

PRESCRIPTION BENEFIT MANAGEMENT SERVICES AGREEMENT

THIS PRESCRIPTION BENEFIT MANAGEMENT SERVICES AGREEMENT (the “Agreement”) is entered into this first day of **January, 2021** (the “Effective Date”), by and between _____, a _____ corporation (“PBM”), and **Arkansas Tech University** (“Sponsor”).

WHEREAS, Sponsor is an organization that desires to offer a Benefit Plan providing for cost-effective prescription benefit services and cost-effective dispensing of prescription drugs and other covered products to Members; and

WHEREAS, PBM has contracted with Participating Pharmacies for the purpose of providing prescription benefit services to its clients; and

WHEREAS, Sponsor desires to engage PBM to perform pharmacy benefit management services relating to (i) prescription claims processing; (ii) eligibility verification; (iii) negotiation and execution of contracts with retail, mail and specialty pharmacies to obtain favorable pricing for its clients; (iv) negotiation and execution of contracts with pharmaceutical manufacturers, wholesalers, distributors, and other third parties to obtain favorable Financial Benefits for Sponsor; (v) management and administration of other prescription drug programs; and (vi) performance of other pharmaceutical benefit management services identified herein; and

WHEREAS, PBM agrees to perform all such services on a fully transparent basis, enabling Sponsor (and its agents) to have complete and full access, as provided in this Agreement, to all information, necessary to determine and verify that PBM has met all terms of this Agreement, and satisfied all Pass-Through Pricing and other requirements set forth herein; and

WHEREAS, both parties agree to satisfy all terms set forth in this Agreement subject to the terms and conditions hereof.

NOW THEREFORE, in consideration of the mutual promises and agreements contained herein, PBM and Sponsor hereby agree as follows:

ARTICLE 1 - DEFINITIONS

1.1 **Additional Fees.**

The term “Additional Fees” shall have the meaning defined in Exhibit B, Section 2.

1.2 **Affiliate.**

The term “Affiliate” means with respect to any entity (i) directly or indirectly controlling, controlled by or under common control with such entity; (ii) any officer, director, general partner, member or trustee of such entity; or (iii) any individual who is an officer, director, general partner, member or trustee of any entity described in clauses (i) or (ii) of this sentence. For purposes of this definition, the terms “controlling,” “controlled by” or “under common control with” mean the possession, direct or indirect, of the power to

direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise, or the power to elect at least 30% of the directors, managers, general partners, or persons exercising similar authority with respect to such entity.

1.3 Administrative Fee.

The term “Administrative Fee” shall have the meaning defined in Exhibit B, Section 1.

1.4 Agreement.

The term “Agreement” shall have the meaning defined in the preface.

1.5 Approved Protocols.

The term “Approved Protocols” shall have the meaning set forth in Exhibit A, Section C.3.

1.6 Average Wholesale Price or AWP.

The term “Average Wholesale Price” or “AWP” shall mean the average wholesale price of a prescription drug, medication or other item as set forth in the industry source, Medispan as of the date the prescription is adjudicated as a Paid Claim by the PBM. The applicable AWP for all prescriptions dispensed shall be based on the full 11 digit NDC drawn from the actual bottle size from which the Participating Pharmacy dispensed the prescription and not from any standard or other bottle size. In no event shall Sponsor be charged more on a per-unit basis for a repackaged product than would have been invoiced on a per-unit basis for the original manufacturer’s product in a like-bottle size or the next larger bottle size if the exact bottle size is not available.

1.7 Benefit Plan.

The term “Benefit Plan” shall mean the pharmacy benefit plan sponsored by Sponsor, which plan shall include the Claims processing variables included but not limited to the variables identified in Exhibit G attached hereto. Sponsor will immediately notify PBM of any changes to the Benefit Plan. PBM shall provide within the claims data at least one field plus indicators clearly defining each of the Sponsor’s individual benefit plans.

1.8 Benefit Plan Change Date.

The term “Benefit Plan Change Date” shall have the meaning defined in Section 2.3 herein.

1.9 Brand Drug.

The term “Brand Drug” shall mean the drugs or medications identified as brand drugs according to the methodology set forth herein on Exhibit D attached hereto. Any proposed change by PBM to such methodology must be approved in writing by Sponsor. If Sponsor does not approve in writing PBM’s proposed change to such methodology within thirty (30) days of PBM’s request to change such methodology, Sponsor may provide written notice to PBM of its intent to terminate this Agreement, which may take place ninety (90) days after such notice to terminate is provided.

1.10 Change of Control.

The term “Change of Control” means: (i) an acquisition by any person or entity of the ownership interests of the referenced person or entity in a transaction or series of transactions, if immediately thereafter such acquiring person or entity has, or would have, beneficial ownership of more than 50% of the combined voting power of the referenced person’s or entity’s then outstanding ownership interests, including any such acquisition by way of a merger, consolidation or reorganization (including under any bankruptcy laws), or series of such related transactions, involving the referenced person or entity; or (ii) a sale, assignment or other transfer of all or substantially all of the referenced person or entity’s assets; or (iii) a confirmation of any plan of organization or liquidation under, or sale of assets pursuant to, any bankruptcy laws, any out-of-court recapitalization or reorganization transaction or exchange offer, in any case in which more than fifty-one percent (51%) of such person’s or entity’s outstanding equity securities are issued in exchange for all or a significant portion of such person’s or entity’s outstanding debt or other securities, or a deed in lieu of foreclosure or any other remedy or right at law or contract by which substantially all of such person’s or entity’s equity securities or assets are surrendered, assigned or otherwise transferred to another person or entity.

1.11 Claim(s).

The term “Claim(s)” shall mean: (i) all claims transmitted or sent to PBM by Participating Pharmacies via the Online Adjudication System as a result of dispensing Prescription Drug Services to Members; (ii) DMRs; and (iii) claims submitted by other payors related to PBM Services.

1.12 Confidential Information.

The term “Confidential Information” shall have the meaning defined in Section 10.1.

1.13 Contract Year.

The term “Contract Year” shall mean the one year period beginning on the Effective Date (or annual anniversary thereof) and ending on the date immediately preceding the next annual anniversary of the Effective Date.

1.14 Copayment or Coinsurance.

The term “Copayment” or “Coinsurance” shall mean those amounts collected pursuant to the Benefit Plan by Participating Pharmacies from Members.

1.15 DAW.

The term “DAW” shall mean “dispense as written.”

1.16 Disclosing Party.

The term “Disclosing Party shall have the meaning defined in Section 10.1

1.17 DMR.

The term “DMR” shall have the meaning defined in Section A.d of Exhibit A.

- 1.18 Dispensing Fee.
The term “Dispensing Fee” shall mean the dispensing fee charged by Participating Pharmacies. All Dispensing Fees invoiced to Sponsor for retail, mail or specialty drugs shall be invoiced based on Pass-Through Pricing.
- 1.19 Effective Date.
The term “Effective Date” shall have the meaning defined in the preface.
- 1.20 Financial Benefits.
The term “Financial Benefits” shall mean all direct or indirect financial benefits of any kind or nature relating to or arising out of any contracts or arrangements between PBM and any Pharmaceutical Manufacturers, including without limitation, all rebates, discounts, administrative or other fees, chargebacks, and grants, and all other monies of any kind whatsoever paid by or on behalf of Pharmaceutical Manufacturers, and the value of all goods or in kind services provided by or on behalf of Pharmaceutical Manufacturers to PBM.
- 1.21 Formulary.
The term “Formulary” shall mean PBM’s preferred drug list approved from time to time by PBM’s pharmacy and therapeutics committee, which list shall constitute the preferred prescription drugs and medications for Sponsor.
- 1.22 Generic Drug.
The term “Generic Drug” shall mean the drugs or medications identified as generic drugs according to the methodology set forth on Exhibit D attached hereto. Any change by PBM to such methodology must be approved in writing by Sponsor. If Sponsor does not approve in writing PBM’s proposed change to such methodology within thirty (30) days of PBM’s request to change such methodology, Sponsor may provide written notice to PBM of its intent to terminate this Agreement, which may take place ninety (90) days after such notice to terminate is provided.
- 1.23 Guaranteed Average Retail 90 Rate(s).
The terms “Guaranteed Average Retail 90 Rate(s)” shall have the meaning defined in Section 6.4.
- 1.24 Guaranteed Average Mail Order Rate(s).
The term “Guaranteed Average Mail Order Rate(s)” shall have the meaning defined in Section 6.4.
- 1.25 Guaranteed Average Retail 30 Rate(s).
The term “Guaranteed Average Retail 30 Rate(s)” shall have the meaning defined in Section 6.4.
- 1.26 HIPAA.
The term “HIPAA” shall mean the Health Insurance Portability and Accountability Act of

1996, as amended, and the regulations promulgated thereunder.

1.27 Identification Cards or ID Cards.

The term “Identification Cards” or “ID Cards” shall mean printed identification cards that contain specific information about the prescription drug benefits to which Members are entitled.

1.28 Image.

The term “Image” shall be defined as set forth in Exhibit A, Section C.6.

1.29 Ingredient Cost.

The term “Ingredient Cost” shall mean the base drug cost of the Claim, calculated as the lowest of (i) the AWP of the drug or medication dispensed, less the provider-contracted percentage discount, (ii) the drug’s MAC price each multiplied by the metric quantity dispensed, or (iii) U&C.

1.30 Mail Order Pharmacy.

The term “Mail Order Pharmacy” shall mean any mail order pharmacy vendor under contract with or owned by PBM.

1.31 MAC.

The term “MAC”, “MAC Price” or “MAC Price Each” shall mean the maximum allowable cost of a multisource Brand Drug, or Generic Drug, as established by PBM in its MAC List, and shall represent the maximum price that PBM will reimburse a Participating Pharmacy for a specific Generic Drug or multisource Brand Drug regardless of the AWP set by the various manufacturers and repackagers of that drug. The MAC for a drug shall include all Generic Drugs or multisource Brand Drugs assigned the same GCN, GSN or GPI. There shall be no more than one MAC Price for each GCN, GSN or GPI and there shall be only one MAC Price for all Participating Pharmacies for all channels. The MAC Price shall be a set cost per unit and shall be utilized by PBM to calculate the amount to be reimbursed to the Participating Pharmacy. Further, the MAC Price will be used to calculate the DAW penalty for all DAW codes, the logic of which is detailed in Exhibit D, except DAW 7 (Substitution not allowed-brand drug mandated by law) for all Claims where a multisource Brand Drug was dispensed where that multisource Brand Drug’s GCN, GSN or GPI is included in the MAC List and such penalty will be the difference between the ingredient cost of that Claim and the ingredient cost of that Claim if the MAC Price had been applied to the ingredient cost calculation of that Claim. In addition, such calculation shall be the MAC Price multiplied by the metric quantity of the Claim to ascertain the ingredient cost amount to reimburse the Participating Pharmacy.

1.32 MAC List.

The term “MAC List” shall mean the entire list of PBM’s MAC Prices established using GCN, GSN or GPI to identify the drug entity within MAC Priced claims. The current MAC List, which is subject to periodic review and modification by PBM, is attached hereto as Exhibit I. Since the MAC will change with time, a historical MAC List

covering requested time periods will be provided to Sponsor within 15 calendar days upon request. If PBM fails to provide such updated or revised MAC List within the establish time period then Sponsor or Auditor may utilize the current MAC List in Exhibit I for audit purposes for any period of time Sponsor chooses and PBM shall pay a penalty of \$250.00 per calendar day to Sponsor until such requested MAC List is received by Sponsor. Penalty will be paid to Sponsor every 30 days following such failure until all penalties have been paid to Sponsor.

1.33 Marks.

The term “Marks” means a party’s trade names, service marks and symbols, commercial symbols, and trademarks.

