

STATE OF NEBRASKA SERVICE CONTRACT AWARD

State Purchasing Bureau
301 Centennial Mall South, 1st Floor
Lincoln, Nebraska 68508
OR
P.O. Box 94847
Lincoln, Nebraska 68509-4847
Telephone: (402) 471-2401
Fax: (402) 471-2089

PAGE 1 of 2	ORDER DATE 08/17/10
BUSINESS UNIT 65085109	BUYER RUTH GRAY
VENDOR NUMBER: 507256	
VENDOR ADDRESS: EXPRESS SCRIPTS, INC. 1 EXPRESS WAY SAINT LOUIS MISSOURI 63121-1824	

CONTRACT NUMBER
35276 04

AN AWARD HAS BEEN MADE TO THE VENDOR/CONTRACTOR NAMED ABOVE FOR THE SERVICES AS LISTED BELOW FOR THE PERIOD:

JANUARY 01, 2011 THROUGH JUNE 30, 2012

THIS CONTRACT IS NOT AN EXCLUSIVE CONTRACT TO FURNISH THE SERVICES SHOWN BELOW, AND DOES NOT PRECLUDE THE PURCHASE OF SIMILAR SERVICES FROM OTHER SOURCES.

THE STATE RESERVES THE RIGHT TO EXTEND THE PERIOD OF THIS CONTRACT BEYOND THE TERMINATION DATE WHEN MUTUALLY AGREEABLE TO THE VENDOR/CONTRACTOR AND THE STATE OF NEBRASKA.

Original/Bid Document 2470 Z1

Contract to provide a contractor to serve as a Pharmaceutical Benefits Manager for the State of Nebraska Self Insured Employee Health Care Benefit Plans for their period effective January 1, 2011 through June 30, 2012 with the option to extend for up to six (6) additional months as mutually agreed upon by all parties.

The contract shall incorporate the following previously submitted documents:

1. Contract Award, to include the attached Express Scripts, Inc. Pharmacy Benefit Management Agreement;
2. Any Contract Amendments, in order of significance;
3. Any Request for Proposal Addenda and/or Amendments to include Questions and Answers;
4. The original RFP document;
5. The signed Request for Proposal form; and
6. The Contractor's Proposal.

CONTACT: J. Ramon Vickman, Senior Account Director, National Accounts

PHONE: 800-955-4879 Ext: 375125 or 952-837-5125

FAX: 952-837-7108

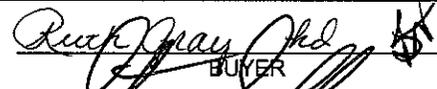
E-MAIL: rvickman@express-scripts.com

CELL: 612-990-1445

THIS IS THE FIRST RENEWAL OF THE CONTRACT and includes Amendment One (1). Descriptions on lines 1 and 2 are changed. Added lines 3 and 4. Contract contact information changed. (08/17/10 djg)

Line Description

- 1 PHARMACY -ADMIN FEES
JAN 2009-JUNE 2012
JAN-JUNE 2009
- 2 PHARMACY BENEFITS MANAGER
2009/2010 ADMINISTRATIVE FEE
PAYMENT
- 3 PHARMACY BENEFITS MGR 2010-
2011 ADMINISTRATIVE FEE
PAYMENT


BUYER

MATERIEL ADMINISTRATOR

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PAGE 2 of 2		ORDER DATE 08/17/10
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Line Description

- 4 PHARMACY BENEFITS MGR 2011-2012 ADMINISTRATIVE FEE PAYMENT



RG/hd
BUYER INITIALS

AMENDMENT TO
EXPRESS SCRIPTS, INC.
PRESCRIPTION DRUG PROGRAM AGREEMENT

This AMENDMENT (the "Amendment") is entered into as of the Effective Date, by and between EXPRESS SCRIPTS, INC., a Delaware corporation ("ESI"), and STATE OF NEBRASKA ("Sponsor").

RECITALS

- A. ESI and Sponsor are parties to a Managed Prescription Drug Program Agreement dated as of January 1, 2009, as amended from time to time (the "Agreement"), pursuant to which ESI provides certain prescription drug benefit management services to Sponsor.
- B. Sponsor and ESI desire to update and amend the Agreement in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and other conditions contained herein, the parties hereto hereby agree as follows:

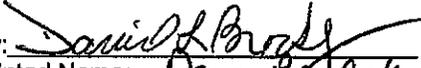
TERMS OF AMENDMENT

1. Definitions. For purposes of this Amendment, any capitalized term not otherwise defined herein shall have the meaning set forth in the Agreement.
2. Pharmacy Program Fees. Section I of Exhibit A of the Agreement is hereby deleted in its entirety and replaced with the following:
 - I. General. Sponsor will pay to ESI the amounts set forth below, net of applicable Copayments. Sales or excise tax or other governmental surcharge, if any, will be the responsibility of Sponsor. If ESI pays a particular Participating Pharmacy a higher rate because Sponsor has requested such pharmacy be included in the network, the rate charged to Sponsor will be the net ingredient cost plus the dispensing fee paid by ESI to such pharmacy, plus applicable sales or excise tax or other governmental surcharge, if any. A Member's Copayment charged for a Covered Drug will be the lesser of the applicable Copayment, U&C, or the AWP discount.
3. Performance Standards. Exhibit F of the Agreement is hereby deleted in its entirety and replaced with Exhibit F attached hereto.
4. Effective Date. This Amendment shall be effective as of January 1, 2009.
5. Effect of Amendment. Except as expressly provided herein, the terms and conditions of the Agreement shall remain in full force and effect. In the event of a conflict between this Amendment and the Agreement, the terms of this Amendment shall prevail.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the day and year below set forth.

EXPRESS SCRIPTS, INC.

STATE OF NEBRASKA

By: 
Printed Name: Dave Brady
Title: GM Labor
Date: 7-29-09

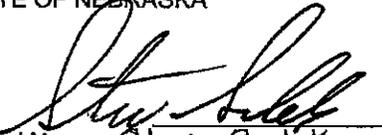
By: 
Printed Name: Steve Sulek
Title: Administrator
Date: 8/12/2009

EXHIBIT F
PERFORMANCE STANDARDS

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

Within forty-five (45) business days after the end of each measurement period, ESI will provide Sponsor with a quarterly report (i) assessing ESI's performance under each performance standard, and (ii) if ESI did not meet a performance standard, calculating the applicable amount due to Sponsor. Unless otherwise stated, measurements periods are quarterly and amounts due, if any, will be paid to Sponsor on an annual basis within ninety (90) days of each anniversary of the Agreement. No performance penalties, if any, will be paid until this Agreement is executed by Sponsor.

Implementation Performance Guarantees

ESI will place \$300,000 at risk to guarantee completion of implementation deliverables by the dates noted, assuming that the State has provided the information necessary to complete these deliverables. During the implementation process, Sponsor may allocate up to 25% of the amount at risk to any deliverable, with the total adding up to 100% of the amount at risk.

Ongoing Performance Guarantees

ESI will place \$150,000 per year at risk to guarantee performance of the service standards set out below, assuming that the Sponsor has provided the information necessary to complete meet the standards. During the implementation process, the State may allocate up to 25% of the annual amount at risk to any standard annually, with the total adding up to 100% of the amount at risk.

Service Feature	Standard	Penalty
Implementation		
Implementation and Start-up	<p>ESI will guarantee the implementation of Sponsor to be completed in accordance within the mutually agreed upon timelines. Each of ESI's standards is dependent upon receiving specific information from Sponsor. All Implementations are a 90-day implementation project. Loading of eligibility and production of ID cards are dependent upon receiving group structure and benefit plan design sign-off from Sponsor. A delay in receipt of data or information from Sponsor may require rescheduling of all subsequent deliverable dates.</p> <p>ESI's Implementation Project Manager (IPM) will provide regular updates to Sponsor tracking the status of the implementation.</p> <p>A completed Sponsor implementation sign-off manual will be provided to Sponsor five (5) business days prior to the effective date.</p> <p>The IPM will conduct a post-implementation review meeting with Sponsor within 30 days after the effective date.</p>	<p>The following dollars will be paid to Sponsor if ESI does not complete the deliverables by the dates mutually agreed upon, assuming that Sponsor has provided the information necessary to complete these deliverables:</p> <p><i>Group Structure, Benefit Plan Design — \$60,000</i></p> <p><i>Eligibility Load — \$60,000</i></p> <p><i>ID Cards — \$60,000</i></p> <p><i>Toll-Free Number — \$60,000</i></p> <p><i>Communications — \$60,000</i></p> <p>The implementation performance standards are one time only standards to be based on Sponsor effective date. The maximum implementation penalty will be \$300,000.</p>

Account Management		
Account Management — Satisfaction	<p>ESI guarantees that Sponsor satisfaction with Account Management is rated as satisfactory. The following categories will be measured annually by Sponsor as satisfactory or not satisfactory:</p> <ul style="list-style-type: none"> • Timely issues resolution by the account management (20% of total amount of penalty at risk) • Consultative services (20% of total amount of penalty at risk) • Timeliness of reporting and annual reviews (20% of total amount of penalty at risk) • Frequency of meetings/plan updates (20% of total amount of penalty at risk) • One mutually agreed upon category (20% of total amount of penalty at risk) 	ESI will put \$30,000 as a total amount of penalty at risk.
Client Services Administration		
Satisfaction Survey	One random sample member survey will be completed annually on a company-wide basis. ESI guarantees that 90% of survey participants' responses to a question measuring overall satisfaction with the prescription benefit program will indicate "satisfied" or "very satisfied."	ESI will put \$15,000 as a total amount of penalty at risk.
Contact Center		
Customer Service Call — Average Speed of Answer	<p>ESI guarantees that calls will be answered in an annual average of 30 seconds or less with the exception of a failure in a third-party communication system.</p> <p>This standard is predicated on the installation of a toll-free telephone number unique to Sponsor.</p> <p>ESI's Member Choice Center calls will be excluded from this standard.</p>	ESI will put \$10,500 as a total amount of penalty at risk.
Customer Service Response Time — Blockage Rate (Busy Signal)	<p>ESI will guarantee an annual blockage rate of 2% or less with the exception of a failure in a third-party communication system. Blockage is defined as a caller receiving a busy signal.</p> <p>This standard is predicated on the installation of a toll-free number unique to Sponsor.</p> <p>ESI's Member Choice Center calls will be excluded from this standard.</p>	ESI will put \$10,500 as a total amount of penalty at risk.
Customer Service Response Time — Percent of Calls Abandoned	<p>ESI guarantees that the annual call abandonment rate will be 4% or less with the exception of a failure in a third-party communication system. The abandonment rates do not include calls terminated by members in less than 30 seconds.</p> <p>This standard is predicated on the installation of a toll-free number unique to Sponsor.</p> <p>ESI's Member Choice Center calls will be excluded from this standard.</p>	ESI will put \$9,000 as a total amount of penalty at risk.

