

# RESOLUTION OF THE CITY COUNCIL

No. 326

Approved August 3, 2016

RESOLVED, That the Members of the Providence City Council hereby Authorize Approval to renew the current Pharmacy Benefit Management Contract Award for a term of two years beginning July 1, 2016 through June 30, 2018, by the Board of Contract and Supply, in accordance with Section 21-26 of the Code of Ordinances.


CVS/Caremark  
(Human Resources)

\$19,292,000.00

IN CITY COUNCIL

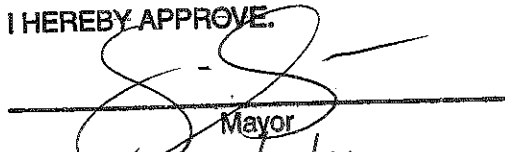
AUG 02 2016

READ AND PASSED

  
\_\_\_\_\_  
PRES.

  
\_\_\_\_\_  
CLERK

I HEREBY APPROVE.

  
\_\_\_\_\_  
Mayor

Date: 8/3/16

MATTHEW M. CLARKIN, JR.  
INTERNAL AUDITOR  
25 DORRANCE STREET, ROOM #307  
PROVIDENCE, RI 02903  
Phone: (401) 421-7740 EXT. 577  
Fax: (401) 551-1056  
mclarkin@providenceri.com



## City of Providence, Rhode Island Office of the Internal Auditor

June 23, 2016

Ms. Lori Hagen  
City Clerk's Office  
City of Providence  
25 Dorrance Street  
Providence, RI 02903

Dear Lori:

I am writing to request that the following requested contract awards be submitted to the City Council and the Finance Committee for approval.

- *Public Works* – Approval of a sole-source award in an amount of \$63,000 to Dunbar Armored, Inc. for monthly armored car service to be provided during fiscal 2017 to the Department of Public Works for parking meter revenue collection.
- *Public Works*- Approval of a sole-source award in an amount of \$43,200 to Cale America, Inc for monthly service during fiscal 2017 on multi-space parking meters.
- *Public Works* - Approval of a sole-source award in the amount of \$187,200 to Cale America, Inc for monthly leasing fees during fiscal 2017 on multi-space parking meters.
- *Public Works* – Approval a sole-source award to Pascale Services in an amount of \$25,000 for the purchase of miscellaneous parks for International, Sterling and Freightliner Trucks.
- *Public Works* – Approval of a sole-source award to MacKay Meters, Inc. in an amount of \$135,500 for monthly service fees on single space parking meters.
- *Information Technology* - Approval of a sole-source, three-year award to W.B. Mason Inc. in an amount not to exceed \$90,000 for the periodic purchases of printer, toner, paper, office supplies and computer supplies.

- *Information Technology* – Approval of a one-year contract extension in an amount of \$30,000 for fiscal year 2017 to Jimmy Chiu for emergency Lawson software infrastructure support.
- *Human Resources* – Approval to renew the current Pharmacy Benefit Management contract with CVS/Caremark for a term of two years beginning July 1, 2016 through June 30, 2018 at a maximum cost of \$19,292,000.
- *Human Resources* – Approval to renew the current Stop Loss Insurance contract with Blue Cross-Blue Shield of RI for the term of one year beginning July 1, 2016 through June 30, 2017 at a cost of \$922,000.
- *Planning & Development* – Approval to renew the current contract for fiscal 2017 in amount of \$150,000 with Building Futures for services associated with the city's First Source program.

Sincerely,



Matthew M. Clarkin, Jr.

Internal Auditor

Cc: Alan Sepe, Director of Operations  
James Lombardi, City Treasurer  
Margaret Wingate, Manager of Employee Benefits  
Natalie Lopes, Director –First Source  
Russell P. Knight, Director – Public Works  
James Silveria, Chief Information Officer



CITY OF PROVIDENCE  
Jorge C. Elorza, Mayor

June 21, 2016

The Honorable Mayor Jorge Elorza  
Chairman, Board of Contract and Supply  
City Hall  
Providence, RI 02903

Dear Mayor Elorza:

Mercer, as outlined in their contract with the City of Providence, has responsibility of negotiating our contract with the City's Pharmacy Benefit Management company – currently CVS/Caremark. Mercer's responsibilities are outlined in the Health and Benefits Statement of Work (SOW). Mercer, using industry best practices, has negotiated with CVS/Caremark the proposed contract for the City.

We are respectfully requesting authorization to renew the PBM contract with CVS/Caremark for the term of two (2) years beginning July 1, 2016 through June 30, 2018. Mercer's analysis of the proposed contract is attached. Because the contract can be terminated early, an analysis for both one-year and two-years was performed.

The reasons for this request are as follows:

- The base pricing in our contract has improved significantly, in several areas. For example:
  - o Price discount on CVS generics is improving by three percentage points, from AWP -78.5% to AWP -81.25%.
  - o Price discount on Non-CVS brands has improved by 0.25% from AWP -16.25% to AWP -16.5%.
- Rebates have become a significant source of savings for the City, increasing to over \$2.5 million in FY16. In addition to the basic pricing, the proposed contract has a significant increase in rebates payable to the City. For example:
  - o Minimum rebates on the majority of our plans will increase from \$108.05 to \$297.44 per brand claim at CVS
  - o Minimum rebates rise from \$40.14 per brand claim to \$87.41, when the prescription is not filled at CVS.
- CVS continues to offer new programs and policies, designed to reduce The City's spend, and to promote safe and effective utilization by City members.
- CVS is the current provider of PBM services to The City; making any change to this relationship would cause significant disruption
- This agreement does not prevent such a marketing or an early termination: either party may terminate, for convenience and without cause, the prescription benefit services agreement upon providing at least ninety (90) days prior written notice to the other party

Account: 891-891-51576 (Actives)  
892-892-51576 (Retirees)  
Amount: \$19,292,000.00

Respectfully Submitted,

*Margaret M. Wingate*

Margaret M. Wingate  
Manager of Employee & Retiree Benefits

Financial Approval:

\_\_\_\_\_  
Lawrence J. Mancini  
Director of Finance

**HUMAN RESOURCES**

Providence City Hall | 25 Dorrance Street, Room 401, Providence, Rhode Island 02903  
401 421 7740 ph | 401 273 9510 fax  
[www.providenceri.com](http://www.providenceri.com)



Human Resources  
Jorge O. Elorza, Mayor | Sybil Bailey, Director

July 19, 2016

Councilman John Igliozzi  
Chairman, Committee on Finance  
Providence City Hall  
25 Dorrance Street  
Providence, RI 02903

Dear Chairman Igliozzi:

In consideration of a Resolution authorizing approval to renew the current Pharmacy Benefit Management (PBM) Contract Award for a term of two years beginning July 1, 2016 through June 30, 2018, by the Board of Contract and Supply, in accordance with Section 21-26 of the Code of Ordinances, please find the following items:

- a. Board of Contract & Supply Letter dated June 21, 2016 requesting approval to renew the Pharmacy Benefit Management (PBM) contract with CVS Caremark for a term of two years beginning July 1, 2016 through June 30, 2018
- b. Pharmacy Benefit Management (PBM) Renewal Negotiation & Analysis conducted by Mercer Health & Benefits, LLC documenting a projected \$2,434,000 savings over the course of the two year extension, with a projected \$1,050,000 savings in FY17
- c. Amendment No. 3 of the Prescription Benefits Services Agreement between the City of Providence and CVS Caremark dated July 1, 2013 effective July 1, 2013 through June 30, 2016
- d. Prescription Benefit Services Agreement between the City of Providence and CVS Caremark dated January 1, 2009. The above noted item c. is an amendment to this original contract

Respectfully Submitted,

Margaret M. Wingate  
Manager of Employee Benefits

**PROVIDENCE THE CREATIVE CAPITAL**

25 Dorrance Street | Room 401 | Providence, Rhode Island 02903 | 401 421 7740 OFFICE | 401 273 9510 FAX  
[www.providenceri.com](http://www.providenceri.com)



CITY OF PROVIDENCE  
Jorge G. Elorza, Mayor

June 21, 2016

The Honorable Mayor Jorge Elorza  
Chairman, Board of Contract and Supply  
City Hall  
Providence, RI 02903

Dear Mayor Elorza:

Mercer, as outlined in their contract with the City of Providence, has responsibility of negotiating our contract with the City's Pharmacy Benefit Management company – currently CVS/Caremark. Mercer's responsibilities are outlined in the Health and Benefits Statement of Work (SOW). Mercer, using industry best practices, has negotiated with CVS/Caremark the proposed contract for the City.

We are respectfully requesting authorization to renew the PBM contract with CVS/Caremark for the term of two (2) years beginning July 1, 2016 through June 30, 2018. Mercer's analysis of the proposed contract is attached. Because the contract can be terminated early, an analysis for both one-year and two-years was performed.

The reasons for this request are as follows:

- The base pricing in our contract has improved significantly, in several areas. For example:
  - o Price discount on CVS generics is improving by three percentage points, from AWP -78.5% to AWP -81.25%.
  - o Price discount on Non-CVS brands has improved by 0.25% from AWP -16.25% to AWP - 16.5%.
- Rebates have become a significant source of savings for the City, increasing to over \$2.5 million in FY16. In addition to the basic pricing, the proposed contract has a significant increase in rebates payable to the City. For example:
  - o Minimum rebates on the majority of our plans will increase from \$108.05 to \$297.44 per brand claim at CVS
  - o Minimum rebates rise from \$40.14 per brand claim to \$87.41, when the prescription is not filled at CVS.
- CVS continues to offer new programs and policies, designed to reduce The City's spend, and to promote safe and effective utilization by City members.
- CVS is the current provider of PBM services to The City; making any change to this relationship would cause significant disruption
- This agreement does not prevent such a marketing or an early termination: either party may terminate, for convenience and without cause, the prescription benefit services agreement upon providing at least ninety (90) days prior written notice to the other party

Account: 891-891-51576 (Actives)  
892-892-51576 (Retirees)  
Amount: \$19,292,000.00

Respectfully Submitted,

*Margaret M. Wingate*

Margaret M. Wingate  
Manager of Employee & Retiree Benefits

Financial Approval:

*Lawrence J. Mancini*  
Lawrence J. Mancini  
Director of Finance

HUMAN RESOURCES

Providence City Hall | 25 Dorrance Street, Room 401, Providence, Rhode Island 02903  
401 421 7740 ph | 401 273 9510 fax  
[www.providenceri.com](http://www.providenceri.com)

**PHARMACY BENEFIT MANAGEMENT  
RENEWAL NEGOTIATION**

THE CITY OF PROVIDENCE

June 20, 2016

MAKE TOMORROW, TODAY  P&M



# CAREMARK RENEWAL

## PRICING EFFECTIVE JULY 1, 2016 – 1 YEAR

7/1/2016 - 6/30/2017		QVS Caremark Experience Data	QVS Caremark Current Contract	COP Renewal 6/02/16 Offer
Year 1 = 2016				
Retail Network		\$14,950,000	\$14,755,000	\$14,307,000
Retail 90 Network		\$961,000	\$1,008,000	\$959,000
Mail Order		\$358,000	\$366,000	\$351,000
Specialty Pharmacy				
Misc. Claims (compounds, paper claims, etc).		\$6,257,000	\$6,293,000	\$6,257,000
		\$119,000	\$119,000	\$119,000
Total Gross Rx Claim Cost		\$22,645,000	\$22,541,000	\$21,993,000
PBM Base Administrative Fees		\$1,000	\$1,000	\$1,000
Rebates		(\$2,259,000)	(\$2,200,000)	(\$2,702,000)
PROJECTED PROGRAM COST		\$20,387,000	\$20,342,000	\$19,292,000
Cost/(Savings) from Current				
Dollar		N/A	N/A	(\$1,050,000)
Percent		N/A	N/A	-5.2%

- \* Analysis based on data provided by Caremark for the 2015 calendar year, trended forward to the renewal term
- \* Estimates assume 6,290 employees and 15,541 members
- \* Estimate assumes pricing is implemented on July 1, 2016
- \* Analysis does not include clinical program costs (admin fees)
- \* All estimates are based upon the information available at a point in time and are subject to unforeseen and random events. Therefore, any projection must be interpreted as having a likely range of variability from the estimate. Any estimate or projection may not be used or relied upon by any other party or for any other purpose than for which it was issued by Mercer. Mercer is not responsible for the consequences of any unauthorized use.



# CAREMARK RENEWAL

## PRICING EFFECTIVE JULY 1, 2016 – 2 YEARS

2-Year Totals		CYS Caremark Experience Data	CYS Caremark Current Contract	COP Renewal 6/02/16 Offer
Retail Network		\$30,794,000	\$30,311,000	\$29,438,000
Retail 90 Network		\$1,949,000	\$2,035,000	\$1,940,000
Mail Order		\$730,000	\$744,000	\$714,000
Specialty Pharmacy		\$13,810,000	\$13,888,000	\$13,810,000
Misc. Claims (compounds, paper claims, etc).		\$245,000	\$245,000	\$245,000
<b>Total Gross Rx Claim Cost</b>		<b>\$47,528,000</b>	<b>\$47,223,000</b>	<b>\$46,147,000</b>
PBM Base Administrative Fees		\$2,000	\$2,000	\$2,000
Rebates		(\$4,469,000)	(\$4,400,000)	(\$5,758,000)
<b>PROJECTED PROGRAM COST</b>		<b>\$43,061,000</b>	<b>\$42,825,000</b>	<b>\$40,391,000</b>
<b>Cost/(Savings) from Current</b>				
	Dollar	N/A	N/A	(\$2,434,000)
	Percent	N/A	N/A	-5.7%

- \* Analysis based on data provided by Caremark for the 2015 calendar year, trended forward to the renewal term
- \* Estimates assume 6,290 employees and 15,541 members
- \* Estimate assumes pricing is implemented on July 1, 2016
- \* Analysis does not include clinical program costs (admin fees)
- \* All estimates are based upon the information available at a point in time and are subject to unforeseen and random events. Therefore, any projection must be interpreted as having a likely range of variability from the estimate. Any estimate or projection may not be used or relied upon by any other party or for any other purpose than for which it was issued by Mercer. Mercer is not responsible for the consequences of any unauthorized use.



**MAKE TOMORROW, TODAY**

© 2016, Mercer Health & Benefits LLC

All rights reserved. The document and the materials presented herein contain confidential and proprietary information of Mercer Health & Benefits LLC. The document and such materials have been prepared and are intended for the exclusive use of the City of Providence. The document and such materials (including the format and the presentation thereof) may not be reproduced, modified, sold, or otherwise transferred or provided, in whole or in part, to any other person or entity without the prior written permission of Mercer Health & Benefits LLC.

© MERCER 2016

## PRESCRIPTION BENEFIT SERVICES AGREEMENT

This Prescription Benefit Services Agreement (the "Agreement"), is entered into as of January 1, 2009 (the "Effective Date"), between CaremarkPCS Health, L.L.C., a Delaware limited liability company ("Caremark") and City of Providence, Rhode Island, a municipal corporation organized and existing under the laws of the State of Rhode Island ("Client"), the sponsor of the prescription drug benefit plan (collectively, the "Parties").

Client has established a prescription drug benefit plan(s) for its Plan Participants (herein after defined) and hereby retains Caremark to provide certain prescription drug benefit management, disease management and specialty pharmacy services with respect to Client's prescription drug benefit plan(s).

Caremark agrees to provide such services pursuant to the terms and conditions of this Agreement.

Now, therefore, in consideration of the mutual promises set forth herein, the Parties hereto agree as follows:

**1. Definitions.** Capitalized terms shall have the meaning provided in this Section 1.

- 1.1 "AWP" means the "average wholesale price" for a standard package size of a prescription drug from the most current pricing information provided to Caremark by First DataBank® or, following notice to Client, any other nationally available reporting service of pharmaceutical prices as utilized by Caremark as a pricing source for prescription drug pricing. Caremark uses a single data reporting source for determining a Client's AWP pricing. The data reporting source used is dependent on the service platform utilized by Client. The standard package size applicable to a mail service pharmacy shall mean 100 units (i.e., pills, tablets, capsules, etc.), unless only a smaller package size is available from the manufacturer, or the actual package size dispensed for liquids and topical treatments. The standard package size applicable to a Participating Pharmacy (hereinafter defined) shall be the actual package size dispensed as reported by the retail pharmacy to Caremark.

The Parties acknowledge that First DataBank recently announced a possible legal settlement that, if implemented, will result in First DataBank changing its pricing methodology for calculating drug pricing information and that any such change may affect AWP-based pricing assumptions made by Caremark in this Agreement. Additionally, regardless of the final disposition of the current lawsuit, AWP may phase out as the primary pricing benchmark during the term of this Agreement. In either event, the Parties agree to preserve the relative economics of this Agreement so that both parties have the same financial benefit after any change.

The Parties agree that: 1) Caremark may use First DataBank or other nationally available reporting service of pharmaceutical prices, upon 90-days prior written notice, provided such reporting service does not alter the aggregate net cost of medications to the Client or its methodology for calculating AWP; or 2) if a new pricing methodology develops modifications to the AWP-based fees and rates in this Agreement will occur so that the aggregate net price of all the products dispensed pursuant to this Agreement is the same as before such change occurred.

In either case, Caremark agrees to provide Client written illustrations of the financial impact at least ninety (90) days, or as is reasonably practicable, prior to AWP change or replacement, to demonstrate the same financial benefit as of the Effective Date. Client will have (ninety) 90 days (or as much time as practical by law) to review the financial impact.