1.34 Member.

The term “Member” shall mean those individuals who are entitled to Prescription Drug Services as identified in the Member List by Sponsor, and as amended on New Eligibility Implementation Dates by documents, whether electronic or paper, transmitted by Sponsor to PBM, including all covered Members, and all of their covered beneficiaries.

1.35 Member List.

The term “Member List” shall have the meaning set forth in Section 2.1.

1.36 NCPDP.

The term “NCPDP” shall mean the National Council for Prescription Drug Programs.

1.37 Negotiated Price.

The term “Negotiated Price” shall mean the exact rate or price that PBM has negotiated and pays to Participating Pharmacies for dispensed drugs. The Negotiated Price shall be passed-through to Sponsor without any adjustment. PBM shall not utilize any spread or repricing methodology prior to invoicing Sponsor.

1.38 New Eligibility Implementation Date.

The term “New Eligibility Implementation Date” shall mean the date on which PBM Services for newly eligible Members are to begin, or end, which, unless otherwise agreed in writing, shall be no later than two (2) business days after PBM’s receipt of notice from Sponsor. Sponsor shall notify PBM of Member eligibility in an approved NCPDP format. PBM shall, as of the New Eligibility Implementation Date, begin its PBM Services for newly eligible Members, and terminate all PBM Services for those who are no longer eligible.

1.39 Online Adjudication System.

The term “Online Adjudication System” means the online electronic transmission link maintained between PBM and each of the Participating Pharmacies.

1.40 Paid Claim.

The term “Paid Claim” shall mean each Claim that is dispensed to a Member, reimbursed

to the Participating Pharmacy and paid by Sponsor, and shall not include any denied or reversed Claims. With respect to any dispensed and paid Claim, if the Claim is adjusted in any way, the Claim shall constitute only one Paid Claim. PBM will not assess any fee of any kind, including, without limitation, any Administrative Fee, for reversals, adjustments or reprocessed Paid Claims.

1.41 Participating Pharmacies.

The term “Participating Pharmacy” or “Participating Pharmacies” shall mean those pharmacies (including retail, mail and specialty pharmacies) which are owned by or under contract with PBM to dispense pharmaceutical prescriptions or other products to Members and shall include any preferred networks established by PBM.

1.42 Pass-Through Pricing.

The term “Pass-Through Pricing” shall mean the following: (a) that the only revenues, compensation, profit, or other economic advantages of any kind that PBM shall derive in connection with this Agreement or the transactions contemplated hereunder are the Administrative Fees identified in Exhibit B, Section 1, the Additional Fees identified in Exhibit B, Section 2, and other fees as expressly stated elsewhere in this Agreement; (b) that there shall be no “spread” between the amounts invoiced to Sponsor by PBM, and amounts paid by PBM to Participating Pharmacies; (c) that, except as otherwise expressly provided herein, PBM shall invoice Sponsor for all drugs dispensed by all Participating Pharmacies owned by PBM in an amount equal to the per/pill cost paid to the Participating Pharmacies; and (d) that PBM shall pass through to Sponsor the full amount of all Financial Benefits obtained from all Pharmaceutical Manufacturers.

1.43 PBM.

The term “PBM” shall have the meaning defined in the preface and will include PBM’s affiliates, subsidiaries, successors, or permitted assigns.

1.44 PBM Indemnitees.

The term PBM Indemnitees shall have the meaning defined in Section 8.1.

1.45 PBM/Participating Pharmacy Contract.

The term “PBM/Participating Pharmacy Contract” shall mean all contracts, amendments or addendums thereto, letter agreements, or other written agreements in any form, setting forth any terms of reimbursement between PBM and any retail, mail or specialty drug pharmacy, whether independent, or owned by or affiliated with PBM.

1.46 PBM/Pharmaceutical Manufacturer Contract

The term “PBM/Pharmaceutical Manufacturer Contract” shall mean all contracts, amendments or addendums thereto, letter agreements, or other written agreements in any form, setting forth any reimbursement or Financial Benefit terms between PBM and any Pharmaceutical Manufacturer. Said term shall include all pricing sheets, term sheets or discount sheets.

1.47 Performance Guarantees.

The term “Performance Guarantees” shall have the meaning defined in Exhibit E attached hereto.

1.48 Pharmaceutical Manufacturer.

The term “Pharmaceutical Manufacturer” shall mean any pharmaceutical manufacturer or company, any drug wholesaler or distributor, any repackager, or any other third party, that provides discounts, rebates, fees, chargebacks, or other payments, services or goods to PBM.

1.49 Pharmacy Benefit Management Services or PBM Services.

The term “Pharmacy Benefit Management Services” or “PBM Services” shall mean claims processing, eligibility verification, Participating Pharmacy contracting and management, Pharmaceutical Manufacturer contracting and administration, Financial Benefits management, reporting, formulary and clinical support, and other services as described herein. Unless otherwise agreed in writing, the PBM shall not provide Medicare Part D services under this Agreement.

1.50 Prescription Drug Services.

The term “Prescription Drug Services” shall mean those outpatient prescription drug services or supplies provided as a covered benefit to Members as set forth in the Benefit Plan. Any prescription drug services or supplies provided by any hospital, long term facility or any other facility that dispenses medications to Members while confined to any type of medical or long term care facility are expressly not covered by the Benefit Plan.

1.51 Receiving Party.

The term “Receiving Party” shall have the meaning defined in Section 10.1.

1.52 Specialty Drug.

The term “Specialty Drug” shall mean each drug identified and listed on Exhibit C, as it may be amended in writing by both of the parties from time to time.

1.53 Specialty Pharmacy Vendor.

The terms “Specialty Pharmacy Vendor” or “Special Pharmacy” shall mean the Specialty Drug distribution system owned by PBM’s or under contract with PBM.

1.54 Sponsor.

The term “Sponsor” shall have the meaning defined in the preface.

1.55 Sponsor Indemnitees.

The term “Sponsor Indemnitees” shall have the meaning defined in Section 8.2.

1.56 Statement.

The term “Statement” shall have the meaning defined in Section 4.1 herein.

1.57 Taxes.

The term “Tax(es)” means any sales tax, imposition, assessment, excise tax or other

government levied amount based on a Participating Pharmacy's retail sales of prescriptions to Members.

1.58 Usual and Customary or U&C.

The term "Usual and Customary", "U&C" or "Cash Price" shall mean the Participating Pharmacy's usual and customary charge equal to the Participating Pharmacy's cash price for dispensing the exact product including quantity to a cash customer on the same day. U&C would also include the cash price a person possessing or presenting a special identification card or document or making a verbal request or paying for the prescription by a particular method would receive.

1.59 Users.

The term "Users" means any employee or third-party agent accessing the Online Adjudication System on Sponsor's behalf.

1.60 Zero Balance Claim.

The term "Zero Balance Claim" refers to any Claim where the Copayment has completely covered the total cost of the Claim and the Sponsor has no liability or payment obligations other than Administrative Fee.

ARTICLE 2 - DUTIES TO BE PERFORMED BY SPONSOR

2.1 Member List. Sponsor shall provide to PBM electronic files reflecting an initial listing of all Members ("Member List"). Sponsor shall be responsible for updating the Member List to reflect all additions and terminations of Members. Such Member List must be provided to PBM at least thirty (30) days prior to implementation or upon such other timeframe as may be agreed between the parties in writing. Sponsor shall also be solely responsible for ensuring the accuracy, completeness, reliability, and timeliness of the Member List and for paying PBM for all Paid Claims dispensed to persons listed on the Member List. Any errors or omissions in the Member List are the sole responsibility of Sponsor. Sponsor may not deny claims submitted by any Participating Pharmacy for payment subsequent to such Participating Pharmacy receiving approval via the Online Adjudication System. The Member List shall contain the following minimum information:

- Each Member's identification number and social security number
- Each Member's full name (last, first, and middle initial)
- Each Member's date of birth
- Each Member's address
- The date the Member's participation in Prescription Drug Services under the Benefit Plan becomes effective
- The date the Member's participation in Prescription Drug Services under the Benefit Plan is terminated
- The Benefit Plan group number
- Each Member's gender
- Each Member's coverage code

- Each Member’s person code(s)
 - Each Member’s relationship code(s)
- 2.2 Retroactive Disenrollment. Sponsor agrees that the retroactive termination or retroactive disenrollment of a Member shall not constitute a reason for non-payment of Claim amounts or Administrative Fees due to PBM or a Participating Pharmacy.
- 2.3 Benefit Plan Information. Sponsor shall provide any Benefit Plan changes to PBM within one week of the date such changes become effective (the “Benefit Plan Change Date”), or if Sponsor seeks an earlier date, by a date mutually agreed upon in writing by the parties. Failure to provide Benefit Plan changes within said period may result in postponement of the proposed Benefit Plan Change Date.
- 2.4 Description. Sponsor will accurately describe and represent the role of PBM and Participating Pharmacies in providing services and programs under this Agreement.

ARTICLE 3 - DUTIES TO BE PERFORMED BY PBM

- 3.1 Provision of Services to Sponsor. PBM shall provide to Sponsor PBM Services described in this Agreement and all attached Exhibits (including, without limitation, Exhibit A “Scope of Services”). All such services shall be provided at the agreed upon rates specified in this Agreement. PBM shall provide all requested information to the Sponsor or Sponsor’s auditor in an electronic format acceptable to Sponsor.
- 3.2 Communications to Members. Sponsor shall be entitled to review and approve all communications, and all changes in communications, made by PBM to Members, whether electronically or in hard copy.
- 3.3 Sales and Account Managers. PBM shall provide dedicated personnel who will serve as account managers and representatives for Sponsor.
- 3.4 AWP Source. Except as otherwise expressly provided herein, PBM shall use current, electronic data provided by Medispan to calculate all pricing related to this Agreement, including, without limitation, all invoices to Sponsor, reimbursements to Participating Pharmacies, and all calculations of any pricing guarantees in this Agreement. Thereafter, PBM may switch data providers upon written agreement of Sponsor, but not more often than once per Contract Year during the term. If PBM elects to switch data providers, PBM shall provide proposed change to Sponsor or its agent, and promptly update as necessary, all information concerning the formula or methodology for PBM’s assignment of Brand Drug or Generic Drug status to any drug or medication.

If the pricing methodology used by PBM or any of PBM’s vendors, including its AWP pricing source, pricing calculation, or methodology changes Sponsor may request that the parties renegotiate in good faith changes to the financial terms of this Agreement. If PBM and Sponsor are unable to reach agreement on new financial terms within thirty (30) days of the above request to renegotiate, Sponsor may provide written notice to

PBM of its intent to terminate this Agreement, which may take place ninety (90) days after such notice to terminate, is provided.

- 3.5 Performance Guarantees. PBM hereby makes the Performance Guarantees set forth on Exhibit E attached hereto in connection with the services to be performed under this Agreement. PBM will comply with the performance guarantees set forth in Exhibit E, attached hereto and incorporated herein (“Performance Guarantees”). Such Performance Guarantees are subject to timely review and sign-off by Sponsor of Plan Design and Member communications. Some Performance Guarantees may be based on book-of-business results when specifically indicated hereunder. All other Performance Guarantees are measured are based on sponsor’s claims on a quarterly basis unless otherwise specified; penalties, if any, are paid annually, subject to Sponsor being current in all payments owed to PBM hereunder.

