

NDPERS BOARD SPECIAL MEETING

Agenda

Bismarck Location:
Attorney General's Conference Room
17th Floor, State Capitol

December 30, 2015

Time: 8:30 a.m.

- I. Member Retirement Eligibility ***
- II. Medicare Part D Contract**

*Executive Session to discuss confidential member information pursuant to NDCC 44-04-19.2(1), 54-52-26

Any individual requiring an auxiliary aid or service must contact the NDPERS ADA Coordinator at 328-3900, at least 5 business days before the scheduled meeting.



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Memorandum

TO: PERS Board
FROM: Sparb
DATE: December 23, 2015
SUBJECT: ESI Contract

At the last Board meeting, we reviewed the progress on the ESI contract (Attachment #3 is the memo and attachments from the December 17th meeting). We noted at that time that discussions were going along a dual track. The first track was the continuation of staff's review of the contract that was ongoing since September. The second track was to follow-up on the comments offered by the Pharmacy Association at the November meeting (Attachment #1).

Concerning the first track there were two issues remaining and those are in the Attachment #2 at:

1. Page 7. In the draft, part of a sentence had been inadvertently deleted. We requested that it be restored. You will note that the portion in the blue is the remainder of the sentence. Staff has no disagreement with the language.
2. Page 12, Section 4.5. The change here was a suggestion from Jan. The last sentence was requested by ESI. Jan and staff do not disagree with the language requested by ESI since this is generally requested in RFP's.

Concerning the Pharmacy Association comments, we did two efforts since our December 17 meeting:

1. We sent the table with ESI's Dec 16th comments to Deloitte who had not had an opportunity to review them. They provided updated comments which are in blue under "Deloitte and Staff Comments". Their original Deloitte comments are in black.
2. We had a call with ESI on December 22nd. We have added an additional column to the table with their comments. You will note that:
 - a. Concerning #1 & #6, ESI agreed to provide the DIR report annually.
 - b. Concerning item #8, they agreed to new language in the contract concerning audits as noted above.

Pursuant to the direction at the last meeting, we have completed the above and report the attached findings. I would like to thank the Pharmacy Association for its input, which was very helpful to us. As we discussed at the last Board meeting, some of the considerations they presented would provide for more direct control of the plan by the Board and are associated with a self-insured plan. This may be something the Board may want to investigate relating to future direction of the program. Staff seeks your direction on this matter.

At this point, we feel we have addressed the issues with ESI. They have agreed to some changes and not others, but I think we are at point where all considerations that have been suggested have been reviewed and we have received responses. If we have missed anything, please get in touch with me and I will follow-up before our meeting on Wednesday, December 30.

NDPERS ESI Part D Contract

Contract Suggestions	Deloitte & NDPERS Staff Response (12/16 & 12/22)	ESI Response (12/16)	ESI Follow-up Response (12/22)
<p>1</p> <p>Term “Rebates” Starts on the bottom of Page 3: The federal government/CMS requires that an entity pass-through and accurately report on all “Direct and Indirect Remuneration” (also referred to as DIR’s) that are paid in connection with drug coverage. It is clear that “rebates” are included in DIR, but many other types of third party monies are included as well. The contract fails to require a PBM to correctly pass-through and report on all DIRs, as required by government regulations, as further touched on below. NDPERS should insist on changes to this definition.</p> <p><input type="checkbox"/> The “rebate” definition should be changed and the contract should refer to DIRs and the term should be defined just as the federal government.</p> <p><input type="checkbox"/> The contract should require the PBM to adhere to all regulations related to DIRs, including but not limited to: the government’s requirement that all DIRs be passed through, be accurately reported to the government, and that the PBM only retain approved bona fide service fees.</p> <p><input type="checkbox"/> It should further require all DIR information be reported to NDPERS (as mentioned in point 1).</p> <p><input type="checkbox"/> In the past, under Medicare Part D plans,</p>	<p>“Rebates”: we agree with the recommendation. Negotiating the definition on “rebates” may not result in a change as it is likely that Express Scripts has validated their contracts are in alignment with CMS requirements.</p>	<p>Change not accepted.</p> <p>Under CMS regulations, DIR reporting requirements are the obligation of plan sponsor. Under a fully-insured EGWP, MCLIC is the plan sponsor. Rebates and DIR are not passed through to the client. This is consistent with CMS regulations. Likewise, as the client is not contractually required to receive such payments, MCLIC does not report such amounts to client.</p> <p>Section 7.1 already requires MCLIC to comply with applicable law.</p>	<p>A fully insured agreement does not have a pass through arrangement in which rebates are passed to the Client. The only payment of funds in this type of arrangement is premiums paid from the Client to the PBM. All DIRs are reported by the PBM to CMS per CMS requirements.</p> <p>New Section 3.16 addresses DIR reporting requirements.</p>

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<p>PBMs have started charging DIR fees to pharmacies based on future payments owed to the pharmacy. Pharmacies don't even know what the DIR fees will be, until after claims have been adjudicated. These fees have gotten so out of hand that CMS is now requiring that the fees be reported to reflect accurately the monies the PBM is collecting and retaining.</p> <p><input type="checkbox"/> It would be wise to specifically require the PBM report on DIR fees charged to pharmacies to NDPERS. This would position NDPERS to better understand how much is being charged and to factor such amounts into reducing NDPERS' premiums next year (or if NDPERS negotiates a self-insured plan next year, to have such DIR fees passed through as a reduction in total costs).</p>			
<p>2</p> <p>Eligibility and NDPERS' Premium Costs: Since ND will be paying its premium based on the "number of members" each month, the contract should include a requirement that the PBM identify in its premium invoice each month, all retroactive eligibility decisions that have been made. Otherwise, NDPERS won't be able to determine if ESI's "tally" of members is accurate as well as won't be able to determine if the amount of</p>	<p>"Eligibility and NDPERS Premium Costs": Deloitte does not expect this to present a problem for Express Scripts to change.</p> <p><u>NDPERS Staff Comment:</u></p>	<p>No response requested.</p>	<p>See staff comment</p>

NDPERS ESI Part D Contract				
Contract Suggestions		Deloitte & NDPERS Staff Response (12/16 & 12/22)	ESI Response (12/16)	ESI Follow-up Response (12/22)
	premium owed was accurate. As written, the proposed contract appears to allow the PBM to charge for participants, even if they are not enrolled members.	<i>NDPERS does all the billing to retirees and is the source for plan eligibility so this is not directly applicable to our situation.</i>		
3	Miscellaneous Additional Points: Section 3.5 (page 9): Changes to the EGWP Benefit: It would be a good idea to strike the second sentence for the benefit of NDPERS.	3.5 – Deloitte agrees that it is a benefit to strike the conditions that must be met before a change is made to the program. <i><u>NDPERS Staff Comment:</u> ESI removed the language regarding implementation of the change was subject to their sole discretion.</i>	Agree	See 12/16 response
4	Section 3.8 (page 9): Pharmacy Network: This language is of little utility and also ignores ND law: the “MCLIC shall develop and maintain a Participating Pharmacy network that at a minimum is sufficient to meet the needs of the enrollees, as provided in the CMS waiver guidance concerning	3.8 – Deloitte does not expect this to present a problem for Express Scripts to change. Response to ESI	Change not accepted. As the EGWP is a federal health care program, federal law applies. MCLIC’s Med	ND law requirement is similar to CMS requirement of “any willing provider”. ESI must follow CMS requirement for administering the PDP.

NDPERS ESI Part D Contract				
Contract Suggestions		Deloitte & NDPERS Staff Response (12/16 & 12/22)	ESI Response (12/16)	ESI Follow-up Response (12/22)
	network access under Medicare Drug Rules”. As you know, ND has a “Freedom of Choice of Health Care Services” law that NDPERS should also elect to follow in setting up this benefit for enrollees.	<u>Comments:</u> Deloitte’s comment (above) was in regards to ESI meeting mandated federal law requirements and access standards. ESI has confirmed the program does both	D network is an any willing provider, and meets the CMS waiver guidance concerning network access. MCLIC’s Med D network meets sufficient access under Medicare Drug Rules.	
5	Section 3.11 (b) (page 11): Medication Therapy Management: CMS requires all Medicare Part D plans including EGWPs to include MTM services. The word “may” should therefore, be changed to “shall” implement an MTM program and the contract should require the PBM to report to NDPERS specific information regarding the implementation of the program. Regarding patient choice options, additional language should state something similar to “When such a program is implemented, EGWP enrollees will be given the choice to receive MTM services from their local participating network pharmacy as a first option with telephonic MTM services being offered as the last resort. Reimbursement rates to participating network pharmacies or MCLIC or its affiliates for these services will be at	3.11 – Deloitte does not expect the change in language on the MTM to present a problem for ESI to change, however NDPERS should expect Express Scripts to decline any changes to the structure of their MTM delivery methodology (i.e. through the local pharmacy instead of telephonically).	Change not accepted. CMS requires all Medicare Part D plans, including EGWPs, to include MTM services. MCLIC or its affiliate shall implement an MTM program in compliance with CMS regulations outlined in Chapter 7 of the Prescription Drug Benefit Manual and any applicable subregulatory guidance. EGWP enrollees who meet	MTM administered through ESI meets CMS requirement.

NDPERS ESI Part D Contract				
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	fair market value”.		the qualification criteria will be automatically opted into the MTM program and the enrollee will have the option to opt-out of the MTM program for the calendar year. MTM services are offered telephonically to qualified enrollees.	
6	Section 3.12 (page 11): Medicare Rebate Program: This section should be rewritten to state something like the following “ESI is obligated to accurately report all DIR and all other bona fide service fees to the government as well as to the Client”.	3.12 – Agree with the recommendation. <u>Response to ESI Comments:</u> Under the fully insured contract, DIR and fees will be retained by ESI. While transparency is preferred and requested, it is uncommon for fully insured contracts to report on such data	Changes not accepted. See comments to “Rebates” above.	New Section 3.16 addresses DIR reporting requirements..

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7	<p>Section 3.13 (page 12): Mail Service Pharmacy: The section that ESI is looking to add should be removed. It basically states that the Client is responsible for any unpaid enrollee copayment amounts if the enrollee does not pay ESI. That is like saying if the employee cannot pay, the insurance company will bill the employer for any unpaid balances.</p>	<p>3.13 – Agree with the recommendation.</p> <p><i>NDPERS Staff Comment: Removed language from contract and clarified that they can suspend mail order to participant if participant does not pay.</i></p>	Agreed.	See Staff Comment and ESI 12/16 comment.
8	<p>Section 4.4 (page 13): Government Audits: The contract between the NDPERS and the PBM must provide for an annual audit performed by an audit firm selected solely by NDPERS, include a drafted confidentiality agreement that will be used by the parties and auditor. Also NDPERS should contractually make clear that all documents and data necessary to conduct an audit must be produced by the PBM and/or its subsidiaries and affiliates. NDPERS should require the PBM agrees that the auditor can and must provide NDPERS with all audit related information. Finally to protect the PBM, the contract can</p>	<p>4.4 – Agree with the recommendation.</p> <p><i>NDPERS Staff Comment: Per legal, ND law will control.</i></p>		<p>This type of language is not part of any other fully insured PDP contract that ESI has in place with other clients, but they do recognize that ND law has requirements.</p> <p>ESI agrees to accept NDPERS legal language but will be adding language to address concern over conflict of interest if a designee is used for audit.</p>

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	state that all confidential information will remain confidential but NDPERS needs to be able to conduct an audit as part of its fiduciary responsibilities.			
9	<p>Section 5.3 (page 16): CMS Reimbursement: The contract should also include terms that require the PBM to provide NDPERS the same line item information as the PBM is providing to the federal government and receiving back from the government. Instead, all this section states is the following, “the Client acknowledges and agrees that neither it nor its enrollees shall have a right to any CMS reimbursement payments made to MCLIC or its affiliates (ESI) during the collection period or moneys payable under the section”. It is one thing to not be entitled to certain amounts. It is another to know nothing about them! NDPERS needs to know this information if it is to be positioned to obtain reasonable pricing in the future.</p>	<p>5.3 – Agree with the recommendation.</p> <p><u>Response to ESI Comments:</u> Under the fully insured contract, DIR and fees will be retained by ESI. While transparency is preferred and requested, it is uncommon for fully insured contracts to report on such data</p>	<p>Change not accepted.</p> <p>MCLIC does not report this information to clients. It is unnecessary to verify compliance with the contract.</p>	<p>Under a fully insured arrangement, this Information is not shared with the client.</p>
	<p>Section 8.1 (page 18): Term: Language added by ESI only benefits ESI. Especially the change in date from July 10th to August 31st. The notice for an increase in premium</p>	<p>8.1 – Agree with the recommendation.</p>	<p>Agreed.</p>	<p>See Staff Comment and ESI 12/16 comment.</p>

NDPERS ESI Part D Contract			
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10	by August 31 st doesn't leave NDPERS enough time to issue an RFP if they decide to do so because the premium increase was too high. I feel this is too short of a time frame and would leave NDPERS exposed because there would not be enough time to issue and get through an RFP process.	<i>NDPERS Staff Comment: Contract modified to reflect August 15th as date NDPERS would receive the renewal premium and 60 days prior to end of current term as timeframe for NDPERS to notify ESI of renewal (from August 31 and 90 days).</i>	
11	Section 8.3 (b) (page 20): Remedies/Force Majeure: ESI wants to include language that does not make them responsible for delay or default caused by "government acts or regulations". That language should not be allowed! If NDPERS is paying extra to its PBM for a fully-insured policy because the PBM is incurring "risk", than the PBM must actually incur such "risk", including the risk that the government may change its policies and/or laws.	8.3 – Agree with the recommendation, however Deloitte does not expect Express Scripts to be amenable to changes. Express Scripts may be more likely to accept clarifying language, such as: "government acts or regulations that could not be foreseen by a reasonable person and would change the	See Staff Comment

NDPERS ESI Part D Contract				
Contract Suggestions		Deloitte & NDPERS Staff Response (12/16 & 12/22)	ESI Response (12/16)	ESI Follow-up Response (12/22)
		<p>economics of the contract such that Express Scripts can demonstrate, in writing, the impact of the change. If upon negotiation, NDPERS and ESI are unable to reach an agreement, NDPERS has the right to terminate the contract”.</p> <p><u>NDPERS Staff Comment:</u> <i>Jan reviewed this at the board meeting and indicated that from a legal perspective this was not a concern.</i></p>		
12	<p>Section 8.4 (page 20): Obligations Upon Termination: NDPERS needs to know that if it changes vendors, its current PBM will cooperate and provide the necessary information to NDPERS’ next vendor. The language that ESI is proposing to remove should not be removed and is in fact necessary language, and this entire</p>	<p>8.4 – Agree with the recommendation.</p> <p><u>NDPERS Staff Comment:</u> <i>Rather than list specific files that NDPERS requested, ESI added</i></p>	Agreed.	See Staff Comment and ESI 12/16 comment.