- 1.2 "Brand Name Drug(s)" means a single-source brand or multi-source brand drug as set forth in Medi-Span Master Drug Database.
- 1.3 "Claims" means those prescription drug claims processed through Caremark's on-line claims adjudication system or otherwise transmitted or processed in accordance with the terms of this Agreement in connection with Client's Plan (hereinafter defined).
- 1.4 "Contract Year" means the full twelve (12) month period commencing on the Effective Date and each full consecutive twelve (12) month period thereafter that this Agreement remains in effect.
- 1.5 "Cost Share" means the amount which a Plan Participant is required to pay for a prescription in accordance with the PDD (hereinafter defined) which may be a deductible, a percentage of the prescription price, a fixed amount and/or other charge or penalty.
- 1.6 "Drug Interchange" means any substitution initiated by Caremark, as approved by its pharmacy and therapeutics committee, of a prescription drug that is not on the PDL (hereinafter defined) or the Prescribing Guide (hereinafter defined), for a clinically comparable drug on the PDL or Prescribing Guide. Drug Interchange shall not include any substitution initiated by Caremark that is (i) due to a drug utilization review; (ii) due to Plan Participant safety reasons; (iii) due to market unavailability of the originally prescribed drug; (iv) a generic substitution of a brand drug; or (v) due to the originally prescribed drug not being covered by the Plan.
- 1.7 "ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.
- 1.8 "Generic Drug" refers to certain drugs that are chemically equivalent to a Brand Drug, and are authorized to be dispensed by the Prescriber. Most Generic Drug names reflect the chemical name of the drug. These drugs are less expensive, yet provide the same therapeutic value. A-rated generics are linked to their corresponding brands. A generic drug shall mean a drug classified by the Medi-Span Master Drug Database with supplements.
- 1.9 "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, and the regulations promulgated thereunder.
- 1.10 "Losses" means all claims, liabilities, demands, damages, losses, costs or expenses of any kind, including, without limitation, reasonable attorneys' fees and expenses.
- 1.11 "Maximum Allowable Cost" or "MAC" means the unit price that has been established by Caremark for a multi-source drug (i.e., a drug with more than two sources) included on the MAC drug list applicable to Client, which list may be amended from time to time by Caremark in maintaining its generic pricing program. Client acknowledges that the MAC list applicable to Client is not the same as the MAC list published by the Centers for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration, or "HCFA MAC"). A copy of such MAC drug list shall be provided to Client prior to execution of this Agreement and thereafter upon Client's reasonable request.
- 1.12 "Participating Pharmacy" means a retail pharmacy that participates in a retail network established by Caremark.
- 1.13 "PDL" means the Caremark Performance Drug List, which is a list of preferred pharmaceutical products, created and maintained by Caremark, as amended from time to time, which: (a) has been approved by Caremark's pharmacy and therapeutics committee; and (b) reflects Caremark's

- recommendations as to which pharmaceutical products should be given favorable consideration by plans and their participants.
- 1.14 "Plan" means the prescription drug benefit plan(s) sponsored by Client.
- 1.15 "Plan Design Document" or "PDD" means the documents prepared by Caremark and approved by Client, as may be modified by Client from time to time in accordance with this Agreement, which documents detail the relevant parts of Client's Plan for prescription drug benefits and which are used by Caremark to provide Services (hereinafter defined) under this Agreement.
- 1.16 "Plan Participant" means each individual identified by Client to be eligible for prescription drug benefits under the Plan, as set forth in Client's eligibility file or otherwise communicated by Client in a format acceptable to Caremark.
- 1.17 "Prescriber" means a health care practitioner licensed or authorized by law to issue an order for a prescription drug.
- 1.18 "Prescribing Guide" means the Caremark Prescribing Guide, as modified and published from time to time, which has been approved by Caremark's pharmacy and therapeutics committee.
- 1.19 "Protected Health Information" or "PHI" shall have the meaning given such term by HIPAA, but limited to that information created or received by Caremark in its capacity as a business associate to the Plan.
- 1.20 "Rebates" means the formulary rebates, including base and market share rebates, collected by Caremark in its capacity as a group purchasing organization for the Plan from various pharmaceutical companies that are attributable to the utilization of single source brand, prescription drugs by Plan Participants.
- 1.21 "Services" means the prescription drugs and all related products and services as provided by Caremark pursuant to this Agreement.
- 1.22 "Specialty Drugs" means certain pharmaceuticals, biotech or biological drugs, as offered by Caremark, that are used in the management of chronic or genetic disease, including but not limited to, injectible, infused, or oral medications, or products that otherwise require special handling, including without limitation those listed in Attachment 1 of Exhibit A (which Caremark may amend from time to time).
- 1.23 "Term" shall mean the time period between the Effective Date and termination of this Agreement, including the Initial Term, as extended by any Renewal Term (as such terms are defined in Section 9.1).
- 1.24 "Usual and Customary" or "U&C" means a Participating Pharmacy's usual selling price for a prescription drug.
2. **Caremark Services.** Caremark shall provide the Services in a manner consistent with the PDD, and the terms of this Agreement, and Client hereby authorizes Caremark to provide the Services in such manner.
- 2.1 **Claims Processing.**
- (a) **On-Line Claims Processing.** Caremark will perform Claims processing services for products dispensed by Participating Pharmacies and Caremark's mail and specialty pharmacies. Caremark will perform standard drug utilization services, as described in Section 2.9 of this Agreement, for each Claim submitted by Participating Pharmacies, and Caremark's mail and specialty pharmacies.

- (b) Submitted Paper Claims. To the extent authorized by the PDD, Caremark will process Claims submitted by Plan Participants directly to Caremark consistent with Caremark's standard procedures and for the fees set forth in Exhibit A.

2.2 **Mail Service Pharmacy.** Caremark's mail service pharmacies shall provide the following products and services:

- (a) Dispense new or refill prescriptions following receipt from a Plan Participant of (i) a prescription and a completed order or refill order form, and (ii) any applicable Cost Share;
- (b) Fill prescriptions subject to the professional judgment of the dispensing pharmacist, good pharmacy practices in accordance with local community standards, and product labeling guidelines;
- (c) Ship all drugs to Plan Participants via United States postal service or other appropriate carriers to the address provided by Client and/or the Plan Participant; and
- (d) Comply with Caremark's terms and conditions applicable to mail pharmacy services in effect from time to time.

2.3 **Retail Pharmacy Network.** Caremark contracts with Participating Pharmacies, which are independent contractors, to provide prescription drugs and related products and services with respect to the Plan. Caremark shall:

- (a) Require Participating Pharmacies to service Plan Participants during their normal business hours;
- (b) Include in its standard retail network agreements that Participating Pharmacies must comply with Caremark's terms and conditions applicable to participation in the retail pharmacy network in effect from time to time;
- (c) Provide information to Participating Pharmacies concerning drug interaction, safety edits, and generic substitution and therapeutic intervention programs;
- (d) Direct Participating Pharmacies to collect all applicable Cost Shares or the lesser of Cost Share or U&C from Plan Participants;
- (e) Provide and maintain toll free telephone access for Participating Pharmacies to address Claim submission and clinical drug utilization review issues;
- (f) Maintain a database of Participating Pharmacies so that Plan Participants and Client may locate a Participating Pharmacy using Caremark's website or via Customer Service Representatives as identified in Section 2.9;
- (g) Be solely responsible for payment to the Participating Pharmacies for prescriptions dispensed (exclusive of Cost Shares), provided that the foregoing shall not release Client from any payment obligation to Caremark; and
- (h) Conduct Participating Pharmacy audits as follows:
  - (i) Caremark shall conduct weekly on-site and off-site audits of certain Participating Pharmacies as selected by Caremark from time to time to help verify such Participating Pharmacies' compliance with their respective pharmacy network agreements with Caremark ("Periodic Audits"). Caremark shall have the sole right to audit Participating Pharmacies. Such audits shall include a daily review of Claims greater than one thousand dollars (\$1,000); and
  - (ii) To the extent Caremark determines, as the result of its Periodic Audits, that amounts have not been billed in accordance with Caremark's pharmacy network agreements ("Audit Discrepancies"), Caremark shall make reasonable attempts to reconcile such Audit

Discrepancies. In the event an Audit Discrepancy has a financial impact to Client, Caremark shall reconcile Client's invoice, or credit Client, based upon such recovered Audit Discrepancy. Caremark shall notify Client of any Audit Discrepancy that has impacted Client's financial obligation to Caremark by greater than [REDACTED] that Caremark determines to be reasonably uncollectible by Caremark. Client acknowledges and agrees that Caremark may, but is not required to, initiate any collection action to collect any Audit Discrepancies.

#### 2.4 Implementation.

- (a) In consultation with Client, Caremark shall develop a mutually agreeable implementation project plan prior to the Effective Date.
- (b) Client or Client's designee shall provide to Caremark prior to the Effective Date: (i) the initial eligibility test data and the initial full eligibility data; (ii) the governing Plan documents, a summary plan description, and an executed PDD; and (iii) a refill file (if available) in a format acceptable to Caremark. Any delays by Client or its designee in providing this information may delay the implementation of Services by Caremark.
- (c) Subject to timely receipt of a refill file or prescription, Caremark will begin filling prescriptions through its mail service pharmacies as of the Effective Date.
- (d) Caremark will provide Client with implementation kits for distribution to Plan Participants. The implementation kits will include the following materials: (i) introductory cover letter; (ii) standard identification cards for use within the retail network which shall include Caremark's name and toll free number; (iii) a standard client benefit brochure; (iv) mail service order form; (v) paper Claim reimbursement form, if applicable; and (vi) PDL brochure, if applicable. If Client chooses to have Caremark prepare envelopes for mailing kits to Plan Participants, Client must provide at least one data tape in a mutually acceptable format, which tape shall contain Plan Participant address information. Caremark shall bulk ship initial implementation kits to up to [REDACTED] locations at no charge to Client. Postage for bulk shipments to additional locations or distribution of implementation kits directly to Plan Participants, including Plan Participants who become eligible under the Plan after the Effective Date, [REDACTED].
- (e) Any reprints or customization of any communication materials requested by Client shall be at Client's expense.

- 2.5 **Eligibility Data.** Client, or Client's designee, at Client's sole expense, will provide Caremark all information concerning its Plan and Plan Participants needed to perform the Services, including any updates thereto ("Eligibility Information"). This Eligibility Information must be complete and accurate, provided timely, and in a format and media acceptable to Caremark. Client acknowledges and agrees that Caremark will not use Social Security Numbers on Plan Participants' identification cards and will instead use alternate identification numbers assigned and provided by Client. Client acknowledges that Caremark, Plan Participant's Prescriber or Participating Pharmacy shall be able to rely on the Eligibility Information provided by Client.

#### 2.6 Formulary Management.

- (a) Client hereby adopts, as part of the Plan design and as Client's formulary, the PDL and the Prescribing Guide.

- (b) Changes made by Caremark to the PDL or the Prescribing Guide may be based upon, among other things, new products, customer safety, clinical appropriateness, efficacy, cost effectiveness, changes in availability of products, new clinical information and other considerations, changes in the pharmaceutical industry, introduction of generics, new legislation and regulations. Caremark shall use reasonable efforts to provide Client with thirty (30) days notice prior to the addition or removal of a drug from the PDL or the Prescribing Guide. In the event safety concerns or regulatory action require Caremark to remove a drug sooner, Caremark shall notify Client of the removal of a drug from the PDL or the Prescribing Guide within five (5) business days.
- (c) Caremark may implement Drug Interchange program(s), which has been approved by Caremark's pharmacy and therapeutics committee for selected prescriptions, under which Caremark's mail service pharmacy shall contact Prescribers, as appropriate, to obtain approval for the Drug Interchange. In accordance with its standard policies, Caremark shall credit Client or Plan Participant, as appropriate, for any mail prescription returned to Caremark upon rejection by the Plan Participant of the Drug Interchange. Client acknowledges that the adoption of therapeutic interventions may result in an increase of Rebates payable by pharmaceutical manufacturers pursuant to their agreements with Caremark.
- (d) Client acknowledges the Prescriber shall have final authority over the drug prescribed to a Plan Participant, regardless of benefit coverage. Nonetheless, the Plan is the final arbiter as to prescription drug benefits provided pursuant to the Plan.
- (e) Client acknowledges that, pursuant to the Plan, in the event a drug is removed from the PDL or the Prescribing Guide (unless the removal was the result of product recall or withdrawal), the Cost Share in effect as of the date of removal shall continue to be applied to refill prescriptions for such drug for a period of ninety (90) days after the effective date of the removal in order to allow Plan Participants time to transition to the new recommended drug in that therapeutic class.

## 2.7 Generic Substitution Program.

- (a) Generic substitution may be conducted through Caremark's mail service pharmacies and Participating Pharmacies under a program which substitutes brand name drugs with generic equivalents, where available and clinically appropriate, unless (i) the Prescriber requires the prescription to be dispensed as written and does not authorize generic substitution, or (ii) the Plan Participant has notified the dispensing pharmacy to dispense the brand name drug only.

## 2.8 Drug Utilization Review ("DUR") Services/Clinical Programs.

- (a) Caremark will provide its automated concurrent DUR Services including but not limited to: (i) drug to drug interactions; (ii) therapeutic duplications; (iii) known drug sensitivity; (iv) over-utilization; (v) insufficient or excessive drug usage; and (vi) early or late refills.
- (b) Health care providers are individually responsible for acting or not acting upon information generated and transmitted through the DUR Services, and for performing services in each jurisdiction consistent with the scope of their licenses. The DUR Services are necessarily limited by the amount, type and accuracy of Plan Participant information made available to Caremark.
- (c) Caremark shall provide clinical services as described in Exhibit F.



(d) In accordance with applicable law, including HIPAA, Client authorizes Caremark to perform the following services or programs (collectively referred to herein as "Additional Health-Related Services"): (i) Prescriber education programs; (ii) health research; (iii) compliance and persistency; (iv) health education or management programs for Plan Participants, including, but not limited to, informing Plan Participants about preventive care programs, health assessments, and other treatment options; (v) communications about health-related products or services that would be offered on behalf of Client through Caremark as a value-added item or service that is not part of the Plan benefit; and (vi) share Plan Participant information as appropriate for the treatment, payment and health care operations of other health care providers (which may or may not be affiliated with Caremark) or plans. Client and Caremark acknowledge and agree that: (w) although the Additional Health-Related Services may be of benefit to Client and its Plan Participants, [REDACTED], (x) the performance of such Additional Health-Related Services may utilize PHI; (y) the performance and scope of such Additional Health-Related Services shall be determined by Caremark, and Caremark shall have no obligation to perform Additional Health-Related Services; and (z) Caremark may contract with, and pursue and retain for its own account compensation or fees received from, pharmaceutical companies for the funding and provision of such Additional Health-Related Services.

2.9 **Plan Participant Services.** Caremark shall operate toll-free customer service lines twenty-four (24) hours a day, seven (7) days a week for the purpose of responding to inquiries from Plan Participants. Caremark shall also provide telephonic emergency pharmacist services twenty-four (24) hours a day, seven (7) days a week.

2.10 **Communication Materials.** In addition to materials provided under Section 2.4(d), Caremark shall produce and provide the following communication materials:

- (a) Caremark will provide an Internet Web site where Plan Participants can access information with respect to Plan specific drug information, the PDL, Cost Shares, Participating Pharmacy listings and prescriptions.
- (b) Caremark may provide communications to Plan Participants and/or Client regarding drug recalls or withdrawals. Client acknowledges that it shall look solely to pharmaceutical companies and not to Caremark for any refunds or reimbursements associated with such drug recalls or withdrawals.

2.11 **Reports, Claims Data and SAS 70.** Caremark shall provide reports and detailed Claims data to Client as follows:

- (a) Caremark shall prepare and provide Client with Caremark's standard management and utilization reports.
- (b) At Client's expense, Caremark may prepare and provide non-standard management and utilization reports and ad hoc reports within an agreed-upon time and format, at Caremark's prevailing rate.
- (c) Caremark shall provide Client with up to [REDACTED] data feeds of complete Claims data in Caremark's standard format at no additional charge. At Client's expense, request and direction, Caremark may provide additional detailed electronic Claims files or Claim detail reports to Client's designated third party service provider subject to such third party's

execution of Caremark's form confidentiality agreement. Except as otherwise set forth in Section 10 of this Agreement, Client shall not release or provide any Claims data including pricing and other Confidential Information, to a third party.

- (d) If requested, Caremark shall provide Client with a copy of its most recent Type II SAS 70 report in accordance with the terms and conditions of such report.

2.12 **Drug Classification.** As identified in Sections 1.2 and 1.8, Caremark shall use Medi-Span Master Drug Database (Medi-Span) indicators, and their associated files, or indicators provided by another nationally available reporting service of pharmaceutical drug information in helping to determine the classification of drugs (e.g., prescription vs. over the counter, brand vs. generic, single-source vs. multi-source) for purposes of this Agreement.

2.13 **Specialty Pharmacy.** Caremark shall provide specialty pharmacy products and services as follows:

- (a) Dispense new or refill prescription orders for Specialty Drugs upon receipt from a Plan Participant of (i) a prescription and a completed order or refill order form, and (ii) the applicable Cost Share;
- (b) Fill prescriptions for Specialty Drugs subject to the professional judgment of the dispensing pharmacist, good pharmacy practices in accordance with local community standards, and product labeling and guidelines;
- (c) Ship Specialty Drugs to Plan Participants via the United States postal service or other appropriate carriers with the ability to track the mail package to the address provided by Client and/or Plan Participant;
- (d) Bill major medical benefits through the use of a CMS 1500 form when required; and
- (e) Comply with, and include in its standard retail network agreements that any Participating Pharmacy providing Specialty Drugs to Plan Participants must comply with, Caremark's terms and conditions applicable to specialty pharmacy services in effect from time to time.

2.14 **Government Agency Submitted Claims.** Client acknowledges that government agencies, or their agents may seek eligibility or similar data from Caremark regarding Plan Participants. Additionally, government agencies, or their agents, may submit to Caremark claims for reimbursement for prescription drug benefits provided by such government agencies, or their agents, to Plan Participants ("Government Claims"). Client authorizes Caremark to provide such data as requested by government agencies or their agents and further authorizes Caremark to process such Government Claims. Client acknowledges that Caremark may advance payment for Government Claims on behalf of Client. Client will reimburse Caremark, in accordance with Client's payment obligations under this Agreement, for all amounts advanced by Caremark for payment of Government Claims. Client shall also reimburse Caremark for any adjustments or reconciliations to previously processed Government Claims that may be payable to government agencies in accordance with applicable laws and regulations. The administrative fee for processing Government Claims will be invoiced [REDACTED] or as otherwise agreed in writing by Caremark and Client. Caremark reserves the right to (i) to terminate these services upon ninety (90) days prior notice to Client, or (ii) to delegate these services to a third party claims processor.

2.15 **Client Debit Card Program.** Client hereby authorizes and directs Caremark to disclose data, upon the request of Client, to a third party vendor for the purposes of administering debit card

program payments under a flexible spending account or other consumer directed health plan subject to such third party's execution of Caremark's form confidentiality agreement. Caremark may provide such data, as requested by the third party for this purpose, until such time as Client advises Caremark otherwise in writing.

- 2.16 **Performance Guarantees.** Caremark agrees to perform in accordance with the performance standards described in Exhibit E. Unless otherwise stated, all performance standards shall be measured across Caremark's book of business based on Caremark's standard calculation methodology and shall exclude Specialty Drugs and related specialty services.
- 2.17 **Client Information.** Client acknowledges that Caremark shall not be held responsible for any obligation if Client, or Client's designee, fails to provide Caremark with accurate, timely and complete information as needed to meet such obligation.
- 2.18 **Appeals.** Caremark shall conduct appeals in accordance with the terms and conditions described in Exhibit G.
- 2.19 **RxNavigator.** Caremark agrees to provide access to RxNavigator for the rate specified in Exhibit A.
- 2.20 **iBenefit Report.** At Client's request and subject to the fees described in Exhibit A, which provides for one (1) annual report for each Plan Participant with savings opportunities [REDACTED] Caremark shall mail the iBenefit report to Plan Participants with savings opportunities on an annual basis.
- 2.21 **ExtraCare Health Discount Card.** Caremark shall provide Plan Participants with an ExtraCare Health discount card ("ExtraCare Card"). The ExtraCare Card provides the ability to earn rewards for purchases at CVS/pharmacy store or online at CVS.com and to receive a 20% discount on all CVS-branded health care-related items that are FSA-eligible at CVS/pharmacy stores; provided that no rewards or discounts are available for the purchase of certain items such as prescription drugs (including Cost Shares).
- 2.22 **Medicare Retiree Drug Subsidy.** Caremark shall provide the Medicare Retiree Drug Subsidy services in accordance with the terms and conditions described in Exhibit H.
- 3. **Maintenance of Records.** Caremark shall maintain records with respect to the processing, payment, and denial of Claims by Caremark and shall retain such records for a period of up to ten (10) years after the transaction occurred or as otherwise required by applicable law.