Home Delivery		
Prescription Accuracy	Whereas ESI strives for 100% accuracy, ESI guarantees the annual accuracy in dispensing the correct drug, at the correct strength, and the correct dosage (excluding errors by prescribers) as follows: <ul style="list-style-type: none"> • 99.9%, for accounts with 34,999 or fewer annual mail prescriptions • 99.95%, for accounts with 35,000 or more annual mail prescriptions 	ESI will put \$6,000 as the total amount of penalty at risk.
Turnaround Time for Routine Prescriptions	ESI guarantees dispensing and shipping (or return) of prescriptions not subject to intervention with an annual average of three (3) business days of receipt of the order at ESI's Pharmacy. "Interventions" include all calls to members or prescribers to clarify the prescriber's direction, to obtain consent for formulary programs, generic or therapeutic substitution, or otherwise.	ESI will put \$4,500 as the total amount of penalty at risk.
Turnaround Time for Prescriptions Subject to Intervention	ESI guarantees dispensing and shipping (or return) of prescriptions subject to intervention within an annual average of five (5) business days of receipt of the order at ESI's Mail Service Pharmacy.	ESI will put \$4,500 as a total amount of penalty at risk.
Data Systems		
System Availability	ESI guarantees an annual average 99% system availability of the point-of-sale adjudication system. This standard excludes systems downtime attributed to regularly scheduled systems maintenance or systems downtime attributed to telecommunications failure or other circumstances outside the control of ESI.	ESI will put \$15,000 as a total amount of penalty at risk.
Reporting		
Timely Production of Management Reports	ESI guarantees access to the online reporting data will be available within an annual average of ten (10) days after month-end. Billing data will be available within an annual average of ten (10) days after the billing cycle.	ESI will put \$7,500 as a total amount of penalty at risk.
Replacement ID Card Production		
Timely Production of Replacement ID Cards	ESI guarantees that standard replacement ID cards will be produced within an annual average of five (5) business days of the receipt of machine-readable eligibility information.	ESI will put \$7,500 as a total amount of penalty at risk.
Eligibility		
Eligibility — Timeliness of Installations	ESI guarantees that electronic eligibility will be installed and eligibility status will be effective within an annual average of two (2) business days of receipt.	ESI will put \$7,500 as a total amount of penalty at risk.
Eligibility — Accuracy	ESI guarantees that electronic eligibility records will be loaded with 99.5% accuracy (as provided by Sponsor). This standard is contingent upon receipt of clean eligibility data delivered in an agreed upon format and that it can be determined with certainty that ESI incorrectly loaded the eligibility. This standard will be measured across ESI's client base.	ESI will put \$15,000 as a total amount of penalty at risk.

Retail Pharmacy Network		
Network Audits	ESI guarantees that 100% of participating pharmacies will be subject to statistical audits and that 50% of participating pharmacies will be subject to further investigation (e.g., desk audits, on-site audits, etc.) as a result of the statistical audits.	ESI will put \$7,500 as a total amount of penalty at risk.

**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 on behalf of itself and its subsidiaries ("ESI"), and STATE OF NEBRASKA ("Sponsor").

RECITALS

A. ESI, either directly or through its subsidiaries, engages in pharmacy benefit management services, including, among other things, pharmacy network contracting, pharmacy claims processing, mail and specialty drug pharmacy, and formulary and rebate administration ("PBM Services").

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

C. ESI and Sponsor desire that ESI be a 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

"Average Wholesale Price" or "AWP" means the average wholesale price of a prescription drug as identified by drug pricing services such as First Data Bank or other source recognized in the retail prescription drug industry selected by ESI for all clients. The applicable AWP shall be the 11-digit NDC for the product on the date dispensed, and for prescriptions filled in (a) Participating Pharmacies and CuraScript will be the AWP for the package size from which the prescription drug was dispensed, and (b) in the Mail Service Pharmacy the AWP for the 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.

"Brand Drug" means a prescription drug product that is not a Generic Drug as defined below. See MAC List.

"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.

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

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

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

"Generic Drug" means a prescription drug, whether identified by its chemical, proprietary, or non-proprietary name, that is therapeutically equivalent and interchangeable with drugs having an identical amount of the same active ingredient(s) and approved by the FDA. See MAC List.

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

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

"MAC" or "Maximum Allowable Cost" is the price charged to Sponsor for a prescription drug product on the MAC List.

"MAC List" means a list of prescription drug products identified as readily available as Generic Drugs, generally equivalent to a Brand Drug (in which case the Brand Drug may also be on the MAC List) and which are deemed to require pricing management due to the number of manufacturers, utilization and pricing volatility. Whether a Prescription Drug Claim processes at the Generic ingredient cost rates set forth on Exhibit A-1 is subject to the Covered Drug's inclusion on the MAC List and the application of "dispensed as written" 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 other than a Participating Pharmacy or for which the Member paid cash.

"Participating Pharmacy" means any licensed retail pharmacy with which ESI has executed an agreement to provide Covered Drugs to Members. Participating Pharmacies are independent contractors of ESI.

"PEPM" means per employee per Month determined by ESI from the Eligibility Files.

"Plan" means Sponsor's welfare benefit plan(s) that contains a prescription drug benefit.

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

"Rebates" means retrospective rebates that are paid to ESI, or otherwise retained by ESI, pursuant to the terms of a rebate contract negotiated independently by ESI with a pharmaceutical manufacturer, and directly attributable to the utilization of certain pharmaceuticals by Members. Rebates do not include Manufacturer Administrative Fees, product discounts related to purchase of prescription drug inventories, or compensation for services related to the distribution of certain pharmaceutical products or similar remuneration received by subsidiary pharmacies of ESI.

"Set-Up Forms" means any standard ESI document or form, which when completed and signed by Sponsor, will describe the essential benefit elements and coverage rules adopted by Sponsor for its Plan.

"Specialty Product List" means the standard list of Specialty Products and their reimbursement rates under the applicable (exclusive or open) option as updated from time to time.

"Specialty Products" means those injectable and non-injectable drugs on the Specialty Product Drug List and typically having one or more of several key characteristics, including: frequent dosing adjustments and intensive clinical monitoring to decrease the potential for drug toxicity and increase the

probability for beneficial treatment outcomes; intensive patient training and compliance assistance to facilitate therapeutic goals; limited or exclusive product availability and distribution; specialized product handling and/or administration requirements and/or cost in excess of \$500 for a 30-day supply.

"Subrogation Claim" means subrogation claims submitted by any state under Medicaid or similar United States or state government health care programs for which Sponsor is the primary payor. Processing of Subrogation Claims is an optional service.

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

"UM Company" means an independent, third party utilization management company as further described in Section 2.3(c).

ARTICLE II - PBM SERVICES

2.1 Eligibility/Set Up. Sponsor will submit a 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-2. 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 or intentional act.

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 periodically consolidates networks or migrates clients to other networks, in order to capitalize on certain operational efficiencies and other benefits associated with a streamlined network offering. ESI will notify Sponsor as soon as reasonably possible of any change having a material impact on Member access, and work with Sponsor in good faith to mitigate any negative effects to the Plan or Members. For purposes of this Section, "material impact on Member access" would mean, at a minimum, that five percent (5%) of Members would be affected by the reduction in providers in the network.

(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 electronic and on-site audits of Participating Pharmacies to determine compliance with their provider agreements. ESI will attempt recovery of identified overpayments through offset, demand or other reasonable means; provided that ESI will not be required to institute litigation. Recovered overpayments are credited to Sponsor. To compensate ESI for the cost of conducting audits, ESI charges an audit fee in the amount set forth in Exhibit A upon recovery of overpayments. Copies of participation requirements and auditing processes are available upon request.

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

(b) Mail Service Pharmacy. Members may have prescriptions filled through the Mail Service Pharmacy. Subject to applicable law, ESI may communicate with Members regarding benefit design, cost savings, availability and use of the Mail Service Pharmacy, as well as provide supporting services.

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

2.3 Claims Processing.

(a) Claims Processing. ESI will perform claims processing services for Covered Drugs dispensed by Participating Pharmacies, Mail Service and CuraScript. ESI will perform a standard concurrent drug utilization review ("DUR") analysis of each prescription submitted for processing on-line by a Pharmacy in order to assist the dispensing pharmacist and prescribing physician in identifying potential drug interactions, incorrect prescriptions or dosages, and certain other circumstances that may be indicative of inappropriate prescription drug usage. ESI's DUR processes are not intended to substitute for the professional judgment of the prescriber, the dispensing pharmacist or any other health care professional providing services to the Member. If elected by Sponsor, ESI will process Member Submitted Claims and/or Subrogation Claims in accordance with the rules in the Set-Up Forms and ESI's standard procedures. Sponsor or its 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 on Exhibit A-2 (if applicable), ESI will provide prior authorization ("PA") services as specified and directed by Sponsor for drugs designated on the Set-Up Form. Prior authorized drugs must meet Sponsor-approved guidelines ("Guidelines") before they are deemed to be Covered Drugs. Sponsor authorizes coverage for an otherwise excluded use in the event of co-morbidities, complications and other factors not otherwise expressly set forth in the Guidelines, unless Sponsor directs that Sponsor be provided such issue for determination. In determining whether to authorize coverage of such drug under the PA Program, ESI will apply only the Guidelines and may rely entirely upon information about the Member and the diagnosis of the Member's condition provided to it from 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 physician. As part of the PA process, ESI will perform reconsiderations of denials to determine if information was missing or unavailable at the time of the initial determination. In addition, ESI has agreed to perform an initial appeal if requested by Sponsor.

(c) Appeals. ESI will perform an initial appeal of a denied claim if requested by Sponsor. ESI will not conduct any final appeals of denied Member Submitted Claims or PA requests, and as of the Effective Date Sponsor has indicated that it will handle final appeals. Detailed processes and procedures for PA and the performance of appeals (or facilitation of appeals) will be provided to Sponsor during the implementation process and at any time upon request during the Term.