NDPERS ESI Part D Contract				
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	paragraph should be strengthened to protect NDPERS.	<i>language to contract specifying “agrees to provide to a successor PDP Sponsor mutually agreed upon files and information to assist Client with member transition.”</i>		
13	<p>Exhibit B (page 32): Financial Disclosure to ESI PBM Clients: This section has multiple flaws and could use a lot of improvement to the benefit of NDPERS.</p> <p>Network Pharmacies: The third sentence basically allows ESI to create “spread pricing” opportunities, meaning ESI will pay one amount for drugs, but charge NDPERS far more for the same drugs. Currently, it states “<i>PBM agreements generally provide that a client pays ESI an ingredient cost, plus dispensing fee for drug claims. If the rate paid by a client exceeds the rate contracted with a particular pharmacy, ESI will realize a positive margin on the claim.</i>”</p> <p>o The fifth sentence in the same paragraph states “<i>ESI also may enter into pass-through arrangements with the Client</i>”. Why not INSIST on a “pass-through” arrangement in the contract now?</p>	<p>Network Pharmacies –</p> <p>First bullet: under the “fully insured” arrangement, NDPERS is paying a flat monthly premium and therefore the distinction between a “spread” vs “pass through” is irrelevant. If the contract was “self insured”, Deloitte agrees that NDPERS would achieve greater transparency to costs and likely achieve lower claims cost by implementing a “pass through” contract.</p>		<p>This is not part of a fully insured arrangement.</p>

NDPERS ESI Part D Contract				
Contract Suggestions		Deloitte & NDPERS Staff Response (12/16 & 12/22)	ESI Response (12/16)	ESI Follow-up Response (12/22)
14	o It would also be beneficial if ESI was not allowed to use copay differentials to steer patients to mail order pharmacies or specialty pharmacies that ESI owns and controls. Copayment amounts should be the same for the patient whether they decide to use their local pharmacy or a mail order pharmacy owned by ESI. Allowing ESI to steer or financially penalize patients for using the pharmacy of their choice should not be allowed especially given the built in conflict of interest with ESI owning and controlling its own mail order and specialty mail order pharmacies. It might not state ESI is going to do this but it also does not state they cannot implement such either.	<p>Second bullet: NDPERS may elect to clarify that Express Scripts has no authority over plan design.</p> <p><u>NDPERS Staff Comment:</u> <i>Our existing plan design does provide for this and was in the RFP. ESI has agreed to our plan design so is limited to those provisions.</i></p>		This is not part of a fully insured arrangement.
15	Brand/Generic Classifications: ESI is notorious for shifting drugs between categories meaning is classifies “generic drugs” as “brand drugs” – and vice a versa – all to charge its clients more but covers it by stating it is satisfying price guarantees. The contract, as written, allows ESI to do just that, switch between drug categories whenever they feel the need or determine to	<p>Brand / Generic Classifications – Discussed in the “General Commentary” in the preceding pages.</p> <p><u>NDPERS Staff Comment:</u></p>		This is not part of a fully insured arrangement as the definition of brand and generic does not have a financial effect on the client given the amount paid is based on agreed upon premium.

NDPERS ESI Part D Contract				
Contract Suggestions		Deloitte & NDPERS Staff Response (12/16 & 12/22)	ESI Response (12/16)	ESI Follow-up Response (12/22)
	<p>do so. There needs to be strong definitions of what constitutes a (1) generic drug, (2) brand drug, and (3) specialty drug and to not allow the switching between categories. NDPERS should change this section as soon as possible. It is unfortunately probably too late to do so, meaning to correct the problem a new RFP should be issues for the coming year.</p> <p>o Again, don't forget to change the "Term" on page 18 to reflect a time line that allows NDPERS to have enough time issue an RFP whether it is next year or whenever. An August 31st deadline does not give NDPERS enough time and you will be stuck with ESI and any increases to premiums for the next year with little to no recourse.</p>	See 13.		

**MEDICARE PART D
EMPLOYER/UNION-ONLY SPONSORED GROUP WAIVER PLAN
PRESCRIPTION DRUG SERVICES AGREEMENT**

THIS MEDICARE PART D EMPLOYER-ONLY SPONSORED GROUP WAIVER PLAN PRESCRIPTION DRUG SERVICES AGREEMENT ("Agreement"), made as of the date of execution as set forth on the signature page (the "Execution Date"), is entered into by and between Medco Containment Life Insurance Company, a Pennsylvania corporation ("MCLIC") (an affiliate of Express Scripts, Inc.) and NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM, on its own behalf and on behalf of the Client Group Health Plan (as defined below) ("Client").

RECITALS

A. MCLIC has received approval from the Centers for Medicare and Medicaid Services ("CMS") to serve as a Prescription Drug Plan Sponsor (a "PDP Sponsor") and to provide prescription drug coverage that meets the requirements of, and pursuant to, the Voluntary Prescription Drug Benefit Program set forth in Part D of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, 42 U.S.C. §1395w-101 through 42 U.S.C. §1395w-152 (the "Act") and all applicable and related rules and regulations promulgated, issued or adopted by CMS or other governmental agencies with jurisdiction over enforcement of the Act, including, but not limited to, 42 C.F.R. §423.1 through 42 C.F.R. §423.910 (with the exception of Subparts Q, R, and S), and the terms of any PDP Sponsor contract between CMS and MCLIC (collectively, the "Medicare Drug Rules"); and

B. Pursuant to the waivers granted by CMS under 42 U.S.C. §1395w-132(b), MCLIC offers employer/union-only sponsored group waiver plans ("EGWPs") to employers/unions that wish to provide prescription drug benefits to their Part D Eligible Retirees (as defined below) in accordance with the Medicare Drug Rules; and

C. Client desires to contract with MCLIC to offer a prescription drug benefit to Client's Part D Eligible Retirees pursuant to an EGWP (the "EGWP Benefit") (as further defined below) as part of Client's group welfare benefit plan (the "Client Group Health Plan"); and

E. Provided that the EGWP Benefit meets the actuarial equivalence standards of the Medicare Drug Rules, as more fully described below, MCLIC desires to offer the EGWP Benefit to Client's Part D Eligible Retirees in accordance with the Medicare Drug Rules and pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual representations, warranties and covenants herein contained, and pursuant to the terms and subject to the conditions set forth below, MCLIC and Client hereby agree as follows:

TERMS AND CONDITIONS

ARTICLE I - DEFINITIONS

Terms not otherwise defined in this Agreement shall have the meanings ascribed to them as set forth below, or as defined in the Medicare Drug Rules.

"Affiliate" means, with respect to MCLIC, individually or collectively, any other individual, corporation, partnership, limited liability company, trust, joint venture or other enterprise or entity directly or indirectly controlling (including without limitation all directors and executive officers of such entity), controlled by or under direct or indirect common control of or with MCLIC.

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

“Commercial Agreement” means that certain Pharmacy Benefit Management Agreement, dated January 1, 2014, by and between Express Scripts, Inc. (“ESI”) and Sanford Health Plan and Sanford Health Plan of Minnesota (collectively “Sanford”), as amended from time to time (the “Commercial Agreement”). Client contracts with Sanford to receive pharmacy benefit services for its non-EGWP members.

“Copayment” or “Copay” means that portion of the charge for each Covered Drug dispensed to an EGWP Enrollee that is the responsibility of such EGWP Enrollee (e.g., copayment, coinsurance, cost sharing, and/or deductibles under initial coverage limits and up to annual out-of-pocket thresholds) as provided under the EGWP Benefit and shown on Exhibit A.

“Coverage Gap” means the stage of the benefit between the initial coverage limit and the catastrophic coverage threshold, as described in the Medicare Part D prescription drug program administered by the United States federal government.

“Coverage Gap Discount” means the manufacturer discounts available to eligible Medicare beneficiaries receiving applicable, covered Medicare Part D drugs, while in the Coverage Gap.

“Coverage Gap Discount Program” means the Medicare program that makes manufacturer discounts available to eligible Medicare beneficiaries receiving applicable, covered Medicare Part D drugs, while in the Coverage Gap.

“Covered Drug(s)” means those prescription drugs, supplies, Specialty Products and other items that are covered under the EGWP Benefit, or treated as covered pursuant to a coverage determination or appeal.

“EGWP Benefit” means the prescription drug benefit to be administered by MCLIC under this Agreement, as defined in the Recitals above and as further described in the Client Group Health Plan document, its summary plan description, and its summary of benefits, the latter of which is attached hereto as Exhibit A, as may be amended from time to time in accordance with the terms of this Agreement.

“EGWP Enrollee” means each Part D Eligible Retiree who is enrolled in the EGWP Benefit in accordance with the terms of this Agreement.

“EGWP Enrollee Submitted Claim” means (a) a claim submitted by an EGWP Enrollee for Covered Drugs dispensed by a pharmacy other than a Participating Pharmacy, or (b) a claim for Covered Drugs filled at a Participating Pharmacy for which the EGWP Enrollee paid the entire cost of the Covered Drug.

“Enrollment File” means the list(s) submitted by Client to MCLIC, in accordance with Article II, indicating the Part D Eligible Retirees that Client has submitted for enrollment in the EGWP Benefit, as verified by MCLIC through CMS eligibility files.

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

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

“Ineligible Enrollee” means an EGWP Enrollee who Client or MCLIC determines will no longer be eligible to participate as an EGWP Enrollee in the EGWP Benefit, in accordance with the EGWP Benefit’s eligibility requirements and/or the Medicare Drug Rules.

“Late Enrollment Penalty” or “LEP” means the financial penalty incurred under the Medicare Drug Rules by Medicare Part D beneficiaries who have had a continued gap in creditable coverage of sixty-three (63) days or more after the end of the beneficiary’s initial election period, adjusted from time to time by CMS.

“Mail Service Pharmacy” means a duly licensed pharmacy wholly owned or operated by MCLIC or one or more of its Affiliates, other than ESI Specialty Pharmacy, where prescriptions are filled and delivered to EGWP Enrollees via mail or other delivery service.

“Manufacturer Administrative Fees” means those administrative fees of up to 3.5% of the AWP of certain Covered Drugs paid by pharmaceutical manufacturers to, or otherwise retained by, MCLIC or its Affiliate pursuant to a contract between MCLIC or its Affiliate and the manufacturer and directly in connection with MCLIC or its Affiliate administering, invoicing, allocating and collecting the Rebates for the EGWP Benefit under the Medicare Rebate Program.

“Medicare Formulary” means the list of prescription drugs and supplies developed, implemented and maintained in accordance with the Medicare Drug Rules for the EGWP Benefit.

“Medicare Rebate Program” means MCLIC’s or its Affiliate’s manufacturer rebate program under which MCLIC or its Affiliate contracts with pharmaceutical manufacturers for Rebates payable on selected Covered Drugs that are reimbursed, in whole or in part, through Medicare Part D, as such program may change from time to time.

“Part D” or “Medicare Part D” means the Voluntary Prescription Drug Benefit Program set forth in Part D of the Act.

“Part D Eligible Retiree” means an individual who is (a) eligible for Part D in accordance with the Medicare Drug Rules, (b) not enrolled in a Part D plan (other than the EGWP Benefit), and (c) eligible to participate in Client’s Current Benefit.

“Participating Pharmacy” means any licensed retail pharmacy, including retail, long-term care, home infusion, I/T/U pharmacies, with which MCLIC or one or more of its Affiliates has executed an agreement to provide Covered Drugs to EGWP Enrollees. These shall not include any mail order or specialty pharmacy affiliated with any such Participating Pharmacy.

“Pharmacy” or “Pharmacies” refers from time to time to any or all Participating Pharmacies, Mail Service Pharmacy, or ESI Specialty Pharmacy as the context of the provision dictates.

“Prescription Drug Claim” means an EGWP Enrollee Submitted Claim or claim for payment of a Covered Drug submitted to MCLIC by a Pharmacy.