4. Use of Data Caremark may use, disclose, reproduce, adapt or sell to third parties for their business purposes information obtained in connection with this Agreement, including Claims, as well as eligibility information, which is not identifiable on a Client or Plan Participant basis. Caremark shall maintain the confidentiality of this information as required by applicable law, and may not use the information in any way prohibited by applicable law.

5. Audit Rights.

5.1 Claims Audits. During the term of this Agreement, upon not less than sixty (60) days prior written notice, the Client, or a mutually acceptable independent third party retained by the Client, may conduct an annual Claims audit of Caremark data that directly relates to claims billings during [REDACTED] months prior to the date of the review. The Client shall be responsible for all reasonable expenses of the claims audit, including Caremark's costs related to the provision of records. For purposes of a Claims audit, the Client acknowledges that it shall not be entitled to audit agreements with vendors, pharmaceutical companies, participating pharmacies, or other providers of products or services to Caremark. In the event a third party auditor is used, the third party auditor shall execute a confidentiality agreement with Caremark in a form and substance reasonably acceptable to Caremark prior to conducting an audit.

5.2 Rebate Audits. During the term of this Agreement, upon not less than sixty (60) days prior written notice the Client, through an independent third party retained by the Client and reasonably acceptable to Caremark, may conduct an annual Rebate audit for the [REDACTED] prior to the date of such Rebate audit. Such audit shall be limited to a review of up to [REDACTED] pharmaceutical company contracts directly related to the Client's Rebates, as selected by the Client. Such review of pharmaceutical company contracts may include formulary and Rebate provisions to the extent permitted by such contracts and shall be limited to information necessary for validating the accuracy of the Rebate amounts distributed by Caremark. Any mutually agreed upon third party auditor engaged by Client shall execute Caremark's form confidentiality agreement prior to conducting a Rebate audit ensuring that all information gathered during such audit and all details and terms of any pharmaceutical company contract reviewed will be treated as confidential and will not be revealed in any manner or form by or to any third party, including the City.

5.3 Participating Pharmacy Agreement Audit. Client may request to audit five (5) Participating Pharmacy provider contracts on an annual basis. Audit requests involving a review of Participating Pharmacy provider contracts must be performed by an independent accounting firm, reasonable acceptable to Caremark. Such firm shall sign a confidentiality agreement with Caremark ensuring that all details and terms of Participating Pharmacy contracts with Caremark (except the total aggregate amount due to Client) will be treated as confidential to Caremark and will not be revealed in any manner or form by or to any person or entity. Such records shall be limited to information necessary for validating the accuracy of the claims billing.

6. Obligations of Client.

6.1 Plan Participant Authorizations. Client represents and warrants that it has obtained from Plan Participants all consents and/or authorizations required, if any, for Caremark to perform the Services and for the use and disclosure of information, including PHI, as permitted under this Agreement.

- 6.2 **Control of Plan.** Client represents that the Plan is not governed by ERISA. Client and/or its designated third party Plan administrator retain the sole and absolute authority to design, amend, terminate or modify, in whole or in part, all or any portion of the Plan, including the sole authority to control and administer the Plan and any assets of the Plan. Client and/or Plan administrator shall also have complete discretionary, binding and final authority to construe the terms of the Plan, to interpret ambiguous Plan language, to make factual determinations regarding the payment of Claims or provision of benefits, to review denied Claims and to resolve complaints by Plan Participants. Caremark and Client acknowledge and agree that Caremark shall not be (i) the administrator of the Plan for any purpose; (ii) a named fiduciary with respect to the Plan for purposes of any applicable law; (iii) delegated discretionary authority or responsibility, or exercise discretionary authority or control, with respect to the Plan or its administration; or (iv) deemed a fiduciary with respect to the Plan for purposes of any applicable law, except as may be expressly set forth in Exhibit G.
- 6.3 **PDD.**
- (a) Client represents and warrants that the PDD accurately reflects the applicable terms of the Plan for purposes of this Agreement.
  - (b) Client shall provide Caremark with ninety (90) days prior written notice of any proposed changes to the PDD, which changes shall be consistent with the scope and nature of the Services to be performed by Caremark under this Agreement. Client agrees that it is responsible for Losses resulting from (i) any failure to implement Plan design changes which are not communicated in writing to Caremark in a manner reasonably communicating the Plan terms and conditions necessary for Caremark to perform the Services, or (ii) Caremark's implementation of Client's verbal or written direction regarding exception or overrides to the PDD. Client shall notify Plan Participants of any Plan design changes prior to the effective date of any such changes.
  - (c) Upon Client's request, Caremark shall provide Client with a detailed written statement specifying the changes in the financial terms of this Agreement, including any anticipated change in Rebates, that would result from any proposed changes in Plan design.
- 6.4 **Government Programs.** To the extent required by applicable law or contractual commitment, Client agrees to fully and accurately disclose and report to Medicare, Medicaid or other government health care programs any discount or rebate or other credit received by Client under this Agreement, whether reflected in the fees for the products and services or otherwise provided hereunder, as discounts against the price of the drugs under all applicable state or federal programs that provide reimbursement to Client for products or services provided by Caremark. It is the intention of the Parties, that for purposes of the Federal Anti-kickback Statute, any discount, rebate or other Client credit, shall constitute and be treated as discount against the price of drugs within the meaning of 42 U.S.C. §1320a 7b(b)(3)(A).
- 6.5 **Plan Participant Cost Share.** Caremark may, but shall not be obligated to, dispense a prescription even if the prescription is not accompanied by the Cost Share. Caremark will credit any amount submitted by Plan Participant in excess of the Plan Participant's Cost Share. Shipping of prescriptions submitted without the appropriate Cost Share may be delayed and these delayed shipments shall not be included in the measurement of any applicable performance guarantees.

7. Invoicing and Payment.

7.1 Invoicing. Caremark shall invoice Client in accordance with the terms set forth in Exhibit A according to the following schedule:

(a) Claims. Caremark shall issue Client an invoice for Claims [REDACTED] times monthly.

(b) Service Fees. Caremark shall issue Client an invoice for all other services on [REDACTED] basis.

7.2 Payment. Client shall pay Caremark for the Services in accordance with the terms set forth in Exhibit A. Client shall pay Caremark all invoiced amounts for Claims and service fees within [REDACTED] business days after Client receives an invoice from Caremark, except for any amounts that are disputed in good faith, provided that Client has provided Caremark with a detailed description explaining its reason for disputing the amount in the invoice, within the time payment is due. Caremark and Client agree to promptly work to resolve any dispute in good faith. Other than as stated above, Client shall have no right to offset disputed amounts or amounts due or allegedly due from Caremark from such payment except as previously approved in writing by Caremark. Any sales, use or other tax or assessment, including any surcharge or similar fee imposed under any applicable law on any health care provider, Plan Participant, service, supply or product provided under this Agreement, will be the sole responsibility of Client and may be added to the invoice.

8. Pharmaceutical Contracts and Rebates.

8.1 Client's Authorization. Client authorizes Caremark to contract with pharmaceutical companies for Rebates as a group purchasing organization for the Plan.

8.2 Remittance of Rebates. Caremark will remit to Client the Rebates received by Caremark with respect to Client's Claims during the prior calendar [REDACTED], if any. Client acknowledges and agrees that it shall not have a right to interest on, or the time value of, any Rebate payments received by Caremark or monies payable under this Agreement. Upon termination of this Agreement or upon Client's breach of this Agreement, Caremark may use Rebates, or any other amount that may be payable by Caremark to Client, to set off amounts due from Client or may delay remittance of Rebates up to [REDACTED] to allow for final adjustments. Such right of set off or delay shall be in addition to Caremark's other rights set forth in this Agreement, including without limitation Section 9.5.

8.3 Rebate Limitations. Client waives, releases and forever discharges Caremark from any Losses arising from a pharmaceutical company's failure to pay Rebates. Client acknowledges that whether and to what extent pharmaceutical companies are willing to provide Rebates to Client may depend upon a variety of factors, including the content of the PDL adopted by Client, the Plan's design features, Client meeting criteria for Rebates, and the extent of participation in Caremark's formulary management programs, as well as Caremark receiving sufficient information regarding each Claim for submission to pharmaceutical companies for Rebates. Client acknowledges and agrees that Caremark may, but shall not be required to, initiate any collection action to collect any Rebates from a pharmaceutical company.

8.4 **Disclosure of Manufacturer Fees.** In accordance with Section 8.1 of this Agreement, Caremark or its affiliates may hold contracts with pharmaceutical companies relating to products covered under this Agreement. In connection with such contracts, Caremark or its affiliates may have a financial relationship with such pharmaceutical companies and may receive and retain fees or other compensation from pharmaceutical companies for services rendered and property provided to pharmaceutical companies, including, without limitation, administrative fees not exceeding three percent (3%) of the AWP of the products dispensed across Caremark's book of business. In addition, Caremark or its affiliates may receive discounts or rebates from pharmaceutical companies which are attributable to or based on products purchased by Caremark affiliated dispensing pharmacies. The term "Rebates" as used in this Agreement does not include the fees, compensation, discounts and rebates described in this Section 8.4, which belong exclusively to Caremark or its affiliates.

8.5 **Non-Interference.** Client agrees that during the Term of this Agreement, Client will not directly or indirectly negotiate, contract, or agree with any pharmaceutical company, or any other third party, for the purpose of obtaining rebates or other discounts related to the drug utilization of Plan Participants, including, but not limited to the use of over the counter products. Client represents and warrants that, as of the Effective Date, it does not have any direct or indirect agreements, arrangements and/or contracts with any pharmaceutical company or other third party related to any rebates or discounts.

9. **Term and Termination.**

9.1 **Term.** The initial term of this Agreement shall commence on the Effective Date and expire on December 31, 2011 ("Initial Term") subject to earlier termination as hereinafter set forth. Client shall have the option to renew this Agreement, upon the same terms and conditions, for up to two (2) one (1) year renewal terms (each a "Renewal Term"). This Agreement shall expire on the last day of the Initial Term or first Renewal Term (as applicable) unless Client provides its express written notice to Caremark requesting to renew the Agreement, at least [REDACTED] days prior to such expiration. Caremark agrees to render Services and Client agrees to pay for Services provided by Caremark in accordance with the terms of this Agreement for any Claims incurred for covered drugs by Plan Participants prior to the expiration or termination of this Agreement.

Upon expiration or termination of this Agreement, Caremark shall cooperate with Client to permit an orderly transition to a replacement pharmacy benefits manager ("Replacement PBM"). Subject to the terms under section 9.6 of this Agreement, Caremark agrees to provide data Caremark has in its possession in Caremark's standard electronic data layout (excluding any Caremark confidential or proprietary data) per its standard fees to the Replacement PBM as may be reasonably required by the Replacement PBM to perform prescription benefit management functions for Client. If Client or the Replacement PBM requires a custom data layout, the cost of such custom data layout will be the responsibility of either Client or the Replacement PBM. This provision will survive the termination of this Agreement as stated in Section 13.12.

9.2 **Termination for Cause.**

(a) Either Party may terminate this Agreement upon thirty (30) days prior written notice to the other party in the event of a material breach of this Agreement by the other party which is not cured within [REDACTED] days of notice thereof including, without limitation, any material breach described in Sections 8.5, 10 or 13.2.

(b) Further, Client may terminate this Agreement upon a material breach by Caremark of Exhibit B (Business Associate Obligations) of this Agreement if Caremark does not cure the breach or if a cure is not possible, and the violation, within [REDACTED] days of receipt of written notice by Caremark of such breach.

### 9.3 Termination without Cause

Client may terminate this Agreement without cause and without incurring any early termination fees by providing ninety (90) days prior written notice to the other party.

### 9.4 Termination for Change in Law.

- (a) Either Party may terminate this Agreement upon [REDACTED] days prior written notice to the other party if, as a result of any Change in Law, as defined herein, the rights or obligations of the terminating Party under this Agreement would be materially adversely affected. For purposes of this Section 9.3, the term "Change in Law" means any (i) applicable federal or state law or regulation enacted after the Effective Date, or any change in any existing applicable federal or state law or regulation; (ii) change in judicial or administrative interpretation of any applicable federal or state law or regulation; or (iii) change in the enforcement of any applicable federal or state law or regulation, in each case occurring after the date Caremark begins providing Services or the Effective Date, whichever is earlier.
- (b) Prior to any termination pursuant to Section 9.4(a), the Parties agree to use prompt, good faith efforts to renegotiate the terms of this Agreement. If the Parties successfully conclude such negotiations prior to the termination date, this Agreement shall not terminate and shall be amended to reflect the negotiated terms. In the event the Parties are unable to successfully conclude such negotiations, this Agreement shall terminate as provided above.
- (c) State Fiduciary Laws. Caremark shall not be obligated at any time to provide Services to Client or, if applicable, Plan Participants if Client or, if applicable, Plan Participants are located in a state requiring a prescription benefit manager to be a fiduciary to Client or a Plan Participant in any capacity contrary to the terms and conditions specifically identified in this Agreement. In the event any state law or regulation requires Caremark to be a fiduciary to Client or a Plan Participant contrary to the terms and conditions identified in this Agreement, Caremark may elect not to provide Services to the impacted Plan Participants upon [REDACTED] days prior written notice to Client.

### 9.5 Remedies.

- (a) Financial Responsibility. If at any time during this Agreement, Caremark reasonably determines that Client may have difficulty meeting its financial commitments under this Agreement, then Caremark may request information, reasonable assurances or both from Client as to Client's financial responsibility.
- (b) Suspension of Performance. In the event (i) Client is [REDACTED] days in arrears on its payment obligations under this Agreement; (ii) Client makes an assignment for the benefit of creditors; (iii) Client is the subject of a voluntary or involuntary petition for bankruptcy, or is adjudged insolvent or bankrupt; or (iv) a receiver or trustee is appointed for any portion of Client's rights or property, Caremark may immediately, and without penalty or any liability for any Client losses, suspend performance of Services hereunder until such time as any of



the aforementioned conditions cease to exist. Suspension of performance by Caremark shall not constitute termination of this Agreement.

- (c) The exercise by a party of any of its rights under Section 9 will not preclude such party from seeking any other remedy available under this Agreement or at law or equity.

#### 9.6 Obligations Upon Termination.

- (a) Upon termination of this Agreement, Caremark may, at Client's request, provide mutually agreed upon post-termination services at Caremark's prevailing rate.
- (b) Upon termination of this Agreement for any reason, Caremark shall return or destroy all PHI created or received by Caremark as a business associate of Client in connection with this Agreement.
- (c) In the event that Caremark determines that returning or destroying the PHI is not feasible, Caremark may retain PHI, provided that Caremark shall extend the protections contained in Exhibit B to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Caremark maintains such PHI.
- (d) Upon termination of this Agreement, Caremark will not transition Claims files and/or history that contain Caremark's cost and pricing information to Client's new prescription benefit manager or any other third party.

#### 10. Confidential and Proprietary Information.

- 10.1 **Confidential Information.** The term "Confidential Information" includes, but is not limited to, certain portions of this Agreement or any information of either Client or Caremark (whether oral, written, electronic, visual or fixed in any tangible medium of expression) relating to either party's services, operations, systems, programs, inventions, techniques, suppliers, customers and prospective customers, contractors, costs and pricing data, trade secrets, know-how, processes, plans, designs and other information of or relating to either party's business which is specifically identified by the disclosing party as being "confidential." "Confidential Information" does not include PHI, the use and disclosure of which is governed by Section 12 of this Agreement.

#### 10.2 Confidentiality Obligations

- (a) Generally. Caremark and Client shall not disclose or make use of any Confidential Information except as permitted under this Agreement without the prior written consent of the non-disclosing party, which consent may be conditioned upon the execution of a confidentiality agreement. Each party may disclose Confidential Information of the other party only to its employees, agents, consultants, or authorized representatives who have a need to know the Confidential Information in order to accomplish the purpose of this Agreement and who (i) have been informed of the confidential and proprietary nature of the Confidential Information, and (ii) with respect to agents, consultants or authorized representatives, have agreed in writing not to disclose it to others and to treat it in accordance with the requirements of this Section. Caremark or Client, as applicable, shall be responsible to the other party for any breach of this Agreement by its respective employees, agents, consultants, or authorized representatives.
- (b) Public Records Acts. The Parties acknowledge that Client is a public entity and subject to state laws governing disclosure of public records. Client agrees that the confidential and proprietary information of Caremark which is in writing and marked as confidential and

proprietary, shall be afforded protection under applicable law. Prior to disclosing such confidential and proprietary information of Caremark, Client shall immediately notify Caremark of any requests for information made by a third party pursuant to applicable state statute or local ordinance and shall further provide Caremark sufficient time to claim applicable exemptions and/or designate those portions of this information that constitute proprietary information exempt from disclosure under applicable state statute or local ordinance. Client further acknowledges that it will not release any information identified by Caremark as exempt from disclosure without first providing notice to Caremark of such intent and allowing Caremark to seek judicial relief to prevent such disclosure. Client agrees not to oppose any action of Caremark to obtain a declaratory judgment or other appropriate remedy. If a court thereafter determines that Client is legally required to disclose such proprietary information, Client shall disclose the minimum required pursuant to the court order. Client agrees that upon receipt of a request to disclose this Agreement, Client shall disclose the confidentiality log (Exhibit I) and a previously provided redacted Agreement produced by Caremark on December 30, 2010.

- 10.3 **Permitted Disclosure of Confidential Information.** The foregoing shall not apply to such Confidential Information to the extent: (i) the information is or becomes generally available or known to the public through no fault of the receiving party; (ii) the information was already known by or available to the receiving party prior to the disclosure by the other party on a non-confidential basis; (iii) the information is subsequently disclosed to the receiving party by a third party who is not under any obligation of confidentiality to the disclosing party; (iv) the information has already been or is hereafter independently acquired or developed by the receiving party without violating any confidentiality agreement or other similar obligation; or (v) the information is required to be disclosed pursuant to a non-appealable court order. Except in accordance with the requirements of Section 10.2(b) or this Section 10.3, neither party nor its employees, agents, consultants, or authorized representatives may disclose, or permit to be disclosed, Confidential Information of the other party as an expert witness in any proceeding, or in response to a request for information by oral questions, interrogatories, document requests, subpoena, civil investigative demand, formal or informal investigation by any government agency, judicial process or otherwise. If either party, or any of its respective employees, agents, consultants, or authorized representatives, is requested to disclose the Confidential Information of the other party for any of the reasons described in the preceding sentence such party shall give prompt prior written notice to the other party to allow the other party to seek an appropriate protective order or modification of any requested disclosure. The receiving party agrees to cooperate with the disclosing party in any action by the disclosing party to obtain a protective order or other appropriate remedy. If the receiving party is ultimately legally compelled to disclose such Confidential Information, the receiving party shall disclose the minimum required pursuant to the court order or other legal compulsion.
- 10.4 **Remedies.** In the event Client discloses, without Caremark's authorization, knowledge or consent, Confidential Information belonging to Caremark, the Parties agree that Caremark's sole remedy shall be specific performance, including immediate issuance of a temporary restraining order or preliminary injunction enforcing this Agreement as a result of immediate and irreparable injury or loss that occurred as a result of such disclosure. The Parties further agree that in order to maintain the integrity of the Confidential Disclosed Materials, Client will use best efforts to obtain the Confidential Disclosed Materials including any additional copies made and assist

Caremark in mitigating the immediate and irreparable injury or loss that occurred as a result of such disclosure.