ARTICLE 4 - PAYMENTS DUE PBM

- 4.1 Statements. PBM shall provide a statement (the “Statement”) to Sponsor twice monthly reflecting all Claims processed and dispensed by PBM for Members during the previous period, and Administrative Fees, Additional Fees, fees for clinical programs, and any other fees identified in this Agreement. Sponsor may question or dispute any such Claims, or any amounts invoiced for such Claims, by notifying PBM in writing. After receiving such notice, PBM shall respond to such questions within five (5) business days. Notwithstanding the foregoing, the failure of Sponsor to question or dispute any Statement shall not waive its right to do so in the future.
- 4.2 Sponsor’s Payment Obligation to PBM. Sponsor shall pay to PBM the total non-disputed amount invoiced on each Statement, by the due date, ten (10) days after receipt. Said payment shall be made by wire transfer to a bank designated by PBM. In addition, Sponsor shall pay to PBM, by the due date, fifteen (15) days after receipt of PBM’s monthly invoice, the Administrative Fees and Additional Fees set forth in Exhibit B hereunder, and any other fees as expressly identified in this Agreement. All sums owed by Sponsor under this Agreement that are late more than fourteen (14) days after the date due will bear interest of 1.5% per month from the date payments are due until paid; however, in the event such interest rate exceeds that which is permitted by applicable law, the maximum interest rate allowed by applicable law shall be applied in lieu of 1.5%. Notwithstanding the foregoing, Sponsor shall be entitled to withhold from any payments due under this Section 4.2 any amounts as to which Sponsor has notified PBM of questions or disputes pursuant to Section 4.1 above, pending the resolution of such questions or disputes by the parties and any amount equal to any payments which PBM may owe to Sponsor in connection with any missed Performance Guarantees as set forth in Exhibit E, missed Financial Benefit guarantees as provided in Section 7.7, missed guarantees as set forth in Section 6.4, or otherwise as provided in this Agreement.
- 4.3 Sales and Use Taxes. The parties agree that the calculation of Taxes attributable to the PBM Services delivered pursuant to this Agreement shall be the obligation of the

Participating Pharmacy. PBM shall include any Taxes charged by a Participating Pharmacy in the Claim invoice payable by Sponsor.

- 4.4 Payments to Third Parties. A Claim that is received from a third party payer (e.g. Medicaid, Medicare, or an insurer), or its designate, by PBM that has paid such Claim in error and which Claim is payable by Sponsor, shall be processed in accordance with the Benefit Plan. In this case, PBM shall pay the Claim up to the amount allowed by the benefit plan and Sponsor shall reimburse the PBM the same amount.
- 4.5 Security Deposit. In the event (i) Sponsor is delinquent in more than one payment of invoices issued under this Article Four PBM will have the option to require that Sponsor provide to PBM a deposit in an amount equal to the average of the last three months of billing history or, if three months billing history is not available, the most recent month of billing history will be the basis. If PBM requires Sponsor to provide a deposit, Sponsor will provide such deposit within fifteen (15) days of PBM's request. If Sponsor gives PBM a deposit, in addition to any other available remedies PBM may apply the deposit to past due balances and shall return the remaining deposit, if any, the earlier of 12 months of non-delinquent payments or the termination of this Agreement.
- 4.6 Subcontractor. PBM may subcontract with Sponsor approval certain services provided under this Agreement, including those covered under the administrative or ancillary fees under this Agreement.

ARTICLE 5 - RECORDS

- 5.1 Maintenance of Records. PBM shall maintain documentation of all Claims processed and all PBM Services rendered for a minimum of six (6) years from the date Claims are paid or PBM Services are rendered, or such longer period of time as may be required by applicable law or regulation. Should PBM alter the original format of said documentation (e.g., by converting hard copy documents to electronic documents) all information contained in the original documents shall be contained in the new electronic format, without change or deletion.
- 5.2 Ownership of Information. All Claims data and other data generated in connection with this Agreement shall be the sole property of Sponsor. PBM shall not sell or disclose such data in any form to any third party without the prior written consent of Sponsor. Notwithstanding the foregoing, PBM shall be entitled hereunder to provide data to Pharmaceutical Manufacturers (at no cost to Pharmaceutical Manufacturers) or rebate aggregator (at no cost to rebate aggregator) to enable PBM to collect Financial Benefits. In addition, the parties agree that PBM shall have the right to use, in the aggregate and consistent with applicable law, any non-Member-identifiable information derived from PBM Services rendered under this Agreement for any lawful internal business purpose.
- 5.3 Right to Audit Claims and Business Records.
- a. The following individuals and/or entities may conduct audits related to this Agreement

during normal business hours and reasonable written notice. Sponsor will not conduct routine audits on-site during the months November through January:

1. Sponsor (or any agents of Sponsor) may inspect and audit, or cause to be inspected and audited, the books and records of PBM concerning or relating to this Agreement, including, without limitation, all PBM Services provided under this Agreement. Such audits may not be conducted more frequently than twelve (12) times per calendar year.
 2. Regulatory or accreditation agencies may inspect and audit the books and records of PBM and Sponsor in accordance with applicable law.
- b. The following terms shall control Sponsor's audits of PBM:
1. Sponsor's auditor for purposes hereof shall not be a PBM, a Pharmaceutical Manufacturer representative, or any retail Participating Pharmacy, Mail Order Pharmacy or Specialty Pharmacy Vendor. PBM agrees to allow any auditor.
 2. Contemporaneously with the execution of this Agreement, PBM and Sponsor's initial auditor shall execute the Confidentiality Agreement attached hereto as Exhibit F.
 3. All audits shall be conducted in accordance with the Audit Protocol attached hereto as Exhibit H.
 4. The audit rights provided to Sponsor hereunder shall survive the termination or expiration of this Agreement for a period of six (6) years.
 5. Sponsor or auditor will not exceed one (1) on-site audit per calendar year.

**ARTICLE SIX: RETAIL, MAIL and SPECIALTY PHARMACY SERVICES,
PASS-THROUGH PRICING, GENERIC PRICING, RETAIL and MAIL GUARANTEES,
AND SPECIALTY DRUG PRICING**

- 6.1 Retail, Mail and Specialty Pharmacy Administration. PBM shall act as Sponsor's agent with respect to all retail, mail, and specialty pharmacy network management and control. In connection therewith, PBM shall contract with Participating Pharmacies to join PBM's network, manage Participating Pharmacies' participation in the network, negotiate on an ongoing basis to reduce reimbursements to Participating Pharmacies, conduct regular audits of Participating Pharmacies' processing of claims (and passing through to Sponsor, subject to Section 6.7(b), below, Sponsor's pro rata share of monies collected from audits), and add or terminate Participating Pharmacies from PBM's network in PBM's discretion.
- 6.2 Pass-Through Pricing. PBM shall invoice Sponsor utilizing Pass-Through Pricing as defined herein, and as modified by the representations and agreements below:

- a. Varied Pricing. PBM represents that it has executed numerous contracts with Participating Pharmacies, which contracts contain various and differing reimbursement rates and structures. PBM further represents that for certain individual Participating Pharmacies, and for certain chain Participating Pharmacies, PBM has negotiated several different contracts containing various and differing reimbursement rates and structures. Sponsor's rate with Participating Pharmacies shall be within two percent (2%) of the best contracted PBM discount rate offered by each contracted participating pharmacy. As an example, .3% is within 2% of a 15% discount.
- b. On-Going Negotiation; Improved Financial Terms. PBM further represents that it regularly negotiates new contracts with Participating Pharmacies from time to time to decrease its clients' costs and to help ensure that the pricing that it is receiving is competitive with pricing available in the marketplace. PBM further represents that it will in good faith actively continue to negotiate new contracts to decrease its clients' costs. In the event that PBM is successful in negotiating new rates within the same contract, or in new contracts which includes a significant number of Participating Pharmacies, Mail Order Pharmacy or Specialty Pharmacy, Sponsor shall be entitled to improved financial terms available as a result of such negotiation regardless of what PBM calls such network internally.
- c. Pass-Through Pricing, Subject to Guaranteed Rates. PBM shall provide Pass-Through Pricing to Sponsor, subject to the achievement of certain guaranteed average rates as provided in this Article 6. PBM's obligation to provide Pass-Through Pricing shall require PBM to invoice Sponsor the exact amount paid to the Participating Pharmacy for each dispensed and Paid Claim.

6.3 Generic Drug Pricing

- a. Generic Drug Pricing Delegation to PBM As Agent: Sponsor delegates to PBM, as Sponsor's agent, the management and control of pricing for Generic Drugs (whether said Generic Drugs are multisource brand drugs or multisource generic drugs). Such delegation shall include, without limitation: negotiating on an ongoing basis all MAC and non-MAC reimbursement rates with retail Participating Pharmacies and increasing the Financial Benefits related to all multisource Brand Drugs or Generic Drugs (which Financial Benefits shall be passed through to Sponsor).
- b. Pricing Agreement Concerning All Generic Drugs. For all Generic Drugs, PBM shall invoice Sponsor for the exact amount that PBM reimburses to retail Participating Pharmacies. Sponsor delegates to PBM, as Sponsor's agent, the discretion to establish said cost, in the form of a MAC or a non-MAC price. Said discretion is delegated to PBM in order to: (i) enable PBM to generate cost-effective and market competitive prices, and (ii) to decrease such prices as Generic Drug prices decrease in the market place. Notwithstanding the foregoing, there shall be no more than one MAC Price for each GCN, GSN or GPI and there shall be only one MAC Price for all Participating Pharmacies for all channels and PBM shall be obligated to satisfy the annual generic retail pricing guarantees stated in Section 6.4 below.

- c. Pricing Agreement Concerning Newly Available Generic Drugs, Whether Dispensed Through Retail Participating Pharmacies or the Mail Order Pharmacy. PBM and Sponsor acknowledge that certain Brand Drugs have recently lost their patents, or will lose their patents, during the term of this Agreement. With respect to all newly available Generic Drugs, PBM and Sponsor agree that the price payable to the Participating Pharmacies and by Sponsor shall be set at least a [XX.XX]% discount to AWP. In such event, for each such drug dispensed thereafter, Sponsor shall reimburse PBM an amount equal to the lesser of (i) the amount paid by PBM to the Participating Pharmacies, or (ii) [XX.XX]% discount off the AWP for such drug as of the dispensing date, less any Copayments/Coinsurance or other amounts received by Participating Pharmacies, plus the Dispensing Fee.

6.4 Guaranteed Retail and Mail Order Pharmacy Rates (excluding U&C dispensed drugs)

- a. PBM's Guaranteed Retail and Mail Order Rates: With respect to each of the categories set forth below, PBM guarantees to Sponsor the following average annual rates during each Contract Year during the term hereof:

For Retail 30 Paid Claims:

average Brand Drug Dispensing Fee: \$X.XX

average Generic Drug Dispensing Fee: \$X.XX

average Brand Drug percentage discount off AWP (not including Dispensing Fees): XX.XX%

average Non-MAC Generic Drug discount off AWP (not including Dispensing Fees): XX.XX%

MAC priced Generic Drug equals MAC each as of the most current MAC List times metric quantity.

average overall Generic Drug discount off AWP (not including Dispensing Fees): XX%

(each, a "Guaranteed Average Retail 30 Rate," and, collectively, the "Guaranteed Average Retail Rates").

For Retail 90 Paid Claims (84 or greater days' supply at Retail 90 Participating Pharmacies only):

average Brand Drug Dispensing Fee: \$X.XX

average Generic Drug Dispensing Fee: \$X.XX

average Brand Drug percentage discount off AWP (not including Dispensing Fees): XX.XX%

average Non-MAC Generic Drug percentage discount off AWP (not including Dispensing Fees): XX.XX%

MAC priced Generic Drug equals MAC each as of the most current MAC List times metric quantity.

average overall Generic Drug discount off AWP (not including Dispensing Fees): XX%

(each, a "Guaranteed Average Retail 90 Rate," and, collectively, the "Guaranteed Average Retail90 Rates").

For Mail Order Paid Claims:

average Brand Drug Dispensing Fee: \$X.XX

average Generic Drug Dispensing Fee: \$X.XX

average Brand Drug percentage discount off AWP (not including Dispensing Fees): -XX%

average Non-MAC Generic Drug discount off AWP (not including Dispensing Fees): -XX%

MAC priced Generic Drug equals MAC each as of the most current MAC List times metric quantity.

average overall Generic Drug discount off AWP (not including Dispensing Fees): XX%

(each, a “Guaranteed Average Mail Order Rate,” and, collectively, the “Guaranteed Average Mail Order Rates”).

