasible, ESI shall have the right to immediately terminate this Business Associate Agreement and the PBM Agreement. If cure of the material breach is infeasible, ESI shall report the violation to the Secretary.

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

**6. Indemnification.** Each party (the "Indemnifying Party") shall indemnify and hold the other party and its officers, directors, employees and agents (each an "Indemnified Party") harmless from and against any claim, cause of action, liability, damage, cost or expense ("Liabilities") to which the Indemnified Party becomes subject to as a result of third party claims (including reasonable attorneys' fees and court or proceeding costs) brought against the Indemnified Party, which arise as a result of: (i) the material breach of this Business Associate Agreement by the Indemnifying Party; or (ii) the gross negligence or willful misconduct of the Indemnifying Party, except to the extent such Liabilities were caused by the Indemnified Party. A party entitled to indemnification under this Section 6 shall give prompt written notification to the Indemnifying Party of the commencement of any action, suit or proceeding relating to a third party claim for which indemnification is sought, subject to applicable confidentiality constraints. The Indemnifying Party shall be entitled to assume control of the defense of such action, suit, proceeding or claim with competent counsel of its choosing. Indemnification shall not be required if any claim is settled without the Indemnifying Party's consent, which such consent shall not be unreasonably withheld. **NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SECTION 6, IN NO EVENT WILL AN INDEMNIFYING PARTY BE LIABLE TO AN INDEMNIFIED PARTY UNDER CONTRACT, TORT, OR ANY OTHER LEGAL THEORY FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR SPECIAL LOSSES OR DAMAGES OF ANY KIND.**

**7. Miscellaneous.**

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

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days written notice to the other party. Any other amendment to this Business Associate Agreement unrelated to compliance with applicable law and regulations shall be effective only upon execution of a written agreement between the parties.

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

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

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

(e) **Effective Date.** This Business Associate Agreement shall be effective as of the applicable Compliance Dates or the effective date of the PBM Agreement, whichever is later.

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**EXHIBIT D**

**FINANCIAL DISCLOSURE TO ESI PBM CLIENTS**

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

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

Brand/Generic Classifications – Prescription drugs may be classified as either a “brand” or “generic,” however, the reference to a drug by its chemical name does not necessarily mean that the product is recognized as a generic for adjudication, pricing or copay purposes. ESI distinguishes brands and generics through a proprietary algorithm (“BGA”) that uses certain published elements provided by First DataBank (FDB) including price indicators, Generic Indicator, Generic Manufacturer Indicator, Generic Name Drug Indicator, Innovator, Drug Class and ANDA. The BGA uses these data elements in a hierarchical process to categorize the products as brand or generic. The BGA also has processes to resolve discrepancies and prevent “flipping” between brand and generic status due to price fluctuations and marketplace availability changes. The elements listed above and sources are subject to change based on the availability of the specific fields. Updated summaries of the BGA are available upon request.

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

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

Copies of ESI’s standard formularies may be reviewed at [www.express-scripts.com/services/clientsadvisors](http://www.express-scripts.com/services/clientsadvisors). In addition to formulary considerations, other plan design elements are described in ESI’s Plan Design Review Guide, which may be reviewed at [www.express-scripts.com/services/clientadvisors](http://www.express-scripts.com/services/clientadvisors).



**THIS SAMPLE FORM OF PBM AGREEMENT IS FOR INFORMATIONAL PURPOSES ONLY AND MAY NOT REPRESENT THE FINAL TERMS AND CONDITIONS AGREED TO BY ESI AND SPONSOR.**

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

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

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

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

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

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

January 1, 2013

**THIS EXHIBIT REPRESENTS ESI'S FINANCIAL POLICIES. ESI MAY PERIODICALLY UPDATE THIS EXHIBIT AND THE FINANCIAL DISCLOSURES CONTAINED HEREIN TO REFLECT CHANGES IN ITS BUSINESS PROCESSES; THE CURRENT FINANCIAL DISCLOSURE IS AVAILABLE UPON REQUEST AND ACCESSIBLE ON EXPRESS-SCRIPTS.COM FOR CLIENTS & ADVISORS.**



# ***HUMAN RESOURCES***

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*Donita Pikes  
Director*

## **Memorandum**

Date: February 27, 2015

To: Cindy Carnes, Purchasing

From: Anita Galajda, Assistant Director  
Human Resources

RE: PBM RFP Evaluation

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The responses to the Request for Proposal for a Pharmacy Benefit Management provider has been completed.

The recommended provider based on the evaluation is Express Scripts, Inc.



# Genesee County

## Pharmacy Benefits Management (PBM) RFP Evaluation

February 27, 2015

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## Executive Summary

In November of 2014, Genesee County released Request for Proposal #14-034 (RFP) for Pharmacy Benefits Management (PBM) services. The RFP was released as an open bid through the County's Purchasing Department. Five (5) vendors provided full responses to the RFP. Those vendors are:

- Aetna – National health plan offering PBM services
- BlueCross BlueShield of Michigan (BCBSM) – Incumbent health plan administrator offering PBM services
- Express Scripts (ESI) – Incumbent, stand-alone PBM
- Pharmacy Benefit Dimensions (PBD) – Stand-alone PBM
- ProAct, Inc. – Stand-alone PBM

One (1) additional bid was considered non-responsive by the County's Purchasing Department and excluded from consideration.