“Prescription Drug Plan” or “PDP” shall have the meaning set forth in the Medicare Drug Rules.

“PHI” means protected health information as defined under HIPAA.

“Rebates” means retrospective formulary rebates that are paid to MCLIC or its Affiliate, pursuant to the terms of a formulary rebate contract negotiated independently by MCLIC or its Affiliate and directly attributable to the utilization of certain Covered Drugs by EGWP Enrollees under the EGWP Benefit. For sake of clarity, Rebates do not include, for example, Manufacturer Administrative Fees, product discounts or fees related to the procurement of prescription drug inventories by or on behalf of MCLIC or its Affiliates owned and operated specialty or mail order pharmacies; as more fully described in Exhibit D; fees received by MCLIC from manufacturers for care management or other services provided in connection with the dispensing of Specialty Products; or other fee-for-service arrangements whereby pharmaceutical manufacturers generally report the fees paid to MCLIC, its Affiliates or wholly-owned subsidiaries for services rendered as “bona fide service fees” pursuant to federal laws and regulations, including, but not limited to the Medicaid “Best Price” rule (collectively, “Other Pharma Revenue”). Such laws and regulations, as well as MCLIC’s contracts with pharmaceutical manufacturers, generally prohibit MCLIC from sharing any such “bona fide service fees” earned by MCLIC, whether wholly or in part, with any MCLIC client.

“Specialty Product List” means the standard list of Specialty Products and their reimbursement rates applicable to Client and available to EGWP Enrollees as part of the EGWP Benefit provided to Client with this Agreement and as updated from time to time. MCLIC or its Affiliate will provide additional and/or updated Specialty Product Lists any time upon request from Client.

“Specialty Products” means those injectable and non-injectable drugs on the Specialty Product List. Specialty Products typically have one or more of several key characteristics, including: frequent dosing adjustments and intensive clinical monitoring to decrease the potential for drug toxicity and increase the probability for beneficial treatment outcomes; intensive patient training and compliance assistance to facilitate therapeutic goals; limited or exclusive product availability and distribution; specialized product handling and/or administration requirements and/or

cost in excess of \$500 for a 30 day supply. Specialty Products elected for coverage shall be considered "Covered Drugs" as defined in the Agreement.

"True Out-of-Pocket Costs" or "TrOOP" means costs incurred by an EGWP Enrollee or by another person on behalf of an EGWP Enrollee, such as a deductible or other cost-sharing amount, with respect to Covered Drugs, as further defined in the Medicare Drug Rules.

"UM Company" means MCMC, LLC or other independent third party utilization management company contracted by MCLIC, subject to and as further described herein.

ARTICLE II – PLAN STATUS UNDER APPLICABLE LAWS; ENROLLMENT AND DISENROLLMENT IN THE EGWP BENEFIT

2.1 Medicare Part D. Client and MCLIC acknowledge and agree as follows:

(a) Under the Medicare Drug Rules, the EGWP Benefit will be deemed to be an EGWP administered by MCLIC and each EGWP Enrollee will be deemed to be a Part D enrollee of MCLIC who is covered by the EGWP Benefit.

(b) The design of and administration of the EGWP Benefit is subject to the applicable requirements of the Medicare Drug Rules. Client shall cooperate with MCLIC and, upon MCLIC's request, do, execute, acknowledge, deliver, and provide such further acts, reports, information, and instruments as may be reasonably required or appropriate to administer the EGWP Benefit in compliance with the Medicare Drug Rules, applicable state insurance laws and other applicable laws. MCLIC shall provide reasonable guidance to Client regarding the requirements of the performance necessary for Client to meet its obligation under this section.

(c) In the event any Federal or State authority imposes any changes to plan design, plan benefits or other mandate affecting the Plan that results in the number of Client's Part D Eligible Retirees being materially reduced or eliminated for any reason, MCLIC and Client shall reasonably cooperate to anticipate material increased expenses or other material effects and negotiate in good faith to incorporate consequent program pricing terms. In the event the parties are unable to reach agreement, either party may terminate this Agreement pursuant to 7.1 hereof. MCLIC reserves the right to adjust the program pricing terms hereunder to reflect the reduction or elimination of the number of Part D Eligible Retirees, with a 90-day notice, or when mandates imposed by State or Federal legislative action or NDPERS mandate become effective.

2.2 HIPAA.

(a) Each of Client, the Client Group Health Plan and MCLIC agrees to take reasonable and necessary actions to safeguard the privacy and security of information that identifies a particular EGWP Enrollee in accordance with state and federal privacy and security requirements, including HIPAA and the confidentiality and security provisions stated in 42 C.F.R. §423.136. Without limiting the generality of the foregoing, the parties acknowledge that, for the purposes of HIPAA compliance, each of MCLIC and the Client Group Health Plan is a Covered Entity, and that, with respect to the EGWP Benefit, MCLIC and the Client Group Health Plan shall be deemed to be an Organized Health Care Arrangement. MCLIC and the Client Group Health Plan may transmit and receive PHI as necessary for the operation of the EGWP Benefit. In addition, MCLIC may transmit PHI to the Client Group Health Plan for payment purposes and any other purpose permitted by HIPAA. Client hereby represents and warrants that: (i) the Client Group Health Plan's documents have been amended to meet the specification requirements set forth at 45 C.F.R. §164.504(f); (ii) Client will use and disclose PHI solely in accordance with these provisions; and (iii) accordingly, MCLIC, at the direction of the Client Group Health Plan, may disclose PHI to Client consistent with the terms of this Section 2.2. The parties shall take reasonable steps to ensure that all uses and disclosures of PHI by MCLIC, the Client Group Health Plan and Client only include information that is minimally necessary to accomplish the purpose(s) of the use or disclosure. Capitalized terms used in this Section 2.2 and not otherwise defined in this Agreement shall have the meaning set forth in HIPAA. Notwithstanding the foregoing, the parties acknowledge that in providing services to EGWP Enrollees, ESI Specialty Pharmacy and the Mail Service Pharmacy are acting as separate health care provider covered entities under HIPAA and not as business associates to the Plan covered by the Business Associate Agreement. In providing services, ESI Specialty Pharmacy and the Mail Services Pharmacy shall abide by all HIPAA requirements applicable to covered entities and shall safeguard, use and disclose EGWP Enrollee PHI accordingly.

2.3 Group Enrollment. Subject to each individual's right to opt out, as described below, Client shall enroll Part D Eligible Retirees in the EGWP Benefit through a group enrollment process, as further described in and permitted under the Medicare Drug Rules. Client agrees that it will comply with all applicable requirements for group enrollment in EGWPs as set forth in the Medicare Drug Rules and related CMS guidance, and as described and required by MCLIC's policies and procedures. Client's performance under this Section 2.3 shall be a condition precedent to MCLIC's performance under this Agreement. MCLIC shall provide reasonable guidance to Client regarding the requirements of the performance necessary for Client to meet its obligation under this section.

2.4 Enrollment File. No later than thirty (30) days prior to the Effective Date (unless otherwise agreed to by the parties) and the first day of each EGWP Benefit enrollment period thereafter, so long as this Agreement is in effect, Client, or its authorized representative, shall provide an Enrollment File to MCLIC via on-line or other communication medium reasonably requested by MCLIC that lists those Part D Eligible Retirees for whom Client intends to make application for enrollment in the EGWP Benefit (i.e., those Part D Eligible Retirees who have not opted out of the group enrollment process) for that contract year. Client shall communicate all new enrollments, requested retroactive enrollments of Part D Eligible Retirees, and disenrollments from the EGWP Benefit via the communication medium reasonably requested by MCLIC. MCLIC agrees to process retroactive enrollment requests pursuant to the requirements of the Medicare Drug Rules. Client acknowledges and agrees that the requested effective date for any such retroactive enrollment may not be prior to the date that the enrollment request was completed by the individual, and that the effective date of enrollment may be adjusted by no greater than ninety (90) days. Client represents and warrants that the Enrollment File provided to MCLIC pursuant to this Section 2.4, and all retroactive additions thereto, shall only include those individuals eligible for enrollment under the Client Group Health Plan, and which have elected to participate in the EGWP Benefit. Client's performance under this Section 2.4 shall be a condition precedent to MCLIC's performance under this Agreement.

2.5 Implementation.

(a) MCLIC's Responsibilities. MCLIC shall implement the Enrollment File following confirmation of the eligibility of the Part D Eligible Retirees listed on the Enrollment File with CMS eligibility files. A Part D Eligible Retiree will not be enrolled in the EGWP Benefit unless such individual is listed on both the Enrollment File submitted by Client and the CMS eligibility files. MCLIC will seek from CMS verification of eligibility for all Part D Eligible Retirees whose names are listed in the Enrollment File. If an individual is listed on the Enrollment File provided by Client, but is not eligible for participation according to CMS eligibility files, then MCLIC shall notify Client in a timely manner regarding such individual's ineligibility. MCLIC will work with Client to determine if such individual has been rejected due to an administrative or clerical error (e.g., data field standards errors, rejections related to information input by MCLIC related to the EGWP Benefit into the CMS system, etc.), or an error requiring individual retiree contact, and if so in either case, MCLIC will take appropriate action and attempt to correct such error and resubmit the individual through the CMS system. Client acknowledges and agrees that MCLIC may update in the Enrollment File any and all information concerning Part D Eligible Retirees upon receipt of corrected information from CMS, and MCLIC may use such corrected information to obtain a Part D Eligible Retiree's enrollment in the EGWP Benefit. For all Part D Eligible Retirees that have been included by Client in the Enrollment File, but who are ultimately determined to be ineligible for participation in the EGWP Benefit, MCLIC or its Affiliate shall notify the individual of his or her ineligibility in the EGWP Benefit and take all other action as required by applicable law. MCLIC shall communicate to Client any changes to a Part D Eligible Retiree's information in the Enrollment File based upon updates or corrections received from CMS.

(b) Incomplete Enrollment File Information. Client acknowledges that its submission to MCLIC of an inaccurate or incomplete Enrollment File (e.g., missing date of birth, last name, first name, etc.) or otherwise of incomplete information with respect to any individual Part D Eligible Retiree, may result in a rejection of the Part D Eligible Retiree's enrollment in the EGWP Benefit. MCLIC will provide Client with regular reports providing the details of all such incomplete information needed to enroll Part D Eligible Retirees. Upon Client's request, MCLIC will perform research and may initiate contact and communication with all such Part D Eligible Retirees to obtain all missing information needed to complete enrollment of the Part D Eligible Retirees in the EGWP Benefit. Client acknowledges and agrees that MCLIC may contact Client's Part D Eligible Retirees to obtain the information required hereunder, and that MCLIC will update the Enrollment File on Client's behalf to reflect additional information needed to complete enrollment of the Part D Eligible Retirees in the EGWP Benefit. MCLIC shall provide to Client all such updated information through the regular reports provided hereunder. After obtaining all information needed to complete enrollment of the Part D Eligible Retirees in the EGWP Benefit, MCLIC shall complete such enrollment including verification with CMS; provided, however, that if MCLIC, using reasonable efforts, is not able to obtain all

missing information from a Part D Eligible Retiree within twenty-one (21) days after receiving Client's initial request for enrollment of the Part D Eligible Retiree in the EGWP Benefit, then Client's request shall be deemed cancelled and MCLIC or its Affiliate shall notify the individual of his or her non-enrollment in the EGWP Benefit and shall take all other action as required by applicable law.

(c) Effective Date of Application for Enrollment into EGWP Benefit. Notwithstanding any provision of this Agreement to the contrary, the effective date of the application for any Part D Eligible Retiree who MCLIC seeks to enroll in the EGWP Benefit hereunder shall be the date on which the application for enrollment is entered by MCLIC into its enrollment system, subject however to any adjustments that MCLIC may make for retroactive enrollments as necessary to enroll the Part D Eligible Retiree in the EGWP Benefit.

(d) Client's Responsibilities. The parties agree that Sanford will be providing certain services on behalf of Client with respect to Client's obligations under this Agreement. Client shall bind Sanford for obligations Sanford performs on its behalf, and references in the Agreement to "Client" in performing a function shall be construed to include Sanford to the extent applicable. Further, Client shall require Sanford to comply with all applicable laws and the Medicare Drug Rules. The services provided by Sanford on behalf of client include, but may not be limited to the following:

- Help coordination of communication pieces between ESI and Client;
- Assisting Client with renewals or other contract negotiations with ESI;
- Helping to provide technical advice to Client on pharmacy issues;
- Assist Client/ESI with EGWP Enrollee appeals and general complaints;
- Assist Client/ESI with problem resolution;
- Assist EGWP Enrollees with appeals on formulary, network & other issues;
- Assist Client/ESI with general EGWP Enrollee inquiries related to their prescription drug plan.

2.6 Individual Disenrollment. If Client or MCLIC determines that an EGWP Enrollee will be an Ineligible Enrollee, in accordance with the EGWP Benefit's eligibility requirements and/or the Medicare Drug Rules, then the following procedures shall be implemented as applicable:

(a) Upon Client's determination, Client shall notify MCLIC no earlier than sixty (60) days prior to the effective date of such Ineligible Enrollee's ineligibility, in a manner and format agreed upon by the parties;

(b) MCLIC shall send a letter / notification to the Ineligible Enrollee alerting the Ineligible Enrollee that he or she is no longer eligible to participate in the EGWP Benefit;

(c) Client shall provide all information to MCLIC that is required for MCLIC to submit a complete disenrollment request transaction to CMS, as set forth in the Medicare Drug Rules; and

(d) MCLIC shall submit the disenrollment request transaction to CMS in accordance with the Medicare Drug Rules.