11. Indemnification.

11.1 **Caremark Indemnification.** Subject to Section 13.6(b), Caremark shall defend, indemnify and hold harmless Client, its subsidiaries and affiliates and each of their respective officers, directors, and employees (the "Client Parties") from and against any and all Losses incurred by any Client Parties arising out of or relating to Caremark's negligence or breach of its obligations or warranties set forth in this Agreement, except to the extent such Losses are caused by the negligence or willful misconduct of any Client Parties or breach of this Agreement by Client.

11.2 **Client Indemnification.** Subject to Section 13.6(b) and to the extent not prohibited by applicable law, Client shall defend, indemnify and hold harmless Caremark, its subsidiaries and affiliates and each of their respective officers, directors, and employees (the "Caremark Parties") from and against any and all Losses incurred by any Caremark Parties arising out of or relating to (i) Client's negligence or breach of its obligations or warranties set forth in this Agreement, except to the extent such Losses are caused by the negligence or willful misconduct of any Caremark Parties or breach of this Agreement by Caremark, (ii) any legal defects in the design of the Plan, or (iii) any deficiencies in the PDD. It is understood between the Parties that Client has not expressed any opinion as to the scope of its legal ability to provide indemnification to Caremark under Rhode Island law.

11.3 **Notice of Claim.** The party seeking indemnification shall notify the other party in writing within thirty (30) days of the assertion of any claim or the commencement of any action or proceeding for which indemnity may be sought under this Agreement. Failure to notify the other party shall not result in the waiver of indemnity rights with respect to such claim, suit, action or proceeding unless such failure materially prejudices the ability of the indemnifying party to defend such claim, suit, action or proceeding. The Parties shall cooperate with each other in the defense and settlement of any such claim, action or proceeding.

12. **Business Associate Relationship.** The parties acknowledge and agree that Caremark is a Business Associate, as defined under HIPAA, of the Plan in connection with the provision of certain Services, and is a health care provider and Covered Entity, and not a Business Associate of Client, under HIPAA in connection with its provision of certain other Services. To the extent Caremark acts as a Business Associate of the Plan, and in accordance with HIPAA, Caremark shall adhere to the applicable requirements established for Business Associates as set forth in Exhibit B.

13. Miscellaneous Provisions.

13.1 **Assignment.** Neither party may assign this Agreement without the prior written consent of the other party, provided such consent will not be unreasonably withheld. However, Caremark may assign this Agreement or delegate the duties to be performed under this Agreement without the consent of Client to any of its subsidiaries or affiliates at any time.

13.2 **Exclusivity.** Caremark shall be the exclusive provider of each of the Services described in this Agreement. Notwithstanding the foregoing, [REDACTED] Client acknowledges and agrees that it will not provide, directly or indirectly, or engage any prescription benefit manager or other third party, to provide to Client or Plan any service that is similar to one of the Services provided by Caremark, including without limitation, retail pharmacy network contracting, pharmacy claims processing, mail and specialty pharmacy services, and formulary and rebate administration services. Client acknowledges and agrees that a breach of this Section 13.2 shall be deemed a material breach of this Agreement and shall entitle Caremark to modify pricing terms pursuant to Section 13.3 of this Agreement.

13.3 **Pricing Assumptions.**

(a) Upon [REDACTED] days' prior written notice to Client, Caremark may modify or amend the financial provisions in this Agreement in a manner which accounts for the impact of the events identified below. Such notice will include Caremark's explanation of the manner in which the modification accounts for the impact of the event:

1. A change in the scope of Services to be performed by Caremark or any government imposed or industry wide change that would impede Caremark's ability to provide the pricing described in this Agreement, including any prohibition or restriction on the ability to receive rebates or discounts for pharmaceutical products;
2. A change in Client alignment with Caremark's PDL;
3. Implementation or addition of a high deductible health plan/consumer-driven health plan option;
4. Implementation or addition of a member paid plan;
5. A greater than twenty percent (20%) change in the total number of Plan Participants from the number provided during pricing negotiations; or
6. A change in the coverage of Medicare eligible Plan Participants, irrespective of the resulting change in total number of Plan Participants, as defined above.
7. A change in any of the pricing assumptions set forth in this Agreement, including, Exhibit A.

(b) Pricing Benchmarks. The Parties acknowledge that the pricing indices historically used by Caremark are the basis for the financial offer of this Agreement and are outside the control of the Parties. In the event First DataBank or other nationally available AWP reporting source discontinues the reporting of AWP or changes the manner in which AWP is calculated, then Caremark reserves the right to modify the pricing terms of this Agreement, to be effective as of the date of such discontinuation or change, so as to maintain the parties' relative economic positions as existed immediately before the effective date of such discontinuation in reporting or change in the calculation of AWP, as measured across all products on an aggregate basis. Such modifications may include, without limitation, the adjustment of AWP to the methodology relied on by such reporting source prior to such modification of AWP methodology, the adjustment of the AWP discount, or the utilization of alternate pricing benchmarks.

13.4 **Compliance with Law.**

- (a) Each party shall comply with the provisions of all applicable laws relating to the performance of its obligations under this Agreement. Each party is responsible for obtaining its own legal advice concerning its compliance with applicable laws.
- (b) Each party certifies that it shall not violate the federal anti-kickback statute, set forth at 42 U.S.C. § 1320a-7b(b) ("Anti-Kickback Statute"), or the federal "Stark Law," set forth at 42 U.S.C. § 1395nn ("Stark Law"), with respect to the performance of its obligations under this Agreement. Further, Caremark shall ensure that individuals meeting the definition of "Covered Persons" (as such term is defined in the Corporate Integrity Agreement between the Office of Inspector General of the Department of Health and Human Services and AdvancePCS dated September 5, 2005) shall comply with Caremark's Compliance Program, including training related to the Anti-Kickback Statute and the Stark Law. Caremark's Code of Conduct and policies and procedures on the Anti-Kickback Statute and Stark Law may be accessed at <http://www.caremark.com/wps/portal/s.155/3370?cms=CMS-2-007764>.

13.5 **Force Majeure.** Except for payment obligations, neither party shall be liable for failure or delay of performance arising from an act of God or other events beyond the reasonable control of such party, such as the acts of a regulatory agency, fires, floods, pandemics, explosions, strikes, labor stoppages, and acts of terrorism, war or rebellion.

13.6 **Limitation of Liability.**

- (a) Except as otherwise expressly set forth in this Agreement, Caremark makes no additional representations or warranties, including without limitation, warranties of merchantability or fitness for a particular purpose.
- (b) In no event shall either party be liable to the other for any incidental, special, consequential, or punitive damages as a result of the performance or any default in the performance of their respective obligations under this Agreement.
- (c) Client acknowledges that Caremark does not establish AWP or other available industry pricing benchmark methodologies (e.g., "Wholesale Acquisition Costs" or "WAC"), and Caremark shall have no liability to Client arising from the use of First DataBank or any other nationally available reporting service.

13.7 **General.** Except as otherwise provided herein, this Agreement may not be amended except in a writing signed by both parties; provided, however, Caremark may make changes to the Services from time to time and may use Claims information to improve or recommend additional Services to Client provided such changes do not materially alter any of the provisions of this Agreement. If any provision of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect the remainder of this Agreement, which shall remain in full force and effect and enforceable in accordance with its terms. This Agreement, including all documents referred to herein and attached hereto, constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior oral or written representations, understanding and agreements between the parties with respect thereto. Any waiver of any breach of any provision of this Agreement shall not be a waiver of any subsequent breach of any provision of this Agreement. The terms and conditions of this Agreement are the result of an arm's length negotiations between the parties and each party has had the opportunity to obtain the advice of legal counsel regarding the negotiations and execution of this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The section headings

contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement.

- 13.8 **Governing Law/Venue.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Rhode Island (without regard to its conflict of laws rules). Subject to Section 13.16, any suit brought hereunder, including any action to compel arbitration or to enforce any award or judgment reentered thereby, shall be brought in the state or federal courts sitting in Providence, Rhode Island, the parties hereby waiving any claim or defense that such forum is not convenient or proper. Each party agrees that any such court shall have *in personam* jurisdiction over it and consents to service of process in any manner authorized by Rhode Island law.
- 13.9 **Notices.** Any notice given under this Agreement shall be given in writing, and sent by hand delivery, facsimile transmission (receipt confirmed), overnight courier that provides confirmation of delivery, or certified mail, return receipt requested, to the applicable party at its address set forth below:

If to Caremark:

2211 Sanders Road, 10<sup>th</sup> Floor  
Northbrook, Illinois 60062  
Attn: Vice President, Legal Services and Managing Counsel  
Fax No.: (847) 559-4879

With a copy to:

445 Great Circle Road  
Nashville, Tennessee 37228  
Attn: General Counsel  
Fax No.: (615) 743-6611

If to Client:

Director of Finance  
City Hall  
25 Dorrance Street  
Providence, Rhode Island 02903  
Fax No.: (401)

With a copy to:

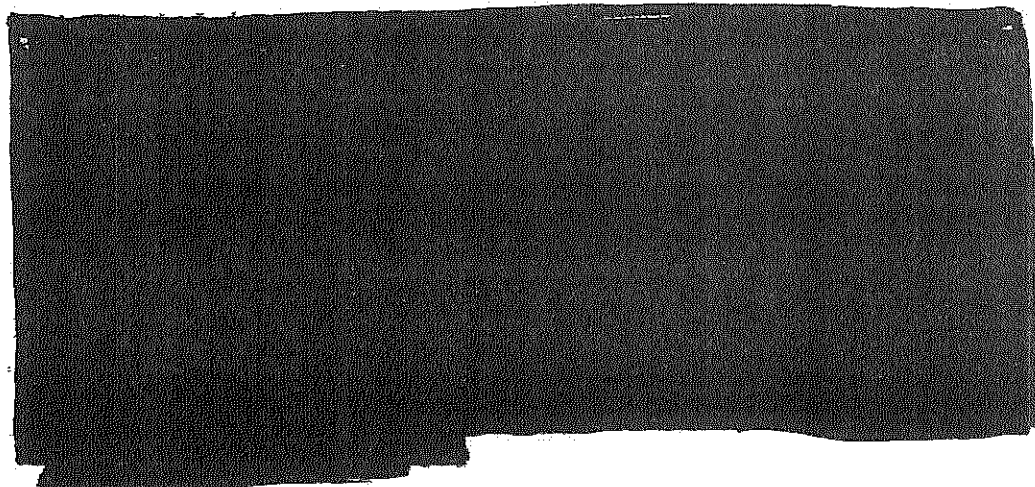
City Solicitor  
City of Providence  
275 Westminster Street  
Providence, RI 02903  
Fax No.: (401) 351-7596

or to such other address or to the attention of such other person as either party may designate in writing, from time to time, pursuant to this Section 13.9. Written notices shall be deemed received on the date actually delivered to the other party.

- 13.10 **Independent Contractors.** Nothing contained herein shall be deemed or construed by the Parties, or by any third party, as creating a relationship of employer and employee, principal and agent, or joint venture of the Parties; it being understood and agreed that no provision contained in this Agreement nor any acts of the parties hereto shall be deemed to place Caremark in any relationship with Client other than as an independent contractor.
- 13.11 **Third Party Beneficiary.** This Agreement has been entered into solely for the benefit of Client and Caremark and is not intended to create any legal, equitable, or beneficial interest in any third party or to vest in any third party any interest as to enforcement or performance, including but not limited to, Participating Pharmacies or Plan Participants.
- 13.12 **Survival.** Sections 3 (Maintenance of Records), 4 (Use of Data), 6.1 (Plan Participant Authorizations), 6.2 (Control of Plan), 6.3(a) (PDD), 6.5 (Plan Participant Cost Share), 7.2 (Payment), 9.4 (Remedies), 9.5 (Obligations Upon Termination), 10 (Confidential and Proprietary Information), 11 (Indemnification), 13.6 (Limitation of Liability), 13.8 (Governing Law/Venue) 13.12 (Survival), and 13.16 (Dispute Resolution) shall survive the termination or expiration of this Agreement.
- 13.13 **Use of Name.** Each party shall use the other party's name, logo and trademark only in the manner specified by the other party in writing, or as expressly permitted by this Agreement. The terms of use of Caremark's name, logo and trademark are set forth in Exhibit C.
- 13.14 **Third Party Recoveries.** Caremark shall use reasonable commercial efforts to distribute to Client recoveries received from third parties related to Services provided under this Agreement to the extent such recoveries may reasonably be allocated to Caremark's clients based on the utilization of products by Plan Participants. Caremark may offset its reasonable costs arising from collection and distribution of such recovery, including reasonable attorneys' fees and expenses. Caremark shall have no obligation to initiate or participate in any legal proceeding seeking third party recoveries.
- 13.15 **Authority.** Each party represents and warrants that it has the necessary power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement.
- 13.16 **Dispute Resolution.** In the event of a dispute between the parties and prior to commencing any litigation or other legal proceeding, each party shall, by giving written notice to the other party ("Dispute Notice"), request a meeting of authorized representatives of the parties for the purpose of resolving the dispute. The parties agree that, within ninety (90) days after issuance of the Dispute Notice, each party shall designate a representative to participate in dispute resolution discussions which will be held at a mutually acceptable time and place (or by telephone) for the purpose of resolving the dispute. Each party agrees to negotiate in good faith to resolve the dispute in a mutually acceptable manner. If despite the good faith efforts of the parties, the authorized representatives of the parties are unable to resolve the dispute within ninety (90) days after the issuance of the Dispute Notice, or if the parties fail to meet within such ninety (90) day period, either party may, by written notice to the other party, submit the dispute to binding arbitration in Providence, Rhode Island before a single mutually designated arbitrator, according to mutually acceptable and customary commercial arbitration rules. The foregoing shall not affect the right of either party to at any time seek appropriate equitable relief to enforce its rights

under this Agreement. Notwithstanding any provision in this Agreement to the contrary, in no event, as a result of any such arbitration or otherwise, shall any party be liable to another party for payment of any incidental, special, consequential, or punitive, damages incurred by such other party. Each party shall be responsible for its own costs associated with the provisions of Section 13.6.

13.17



14. Exhibits. The following Exhibits are hereby incorporated into and made a part of this Agreement:

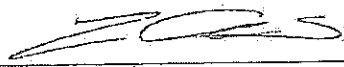
<u>Exhibit</u>	<u>Description</u>
A	Financial Terms
B	Business Associate Obligations
C	Terms of Use of Names
D	Audit Procedures
E	Performance Guarantees
F	Clinical Service Programs
G	Appeals
H	Medicare Part D Subsidy

\* \* \* \* \*



The parties hereto have caused this Prescription Benefit Services Agreement to be executed by their duly authorized representatives.


CAREMARKPCS HEALTH, L.L.C.:

By:   
Its: SVR

Date Signed: 2/11/11

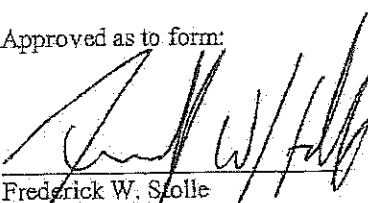


CITY OF PROVIDENCE, RHODE ISLAND

By:   
Angel Traveras,  
Mayor, City of Providence

Date Signed: 1/13/11

Approved as to form:

  
Frederick W. Stolle  
Deputy City Solicitor

## Exhibit A Financial Terms

The financial terms described in this Exhibit A will be effective the later of January 1, 2009.

### 1. Mail, Retail, Rebates and Specialty:

MAIL	
BRAND	AWP - 25.5% + \$0.00 dispensing fee
GENERIC	AWP - 67% + \$0.00 dispensing fee
ELECTRONIC CLAIM ADMINISTRATION FEE	\$1.15 per Claim
RETAIL	
BRAND EFFECTIVE RATE	Lower of U&C or AWP - 16.75% + \$1.50 dispensing fee
GENERIC EFFECTIVE RATE	Generic effective rate guarantee
ELECTRONIC CLAIM ADMINISTRATION FEE	\$1.15 per Claim
REBATES	
Two Tier Plan Design	
MAIL	Year 1: \$17.97 per Claim Year 2: \$16.45 per Claim Year 3: \$14.03 per Claim
RETAIL	Year 1: \$4.08 per Claim Year 2: \$3.93 per Claim Year 3: \$3.41 per Claim
Qualifying Three Tier Plan Design	
MAIL	Year 1: \$18.55 per Claim Year 2: \$17.11 per Claim Year 3: \$14.63 per Claim
RETAIL	Year 1: \$4.34 per Claim Year 2: \$4.22 per Claim Year 3: \$3.72 per Claim
SPECIALTY DRUGS	
	See Attachment I to Exhibit A - Specialty Drug List
ELECTRONIC CLAIM FEE	\$1.15 per Claim
MISCELLANEOUS CHARGES	
1. Paper Submitted Claim (per processed Claim)	\$1.50/Claim
2. Card Re-issuance	\$0.50/Card
3. Manual Eligibility Submission	\$1.00/Manual Entry

	4. Client Specific Programming	\$150.00/Hour
--	--------------------------------	---------------

See Section 3.1 for Rebate conditions.

a. The pricing set forth above is contingent upon the following conditions:

- (i) Rebate guarantees are based upon [REDACTED]
- (ii) Rebate guarantees [REDACTED]
- (iii) Retail and Mail financial guarantees will be guaranteed individually dollar for dollar, i.e., any excess in one category shall not be used to offset a shortfall in another.
- (iv) The amount billed to Client [REDACTED]
- (v) Generic products represented on the MAC drug list for Caremark's generic pricing program applicable to Client [REDACTED]
- (vi) Caremark may exclude the following from any retail pricing guarantee:
  - o [REDACTED]
  - o [REDACTED]
  - o [REDACTED]
- (vii) Caremark shall include [REDACTED] in its calculation of the Generic Effective Rate.
- (viii) The Participating Pharmacy may collect from the Plan Participant the lower of the applicable Cost Share, or the Participating Pharmacy's Usual and Customary price.
- (ix) Client acknowledges and agrees all (mail/retail/specialty) discounts are based [REDACTED]

b. Caremark may update the Specialty Drugs on the Specialty Drug list from time to time. Caremark shall provide Client with quarterly notifications regarding products being classified as Specialty Drugs (each a "Specialty Drug Update") upon written request from Client. Any new Specialty Drug (each a "New Specialty Drug") will be dispensed at the Specialty Drug rate. Should the addition of any New Specialty Drug at the Specialty Drug rate not be satisfactory to Client, the parties shall negotiate mutually agreeable terms for such New Specialty Drug within ninety (90) days of the date of the Specialty Drug Update; provided, however, any new Specialty Drug shall be dispensed at the Specialty Drug rate until such time as the parties mutually agree to revised pricing for such Specialty Drug. The Specialty Drug rates noted above do not include ancillary charges such as nursing and per diems (e.g., pumps, supplies, etc.) which may apply to certain infused Specialty Drugs.

c. **Generic Dispensing Rate Guarantee.** Caremark guarantees that prescriptions that are dispensed to Plan Participants through Caremark's mail service pharmacies or by Participating Pharmacies in Caremark's network shall be dispensed with a generic product, as permitted by applicable law and the Plan Participant consents, as follows: 54.2% in Contract Year 1; 56% in Contract Year 2 and 60.1% in Contract Year 3, as measured on a calendar year basis. Some changes in Plan design or demographics can materially affect Caremark's ability to meet the GDR guarantee (for example, situations where generically available medications are excluded from the benefit such as OTC equivalent strengths). Both parties must work together to determine if GDR Guarantee shall be

adjusted to account for such change, whether higher or lower, depending on the actual impact of such change. If a brand does not lose patent expiration when expected due to unforeseen litigation activity, an adjustment would need to be made to GDR guarantee. Any potential penalty will be determined based on the following formula: (Avg Amt Pd per Multi-Source Brand Rx - Avg Amt Pd per Generic Rx) multiplied by (GDR guarantee - GDR measured) multiplied by total Claims. Specialty Drugs are not included in the GDR guarantee calculation.