Scoring performed in four (4) categories: General Requirements, Technical Questionnaire, Cost Quotation Elements, and Cost Proposal.

The exercise has produced projected savings for the County. Each of the five bidders, listed above, proposed financial terms that are projected to produce cost savings over the current contract pricing. The savings range is \$0.7M – \$1.3M, or \$2.5M – \$4.2M over the course of the three-year rate guarantee period.

Below is the scoring summary for each proposal. The weightings shown are consistent with the weightings standardly utilized by Buck on our PBM RFP projects. Details of how the scoring is performed are provided in the *RFP Evaluation* section of this report. The summary below is weighted by category and displayed on a scale of 1 to 100, with 100 being the highest possible score.

Summary	Aetna	BCBS of Michigan	Express Scripts	Pharmacy Benefit Dimensions	ProAct
<b>General Requirements</b>	50.00	50.00	46.67	50.00	46.67
<b>Rank</b>	<b>1</b>	<b>1</b>	<b>4</b>	<b>1</b>	<b>4</b>
<b>Technical Questionnaire</b>	45.99	42.81	48.13	45.10	45.04
<b>Rank</b>	<b>2</b>	<b>5</b>	<b>1</b>	<b>3</b>	<b>4</b>
<b>Cost Quotation Elements</b>	58.61	54.28	63.98	66.23	64.79
<b>Rank</b>	<b>4</b>	<b>5</b>	<b>3</b>	<b>1</b>	<b>2</b>
<b>Cost Proposal</b>	99.42	98.19	98.96	93.07	97.44
<b>Rank</b>	<b>1</b>	<b>3</b>	<b>2</b>	<b>5</b>	<b>4</b>
<b>Grand Total</b>	<b>254.02</b>	<b>245.28</b>	<b>257.73</b>	<b>254.40</b>	<b>253.94</b>
<b>Rank</b>	<b>3</b>	<b>5</b>	<b>1</b>	<b>2</b>	<b>4</b>

Based on the above analysis, Express Scripts (ESI) has the highest overall total score. As such, we recommend that the County remain with Express for both the employee plan and EGWP, assuming contracting can be finalized under terms acceptable to the County.

## RFP Proposal Process

The RFP was released November 21, 2014. Responses to the RFP were returned to the County December 22, 2014, and forwarded on to Buck Consulting, LLC., for analysis and scoring.

The RFP contained information about the County's pharmacy benefit plan design, cost, utilization, and enrollment details for the most recent 12 months available (October 1, 2013 – September 30, 2014). Bidders were required to match the administration of the current benefit design, including offering an Employer Group Waiver Plan (EGWP) for the County's Medicare eligible retirees.

Claims detail information was provided to the bidders in order to improve the accuracy of the financial offers being proposed. Bidders were requested to respond to the RFP in its entirety and provide completed appendices for evaluation of pricing, network strength, and formulary management. Any incomplete responses were considered non-responsive and disregarded.

The RFP was released as an open bid through the County's Purchasing Department. Five (5) vendors provided complete responses to the RFP. One (1) additional bid was considered non-responsive by the County's Purchasing Department and excluded from consideration.

Carrier Name	Responsive
Aetna	Yes
BlueCross BlueShield of Michigan (BCBSM)	Yes
Express Scripts (ESI) - <i>incumbent</i>	Yes
Pharmacy Benefit Dimensions (PBD)	Yes
ProAct, Inc.	Yes
ScriptGuide	No

Two (2) vendors were narrowed down for Best-and-Final (BAFO) consideration. Those vendors were Aetna and Express Scripts. The County's Purchasing Department led the BAFO pricing and follow-up/clarifying question request.

## RFP Evaluation

### Technical Evaluation

Each bidders RFP response was reviewed in its entirety. The RFP was broken down into main sections and each section was scored on a scale of 0 to 5.

Response Evaluation	Score
No Response Offered	0
Unacceptable	1
Somewhat Satisfactory	2
Satisfactory	3
Above Average	4
Exceeds Expectations	5