(d) UM Company. Sponsor shall have to option to facilitate any level of appeal, including a final appeal, through the UM Company for the fees set forth in Exhibit A-2, or through a third party of Sponsor's choice. In any case, ESI will route to UM Company (Sponsor or other Sponsor designated entity) Member appeals properly sent to ESI's designated address. In the event Sponsor elects to utilize the UM Company, the UM Company will be responsible for conducting the appeal on behalf of Sponsor in accordance with state law requirements, and Sponsor acknowledges and agrees that:

(i) ESI is not acting as a fiduciary in connection with the appeals being conducted by the UM Company, and ESI will not be named by Sponsor as a fiduciary in connection with such appeals; the UM Company, and not ESI, will be conducting appeals on behalf of Sponsor; the UM Company is an independent contractor of ESI and ESI does not in any way control or direct the UM Company with respect to appeals conducted by the UM Company; and

(ii) with respect to the appeals designated by Sponsor for UM Company to perform, the UM Company will have full authority and full discretion to interpret the terms of Sponsor's plan, make all findings of fact and conduct the appeals.

(iii) ESI represents to Sponsor that UM Company has contractually agreed that: (A) UM Company will conduct appeals in accordance with the applicable law 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. ESI will not be liable to Sponsor for any injury or damages arising as a result of the UM Company's acts or omissions.

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

2.4 Formulary Support and Rebate Management.

(a) Formulary Adherence and Clinical Programs. Upon Sponsor's written election, ESI will provide the then available Formulary management, clinical, safety and/or trend programs identified on Exhibit A-2, or such other programs as ESI may introduce from time to time (e.g., step therapy modules, new trend management program), some of which may require payment of additional fees if so elected for use by Sponsor.

(b) Rebate Program. ESI will pay to Sponsor the amounts set forth on Exhibit A-3.

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 perform custom programming (e.g., to develop a unique application solely for Sponsor at Sponsor's request) at ESI's standard hourly rate for such services, as set forth in Exhibit A-2.

(b) Claims Data.

(i) Claims Data Retention. ESI will retain Sponsor's claims data 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).

(iii) De-Identified Claims Data. Upon Sponsor approval ESI may use both during and after the term of this Agreement the anonymized claims data (de-identified in accordance with HIPAA) and drug and related medical data collected by ESI or provided to ESI by Sponsor for research, provider profiling and maintaining databases for benchmarking, drug trend, cost analyses, cost comparisons or other ESI business purposes. ESI will not sell Sponsor data.

(c) Sponsor Audits. Provided that this Agreement has been duly executed by Sponsor and Sponsor is current in the payment of invoices under this Agreement, Sponsor may, upon written request, audit the prescription management services provided pursuant to this Agreement on an annual basis (unless additional audits are warranted), consistent with the Audit Protocol set forth in Exhibit B. Sponsor may use an independent third party auditor ("Auditor"), so long as such Auditor does not have a conflict of

interest with ESI (as determined by ESI acting reasonably and in good faith), and provided that Sponsor's Auditor executes a mutually acceptable confidentiality agreement. Any written request by Sponsor to permit an Auditor to perform an audit will constitute Sponsor's direction and authorization to ESI to disclose PHI to the Auditor.

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

2.6 Pharmacy Management Funds. Subject to the following, ESI will provide Pharmacy Management Funds ("PMF") up to \$3.00 per Member as of the Effective Date, solely to fund mutually agreed upon services, projects and programs directly related to the pharmacy benefit administered under this Agreement:

(a) PMF amounts must be based on the fair market value of the direct expenses of the service, project or program funded, and either Sponsor or ESI may use the PMF to cover the fair market value of expenses requiring joint resources. Funds may not be used in connection with the Medicare Part D program without ESI's consent, which consent will not unreasonably be withheld following a regulatory assessment.

(b) Sponsor will submit adequate documentation to support reimbursement within 180 days of incurring the applicable expense.

(c) Sponsor represents and warrants that (i) it will only request reimbursement for its actual expenses incurred in performing the service, project or program and such service, project or program was performed or provided; (ii) the amount of the reimbursement is equal to or less than the reasonable fair market value of the actual expenses incurred by Sponsor; (iii) it will notify and disclose the amount and the terms of any PMF reimbursements to Members and other third parties to the extent required by applicable laws and regulations.

(d) ESI intends to amortize the PMF over the Initial Term of the Agreement on a straight-line basis, unless otherwise required by law or accepted accounting principles. Sponsor will have no right to interest on, or the time value of, any PMF. Unused funds shall be retained by ESI. In the event of a termination of this Agreement for any reason other than ESI's uncured material breach of this Agreement prior to the expiration of the Initial Term, Sponsor will reimburse ESI an amount equal to any paid but unamortized portion of the PMF. Reimbursement to ESI by Sponsor pursuant to this Section will not be in lieu of any other rights or remedies ESI may have in connection with the termination of this Agreement, including monetary or other damages. PMF reimbursements are not payable until this Agreement is executed.

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," and together with Claims Reimbursements, "Fees") set forth in Exhibit A.

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 three (3) Business Days from the date of Sponsor's receipt of each ESI invoice. Sponsor shall be permitted up to four (4) Grace Periods during each calendar year. In the event Sponsor exceeds the four (4) Grace Periods, or Sponsor is unable to issue payment due to system failure for a period in excess of five (5) days, ESI shall have the right to charge, and Sponsor agrees to pay, interest on the unpaid balance from

the due date until paid at *The Wall Street Journal* prime rate plus two percent (2%). In addition to any rights under Section 6.2 and to the extent permitted by law, ESI may apply Rebate and Manufacturer Administrative Fees otherwise owed to Sponsor against any unpaid Fees. For purposes of this Section 3.2(b), the terms (i) "Grace Period" means (2) two business days after the usual due date for the invoice; and (ii) "Business Days" includes all Nebraska state holidays for which government offices are closed.

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.

4.2 Confidential Information.

(a) To the extent permitted by law, each party agrees that the terms of this Agreement and information of the other party, including, but not limited to and the following, are represented by said parties to 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, 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: Sponsor and Member data, Eligibility Files, Set-Up Form information, business operations and strategies. To the extent permitted by law, 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 if so allowed by law. 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; PRICING BENCHMARKS; 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 the services provided hereunder, other than taxes based on the net income of ESI. If there is a change in federal or state laws or regulations or the interpretation thereof, regulatory, judicial or legal action that, among other things, materially burdens ESI, requires ESI to increase payments or shorten payment times for Covered Drugs to Participating Pharmacies, or materially changes the scope of services hereunder, then the parties shall negotiate an appropriate modification of the services, reimbursement rates, administrative fees and/or Rebates such that the parties are returned to their comparable economic position as of the Effective Date. If the parties cannot agree on a modification or adjusted fee or rates, then either party may terminate the Agreement on ninety (90) days prior written notice to the other.

5.2 Pricing Benchmarks. The parties understand there are extra-market industry, legal, government and regulatory activities which may lead to changes relating to, or elimination of, the AWP pricing index that could alter the financial positions of the parties as intended under this Agreement. The parties agree that their mutual intent has been and is to maintain pricing stability as intended and not to advantage either party to the detriment of the other. Accordingly, to preserve this mutual intent, if ESI undertakes any or all of the following: (a) changes the AWP source across its book of business (e.g., from First DataBank to MediSpan); (b) maintains AWP as the pricing index with an appropriate adjustment as described below, in the event the AWP methodology and/or its calculation is changed, whether by the existing or alternative sources; (c) transitions the pricing index from AWP to another index or benchmark (e.g., to Wholesale Acquisition Cost), Participating Pharmacy, CuraScript and Mail Service Pharmacy rates, rebates and guarantees, as applicable, will be modified as reasonably and equitably necessary to maintain the pricing intent under this Agreement. To validate the soundness of ESI's methodology to be used for determining adjusted prices, ESI engaged the services of Milliman, Inc. ("Milliman"), an independent, internationally recognized actuarial firm. Milliman conducted a thorough analysis of ESI's logic and methodology for establishing cost-neutral adjusted contract discount rates and determined it to be an appropriate method for calculating a price neutral adjusted AWP. A copy of Milliman's analysis has been provided to Sponsor. ESI agrees that if there is any change in Milliman's opinion or analysis, ESI will provide any updates to Sponsor. Further, ESI hereby represents and warrants that it will implement the methodology described in the Milliman analysis. ESI shall provide Sponsor with at least ninety (90) days notice of the change (or if such notice is not practicable, as much notice as is reasonable under the circumstances), and written illustration of the financial impact of the pricing source or index change (e.g., specific drug examples). If Sponsor has reasonable proof that the adjusted pricing is not economically equivalent within sixty (60) days of the receipt of the ESI notification, Sponsor may terminate the Agreement upon ninety (90) days written notice, provided ESI retains the right to implement the change on the effective date as specified in the notification.

5.3 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 neither it nor the Plan intends for ESI to be a fiduciary of the Plan, and neither will name ESI or any of ESI's wholly-owned subsidiaries as a plan fiduciary. Sponsor further acknowledges and agrees that neither ESI nor any of ESI's wholly-owned subsidiaries: (i) have any discretionary authority or control respecting management of the Plan's prescription benefit program, or (ii) exercise any authority or control respecting management or disposition of the assets of the Plan or Sponsor. Sponsor further acknowledges that it is responsible for the Plan's benefit design, coverage rules and determinations relating to 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.

5.4 Disclosure of Certain Financial Matters. In addition to the administrative fees paid to ESI by Sponsor, if any, ESI and ESI's wholly-owned subsidiaries derive margin from fees and revenue in one or more of the ways as further described in the Financial Disclosure to ESI PBM Clients set forth in Exhibit D hereto ("Financial Disclosure"). In negotiating any of the fees and revenues described in the Financial Disclosure or in this Agreement, ESI and ESI's wholly-owned subsidiaries act on their own behalf, and not for the benefit of or as agents for Sponsor, Members or the Plan. ESI and ESI's wholly-owned subsidiaries retain all proprietary rights and beneficial interest in such fees and revenues described in the Financial Disclosure and, accordingly, Sponsor acknowledges that neither it, any Member, nor the Plan, has a right to receive, or possesses any beneficial interest in, any such fees or revenues; provided, that ESI will pay Sponsor amounts equal to the amounts expressly set forth on Exhibit A-3. Nothing in the Financial Disclosure is intended to supersede any of the specific financial terms and conditions agreed to under this Agreement.

ARTICLE VI - TERM AND TERMINATION; DEFAULT AND REMEDIES

6.1 **Term.** (a) This Agreement will commence effective as of January 1, 2009 ("Effective Date"), and will continue for a period of two (2) years ("Initial Term") and two (2) optional one (1) year renewals on the same terms and conditions as set forth herein, and may be terminated earlier or extended in accordance with the terms of this Agreement.