The Guaranteed Average Retail 30 Rates, Guaranteed Average Retail 90 Rates, and Guaranteed Average Mail Order Rates shall be calculated based on all drugs dispensed through Participating Pharmacies except those: (i) priced based on U&C. Drugs shall only be priced based on U&C if said U&C price is lower than the same drug’s price based on the contractually agreed discounted AWP for that pharmacy, or PBM’s MAC; (ii) over-the-counter products; (iii) compound drug products; (iv) claims from veterans administration facilities; and (v) Specialty Drugs. Drugs shall only be priced based on MAC if the MAC is lower than the same drug’s price based on AWP discount. No Member shall pay in excess of the appropriate contract rate and no Member shall be subject to a minimum charge amount.

PBM shall measure Generic Drug and Brand Drug discounts off AWP (“Discount Guarantees”) in a methodology that includes the following procedures. For Generic Drugs, all Generic Drugs (MAC List and non-MAC List generics) including Zero Balance Claims as adjudicated at point-of-sale that are filled during each Contract Year quarter will be included (“Generic Measurement Period. For Brand Drugs, all Brand Drugs including Zero Balance Claims as adjudicated at point-of-sale that are filled during each Contract Year quarter will be included (“Brand Measurement Period”) (Brand Measurement Period and Generic Measurement period collectively, “Measurement Period”. Discount Guarantees will exclude claims for over-the-counter products, U&C, compound drug products, and Specialty Drugs and claims from veterans administration facilities. Ingredient cost also excludes Taxes and Dispensing Fees. Furthermore, Sponsor’s results will be measured and reported quarterly. In the event the achieved discount for any guarantee in any channel is less favorable for Sponsor than the Discount Guarantees, PBM shall credit Sponsor’s invoice for the difference between the Discount Guarantees and the achieved discount within thirty (30) days of the PBM’s completion and Client’s acceptance of each quarterly measurement. For each of the above excluded groups of drugs the claims for those groups of drugs will be audited and held to a claim by claim standard. In the event the achieved discount for any claim in any group is less favorable for Sponsor than the appropriate discount, PBM shall credit Sponsor’s invoice for the difference between the appropriate discount and the achieved discount within thirty (30) days of the PBM’s completion and Client’s acceptance of each quarterly measurement.

Notwithstanding the foregoing, Sponsor acknowledges that certain factors beyond PBM's control may affect PBM's ability to achieve the Discount Guarantees, including, but not limited to, significant changes in (a) Plan Design, (b) Brand Drug/Generic Drug market status of certain highly utilized drugs, and (c) applicable law or regulation (collectively, "Changes"). If at any time PBM, in its reasonable discretion, determines that any Changes are likely to materially and negatively affect PBM's ability to meet the Discount Guarantees, the parties will, upon PBM's request, negotiate a mutually acceptable alternative guarantee or other financial arrangement. If the parties fail to reach any such agreement in writing within 45 days of notice of Change, notwithstanding anything contained in this Agreement to the contrary, PBM will not be bound by any of the obligations in this Section 6.4.a, above, in the Measurement Period following the Measurement Period in which the renegotiation was requested or any future Measurement Periods, and PBM will have no additional liability in connection therewith. Furthermore, if the parties fail to reach any agreement related to Changes, Sponsor may provide written notice to the other party of its intent to terminate this Agreement, which may take place ninety (90) days after such notice to terminate is provided.

- b. Transmission of Data. Not later than twenty (20) days following the end of each Contract Year quarter, PBM shall transmit to Sponsor and its auditor data showing the actual average invoiced rates for each of the categories set forth in Section 6.4(a) above for all Paid Claims dispensed during the three (3) months of the current Contract Year quarter. In calculating the average rates, PBM shall provide but not include any Paid Claims dispensed and priced based on U&C, over-the-counter products, compound drug products, claims from veterans administration facilities and Specialty Drugs. PBM shall also transmit, within five (5) business days of Sponsor's request, all supporting documents and data requested by Sponsor or its auditor to enable Sponsor to verify the accuracy of PBM's calculations. No later than twenty (20) days after the end of each Contract Year, PBM shall transmit to Sponsor and its auditor revised actual average invoiced rates for each of the categories set forth in Section 6.4(a) above (and calculated in accordance with the requirements of this section) with respect to the just-concluded Contract Year.
- c. Renegotiation of Guaranteed Average Rates. No later than thirty (30) days after the end of each Contract Year, Sponsor and PBM shall begin negotiating in good faith to develop revised Guaranteed Average Retail 30 Rates, Guaranteed Average Retail 90 Rates and Guaranteed Average Mail Order Rates which shall apply during the upcoming Contract Year. The revised rates shall be no less favorable to Sponsor than the guaranteed rates applicable during the preceding Contract Year. In any event, if Sponsor and PBM cannot mutually agree by forty-five (45) days following the end of the current Contract Year on the revised Guaranteed Average Retail 30 Rates, Guaranteed Average Retail 90 Rates and Guaranteed Average Mail Order Rates, Sponsor shall have the right, in its sole discretion, to terminate this Agreement upon sixty (60) days written notice to PBM.
- d. Reimbursement for Overcharges. If, during any completed Contract Year quarter, the

actual average retail or mail order rate with respect to any category set forth in Section 6.4(a) above is less favorable to Sponsor than the Guaranteed Average Retail 30 Rate, Guaranteed Average Retail 90 Rates, or Guaranteed Average Mail Order Rate for such category (as such guaranteed rates may be revised from time to time as provided in subsection 6(b) above), then PBM shall pay to Sponsor, within thirty (30) days after the end of such Contract Year quarter, an amount equal to the savings which would have accrued to Sponsor during such Contract Year quarter had the guaranteed rate for such category been achieved.

6.5 Specialty Drugs.

- a. Management and Administration. PBM shall be responsible for ensuring that the Specialty Pharmacy Vendor dispenses to members all Specialty Drugs identified on Exhibit C at prices no less favorable to Sponsor than those set forth on Exhibit C, as it may be amended from time to time pursuant to Section 6.5(c) below.
- b. Specialty Drug Pricing. For all Paid Claims for the Specialty Drugs listed on Exhibit C, the cost to Sponsor shall be the lower of (i) the purchase price per unit paid by PBM to the Specialty Drug vendor to provide the medication and process the Paid Claim, or (ii) the Ingredient Cost, determined based on the percentage discount from AWP reflected on Exhibit C, plus the Dispensing Fee reflected on Exhibit C, less any Coinsurance or Copayment received by the Participating Pharmacy.
- c. Changes to Exhibit C. On an annual basis (or more frequently as deemed necessary in the written opinion of PBM or Sponsor), PBM and Sponsor shall in good faith agree on any necessary changes in the Specialty Drugs that will be included on, or excluded from, Exhibit C, as well as changes in Specialty Drug Pricing for all existing or newly added Specialty Drugs reflected on Exhibit C. All such changes shall be memorialized in writing no later than thirty (30) days after the initiation of such communications, and shall be made a part of this Agreement as amendments to Exhibit C. If the parties are unable to agree on such proposed changes within such thirty (30) day period following the initiation of communications, Sponsor shall have the right to terminate this Agreement upon sixty (60) days' written notice to PBM.

6.6 Transaction Charges. The parties agree that Participating Pharmacies are responsible for any applicable transaction and/or switch charges associated with the submission of Claims to PBM. Such charges will not be deducted by PBM from its reimbursements to Participating Pharmacies, and therefore shall not be invoiced or passed through to Sponsor. The parties acknowledge that the charges referred to in this paragraph do not include Administrative Fees.

6.7 Customer Service for Pharmacy and Provider Inquiries. PBM shall be responsible for responding to inquiries from Participating Pharmacies, providers and Members regarding the PBM Services provided by PBM under this Agreement through a PBM toll-free phone line. Services to be provided by PBM include providing answers to questions on Member eligibility, Benefit Plan guidelines, deductibles, status and Copayment or Coinsurance

levels, maximum benefit status, instructions on completing a DMR claim form, and status of DMR claims.

- a. Hours of Service. PBM's 800 Help Line shall be available to Sponsor and all Participating Pharmacies and providers twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year, except for such reasonably necessary maintenance and regularly scheduled downtime necessary to provide such maintenance.
- b. Participating Pharmacy Audit. PBM must audit three percent (3%) of Participating Pharmacies to ensure that Participating Pharmacies are in compliance with their contracts with PBM. Selection of Participating Pharmacies for this type of audit and the method of audit will be determined by PBM with guidance from Sponsor if deemed necessary. PBM may perform the audit or select an outside firm to perform the audit on PBM's behalf. Any identified overpayments made to a Participating Pharmacy attributable to Claims will be offset against future Sponsor invoice payments; if offset is not available, then Sponsor's portion of any overpayment recovered from the Participating Pharmacy will be remitted to Sponsor.
- c. Other Terms. The Participating Pharmacy may withhold prescription services to a Member for good cause, including, but not necessarily limited to the Member's failure to pay for services rendered (e.g., Copayment); requests by Member for quantities of drugs in excess of prescribed amounts or refill limitations pursuant to the pharmacy benefit information; or where, in the professional judgment of the dispensing pharmacist, the prescription should not be filled.
- d. Prescriptions filled by Mail Order Pharmacy will be sent to Members via United Parcel Service, United States Postal Service, or any other method the Mail Order Pharmacy may select. Risk of loss or damage to covered drugs provided hereunder is on the Mail Order Pharmacy until such prescription drugs have been delivered to Member. The cost of shipping will be borne by the Participating Mail Order Pharmacy, except that Members will pay, or reimburse Mail Order Pharmacy, as applicable, for all additional expenses due to expedited delivery requested by Member.

ARTICLE 7 - FORMULARY SELECTION, ADMINISTRATION OF ALL FINANCIAL BENEFITS FROM CONTRACTS WITH PHARMACEUTICAL MANUFACTURERS AND GUARANTEED REBATES

- 7.1 Selection of Formulary. Prior to the Effective Date of this Agreement, Sponsor and PBM shall discuss and review PBM's standardized Formulary. Sponsor agrees to adopt the Formulary as of the Effective Date unless otherwise agreed upon by the parties.
- a. The parties agree that PBM may review and make changes with a forty-five (45) day notice to the Formulary from time to time during the term of this Agreement for safety and efficacy as necessitated by accepted medical and pharmacy practice, and based on

drug price changes and Financial Benefits available for each drug. With respect to all such recommendations, PBM will ensure that all such recommended changes are made in the interests of Sponsor and Members. Unless medical and pharmacy practice requires the favoring of a higher net cost drug in a therapeutic category, PBM shall favor lower net cost drugs in each therapeutic category when making recommendations for Formulary changes.

- b. The parties further agree that Sponsor shall also have the right to make changes in the Formulary, as Sponsor deems appropriate. Should Sponsor consider any such Formulary changes, PBM shall be obligated to provide information to Sponsor concerning (a) the safety and efficacy of any such Formulary change; and (b) any changes in Financial Benefits that may result from Sponsor's Formulary changes. Other than the possible change in Financial Benefits Sponsor will not incur any further charges or fees including but not limited to custom formulary management fees. Sponsor will notify PBM in advance of any Benefit Plan changes that may materially affect PBM's ability to perform formulary management and/or other services described in this Agreement.
- c. The parties acknowledge that the prescribing physician has ultimate authority to determine which drug is prescribed to a Member.

7.2 Sponsor's Selection Of Copayment/Formulary Structure: Sponsor's Benefit Plan Copayment/Formulary Structure is set forth in Exhibit G, together will all other plan design criteria to be implemented by PBM.

7.3 PBM's Agreement To Pass-Through All Financial Benefits From Contracts With Pharmaceutical Manufacturers. PBM agrees to pass through to Sponsor all Financial Benefits received under all PBM Pharmaceutical Manufacturer Contracts or monies from rebate aggregator in connection with or relating to the Benefit Plan, this Agreement, and Claims processed hereunder.