General Requirements	Aetna	BCBS of Michigan	Express Scripts	Pharmacy Benefit Dimensions	ProAct
Minimum Bid Requirements	20.00	20.00	20.00	20.00	20.00
Scope of Service Requirements	30.00	30.00	26.67	30.00	26.67
<b>Total (50)</b>	<b>50.00</b>	<b>50.00</b>	<b>46.67</b>	<b>50.00</b>	<b>46.67</b>
<b>Rank</b>	<b>1</b>	<b>1</b>	<b>4</b>	<b>1</b>	<b>4</b>
Technical Questionnaire					
Organization	1.00	1.00	1.00	1.00	0.83
HIPAA Compliance	2.63	3.00	2.63	2.63	3.00
Account Management	2.70	2.55	3.00	3.00	2.70
Customer Service	2.79	2.17	3.10	2.69	2.79
Claims Payment and Administration	4.12	4.00	4.00	3.88	3.41
Eligibility Files	3.43	2.86	4.29	3.14	3.14
Specialty Drugs	6.00	6.00	5.60	6.40	5.20
Clinical Services	9.80	8.57	9.39	8.98	8.98
Medicare Part D	13.53	12.65	15.13	13.38	14.98
<b>Total (50)</b>	<b>45.99</b>	<b>42.81</b>	<b>48.13</b>	<b>45.10</b>	<b>45.04</b>
<b>Rank</b>	<b>2</b>	<b>5</b>	<b>1</b>	<b>3</b>	<b>4</b>
Cost Quotation Elements					
Pharmacy Network	15.00	13.87	13.87	13.87	12.74
Experience, Qualifications, and References	4.44	10.00	7.78	7.78	8.89
Financial Solvency	5.00	5.00	4.00	5.00	4.00
Management Reports	3.33	2.92	5.00	2.92	3.33
Implementation and Timeline	9.17	9.17	15.00	11.67	12.50
Performance Guarantees	6.67	3.33	8.33	10.00	8.33
Formulary	15.00	10.00	10.00	15.00	15.00
<b>Total (75)</b>	<b>58.61</b>	<b>54.28</b>	<b>63.98</b>	<b>66.23</b>	<b>64.79</b>
<b>Rank</b>	<b>4</b>	<b>5</b>	<b>3</b>	<b>1</b>	<b>2</b>
Cost Proposal					
Commercial Estimated 3-Year Gross Cost	50.00	49.52	48.96	46.06	48.86
EGWP Estimated 3-Year Gross Cost	49.42	48.68	50.00	47.01	48.58
<b>Total (100)</b>	<b>99.42</b>	<b>98.19</b>	<b>98.96</b>	<b>93.07</b>	<b>97.44</b>
<b>Rank</b>	<b>1</b>	<b>3</b>	<b>2</b>	<b>5</b>	<b>4</b>
Grand Total					
<b>Total (275)</b>	<b>254.02</b>	<b>245.28</b>	<b>257.73</b>	<b>254.40</b>	<b>253.94</b>
<b>Rank</b>	<b>3</b>	<b>5</b>	<b>1</b>	<b>2</b>	<b>4</b>

Each of the questions was scored on a scale developed by Buck and is consistent with scoring weightings standardly utilized by Buck. If the response addressed all areas of the question, and met the needs of the County, the score was “Satisfactory.” If additional relevant information was provided in the response that would be valuable to the County, the score was increased. If the information provided by the vendor did not address all areas of the question, or if the response was deemed not to meet the stated needs of the County, the score was “Somewhat Satisfactory” or “Unacceptable.” Each question was scored independently with scoring totals provided for each section. Weightings for each section then were applied to the scoring totals to calculate a total score. Each score for each section for each proposing vendor was summed to develop a total score for each proposing vendor. The sum totals were then ranked for each section, and for each proposing vendor as a whole.

Express Scripts received the highest overall score. Express Scripts’ advantage over the other bidders was its favorable responses to customer service, management reporting, eligibility/claims processing, and Medicare Part D management. The major disadvantages Express Scripts had in regard to other bidders are its stringent PBM contract terms and its formulary management philosophy.

Aetna provided the “best” overall cost proposal based on the pricing discounts and rebates offered. However, this cost advantage was only marginally better than the next closest bidders, including Express Scripts, and was ultimately over-shadowed by its lack of experience administering EGWPs and the fact that it administers few stand-alone pharmacy benefit plans.

BCBSM presented a strong cost proposal but faltered in areas of account management, customer service, reporting, and implementation.

Pharmacy Benefit Dimensions and ProAct both had limited EGWP experience and provided the least favorable financial offerings. There were additional concerns regarding the broadness of Pharmacy Benefit Dimensions’ pharmacy network relative to other bidders and industry standards.

## Network Evaluation

Each bidder was supplied with a list of the pharmacy providers utilized by the County’s plan members within the last 12-months and asked to identify whether the providers were a participating or non-participating provider within their proposed network. Of the top 50 pharmacies frequented by Genesee County’s plan members, all Meijer Pharmacies are excluded from the current network as well as local pharmacies such as Diplomat Pharmacy, Luea Pharmacy, and Family Pharmacy.

In addition, their pharmacy networks across the U.S. were evaluated. The table below provides a summary of the network strength of each bidder.

Carrier	National Network Size
Aetna	68,961
BCBS of Michigan	69,016
Express Scripts	69,014
Pharmacy Benefit Dimensions	60,000
ProAct	66,422



Aetna, BCBSM, and Express Scripts each offer the broadest networks. Pharmacy Benefit Dimensions and ProAct offer smaller networks because they are mainly regional PBMs and do not need to contract with the independent pharmacies and regional chain pharmacies where they are not servicing plan members. Pharmacy Benefit Dimensions offers a particularly small national pharmacy network.