(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. Notwithstanding any provision in this Agreement to the contrary, in no event will this Agreement be terminable "without cause" prior to the expiration of the Initial Term by either party.

6.2 Termination.

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

(b) **Non-Payment.** Subject to Sponsor's rights to Grace Periods as set forth in Section 3.2(b), 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 in accordance with the terms of this Agreement. ESI shall attempt collection through written and verbal communications with Sponsor prior to sending any 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 filed during the Term but filed with ESI after the effective date of termination ("Termination Date"). Sponsor will continue to pay ESI in accordance with this Agreement for any Fees for PBM Services provided during the term and any run-off period. ESI will continue filing for Rebates for claims incurred prior to the Termination Date and will pay Sponsor Rebates for such claims in accordance with the Rebate payment schedule set out herein.

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, (other than acts by Sponsor as the pharmacy plan hereunder) 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. To the extent permitted by law, 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. This provision shall not limit any ESI indemnification obligations set forth in Section 6.3 below.

(d) Indemnification.

(i) In addition to any indemnification obligations set forth in the Business Associate Agreement, ESI will indemnify, defend 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 CuraScript), or (B) ESI's breach of this Agreement.

(ii) ESI shall have no liability for and shall not be responsible to indemnify Sponsor for (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 provided to such party.

(iii) As a condition of indemnification, Sponsor shall notify ESI in writing promptly upon learning of any Claim for which indemnification may be sought hereunder, and subject to applicable laws and regulations, will tender the defense of such claim to ESI or otherwise cooperate with ESI to dispose of the Claim. ESI will not be obligated to indemnify Sponsor with respect to any Claim settled without ESI's written consent.

6.4 Survival. The parties' rights and obligations under the last sentences of Sections 2.4(b), 2.5, Articles III, IV and V; and Sections 6.2(c), 6.3, 6.4, 7.2, 7.3, 7.4, 7.6 and 7.11 will survive the termination of this Agreement for any reason.

ARTICLE VII – MISCELLANEOUS

7.1 Liability Insurance 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 CuraScript 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 has provided to Sponsor, and will continue to provide upon request, copies of certificates of coverage. 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

State of Nebraska
Attn: Steve Sulek, Administrator
AS Materiel Division
301 Centennial Mall South
Lincoln, NE 68508
With copy to Legal Department
Fax No. (402) 471-2800

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 Successors and Assigns. This Agreement will be binding upon, and inure to the benefit of and be enforceable by, the respective successors and permitted assigns of the parties hereto; provided that this Agreement may be assigned by Sponsor upon ESI's written consent, which consent will not unreasonably be withheld.

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. If there is any conflict between the terms of State of Nebraska RFP 2470Z1 (as modified by previous addenda) ("Nebraska RFP") and the provisions of this Agreement, the terms of this Agreement shall control to the extent of such conflict over the terms of the Nebraska RFP. If there is any conflict between the terms of the ESI Proposal and this Agreement, the terms of this Agreement shall control. Where there is a conflict between a provision in the Nebraska RFP and in the ESI Proposal, the Nebraska RFP shall control unless otherwise provided in this Agreement or ESI has identified the provision in the Exceptions section of the ESI Proposal.

7.6 Choice of Law. This Agreement will be construed and governed in all respects according to the laws in the State of Nebraska, 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 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.

EXHIBIT A

PHARMACY PROGRAM FEES

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

II. Conditions. 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. In the event one or more of the triggers identified below occurs, (whether by virtue of voluntary Sponsor action or mandated government or regulatory action or otherwise) ("Triggers"), and the Trigger(s) has the effect of reducing the number of Covered Drug Claims adjudicated on-line; lowering the amount of Rebates earned by Sponsor; or reducing the discounts achieved (relating to ingredient cost guarantees), ESI will have the right to make an equitable adjustment to the rates, administrative fees and/or Rebates (singly and collectively, "Terms"), solely as necessary to return ESI to its contracted economic position subject to the Adjustment Process set forth in Section III below. The Triggers include:

- (a) a material change in the size, demographics or gender distribution of Sponsor's Membership compared to data provided by Sponsor; including, but not limited to a minimum of 25,000 Members, none of whom are in a 100% Copayment plan;
- (b) Formulary, benefit design changes made by Sponsor; implementation of OTC plans, clinical or trend programs or similar change;
- (c) Use on-site clinics or pharmacies to dispense prescription drugs to Members; or
- (d) Rebate revenue materially decreases because Brand Drugs move off-patent to generic status.

III. Adjustment Process. To the extent Sponsor desires to initiate a Trigger, Sponsor shall notify ESI at least 90 days in advance of the desired change (or as much notice as is reasonable under the circumstances) and ESI will evaluate and model the change and notify Sponsor of a fee, rate or Rebate adjustment, if any, that ESI believes is required to restore ESI to its intended contracted economic position. Sponsor may elect not to make the change, or elect to make the change and agree to the modification in the Terms effective as of the effective date of the Trigger. If a Trigger occurs, whether ESI is notified in advance or not, ESI shall provide an evaluation and analysis to Sponsor of the impact of the Trigger and the proposed adjustment to the Terms. ESI and Sponsor agree to cooperate in good faith to reach agreement on the adjustment to Terms. If no agreement is reached within a reasonable time [60?], either party may elect to terminate the Agreement; provided however, that the modification to the Terms shall be implemented as of the effective date of the Trigger.

Exhibit A-1

Pharmacy Reimbursement Rates

I. Participating Pharmacy Reimbursement Rates

Network	Minimum 50,000 Participating Pharmacy Network 1 – 83 days' supply	Participating Pharmacy Maintenance Broad Network 84 – 90 days' supply
Ingredient Cost - Brand <i>single source Generic Drugs are priced as brands</i>	Pass-through	Pass-through
Ingredient Cost - Generic	Pass-through	Pass-through
Ingredient Cost - Compound Drugs	Pass-through	Pass-through
Dispensing Fee/Rx	2009: \$1.61 2010: \$1.43	2009: \$0.77 2010: \$0.60
Administrative Fee/Rx	\$5.97 PEPM	

Notwithstanding the preceding, ESI will guarantee a minimum average discount for Generic Drugs and Brand Drugs, as set forth in the table below.

II. Mall Pharmacy Reimbursement Rates

Ingredient Cost - Brand Drugs <i>single source Generic Drugs are priced as brands</i>	AWP - 26%
Ingredient Cost - Generic Drugs	AWP - 26% or, if lower, MAC
Ingredient Cost - Compound Drugs	Combined AWP plus applicable service fee
Dispensing Fee/Rx <i>Subject to change for changes in delivery rates</i>	\$0.00
Administrative Fee/Rx	\$0.00
Minimum Rate / Rx	\$8.99

Notwithstanding the preceding, ESI will guarantee a minimum average discount for Generic Drugs as set forth in the table below.

III. Pricing Guarantees:

Ingredient Cost Guarantee. ESI will guarantee a minimum average discount as reflected below on Sponsor utilization to be calculated as follows:

[1-(total discounted AWP ingredient cost (excluding dispensing fees and claims with ancillary charges, and prior to application of Copayments) of applicable Prescription Drug Claims for the annual period divided by total undiscounted AWP ingredient cost (both amounts will be calculated as of the date of adjudication) for the annual period)]. Discounted ingredient cost will be the lesser of MRA, U&C or AWP discount adjudication methodology.

Type of Guarantee	Participating Pharmacy	Mail Service Pharmacy	Claims Included	Claims Excluded
Generic	2009: AWP - 68% 2010: AWP - 69.5%	AWP - 74%	MRA, AWP, U&C and zero balance due - discounted cost before copay	OTC, Compounds, Products subject to patent actions, Single Source Generic Drugs and Specialty Products
Brand 1-83 days' supply	2009: AWP - 16.89% 2010: AWP - 17.38%	N/A	AWP, U&C and zero balance due - discounted cost before copay	OTC, Compounds and Specialty Products
Brand 84-90 days' supply	2009: AWP - 20.20% 2010: AWP - 20.69%	N/A	AWP, U&C and zero balance due - discounted cost before copay	OTC, Compounds and Specialty Products

Guarantees will be measured and reconciled on an annual basis within 90 days of the end of each contract year. The guarantees shall be subject to adjustment as provided in Section II of Exhibit A if Sponsor changes its benefit design or Formulary and it causes a material impact on the discount achieved. ESI will pay the difference of Sponsor's net cost for any shortfall between the actual result and the guaranteed result. Any excess achieved in any other guarantee offered pursuant to this Agreement will be used to make up for, and offset, a shortfall in other guarantee(s).

IV. Specialty Products

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

(b) Open. Specialty Products shall be available through CuraScript and Participating Pharmacies for the Participating Pharmacy Specialty Product reimbursement rates.

	Ingredient Cost	Dispensing Fee
Exclusive CuraScript	See Exclusive Specialty Drug List	\$0.00
Non-Exclusive CuraScript	Non-Exclusive Specialty Drug List Lesser of AWP discount or MRA	\$0.00
Participating Pharmacy Specialty Products	Participating Pharmacy Specialty Drug List Lesser of AWP discount, U&C or MRA	\$2.00

(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 specified in the Agreement apply to Specialty Products.

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

(i) If Sponsor has expressly excluded a specific therapy class or product on a Set-Up Form, Specialty Products in such excluded classes will automatically be deemed excluded

from coverage and will reject as "NDC Not Covered" through Participating Pharmacies, Mail Service Pharmacy and CuraScript; otherwise, all other Specialty Products will be implemented as Covered Drugs at the rate specified in the applicable Specialty Drug List or Notice, and Sponsor acknowledges and agrees to same. If Sponsor desires to cover otherwise excluded Specialty Products, Sponsor must notify ESI in writing that it desires to cover the Specialty Product before ESI will adjudicate as a Covered Drug, and if ESI receives such confirmation of coverage from Sponsor such Specialty Product will be loaded thereafter as a Covered Drug at the applicable Specialty Drug List reimbursement rate set forth in the Notice.

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

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

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

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

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

(iv) Social Services: patient advocacy, hardship reimbursement support, and indigent and patient assistance programs.

The aforementioned services do not include home infusion supplies and related home health services and may require the payment of additional fees, such as nursing per diems, pumps, and related equipment.