2. Clinical Programs and Services. As consideration for the clinical services and programs selected by Client in accordance with this Agreement, Client shall pay to Caremark the fees set forth below:

2.1 Core Clinical Services and Programs [REDACTED]

(a) Formulary Management (as described in Section 2.6 of the Agreement) [REDACTED]

(b) Safety Now Programs (as described in Exhibit F of this Agreement)

- i. POS Safety Review [REDACTED]
- ii. Retrospective Safety Review with Pharmacy Claims [REDACTED]
- iii. Safety and Monitoring Solution [REDACTED]

(c) Savings Now Programs (as described in Exhibit F of this Agreement)

- i. Comprehensive Generics Solutions [REDACTED]
- ii. POS Utilization Management [REDACTED]
- iii. POS Preferred Product Messaging [REDACTED]
- iv. Physician Profiling Report [REDACTED]

(d) Healthier Now Programs (as described in Exhibit F of this Agreement)

- i. Adherence to Drug Therapy [REDACTED]
- ii. Gaps in Care Pharmacy [REDACTED]
- iii. Evidence-Based Plan Design [REDACTED]
- iv. Integrated Health Record [REDACTED]
- v. Face-to-Face Physician Consultation [REDACTED]

2.2 Enhanced Clinical Programs and Services (as described in Exhibit F unless otherwise noted):

(a) Savings Now Programs

- i. Prior Authorization
- ii. Appeals (as described in Exhibit G)

Fee

[REDACTED] per prior authorization  
[REDACTED] per review of benefit coverage and  
[REDACTED] per review of medical necessity

(b) ExtraCare Card (as described in Section 2.22)

(c) iBenefit Report (as described in Section 2.21)

One annual report mailed to each Plan Participant with savings opportunities [REDACTED]

(d) RxNavigator License

[REDACTED] licenses included. Additional licenses available for [REDACTED] per license per user per year.

Charges or service not identified in this Exhibit A shall be quoted upon request.

3. Client Credits:

This Section 3 of Exhibit A sets forth various rebates and credits to be paid or credited by Caremark to Client (collectively "Client Credits") as identified in Section 1 of this Exhibit A. It is the intention of the parties that, for

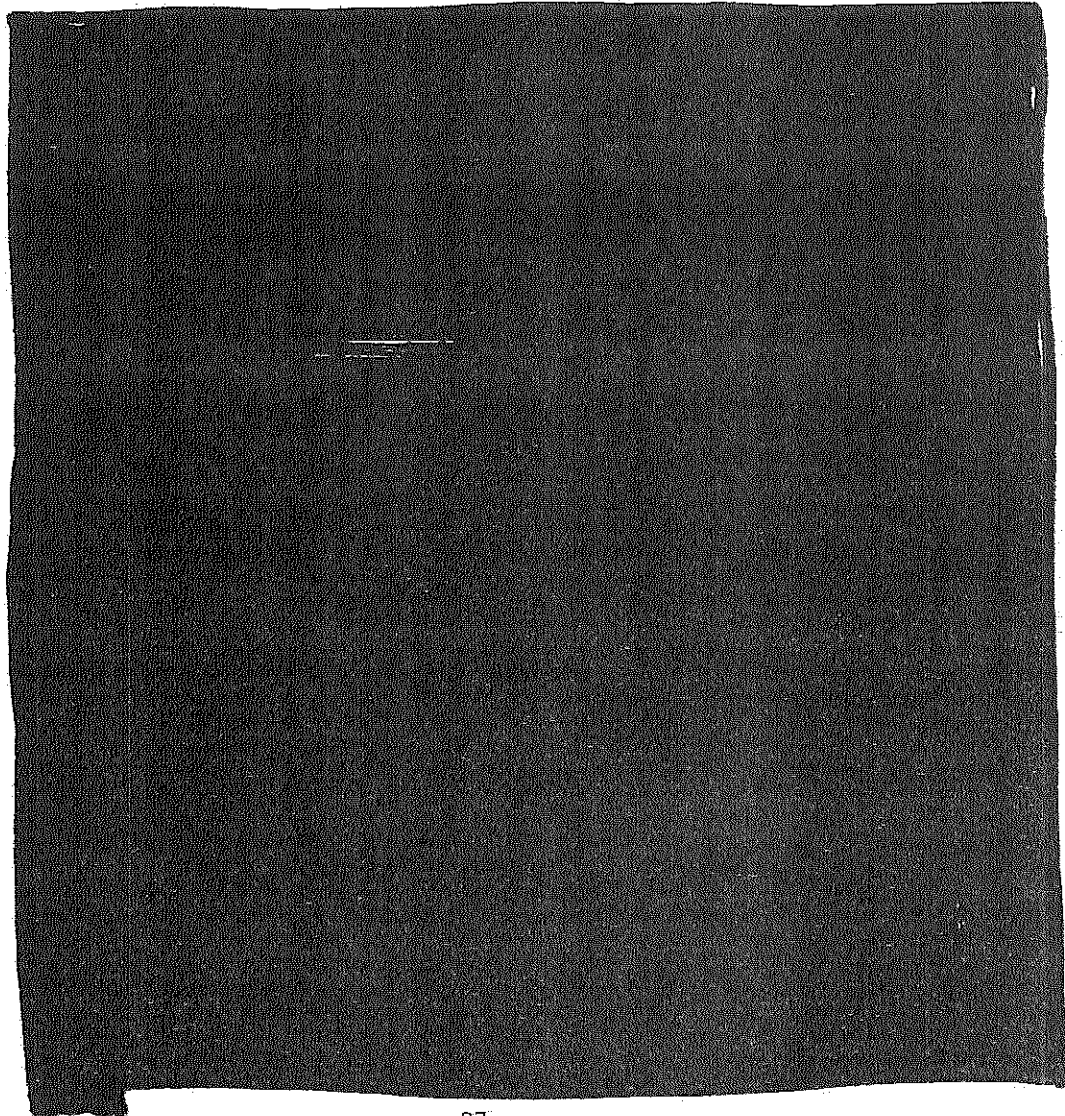
purposes of the Federal Anti-Kickback Statute, these Client Credits shall constitute and shall be treated as discounts against the price of drugs within the meaning of 42 U.S.C. 1320a 7b(b)(3)(A). In addition, Client acknowledges and agrees that, as a condition to its right to receive Client Credits from Caremark, all Client Credits received shall be used exclusively for providing benefits to Plan Participants of the Plan and defraying the reasonable expense of administering the Plan.

### 3.1 Drug Rebates.

Rebates will be effective the first day of [REDACTED] Caremark's receipt of this executed Agreement.

100% / 0%

(Client Allocation / Caremark Retention)



3.2 Implementation Credit. Caremark shall provide Client with an implementation credit of up to [REDACTED] per new Plan Participant to defray certain transition costs associated with moving Client business to Caremark. This credit can be used to offset typical and/or mutually agreed upon implementation costs in transferring from the current provider to Caremark. Client shall be responsible for all transition and implementation expenses in excess of the implementation credit provided to Client as set forth above. Examples of transition and implementation expenses include costs of customized Plan Participant I.D. cards, postage expense for direct mail of I.D. cards and other communication materials to Plan Participants, and special programming required by Client's prior prescription benefit manager to provide data to Caremark.

[REDACTED] Client shall provide Caremark with documentation of eligible expenses directly incurred by Client in the form of an invoice, an account statement, or other detailed documentation. For agreed upon implementation or transition services provided by Caremark towards this credit, Caremark shall provide expense detail for such items. [REDACTED]

[REDACTED] The parties acknowledge and agree that the implementation credits provided by Caremark are commercially reasonable and necessary services related to the implementation of this Agreement and represent fair market value for the services provided.

3.3 [REDACTED]



Attachment 1 to Exhibit A  
Specialty Drug List

What is the maximum day supply for a specialty medication? 30 or 90 days

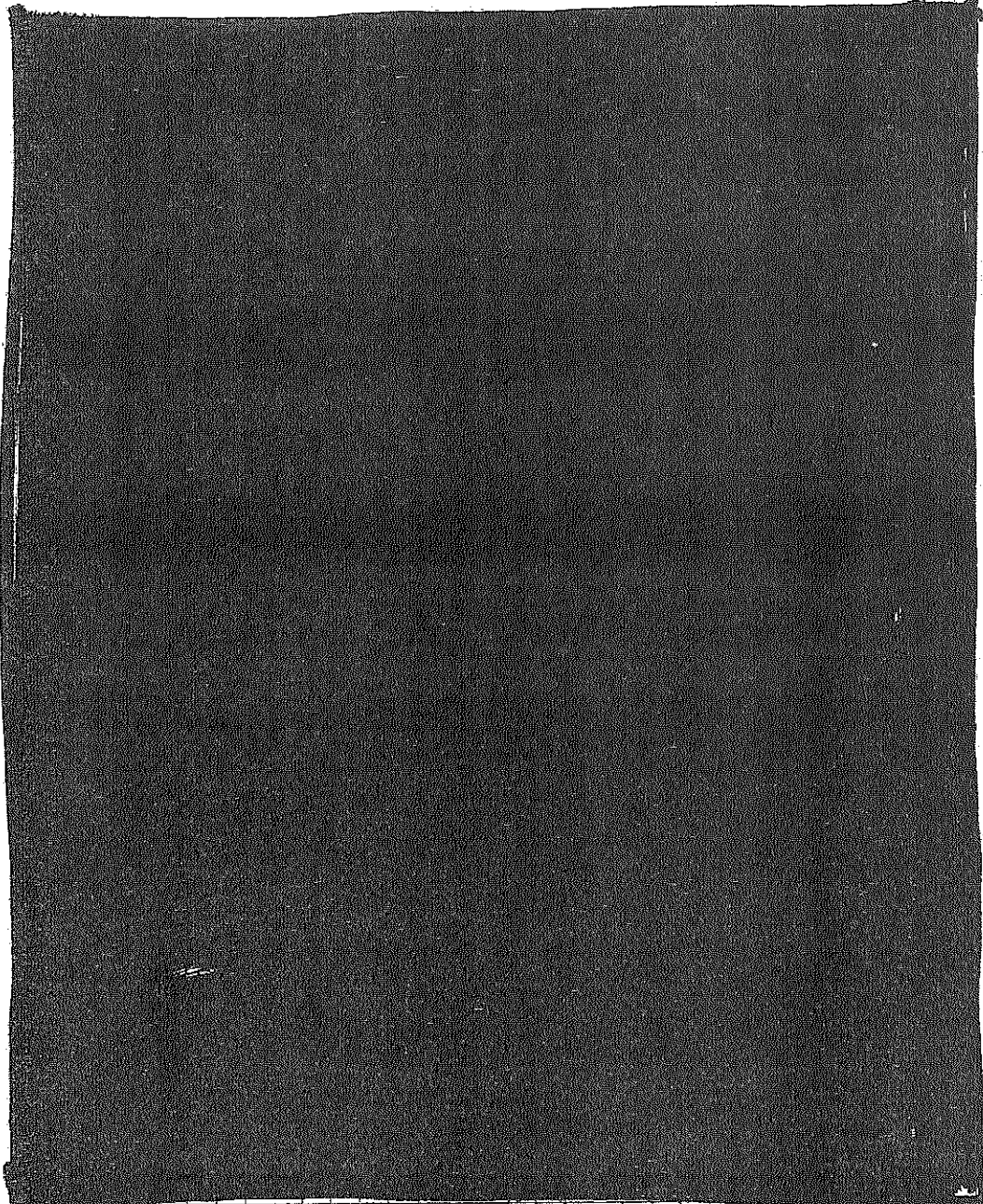
Selected component

Medications	Proposed AWP Discount (Mail)	Dispensing Fee + Shipping (Mail)	AWP Discount (Retail)	Dispensing Fee (Retail)	Nursing Fee per Admin.	Formulary Brand	Rebate per Rx	Specialty Network Provided
	%	\$	%	\$	\$	Yes/No	\$	Open/Restricted/Either
Aediar								
Actimmune								
Advate								
Aldurazyme with per diem ***								
Alferon N								
Alphanate								
Alphanine SD								
Amnirive								
Artagon								
Aralast with per diem ***								
Aralast NP with per diem***								
Aranesp								
Arcalyst								
Ariztra								
Autoplex T								
Avastin								
Avonex Administration Pack								
Baygam								
Bebulin VH								
Bonefix								

Betaseron
Botox
Bravelle
Carimune
Carimune NF
Ceredase with per diem ***
Cerezyme with per diem ***
Cetrolide
Chorex-10
Chorionic Gonadotropin
Copaxone
Copegus
Cytogam
Dacogen
Delestrogen
Elaprase with per diem ***
Eligard
Enbrel
Epogen
Euflexxa
Exjade
Fabrazyme with per diem ***
Factrel
Feiba VH Immuno
Fieboegamma
Fiolan 0.5mg
Fiolan 1.5mg
Follistim
Follistim AQ
Forteo
Pragrafin
Fuzeon
Gannatan S/D

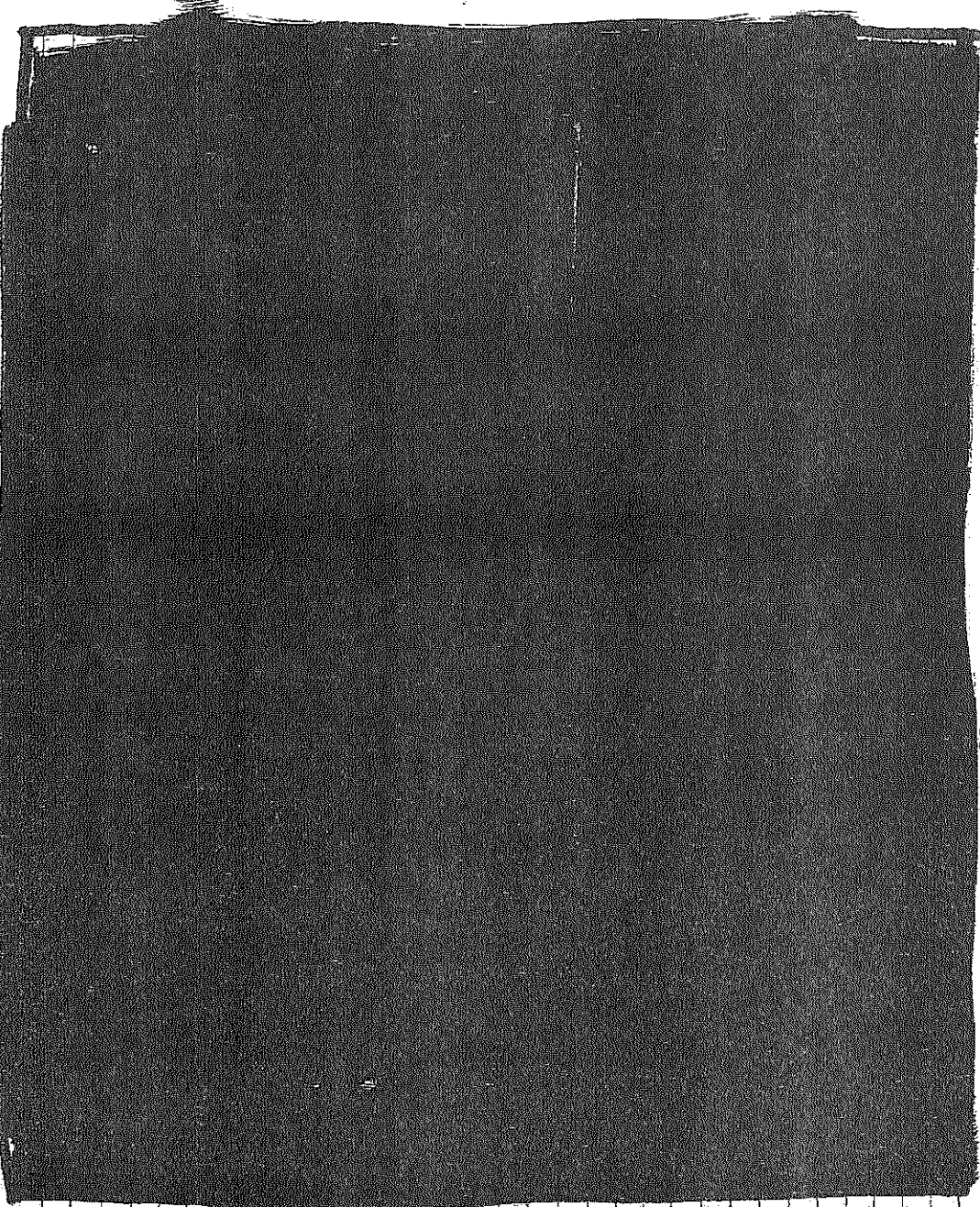


Gamifume N
Gammagard Liquid
Gammagard S/D
Gammag-P I.V.
Gamunex
Ganirelix Acetate
Genotropin
Gleevec
Gonal-F
Gonal-F REF
Helixate FS
Hemofil-M
Herceptin
Humate-P
Humatrope
Humira
Hyalgan
Hyate-C
Intrelex
Infergen
Innolip
Intron A
Iveegam
Ixopria
Kineret
Korate-DVI
Kogenate FS
Kuvan
Letairis
Leukine
Lauprolide Acetate
Lovenox
Lucentis