## Formulary Comparison

Each bidder was provided a complete list of all brand drugs filled in 2014. The list was provided on the NDC-level (National Drug Code) so that the bidders could match exactly to the drug. Bidders were then asked to identify how the County's current drug utilization matched up against their proposed formulary tier status. Any change from a tier-2 (i.e., formulary or preferred status) to a tier-3 (i.e., non-formulary or non-preferred status) is viewed negatively as a disruption to plan members. The table below provides the results of the top 20 drugs for the Commercial group.

### Top 20 Commercial Plan Brand Medications by Volume

Carrier	Aetna	BCBSM	ESI	PBD	ProAct
Drug Name	Tier-Status (Tier-1, Tier-2, Tier-3 or Excluded)				
PROAIR HFA 90 MCG INHALER	2	2	2	2	2
CRESTOR 10 MG TABLET	2	3	2	2	2
CELEBREX 200 MG CAPSULE	3	3	2	2	3
NEXIUM DR 40 MG CAPSULE	2	3	2	3	2
LANTUS SOLOSTAR 100 UNITS/ML	2	2	2	2	2
VENTOLIN HFA 90 MCG INHALER	2	2	2	2	2
NEXIUM DR 40 MG CAPSULE	2	3	2	3	2
SYMBICORT 160-4.5 MCG INHALER	2	2	2	2	2
CRESTOR 5 MG TABLET	2	3	2	2	2
ZETIA 10 MG TABLET	2	2	2	2	3
ADVAIR 250-50 DISKUS	2	2	2	2	2
PREMARIN 0.625 MG TABLET	2	2	2	2	2
MINASTRIN 24 FE CHEWABLE TAB	3	3	2	3	3
BYSTOLIC 5 MG TABLET	2	3	2	3	2
VYTORIN 10-40 MG TABLET	3	3	2	3	2
SPIRIVA 18 MCG CP-HANDIHALER	2	2	2	2	2
CRESTOR 20 MG TABLET	2	3	2	2	2
BYSTOLIC 10 MG TABLET	2	3	2	3	2
ANDROGEL 1.62% GEL PUMP	2	2	2	2	2
ORTHO TRI-CYCLEN LO TABLET	3	2	3	2	3

Express Scripts, as the incumbent vendor, provides the least amount of formulary disruption. The Top 20 table is a good indicator of each bidder's total formulary disruption. Aetna and ProAct provide the next lowest amount of disruption, followed by Pharmacy Benefit Dimensions, and BCBSM providing the greatest amount of member disruption.

"Disruption" in this analysis is defined as a negative change in drug tier (i.e., a tier -2 drug moving to a tier-3 drug) resulting in the member having to make a choice of paying a higher copay or switching their medication to a preferred product.

## Medicare Part D Comparison

The County takes advantage of federal prescription drug reimbursements through Medicare Part D by sponsoring an EGWP, which is a critical component of the County's retiree healthcare program. The most recent full-year government subsidies under the County's EGWP program were \$850,000 (or 34% of total claims paid) in the form of direct subsidies, low-income premium subsidies, coverage gap discount rebates, and catastrophic reinsurance.

Express Scripts is a well-established EGWP provider, as indicated in its response that it currently serves 2.2M plan members in EGWP plans. This is followed by BCBSM with 35,546 plan members, Aetna with 23,404 plan members, ProAct with 22,598 plan members, and Pharmacy Benefit Dimensions with 4,400 plan members.

Express Scripts responses to the RFP also indicate that they are better equipped to assist the County with their administration of the EGWP. Express scripts responded favorably to area such as being able to provide customizable utilization management programs, managing low income subsidies, and assisting the County in acquiring HCINs, and enrolling plan members in Part D.

## Financial Evaluation

For the analysis, the County's actual prescription drug claims experience (average AWP pricing, drug mix, and utilization) and enrollment was used as the baseline for all calculations. This data was provided by the incumbent PBM and was for the current available plan year period of January 1, 2014 through September 30, 2014. Enrollment was assumed to remain constant at the 2014 level for years 2015 – 2018 (proposed contract term) for all calculations.

The following trend rates were assumed:

- An overall annual utilization trend of 1.5%,
- An overall annual drug cost/inflation trend of 2.8%.

Each prospective vendor's proposed discounts, dispensing fees, administrative fees, and rebates were utilized in the model development (see Pricing Proposals Summary below). The proposed pricing was applied against the County's actual, trended claims experience for the full three years of the contract term. The County's actual 2014 generic dispensing rate of 78.8% was assumed in all calculations.

Each bidding vendor proposed a savings over the County's current in-force pricing. The savings range is \$0.7M – \$1.3M, or \$2.5M – \$4.2M over the course of the three-year rate guarantee period.