Exhibit A-2

Administrative Services and Clinical Program Fees

I. Administrative Services

PBM Services	Fee
<ul style="list-style-type: none"> • Customer Service for Members • Eligibility submission • Electronic/online submission • FSA Feeds 	<p>No additional fee</p> <p>No additional fee</p> <p>No additional fee</p>
<ul style="list-style-type: none"> • Software Training for Access to Our Online System(s) • Electronic Claims Processing • Plan Setup 	<p>No additional fee</p> <p>No additional fee</p> <p>No additional fee</p>
Participating Pharmacies	
<ul style="list-style-type: none"> • Pharmacy Help Desk • Pharmacy Network Management • Pharmacy Reimbursement • Network Development Upon Request 	<p>No additional fee</p> <p>No additional fee</p> <p>No additional fee</p> <p>No additional fee</p>
Mail Services	
<ul style="list-style-type: none"> • Benefit Education (includes Mail Promotion Program) • Prescription Delivery — standard 	<p>No additional fee</p> <p>No additional fee</p>
Reporting Services	
<ul style="list-style-type: none"> • Web-based Client Reporting — produced by Sponsor • Additional Reports • Billing Reports (including claims paid tape) • Annual Strategic Account Plan Report • Custom Ad-Hoc Reporting through ESI Benefits Analysis and Consulting Services (BACS), not requiring IS Programming • Claims detail extract file electronic (NCPDP format) 	<p>No additional fee</p>
<ul style="list-style-type: none"> • Load 12 months claims history for clinical programs and reporting • Inquiry access to Anchor claims processing system 	<p>No additional fee</p> <p>No additional fee; the State of Nebraska is responsible for its own telecommunication charges</p>
Formulary Support Services	
<ul style="list-style-type: none"> • Annual Formulary Communications • Posted at Express-Scripts.com • Bulk shipped to Sponsor 	<p>No additional charge</p> <p>No additional charge</p>
Website Services	
<ul style="list-style-type: none"> • Digital Certificates • Up to five certificates • Express-Scripts.com for Clients & Advisors • Express-Scripts.com for Members 	<p>No additional fee</p> <p>No additional fee</p> <p>No additional fee</p>
Implementation Package and Member Communications	
<ul style="list-style-type: none"> • Implementation Support • New member packets (includes 2 standard resin ID cards) • Member Replacement cards printed via web 	<p>No additional fee</p> <p>No additional fee</p> <p>No additional fee</p>

<u>PBM Services</u>	<u>Fee</u>
• Eligibility changes by phone, fax or paper	\$1.00/change
• Member Submitted Paper Claims Processing	\$2.50/claim
• Medicaid subrogation claims	\$2.50/claim
• Coordination of Benefits (COB)	No additional fee
• Standard Process (reject for primary carrier)	\$.04/claim
• Commercial COB On-Line	
• Medicare Part B COB	
o Retail	\$.12 PMPM
o Mail	\$.30 PMPM
<u>Participating Pharmacies</u>	
• Pharmacy Audit Recoveries	20% of audit recoveries OR \$.02/claim
<u>Reporting Services</u>	
• Web-based Client Reporting — produced by Express Scripts	\$100 per report
• Information Systems (IS) programming, if needed for custom ad hoc reporting or other customized services at the State's request	Up to \$150 per hour, with a three-hour minimum. All prices are to be specified as part of a Statement of Work to be executed by the State prior to beginning programming.
<u>Website Services</u>	
• Digital Certificates	
• More than five certificates	Up to \$150 for additional users
<u>Member Communications</u>	
• Member Requested Replacement Packets	\$1.50 + postage per packet
• Client requested annual re-carding	\$1.50 + postage per packet
• Custom Materials	Priced upon request
<u>Final Appeals by MCMC</u>	
• Clinical appeals	\$350/review
• Non-clinical appeals	\$160/review
• Monthly Final Appeals Fiduciary retainer	\$1,000 per month
All Final Appeals fees are paid to MCMC	
<u>Medicare RDS Services</u>	
• Part D Subsidy standard service (Express Scripts sends reports to client)	\$0.62 PMPM for Medicare-qualified members with a minimum annual fee of \$5,000
• Part D Subsidy enhanced service (Express Scripts sends reports to CMS on behalf of client)	\$1.12 PMPM for Medicare-qualified members with a minimum annual fee of \$7,500
• Part D Subsidy enhanced service (Express Scripts sends reports to CMS on behalf of client) and Part B package	\$1.50 PMPM for Medicare-qualified members
• Notice of Creditable Coverage	\$1.35/letter + postage

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

Enhanced Trend Package	Fee	Guaranteed Savings
<ul style="list-style-type: none"> • Prior Authorization — Clinical Base List • Prior Authorization — Clinical Supplemental List • Drug Quantity Management • Standard per Rx • Select per Rx (optional) • Select per day supply (optional) • Step Therapy — Enhanced Trend Package Modules • ACE inhibitors and Angiotensin-2 receptor blockers (ARBs), • Non-steroidal anti-inflammatory drugs (NSAIDs) and COX-2s, • Proton Pump Inhibitors (PPIs) — Enhanced or Standard, • Selective serotonin reuptake inhibitors (SSRIs), • HMGs — Enhanced, • Calcium Channel Blockers, • Leukotriene Pathway Inhibitors, • Topical Immunomodulators, • Other Antidepressants, • Beta Blockers, • Hypnotics, • Non-Sedating Antihistamines • RapidResponse Member Support for Step Therapy • Non-formulary RapidResponse 	\$0.90 PMPM	\$4.25 PMPM

<p align="center">Individual Trend Programs**</p> <p>Select from individual programs listed below in alphabetical order.</p>	<p align="center">Fee</p>	<p align="center">Guarantee</p>
<p>Drug Choice Management⁽¹⁾</p> <p>A. Support appropriate selection of cost-effective mail service medications through retrospective member interventions.</p> <p>B. Annual formulary notification mailings to affected retail and mail members on maintenance, single-source brands.</p>	<p align="center">No additional fee</p>	<p align="center">Not available</p>
<p>Drug Quantity Management</p> <p>Ensure that the quantity of units supplied in each prescription remains consistent with clinical dosing guidelines and a Sponsor's benefit design</p> <ul style="list-style-type: none"> • Standard per Rx • Select per Rx (optional) • Select per day supply (optional) <p>Note: List of drugs subject to change at the discretion of Express Scripts.</p> <ul style="list-style-type: none"> • Automatic updates 	<p align="center">\$0.04 PMPM</p>	<p align="center">\$0.10 PMPM (Must include standard per Rx list)</p>
<p>High Utilizer & Case Management Report</p> <p>Identifies members who are at high risk for hospitalization or increased medical/pharmacy cost. Drug/disease targeting report including member detail.</p>	<p align="center">\$150/report</p>	<p align="center">Not available</p>
<p>Physician Consultation — Client Specific</p> <p>Express Scripts pharmacists conduct client-specific one-on-one phone consultations with selected physicians. Physician consultation focused on sponsor formulary brand and generic products.</p>	<p>Phone-Based Program: \$5,800 set-up cost plus \$100 per targeted physician with a minimum of 100 physicians. Subsequent quarters \$1,000 set-up cost plus \$100 per targeted physician.</p> <p>Mailed Profiles Only (i.e., no telephone consultations): \$5,800 set-up plus \$1.70 per mailed profile. Subsequent implementations \$1,000 plus \$1.70 per mailed profile.</p> <p>Telephone-Based Program plus additional profiles to physicians other than the group targeted for consultations: Same price as phone based program plus \$1.70 per additional profile.</p>	<p align="center">Not available</p>

<p align="center">Individual Trend Programs**</p> <p>Select from individual programs listed below in alphabetical order.</p>	<p align="center">Fee</p>	<p align="center">Guarantee</p>
<p>Prior Authorization — Administrative⁽¹⁾ Manage plan benefits and drug costs by ensuring appropriate prescribing and use by members</p> <ul style="list-style-type: none"> • Non-clinical PA • Lost/stolen overrides • Vacation supplies 	<p align="center">No additional fee</p>	<p align="center">Not available</p>
<p>Prior Authorization — Clinical Base List Intervene to support appropriate use at the point of service through pre-established clinical criteria.</p> <ul style="list-style-type: none"> • Tretinoin (Retin-A, Avita, Altinac) • Becaplermin (Regranex) • Tazarotene (Tazorac) • Sildenafil (Revatio) • Botulinum toxin type A (Botox), Myobloc (botulinum toxin type B) • Epoetin alfa (Epoen and Procrit), Darbepoetin alfa (Aranesp) • Growth Promoting Agents - Somatropin and Somatrem (growth hormone — Humatrope, Nutropin, Genotropin, Norditropin, Nutropin AQ, Saizen, Protopin, and Serostim) Increlex, Iplex • Alpha-1-proteinase inhibitor (Prolastin, Aralast) <p>Note: List of drugs subject to change at the discretion of Express Scripts.</p> <ul style="list-style-type: none"> • Automatic Updates 	<p align="center">No additional fee</p>	<p align="center">Not available</p>
<p>Prior Authorization — Clinical Supplemental List Intervene to support appropriate use at the point of service through pre-established clinical criteria.</p> <ul style="list-style-type: none"> • Antifungals (Diflucan, Lamisil, Sporanox) • Penlac • Topamax (topiramate) • Zonegran (zonisamide) • Provigil (modafinil) • Forteo (teriparatide) • Amevive (alefacept) • Remicade (infliximab) • Raptiva (efalizumab) • Enbrel (etanercept) • Orenzia (abatacept) • Humira (adalimumab) • Kineret (anakinra) • Xolair (omalizumab) • Exubera (inhaled insulin) • Rituxan (rituxamab) <p>Note: List of drugs subject to change at the discretion of Express Scripts</p> <ul style="list-style-type: none"> • Automatic Updates 	<p align="center">\$0.05 PMPM</p>	<p align="center">\$0.10 PMPM</p>
<p>Prior Authorization — Other Clinical Overrides (e.g.:</p> <ul style="list-style-type: none"> • Non-standard Prior Authorization medications, • medical exceptions, • custom Step Therapy modules) 	<p align="center">\$30/decision \$40/physician review</p>	<p align="center">Not available</p>

Individual Trend Programs** Select from individual programs listed below in alphabetical order.	Fee	Guarantee
\$0 Copayment Program Benefit plan design option that offers members the opportunity to pay a \$0 copayment for generic alternatives of selected non-formulary brand drugs in clinically appropriate therapy classes for a set period of time.	\$1.25 per mailing or \$1,000 for member identification & authorization of \$0 copay	Not available
Rx Savings Select (RxSS) A program that increases member awareness of their total pharmacy spend, as well as educates them on available savings opportunities for targeted drugs in retail and home delivery.	\$2.50 per communication	Not available

* Clinical Fees and guaranteed savings for the Step Therapy Enhanced Trend Package will increase by 3% per year during the term of the contract.