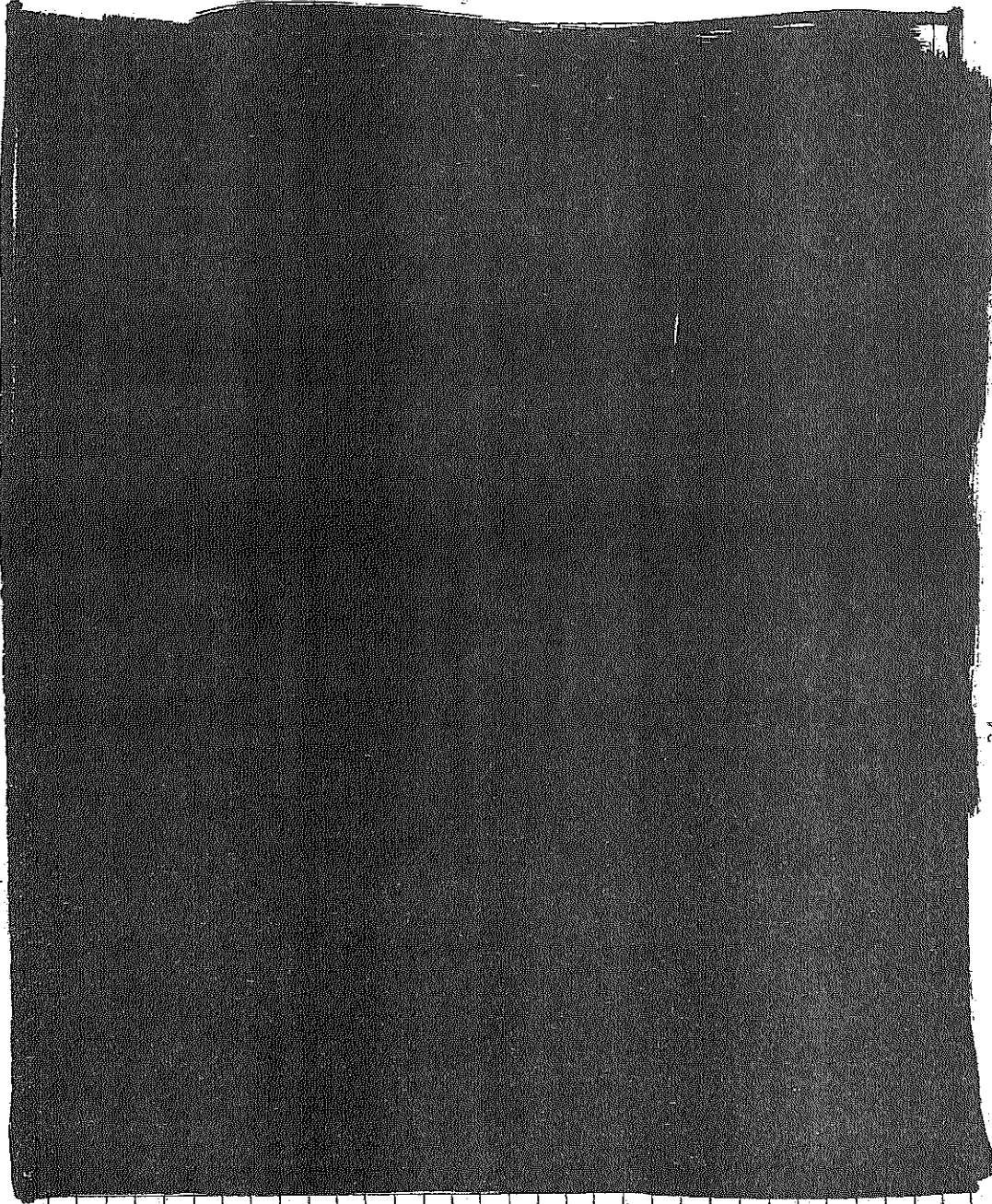
Lupron
Lupron Depot
Lupron Depot-Ped
Macugen
Menomix
Mifexantrone
Monate-M
Monoclate-P
Monomine
Myobloc
Myochrysine
Myozyme with per diem ***
Naglazyme with per diem ***
Neulasta
Neumega
Neupogen
Nexavar
Norditropin
Novantrone
Novarel
Novoseven
Nutropin
Nutropin AQ
Octagam
Ocreotide
Omnitrope
Orencia
Ortho Visc
Ovidrel
Paniglobulin
Paniglobulin NF
Pegasys
Peg-Intron

Perigonol
Polygam SD
Pregnyl
Privigen
Procrit
Profasi HP
Profiline SD
Prolaukin
Proplex T
Pulmozyme
Raptiva
Rebetrol
Rebetron 1000
Rebetron 1200
Rebetron 600
Rebif
Recombineate
Refacto
Remicade
Remodulin with per diem *
Repronex
Revatio
Revlinid
Ribasphe/Ribavirin
Roferon-A
Salzen
Sandostatin
Sandostatin LAR
Sensipar
Serostim
Somatuline Depot
Somavert
Sprycel

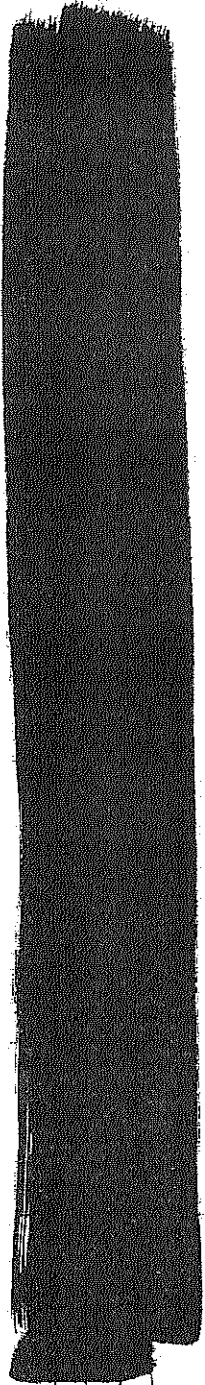




Stimate
Sugartz
Supprelin LA
Sutent
Synagis
Synvisc
Tarceva
Tasigna
Temozar
Tev-Tropin
Thalomid
Thyrogen
Tikosyn
Tobi
Torisel
Tracleer
Trelstar Depot
Trelstar LA
Tykerb
Tysabri
Valergen-20
Vanias
Vectibix
Velcade
Yanoglobulin-S
Ventavis with per diem **
Viadur
Vidaza
Visudyne
Vivaglobin
Vivitrol
Wintrol S/D
Xeloda



Xolair
Zoladex
Zolanza
Zorblive



NOTES:

AVERAGE WHOLESALE PRICE:

Average Wholesale Price is based on First Data Bank® except as otherwise noted. Changes in AWP will affect a change in pricing. Any new Specialty Drug in an existing therapeutic class (i.e., [REDACTED]) will be included at the therapy-level rate for a Specialty Drug within that same therapeutic class. Any existing products or newly FDA-approved products that do not fall into an existing therapeutic class will be billed and reimbursed at First Data Bank AWP-[REDACTED]

Notwithstanding anything to the contrary, from the date client requests a Specialty drug which is not set forth in this fee schedule or included in an existing therapeutic class, [REDACTED]

The rates for Specialty Drugs [REDACTED]

PER DIEMS:

\* Remodulin: [REDACTED] per day

\*\* Ventavis: Per Diems range from [REDACTED] per day to [REDACTED] per day depending upon services and supplies provided. Cost of I-Nebs purchased for administration is [REDACTED] each.

\*\*\* Unless otherwise stated above: [REDACTED] per dose

\*\*\*\*Nursing Charges: [REDACTED] per visit up to [REDACTED] hours, [REDACTED] for each hour thereafter. Alternatively, Caremark can refer any medically necessary nursing services to the Client's contracted nursing agency, in which case nursing services will be billed separately by those agencies. In further consideration of the fees and charges to be paid to Caremark under this Agreement, Caremark will bill any applicable per diems to the Plan Participant's medical benefit. [REDACTED]

DISPENSING FEE: [REDACTED]

REBATES: [REDACTED]

PRODUCT SHORTAGE:

In the event of an industry-wide product shortage, Caremark reserves the right to renegotiate pricing.

## Exhibit B

### Business Associate Obligations

---

In accordance with the Standards for Privacy of Individually Identifiable Health Information, at 45 CFR part 160 and part 164, subparts A and B ("The Privacy Rule") and the Standards for Security of Electronic PHI, at 45 CFR parts 160 and 164, subpart C (the "Security Rule"), under HIPAA, Caremark shall, to the extent it acts in its capacity as a Business Associate to the Plan, adhere to the applicable requirements established in the Privacy Rule and Security Rules for Business Associates as set forth below.

1. **Definitions.** Capitalized terms used, but not otherwise defined, in this Exhibit or the Agreement shall have the same meaning as those terms in the Privacy Rule or Security Rule or the HITECH Act:

- A. "ARRA" shall mean the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (2009), and specifically, Title XIII, the Health Information Technology for Economic and Clinical Health Act).
- B. "Business Associate" shall mean Caremark.
- C. "Compliance Date" shall mean, in each case, the date by which compliance is required under the referenced provision of ARRA or if specified therein, its implementing regulations, as applicable; provided that, in any case for which that date occurs prior to the Effective Date of this Exhibit, the Compliance Date shall mean the effective date of this Exhibit.
- D. "*HITECH Act*" shall mean the Health Information Technology for Economic and Clinical Health Act, which is at Section 13400, *et. seq.* of ARRA, as implemented in regulations issued by the Secretary and as of the applicable Compliance Date specified in such regulations.
- E. "Individual" shall have the same meaning as the term "individual" in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- F. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information, at 45 CFR part 160 and part 164, subparts A and E.
- G. "Protected Health Information" ("PHI") and "Electronic Protected Health Information" ("E PHI"). PHI and E PHI shall have the same meaning given such terms in 45 CFR 160.103, but limited to the information created or received by Caremark in its capacity as a pharmacy benefits manager (and not a mail pharmacy or other health care provider) on behalf of Client and Plan.
- H. "Security Rule" shall mean the Standards for Security of Electronic Protected Health Information, at 45 CFR parts 160 and 164, subpart C.

2. **Obligations and Activities of Caremark.**

- A. Caremark agrees not to use or disclose PHI other than as permitted or required by the

Agreement or this Exhibit, or as permitted or required by Law.

- B. Caremark agrees to use commercially reasonable safeguards to protect against any use or disclosure of the PHI not provided for by the Agreement or this Exhibit. Caremark also agrees to (i) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, maintains, or transmits on behalf of Client as required by 45 CFR 164.314(a)(2)(i)(A); and (ii) report to Client any Security Incidents involving EPHI of which it becomes aware.
- C. Caremark agrees to mitigate, to the extent practicable, any harmful effect that is known to Caremark of a use or disclosure of PHI by Caremark in violation of this Exhibit.
- D. Caremark agrees to report to Client any use or disclosure of the PHI not provided for by the Agreement or this Exhibit of which it becomes aware.
- E. Caremark agrees to require that any agent, including a subcontractor, to whom it delegates any function or activity it has undertaken to perform on behalf of Client, and to whom it provides PHI received from or created on behalf of Client, agrees to substantially the same restrictions and conditions on the use or disclosure of PHI as apply through this Exhibit to Caremark.
- F. Upon the Client's written request, and in a reasonable time and manner, Caremark agrees to provide to Client such PHI maintained by Caremark in a Designated Record Set for Client to respond to a request for access under 45 CFR 164.524. Caremark agrees that if it maintains PHI in an Electronic Health Record, as defined in the HITECH Act, it shall provide such access in electronic format if so requested by Client, to the extent required by and in accordance with Section 13405(e) of the HITECH Act.
- G. Upon the Client's written request, and in a reasonable time and manner, Caremark agrees to make such amendments to PHI maintained by it in a Designated Record Set for Client to respond to a request for amendment under 45 CFR 164.526.
- H. Caremark agrees to make its internal practices, policies, procedures, books, and records relating to the use and disclosure of PHI received from, or created or received by Caremark on behalf of Client, available for inspection and copying by the Secretary for purposes of the Secretary determining Client's compliance with the Privacy Rule.
- I. Caremark agrees to document such disclosures of PHI made by it, and information related to such disclosures, as would be required for Client to respond to a request by an Individual for an accounting of disclosures of PHI under 45 CFR 164.528.
- J. Upon written request by Client, and in a reasonable time and manner, Caremark agrees to provide to Client information collected in accordance with Paragraph I of this Section for Client to provide an accounting under 45 CFR 164.528. In addition, upon Client's written request on behalf of an Individual, Caremark agrees to provide an accounting of such disclosures of PHI maintained in an Electronic Health Record as required by and in accordance with Section 13405(c) of the HITECH Act.



K. **Breach Notification.** Following the discovery by Caremark of any Breach of Unsecured PHI, Caremark agrees to notify Client of such Breach without unreasonable delay. Such notification shall include, to the extent available, the identity of each Individual whose Unsecured PHI has been, or is reasonably believed by Caremark to have been, accessed, acquired, used, or disclosed during the Breach. At the time of notification or promptly thereafter as such information becomes available, Caremark shall also provide Client with such other information as is required for Client to notify an Individual of the Breach as required by 45 CFR 164.404(c). Except for notifications to the Secretary, which must be done by Client, Caremark agrees that to the extent the Breach is solely as a result of Caremark's failure to implement reasonable and appropriate safeguards as required by this Exhibit, and not due in whole or in part to the acts or omissions of Client, Caremark shall provide the notifications required under 45 CFR 164.404 and 45 CFR 164.406, subject to any delay required by law enforcement pursuant to 45 CFR 164.412.

L. **Security and Privacy Requirements of HITECH Act.** Caremark agrees to comply with Sections 164.308, 164.310, 164.312, and 164.316 of the Security Rule and the additional requirements of the HITECH Act that apply to security and privacy that are made applicable to Covered Entities as required by sections 13401 and 13404(a) respectively of the HITECH Act. Caremark may use and disclose PHI only if such use or disclosure, respectively, is in compliance with the applicable provisions of section 164.504(e) of the Privacy Rule. The parties acknowledge and agree that section 164.504(e)(1)(ii) of the Privacy Rule shall apply to Caremark in the same manner that such section applies to Client with respect to compliance with the standards in section 164.502(e) and 164.504(e) of the Privacy Rule, as required by section 13404(b) of the HITECH Act.

3. **Permitted Uses and Disclosures by Caremark.**

Caremark may use or disclose PHI to perform its Services (including analyzing PHI to recommend changes or improvements in such Services) for or on behalf of, Client as provided in the Agreement. Except as provided in this Exhibit, such uses and disclosures shall be limited to those that would not violate the Privacy Rule if done by Client. In addition, Caremark may use and disclose PHI:

- A. for the proper management and administration of Caremark or to carry out its legal responsibilities; provided that, in the case of any disclosures for this purpose, the disclosure is Required by Law or Caremark obtains reasonable assurances from the person to whom the information is disclosed, that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and that the person will notify Caremark of any instances of which it is aware in which the confidentiality of the information has been breached;
- B. to provide Data Aggregation services to Client as permitted by 45 CFR 164.504(e)(2)(i)(B);
- C. to de-identify the information or create a limited data set in accordance with 45 CFR §164.514, which de-identified information or limited data set may be used and disclosed by Caremark as permitted by law, including HIPAA;
- D. pursuant to an individual authorization in accordance with 45 CFR §164.508;
- E. to report violations of law to appropriate federal and state authorities, consistent with 45 CFR

§164.502(j)(1);

F. for treatment, payment and health care operations of health care providers and other Covered Entities as permitted by 45 CFR 164.506(c); and

G. as otherwise authorized in writing by Client.

4. Obligations of Client

Client shall provide to Caremark a written list of the names of those individuals in its Workforce that are authorized to receive or access PHI on its behalf, and to provide reasonable prior written notice to Caremark of any changes to such list. In the absence of Client providing such list, Caremark may assume that those individuals that are member of the Workforce of Plan Sponsor/Client who request or receive PHI are performing plan administration activities for Client, and are authorized to receive or access PHI on its behalf.

5. Miscellaneous.

A. Regulatory References. A reference in this Exhibit to a section in the Privacy Rule means the section as in effect or as amended, and as of its applicable Compliance Date.

B. Changes to this Exhibit. The parties agree to negotiate in good faith to amend this Exhibit or the Agreement as necessary to comply with any changes in the Privacy Rule or Security Rule.

C. Interpretation. Any ambiguity in this Exhibit shall be resolved to permit the parties to comply with the Privacy Rule, Security Rule and HITECH Act.

## Exhibit C

### Terms of Use of Name

---

CVS Pharmacy, Inc. owns federal trademark registrations for the mark CAREMARK and variations thereof in connection with goods and services in the health care and medical field (the "Caremark Mark"). No use of the Caremark Mark, including use of any Caremark's logos, is allowed without the prior written permission of CVS Pharmacy, Inc.

Upon grant of permission of use the Caremark Mark, Client may use the Caremark Mark only in the following manner:

- a. CAREMARK is to be used in block letter only;
- b. The symbol "®" in superscript shall be placed directly after the Caremark Mark on any usage of the Caremark Mark; and
- c. No modifications to font style, orientation or color shall be made to the Caremark Mark that are inconsistent with the depiction of the Caremark Mark.

Within thirty (30) days of notification by CVS Pharmacy, Inc., or upon termination of this Agreement, Client must cease all use of the Caremark Mark in any form.

## Exhibit D

### Audit Procedures

---

Caremark and Client agree the following guidelines shall apply to any audit described by this Agreement.

#### 1. Audit Notification Letter

A Client request for an audit of Caremark will be directed to the Client's account manager either in writing on Client's letterhead or by e-mail. Audits require thirty (30) days prior written notice.

#### 2. Use of Third Party Auditor

In the event a third party auditor is used, the auditor shall be a mutually acceptable independent third party retained by Client. The third party auditor shall execute a confidentiality agreement with Caremark in a form and substance reasonably acceptable to Caremark prior to conducting an audit.

#### 3. Teleconference

Upon Caremark's receipt of a request for an audit, Caremark will organize and conduct an initial teleconference between Client and Caremark. This teleconference will address the following:

- Individual audit participants
- Requirement and purpose of an approved confidentiality agreement (for use with outside audit firms or other Client representatives, as applicable)
- Onsite requirements
- Mutually established timelines
- Claims tape needs and costs
- Prescription copies: timelines, availability and cost
- Guidelines for acceptable verification of audit questions
- Caremark's right to respond within a reasonable time after questions arise and before audit results are disseminated by the auditor to Client
- Audit process confirmation letter
- Other appropriate issues.