**Initial Pricing Proposal Summary****Commercial (3-Year Total)**

	ESI Current Contract	Aetna RFP	BCBSM RFP	ESI RFP	PBD RFP	ProAct RFP
<b>Cost After Rebates and Fees</b>	<b>\$18,652,000</b>					
<b>Cost Avoidance Compared to Current</b>	N/A	(\$3,091,000)	(\$2,939,000)	(\$2,759,000)	(\$1,760,000)	(\$2,726,000)
<b>% Cost Avoidance Compared to Current</b>	N/A	-16.6%	-15.8%	-14.8%	-9.4%	-14.6%

**EGWP (3-Year Total)**

	ESI Current Contract	Aetna RFP	BCBS-M RFP	ESI RFP	PBD RFP	ProAct RFP
<b>Cost After Rebates and Fees</b>	<b>\$8,485,000</b>					
<b>Cost Avoidance Compared to Current</b>	N/A	(\$1,106,000)	(\$994,000)	(\$1,192,000)	(\$728,000)	(\$979,000)
<b>% Cost Avoidance Compared to Current</b>	N/A	-13.0%	-11.7%	-14.0%	-8.6%	-11.5%

**TOTAL (3-Year Total)**

	ESI Current Contract	Aetna RFP	BCBS-M RFP	ESI RFP	PBD RFP	ProAct RFP
<b>Cost After Rebates and Fees</b>	<b>\$27,137,000</b>					
<b>Cost Avoidance Compared to Current</b>	N/A	(\$4,197,000)	(\$3,933,000)	(\$3,951,000)	(\$2,488,000)	(\$3,705,000)
<b>% Cost Avoidance Compared to Current</b>	N/A	-15.5%	-14.5%	-14.6%	-9.2%	-13.7%

The RFP evaluation process had been narrowed down to two finalists and Best-and-Final pricing was requested from each. Additional savings measures were gained from the BAFO process, but the result was that Aetna was still marginally more favorable than Express Scripts over the three-year rate guarantee period.

**BAFO Pricing Proposal Summary****Commercial (3-Year Total)**

	Aetna BAFO	ESI BAFO
<b>Cost After Rebates and Fees</b>		
<b>Cost Avoidance Compared to Current</b>	(\$3,272,000)	(\$3,120,000)
<b>% Cost Avoidance Compared to Current</b>	-17.5%	-16.6%

**EGWP (3-Year Total)**

	Aetna BAFO	ESI BAFO
<b>Cost After Rebates and Fees</b>		
<b>Cost Avoidance Compared to Current</b>	(\$1,106,000)	(\$1,114,000)
<b>% Cost Avoidance Compared to Current</b>	-13.0%	-13.4%

**TOTAL (3-Year Total)**

	Aetna BAFO	ESI BAFO
<b>Cost After Rebates and Fees</b>		
<b>Cost Avoidance Compared to Current</b>	(\$4,378,000)	(\$4,234,000)
<b>% Cost Avoidance Compared to Current</b>	-16.1%	-15.6%

## Recommendation

Each prospective bidder in the RFP process has its own strengths and weaknesses. However, based on the review of proposals submitted, Express Scripts has the highest overall score. Compared to current contract terms and pricing, this RFP effort by the County produced a projected savings of \$4.2 million in for the next three years, assuming the decision to continue the relationship with Express Scripts. Moving to another bidder could potentially save additional money for the County, but there would be a trade-off for other services that potentially would not meet the needs of the County moving forward, specifically around EGWP administration.

Express Scripts delivered the strongest and most comprehensive proposal response overall that specifically addressed and met the detailed and identified needs of the County, as evidenced by their overall score. As such, we recommend that the County remain with Express for both the employee plan and EGWP, assuming contracting can be finalized under terms acceptable to the County.





## GENESEE COUNTY PURCHASING DEPARTMENT

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### MEMORANDUM

**TO:** Michael Lynch, Chairperson  
Public Works Committee

**FROM:** Cindy Carnes,  
Purchasing Manager

**DATE:** March 2, 2015

**SUBJECT:** Approval to Award Contract with Staples for Office Supplies for Genesee County and other local agencies

The purchasing department recommends approval to contract with Staples Contract & Commercial, Inc. operation as Staples Advantage for the provision of office supplies to Genesee County and area agencies. This is a new four year contract and will allow Genesee County authorized staff to place orders online for office supplies and paper. Staples will continue to deliver orders the next day with desk top delivery. Genesee County will be participating in the NJPA cooperative contract # 031210 for Office Supplies and Accessories, contract #111010 for Janitorial supplies and equipment and contract # 052910 for Furniture and Facilities services, supplies and accessories.

The NJPA contracts offers the best value pricing across all product lines and the availability of the County contract pricing and rebate structure to be offer as a shared service to County agencies, including the schools. Staples can have other agencies participate in the Genesee County NJPA program and pay rebates to each agency based on the cumulative total for everyone's purchases. Each entity will need to register with NJPA and get their own member ID number; there is no cost to join NJPA.