** All programs are optional and will only be implemented upon Client request.

Safety Management**		
Program Name	Description	Fees
<i>Concurrent DUR— Clinical</i>	Point-of-service edits for the most important drug- and member-specific pharmaceutical care issues	No additional fee
Emerging Therapeutic Issues Management	Rapid communication to alert physicians, members, and clients about significant patient-safety related issues (drug withdrawals, black box warnings, and class I recalls). Proactively alerts our clients to new drugs that are anticipated to have a significant impact on pharmacy cost.	No additional fee
Retrospective DUR	Daily and weekly physician communication targeting multiple utilization issues. Drug-Drug Interactions Drug-Patient Interactions Drug-Disease Interactions Drug-Pregnancy Interactions Drug Overutilization Drug Underutilization Duplicate Therapy Addictive Substances Long-term hypnotics	\$0.03/claim
Retrospective DUR for Seniors	Weekly physician intervention to identify inappropriate utilization issues in the senior population Polypharmacy Drugs of Concern	\$0.02/claim

** All programs are optional and will only be implemented upon client request.

Care Management**		
Program Name	Description	Fees
Care Management (Level 1) Member Portal	Disease specific education on more than 40 disease states accessed through member portal. Includes e-bulletins and personal reminders.	No additional fee
Care Management (Level 2)	Disease and/or therapy specific, physician and patient letter based interventions.	\$0.01/Claim — Asthma \$0.01/Claim — Cardiovascular Disease \$0.02/Claim — CHF \$0.02/Claim — Depression \$0.01/Claim — Diabetes \$0.03/Claim — GI Disease \$0.02/Claim — Hypertension \$0.02/Claim — Migraine Note: Fee shall be added to, then current, claims administration fees for retail and mail claims.

** All programs are optional and will only be implemented upon Client request.

EXHIBIT A-3
Rebates

1. ESI will pay to Sponsor an amount equal to the greater of the percentage or flat amount below:

	2-Tier Plan Design or 3-Tier Plan Design Less than \$15.00 Copay Differential ESI National Preferred Formulary		3-Tier Plan Design Minimum \$15.00 Copay Differential ESI National Preferred Formulary	
	Participating Pharmacies and CuraScript	Mail Service Pharmacy	Participating Pharmacies and CuraScript	Mail Service Pharmacy
Rebates and Manufacturer Administrative Fee	100%			
Per Prescription Drug Claim	2009: \$5.88 2010: \$5.66	2009: \$27.57 2010: \$24.10	2009: \$7.99 2010: \$7.68	2009: \$36.36 2010: \$31.45

2. Member Submitted and Subrogation Claims, OTC products, Plans that do not meet eligibility requirements set forth herein, claims older than 180 days, claims through Sponsor-owned or 340b pharmacies, claims for 100% copayment (cash and carry) plans not offered in connection with a health plan benefit, and other similar claims may not be eligible for Rebates.

3. Guaranteed amounts are calculated based upon a thirty (30) day supply for Participating Pharmacy claims and a ninety (90) day supply for Mail Service Pharmacy claims. Guarantees are measured in the aggregate and reconciled annually. Amounts representing the Rebates and Manufacturer Administrative Fees allocated to Sponsor pursuant to the terms of this Agreement, as specified above, will be paid on a quarterly basis approximately 150 days following the end of each quarterly period. To the extent permitted by law, ESI will have the right to apply Sponsor's Rebate and Manufacturer Administrative Fee amounts to unpaid Fees, and will have the right to delay payment of Rebates to allow for final adjustments upon termination of this Agreement. All terms and conditions applicable to Rebates described in this Exhibit will apply to Manufacturer Administrative Fees. No Rebates or Manufacturer Administrative Fee amounts will be paid until this Agreement is executed by Sponsor.

4. ESI retains all right, title and interest to any and all actual Rebates and Manufacturer Administrative Fees received from manufacturers, except that ESI will pay Sponsor amounts equal to the Rebate and Manufacturer Administrative Fee amounts allocated to Sponsor, as specified above, from ESI's general assets (neither Sponsor, its Members, nor Sponsor's plan retains any beneficial 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 or Manufacturer Administrative Fee payments received by ESI during the collection period or moneys payable under this Section. The purpose of the preceding two sentences is to affirm ESI's proprietary interest in the actual Rebates and Manufacturer Administrative Fee dollars received by ESI by virtue of independently contracted arrangements that are not client specific. However, the amount ESI contractually is obligated to pay to Sponsor is calculated based on the actual amounts received by ESI, and nothing in this provision is intended to supercede the amount stated above to be paid to the State.

5. Sponsor acknowledges that it may be eligible for Rebates under this Agreement only so long as Sponsor, its affiliates, or its agents do not contract directly or indirectly with anyone else for discounts, 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; provided

that this should not be interpreted to prohibit or impact pharma funded programs that the Sponsor itself or through affiliated agencies (e.g., a Medicaid program or wellness initiative) maintains unrelated to the PBM services and Covered Drugs processed hereunder. In the event that Sponsor negotiates or arranges with a pharmaceutical manufacturer for Rebates or similar discounts for any Covered Drugs hereunder, but without limiting ESI's right to other remedies, ESI may immediately withhold any Rebates earned by, but not yet paid to, Sponsor as necessary to prevent duplicative rebates on Covered Drugs.

EXHIBIT B

AUDIT PROTOCOL

1. AUDIT PRINCIPLES

ESI recognizes the importance of its clients ensuring the integrity of their business relationship by engaging in periodic audits of their financial arrangements with ESI. ESI provides this audit right to each and every client. In granting this right, ESI's primary interest is to facilitate a responsive and responsible audit process. In order to accomplish this goal, for all clients, ESI has established the following Protocol. Our intent is in no way to limit Sponsor's ability to determine that ESI has properly and accurately administered the financial aspects of the Agreement, but rather to create a manageable process in order to be responsive to our clients and the independent auditors that they may engage. If Sponsor has any concern that this Protocol will prohibit Sponsor from fully confirming its financial arrangement with ESI, we encourage Sponsor to express such concern at the audit kick-off meeting.

2. AUDIT PREREQUISITES

A. The financial aspects of the Agreement can be broken down into the following three main components. Sponsor has the right to audit any or all three of these components, if applicable:

- Claims
- Rebates
- Performance Guarantees

At Sponsor's discretion, Sponsor may conduct an audit of each component separately, or may combine all three components in one audit. In addition to the above audit rights, Sponsor may address general claim inquiries, which do not require an audit, by contacting Sponsor's ESI Account Management team at any time.

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

C. ESI engages a national accounting firm, at its sole cost and expense, to conduct a SAS 70 audit on behalf of its clients. Upon request, ESI will provide the results of its most recent SAS 70 audit. Testing of the areas covered by the SAS 70 is not within the scope of Sponsor's audit rights (i.e., to confirm the financial aspects of the Agreement) and is therefore not permitted. However, if requested, ESI will explain the SAS 70 audit process and findings to Sponsor in order for Sponsor to gain an understanding of the SAS 70.

3. AUDITS

A. ESI recommends that the initial audit period for a claims audit cover a timeframe not to exceed twenty-four (24) months immediately preceding the request to audit (the "Audit Period"). This Audit Period allows a reasonable amount of time for both parties to conclude the audit before claims data is archived off the adjudication system. ESI will accommodate reasonable requests to extend the Audit Period, but this may delay ESI's response time to audit findings due to the age of the claims.

B. When performing a Rebate audit, Sponsor may perform an on-site review of the applicable Rebate rate components of manufacturer agreements, selected by Sponsor, as reasonably necessary to audit the calculation of the Rebate payments made to Sponsor by ESI.

C. ESI recommends that Sponsor select an initial number of manufacturer contracts to enable Sponsor to audit fifty percent (50%) of the total Rebate payments due to Sponsor for two (2) calendar quarters during the twelve (12) month period immediately preceding the audit. ESI will accommodate reasonable requests to extend this audit scope, but this may delay ESI's on-site preparation time as well as response time to audit findings.

D. In order to verify pass-through pricing, if applicable, Sponsor may perform an on-site review of the applicable rate components of Participating Pharmacy agreements, selected by Sponsor, as reasonably necessary to audit the calculation of the billings made to Sponsor by ESI. ESI recommends that Sponsor select ten (10) initial pharmacy contracts to be audited from the list of Participating Pharmacies in the applicable network. ESI will accommodate reasonable requests to increase the number of contracts, but this may delay ESI's on-site preparation time as well as response time to audit findings.

4. AUDIT FINDINGS

- A. Following Sponsor's initial audit, Sponsor (or its Auditor) will provide ESI with a written report of suspected errors, if any. In order for ESI to evaluate Sponsor's audit report, Sponsor shall provide an electronic data file in a mutually agreed upon format containing either a representative sample of claims, or the entire suspected error population, and the dollar amount associated with the suspected errors.
- B. If Sponsor provides the entire suspected error population, consistent with generally accepted industry audit standards, ESI will evaluate a statistically valid sample of claims in order to provide a timely response. ESI will use commercially reasonable best efforts to respond to the audit report in no more than thirty (30) days from ESI's receipt of the report. Please be aware, however, that audits that require evaluation of six (6) or more findings typically require additional time to respond due to the complex nature of such audits. Our pledge to respond within the foregoing timeframe is predicated on a good faith and cooperative effort between Sponsor and/or its Auditor and ESI.
- C. Following ESI's evaluation of Sponsor's (or its Auditor's) audit report, if the audit findings warrant an increase in the Audit Period or the number of contracts reviewed, then ESI and Sponsor will mutually determine the scope of further analysis.
- D. Sponsor agrees that once audit results are accepted by both parties, the audit shall be considered closed and final.
- E. ESI shall pay overpayments (or Sponsor shall pay underpayments, if applicable) within thirty days after closure of the audit.

5. CONFIDENTIALITY

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

EXHIBIT C

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") is made for the purpose of delineating the terms and conditions under which ESI ("Business Associate") and Sponsor ("Covered Entity") shall comply with obligations under HIPAA relating to the PBM Services ESI provides to Sponsor under the PBM Agreement.

1. Definitions.

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

(b) "Electronic PHI" or "ePHI" means PHI transmitted or maintained in electronic media as defined in 45 CFR § 160.103

(c) "HIPAA Rules" means the collective privacy, transaction and security regulations promulgated pursuant to the Health Insurance Portability and Accountability Act, as codified at 45 CFR Parts 160, 162 & 164.