2.7 Group Disenrollment. If, upon the expiration of the then current term of this Agreement, or as otherwise provided in Section 8.2, Client plans to disenroll its EGWP Enrollees from the EGWP Benefit using a group disenrollment process, then Client shall implement the following procedures:

(a) Notification to EGWP Enrollees. Client shall provide at least twenty-one (21) days (or such other minimum days' notice as required by the Medicare Drug Rules) prior written notice to each EGWP Enrollee that Client plans to disenroll him or her from the EGWP Benefit and shall include with such written notification an explanation as to how the EGWP Enrollee may contact CMS for information on other Medicare Part D options that might be available to the EGWP Enrollee; and

(b) Information to MCLIC. Client shall provide all the information to MCLIC that is required for MCLIC to submit a complete disenrollment request transaction to CMS, as set forth in the Medicare Drug Rules.

2.8 Voluntary Disenrollment. If an EGWP Enrollee makes a voluntary request to be disenrolled from the EGWP Benefit (the "Voluntary Disenrollee") to Client, then Client shall notify MCLIC no earlier than sixty (60) days prior to the effective date of such Voluntary Disenrollee's disenrollment, in a manner and format agreed upon by the parties. If

Client does not timely notify MCLIC of such Voluntary Disenrollee's disenrollment in the EGWP Benefit, then MCLIC shall submit a retroactive disenrollment request to CMS. Client acknowledges ~~that~~ [that CMS may only grant up to a ninety \(90\) day retroactive disenrollment in such instances](#). If the Voluntary Disenrollee makes his or her request directly to MCLIC, then MCLIC shall direct the Voluntary Disenrollee to initiate the disenrollment with the Client.

2.9 Responsibility for Claims After Loss of Eligibility or Disenrollment. Client represents and warrants that all information that Client, or its authorized representative, provides to MCLIC in the Enrollment File will be complete and correct. Except for Prescription Drug Claims that are paid due to MCLIC's negligence, Client shall be responsible for reimbursing MCLIC pursuant to Section 5.1 for all Prescription Drug Claims processed by MCLIC (a) with respect to an Ineligible Enrollee, as determined by Client, during any period in which the Enrollment File indicated that such Ineligible Enrollee was eligible and (b) with respect to a Voluntary Disenrollee, in the event Client did not provide timely notice to MCLIC of such disenrollment as set forth in this Article II.

2.10 General Support Services. In addition to any other Client obligation under this Article II or elsewhere in this Agreement, Client shall be responsible for providing general support services to EGWP Enrollees throughout the enrollment process, including, but not limited to, EGWP Enrollee education concerning the EGWP Benefit, communicating information concerning premiums, providing information concerning alternative benefit options offered by Client, if any, and answering on-going inquiries related to the payment of the applicable EGWP Enrollee premium.

2.11 Effect On / Effect Of Commercial Agreement. Except as expressly provided in this Agreement, the parties acknowledge that MCLIC shall have no obligations under the Commercial Agreement with respect to the Client Group Health Plan, and that Client shall be solely responsible for determining the eligibility of members covered by the prescription drug benefit administered pursuant to the Commercial Agreement (the "Commercial Benefit"). Upon a member's enrollment as an EGWP Enrollee in the EGWP Benefit, such EGWP Enrollee's eligibility as a member in the Commercial Benefit shall immediately terminate. An EGWP Enrollee may not have dual coverage under the EGWP Benefit and the Commercial Benefit; and therefore, after any EGWP Enrollee's enrollment in the EGWP Benefit, all Prescription Drug Claims and member submitted claims submitted to ESI under the Commercial Agreement shall be treated as Prescription Drug Claims under this Agreement and shall be processed by MCLIC in accordance with the EGWP Benefit. Any Prescription Drug Claim or member submitted claim processed under the Commercial Agreement and the Commercial Benefit after the date of an EGWP Enrollee's enrollment in the EGWP Benefit shall be reversed and shall be re-processed under the EGWP Benefit. Client acknowledges that termination of a member's coverage under the Commercial Benefit prior to such member's enrollment as an EGWP Enrollee in the EGWP Benefit may result in a loss of prescription drug benefit coverage for such member; provided, however, notwithstanding the foregoing, the parties acknowledge and agree that a member's prescription drug benefit coverage under the Commercial Benefit shall be solely determined by Client and not by MCLIC or any of its Affiliates, including without limitation ESI.

ARTICLE III – PRESCRIPTION DRUG SERVICES

3.1 Exclusivity. Client acknowledges and agrees that, in the event Client offers its Part D Eligible Retirees more than one Part D benefit option, the eligibility determinations, enrollment and disenrollment and other administration of such Part D options will require extensive coordination with the administration of the EGWP Benefit. For these reasons, Client agrees that Client shall use MCLIC as Client's exclusive provider of all Medicare Part D services for its Part D Eligible Retirees during the term of this Agreement unless otherwise requested by Client and agreed to by MCLIC in writing. Notwithstanding the forgoing, the parties agree that Retiree Health Insurance Credit benefits received by Part D Eligible Retirees does not violate or implicate this section. The terms and conditions of Client's and MCLIC's arrangements for Part D options other than the EGWP Benefit shall be set forth in separate agreements.

3.2 Prescription Drug Services. In exchange for Client's payment to MCLIC of the amounts set forth in Section 5.2, MCLIC will offer the EGWP Benefit to EGWP Enrollees in accordance with the terms and conditions of this Agreement. In its capacity as a PDP Sponsor with respect to the EGWP Benefit, MCLIC will be responsible for pharmacy network contracting; Mail Service Pharmacy and Specialty Products services; Prescription Drug Claim processing; Formulary and Rebate administration; Medication Therapy Management; and related services (collectively, "Prescription Drug Services"), as further described in this Agreement. All Prescription Drug Services shall be provided by MCLIC in accordance with the Medicare Drug Rules and the terms of the EGWP Benefit. Client acknowledges and agrees that MCLIC may provide Prescription Drug Services under this Agreement through one or more of its Affiliates. MCLIC represents and warrants that it will have written agreements with each Affiliate that will

perform services on behalf of MCLIC in connection with the EGWP Benefit that meet the requirements the Medicare Drug Rules for subcontractors of PDP Sponsors.

3.3 Compliance with Medicare Drug Rules and State Insurance Laws. Under the Medicare Drug Rules, MCLIC is required to maintain licensure under applicable state insurance laws or to obtain appropriate waivers from CMS of such requirements. Notwithstanding any provision to the contrary in this Agreement, MCLIC shall not be obligated to take any action or omit to take any action with respect to the EGWP Benefit that is not in compliance with the Medicare Drug Rules, applicable state insurance laws or other applicable laws.

3.4 The EGWP Benefit. The EGWP Benefit will satisfy all actuarial equivalence standards set forth in the Medicare Drug Rules. Client hereby agrees to cooperate with MCLIC to perform the necessary actuarial equivalence calculations to determine whether the EGWP Benefit meets the foregoing actuarial equivalence standards prior to the Effective Date. If MCLIC determines that the EGWP Benefit does not meet the actuarial equivalence standards, then Client shall cooperate with MCLIC to make necessary adjustments to the EGWP Benefit design to meet the actuarial equivalence standards.

3.5 Changes to the EGWP Benefit. Client shall have the right to request changes to the terms of the EGWP Benefit from time to time by providing written notice to MCLIC. Any such changes shall be subject to the following requirements: (a) all changes to the EGWP Benefit must be consistent with the Medicare Drug Rules; (b) the EGWP Benefit, after implementation of such changes, must continue to meet the actuarial equivalence standards referenced in Section 3.4 above; (c) EGWP Benefit changes may be implemented only at times and in the manner permitted by the Medicare Drug Rules; and (d) any requested change that would increase MCLIC's costs of administering the EGWP Benefit without an equivalent increase in the PMPM Fees (as defined in Section 5.2 below) paid to MCLIC from Client shall not be implemented unless and until Client and MCLIC agree in writing upon a corresponding adjustment to the PMPM Fees.

3.6 EGWP Enrollee Communications. All standard EGWP Enrollee communications concerning the EGWP Benefit (i.e., summary plan description, evidence of coverage, etc.) shall be mutually developed by MCLIC and the Client pursuant to the Medicare Drug Rules, including the CMS Marketing Guidelines contained therein. MCLIC shall be responsible, with assistance from Client, in completing EGWP Enrollee communications and distributing them to EGWP Enrollees as appropriate. Pursuant to the Medicare Drug Rules, Client acknowledges and agrees that MCLIC must provide all such EGWP Enrollee communications, whether created and/or distributed by MCLIC or Client, to CMS for review. If CMS notifies MCLIC that any such EGWP Enrollee communication is deficient, Client agrees to assist MCLIC to make necessary revisions to such EGWP Enrollee communication to correct such deficiency.

3.7 Network Access and Service Area Requirements. At least thirty (30) days prior to the Effective Date, Client shall provide MCLIC de-identified aggregate information concerning where: (A) all Part D Eligible Retirees reside; and (B) all of Client's employees reside, as necessary for MCLIC to determine whether MCLIC's network of Participating Pharmacies is sufficient to meet the needs of such individuals. Client represents and warrants that all such information shall be accurate and complete. Client's performance under this Section 3.7 shall be a condition precedent to MCLIC's performance under this Agreement. If MCLIC determines that its network of Participating Pharmacies is not sufficient to meet the needs of individuals eligible to participate in the EGWP Benefit, then MCLIC shall use its best efforts to address such deficiencies. If MCLIC is not able to satisfactorily address such deficiencies prior to the Effective Date, then MCLIC shall provide written notice to Client prior to the Effective Date and this Agreement shall automatically terminate.

3.8 Pharmacy Network. Subject to the terms of Section 3.7 above, MCLIC shall develop and maintain a Participating Pharmacy network that, at a minimum, is sufficient to meet the needs of the EGWP Enrollees, as provided in the CMS waiver guidance concerning network access under Medicare Drug Rules.

(a) Pharmacy Credentialing. MCLIC agrees to comply with all applicable Medicare Drug Rules regarding credentialing requirements. MCLIC shall require Participating Pharmacies, MCLIC Mail Service Pharmacy and ESI Specialty Pharmacy to meet MCLIC's and the Medicare Drug Rules' credentialing requirements, including but not limited to licensure, insurance and provider agreement requirements.

(b) Independent Contractors. Neither MCLIC nor its Affiliate directs or exercises any control over the professional judgment exercised by any pharmacist in dispensing prescriptions or otherwise providing pharmaceutical related services at a Participating Pharmacy. Participating Pharmacies are independent contractors

of MCLIC or its Affiliate, and neither MCLIC nor its Affiliate shall have any liability to Client, any EGWP Enrollee or any other person or entity for any act or omission of any Participating Pharmacy or its agents or employees.

(c) Pharmacy Help Desk. MCLIC will provide 24-hour a day, 7-days a week toll-free telephone support and Internet web site to assist Participating Pharmacies with EGWP Enrollee eligibility verification and questions regarding reimbursement, and Covered Drug benefits under the EGWP Benefit.

3.9 Audits of Participating Pharmacies; Fraud and Abuse. MCLIC shall periodically audit Participating Pharmacies to determine compliance with their agreements with MCLIC or its Affiliate and in order to meet the anti-fraud provisions of the Medicare Drug Rules applicable to PDPs. MCLIC also shall perform fraud and abuse reviews of EGWP Enrollees and physicians as required under the Medicare Drug Rules for PDPs.

3.10 Claims Processing. Subject to Sections 3.10(a)-(h), MCLIC will be responsible for all claims processing services for Covered Drugs dispensed to EGWP Enrollees by a Pharmacy consistent with the applicable standard transaction rules required under HIPAA and the Medicare Drug Rules. MCLIC also shall process EGWP Enrollee Submitted Claims.

(a) COB.

(i) MCLIC will coordinate benefits with state pharmaceutical assistance programs and entities providing other prescription drug coverage consistent with the Medicare Drug Rules. If Client, in accordance with the Medicare Drug Rules, elects to provide non-Medicare EGWP supplemental coverage for EGWP Enrollees through other health insurance separately issued by a carrier with which MCLIC or its Affiliate has contracted (the "EGWP Supplemental Policy"), then MCLIC will perform the following additional coordination of benefits: Coordination of benefits for Medicare Part D applicable drugs throughout the EGWP Benefit and the EGWP Supplemental Policy; single transaction for members at POS utilizing Medicare Part D eligibility and a single ID card; utilize EGWP Enrollee eligibility established under Medicare Part D plan; comprehensive EGWP Enrollee communications package for the EGWP Supplemental Policy; all CMS required reporting; claims reporting detailing primary and secondary payments; and financial reporting detailing application of Coverage Gap Discount Program.