Approval is requested, for a four year contract with a one (1) year extension substantially conforming to the attached contract amendment. The contract is for the period of April 1, 2015 through March 31, 2019. In addition, said approval will serve as authorization for Commissioner Jamie Curtis to sign the contract on behalf of Genesee County.

Attachments  
g:\pw\2015\ Staples

# OFFICE SUPPLIES

This Agreement for Professional Services (the "Agreement") is made this 1<sup>ST</sup> day of April, 2015, by and between the County of Genesee, a Michigan Municipal Corporation, whose principal place of business is located at 1101 Beach Street, Flint, Michigan 48502 (the "County"), and Staples Contract & Commercial, Inc. operation as Staples Advantage, whose principal place of business is located 23300 Northwestern Highway, Southfield, Michigan 48075 (the "Contractor") (the County and the Contractor together, the "Parties").

## 1. Term

### 1.1 Initial Term

The initial term of this Agreement is effective upon approval by the Genesee County Board of Commissioners (the "Board") and shall be effective for a four (4) year term (the "Initial Term").

### 1.2 Extension Terms

The Board has the option to extend this Agreement for up to one (1) additional one year terms (the "Extension Terms").

## 2. Purpose

To provide required office supplies, toner and paper to Genesee County departments and agencies. Qualified proposers will provide on-line ordering with multiple levels of order approval and next day desk top delivery of orders with a minimum order of \$35.

## 3. Scope of Work

The Contractor agrees to perform the services described on Exhibit A (the "Services").

## 4. Compensation

The Contractor shall be paid according to the rates identified on Office Supplies and Accessories, NJPA Contract #031210; Janitorial Supplies and Equipment NJPA Contract #111010; Furniture and/or Related Services, Supplies and Accessories NJPA Contract #052910. The Contractor must provide to the County monthly invoices in a form acceptable to the County. The County will pay the Contractor within thirty (30) days of the County's acceptance of the invoice and supporting documentation.

5. **Taxes.** The County is a Michigan Municipal Corporation. The Contractor acknowledges that the County is exempt from Federal Excise Tax and Michigan Sales Tax.

## 6. Contract Administrator

The contract administrator for this Agreement is Cindy Carnes, Purchasing Manager (the "Contract Administrator"). The Contractor acknowledges that the Contract Administrator is the primary County contact for notices and instructions related to this Agreement. The Contractor agrees to provide a copy of all notices related to this Agreement to the Contract Administrator.

## 7. Reporting Requirements

During the term of this Agreement, the Contractor must provide to the Contract Administrator the reports identified and described on Exhibit C.

## 8. Inspection and Acceptance

All goods provided with the Services are received subject to inspection and testing. If goods are defective or fail to meet the specifications, the County shall have the right to reject the goods or to

require the Contractor to correct the defects. The Contractor shall correct the defects at no cost to the County or pay the County for expenses incurred by the County in correcting the defects. Rejected goods will be held for forty-five days after delivery awaiting instructions from the Contractor. After the forty-five day period, the County will dispose of the goods and the County shall have no further liability to the Contractor. The Contractor is responsible for the costs of handling, packing, and transportation incurred in returning or disposing of defective or non-conforming goods.

## 9. **Warranties and Indemnification**

The Contractor warrants that:

- 9.1 The Services will be performed in a good workmanlike manner and in accordance with generally acceptable practices in the industry.
- 9.2 For a period of one (1) year following completion of the Services, the Services and any goods provided with the Services shall conform to the representations made by the Contractor.
- 9.3 The Contractor will comply with all federal, state, and local laws in the performance of the Services.
- 9.4 The Contractor will comply with the requirements of any federal or state grants used to fund or support this Agreement.
- 9.5 The Contractor will obtain and maintain all applicable licenses and permits necessary to provide the Services for the entire term of this Agreement.

The Contractor agrees to indemnify and hold the County, its officials, officers, agents, and employees harmless from any and all claims, damages, or liability arising out of the Contractor's breach of these warranties.

## 10. **Suspension of Work**

### 10.1 Order to Suspend Performance

Upon written order of the Director, the Contractor agrees to immediately suspend performance of the Services. The Contractor shall not be entitled to compensation for any Services performed during any period in which the Director has directed that the Services be suspended.

### 10.2 Necessary Actions Before Suspension

If immediate suspension of the Services would cause harm, injury, or damage to persons or property, the Contractor must immediately notify the Director of the nature of such harm, injury, or damage, and obtain the Director's written authorization to take such necessary action as to prevent or minimize such harm, injury or damage. Actions authorized by the Director pursuant to this paragraph are compensable.

## 11. **Termination**

### 11.1 Termination for Cause

If the Contractor is in breach of any provision of this Agreement, and such breach continues for fourteen (14) days after written notice is issued to the Contractor by the County of the breach, the County may terminate this Agreement. Such termination for cause is effective upon receipt of the notice of termination by the Contractor.

In addition for any other remedies provided by law or this Agreement, the Contractor shall be responsible for all costs incurred by the County as a result of the Contractor's breach and termination, including any costs to obtain substitute performance.