(d) "Health Plan" or "Plan" will have the same meaning as the term "Health Plan" in 45 CFR 160.103.

(e) "Individual" will have the same meaning as the term "individual" in 45 CFR § 160.103 and will include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

(f) "PBM Agreement" means the Pharmacy Benefit Management Agreement to which this Business Associate Agreement is attached.

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

(h) "Privacy Rule" will mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, as they exist now or as they may be amended.

(i) "Required By Law" will have the same meaning as the term "required by law" in 45 CFR § 160.103.

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

(k) "Security Standards" will mean the Security Standards, 45 C.F.R. parts 160, 162 and 164, as they exist now or as they may be amended.

(l) "Transaction Standards" will mean the Standards for Electronic Transactions, 45 C.F.R. 160 and 162, as they exist now or as they may be amended.

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

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

(a) Except as otherwise limited in this Agreement, ESI may use and disclose PHI to properly provide, manage and administer the services required under the PBM Agreement and consistent with applicable law to assist the Plan in its operations, as long as such use or disclosure would not violate the HIPAA Rules if done by the Plan.

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

(c) Except as otherwise limited in this Agreement:

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

(ii) ESI may disclose PHI to third parties for the proper management and administration of ESI or to

carry out the legal responsibilities of ESI, provided that the disclosures are Required by Law, or ESI obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies ESI of any instances of which it is aware in which the confidentiality of the information has been breached.

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

(d) ESI agrees to promptly notify the Plan if ESI has knowledge that PHI has been used or disclosed by ESI in a manner that violates applicable law.

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

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

(g) ESI agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by ESI on behalf of the Plan agrees to the same restrictions and conditions that apply through this Agreement to ESI with respect to such information.

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

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

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

(k) Within thirty (30) business days of a proper request by the Plan, ESI agrees to document and make available to the Plan, for a reasonable cost-based fee (under conditions permitted by HIPAA if an Individual requests an accounting more than once during a twelve month period), such disclosures of PHI and information related to such disclosures necessary to respond to such request for an accounting of disclosures of PHI, exclusive of those disclosures for payment, treatment or healthcare operations, in accordance with 45 CFR 164.528. Within sixty (60) days of proper request by subject Individual, ESI agrees to document and make available to the Individual the information described above. ESI will retain copies of any accountings for a period of six (6) years from the date the accounting was created.

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

(m) ESI agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by ESI on behalf of, the Plan available to the Plan within ten (10) business days, or at the request of the Plan or the Secretary of HHS ("Secretary"), to the Secretary in a time and manner directed by the Secretary, for purposes of the Secretary determining the Plan's compliance with the HIPAA Rules.

3. Plan Obligations.

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

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

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

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

4. **Transactions Standards.** To the extent applicable, ESI will comply with the applicable transactions standards for claims processing functions between ESI and provider pharmacies. The parties each hereby agree that it will not change any definition, data condition or use of a data element or segment in a standard, add any data elements or segment to the maximum defined data set, use any code or data elements that are either marked "not used" in the standard's implementation specification or are not in the implementation specification, or change the meaning or intent of the implementation specification.

5. **Security Standards.** To the extent that ESI creates, receives, maintains or transmits electronic PHI, ESI will:

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

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

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

6. **Breach; Termination.**

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

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

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

8. **Miscellaneous.**

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

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

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

(d) **Interpretation.** Any ambiguity in this Agreement will be resolved in favor of a meaning that permits the Plan to comply with the HIPAA Rules.

EXHIBIT D

FINANCIAL DISCLOSURE TO ESI PBM CLIENTS

Express Scripts is a provider of pharmaceutical benefits management ("PBM") and other related services to thousands of client groups including managed care organizations, health insurers, employer groups, third party administrators and government entities. Express Scripts' subsidiary companies, some of which provide services related to supporting our PBM services, include ESI Mail Pharmacy Service, Inc., CuraScript, Inc., Express Scripts Specialty Distribution Services, Inc., and Phoenix Marketing Group, LLC. This disclosure provides an overview of the revenue sources that allow us to deliver competitive pricing arrangements to our clients. Express Scripts offers its clients, either directly or through its subsidiary companies, a variety of services related to the management of prescription drug benefits. The specific services provided to each client are documented under the Pharmacy Benefit Management Agreement, or other similar agreement, with our client. Express Scripts' PBM services typically include claims processing and adjudication, pharmacy network contracting and management, formulary development and management, rebate management and administration, trend management, and clinical program development and fulfillment. Some of our clients also utilize our mail service pharmacy to provide their members with convenient access to safe and affordable prescription drugs through home delivery. In addition to the administrative fees paid to us by our clients for these core PBM services, Express Scripts derives revenue from other sources, including arrangements with pharmaceutical manufacturers and retail pharmacies. Some of this revenue relates to utilization of products by members of the clients for whom we provide PBM services.

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

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

Pharmacy Dispensing and Distribution – Express Scripts has several licensed pharmacy subsidiaries, including our specialty pharmacies. These entities purchase prescription drug inventories, either directly from manufacturers or from drug wholesalers, for dispensing to patients or for distribution to physician offices. Purchase discounts off the acquisition cost of these products are made available by manufacturers in the form of both up-front and retrospective discounts. Such discounts are not considered part of the rebates paid to Express Scripts by manufacturers in connection with our rebate program. While rebates are directly attributable to the utilization of pharmaceutical products by individuals who receive benefits from clients for whom we provide PBM services, product acquisition price discounts are based on a pharmacy's inventory needs and, in the case of specialty pharmacies, the performance of related patient care service obligations. The purchase discounts obtained by these facilities are not based on any client's benefit design. When an Express Scripts subsidiary pharmacy dispenses or distributes a product from its inventory, the purchase price paid for the dispensed product, including applicable dispensing fees, may be greater or less than the pharmacy's acquisition cost for the product net of purchase discounts. In general, our pharmacies realize an overall positive margin between this net acquisition cost and the amounts paid for the dispensed products.

Pharmaceutical Program Services – Our specialty pharmacies, including CuraScript, Inc. and Express Scripts Specialty Distribution Services, Inc., receive compensation from manufacturers for their administration of programs related to the distribution of certain pharmaceutical products. This compensation is based on the fair market value of the services provided and is unrelated to the drug formulary development process or drug utilization applicable to the clients for whom we provide PBM services. Examples of these services include (i) administering patient assistance programs for indigent patients; (ii) administering product sample distribution programs; and (iii) dispensing prescription medications to patients enrolled in clinical trials.

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

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

July, 2005 - THIS EXHIBIT REPRESENTS ESI'S CURRENT FINANCIAL POLICIES. THIS EXHIBIT MAY NOT BE REVISED OR MODIFIED. ESI MAY PERIODICALLY UPDATE ITS FINANCIAL DISCLOSURES TO REFLECT CHANGES IN ITS BUSINESS PROCESSES.

EXHIBIT E
MEDICARE QR-PDP ADDENDUM

THIS MEDICARE QR-PDP ADDENDUM (the "QR-PDP Addendum") sets forth the terms and conditions under which Express Scripts Senior Care, Inc., a wholly owned subsidiary of ESI ("Senior Care") will provide certain QR-PDP services to Sponsor.

1. **Definitions.** Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Client Agreement and, as applicable, the Medicare Drug Rules. The following terms shall have the meanings set forth below:

"CMS" means the Centers for Medicare and Medicaid Services.

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

"Medicare Member" means a Member eligible for benefits through the QR-PDP.

"Qualified Retiree Prescription Drug Plan" or "QR-PDP" means employment-based retiree health coverage established under § 423.884 for a Part D eligible individual who is a retired participant or the spouse or dependent of a retired participant under the coverage.

"Subsidy Payments" means the subsidy amount paid to sponsors of QR-PDPs under § 423.886 of the Medicare Drug Rules.

"Subsidy Reports" means the (a) monthly eligibility file; and cost data extract (covered retiree plan-related prescription drug costs) in a format and with content consistent with the requirements of the Medicare Drug Rules for monthly, quarterly, or annual reporting.

2. **QR-PDP Pharmacy Benefit Management Services.** In consideration of the fees set forth in Section 3 below:

(a) **Services and Financial Terms.** ESI and Senior Care shall provide Sponsor and Medicare Members the same services then presently provided under the Agreement. Except as provided below, the financial terms and conditions of the Agreement shall apply to the QR-PDP. Commissions, if any, payable per the Agreement shall be a PMPM amount confirmed in writing for any QR-PDP Prescription Drug Claims.

(b) **Subsidy Reports.** If elected, Senior Care will provide the Subsidy Reports in a format and with content consistent with the requirements of the Medicare Drug Rules to enable Sponsor to file for Subsidy Payments and meet their QR-PDP reporting obligations under the Medicare Drug Rules. Sponsor shall provide to Senior Care in a timely manner any elements and data now and hereafter required under the Medicare Drug Rules (e.g., Member SSN, CMS issued Client ID and Application ID) in a format reasonably required by Senior Care.

3. **Sponsor Election.** Sponsor shall check the applicable services desired below; if no selection is noted, the default shall be the Standard Option and Member Communications.

- PACKAGE OPTION – PART D (SUBSIDY) ENHANCED PLUS PART B PROGRAM:** \$1.50 Per Medicare Member per Month (\$7,500 annual minimum) (Senior Care submits reports to CMS)
- ENHANCED OPTION:** \$1.12 Per Medicare Member per Month (\$7,500 annual minimum) (Senior Care submits reports to CMS)
- STANDARD OPTION:** \$0.62 Per Medicare Member per Month (\$5,000 annual minimum) (Senior Care submits reports to Sponsor)
- Member Communications (Notices of Creditable Coverage):** \$1.35 per piece plus postage
- Prior Authorization (Part B and Part D drugs) – standard fees**
- No Subsidy Reports; Medicare Rebates Only – no charge**

4. **CMS Requirements.**

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

(b) **Certification.** Senior Care certifies that the information it provides to Clients hereunder is accurate and complete. Senior Care shall provide reasonable access and support to Clients in the event of a CMS audit of the QR-PDP.

5. **Assignment.** ESI hereby assigns to Senior Care, and Senior Care hereby assumes, all responsibility and obligation for the preparation of Subsidy Reports, and the contracting, administration, allocation and collection of Rebates under the Agreement as relates solely to the eligible utilization of the QR-PDP Medicare Members.

6. **Effective Date.** The Medicare QR-PDP Addendum shall be coterminous with the Agreement.