(ii) The premium collected by MCLIC or its Affiliate for the EGWP Supplemental Policy, which is an amount set forth as a separate line item on Client's invoice, is included in the PMPM Fees paid to MCLIC pursuant to this Agreement. PMPM Fees collected by MCLIC pursuant to this Agreement will first be applied to all non-EGWP Supplemental Policy PMPM Fees owed to MCLIC before applying any remaining amounts to the EGWP Supplemental Policy premium amounts owned. As a result, default in payment of PMPM Fees by Client, in whole or in part, may result in a default under the EGWP Supplemental Policy for failure to pay premium amounts thereunder. In addition to the principal ESI revenue sources disclosed in Exhibit B (Financial Disclosure), in connection with the EGWP Supplemental Policy issued to Client in connection with this Agreement, MCLIC or its Affiliate is paid an original commission in an amount equal to one percent (1%) of the gross premium collected by MCLIC or its Affiliate for the EGWP Supplemental Policy.

(iii) If MCLIC and/or the carrier with which MCLIC or its Affiliate has contracted to provide the EGWP Supplemental Policy at any time does not receive authority to issue such EGWP Supplemental Policy, or has such authority revoked, then this Agreement is subject to immediate termination by MCLIC upon written notice to Client.

(b) Utilization Management. Consistent with the terms of the EGWP Benefit, MCLIC will establish a reasonable and appropriate drug management program that includes incentives to reduce costs when medically appropriate; maintains policies and systems to assist in preventing over-utilization and under-utilization of prescribed medications, according to guidelines specified by CMS and in accordance with the Medicare Drug Rules.

(c) Quality Assurance. Consistent with the terms of the EGWP Benefit, MCLIC will establish quality assurance measures and systems to reduce medication errors and adverse drug interactions and improve medication use in accordance with the Medicare Drug Rules.

(d) TrOOP. Consistent with the terms of the EGWP Benefit, MCLIC will establish and maintain a system to record EGWP Enrollees' TrOOP balances, and shall communicate TrOOP balances to EGWP Enrollees upon request.

(e) Coverage Determinations and Appeals. The parties acknowledge and agree that MCLIC is required under the Medicare Drug Rules to maintain oversight of coverage determinations under the EGWP Benefit, including prior authorizations and EGWP Enrollee Submitted Claims determinations, and to maintain an appeals process for EGWP Enrollees. Client acknowledges and agrees that ESI may perform such services through the UM Company. MCLIC or the UM Company, as applicable, will be responsible for conducting the appeal in a manner consistent with the requirements of the Medicare Drug Rules and shall ensure that the contract with the UM Company complies with the applicable delegation requirements of the Medicare Drug Rules, including without limitation 42 C.F.R. §423.505. ESI represents to Client that UM Company has contractually agreed that: (A) UM Company will conduct appeals in accordance with the Medicare Drug Rules and the EGWP Benefit, (B) Client is a third party beneficiary of UM Company's agreement with MCLIC or its Affiliate (a copy of which is available upon request) and the remedies set forth therein, and (C) UM Company will indemnify Client for third party claims caused by the UM Company's negligence or willful misconduct in providing the appeal services.

(g) EOBs. MCLIC will furnish EGWP Enrollees, in a manner specified by CMS, a written explanation of benefits ("EOB") when prescription drug benefits are provided under qualified prescription drug coverage consistent with the requirements of the Medicare Drug Rules.

(h) EGWP Enrollee Services. MCLIC will provide 24-hours a day, 7-days a week toll-free telephone, IVR and Internet support to assist Client and EGWP Enrollees with EGWP Enrollee eligibility, benefits and TrOOP verification, location of Participating Pharmacies and other related EGWP Enrollee concerns.

3.11 Formulary and Medication Management.

(a) P&T Committee and Medicare Formulary. MCLIC or its Affiliate will maintain a pharmacy and therapeutics committee ("P&T Committee") in accordance with the Medicare Drug Rules, which will develop a Medicare Formulary for the EGWP Benefit consistent with the requirements of the Medicare Drug Rules. In accordance with the Medicare Drug Rules, all Covered Drugs on the Medicare Formulary shall be Part D drugs (within the meaning of the Medicare Drug Rules) or otherwise permitted to be covered by a PDP under the Medicare Drug Rules. Client acknowledges and agrees that the Medicare Formulary may not be modified by removing Covered Drugs, adding additional utilization management restrictions, making the cost-sharing status of a drug less beneficial or otherwise modified in a manner not consistent with the Medicare Drug Rules.

(b) Medication Therapy Management. Consistent with the terms of the EGWP Benefit, MCLIC or its Affiliate may implement a Medication Therapy Management program that is designed to ensure that Covered Drugs prescribed to targeted EGWP Enrollees are appropriately used to optimize therapeutic outcomes through improved medication use and reduce the risk of adverse events, including adverse drug interactions, in accordance with the Medicare Drug Rules.

3.12 Medicare Rebate Program.

(a) MCLIC or its Affiliate will negotiate with pharmaceutical manufacturers regarding the terms of the Medicare Rebate Program and will enter into agreements with such manufacturers for Rebates for certain Covered Drugs and Manufacturer Administrative Fees. MCLIC and its Affiliate retain all right, title and interest to any and all actual Rebates and Manufacturer Administrative Fees received from manufacturers. Client acknowledges and agrees that it shall not have a right to any Rebate and Manufacturer Administrative Fee payments received by MCLIC or its Affiliates.

(b) Client shall not negotiate or arrange with, or enter into an agreement with, a pharmaceutical manufacturer for rebates or similar discounts for any Covered Drugs dispensed to EGWP Enrollees for the term covered by this Agreement. A breach of the prior sentence shall be deemed to be a material breach of this Agreement.

(c) To the extent required under the Medicare Drug Rules, MCLIC shall disclose to Client the amount of all Rebates and Manufacturer Administrative Fees received from manufacturers or otherwise retained by MCLIC or its Affiliate with respect to the Rebate eligible EGWP Benefit utilization.

3.13 Mail Service Pharmacy. EGWP Enrollees may have prescriptions filled through the Mail Service Pharmacy. Subject to applicable law, MCLIC may communicate with EGWP Enrollees regarding benefit design, cost savings, availability and use of the Mail Service Pharmacy, as well as provide supporting services. MCLIC may suspend Mail Service Pharmacy services to an EGWP Enrollee who is in default of any Copayment amount due MCLIC.

3.14 Specialty Products

(a) Specialty Products and ASES. EGWP Enrollees may have prescriptions filled through ESI Specialty Pharmacy and Participating Pharmacies. Subject to applicable law, MCLIC and its affiliates may communicate with EGWP Enrollees and physicians to advise EGWP Enrollees filling Specialty Products at Participating Pharmacies of the availability of filling prescriptions through ESI Specialty Pharmacy.

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

(ii) Subject to Client's prior authorization requirements, if applicable, MCLIC or its affiliates will provide or coordinate ASES for EGWP Enrollees through ESI Specialty Pharmacy or through other specialty pharmacies or other independent third party providers of ASES when ASES is required. If MCLIC or its affiliates engages a third party provider of ASES, MCLIC or its affiliates shall contractually obligate such third party provider of ASES to comply with all applicable laws, including, without limitation, all applicable laws relating to professional licensure. Neither MCLIC nor its affiliates direct or exercise any control over any third party provider of ASES in administering Specialty Products or otherwise providing ASES.

(b) MCLIC shall notify Client no more frequently than monthly of new Specialty Products that are introduced to the market and added to the Specialty Product List on or after the Effective Date of this Agreement ("Notice").

3.15 Late Enrollment Penalty. Client agrees to and attests that it shall comply with the applicable CMS requirements of the LEP and shall comply with MCLIC's LEP policy, including participating with MCLIC in the following process:

(a) Client has an option to: (i) provide an initial global attestation to MCLIC to attest to a creditable coverage for all of its EGWP Enrollees; or (ii) periodically provide an attestation to MCLIC to attest to a creditable coverage for its EGWP Enrollees listed on the LEP report periodically provided to Client by MCLIC.

(b) If Client elects to periodically attest to MCLIC under Section 3.15(a)(ii) above, then:

(i) Client's response shall be delivered to MCLIC within five (5) business days from the receipt of LEP report from MCLIC;

(ii) Client shall provide MCLIC with the file listing all EGWP Enrollees for whom Client was unable to attest; and

(iii) MCLIC shall also mail an attestation to each EGWP Enrollee that has gap in coverage as defined by CMS.

(c) Client has provided MCLIC with the attestation form and a file listing of all the EGWP Enrollees included in the attestation.

(d) MCLIC will collect responses to the attestations from Client or EGWP Enrollees and submits EGWP Enrollees information to CMS for processing and determination of applicable LEP.

(e) CMS calculates the LEP amount and transmits the LEP amount to MCLIC on the daily TRR file, which is communicated to Client. MCLIC shall invoice Client for payment of the LEP, which shall be due and owing by the Client to MCLIC. Per the Medicare Drug Rules, Client may elect to either pay for the LEP on behalf of the EGWP Enrollee, or seek reimbursement of the LEP amount from the EGWP Enrollee. This election must be made prior to the beginning of the plan year and must be applied consistently by Client for all EGWP Enrollees throughout the plan year.

[3.16 Direct and Indirect Remuneration. On an annual basis, consistent with Medicare Drug Rules, MCLIC will provide Client with reporting regarding direct and indirect remuneration \(as defined by 42 CFR §432.308\).](#)

ARTICLE IV – PROGRAM OPERATIONS

4.1 Program Reporting. MCLIC or its Affiliate shall make available to Client MCLIC's or its Affiliate's standard management information reporting applications. At the request of Client, MCLIC or its Affiliate may develop special reporting packages at MCLIC's or its Affiliate's standard hourly rate for such services.

4.2 Regulatory Reporting. MCLIC shall comply with the reporting requirements set forth in 42 C.F.R. §423.514, including reporting significant business transactions with parties in interest to CMS, notifying CMS of any loans or other financial arrangements that it makes with contractors, subcontractors, and related entities, and making such information available to EGWP Enrollees upon reasonable request.

4.3 Claims Data Retention. MCLIC and Client will maintain, for a period of the then current plan year plus an additional ten (10) years, the applicable books, contracts, medical records, patient care documentation, and other records relating to covered services under this Amendment. MCLIC may use and disclose both during and after the term of this Agreement the anonymized claims data (de-identified in accordance with HIPAA) including drug and related medical data collected by MCLIC or provided to MCLIC by Client for research; provider profiling; benchmarking, drug trend, and cost and other internal analyses and comparisons; clinical, safety and/or trend programs; ASES; or other MCLIC business purposes, in all cases subject to applicable law.

4.4 Government Audits. MCLIC and Client agree to allow the United States Department of Health and Human Services ("DHHS") and the Comptroller General or their designees, the right to audit, evaluate, inspect books, contracts, medical records, patient care documentation and other records relating to covered services under this Agreement, as are reasonably necessary to verify the nature and extent of the costs of the services provided to EGWP Enrollees under this Agreement, for a period of the then current plan year, plus an additional ten (10) years following termination or expiration of the Amendment for any reason, or until completion of any audit, whichever is later.

4.5 State Auditor Audit. To the extent required by applicable law, the North Dakota State Auditor or State Auditor's designee or Client or Client's designee may audit MCLIC ~~only to the extent necessary to verify the terms of this Agreement.~~ Any such designee shall not have a conflict of interest.

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

ARTICLE V – MONTHLY PREMIUMS; FEES; BILLING AND PAYMENT

5.1 Monthly Premiums.

(a) Determination of Monthly Premium Amounts. Prior to the Effective Date and each EGWP Benefit enrollment period thereafter, MCLIC shall determine the amount of the monthly premium to be charged for each EGWP Enrollee for participation in the EGWP Benefit, which shall be determined based on the CMS Medicare Drug

Rules and guidance for standard prescription drug coverage along with enhancements under the EGWP Benefit as compared to the standard prescription drug coverage as permitted.

(b) Collection of Monthly Premium Amounts. In accordance with the Medicare Drug Rules, MCLIC hereby delegates the premium collection function to Client and hereby directs Client, on behalf of MCLIC, to collect all monthly premium payments due from EGWP Enrollees for participation in the EGWP Benefit. In connection with MCLIC's delegation of the premium collection function to Client under this Section 5.1(b), Client hereby agrees as follows:

(i) That in no event, including, but not limited to, MCLIC's insolvency, or MCLIC's breach of this Agreement, will Client bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against an EGWP Enrollee or persons acting on his or her behalf for payments that are the financial responsibility of MCLIC under this Agreement. The foregoing is not intended to prohibit Client from collecting premium amounts due by EGWP Enrollees for participation in the EGWP Benefit;

(ii) That DHHS, the Comptroller General, or their designees shall have the right to inspect, evaluate, and audit pertinent contracts, books, documents, papers and records of the Client involving Client's collection of premium amounts from EGWP Enrollees, and that DHHS', the Comptroller General's, or their designees' right to inspect, evaluate, and audit any such pertinent information will exist through ten (10) years from the date of termination or expiration of this Agreement, or from the date of completion of any audit, whichever is later;

(iii) That if MCLIC or CMS determines that Client is not performing the premium collection function in compliance with all applicable Medicare Drug Rules and Client is unable to cure such noncompliance within thirty (30) days following notice from MCLIC or CMS, then MCLIC may, at its sole discretion, either: (i) upon prior written notice to Client, revoke all or a portion of such delegated function as MCLIC deems necessary to effectuate MCLIC's ultimate responsibility to CMS for the performance of such delegated function under MCLIC's contract with CMS; or (ii) negotiate an alternative remedy in lieu of revocation of delegation, so long as such remedy conforms to the requirements of the Medicare Drug Rules. Nothing in this Section 5.1(b)(3), including, but not limited to, the thirty (30) day cure period, shall be construed in any way to limit MCLIC's right to suspend performance under Section 8.2 for non-payment; and

(iv) That Client shall not further delegate or subcontract the performance of the premium collection function to a third party without MCLIC's prior written consent, which consent will not be unreasonably withheld. If Client does further delegate or subcontract the performance of the premium collection function to a third party, then Client agrees that it shall: (i) amend its written agreement with such subcontractor or enter into a separate written agreement with such subcontractor that contains the terms, conditions, and provisions set forth in Schedule 5.1(a)(iv) attached hereto and incorporated herein by reference; and (ii) ensure that such subcontractor's performance of the premium collection function complies with the provisions set forth on Schedule 5.1(a)(iv).