## 11.2 Immediate Termination

If the County, in its discretion, determines that the Contractor's breach of this Agreement constitutes a threat to public health, safety, or welfare, the County may terminate this Agreement immediately upon notice to the Contractor.

In addition for any other remedies provided by law or this Agreement, the Contractor shall be responsible for all costs incurred by the County as a result of the Contractor's breach and termination, including any costs to obtain substitute performance.

## 11.3 Termination for Convenience

If the County determines that it is in the County's best interests, the County may terminate this Agreement upon thirty (30) days' written notice to the Contractor.

The County shall pay for all work properly performed up to the effective date of the notice of termination.

## 11.4 Termination for Lack of Funding

If this Contract is funded by public funds or a grant from a public or private entity, and the funds are not appropriated or the grant is discontinued, the County may terminate this Contract by written notice specifying the date of termination.

The County shall pay for all work properly performed up to the effective date of the notice of termination.

## 12. **Equipment Purchased with County Funds**

### 12.1 Reporting

The Contractor agrees that any Equipment purchased for the performance of the Services with funds supplied by the County under this Agreement must be reported to the Contract Administrator upon purchase. For the purposes of this paragraph, Equipment is defined as tangible, non-expendable, personal property having useful life of more than 1 year and an acquisition cost of \$5,000 or more per unit.

### 12.2 Conveyance to the County

Upon the County's request at the termination of this Agreement for any reason, the Contractor agrees to convey to the County all title in any Equipment purchased for the performance of the Services with funds supplied by the County under this Agreement.

## 13. **Nondiscrimination**

The Contractor covenants that it will not discriminate against an employee or applicant of employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position, and that it will require the same non-discrimination assurances from any subcontractor who may be used to carry out duties described in this contract. Contractor covenants that it will not discriminate against businesses that are owned by women, minorities or persons with disabilities in providing services covered by this Contract, and that it shall require the same assurances from subcontractors. Breach of this covenant shall be regarded as a material breach of this contract.

## 14. **Freedom of Information Act**

This Agreement and all attachments, as well as all other [information](#) submitted by the Contractor to the County, are [subject to disclosure under the provisions of MCL 15.231, et seq., known as the "Freedom of Information Act"](#).

**15. Intellectual Property**

Any intellectual property created by the Contractor in the performance of the Services shall become the property of the County upon termination of this Agreement. Upon the County's request, the Contractor agrees to convey all rights to and ownership of any intellectual property to the County.

**16. Audit Rights**

**16.1 Certification of Accurate Information**

Contractor certifies that all information provided to the County by the Contractor relating to the award or modification of this Agreement, or any payment or dispute related to this Agreement, is true and correct. The Contractor further certifies that its accounting system conforms to generally accepted accounting principles.

**16.2 Inspection**

The Contractor agrees that the County may inspect the Contractor's plant, place of business, or worksite to ensure compliance with the terms of this Agreement. If this Agreement is funded or supported with any state or federal grant funds, the state or federal agencies responsible for administering the applicable grants may examine the Contractor's plant, place of business, or worksite to ensure compliance with the terms of this Agreement and the terms of the applicable grant.

**16.3 Audit**

The Contractor agrees that the County may examine the Contractor's records to ensure compliance with the terms of this Agreement. If this Agreement is funded or supported with any state or federal grant funds, the state or federal agencies responsible for administering the applicable grants may examine the Contractor's records to ensure compliance with the terms of this Agreement and the terms of the applicable grant.

**16.4 Records Retention**

The Contractor agrees to maintain any business records related to this Agreement or the Contractor's performance under this Agreement for a period of at least three (3) years after final payment.

**17. Identity Theft Prevention**

17.1 In the event that the Contractor will obtain identifying information during the performance of the Services, the Contractor must take reasonable precautions to ensure that such identifying information is protected from unauthorized disclosure and is used only for the purpose of performing the Services.

17.2 For the purposes of this Paragraph, "identifying information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including but not limited to name, address, telephone number, social security number, date of birth, driver's license number, taxpayer identification number, or routing code.

**18. Insurance Requirements and Indemnification**

The Contractor agrees to obtain insurance coverage of the types and amounts required as set forth in the Insurance Checklist attached as Exhibit C and keep such insurance coverage in force throughout the life of this Contract.

18.1 Insurance Certificate and Additional Insured Coverage

The Contractor further agrees to provide certificates of insurance to the County evidencing the coverages specified in the Insurance Checklist, and including the County as an additional insured. Additional insured coverage is to be by proof of blanket additional insured coverage within the general liability policy or as provided by an endorsement specifying the County as an additional insured to the policy. Contractor's agent must provide a copy of the endorsement or language from the policy with the certificate of insurance.

18.2 Indemnification

The Contractor agrees to indemnify and hold the County, its officials, officers, agents, and employees harmless from any and all claims, damages, or liability, including defense costs, arising out of the Contractor's performance of the Services or presence on the County's property or worksite.