#### 4. Mutually Agreed Timelines

Client and Caremark will mutually agree upon an audit timeline, taking into consideration individual circumstances and constraints. An example of a standard timeline is as follows (*from the time a signed confidentiality agreement is secured*):

- Claim tape request – two (2) weeks

- Standard screen prints -- two (2) weeks
- Mail service prescription copies -- six (6) weeks (cost is typically [REDACTED] per script copy)
- Audit report reply -- one (1) month.

#### 5. Response to Sampling Questions

The Client can submit to Caremark questions related to provided Claim samples. Answers to sampling questions are normally provided within [REDACTED] after the questions have been presented.

#### 6. Claims Tape Requests

Claims tape specifications shall be clarified during the initial teleconference and processed following Caremark's receipt of a signed confidentiality agreement from any third party auditor. Delivery to the specified party normally takes place within two (2) weeks. The cost typically is \$125.00 per month of data.

#### 7. Audit Report

In the event of an audit by a third party, the third party auditor or Client shall provide Caremark with a copy of any proposed audit report, and Caremark will have a reasonable opportunity to comment on any such report before it is finalized.

#### 8. Close of Audit

Upon finalization of audit results and agreement between Client and Caremark on any identified financial discrepancies, the audit period under review will be closed. Any adjustments, payments and/or reimbursements determined to be necessary as a result of any examination or audit shall be paid by the appropriate party within thirty (30) days of execution of an appropriate release document covering the audit period.

#### 9. Audit Costs

Client shall be responsible for all reasonable expenses of the audit, including Caremark's costs related to the provision of records.

## Exhibit E

### Performance Guarantees

---

For purposes of the performance standards herein, the term "Business Day" will mean Caremark's normal business hours on any day other than a Saturday or Sunday or a day on which Caremark is closed for general business purposes.

#### Conditions:

The proposed performance guarantees will be adjusted equitably by the parties to the extent that Caremark has suffered a force majeure event during the applicable measurement period.

Caremark will diligently attempt to maintain its performance at the levels represented herein, provided that failure to achieve or maintain those levels does not constitute a default for purposes of the termination provisions set forth in the Agreement.

Caremark will not be liable to Client for any failure to satisfy a performance guarantee during any time that no agreement existed between Caremark and Client, even if a subsequent written agreement between the parties provides that the effective date of the Agreement is prior to the time at which the written agreement actually was executed by the parties.

The maximum penalty that Caremark will have at risk for any Plan year will be [REDACTED] for ongoing guarantees. The total amount at risk will be allocated [REDACTED] unless otherwise stated in the performance guarantees. [REDACTED]

[REDACTED] Caremark must receive notification, in writing of Client's allocation at least [REDACTED] days prior to the effective date. Caremark is also offering a [REDACTED]

If Caremark fails to satisfy a performance guarantee that is measured for all Caremark clients utilizing the same process platform, Caremark will have satisfied a performance guarantee regarding Client if it satisfies that guarantee with respect to Client only.

If any period covered by the Agreement is less than the period covered by the proposed performance guarantee, and Caremark has not met such performance guarantee for such period, the penalty associated with such failure will be prorated to reflect the actual period during which the Agreement was in effect.

Unless otherwise indicated with respect to a specific performance guarantee, Caremark's satisfaction of the proposed performance will be:

- (i) Monitored internally by Caremark on [REDACTED] basis for all Caremark clients utilizing the same process platform, and
- (ii) Measured by Caremark on [REDACTED] basis for all Caremark clients utilizing the same process platform.

Caremark shall provide the performance guarantee report card no later than [REDACTED] days after the end of the applicable Contract Year. Any applicable amounts owed to Client [REDACTED]

In the event Caremark fails to meet the proposed guarantees, the penalties described above will be the sole and exclusive remedy available to Client for such failure.

1. **Implementation.** Caremark guarantees adherence to the mutually agreed-upon implementation work plan for the initial implementation of the prescription drug program. This is measured on a [REDACTED] basis. Should Caremark fail to meet the above-stated guarantee for reasons that are fully within its control, Caremark shall credit Client \$200,000.00.
2. **Account Management Satisfaction.** A satisfaction survey shall be conducted [REDACTED] among Client's management team. Overall satisfaction ratings of at least [REDACTED] on a 5-point scale (5 is best rating) shall be guaranteed. Caremark shall be responsible for survey design, data collection, analysis [REDACTED]
3. **Account Management Reporting.** The account manager will provide a monthly status report that highlights outstanding open issues and will be available to meet with Client on a monthly basis to discuss the status report.
4. **Account Management Client Meetings.** During first quarter after the Effective Date, Caremark will be available to meet with Client on a minimum of a monthly basis and thereafter on a minimum of a quarterly basis.
5. **Plan Participant Satisfaction.** Satisfaction surveys shall be conducted during the Plan year among Caremark's base of prescription drug benefit plan participants. Survey respondents shall be selected at random from plan participants who have recent experiences with one or more of the following Caremark services: 1) retail pharmacy benefits; 2) mail service pharmacy benefits; or 3) customer care. Based upon a statistically valid sample, overall satisfaction ratings of at least [REDACTED] shall be guaranteed. For the purposes of this guarantee, satisfaction shall be defined as [REDACTED] or better on the following 5-point scale, completely satisfied, very satisfied, satisfied, dissatisfied, or very dissatisfied. Caremark shall be responsible for survey design, data collection, analysis [REDACTED]
6. **Eligibility Updates.** Caremark guarantees [REDACTED] of ongoing eligibility updates shall be processed within two (2) Business Days of receipt of a clean and complete eligibility file. This is measured on a Client specific basis.
7. **Eligibility Error Reporting.** Caremark shall produce an error report on eligibility file updates within forty-eight hours of Caremark receiving a clean and complete eligibility file. This is measured on a Client specific basis.
8. **ID Cards-Maintenance.** Caremark guarantees that [REDACTED] of new Plan Participants will be mailed ID cards and/or welcome booklets within [REDACTED] Business Days of receipt of a clean, accurate and complete electronic file for ongoing eligibility updates. Implementation and re-issues are not considered part of this guarantee. This is measured on a Client specific basis.

9. **Mail Service Prescription Accuracy.** Caremark's accuracy in dispensing prescriptions from its mail service pharmacy (correct drug, correct strength, correct dosage form and correct Plan Participant) shall be at least [REDACTED] as measured on a Contract Year basis.
10. **Electronic Claims Processing Accuracy.** Electronic Claims processing accuracy for both retail and mail service pharmacies will be at least [REDACTED] in any [REDACTED] for which Client conducts a Claims audit as provided in the Audit Rights section of this Agreement. Upon a final and conclusive determination of any discrepancies discovered by such a Claims audit, the electronic Claims processing accuracy rate shall be calculated based upon the following formula: 
$$\frac{((\text{total number of electronic retail and mail service paid Claims processed in sample}) - (\text{number of electronic retail and mail service paid Claims processed incorrectly in sample}))}{(\text{total number of electronic retail and mail service paid Claims processed in sample})}$$
 Caremark shall [REDACTED] up to a maximum annual penalty of [REDACTED]. This is measured on a [REDACTED] basis.
11. **Mail Turnaround Time.** Within an average of [REDACTED] Business Days of receipt, Caremark shall dispense and ship at least [REDACTED] of all clean (not requiring intervention or clarification) mail service pharmacy prescriptions, as measured on a [REDACTED] basis. The average calculation is determined by taking the total number of prescriptions shipped (as recorded by Caremark's systems) multiplied by the number of days these prescriptions took to ship divided by the total number of shipped prescriptions.
12. **Management Report Accuracy.** Information contained in Caremark's standard reports is to be considered fully accurate based upon data contained in Caremark's data systems at the time the reports are produced. Caremark is exempt from this standard if incomplete or inaccurate data were received on the Claim or externally processed files, and/or were due to circumstances beyond Caremark's control.
13. **Management Report Timeliness.** Client's [REDACTED] standard management reports shall be available within [REDACTED] days after the end of each [REDACTED], as measured on a [REDACTED] and [REDACTED] basis.
14. **Plan Participant Submitted Paper Claim Financial Accuracy.** Assuming that Caremark receives complete and accurate information regarding a Claim from a Plan Participant, the paper Claims adjudication accuracy rate shall be at least [REDACTED] correct with respect to the correct reimbursement amount being paid to the Plan Participant and the correct amount being billed to the Client, as measured on a [REDACTED] basis.
15. **Paper Claims Statistical Accuracy.** Caremark guarantees that the paper Claims adjudication accuracy rate shall be [REDACTED] with respect to statistical (non-financial) adjudication, as measured on a [REDACTED] basis.
16. **Plan Participant Submitted Paper Claim Turnaround Time.** Within a weighted average of [REDACTED] Business Days, Caremark shall process at least [REDACTED] of all commercial paper Claims submitted by Plan Participants not requiring clarification, as measured on a [REDACTED] basis.
17. **Phone Abandonment Rate.** Inbound calls to Caremark's toll-free customer service lines shall be answered with an abandonment rate of [REDACTED] or less, as measured on a [REDACTED] basis.



Measurement excludes calls routed to an IVR and excludes calls abandoned by the Plan Participant within the first [REDACTED] seconds.

18. **Phone Average Speed of Answer.** Inbound calls to Caremark's toll-free customer service lines shall be answered within an average time of [REDACTED] seconds or less. Measurement excludes calls routed to an IVR, as measured on [REDACTED] basis.
19. **Participating Retail Pharmacy Access.** Subject to the availability of any active retail pharmacy within the specified area, the Caremark national network of the retail pharmacies shall include a pharmacy within [REDACTED] miles of the residence of at least [REDACTED] of Plan Participants, when Plan Participants have an active retail pharmacy within [REDACTED] miles of their residences, as measured on a [REDACTED] and [REDACTED] basis.
20. **System Availability.** Caremark's online Claims processing system will be available for access by Caremark's contracted pharmacies no less than [REDACTED] of the time, excluding normal scheduled maintenance, as measured on a [REDACTED] basis. This standard will not apply when Caremark does not have total control over the environment or communication links that impact the Claims adjudication process due to third-party involvement. Scheduled maintenance will not be performed during routine pharmacy business hours.
21. **First Call Resolution.** Caremark will resolve at least [REDACTED] of issues at the first point of contact. First call resolution is the number of inquiries completely resolved at the time of initial contact divided by the total inquiries.
22. **Written Inquiries.** Caremark guarantees 95% of written inquiries received by Caremark's Customer Care Department from all Plan Participants will be responded to within [REDACTED] Business Days following the Business Day on which such inquiry was received. This is measured on a [REDACTED] basis.
23. **Account Management Issue Resolution.** Caremark guarantees that if any issue cannot be resolved within [REDACTED] Business Days, Caremark will, within [REDACTED] of receipt by the account manager, provide an estimated time of resolution via electronic or verbal communication to requestor. This is measured on a [REDACTED] basis.

## Exhibit F Clinical Service Programs

Caremark will provide the following Clinical Services for the fees as set forth in Exhibit A.

### A. Core Clinical Services and Programs [REDACTED]

#### 1. Safety Now Programs.

- a. Point of Sale Safety Edits Program. Caremark shall provide in accordance with Section 2.8 of the Agreement its automated concurrent drug utilization review services. The Point of Sale Safety Edits Program is necessarily limited by the amount, type and accuracy of Plan Participant information made available to Caremark.
- b. Retrospective Safety Review Program. Caremark shall provide Client retrospective DUR services, which are designed to provide appropriate clinical information concerning Plan Participant drug utilization for specific prescriptions. Caremark shall provide Prescribers with a Plan Participant-specific communication that identifies clinical issue and suggests alternative therapies, as appropriate.
- c. Safety and Monitoring Solution Program. On a calendar [REDACTED] basis Caremark shall evaluate Claims for patterns of potential overuse or misuse, including without limitation, the use of multiple Prescribers or multiple pharmacies. For circumstances that Caremark identifies patterns of potential overuse or misuse, Caremark may provide Prescribers or pharmacies with written notice of such issues.

Caremark shall provide, as requested, Client with [REDACTED]

#### 2. Savings Now Programs.

- a. Comprehensive Generics Solutions Programs. Caremark shall make the following Generic Solutions Programs, which are designed to increase the utilization of generics, available to Client.
  - i. Generic Alerts. Caremark may send generic alerts to Client and Plan Participants identifying newly available generic drugs that have entered the marketplace. Plan Participants prescribed a brand drug that has a generic drug alternative available due to such generic launches will receive correspondence from Caremark identifying the new generic alternative and encouraging Plan Participant to request the generic drug alternative.
  - ii. Therapeutic Generic Alternative Mailing. For Plan Participants receiving a single source non-preferred brand drug in select therapeutic classes, Caremark shall send information

concerning generic drug alternatives within the certain therapeutic class and encourage the Plan Participant to request the generic drug alternative.

- iii. *iBenefit Report*. At the Client's request and subject to the fees described in Exhibit A, Caremark shall mail the iBenefit Report to Plan Participants [REDACTED].
- iv. *Value Drug Savings Tool*. At Client's request, Caremark shall provide Plan Participants access to the Value Drug Savings Tool, which provides savings information about preferred brand drugs, generic drugs, and over-the-counter products.
- v. *Dispense as Written ("DAW") Interventions Program*. Subject to Plan design changes, Client may implement either of the following DAW Intervention Programs: (a) DAW 1 Option: In the event a Prescriber has indicated on a prescription to "dispense as written", Caremark's mail service pharmacy shall contact Prescribers, as appropriate, to determine if a generic drug can be substituted for a prescribed brand drug; or (b) DAW 2 Option: In the event a Prescriber has authorized a generic drug substitution but the Plan Participant has requested the brand drug, Caremark's mail service pharmacy shall contact the Plan Participant to determine if a generic drug can be substituted for the prescribed brand drug.
- vi. *Face-to-Face Counseling Program*. Caremark shall provide a CVS/pharmacy pharmacist weekly reports identifying Plan Participants eligible to substitute a generic drug for a prescribed brand drug.

b. Point of Service ("POS") Utilization Management Programs. Caremark shall provide the following POS Utilization Management Programs:

- i. *Dose Optimization Program*. Under Caremark's Dose Optimization Program, Claims for selected drugs shall reject at the point of service when multiple daily doses of the drug are prescribed and when a higher-strength single daily dose is available and is clinically appropriate. Client acknowledges that Caremark's Dose Optimization Program is an automated non-discretionary processing technique intended to provide better management of Client's drug benefits based on objective criteria. Caremark shall not undertake, and is not required, to determine medical necessity or appropriateness of therapies, to make diagnoses, or to substitute Caremark's judgment for the professional judgment and responsibility of the Prescriber.
- ii. *Quantity Limits Program*. Subject to Client's written election and inclusion of the Quantity Limits Program in the PDD, Caremark shall apply limitations for specific drugs or drug classes. Caremark shall supply Client with a list of clinical protocols for review, modification and adoption by client. Upon Client's adoption of the protocols, Caremark will reject any Claims for such drugs if dispensing the drugs would result in the applicable drug coverage limitation to be exceeded. Client acknowledges that Caremark's Quantity Limit Program is an automated non-discretionary processing technique intended to provide better management of Client's drug benefits based on objective criteria. Caremark shall not undertake, and is not required, to determine medical necessity or appropriateness of therapies, to make diagnoses, or to substitute Caremark's judgment for the professional judgment and responsibility of the Prescriber.
- iii. *Step Therapy Program*. Subject to Client's election and inclusion of the Step Therapy Program in the PDD, Caremark shall provide its Step Therapy Program, pursuant to which limitations on drug coverage may be established for categories of drugs that are otherwise included in the Plan. Caremark shall supply Client with a list of suggested protocols for review, modification, and adoption by Client. Client must provide final

written approval of the protocols to be used. Such coverage limitations are defined and established based on Step Therapy protocols. Caremark shall then administer these approved protocols. If the coverage requirements are not satisfied, Caremark shall reject Claims for these drugs. Client acknowledges that Caremark's Step Therapy Program is an automated non-discretionary processing technique intended to provide better management of Client's drug benefits based on objective criteria. Caremark shall not undertake, and is not required, to determine medical necessity or appropriateness of therapies, to make diagnoses, or to substitute Caremark's judgment for the professional judgment and responsibility of the Prescriber.

c. POS Preferred Product Messaging. As identified in Section 2.6 of the Agreement, Caremark may implement Drug Interchange program(s), which has been approved by Caremark's pharmacy and therapeutics committee for selected prescriptions, under which Caremark's mail service pharmacy shall contact Prescribers, as appropriate, to obtain approval for the Drug Interchange.

d. Physician Profiling Report. Caremark shall provide, upon Client's request, summary reporting of multiple trend variables for a particular Prescriber [REDACTED]

### 3. Healthier Now Programs.

a. Adherence to Drug Therapy Program. In accordance with the Adherence to Drug Therapy Program, Caremark shall provide communications to Plan Participants, including welcome communications, noncompliance communications, first fill drop-off communications, refill reminder communications, auto-refill and auto-renewal communication. Such communications are designed to increase Plan Participants' adherence to specific maintenance drug regimens. Caremark may provide Plan Participants with adherence counseling at CVS/pharmacy stores; such counseling may include first fill counseling on select maintenance medications, non-adherence prompts when therapy falls below standards of compliance, refill reminders, pick-up reminders when prescriptions are ready and waiting, and counseling to Plan Participants who use multiple pharmacies.

b. Gaps in Care Pharmacy. Based on national clinical guidelines, Caremark shall review Claims for opportunities to improve compliance with for Plan Participants with cardiovascular disease, diabetes and osteoporosis. Caremark may provide Plan Participant-specific communications to such Plan Participants' Prescribers.

c. Face-to-Face Physician Consultation. Clinical pharmacists shall visit certain Prescribers and provide such Prescribers with Plan Participant-specific information on generic prescribing patterns, gaps in care according to evidence-based medicine, and medication adherence.

B. Enhanced Clinical Programs and Services. Caremark shall provide the following enhanced clinical programs and services [REDACTED]

### 2. Savings Now Programs.

a. Prior Authorization Program. Caremark shall provide Client with a form of prospective drug utilization review known as the Prior Authorization ("PA") program. Client may adopt the standard criteria suggested by Caremark for the PA program, as amended from time to time by Caremark. Client shall have final approval over the criteria to be utilized. Caremark shall

periodically review and update the PA criteria. In the event Client elects the auto-update option for this program, Client shall notify Caremark in writing within ten (10) business days of Caremark updating the PA criteria if Client does not want to accept such updates. Client shall be deemed to have approved any proposed changes to the criteria unless Client timely notifies Caremark in writing of Client's objection. If Client does not wish to utilize Caremark's standard PA criteria, Caremark shall work with Client to develop customized criteria that are compatible with the Caremark systems. Client shall be responsible for notifying Caremark when changes are needed to Client's customized criteria.

Client directs Caremark to accept PA requests from Prescribers and approve or deny such requests in accordance with the PA criteria. Caremark shall make clinical pharmacists available to provide professional support to the PA unit as Caremark determines necessary to evaluate PA requests and clarify Client's PA criteria. Caremark's PA unit shall notify the Prescriber who submitted the PA request of the coverage determination for such request.