- a. On a quarterly basis, no later than one hundred and twenty (120) days after the end of each calendar quarter from the Effective Date of this Agreement, PBM shall provide Sponsor (and its agents) with a detailed reconciliation agreeable to Sponsor by channel, identifying the following: the Financial Benefits paid by manufacturers or rebate aggregator and the minimum guarantees due to Sponsor during the quarter; and greater amount by channel will be paid to Sponsor based on the drugs dispensed to Members during the quarter. Accompanying such reconciliation will be the amount due to Sponsor.
- b. PBM's obligations to pass through to Sponsor all Financial Benefits relating to or received in connection with the Agreement shall survive the expiration or termination of this Agreement. PBM shall be obligated to pass through to Sponsor all Financial Benefits that PBM receives that are related to the Agreement, regardless of when PBM receives such Financial Benefits.

- c. PBM's obligation to pass through to Sponsor all Financial Benefits received shall include, without limitation, all Financial Benefits received in connection with Drugs dispensed and services provided in relation to the Agreement.
- 7.4 PBM's Agreement to Provide Transparency. PBM agrees that it shall provide full transparency to Sponsor (and its agents) to the extent they sign the confidentiality agreement found in Exhibit F in connection with all Financial Benefits, and shall provide access to all documents and data related to PBM's receipt of Financial Benefits necessary to enable Sponsor (and its agents) to verify that all Financial Benefits have been passed through to Sponsor.
- 7.5 Appointment of PBM as Agent. During the term of this Agreement, Sponsor appoints PBM as its exclusive agent for the purpose of negotiating and executing contracts with Pharmaceutical Manufacturers or rebate aggregator to obtain Financial Benefits, as well as managing, tracking and controlling the invoicing, collection and distribution to Sponsor of all Financial Benefits. PBM agrees that it will comply with all applicable state and federal laws and regulations regarding all such activities. PBM shall only work for the benefit of the Sponsor concerning Financial Benefits.
- 7.6 Participation in Financial Benefits.
- a. Claims from Members who are entitled to obtain drug benefits from government programs, including Medicaid, Medicare, or any other state or federal health care program which receives rebates, discounts, charge-backs or other forms of price reduction directly from Pharmaceutical Manufacturers, shall not result in Financial Benefits to Sponsor. Notwithstanding the foregoing, this provision shall not be construed to prohibit Sponsor from participating in Medicare or Medicaid choice contracting.
- b. Sponsor represents that it has no direct or indirect arrangements, either oral or written, with pharmaceutical companies or others for rebates, discounts, or other incentive payments on prescription drugs dispensed to Members pursuant to this Agreement and agrees not to enter into any such arrangement during the Term. Sponsor agrees to cancel any existing agreements, arrangements or contracts with any pharmaceutical company related to such rebates or discounts as of the Effective Date. Sponsor agrees to cooperate fully with PBM and execute any documents in addition to this Agreement that may reasonably be necessary for either PBM or Sponsor to participate in any arrangements for rebate-related payments.
- d. Sponsor acknowledges and agrees that it shall not have a right to interest on, or the time value of, any rebate payments received by PBM or monies payable under this Agreement unless specifically called for in this Agreement.

7.7 Financial Benefit Guarantees. The parties agree that PBM shall provide Financial Benefit guarantees during each Contract Year of this Agreement as set forth below:

a. Average Financial Benefit for each brand 30 day retail dispensed and Paid Claim:
\$X.XX

b. Average Financial Benefit for each brand 90 day retail dispensed and Paid Claim:
\$X.XX

c. Average Financial Benefit for each brand Specialty Drug dispensed and Paid Claim:
\$X.xx

d. Average Financial Benefit for each brand mail order dispensed and Paid Claim:
\$X.xx

Each guarantee provided for above is a unique guarantee and must be met within each channel and no offsets from any other channel or guarantee may be included in the guarantee calculation. The above guarantees are not to be aggregated outside of each individual channel for any reason. If, during any completed Contract Year quarter, the actual average Financial Benefit paid to Sponsor for each brand 30 day retail dispensed and Paid Claim and each brand 90 day retail dispensed and Paid Claim and each brand Specialty Drug dispensed and Paid Claim and each brand mail order dispensed and Paid Claim is less than the guarantees specified above (as such guarantees may be revised from time to time as provided in Section 7.8 below), then PBM shall pay to Sponsor, with delivery of the reconciliation required under Section 7.3(a) above for each quarter of such Contract Year the Financial Benefits owed pursuant to the guarantees in subsections (a), (b), (c) and (d) above.

7.8 Annual Renegotiation of Financial Benefit Guarantees. Beginning no later than twenty (20) days prior to the end of each Contract Year, Sponsor and PBM shall begin negotiating in good faith to develop revised Financial Benefit Guarantees which shall apply during the subsequent Contract Year. The revised rates and percentages shall be no less favorable to Sponsor than the Financial Benefit Guarantees applicable during the preceding Contract Year. In any event, if Sponsor and PBM cannot mutually agree by forty-five (45) days following the end of the current Contract Year on the revised Guaranteed Average Retail Rates and Guaranteed Average Mail Order Rates, Sponsor shall have the right, in its sole discretion, to terminate this Agreement upon sixty (60) days written notice to PBM.

ARTICLE 8 - INDEMNIFICATION; INJUNCTIVE RELIEF

8.1 Indemnity by Sponsor. Sponsor shall indemnify and hold PBM, and its officers, directors, shareholders, employees, successors, other agents and permitted assigns ("PBM Indemnities"), harmless from and against any claims, liabilities, damages, judgments or other losses (including attorneys' fees) imposed upon or incurred by PBM Indemnities arising out of or as a result of (i) the breach of this Agreement by Sponsor; (ii) the

negligence of Sponsor, or its officers, directors, employees or other agents, or its successors and assigns, in connection any of their respective obligations under this Agreement.

- 8.2 Indemnity by PBM. PBM shall indemnify and hold Sponsor, and its officers, directors, shareholders, employees, successors, other agents and permitted assigns (“Sponsor Indemnitees”), harmless from and against any claims, liabilities, damages, judgments or other losses (including attorneys’ fees) imposed upon or incurred by Sponsor and Sponsor Indemnitees arising out of or as a result of any breach of this Agreement by PBM, or the negligence of PBM, or its officers, directors, employees or other agents, or its successors and assigns, in connection with the performance of any of their respective obligations under this Agreement.
- 8.3 Injunctive Relief. With respect to the mutual confidentiality obligations of Article 10, and with respect to all of PBM’s obligations to disclose information and materials to Sponsor and/or Sponsor’s auditor under this Agreement, the parties acknowledge that money damages may not be a sufficient remedy for any breach of such obligations. Accordingly, the parties agree that each party shall be entitled to seek specific performance or other equitable relief, including injunction, as remedies for any such breach, without the necessity of proof of damages and without the posting of any bond.
- 8.4 Attorney’s Fees. Each party agrees that the prevailing party in any litigation between the parties in connection with this Agreement shall be reimbursed by the other party for all costs and expenses, including attorney’s fees, incurred by the prevailing party in connection therewith.
- 8.5 Participating Pharmacies. Sponsor acknowledges and agrees that neither PBM, nor its shareholders, directors, officers or employees have any liability whatsoever to Sponsor or Members for the acts or omissions of any Participating Pharmacy (including, but not necessarily limited to, the acts or omissions of any Participating Pharmacy’s employees or agents) in connection with such Participating Pharmacy’s provision of services to Sponsor or Members, including, but not necessarily limited to, any of the following: (i) any actual or alleged malpractice, negligence or misconduct of any Participating Pharmacy; or (ii) the sale, compounding, dispensing, failure to sell, manufacture or use of any drug dispensed to a Member under this Agreement.

ARTICLE 9 - VENUE, CHOICE OF LAW, WAIVER OF JURY TRIAL

- 9.1 Choice of Law. This Agreement shall be construed, interpreted, and governed according to the laws of the State of Arkansas without regard to the conflict of law provisions thereof.
- 9.2 Wavier of Jury Trial. In any dispute between the parties in connection with this Agreement, the parties hereby waive any right to a trial by jury.

ARTICLE 10 - CONFIDENTIALITY

- 10.1 Confidential Information. The term “Confidential Information” means information of a

confidential or proprietary nature which is taken from or disclosed by one party (the “Disclosing Party”) to the other (the “Receiving Party”). Confidential Information may include matters of a technical nature such as trade secrets, data, computer programs, research projects and information derived therefrom, matters of a business nature, PBM/Pharmaceutical Manufacturer Contract terms, lists of actual or potential Clients, and other information that is designated in good faith by either party as confidential.

10.2 Treatment of Confidential Information. The Receiving Party agrees (i) to hold the Disclosing Party’s Confidential Information in strict confidence and to take reasonable precautions to protect such Confidential Information; and (ii) not to divulge Confidential Information or information derived therefrom to any third party unless such disclosure is required in the performance of the Receiving Party’s duties under this Agreement. The confidentiality obligations of this Section 10.2 shall not apply to information which, as evidenced in writing:

- a. is or becomes publicly known by the Receiving Party without breach of this Agreement;
- b. is learned by the Receiving Party from a third party; or
- c. was rightfully obtained by the Receiving Party prior to this Agreement.

The confidentiality obligations contained in this Article 10 shall survive the expiration or termination of this Agreement for a period of three (3) years thereafter; provided, however, that such obligations shall be perpetual with respect to any trade secret information or personally identifiable health information concerning a current or former Member, or other categories of legally protected information as required by applicable privacy laws. Receiving Party may make disclosures to its agents or representatives, including its consultants, auditors or lawyers, provided Receiving Party undertakes to protect the Confidential Information in the same manner as it is protected under this Agreement. Receiving Party may also make disclosures as required by law or by a court order or subpoena, provided Receiving Party allows the Disclosing Party an opportunity to limit disclosure or to obtain a protective order, should the Disclosing Party wish to do so.

10.3 HIPAA Privacy and Security. The parties agree to abide by state and federal privacy and security requirements, including applicable confidentiality and security provisions, including, but not limited to HIPAA and the HITECH Act. To the extent either party is considered to be a Covered Entity or a Business Associate for the purposes of HIPAA and the HITECH Act - the Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or as required by law or obligation. Further, the Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of Protected Health Information by the Business Associate in violation of the requirements of this Agreement or as required by law or obligation. The Business Associate agrees to report to Covered Entity any significant risk of financial, reputation, or other harm arising from the use or disclosure of Protected Health Information not provided for by this Agreement of which it becomes aware. Business Associate agrees to ensure any agent, including a subcontractor, to whom it provides Protected Health Information received

from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. The Business Associate agrees to provide access, at the reasonable request of Covered Entity to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to a Member in order to meet the requirements under 45 CFR 164.524. The Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528. Sponsor acknowledges it may direct PBM to deliver Protected Health Information to third parties. Sponsor represents and warrants it has entered into a Business Associate Agreement with such third parties. Sponsor represents and warrants it limits all requests involving Protected Health Information to the minimum of necessary information. Sponsor represents and warrants it has obtained authorization to send information to third parties or to itself from Members in accordance with applicable laws, regulations, and governmental guidance. Sponsor agrees to indemnify and hold harmless for any and all liability which might result from Sponsor's direction to send Protected Health Information to a third party. Nothing contained in this provision shall be construed to limit any existing Business Associate Agreement entered into by and between the parties.

ARTICLE 11 - EXCLUSIVITY

Sponsor agrees to use PBM as its exclusive provider of Prescription Benefit Services during the term of this Agreement. Nothing contained in this Agreement, however, will prohibit or limit PBM's right to participate in other healthcare or prescription programs or to otherwise provide prescription benefit programs, prescription benefit management, or claims processing services to other third parties.