(c) Determination of Monthly Premium Amounts (if any) to be Subsidized by Client. In determining the amount of the EGWP Enrollee's monthly premium for participation in the EGWP Benefit that Client will subsidize, Client shall make such determination subject to the following restrictions and any other restrictions that may be imposed by CMS:

(i) Client may subsidize different amounts for different classes of EGWP Enrollees provided such classes are reasonable and based on objective business criteria, such as years of service, business location, job category, and nature of compensation (e.g., salaried vs. hourly). Different classes cannot be based on eligibility for the Low Income Subsidy. Notwithstanding the foregoing, the parties agree that Retiree Health Insurance Credit benefits received by Part D Eligible Retirees does not violate or implicate this section;

(ii) Client may not vary the premium subsidy for individuals within a given class of EGWP Enrollees;

(iii) Client may not charge an EGWP Enrollee more than the sum of his or her monthly beneficiary premium attributable to basic prescription drug coverage and 100% of the monthly beneficiary premium attributable to his or her supplemental prescription drug coverage, if any, and by signing this agreement, Client agrees to and attests that it shall abide by such provisions in accordance with the requirements set forth in 42 CFR 423.504 and 423.505;

(iv) Client shall directly refund to the EGWP Enrollee (or shall allow MCLIC to do so), within forty-five (45) days of original receipt from CMS of the Low Income Subsidy premium, the full premium subsidy amount up to the monthly beneficiary premium amount previously collected from the EGWP Enrollee; provided, however, that to the extent there are Low Income Subsidy premium amounts remaining after Client refunds the full monthly beneficiary premium amount to the EGWP Enrollee, then Client may apply that remaining portion of the Low Income Subsidy premium to the portion of the monthly premium paid by Client;

(v) If Client is not able to reduce the up-front monthly beneficiary premium as described in subsection (iv) above, Client shall directly refund to the EGWP Enrollee (or shall allow MCLIC to do so), within forty-five (45) days of original receipt from CMS of the Low Income Subsidy premium, the full premium subsidy amount up to the monthly beneficiary premium amount previously collected from the EGWP Enrollee;

(vi) If the Low Income Subsidy amount for which an EGWP Enrollee is eligible is less than the portion of the monthly beneficiary premium paid by the EGWP Enrollee, then Client must communicate to the EGWP Enrollee the financial consequences for the beneficiary of enrolling in the EGWP Benefit as compared to enrolling in another Medicare Part D plan with a monthly beneficiary premium equal to or below the Low Income Subsidy amount (MCLIC shall provide reasonable guidance to Client regarding the requirements of the performance necessary for Client to meet its obligation under this section); and

(vii) In the event of a change in an EGWP Enrollee's Low Income Subsidy status or an EGWP Enrollee otherwise becomes ineligible to receive the Low Income Subsidy after payment of the Low Income Subsidy premium amount to the EGWP Enrollee, and upon MCLIC's receipt of notification from CMS that such Low Income Subsidy premium amount will be recovered from MCLIC or withheld from future payments to MCLIC, then MCLIC in its sole discretion will invoice Client or set off from amounts otherwise owed from MCLIC to Client, and in either case Client shall reimburse MCLIC for, all amounts deemed by CMS to be ineligible Low Income Subsidy premium payments with respect to the EGWP Enrollee.

(d) Reporting and Auditing of Premium Amounts; Non-Payment by EGWP Enrollees. In the event of a CMS audit, Client shall provide a report to MCLIC, in a form and manner as agreed to by the parties, that includes all information concerning monthly premium amounts due by EGWP Enrollees for participation in the EGWP Benefit, including, without limitation, the monthly premium amount charged to each class of EGWP Enrollees, the amount that is being subsidized by the Client, and all premium amounts collected from EGWP Enrollees. Client represents and warrants that all information that it provides to MCLIC pursuant to this Section 5.1(d) shall be accurate and complete. Client further represents and warrants that it shall collect only those monthly premium amounts that are due from EGWP Enrollees, consistent with the information provided to MCLIC pursuant to this Section 5.1(d). Upon reasonable advance written notice, MCLIC or its Affiliate shall have access to Client's records in order to audit the monthly premium amounts collected from EGWP Enrollees for the purposes of fulfilling reporting requirements under the Medicare Drug Rules or applicable state insurance laws related to collection of such premium amounts or to otherwise assess compliance with the Medicare Drug Rules in connection with the collection of such premium amounts. Any audits performed by MCLIC or its Affiliate pursuant to this Section 5.1(d) will be at MCLIC's expense. Client acknowledges and agrees that neither MCLIC nor its Affiliate shall be responsible to Client for non-payment by any EGWP Enrollee of any monthly premium amount due by such EGWP Enrollee for participation in the EGWP Benefit. Client further acknowledges and agrees that in the event that either Client or MCLIC (through any audit) determines that Client has collected a greater premium amount from an EGWP Enrollee than is due, that Client shall promptly refund any such overpayment to the EGWP Enrollee.

5.2 Once a month, on or about the fifteenth (15th) of the month beginning on the Effective Date, Client shall be invoiced for an amount equal to the product of: (i) the then-current number of EGWP Enrollees; multiplied by (ii) a "per member per month" fee (i.e., member premium amount) determined by MCLIC on an annual basis, as may be adjusted by MCLIC pursuant to the terms of this Agreement. The monthly fee shall be referred to in this Agreement

as the “PMPM Fees.” During the Initial Term (as defined in Section 8.1 below) of this Agreement, the “per member per month” fee used to calculate the PMPM Fees shall be Eighty Two and 00/100 Dollars (\$82.00). Thereafter, MCLIC shall provide written notice to Client of any annual adjustment to the “per member per month” fee by the August 15th immediately prior to the commencement of any one (1) year renewal term hereunder. Any Administrative Service Fees incurred by Client during the previous month shall be invoiced to Client on or about the twentieth (20th) day of the month beginning on the Effective Date. “Administrative Service Fees” means the fees incurred by Client, if any, for MCLIC’s or its Affiliate’s performance of any agreed to administrative services.

5.3 CMS Reimbursement. MCLIC and its Affiliate retain all right, title and interest to any and all reimbursement received from CMS with respect to the EGWP Benefit and EGWP Enrollees, including the following: (1) advance direct subsidy monthly payments with respect to EGWP Enrollees, (2) reinsurance subsidy payments with respect to the EGWP Benefit, (3) low-income subsidy payments with respect to EGWP Enrollees, and (4) any other reimbursement payment by CMS to MCLIC for coverage provided to EGWP Enrollees under the EGWP Benefit for such period (each as further defined in the Medicare Drug Rules) (collectively, “CMS Reimbursement”). Client acknowledges and agrees that neither it nor its EGWP Enrollees shall have a right to any CMS Reimbursement payments received by MCLIC or its Affiliates during the collection period or moneys payable under this Section. Notwithstanding the foregoing, to the extent that MCLIC receives any low-income subsidy payments from CMS with respect to any EGWP Enrollee that qualifies for such payments, MCLIC will remit amounts equal to such payments to Client. In such case, Client shall apply such amounts received from MCLIC pursuant to Section 5.1(c)(iv) through (vi) above.

5.4 Payment. Client shall pay all Fees to MCLIC by wire or ACH transfer, debit or other electronic method within two (2) days from the date of Client’s receipt of the MCLIC invoice.

5.5 Deposit. If, at any time: (i) Client has one (1) or more outstanding past due invoices; or (ii) MCLIC has reasonable grounds to believe that Client may become delinquent in payment of PMPM Fees to MCLIC based on Client’s published financial data (examples include, but are not limited to, persistent negative cash flow, bankruptcy, and insolvency), then MCLIC may require that Client provide to MCLIC a deposit in an amount equal to one (1) month’s billing, using the average of the last three (3) months of billing history as the basis for determining the one (1) month deposit amount or, if three (3) months billing history is not available, the most recent month of billing history as the basis. MCLIC shall retain the deposit until the earlier of: (i) termination of this Agreement (following any run-off period); or (ii) six (6) consecutive months of timely payments of all PMPM Fees following submission of the deposit, and may apply the deposit to delinquent PMPM Fees until return of the deposit.

5.6 Manufacturer Coverage Gap Discount. Pursuant to its CMS contract, MCLIC has agreed to administer for EGWP Enrollees at point-of-sale the Coverage Gap Discount authorized by section 1860D-14A of the Social Security Act. In connection with the Coverage Gap Discount, CMS will coordinate the collection of discount payments from manufacturers, and payment to MCLIC, through a CMS contractor (the “Coverage Gap Discount Payments”). MCLIC and its Affiliate retain all right, title and interest to any and all actual Coverage Gap Discount Payments received from CMS. Client acknowledges and agrees that neither it nor its EGWP Enrollees shall have a right to interest on, or the time value of, any Coverage Gap Discount Payments received by MCLIC or its Affiliates under this Section.

ARTICLE VI - CONFIDENTIALITY

6.1 Access to Records and Confidential Information. Each party agrees that participation by EGWP Enrollees in programs administered by Client is confidential under North Dakota law. Each party agrees that confidential information of the other party, must be exchanged as necessary for MCLIC to provide the services described within this Agreement. MCLIC shall not use or disclose any information it receives from Client under this Agreement that Client has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by Client. Client shall not disclose any information it receives from MCLIC that MCLIC has previously identified as confidential and that Client determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, N.D.C.C. ch. 44-04. The parties acknowledge that the following information may constitute confidential or exempt information of the other party under N.D.C.C. § 44-04-18.4, 44-04-18.5, 54-52.1-11, and 54-52.1-12, subject to final determination by Client: (a) with respect to MCLIC and its Affiliate: reporting and system applications, (web-based and other media), and system formats, databanks, clinical and formulary management operations and programs, fraud, waste and abuse tools and programs, manuals, and anonymized claims data (de-identified in accordance with HIPAA), ESI Specialty Pharmacy and Mail Service Pharmacy data, information concerning Rebates,

prescription drug evaluation criteria, drug choice management, drug pricing information, and Participating Pharmacy agreements; and (b) with respect to Client: Participating Pharmacy Client and EGWP Enrollee identifiable health information and data, and Client information files. Neither party shall use the other's confidential or exempt information or disclose it to any third party, at any time during or after termination of this Agreement, except as specifically contemplated by this Agreement, upon prior written consent or as required by the Medicare Drug Rules or other applicable law. Upon termination of this Agreement, each party shall cease using the other's confidential or exempt information, and all such information shall be returned or destroyed upon the owner's direction, unless retention is otherwise required under applicable law. The duty of both parties to maintain the confidentiality of information under this section continues beyond the term of this Agreement. This section applies to confidential information that may be in the possession of subcontractors or agents of MCLIC.

6.2 Non-Access to MCLIC's or its Affiliate's Systems. Client will not, and will not permit any third party acting on Client's behalf to, access, attempt to access, test or audit MCLIC's or its Affiliate's systems or any other system or network connected to MCLIC's or its Affiliate's systems. Without limiting the foregoing, Client will not: (i) access or attempt to access any portion or feature of MCLIC's or its Affiliate's systems, by circumventing such systems' access control measures, either by hacking, password "mining" or any other means; or (ii) probe, scan, audit or test the vulnerability of such systems, nor breach the security or authentication measures of such systems.

ARTICLE VII - COMPLIANCE WITH LAW AND FINANCIAL DISCLOSURE

7.1 Compliance with Law; Change in Law. MCLIC and Client hereby agree to perform their respective obligations under this Agreement in a manner that is consistent with and complies with the Medicare Drug Rules and with MCLIC's contractual obligations under its contract with CMS. In addition, each party shall be responsible for ensuring its compliance with all federal, state, and local laws and regulations applicable to its business, including maintaining any necessary licenses and permits. If the scope of MCLIC's duties under this Agreement is made materially more burdensome or expensive due to a change in federal, state or local laws or regulations or the interpretation thereof, including actions by CMS, the parties shall negotiate an appropriate modification of the services and/or an adjustment to the PMPM Fees paid to MCLIC. If the parties cannot agree on a modification or adjusted PMPM Fees, then either party may terminate this Agreement upon no less than thirty (30) days prior written notice to the other party. Further, Client by written notice to MCLIC, may terminate this Agreement at any time under the following conditions: 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services of supplies in the indicated quantities or term; 2) if federal or state laws or rules are modified or interpreted in a way that the services are no longer eligible or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement; and 3) if any license, permit, or certificate required by law or rule, or by the terms of this Agreement, is for any reason denied, revoked, suspended, or not renewed and, as a result, would have a material impact on MCLIC's ability to perform services under this Agreement. Termination of this Agreement under this section is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

7.2 Disclosure of Certain Financial Matters. Client acknowledges and agrees that MCLIC will contract with its Affiliate, ESI, to provide the pharmacy benefit management services contemplated by this Agreement on MCLIC's behalf. In addition to the administrative fees paid to MCLIC by Client, MCLIC and ESI's wholly-owned subsidiaries or Affiliates derive revenue in one or more of the ways as further described in the ESI Financial Disclosure to PBM Clients set forth in Exhibit D hereto ("Financial Disclosure"), as updated by ESI from time to time. Unlike the administrative fees, the revenues described in the Financial Disclosure are not direct or indirect compensation to MCLIC from Client for services rendered to Client or the Client Group Health Plan under this Agreement. In negotiating any of the fees and revenues described in the Financial Disclosure, ESI and ESI's wholly-owned subsidiaries and Affiliates act on their own behalf, and not for the benefit of or as agents for Client, EGWP Enrollees or the EGWP Benefit. Except for the Rebate amounts set forth in Exhibit B, if any, Client acknowledges and agrees that MCLIC and MCLIC's wholly-owned subsidiaries and Affiliates retain all interest, revenues, any or all Rebates and Manufacturer Administrative Fees not payable to Client, and all Participating Pharmacy discounts, if any, in addition to any administrative and other fees paid by Client. Client acknowledges for itself and its EGWP Enrollees that, except as may be expressly provided herein, neither it nor any EGWP Enrollee has a right to receive, or possesses any beneficial interest in, any such discounts or payments.