Approvals shall be entered in the adjudication system. Caremark's clinical pharmacists shall review denials on a regular basis to assist Client in determining whether PA criteria and/or processes warrant modification. Standard reports, including approvals and denials, shall be produced on a [REDACTED] basis and included in [REDACTED] reporting to Client.

Client covenants that under no circumstances shall Caremark be responsible or otherwise liable to Client with respect to any and all Losses arising from or as a result of Caremark's decision to authorize or deny coverage of any drug in accordance with the Plan design, except to the extent that any Losses arise from Caremark's failure to apply the Plan design.

## Exhibit G

### Non-ERISA Appeals

---

1. Client represents that its Plan is NOT governed by ERISA.
2. Client represents and warrants to Caremark that the Appeals Program, as defined in Section 5 below, satisfies any and all laws applicable to the Plan with respect to appeals from denials of Claims for prescription drug benefits. Client shall promptly notify Caremark in writing in the event a change in law causes the Appeals Program to be in non-compliance with applicable laws. Upon such notice, Caremark shall have the option of revising its Appeals Program to be in compliance with such change in law or terminating this Appeals Program.
3. Caremark may from time to time modify the Appeals Program. In the event of any such modification, Caremark shall provide Client with written notice of such modification at least thirty (30) days prior to its implementation. If Client determines that any such modification would cause the Appeals Program to be in non-compliance with applicable laws, Client shall so notify Caremark prior to the end of the thirty (30) day period. Caremark shall then have the option of further modifying its Appeals Program to be in compliance with applicable laws or terminating this Appeals Program. If Client does not so notify Caremark, then Caremark shall implement the modification and shall continue to rely on the representation and warranty set forth in Section 2 above.
4. Client represents that it will provide Caremark with a current and accurate copy of the Plan Document, as defined herein. The "Plan Document" shall be the written document, which sets forth the Plan design and all other information concerning Client's prescription drug benefit plan including, but not limited to, eligibility for such benefits, the benefits to be provided, limitations on such benefits and the Plan's claims and review procedures. Throughout the Term of this Agreement, Client, at its expense, will provide Caremark with sufficient advance notice of any proposed amendments to the Plan Document.
5. Caremark will provide Client with the appeals program described in Sections 5.a. and 5.b. below ("Appeals Program").
  - a. *Review of Benefit Coverage.* Caremark shall conduct appeals relating to eligibility and coverage of prescription drug benefit determinations. Such reviews will be based on the Plan Document provisions and criteria approved by the Plan, with respect to coverage of prescription drug benefits only, and shall not include a review of medical necessity as may be defined under the terms of the Plan Document. With respect to such review of benefit coverage, Caremark shall have the sole and absolute discretion to interpret the Plan Document and to make factual findings. The decision of Caremark shall be final, subject to judicial review only for abuse of discretion. Caremark may, in its sole discretion, consider the opinions of additional medical and/or legal experts with respect to interpretation of the Plan Document. Under the Appeals Program, Caremark agrees to be a fiduciary solely for the purpose of reviewing appeals relating to the coverage of prescription drug benefits. Caremark will review appeals in accordance with the rules and procedures established by Caremark to govern appeals from the denials of claims, as may be amended from time to time.
  - b. *Review of Medical Necessity.* Caremark has contracted with an independent vendor or vendors for the processing of appeals resulting from a denial of authorization of prescription benefits where the Plan beneficiary is entitled to obtain a review of the denial by an independent physician specialist. Caremark has entered or will enter into an agreement with the independent vendor(s), which provides for an appeals process consistent with the Appeals Program. With respect to such reviews, the

independent vendor shall act as a fiduciary and shall have the sole and absolute discretion to interpret the Plan Document and to make factual findings. The decision of the independent vendor shall be final, subject to judicial review only for abuse of discretion.

6. As consideration for the services provided hereunder, Client shall pay Caremark the fees set forth in Exhibit A of this Agreement. Payment shall be due in accordance with Section 7.2 of the Agreement.

## Exhibit H Medicare Part D Subsidy

---

### RECITALS

WHEREAS, the Centers for Medicare and Medicaid Services ("CMS") have adopted regulations regarding the Medicare Prescription Drug Benefit ("Part D"), which regulations allow for a retiree drug subsidy payment ("subsidy") from CMS; and

WHEREAS, Client has informed Caremark that Client intends to apply for the subsidy payments specified in 42 CFR Part 423, Subpart R for its prescription drug coverage for Part D eligible retirees ("Part D Participants"); and

WHEREAS, Client desires to have Caremark assist Client with applying for such subsidy and, if qualified, to assist Client with complying with CMS requirements for obtaining and maintaining such subsidy.

#### 1. Caremark Responsibilities.

1.1 **Part D Subsidy Services.** Caremark, or an affiliate thereof, will, upon request, provide Client the services set forth in this Exhibit, the services described in Attachment A that are selected by Client, and the services described in any attachment, addendum or amendment hereto (collectively the "Services"). Caremark may recommend changes to the Services from time to time, and may use Claims Information and other PHI (as defined in the Agreement) to improve or recommend additional Services to Client, and to analyze the value of the subsidy or suggest alternate means for covering Part D Participants, so long as such changes are consistent with the requirements of Part D and do not materially alter any of the provisions of this Exhibit. Client, acting on behalf of its Plan, also authorizes Caremark to use and disclose PHI as necessary to perform its Services and otherwise assist the Plan in complying with its obligation to disclose information to CMS as necessary to enable Client to claim the subsidy payments from CMS.

1.2 **Application.** Caremark agrees to assist Client with completing the Retiree Drug Subsidy Plan Sponsor Application issued by CMS (the "Application"). To the extent Client requires additional data or information in order to complete the Application, Caremark agrees to provide such additional data or information, to the extent available, upon Client's reasonable request and if such request is made at least thirty (30) business days prior to the Application being submitted to CMS.

1.3 **Creditable and Non-Creditable Coverage Notices.** Upon Client's independent determination as to whether its Plan qualifies as creditable prescription drug coverage within the meaning of 42 CFR 423.56(a), Caremark agrees to send to Client's Part D Participants notices of creditable or non-creditable coverage, as applicable, in accordance with Part D requirements under 42 CFR 423.56(f) based on creditable coverage information provided by Client. Client agrees that Caremark shall not have any further responsibility to provide any further services under this Addendum with respect to non-creditable coverage plan(s).

1.4 **Actuarial Equivalence Determination.** Caremark agrees to provide Claims data and analytical tools, which include subsidy estimation and cost distribution reports, and to provide financial



impact assessment and plan design consulting to assist Client in determining whether its Plan meets the actuarial equivalence tests specified in 42 CFR 423.884(d)(1). Client acknowledges and agrees that it is responsible for obtaining and providing to CMS the actuarial equivalence attestation required by 42 CFR 423.884(d).

**1.5 Eligibility Reporting and Reconciliation.** Upon Client's request, Caremark agrees to submit to CMS, in an electronic format required by CMS, the eligibility information about Part D Participants, and periodic updates to such information, that Client provides to Caremark pursuant to Section 2.2. In the event that Caremark submits eligibility information to CMS, Client agrees to take any additional actions or to provide to Caremark or CMS, as applicable, any additional information necessary to update the source eligibility information that originates with Client. Client agrees to provide its eligibility file with the Part D Participants identified as provided in Section 2.2, and any periodic updates, to Caremark at least fifteen (15) business days prior to the required submission date to CMS. Caremark shall have no responsibility, or liability to Client, for verifying that the eligibility information it submits to CMS on behalf of Client is complete, accurate or correct, and its sole responsibility shall be to transmit the information, as provided by Client, to CMS. However, Caremark agrees to perform any required reconciliation functions with CMS related to the submission of the eligibility information.

**1.6 Drug Cost Reporting.** Client shall advise Caremark, at the time it submits the Application, whether it wishes to receive payments from CMS on a monthly, quarterly or annual basis in accordance with 42 CFR 423.888(b)(2)(i) so that Caremark may prepare and submit data accordingly to Client or, as directed by Client, to the CMS RDS website. Caremark agrees to submit to Client or, upon Client's request, to upload directly to the CMS Retiree Drug Subsidy ("RDS") website, in an electronic format required by CMS, the aggregate data about drug costs incurred by Client's Part D Participants required by 42 CFR 423.888(b)(2) and (b)(4). In the case of submissions to the Client, Caremark agrees to provide such data in sufficient time to allow Client to submit such information via the CMS RDS website within the time periods specified by CMS. In the case of direct uploads to the CMS RDS website by Caremark, Caremark agrees to act as an intermediary with CMS, on behalf of the Client and to submit the Claim files for receipt of the tax subsidy. In order to do this, Caremark agrees to upload the data in sufficient time for Client to review and formally submit the data to CMS via the CMS RDS website. Additionally, in the case of direct uploads to the CMS RDS website, Caremark agrees to process the response records returned from CMS related to the submission of the CMS aggregate drug costs. In either case of direct uploads to RDS website or submission to the Client, Client shall be responsible, as stated in the RDS Payment Instructions, for reviewing the cost data, deciding to submit the payment request, accepting the terms of the payment agreement and providing its electronic signature for final submission of the payment request to CMS.

**1.7 Drug Cost Reconciliation.** Caremark agrees to perform any required reconciliation functions with CMS related to the reject responses of the drug cost data. Regardless of whether the Client elects monthly, quarterly or an interim annual payment, Caremark agrees to submit the following items to CMS within fifteen (15) months of the end of the plan year, or within any other longer time limit specified by CMS:

- The total gross covered retiree plan-related prescription drug costs (as defined in 42 CFR 423.882);
- Actual rebate and other price concession data for the plan year in question;
- And any other data CMS may require.

Client agrees to take any additional actions or to provide to Caremark or CMS, as applicable, any additional information necessary to resolve reject responses.

1.8 **Supplemental Customized Reporting.** Client may request customized reports which will be subject to an additional fee as referenced in Attachment A.

1.9 **Non-Part D Drugs.** Client acknowledges and agrees that it is responsible for complying with the laws governing determination of whether a drug is a covered Part D drug. Client will provide to Caremark instructions regarding the coverage of those drugs that may be covered under either Medicare Part B or Part D ("overlap drugs"), depending upon the circumstances under which they were prescribed, dispensed or administered. These instructions will be provided in writing to Caremark on such form(s) as the parties mutually agree and Client shall pay for such services in accordance with the fee schedule set forth in Attachment A.

## 2. **Client Responsibilities.**

2.1 **Actuarial Equivalence and Creditable Coverage.** Client shall be responsible for obtaining the actuarial equivalence attestation required by 42 CFR 423.884(d) and for determining whether its Plan qualifies as creditable coverage under 42 CFR 423.56, and Caremark shall not have any responsibility to Client for making such determinations. Client agrees that it will provide Caremark with all plan design changes which are required in order for the Plan to qualify as actuarially equivalent no less than three months prior to the start of the Plan year or the calendar year, whichever is earlier, for which the subsidy will be claimed. Client agrees that upon mutual agreement, Caremark may charge additional costs for those plan design changes that require material modification and costs to Caremark's system in order for the Plan to qualify as actuarially equivalent.

2.2 **Identification of Part D Participants.** Client will provide Caremark with an eligibility file(s), in the format designated by Caremark, with an indicator that identifies each Part D Participant and the corresponding effective date of their eligibility and other additional fields as required by Caremark or CMS. If Client wishes Caremark to submit the eligibility information directly to CMS on Client's behalf, Client agrees to provide such eligibility file, including periodic updates, to Caremark at least fifteen (15) business days prior to the required submission date to CMS. Otherwise, if Client will be submitting the eligibility file to CMS itself, Client will provide the file to Caremark no later than the date it submits its Application and periodic updates on a timely basis thereafter.

## 3. **Fees.**

3.1 Client shall pay to Caremark the fees set forth in Attachment A for Caremark Services under this Exhibit. Caremark will invoice Client for such fees, and payment will be due as set forth in the Agreement.

3.2 Client acknowledges and agrees that if Client should discontinue coverage of Part D Participants under Client's plan during the term of the Agreement, then upon mutual agreement of the parties, Caremark shall have the right to adjust fees, rebates and other pricing terms set forth in the Agreement to reflect accurately the discontinuation of coverage for such Part D Participants.

## 4. **General Provisions.**

4.1 **Books and Records.** Caremark shall maintain documentation of all Claims processed for six (6) years. In addition, Caremark shall maintain, for a period of six (6) years, books, records, documents and other evidence of accounting procedures and practices directly related to the financial and other aspects of its administration of the Plan consistent with 42 CFR §423.888(d)(1). Subject to this Section, all such records, while maintained by Caremark, shall be accessible by Client for examination and audit during the term of and in accordance with this Agreement.

4.2 **Audit Services.** Caremark agrees to make available for audit by CMS or its designee the Claims data and such data in Caremark's possession as required to be retained pursuant to 42 CFR 888(d)(3), for CMS to verify the subsidy payment claimed by Client, for the six-year period specified in 42 CFR 423.888(d)(1).

4.3 **Federal Funds.** Caremark acknowledges that information and services it provides in connection with this Addendum will be used by Client for the purpose of obtaining Federal Funds, as that term is further described in the Application.

4.4 **Retiree Drug Subsidy Payment Instructions.** Retiree Drug Subsidy payment instructions are available on the Medicare Retiree Drug Subsidy Center Web site at <http://rds.cms.hhs.gov>.

## ATTACHMENT A To Exhibit H

### Fee Schedule

The fees set forth in this Attachment A are in addition to any fees set forth in the Agreement and any Addendums or other Attachments thereto.

1. Core Administrative Service Package - [REDACTED] for Part D Participants. Includes:
  - a. Upon request, provide financial impact assessment and plan design consulting if changes in coverage are required to pass 2-prong test.
  - b. Establish new Medicare indicators to support client Medicare eligible data.
  - c. Perform annual reconciliation to adjust for rebates.
  - d. Store claims in accordance with CMS record retention guidelines.
  - e. Provide claims and support during CMS audits.
  - f. Medicare account services team to work directly with client on Medicare population issues.
  - g. Analytic support to estimate value of subsidy or alternate Medicare drug coverage for 2007 and beyond.
2. Letter of Creditable or Coverage - [REDACTED] per mailing. Mailing [REDACTED] of creditable coverage to each beneficiary [REDACTED] per year, or as required by CMS (includes postage).
3. Supplemental Customized Reporting - [REDACTED] per hour. Any customization to alter CMS-ready standard reporting.
4. Eligibility Submission and Reconciliation - Submission and processing of response records returned from CMS related to the direct submission to CMS of required list of Part D Participants - [REDACTED] for Part D Participants.
5. Act as Intermediary with CMS, on behalf of Employers and Health Plans, to submit claims files for receipt of tax subsidy. Drug Cost Report Upload and Reconciliation - Upload and processing of response records returned from CMS related to the submission of the CMS aggregate drug costs - [REDACTED] for Part D Participants.

Note: All pricing, rates and fees are subject to change and are contingent upon final CMS requirements. All reporting and eligibility deliverables are provided to the Client and not to CMS, unless otherwise noted.

## Exhibit I

### Confidential & Proprietary Information Schedule

Pursuant to Section 10 of the Agreement, the Parties acknowledge that Client is a public entity and subject to state laws governing disclosure of public records. Caremark asserts that the information identified in the schedule below is proprietary to, and considered trade secrets of, Caremark under the Rhode Island Access to Public Records Act, Rhode Island General Laws § 38-2-2(4)(B) and § 38-2-2(4)(i)(S), and unauthorized disclosure of such Confidential Information will cause Caremark significant financial and competitive harm.

Client agrees that the confidential and proprietary information of Caremark which is in writing and marked as confidential and proprietary shall be afforded protection under applicable law. Prior to disclosing such confidential and proprietary information of Caremark, Client shall immediately notify Caremark of any requests for information made by a third party pursuant to applicable state statute or local ordinance and shall further provide Caremark sufficient time to claim applicable exemptions and/or designate those portions of this information that constitute proprietary information exempt from disclosure under applicable state statute or local ordinance. Client further acknowledges that it will not release any information identified by Caremark as exempt from disclosure without first providing notice to Caremark of such intent and allowing Caremark to seek judicial relief to prevent such disclosure. Client agrees not to oppose any action of Caremark to obtain a declaratory judgment or other appropriate remedy. If a court thereafter determines that Client is legally required to disclose such proprietary information, Client shall disclose the minimum required pursuant to the court order.

Retail Pharmacy Network: 2.3(h)(ii) [selected text]

Implementation: 2.4(d) [selected text]

Drug Utilization: 2.8(d)(w) [selected text]

Reports, Claims Data and SAS 70: 2.11(c) [selected text]

Government Agency Submitted Claims: 2.14 [selected text]

iBenefit Report: 2.20 [selected text]

Audit Rights: 5.1, 5.2 [selected text]

Invoicing: 7.1(a), 7.1(b) [selected text]

Payment: 7.2 [selected text]

Remittance of Rebates: 8.2 [selected text]

Term and Termination: 9.1, 9.2(a), 9.2(b), 9.4(a), 9.4(c), 9.5(b) [selected text]

Exclusivity: 13.2 [selected text]

Pricing Assumptions: 13.3(a) [selected text]

Market Check: 13.17

Exhibit A Financial Terms: 1. (Retail, Generic Effective Rate), 1a(i), 1a(ii), 1a(iv), 1a(v), 1a(vi), 1a(vii), 1a(viii), 1a(ix), 2.1, 2.1(a), 2.1(b), 2.1(c), 2.1(d), 2.2(a)(b)(c)(d) (Core Clinical Services and Programs), 3.1 (Drug Rebates), 3.2 (Implementation Credit), 3.3 (Audit Credit), Attachment 1 to Exhibit A (Specialty Drug List), Attachment 1 to Exhibit A, Notes: Average Wholesale Price, Per Diems, Dispensing Fee Rebates, Rebates [selected text]

Exhibit D Audit Procedures: 5 (Response to Sampling Questions) [selected text], 6 (Claims Tape Requests) [selected text]

Exhibit E Performance Guarantees: Conditions, 5 (Plan Participant Satisfaction), 6 (Eligibility Updates), 8 (ID Cards-Maintenance), 9 (Mail Service Prescription Accuracy), 10 (Electronic Claims Processing Accuracy), 11 (Mail Turnaround time), 13 (Management Report Timeliness), 14 (Plan Participant Paper Claim Financial Accuracy), 15 (Paper Claims Statistical Accuracy), 16 (Plan Participant Submitted Paper Claim Turnaround Time), 17 (Phone Abandonment Rate), 18 (Phone Average Speed of Answer), 19 (Participating Retail Pharmacy Access), 20 (System Availability), 21 (First Call Resolution), 22 (Written Inquiries), 23 (Account Management Issue Resolution) [selected text]

Exhibit F: A (Core Clinical Services and Programs), 2a(iii)(Savings Now Program, iBenefit Report), 2d (Physician Profiling Report), B (Enhanced Clinical Programs and Services) [selected text]

Exhibit H: Attachment A to Exhibit H [selected text]