ARTICLE 12 - TERM AND TERMINATION

- 12.1 **Term.** This Agreement shall become effective on the Effective Date, and shall be for an initial term of two (2) years. This Agreement may be extended upon the mutual, written agreement of the parties.
- 12.2 **Termination Due to Breach.** In the event of a material breach of any of the terms of this Agreement, the non-breaching party may provide written notice to the breaching party stating the nature of the breach. If the breach is not cured within thirty (30) days (or such shorter period as may be provided herein), the Agreement may be terminated immediately upon written notice to the breaching party.
- 12.3 **Effect of Termination.** Termination shall have no effect upon the rights and obligations of the parties arising out of any transactions occurring prior to the effective date of such termination. If this Agreement is terminated pursuant to this Article 12: (i) all further obligations of the parties under this Agreement shall terminate as of the termination dates referenced herein; (ii) all Confidential Information provided by either party shall, except for Confidential Information required by law and one copy for archiving may be retained by a party, be immediately returned by a Receiving Party, or such Receiving Party shall

certify to the Disclosing Party that such materials have been destroyed; (iii) neither party shall be relieved of any obligation or liability arising from any prior breach by such party of any provision of this Agreement; and (iv) the parties shall, in all events, remain bound by and continue to be subject to the provisions explicitly stated to survive the termination of this Agreement.

- 12.4 PBM's Agreement to Provide All Requested Documents, Data and Information To New PBM, Should This Agreement Be Terminated. PBM hereby agrees to provide all requested documents, data and information, as agreed upon in writing, to any replacement PBM selected by Sponsor upon termination of this Agreement. PBM will assume no responsibility for processing Claims submitted to PBM by any Participating Pharmacy or any Member more than ninety (90) days following the termination date of this Agreement; PBM may forward all such claims to Plan Sponsor for adjudication and payment. Upon termination of this Agreement, PBM will not transition claims files or history that contain PBM's cost and pricing information to Plan Sponsor's new pharmacy benefit manager. Subject to the foregoing and in relation to the date of termination, PBM will provide the successor pharmacy benefit manager with prior authorization, open mail order refill files and claim history for the previous 12 months.

ARTICLE 13 - GENERAL PROVISIONS

- 13.1 Insurance. Each party shall obtain (to the extent not already possessed) and maintain, with respect to the activities in which such party engages pursuant to this Agreement, comprehensive liability insurance and professional liability (errors and omissions) insurance in amounts reasonable and customary for the nature and scope of business engaged in by such party. Upon request, either party shall promptly deliver to the other party evidence of such insurance. Each party agrees to notify the other party immediately upon such party's receipt of any notice canceling, suspending or reducing the coverage limits of its comprehensive liability insurance or professional liability insurance.
- 13.2 Successors and Assigns. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by PBM (whether by operation of law or otherwise) without the prior written consent of Sponsor.
- 13.3 Waiver. Any term or condition of this Agreement may be waived at any time by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the party waiving such term or condition. No waiver by any party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or other term or condition of this Agreement on any future occasion.
- 13.4 Severability. In the event that any provision of this Agreement shall be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Agreement, and the application of such provision other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected and

shall continue to be valid and enforceable to the fullest extent permitted by law.

- 13.5 Further Assurances. Each party hereto shall execute and cause to be delivered to each other party hereto such instruments and other documents, and shall take such other actions, as such other party may reasonably request (at or after the date hereof) for the purpose of carrying out or evidencing any of the transactions contemplated by this Agreement.
- 13.6 Survival. The provisions of Section 5.1, Articles 8, and 9, Sections 12.3, 12.4 and 13.16 shall survive the termination or expiration of this Agreement. Other sections of this Agreement may survive its termination for a finite period of time, as provided in such sections.
- 13.7 Force Majeure. The performance obligations of PBM and/or Sponsor respectively hereunder shall be suspended to the extent that all or part of this Agreement cannot be performed due to causes which are outside the control of PBM and/or Sponsor. Without limiting the generality of the foregoing, such causes include acts of God, acts of a public enemy, acts of any person engaged in a subversive or terrorist activity or sabotage, wars, fires, floods, earthquakes, explosions, strikes, slow-downs, freight embargoes, and comparable causes. The foregoing shall not be considered to be a waiver of any continuing obligations under this Agreement, and as soon as said conditions abate sufficiently to allow the resumption of operations, the party affected thereby shall fulfill its obligations as set forth under this Agreement.
- 13.8 Entire Agreement. This Agreement, including the Exhibits attached hereto, constitutes the entire agreement between PBM and Sponsor with respect to the subject matter hereof.
- 13.9 Use of Name. No party shall use the other party's name, trade or service mark, logo, or the name of any affiliated company in any advertising or promotional material, presently existing or hereafter established, except in the manner and to the extent permitted by prior written consent of the other party.
- 13.10 Notice. Any notice required or permitted by this Agreement, unless otherwise specifically provided for in this Agreement, shall be in writing and shall be deemed given: (i) one (1) day following delivery to a nationally reputable overnight courier; (ii) one (1) day following receipt by facsimile during the receiving party's business hours with written confirmation thereof; or (iii) three (3) days after the date it is deposited in the United States mail, postage prepaid, registered or certified mail, or hand delivered addressed as follows:

To PBM:
With a copy to:

To Sponsor:

With a copy to:

Any party may at any time change its address for notification purposes by mailing a notice stating the change and setting forth the new address.

- 13.11 Counterparts. Facsimile. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that each party need not sign the same counterpart. This Agreement may be executed and delivered by facsimile and upon such delivery the facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the other party. The original signature copy shall be delivered to the other party by express overnight delivery. The failure to deliver the original signature copy and/or the non-receipt of the original signature copy shall have no effect upon the binding and enforceable nature of this Agreement.
- 13.12 Consent to Amend. This Agreement or any part or section of it may be amended at any time during the term of this Agreement only by mutual written consent of duly authorized representatives of PBM and Sponsor.
- 13.13 Headings. The headings of Articles, Sections and Exhibits contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- 13.14 Compliance with Laws and Regulations. This Agreement will be in compliance with all pertinent federal and state statutes and regulations. If this Agreement, or any part hereof, is found not to be in compliance with any pertinent federal or state statute or regulation, then the parties shall renegotiate the Agreement for the sole purpose of correcting the non-compliance.
- 13.15 Construction.
- a. For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include the masculine and feminine genders.
 - b. The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.
 - c. As used in this Agreement, the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.”

- d. Except as otherwise indicated, all references in this Agreement to “Articles,” “Sections” and “Exhibits” are intended to refer to Articles of this Agreement, Sections of this Agreement and Exhibits to this Agreement.
- 13.16 HIPAA Compliance. The parties will comply with all applicable regulations published pursuant to HIPAA, as of the effective enforcement date of each standard, including execution of a business associate agreement. In addition, without limiting any other provision of this Agreement:
- a. all services provided by PBM under this Agreement will be provided in such a manner as to enable Sponsor to remain at all times in compliance with all HIPAA regulations applicable to Sponsor to the extent that Sponsor’s compliance depends upon the manner in which such services are performed by PBM; and
 - b. all software, application programs and other products licensed or supplied by PBM under this Agreement will contain such characteristics and functionality (including as applicable, but not limited to, the ability to accept and securely transmit data using the standard HIPAA transaction sets) as necessary to ensure that Sponsor’s use of such software, application programs and other products and associate documentation from PBM, when utilized by Sponsor in the manner as directed by PBM, will fully comply with the HIPAA regulations applicable to Sponsor.
- 13.17 Trademarks; Advertising. Each party acknowledges the other party’s sole and exclusive ownership of its own Marks. Subject to the terms and conditions set forth in this Section 13.7, neither party may advertise or use any Marks of the other party without receiving the prior written consent of the party owning the Marks. Sponsor may reference the name and the addresses of PBM or any Participating Pharmacy in informational brochures Sponsor provides to Members or potential Members. Sponsor represents and warrants that any and all descriptions and representations concerning PBM and PBM Services provided under this Agreement as communicated to Members and potential Members are true, accurate, and consistent with the terms of this Agreement. Sponsor will use due diligence to ensure the accuracy of such information and will immediately correct incomplete or inaccurate information whether by its own discovery or at Sponsor’s direction. Any other reference to PBM or any Participating Pharmacy in any Sponsor materials must be pre-approved, in writing, by PBM. PBM may reference Sponsor's Marks to inform Members and the general public (i) of PBM’s role in providing prescription benefit management and other services and (ii) that Participating Pharmacies are participating providers to Sponsor and Members.
- 13.18 Limitation of Liability. Except as otherwise expressly set forth in this Agreement, PBM makes no additional representations or warranties, including without limitation, warranties of merchantability or fitness for a particular purpose. IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, OR ANY DAMAGES FOR LOST

PROFITS, HOWEVER CAUSED OR ARISING, WHETHER OR NOT THEY HAVE BEEN INFORMED OF THE POSSIBILITY OF THEIR OCCURRENCE. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, EACH PARTY'S LIABILITY TO THE OTHER PARTY SHALL IN NO EVENT EXCEED THE ACTUAL PROXIMATE LOSSES OR DAMAGES CAUSED BY BREACH OF THIS AGREEMENT.

The provisions of this Agreement shall bind and inure to the benefit of the parties hereto and their heirs, legal representatives, successors and permitted assignees. This Agreement constitutes the entire understanding between the parties hereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed, and to become effective, as of the Effective Date above.

SPONSOR

PBM

By: _____

By: _____

Print Name and Title

Print Name and Title

List of Exhibits:

Exhibit A	Scope of Services
Exhibit B	Administrative and Additional Fees
Exhibit C	Specialty Drugs and Specialty Drug Pricing
Exhibit D	Methodology for determining Brand Drug and Generic Drug Using First DataBank data
Exhibit E	Performance Guarantees
Exhibit F	Confidentiality Agreement
Exhibit G	Benefit Plan Design
Exhibit H	Audit Protocol
Exhibit I	Current MAC List

EXHIBIT A

SCOPE OF SERVICES

PBM shall perform the following services in connection with the Agreement:

A. CLAIMS PROCESSING

1. Claims Processing Services. PBM shall provide the following Claims processing services related to prescriptions dispensed on or after the Effective Date.
 - a. General Terms. PBM agrees to process Claims within NCPDP prevailing standards. PBM shall process Claims within the following time frames: electronic claims within thirty (30) seconds, manual and Member submitted claims within five (5) business days of receipt. Upon termination of this Agreement, PBM shall be obligated to process only those Claims which are for prescriptions dispensed before the termination date.
 - b. Claims from Participating Pharmacies. PBM shall perform the following services upon receipt of a prescription Claim:
 - (1) Verify that the patient for which the prescription has been dispensed is a Member and is entitled to Prescription Drug Services;
 - (2) Verify that the medication dispensed is a covered benefit under Sponsor's Benefit Plan;
 - (3) Determine the payment applicable to the Claim;
 - (4) Perform all plan design edits and controls applicable to that Claim, including but not limited to quantity limits, exclusions, prior authorization reviews, drug utilization reviews and step therapy, as required by Benefit Plan, or recommended by PBM and approved in writing by Sponsor;
 - (5) Communicate through electronic messaging to Participating Pharmacy any discrepancy which does not allow the Claim to be paid in full;
 - (6) Communicate to Participating Pharmacy (and thereby to the Member) all information necessary to process the Claim, including the Copayment amount and sales and use tax and any other Member requirements such as prior authorization requirements.