ARTICLE VIII - TERM AND TERMINATION; DEFAULT AND REMEDIES

8.1 Term. The initial term of this Agreement (the “Initial Term”) shall commence on the Execution Date, and coverage of EGWP Enrollees under the EGWP Benefit shall begin as of January 1, 2016 (the “Effective Date”). Unless earlier terminated as provided herein, the Initial Term shall continue until December 31, 2016. Thereafter, Client may renew this Agreement upon satisfactory completion of the Initial Term for successive one (1) year renewal terms with the same terms and conditions as set forth herein. MCLIC may decline to renew the Agreement for successive one (1) year terms by providing Client notice of its intent not to renew the Agreement in writing at least ninety (90) days prior to the expiration of the then current term.

MCLIC shall provide written notice to Client of any annual adjustment to the “per member per month” fee by the August fifteenth (15th) prior to the commencement of any one (1) year renewal term hereunder. Client shall provide notice of intent to renew this Agreement to MCLIC at least sixty (60) days prior to the expiration of the then current term, so long as Client does not have an annual open enrollment. Should Client change to an annual open enrollment, Client shall provide notice of intent to renew this Agreement to MCLIC at least ninety (90) days prior to the expiration of the then current term. Both parties acknowledge that nothing in this Agreement prevents Client from engaging in a competitive selection process and to accept a bid from another vendor through a competitive selection process for a subsequent contract term for the services provided hereunder. This Agreement may be terminated earlier during the Initial Term or any renewal terms pursuant to Section 8.2 below.

8.2 Termination.

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

(b) Termination of MCLIC’s Contract with CMS. If at any time throughout the term of this Agreement, CMS either does not renew its contract with MCLIC or terminates its contract with MCLIC such that MCLIC may no longer provide services as a PDP Sponsor under the Medicare Drug Rules, then this Agreement shall be automatically terminated conterminously with such CMS contract termination. MCLIC will provide Client one hundred and twenty (120) days’ notice before MCLIC non-renews the CMS contract and thereby terminates this Agreement. MCLIC will provide Client as much notice as reasonably practical in the event of CMS’s termination or non-renewal of the CMS contract. The notice will include the termination date for this Agreement.

(c) Non-Payment. To the extent permitted by the Medicare Drug Rules and other applicable laws, MCLIC and its Affiliate may terminate or suspend their performance hereunder and cease providing or authorizing provision of Covered Drugs to EGWP Enrollees upon forty-eight (48) hours written notice if Client fails to pay MCLIC or provide a deposit, if required, in accordance with the terms of this Agreement. MCLIC also may offset amounts overdue to MCLIC with amounts owed, if any, by MCLIC to Client. To the extent permitted by law, MCLIC may suspend Mail Service Pharmacy and/or ESI Specialty Pharmacy services to any EGWP Enrollee who is in default of payment of any Copayments or deductibles to the applicable Pharmacy.

(d) Insolvency; Regulatory Action. To the extent permitted by applicable law, MCLIC may terminate this Agreement, or suspend performance hereunder, upon the insolvency of Client, and Client may terminate this Agreement upon the insolvency of MCLIC. The “insolvency” of a party shall mean the filing of a petition commencing a voluntary or involuntary case (if such case is an involuntary case, then only if such case is not dismissed within sixty (60) days from the filing thereof) against such party under the United States Bankruptcy Code or applicable state law; a general assignment by such party for the benefit of creditors; the inability of such party to pay its debts as they become due; such party’s seeking or consenting to, or acquiescence in, the appointment of any trustee, receiver or liquidation of it, or any material part of its property; or a proceeding under any state or federal agency declaration or imposition of receivership, composition, readjustment, liquidation, insolvency, dissolution, or like law or statute, which case or proceeding is not dismissed or vacated within sixty (60) days. Notwithstanding the preceding, in the event of Client’s insolvency or other cessation of operations, MCLIC agrees to require Participating Pharmacies to continue to provide prescription drug services to EGWP Enrollees if required by the Medicare Drug Rules and all other applicable federal and state laws relating to insolvency or other cessation of operations or termination. Nothing herein shall be interpreted to require MCLIC or Pharmacies to provide services without being paid for Covered Drugs or Prescription Drug Services.

8.3 Remedies.

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

(b) Force Majeure. Neither party shall be held responsible for delay or default caused by fire, riot, terrorism, extreme weather conditions, government acts or regulations, acts of God or war if the event is beyond the party's reasonable control and the affected party gives notice to the other party immediately upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.

(c) Limitation of Liability. Client and MCLIC each agrees to assume its own liability for any and all claims of any nature including all, costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

8.4 Obligations Upon Termination. Client or its agent shall pay MCLIC in accordance with this Agreement for all PMPM Fees due hereunder on or before the later of: (i) the effective date of termination, or (ii) the final date that all EGWP Enrollees have been transitioned to a new Part D plan, as applicable (the "Termination Date"). The parties shall cooperate regarding the transition of Client and its EGWP Enrollees to a successor PDP Sponsor in accordance with all applicable Medicare Drug Rules and MCLIC will take all reasonable steps to mitigate any disruption in service to EGWP Enrollees. Specifically MCLIC agrees to provide to a successor PDP Sponsor mutually agreed upon files and information to assist Client with member transition. Notwithstanding the preceding, MCLIC may (a) delay payment of any amounts due Client, if any, to allow for any final adjustments to EGWP Enrollee enrollment information, or (b) request that Client pay a reasonable deposit in the event MCLIC is requested to process after the Termination Date claims incurred on or prior to such date.

8.5 Survival. The parties' rights and obligations under Section 3.8(b) and 3.10(e); Articles V and VI; and Sections 7.1, 8.3, 8.4, and 8.5 shall survive the termination of this Agreement for any reason.

ARTICLE IX - MISCELLANEOUS

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

Medco Containment Life Insurance Company
 Attn: President
 One Express Way
 St. Louis, Missouri 63121
 with copy to: General Counsel
 Fax: 800-417-8163

North Dakota Public Employees Retirement System
 Attn: Sparb Collins
 400 East Broadway, Suite 505
 Bismarck, North Dakota 58502

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

9.3 Assignment and Subcontracting. Client acknowledges and agrees that MCLIC may perform certain services hereunder (e.g., mail service pharmacy and specialty pharmacy services) through one or more MCLIC subsidiaries or Affiliates. MCLIC is responsible and liable for the performance of its subsidiaries and Affiliates in the course of their performance of any such service. To the extent that MCLIC subcontracts any PBM Service under this Agreement to a third party, MCLIC is responsible and liable for the performance of any such third party. In addition, MCLIC may contract with third parties to provide information technology support services and other ancillary services, which services are not PBM Services hereunder, but rather are services that support MCLIC's conduct of its business operations. This Agreement will be binding upon, and inure to the benefit of and be enforceable by, the respective successors and permitted assigns of the parties hereto.

9.4 Integration. This Agreement and all Exhibits hereto constitute the entire understanding of the parties hereto and supersede any prior oral or written communication between the parties with respect to MCLIC's plan offering to EGWP Enrollees as a PDP Sponsor of the EGWP Benefit under the Medicare Drug Rules. The parties hereby expressly agree that this Agreement and the Commercial Agreement are separate and independent agreements that stand on their own and that, unless otherwise specifically set forth in this Agreement, no term or condition in one such agreement shall have any connection to or bear any force or effect on the other agreement.

9.5 Amendments. No modification, alteration, or waiver of any term, covenant, or condition of this Agreement shall be valid unless in writing and signed by both parties or the agents of the parties who are authorized in writing.

9.6 Choice of Law. Unless governed by the Medicare Drug Rules or applicable state insurance laws, this Agreement shall be construed and governed in all respects according to the laws in the State of North Dakota, without regard to the rules of conflict of laws thereof.

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

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

9.9 Severability. In the event that any provision of this Agreement is invalid or unenforceable, such invalid or unenforceable provision shall not invalidate or affect the other provisions of this Agreement which shall remain in effect and be construed as if such provision were not a part hereof; provided that if the invalidation or unenforceability of such provision shall, in the opinion of either party to the Agreement, have a material effect on such party's rights or obligations under this Agreement, then the Agreement may be terminated by such party upon thirty (30) days written notice by such party to the other party.

9.10 Third Party Beneficiary Exclusion. This Agreement is not a third party beneficiary contract, nor shall this Agreement create any rights on behalf of EGWP Enrollees as against MCLIC. Client and MCLIC reserve the right to amend, cancel or terminate this Agreement without notice to, or consent of, any EGWP Enrollee.

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

9.12 Debarment. MCLIC or its Affiliate shall not knowingly employ, or subcontract with, an individual or an entity that employs or contracts with an individual, who is excluded from participation in Medicare under section 1128 or 1128A of the Act or from participation in a Federal health care program for the provision of health care, utilization review, medical social work, or administrative services.

9.13 Signatures. Any documents required to implement the terms of this Agreement shall be signed by a representative of each party with legal authority to bind the entity.

9.14 Federal Funds. The parties acknowledge that information provided in connection with this Agreement is used for purposes of obtaining federal funds and, as such, the parties are subject to certain laws that are applicable to individuals and entities receiving federal funds.

9.15 Nondiscrimination and Compliance with Laws. MCLIC agrees to comply with all laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights. MCLIC agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes and unemployment compensation and workers' compensation premiums. MCLIC shall have and keep current at all times during the term of this Contract all licenses and permits required by law.

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

MEDCO CONTAINMENT LIFE INSURANCE
COMPANY

NORTH DAKOTA PUBLIC EMPLOYEES
RETIREMENT SYSTEM

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Federal ID Number: _____

EXHIBIT A

**EGWP BENEFIT DESCRIPTION
(Incorporated herein by reference)**

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Plan Design Option: Current NDPERS Plan Design

	Retail Pharmacy Network	Retail Maintenance Drug Program (MDP) Pharmacy	Express Scripts Home Delivery
Day Supply	Up to 31 day	Up to 90 day	Up to 90 day
Member Co-Pay	Generic: \$5 copay plus 15% coinsurance Preferred Brand: \$15 copay plus 25% coinsurance Non-Preferred Brand: \$25 copay plus 50% coinsurance Specialty: \$15 copay plus 25% coinsurance	Generic: \$5 copay plus 15% coinsurance Preferred Brand: \$15 copay plus 25% coinsurance Non-Preferred Brand: \$25 copay plus 50% coinsurance Specialty: \$15 copay plus 25% coinsurance	Generic: \$5 copay plus 15% coinsurance Preferred Brand: \$15 copay plus 25% coinsurance Non-Preferred Brand: \$25 copay plus 50% coinsurance Specialty: \$15 copay plus 25% coinsurance
Deductible	No Deductible		
Coverage Gap¹	No Coverage Gap; Member Co-pays above apply.		
Catastrophic Coverage	Member cost share post TrOOP (\$4,850) is the greater of 5% or \$2.95 per generic or preferred multi-source drugs and the greater of 5% or \$7.40 per all other brands		
Formulary	Medicare Premier Access		
Non Part D Drugs²	Mirror current coverage within CMS guidelines		
Part B Drugs²	Not Covered		
Generics Policy	Voluntary		
Utilization Management Program	All Approved Standard Part D		
Federal Poverty Limits	Standard Federal Poverty Limit (FPL) guidelines apply		

Please note that most specialty medications can only dispensed up to a 31 day supply to Medicare members

	Effective Date	Expiration Date
	<u>January 1st, 2016</u>	<u>December 31st, 2016</u>
EGWP Plan Premium (PMPM)		\$69.26
Enhanced Insurance Premium³ (PMPM)		\$12.74
Total Premium⁴ (PMPM)		\$82.00

¹ Coverage Gap begins at the Initial Coverage Limit which is \$3,310 for CY 2016.

² Some states require coverage for certain Non Part D and Part B drugs. Express Scripts will comply with all state requirements on your behalf.

³ This group Medicare Part D plan has additional benefits to enhance the Medicare Part D coverage, as required by the Centers for Medicare and Medicaid Services (CMS). Per CMS regulations, the benefit enhancements are considered other health benefits and require filing with and approval by the state department of insurance. Express Scripts Medicare will offer this product in conjunction with Companion/Niagara/Pan American.