EXHIBIT F
PERFORMANCE STANDARDS

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

Within forty-five (45) business days after the end of each measurement period, ESI will provide Sponsor with a quarterly report (i) assessing ESI's performance under each performance standard, and (ii) if ESI did not meet a performance standard, calculating the applicable amount due to Sponsor. Unless otherwise stated, measurements periods are quarterly and amounts due, if any, will be paid to Sponsor on an annual basis within ninety (90) days of each anniversary of the Agreement. No performance penalties, if any, will be paid until this Agreement is executed by Sponsor.

Implementation Performance Guarantees

ESI will place \$300,000 at risk to guarantee completion of implementation deliverables by the dates noted, assuming that the State has provided the information necessary to complete these deliverables. During the implementation process, Sponsor may allocate up to 25% of the amount at risk to any deliverable, with the total adding up to 100% of the amount at risk.

Ongoing Performance Guarantees

ESI will place \$150,000 per year at risk to guarantee performance of the service standards set out below, assuming that the Sponsor has provided the information necessary to complete meet the standards. During the implementation process, the State may allocate up to 25% of the annual amount at risk to any standard annually, with the total adding up to 100% of the amount at risk.

Service Feature	Standard	Penalty
Implementation		
Implementation and Start-up	<p>ESI will guarantee the implementation of Sponsor to be completed in accordance within the mutually agreed upon timelines. Each of ESI's standards are dependent upon receiving specific information from Sponsor. All Implementations are a 90-day implementation project. Loading of eligibility and production of ID cards are dependent upon receiving group structure and benefit plan design sign-off from Sponsor. A delay in receipt of data or information from Sponsor may require rescheduling of all subsequent deliverable dates.</p> <p>ESI's Implementation Project Manager (IPM) will provide regular updates to Sponsor tracking the status of the implementation.</p> <p>A completed Sponsor implementation sign-off manual will be provided to Sponsor five (5) business days prior to the effective date.</p> <p>The IPM will conduct a post-implementation review meeting with Sponsor within 30 days after the effective date.</p>	<p>The following dollars will be paid to Sponsor if ESI does not complete the deliverables by the dates mutually agree upon, assuming that Sponsor has provided the information necessary to complete these deliverables:</p> <p><i>Group Structure, Benefit Plan Design — \$XX</i></p> <p><i>Eligibility Load — \$XX</i></p> <p><i>ID Cards — \$XX</i></p> <p><i>Toll-Free Number — \$XX</i></p> <p><i>Communications — \$XX</i></p> <p>The implementation performance standards are one time only standards to be based on Sponsor effective date. The maximum implementation penalty will be \$XX.</p>

Account Management		
Account Management — Satisfaction	<p>ESI guarantees that Sponsor satisfaction with Account Management is rated as satisfactory. The following categories will be measured annually by Sponsor as satisfactory or not satisfactory:</p> <ul style="list-style-type: none"> • Timely issues resolution by the account management (20% of total amount of penalty at risk) • Consultative services (20% of total amount of penalty at risk) • Timeliness of reporting and annual reviews (20% of total amount of penalty at risk) • Frequency of meetings/plan updates (20% of total amount of penalty at risk) • One mutually agreed upon category (20% of total amount of penalty at risk) 	ESI will put \$XX as a total amount of penalty at risk.
Client Services Administration		
Satisfaction Survey	One random sample member survey will be completed annually on a company-wide basis. ESI guarantees that 90% of survey participants' responses to a question measuring overall satisfaction with the prescription benefit program will indicate "satisfied" or "very satisfied."	ESI will put \$XX as a total amount of penalty at risk.
Contact Center		
Customer Service Call — Average Speed of Answer	<p>ESI guarantees that calls will be answered in an annual average of 30 seconds or less with the exception of a failure in a third-party communication system.</p> <p>This standard is predicated on the installation of a toll-free telephone number unique to Sponsor.</p> <p>ESI's Member Choice Center calls will be excluded from this standard.</p>	ESI will put \$XX as a total amount of penalty at risk.
Customer Service Response Time — Blockage Rate (Busy Signal)	<p>ESI will guarantee an annual blockage rate of 2% or less with the exception of a failure in a third-party communication system. Blockage is defined as a caller receiving a busy signal.</p> <p>This standard is predicated on the installation of a toll-free number unique to Sponsor.</p> <p>ESI's Member Choice Center calls will be excluded from this standard.</p>	ESI will put \$XX as a total amount of penalty at risk.
Customer Service Response Time — Percent of Calls Abandoned	<p>ESI guarantees that the annual call abandonment rate will be 4% or less with the exception of a failure in a third-party communication system. The abandonment rates do not include calls terminated by members in less than 30 seconds.</p> <p>This standard is predicated on the installation of a toll-free number unique to Sponsor.</p> <p>ESI's Member Choice Center calls will be excluded from this standard.</p>	ESI will put \$XX as a total amount of penalty at risk.

Home Delivery		
Prescription Accuracy	Whereas ESI strives for 100% accuracy, ESI guarantees the annual accuracy in dispensing the correct drug, at the correct strength, and the correct dosage (excluding errors by prescribers) as follows: <ul style="list-style-type: none"> • 99.9%, for accounts with 34,999 or fewer annual mail prescriptions • 99.95%, for accounts with 35,000 or more annual mail prescriptions 	ESI will put \$XX as the total amount of penalty at risk.
Turnaround Time for Routine Prescriptions	ESI guarantees dispensing and shipping (or return) of prescriptions not subject to intervention with an annual average of three (3) business days of receipt of the order at ESI's Pharmacy. "Interventions" include all calls to members or prescribers to clarify the prescriber's direction, to obtain consent for formulary programs, generic or therapeutic substitution, or otherwise.	ESI will put \$XX as the total amount of penalty at risk.
Turnaround Time for Prescriptions Subject to Intervention	ESI guarantees dispensing and shipping (or return) of prescriptions subject to intervention within an annual average of five (5) business days of receipt of the order at ESI's Mail Service Pharmacy.	ESI will put \$XX as a total amount of penalty at risk.
Data Systems		
System Availability	ESI guarantees an annual average 99% system availability of the point-of-sale adjudication system. This standard excludes systems downtime attributed to regularly scheduled systems maintenance or systems downtime attributed to telecommunications failure or other circumstances outside the control of ESI.	ESI will put \$XX as a total amount of penalty at risk.
Reporting		
Timely Production of Management Reports	ESI guarantees access to the online reporting data will be available within an annual average of ten (10) days after month-end. Billing data will be available within an annual average of ten (10) days after the billing cycle.	ESI will put \$XX as a total amount of penalty at risk.
Replacement ID Card Production		
Timely Production of Replacement ID Cards	ESI guarantees that standard replacement ID cards will be produced within an annual average of five (5) business days of the receipt of machine-readable eligibility information.	ESI will put \$XX as a total amount of penalty at risk.
Eligibility		
Eligibility — Timeliness of Installations	ESI guarantees that electronic eligibility will be installed and eligibility status will be effective within an annual average of two (2) business days of receipt.	ESI will put \$XX as a total amount of penalty at risk.
Eligibility — Accuracy	ESI guarantees that electronic eligibility records will be loaded with 99.5% accuracy (as provided by Sponsor). This standard is contingent upon receipt of clean eligibility data delivered in an agreed upon format and that it can be determined with certainty that ESI incorrectly loaded the eligibility. This standard will be measured across ESI's client base.	ESI will put \$XX as a total amount of penalty at risk.

Retail Pharmacy Network		
Network Audits	ESI guarantees that 100% of participating pharmacies will be subject to statistical audits and that 50% of participating pharmacies will be subject to further investigation (e.g., desk audits, on-site audits, etc.) as a result of the statistical audits.	ESI will put \$XX as a total amount of penalty at risk.

7.9 Medicare (QRDP) Services. The parties agree that as relates to any qualified retiree prescription drug plan ("QRDP") established by Sponsor under Medicare for the purpose of applying for subsidy payments as defined under 42 CFR §423.886, Express Scripts Senior Care, Inc., a subsidiary of ESI, will provide the services under the terms and conditions set forth in Exhibit E.

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

7.11 Open Records. ESI acknowledges that Sponsor, as a government agency, may be subject to applicable freedom of information or open records laws and must, upon request, disclose such materials as are covered by and not exempted from such laws. Pursuant to Section 3.2 hereof, Sponsor acknowledges that certain information contained herein or subject to this Agreement is represented as ESI as being proprietary and confidential to ESI and shall be exempt from that Act to the fullest extent permitted by law. Sponsor agrees to give ESI reasonable notice and the minimum statutory or regulatory period of time to oppose, request redactions or limitations on any disclosures under a third party freedom of information or open records request pertaining to this Agreement or any proposal related hereto. This provision shall survive termination of the Agreement.

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

EXPRESS SCRIPTS, INC.

STATE OF NEBRASKA

By: 
Printed Name: _____
Title: _____

By: 
Printed Name: Steve Sulek
Title: Acting Administrator, Materiel Division
Federal ID Number: 47-0491233

Date: 8-20-08

Date: 8-25-08

Ed Ignaczak
Executive Vice President
Sales & Marketing
Phone: 314-692-1901
Fax: 800-662-9135



EXPRESS SCRIPTS®

EXHIBIT G
PERFORMANCE BOND

August 22, 2008

*Via overnight delivery and
PDF via email to Ruth.Gray@nebraska.gov*

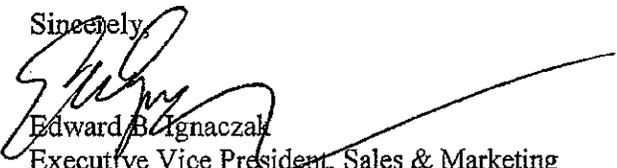
Ruth Gray, Buyer
State of Nebraska Department of Administrative Services
Purchasing Bureau, Materiel Division
301 Centennial Mall South, 1st Floor
Lincoln, Nebraska 68508

Re: Annual Renewal of Express Scripts Performance Bond for Contract Resulting from RFP 2470Z1

Dear Ms. Gray:

This letter will confirm Express Scripts' commitment to deliver to the State of Nebraska on an annual basis a renewal of the Performance Bond for the contract resulting from RFP Number 2470Z1 for Pharmacy Benefit Management services for the State of Nebraska's employee benefits program, with delivery to be made at least sixty (60) days prior to the end of each contract year for the Performance Bond covering the following contract year.

Sincerely,


Edward B. Ignaczak
Executive Vice President, Sales & Marketing
Express Scripts, Inc.