- (7) Pass through to Sponsor all Financial Benefits obtained from all Pharmaceutical Manufacturers.
- c. Collection of Deductible and/or Copayment/Coinsurance and Sales/Use Tax by Participating Pharmacies. Prior to providing to a Member any of the benefits or Prescription Drug Services to which such Member is entitled, PBM shall require Participating Pharmacies to collect from Member the amount of any applicable deductible, if any, the Copayment/Coinsurance, and the sales/use tax, if any. Additionally, PBM shall ensure that Participating Pharmacies do not recover any unpaid balances due or claimed to be due by Participating Pharmacies from Members. PBM represents that Participating Pharmacy agreements do not require, and PBM does not require in its contracts with Participating Pharmacies, a minimum Copayment or Coinsurance amount as described in the Benefit Plan.
- d. Direct Member Reimbursement. Either PBM or Sponsor shall provide a Member with an approved Claim form for use for reimbursement for Prescription Drug Services provided by a Participating or non-Participating Pharmacy for direct Member reimbursement (“DMR”). DMR claims will be submit by members and PBM shall process any DMR Claims submitted by members. When a DMR Claim is submitted by a Member or a third party, the PBM shall process the DMR Claim according to the Benefit Plan and pay an amount that would have been approved by Sponsor for payment. PBM shall charge Sponsor \$0.00 per DMR.
- e. Recalls. PBM will be obligated to cease claims processing for all pharmaceutical products for which any recall has been issued, as of the date the recall is issued.

B. SPONSOR IMPLEMENTATION SERVICES

1. PBM shall provide standard implementation services to Sponsor at no additional charge. Such standard implementation services shall include:
- Load eligibility files
 - Create and maintain adjudication processes and computerized “edits” that allow Claims to be processed, and payment to be made to all Participating Pharmacies for all Paid Claims, according to the Benefit Plan
 - Provide the specialized computer “edits” related to: DUR, too soon refills, duplicate claims, etc. as approved by Sponsor
 - Provide each Member with one (1) standard plastic ID Card or each Member’s family with two (2) plastic ID cards
 - Provide training, if necessary, via telephone, of PBM’s Online Adjudication System
 - Provide connectivity (VPN, FTP) to enable Sponsor (and its agents) to facilitate data transfer

- Implement a mutually agreed upon, in writing, and as described in Section C(4) below, prior authorization and step therapy
- Provide standard prior authorization letters, step therapy and mail order service letters, to be approved by Sponsor prior to transmission (by either PBM or Sponsor).

C. ANCILLARY SERVICES

1. Standard and Ad Hoc Reports. PBM shall provide Sponsor with access to web-based electronic reports. PBM shall provide training for a Sponsor employee designated by the Sponsor on the capabilities of PBM's online accessible reporting program.
2. Eligibility & Benefit Plan Changes.
 - a. Eligibility Information. PBM shall load electronically submitted Member data into the Online Adjudication System no later than twenty-four (24) hours from receipt of such data. Eligibility information submitted on hard copy requiring data input will be loaded into the Online Adjudication System no later than seven (7) days from receipt of such data. Eligibility information will be loaded in the order received.
 - b. Benefit Plan Changes. PBM shall have up to one week to implement any changes in any coverage criteria used by Sponsor that require customized edits, unless a different term is mutually agreed upon in writing by the parties. Sponsor shall be bound by the Benefit Plan Change Date requirements set forth in Section 2.2 of the Agreement.
3. Prior Authorization Program and Step Therapy Program (If Implemented). At Sponsor's request, PBM shall administer the rules and conditions established by Sponsor under which certain drugs or therapeutic drug categories may be prior authorized. Should Sponsor implement a step therapy program, PBM shall also administer said program. PBM will implement Prior Authorizations on Sponsor's behalf and in accordance with the protocols, criteria, forms, and related documents approved by Sponsor ("Approved Protocols"). If implemented, Sponsor will approve a Clinical Program & Billing Sheet, which is incorporated into this Agreement by reference. The Approved Protocols are hereby incorporated into this Agreement
 - a. Protocols and Modification of Protocols. Sponsor may, at its discretion, utilize PBM's prior authorization protocols or those established by Sponsor or a mixture of both. Protocols may be modified, added or deleted at Sponsor's request with fifteen (15) days' prior written notice.
 - b. Prior Authorization – Operational. Operational Prior Authorizations shall refer to the process in which PBM evaluates the dispensing of drugs on

behalf of Sponsor. Such evaluation shall not require consultation or approval by Sponsor, or by a professional consultation with a physician, physician office staff, nurse, clinical pharmacist, other persons authorized to prescribe prescription drugs, or other health care professionals. Operational Prior Authorizations shall include, but not be limited to, vacation overrides, lost/stolen/spilled overrides, emergency Prior Authorizations, and school supply and facility overrides.

- c. Prior Authorizations – Therapeutic. Therapeutic Prior Authorizations shall refer to the process in which PBM evaluates the dispensing of drugs on behalf of Sponsor. Said evaluation shall be governed by prior authorization protocols designed and approved for use by Sponsor (or its agents). Such evaluation may require consultation with a physician, physician office staff, nurse, clinical pharmacist, other person authorized to prescribe prescription drugs, or other health care professionals. Further, Therapeutic Prior Authorizations shall include, but not be limited to, prior authorization required, DAW exceptions, quantity restriction overrides, age restriction overrides, and specialty overrides.
 - d. Step Therapy. Step Therapy shall refer to the process by which PBM dispenses certain drugs only after Members have tried alternative, less expensive, therapeutically similar or equivalent drugs, including over-the-counter drugs. Step Therapy shall be governed by step therapy protocols designed and approved for use by Sponsor (or its agents), memorialized in writing, and incorporated by reference into this Agreement.
4. Access to PBM’s Claims Processing System. Through the Online Adjudication System, Sponsor has the ability to add, update, and terminate patient eligibility; create real-time prior authorization approvals; track progress of adjudicated pharmacy claims; and review data submission in PBM’s file library system. Sponsor (or its agents) shall have the right to access the Online Adjudication System for adding or updating patient eligibility, and for creating real-time prior authorization approvals or prescription claim overrides. Certain costs may apply. Sponsor acknowledges that as a condition precedent to receiving or continuing to receive access to the Online Adjudication System, Sponsor will (i) comply with the manuals and other instructions provided by PBM for such access; (ii) safeguard the access code(s) and any downloads of information; (iii) comply with applicable laws, regulations, and Sponsor’s policies and procedures concerning the protection of patient information; (iv) notify PBM immediately if any information accessed online is inconsistent with the Benefit Plan; (v) supervise all Users and administer all passwords to ensure there is no misuse or abuse of the access rights granted herein; and (vi) inform all Users of the requirements set forth in this paragraph. Sponsor is solely responsible for the accuracy, completeness, reliability, and timeliness of all information it enters into the Online Adjudication System. Any errors or omissions in the information are the sole responsibility of Sponsor. Sponsor is further responsible for providing, at its own expense, any hardware

and/or software that may be necessary to effectuate access to the Online Adjudication System, and for paying all telecommunication access fees.

5. Clinical Services. The following Clinical services will be provided under this Agreement:
 - a. Concurrent Drug Utilization Review. PBM shall provide concurrent on-line drug utilization review to Participating Pharmacies for all Claims submitted on-line, using mutually agreed specifications.
 - b. Prior Authorization. PBM shall provide prior authorization, using mutually agreed parameters.

6. Access To Personal Drug Profile and Annual EOB Reports. Members shall be able to view their personal drug history for retail, mail and specialty medications on PBM's website. PBM hereby grants to Sponsor a nonexclusive, non-transferable right to establish a link to PBM's web site(s). PBM grants to Sponsor a nonexclusive, non-transferable right to use, in connection with establishing this web link, the graphical image file containing PBM's copyrighted logo as such is selected by Sponsor and correlated text as approved in writing by PBM ("Image"). Such use is limited to the purposes of establishing the link, defining the web link specifications, and other purposes approved by PBM. Sponsor agrees to include such attributions, disclaimers and restrictions on the Sponsor's site relating to the use of the link as PBM may reasonably specify. The PBM Marketing Department will assist Sponsor in this process. Sponsor may not modify or alter the Image. Sponsor assumes all costs and responsibility for implementing the Image on the authorized web sites. Sponsor acknowledges and agrees that PBM is the owner of the exclusive right to use PBM trademarks and service marks, including the Image, and any registrations therefore. Sponsor agrees that it will not use the PBM trademarks or service marks, including the Image, other than as expressly provided herein.

EXHIBIT B

ADMINISTRATIVE AND ADDITIONAL FEES

In consideration for the services to be rendered by PBM under the Agreement, Sponsor shall pay PBM Administrative Fees and Additional Fees, as such terms are defined below. Such fees shall constitute the only revenue, compensation, profit, or other economic benefit of any kind that PBM shall be entitled to retain (all else to be paid to Sponsor promptly upon receipt) in connection with this Agreement or the transactions contemplated hereunder, unless expressly stated elsewhere in this Agreement.

1. ADMINISTRATIVE FEE

In consideration of the provision by PBM of the PBM Services described below in this Section 1, Sponsor shall pay PBM a fee of X.XX per Paid Claim (the “Administrative Fee”), pursuant to a monthly invoice to Sponsor:

- Processing and payment of all Claims
- Concurrent Drug Utilization Reviews (DUR)
- Online access to standard reports
- Administration of MAC program
- Standard benefit design and implementation services
- Eligibility management
- EOB claims payment detail and reimbursement sent to Participating Pharmacies
- Participating Pharmacy Contracting, Management and Administration
- Sponsor’s basic access to the Online Adjudication System for online and real time Member eligibility, if necessary
- Sponsor’s (or its agent’s) access to PBM’s reporting systems
- Sponsor’s access to PBM’s reporting system for the generation and review of PBM’s generation of reports
- Access to Personal Drug Profiles
- Paid Claims Data
- Welcome kit specific to Sponsor
- Initial ID Card
- Drug Utilization Program, as described herein
- Step Therapy Program, if implemented
- Prior Authorization Program, as described herein
- Toll free customer service help desk (twenty four hours a day, 365 days a year)
- Additional On-line messaging (approved in writing by Sponsor)

Any additional services and any requested modification to PBM’s standard procedures are subject to additional charges as quoted to Sponsor below.

EXHIBIT C
SPECIALTY DRUGS
AND SPECIALTY DRUG PRICING
[INSERT LIST UPON EXECUTION]

EXHIBIT D

Methodology for determining Brand Drug and Generic Drug Using Medispan data.

Please explain in detail the full procedure for determining brand drug and generic drug in this area.

DAW Logic:

DAW-0	Pharmacy pays difference
DAW-1	Patient pays difference
DAW-2	Patient pays difference
DAW-3	Pharmacy Pays Difference
DAW-4	Patient pays difference
DAW-5	Pharmacy Pays Difference
DAW-6	Reject
DAW-7	No Penalty
DAW-8	Pharmacy pays difference
DAW-9	Pharmacy pays difference

EXHIBIT E

PERFORMANCE GUARANTEES

PBM and Sponsor acknowledge the importance of maintaining high standards of customer service. Accordingly, to ensure prompt, accurate service in connection with the services to be rendered under the Agreement, PBM hereby provides the following “Performance Guarantees” to Sponsor:

Category	Standard	Total Dollar Amounts at Risk
Quarterly Meetings	PBM will be available to meet with Sponsor regularly based upon a mutually agreed upon timeframe.	PBM will pay a penalty of \$500.00 per quarter to an annual maximum of \$2,000.00.
Claim Adjudication Accuracy Rate	PBM guarantees that 99.5% of all claims entered into the Online Adjudication System by PBM or its designee will be adjudicated (processed) accurately and in accordance with the Sponsor’s defined plan specifications.	PBM will pay a penalty of \$1,250.00 per quarter to an annual maximum of \$5,000.00.
System Availability	The Online Adjudication System will be available for online point-of-sale claim processing at least 99% of scheduled uptime.	PBM will pay a penalty of \$500.00 per quarter to an annual maximum of \$2,000.00.
Customer Service Average Call Abandonment Rate	PBM guarantees that no more than 3 percent of all calls requesting to speak to a Customer Care Professional will be abandoned before the caller is connected.	PBM will pay a penalty of \$1,250.00 for each full percentage point above 3 percent as measured quarterly, to an annual maximum of \$5,000.00.
Customer Service Average Speed of Answer	PBM guarantees that 80 percent of all calls requesting to speak to a Customer Care Professional will be answered within an average of 20 seconds.	PBM will pay a penalty of \$1,250.00 for each full percentage point below 80 percent as measured quarterly, to an annual maximum of \$5,000.00.
Mail Service Prescription Turnaround Time For “Clean” Orders	PBM guarantees that 90 percent of all prescriptions received, not requiring patient, physician, or Sponsor intervention will be filled within an average turn-around time of 2 business days or less.	PBM will pay a penalty of \$1,250.00 per quarter to an annual maximum of \$5,000.00.