19. **Independent Contractor**

The Contractor and its agents and employees are independent contractors and are not the employees of the County.

20. **General Provisions**

20.1 Entire Contract

This Contract, consisting of the following documents and Exhibits, embodies the entire Contract between the Parties.

20.1.1. The Contract – This Professional Services Contract

20.1.2. Exhibit A – Services

20.1.3. Exhibit B – Fee Schedule

20.1.4. Exhibit C – Required Reports

20.1.5. Exhibit D – Insurance Checklist

There are no promises, terms, conditions, or obligations relating to the Services other than those contained herein. In the event of a conflict between this Contract and any Exhibit, the terms of this Contract shall control.

20.2 No Assignment

The Contractor may not assign or subcontract this Contract without the express written consent of the County.

20.3 Modification

This Contract may be modified only in writing executed with the same formalities as this Contract.

20.4 Binding Effect

The provisions of this Contract shall apply to and bind the heirs, executors, administrators, and assigns all of the parties hereto.

20.5 Headings

The paragraph headings in this Contract are used only for ease of reference, and do not limit, modify, construe, and or interpret any provision of this Contract.

20.6 Governing Law and Venue

This Contract is entered into under the laws of the State of Michigan. Any litigation between the Parties arising out of this Contract must be initiated within two years of the cause of action accruing and must be brought in a court of competent jurisdiction in Genesee County, Michigan.

20.7 Severability and Survival

In the event that any provision of this Contract is deemed by any court of competent jurisdiction to be legally ineffective, such decision shall have no effect on the remaining provisions of this Contract.

20.8 Interpretation

Each Party has had opportunity to have this Contract reviewed by legal counsel and has had equal opportunity to contribute to its contents. In the event of any dispute concerning the interpretation of this Contract, there shall be no presumption in favor of any interpretation solely because the form of this Contract was prepared by the County.

20.9 Remedies

All remedies specified in this Contract are non-exclusive. The County reserves the right to seek any and all remedies available under this Contract and applicable law in the event that the Contractor fails to abide by the terms of this Contract.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized agents.

STAPLES ADVANTAGE

GENESEE COUNTY

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

Name:

Title: Regional Vice President

Date: \_\_\_\_\_

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

Jamie Curtis

Chairman Genesee County Board of  
Commissioners

Date: \_\_\_\_\_

Approved as to Form and Legality

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

Genesee County Corporation Counsel

Date: \_\_\_\_\_

EXHIBIT A Services

EXHIBIT B  
Fee Schedule

Office Supplies and Accessories  
NJPA Contract #031210

Janitorial Supplies and Equipment  
NJPA Contract #111010

Furniture and/or Related Services, Supplies and Accessories  
NJPA Contract #052910

EXHIBIT C  
Reports Provided by the Contractor

MANAGEMENT REPORTS

The following electronic reports are a minimum requirement to be emailed to the Genesee County Purchasing Department by the 5<sup>th</sup> of each month:

- a. Monthly usage reports
- b. Performance Reports; including fill rates, contract vs. non-contract spend, Internet dollars, number of orders, number of lines, etc.
- c. Consolidated Usage for all of the Genesee County locations.
- d. Detailed Usage by designated locations
- e. Minority Purchases report
- f. Recycled product (green initiative) report
- g. Custom reports that the Purchasing Department may request.



EXHIBIT D

Insurance Checklist

**GENESEE COUNTY INSURANCE CHECKLIST**

<b>Bid Title</b>	<b>Office Supplies for Genesee County</b>	<b>Bid Number</b>	<b>NJPA</b>
<b>Coverages Required</b>	<b>minimums)</b>	<b>Limits (Figures denote</b>	
<u>X</u> 1.	Workers' Compensation	Statutory limits of Michigan	
<u>X</u> 2.	Employers' Liability	\$100,000 accident/disease	
<u>X</u> 3.	General Liability	\$500,000 policy limit, disease	
		Including Premises/operations	
		\$1,000,000 per occurrence with \$2,000,000	
		aggregate	
<u>X</u> 4.	Products/Completed operations	\$1,000,000 per occurrence with	\$2,000,000
	Aggregate [If applicable]		
<u>X</u> 5.	Automobile liability	\$1,000,000 combined single limit each	
	accident- Owned, hired, non-owned		
<u>X</u> 6.	<u>Genesee County named as an additional insured on <b>other</b> than Workers' Compensation and Professional Liability via endorsement. A copy of the endorsement or evidence of blanket Additional Insured language in the policy must be included with the certificate.</u>		
<u>X</u> 7.	Best's rating: A VIII or better, or its equivalent (Retention Group Financial Statements)		
<u>X</u> 8.	The certificate must state bid number and title		

\*exception:

Professional Services Contract Item 18, Insurance Requirements

Staples can not agree to provide 30 days prior written notice of cancellation, termination or change of insurance coverage. Instead, Staples can agree that its insurance carrier shall reasonably endeavor to provide notice of cancellation, termination or change of insurance coverage.