Mail Service Prescription Turnaround Time For “Problem” Orders	PBM guarantees that 90 percent of all prescriptions received, requiring patient, physician, or Sponsor intervention will be filled within an average turn-around time of 5 business days or less.	PBM will pay a penalty of \$1,250.00 per quarter to an annual maximum of \$5,000.00.
Paper Claim Processing	PBM guarantees that at least 90% of all clean DMR forms (those not requiring additional information for processing review) will be processed within 15 business days.	PBM will pay a penalty of \$1,250.00 for each full percentage point below 90 percent as measured quarterly, to an annual maximum of \$5,000.00.
Timely Production of Management Reports	PBM guarantees that Sponsor’s quarterly management reports will be produced and distributed 30 days following the end of such calendar quarter.	PBM will pay a penalty of \$750.00 per quarter to an annual maximum of \$3,000.00.
Accuracy of Reporting	PBM guarantees an accuracy rate of 99% for the standard reporting package.	PBM will pay a penalty of \$1,250.00 per quarter to an annual maximum of \$5,000.00.
Eligibility Updates	Eligibility information received by File Transfer Protocol in the agreed upon format is updated within an average of 1 business day.	PBM will pay a penalty of \$1,250.00 per quarter to an annual maximum of \$5,000.00.
Member Satisfaction	85% of respondents will provide a good to excellent satisfaction rating. PBM’s standard member satisfaction survey will be provided as a sample.	Failure to fulfill this performance standard will result in a \$3,000.00 penalty, measured and paid annually.
TOTAL AMOUNT AT RISK-ANNUALLY		\$60,000.00

- In the event PBM fails to meet any Performance Guarantee, PBM shall pay to Sponsor, for each such failure, the amount set forth in the column labeled “Total Dollar Amount At Risk.” PBM shall pay Sponsor the amount of the penalty within ten (10) business days after the determination of the failure, or, at Sponsor’s option. Penalties owed under this Exhibit E shall be in addition to, and not in lieu of, any other amounts which may be owed by PBM to Sponsor under the Agreement.

- For purposes of calculating time with the respect to any Performance Guarantee, the day a Claim is received by PBM shall be excluded from the calculation, and the day of delivery will be included in the calculation, as long as delivery occurs prior to 4:00 PM local time.

Exhibit F

Confidentiality Agreement

This Confidentiality Agreement (“Confidentiality Agreement”) is entered into this first day of January, 2021, by and between [PBM NAME] (“PBM) and [Auditor name] (“Auditor”).

RECITALS:

WHEREAS, Sponsor and PBM have entered into an agreement (the “Agreement”) for PBM to provide prescription benefit management services to **Arkansas Tech University (“Sponsor”)**; and

WHEREAS, the Agreement sets forth terms on which the PBM will provide prescription benefit services to the Sponsor, including terms providing for audits to be conducted by the Sponsor or its designated auditor; and

WHEREAS, Sponsor has selected Auditor to be its auditor with respect to the Agreement; and

WHEREAS, the PBM will be furnishing to Auditor, during any audits under the Agreement, certain confidential information which the PBM seeks to protect, which information is defined below, and which information shall hereafter be referred to as the “Confidential Information”; and

WHEREAS, as a condition to delivery of the Confidential Information, PBM requires the Auditor to execute this Confidentiality Agreement, which Agreement will protect the confidentiality of all such Confidential Information.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. Definition of Confidential Information: Confidential Information shall be defined to include all: proprietary information related to the PBM’s methods of conducting its PBM operations, all proprietary data related to the PBM’s contracts with third parties, and all PBM research, know-how, or trade secrets, whether any of the above-described Confidential Information is in oral, written or machine-readable form. Notwithstanding the foregoing, Confidential Information shall not include information (i) in the public domain (other than as a result of a breach of this Agreement); (ii) in Auditor’s possession prior to receipt of said Confidential Information from PBM pursuant to this Agreement; (iii) disclosed to the Auditor by a third party who is not under an obligation of confidentiality to PBM; or (iv) independently developed by Auditor.

2. Disclosure and Use Limitations: Auditor agrees that it shall not transfer or disclose Confidential Information to any third party, or use Confidential Information for any purpose other than to conduct audits as provided under the Agreement.

3. Disclosure Required By Law: If Auditor is required or requested to disclose any Confidential Information, whether by oral questions, written interrogatories, requests for information or documents, subpoenas, or other processes, the Auditor shall provide PBM with written notice of the requirement or request to enable PBM to seek a protective order. In the event it is determined by counsel to the party receiving such request that disclosure of Confidential Information is required, Confidential Information may be disclosed to the extent such disclosure is required by law.

4. Governing Law; Venue: This Agreement shall be governed by and construed in accordance with the laws of the State of Arkansas, without reference to the conflict of law provisions thereof. Any action to enforce the terms of this Agreement shall be brought in the state or federal courts situated in Pulaski County, Arkansas.

5. Notices: All notices which any party is required or may desire to give to another party under this Agreement shall be given by addressing the communication to the address set forth on the signature line below, and may be delivered by certified or registered mail. Such notices shall be deemed given on the date of receipt of delivery of said notice. Any party may designate a different address for receipt of notices upon written notice to the other parties in accordance with this section.

6. Enforceability: The provisions of this Agreement are severable. Accordingly, if any provision of this Agreement (or any portion thereof) is determined to be unenforceable, it shall not affect the enforceability of all other provisions. Moreover, if any provision of this Agreement (or any portion thereof) is determined by a court to be unenforceable as drafted, the parties agree that it is their intention that such provision (or portion thereof) shall be construed in a manner designed to effectuate the purposes of such provision to the maximum extent enforceable under the law.

7. Successors and Assigns; Waiver: This Agreement shall inure to the benefit of and be binding on each party, and its successors and permitted assigns. It is further understood and agreed that no failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed, and to become effective, as of this _____ day of _____, _____.

PBM:

By: _____
Printed Name: _____
Title: _____
Address _____

Audit Firm:

By: _____
Printed Name: _____
Title: _____
Address: _____

EXHIBIT G

**BENEFIT PLAN DESIGN
AND PLAN SET-UP SHEET**

EXHIBIT H AUDIT PROTOCOL

1. Audit Principles

This Audit Protocol is intended to facilitate Sponsor's audit of PBM by: (1) defining the scope of the review to be performed; (2) enabling production of timely and accurate results; (3) minimizing administrative burdens on all parties; and (4) ensuring that standard accounting and auditing practices are followed. PBM acknowledges and agrees that all audit and investigative rights of Sponsor hereunder or in the Agreement may be exercised on its behalf by the Auditor selected by Sponsor pursuant to the Agreement. All capitalized terms in this exhibit not defined herein shall have the meanings ascribed to them in the Agreement.

2. Audit Prerequisites and Procedures

- A. An audit involves a review of one (1) month or more of data (not to exceed six (6) years), and addresses broad operational areas including claim pricing accuracy, concurrent eligibility, formulary compliance, logic utilized in claims processing and, when applicable, rebates and/or Financial Benefits. An audit may be initiated by contacting any individual on PBM's account management team.
- B. Sponsor or Auditor will supply a written request to begin an audit, which shall include an explanation of the scope of the audit and a list of items necessary to perform the audit. PBM shall provide the requested data within ten (10) business days.
- C. Sponsor or Auditor may supply an audit questionnaire containing questions and requests for information and documentation concerning, without limitation:
 - 1. AWP source for audit period.
 - 2. Source and associated logic for determining Brand Drug and Generic Drug designation.
 - 3. Mandatory generic logic, including the processing logic of each DAW
 - 4. Information concerning the computation of any guaranteed discounts, logic surrounding such computations and any definitions necessary, in the opinion of Sponsor or Auditor, to clarify such logic and or computation.
 - 5. Copy of PBM policies and procedures
 - 6. Results of PBM's most recent SAS-70 audit

PBM will make available on a claim by claim basis all claims utilized along with definition designations for each claim utilized in the denominator and the numerator of the specified computation for each time period in question.

PBM shall transmit the completed audit questionnaire, along with all requested claims and computations, within ten (10) business days.

3. Auditing Prescription Claims

- A. PBM will provide all requested claim detail history via secure FTP or on CD-ROM in Report 2.0 NCPDP HIPAA Expanded standard field format accompanied by a clearly defined data report format sheet.
- B. The initial audit scope will cover a period not to exceed seventy-two (72) months preceding the date of the audit notification. Requests for data older than 36 months may be subject to an extended time frame of 30 calendar days to allow for retrieval of data from off-site storage.
- C. It is anticipated that audits will be performed remotely via transfer of data via secure FTP or on CD-ROM, e-mail and reproduction of hardcopy documents. Sponsor or Auditor may conduct on-site audits upon two (2) weeks' prior written notice. Any such on-site audits shall be conducted during normal business hours at PBM's offices.
- D. During the course of an audit, all data and supplied documentation, including claims detail and any copies of claims (or compilations thereof) provided by PBM may be retained by Sponsor or Auditor.

4. Auditing Rebates from Manufacturers

- A. Sponsor or Auditor may audit any and all Financial Benefits or other payments under rebate or other financial incentive contracts applicable to Sponsor and/or the Agreement.
- B. PBM shall provide access to: (a) PBM/Participating Pharmacy Contracts; (b) PBM/Pharmaceutical Manufacturer Contracts; (c) PBM contracts with third parties purchasing or using claims data; and (d) sufficient PBM transmittals to third parties in connection with sales of claims data to enable Sponsor or Auditor to verify that Sponsor's claims data is not being sold to third parties in violation of this Agreement.
- C. PBM will permit Client to perform an on-site review of all rebate rate components of the manufacturer rebate or rebate aggregator agreements including, without limitation, rebates, administration fees, access fees, payment for data, and any other documentation necessary, in the sole discretion of Sponsor, to audit the calculation of the rebate or other payments made to PBM by any manufacturer.
- D. With respect to all data and documents produced by PBM to Sponsor or to its agents or auditors, PBM's production shall be made without redacting any information from the data and documents produced. When electronic data is produced by PBM, all fields created or maintained or used by PBM shall be produced, and none shall be withheld, redacted or deleted. In addition, appropriate manuals and/or guides identifying the meaning of each field shall be produced. Sponsor or Auditor will

not be permitted to retain any original manufacturer agreements or documents provided or made available by PBM in connection with the rebate or Financial Benefits audit. Sponsor or Auditor will be entitled, however, to take and retain notes to the extent necessary to perform an audit or to document any identified exceptions.

5. Compliance with Benefit Plan Requirements

Sponsor shall be entitled to audit all PBM records necessary, in sponsor's sole discretion, to determine PBM's compliance with all the applicable requirements of the Benefit Plan and the Benefit Plan set up sheet.

6. Handling of Disputed Claims

- A. After PBM has supplied the requested data and Sponsor or Auditor has performed the audit, Sponsor or Auditor will provide PBM with a written exception report stating the error population, if any, and the dollar amounts associated with such errors. In addition to the written report, Sponsor or Auditor will provide an electronic claim-by-claim compilation of errors comprised of the entire population of errors.
- B. PBM will research and investigate the entire exception report and the compilation of errors and, within thirty (30) calendar days, respond to Sponsor and Auditor with PBM's agreement or exception to each claim and the reasoning and or logic associated with each excepted claim. Any discrepant claims not addressed within 30 calendar days will be deemed to be an error and PBM shall reimburse Sponsor for the total of the discrepant claims within 30 days.

EXHIBIT I
Current MAC List