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⁴The illustrated premium is subject to change in the event of CMS guidance and rate changes. Income Related Monthly Adjustment Amounts apply for high income beneficiaries. See page 2 for details.

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Income Related Monthly Adjustment Amount (IRMAA)

Effective January 1, 2011, individuals whose modified gross income (MAGI) exceeds certain thresholds will be required to pay an extra amount, referred to as an income related monthly adjustment amount, for their Medicare Part D coverage. In 2010, these amounts were \$85,000 for a beneficiary filing an individual income tax return or married and filing a separate return, and \$170,000 for a beneficiary filing a joint tax return. In accordance with the Affordable Care Act, these income threshold amounts will remain at the 2010 levels for calendar years 2011-2019. The Social Security Administration, not MCLIC, will determine which members are required to pay a Part D-IRMAA and will send the beneficiary a letter telling him or her what that extra amount will be and what information was used to make the determination. In general, the Part D-IRMAA will be paid through premium withholding from monthly Social Security benefit payments. For more information about Part D premiums based on income, visit medicare.gov on the web or call 1-800-MEDICARE (1-800-633-4227). The Social Security Administration may also be contacted at 1-800-772-1213.

Included Additional Services

Electronic Claims Processing	No Additional Fee
Member Submitted Paper Claims Processing	No Additional Fee
Medicaid Subrogation Claims	No Additional Fee
Electronic Prescribing	No Additional Fee
Eligibility submission	No Additional Fee
Electronic/on-line submission (changes only)	No Additional Fee
Manual/hardcopy submission	No Additional Fee
Pharmacy Audit	No Additional Fee
Pharmacy Help Desk	No Additional Fee
Pharmacy Network Management	No Additional Fee
Pharmacy Reimbursement	No Additional Fee
Network Development Upon Request	No Additional Fee
My Rx Choices Medicare	No Additional Fee
Benefit Education (Includes Mail Promotion Program)	No Additional Fee
Prescription Delivery – standard	No Additional Fee
Ad-Hoc Desktop Parametric Reports	No Additional Fee
Billing Reports	No Additional Fee
Custom Ad-Hoc Reporting (up to 10 hours of programming time)	Included; additional programming may be billed at \$150 per hour
Load 12 Months Claims History for Clinical Programs and Reporting	No Additional Fee
Preparation of All Data Necessary to meet Medicare Part D Reporting Requirements	No Additional Fee
Provide Data to CMS in Required Format	No Additional Fee
CMS Designated Third Party Manages TrOOP ensuring Secondary Payments	No Additional Fee
Digital Certificates – Up to 5 certificates	No Additional Fee
Express-Scripts.com for Clients – access to Contact Directory, Sales and Benefit and Enrollment Support Marketing Information, and Benefit and Enrollment Support	No Additional Fee
Express-Scripts.com for Members – access to benefit, drug, health and wellness information; prescription ordering capability; and customer service	No Additional Fee

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Call Center service for members	No Additional Fee
Fraud and Abuse Program – Pharmacy, Physician and Member Audit Program to Prevent Fraud, Waste and Abuse	No Additional Fee
Pharmacy Audit Only	No Additional Fee
Online member service application	No Additional Fee (up to 10 users)
Assigned account team, Training for online tools	No Additional Fee
Communication with physicians and/or members (Transition Letters, notifications, etc.)	No Additional Fee (Client Requested EOBs Extra)
Annual pharmacy benefit strategic planning with quarterly review	No Additional Fee
Postage (e.g., physician or member mailings)	No Additional Fee
CMS required Member Materials and New Enrollee Packets, which contain the following: 1 standard ID card and Enrollment Letter carrier, HIPAA Notice of Privacy, Abridged Formulary, Evidence of Coverage (Non-ERISA clients only), Quick Reference Guide and Checklist, and Home Delivery Form	No Additional Fee
Non-Standard Member Materials	Non Standard member materials priced upon request
Appeals	No Additional Fee
Grievances	No Additional Fee
Prior Authorization Services-Administrative Manage plan benefits and drug costs by ensuring appropriate prescribing and use by members Non-clinical PA Lost/stolen overrides Vacation supplies	No Additional Fee
Prior Authorization Services-Clinical Prior Authorization, Step Therapy, Drug Quantity Level Limits Part B versus Part D coverage determinations Formulary exceptions Benefit level exceptions	No Additional Fee

Optional Service (if elected by Client)

Includes:	
<ul style="list-style-type: none"> • Invoicing of EGWP Enrollees • Sending delinquency • Disenrollment for non-payment of premium • Processing of premium refunds 	\$0.80 Per EGWP Enrollee Per Month

MCLIC offers clinical programs focused on Safety Management and Care Management. Safety Management Programs are designed to provide an additional source of pharmaceutical information (a “safety net”) for the most important drug and member specific pharmaceutical care issues. Care Management Programs offer disease-based programs focused on improving the health and well being of the patient, optimization of medication therapy, and compliance with prescribed therapy.

Safety and Care Management		
Program Name	Description	Fee
Concurrent DUR	Drug Utilization Review is a series of checks to insure that the drug being dispensed is appropriate; edits include dose checks, checks for drug interactions, duplicate Rx, step therapy, etc.	No Additional Fee

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Medication Therapy Management Program (MTM)	This CMS required clinical program is designed to improve the therapeutic outcomes associated with the use of medication for selected Medicare members.	No Additional Fee
Emerging Therapeutic Interventions Program	This CMS required notification is designed to alert members and healthcare professionals regarding significant safety-related drug recalls (FDA Removals) or market withdrawals (Manufacturer Removals) in a timely and efficient manner.	No Additional Fee
Fraud, Waste and Abuse Program	Express Scripts is strongly committed to the detection and prevention of Fraud, Waste and Abuse (FWA). This program includes the identification of potential problem pharmacies as well as prescribers and members with unusual or excessive utilization patterns. This program consists of two parts: the Network Pharmacy Audit Program and the Member and Physician Fraud Detection Program.	No Additional Fee
Appeals	Any of the procedures that deal with the review of adverse coverage determinations made by the Part D Plan Sponsor on the benefits a member believes he/she is entitled to receive, including the delay in providing or approving the drug coverage (when a delay would adversely affect the health of the member), or any amounts the member must pay for the drug coverage. These procedures include redeterminations by the Part D Plan Sponsor, reconsiderations by the independent review entity (IRE), ALJ hearings, MAC reviews, and judicial reviews. MCLIC contracts with an independent review agency to handle Re-determination appeals for the Express Scripts PDP. This vendor will perform redeterminations in compliance with CMS regulations for standard and expedited appeals.	No Additional Fee
Grievance	A 'grievance' is defined as a patient's expressed dissatisfaction with a specific event related to their Medicare Part D benefit that occurred within the last 60 calendar days or a complaint regarding the Part D sponsor's refusal to expedite a Coverage Determination or redetermination.	No Additional Fee

The following describes the CMS approved MCLIC Generics Policy.

Generics Policy	
Voluntary	No matter who requests Brand name, Physician or Member, no ancillary charge applies.

The following describes the MCLIC Standard Utilization Management Programs. These programs apply if the Design Option sections states "Standard Part D".

Standard Utilization Management Programs		
Program	Description	Fee
Step Therapy	CMS approved program that manages drug costs within specific therapy classes by ensuring that patients try a front-line or step one drug (usually generics) before a higher cost back-up or step two brand-name drug is covered. Within specific therapy classes, multiple drugs are available to treat the same condition. Step Therapy points a new patient to a front-line or step one, lower cost, clinically effective drug in each therapy group. Evidence-based clinical protocols are used to select front-line or step one drug. Members who fill a step therapy medication within the first 90 days of enrollment will be allowed to remain on that medication. Medicare Part D Step Therapy Drugs List stated below.	No Additior
Prior Authorization (PA)	CMS approved program that manages plan benefits by ensuring appropriate prescribing and member usage. For MCLIC Standard list of drugs, client agrees to all updates/revisions as approved by CMS. B vs D require Prior Authorization, if determined to be a Part B drug, then the copay will process at the Part B co-pay (if covered); if determined to be a Part D drug then the co-pay will process at the applicable Part D co-pay. Members will be allowed one transition fill for a retail supply (up to 31 day supply) within the first 90 days of enrollment.	No Addition
Quantity Level Limit (QLL)	CMS approved program that manages prescription costs by ensuring that the quantity of units supplied for each copayment are consistent with clinical dosing guidelines. The program is designed to support safe, effective, and economic use of drugs while giving patients access to quality care. MCLIC clinicians maintain a list of quantity limit drugs, which is based upon manufacturer-recommended guidelines and medical literature. Online edits help make sure optimal quantities of medication are dispensed per copayment and per days' supply.	No Addition

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SCHEDULE 5.1(a)(iv)

If Client engages a subcontractor (“Subcontractor”) to perform any of the functions that MCLIC has delegated to Client to perform under this Agreement, Client shall do so pursuant to a written agreement that includes the following terms, conditions, and provisions:

1. The agreement between Client and Subcontractor (the “Subcontract”) must clearly identify the parties to the Subcontract.
2. The Subcontract must describe the functions that are being delegated to and performed by the Subcontractor.
3. The Subcontract must describe the manner in which Client will monitor the performance of the Subcontractor on an ongoing basis; specifically to monitor compliance with the Medicare Drug Rules.
4. The Subcontract must describe any reporting requirements that the Subcontractor has to Client.
5. The Subcontract must describe the payment that the Subcontractor will receive for performance under the Subcontract.
6. The Subcontractor must agree that the United States Department of Health and Human Services (“DHHS”), the Comptroller General, or their designees have the right to inspect, evaluate, and audit any pertinent contracts, books, documents, papers and records (including medical records and documentation) of the Vendor involving transactions related to the Centers for Medicare and Medicaid Services’ (“CMS”) contract with MCLIC for a period of the then current plan year, plus an additional ten (10) years following the expiration or termination of the Subcontract or the date of any audit completion, whichever is later.
7. The Subcontractor must agree pursuant 42 CFR § 423.505(i)(3)(iv) to produce upon request by CMS, or its designees, any books, contracts, records, including medical records and documentation of the PDP Sponsor, relating to the Part D program, to either the PDP Sponsor to provide to CMS, or directly to CMS or its designees.
8. The Subcontractor must agree that in no event, including, but not limited to, nonpayment by Client, Client’s insolvency, or breach of the Subcontract, will the Subcontractor bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against a beneficiary of Client or persons acting on his or her behalf for services provided by the Subcontractor pursuant to the Subcontract.
9. The Subcontract must: (i) specify that the Subcontractor will perform all services under the Subcontract in a manner that is consistent with and that complies with MCLIC’s contractual obligations under its contract with CMS; (ii) specify that the Subcontractor agrees to comply with all applicable federal laws, regulations, and CMS instructions; and (iii) provide for revocation of the Subcontractor’s delegated activities and reporting responsibilities or specify other remedies in instances when CMS, Client, or MCLIC determine that the Subcontractor has not performed satisfactorily.
10. The Subcontract must require the Subcontractor to agree to comply with state and federal privacy and security requirements, including the confidentiality and security provisions stated in 42 CFR §423.136.
11. The Subcontract must include an acknowledgment by the parties that information provided in connection with the Subcontract is used for purposes of obtaining federal funds.

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12. If the Subcontract permits the Subcontractor to use a subcontractor to perform any of the services delegated to it under the Subcontract, the Subcontract must require that the Subcontractor include all of the above provisions in a written agreement with such subcontractor.
13. The Subcontract must be signed by a representative of the Subcontractor with legal authority to bind the Subcontractor.
14. The Subcontract must contain a representation by Client and the Subcontractor that they shall not knowingly employ, or subcontract with, an individual or an entity that employs or contracts with an individual, who is excluded from participation in Medicare under section 1128 or 1128A of the Act or from participation in a Federal health care program for the provision of health care, utilization review, medical social work, or administrative services.
15. The Subcontract must contain language clearly indicating that the first tier, downstream, or related entity has agreed to participate in the PDP Sponsor's Medicare Prescription Drug Benefit program. This requirement is not applicable for a network pharmacy if the existing contract would allow participation in this program.
16. The Subcontract must be for a term of at least the one-year contract period for which the PDP Sponsor's Medicare Part D Application is submitted. However, where the Subcontract is for services or products to be used in preparation for the next contract year's Part D operations (marketing, enrollment), the initial term of such Subcontract must include this period of performance (e.g., contracts for enrollment-related services must have a term beginning no later than November 15 extending through the full contract year ending on December 31 of the next year).
17. Insofar as the Subcontractor establishes the pharmacy network or select pharmacies to be included in the network, the Subcontractor must agree: i) pursuant 42 CFR § 423.505(i)(5) that the PDP Sponsor retains the right to approve, suspend, or terminate any arrangement with a pharmacy; ii) pursuant 42 CFR §423.505(i)(3)(vi) and consistent with 42 CFR § 423.520 to issue, mail, or otherwise transmit payment of all clean claim to such pharmacies (excluding long-term care and mail order) submitted by or on behalf of pharmacies within 14 days for electronic claims and within 30 days for claims submitted otherwise; iii) pursuant 42 CFR § 423.505(i)(3)(viii)(B) and 42 CFR § 423.505(i)(3)(viii)(A) that if a prescription drug pricing standard is used for reimbursement, Subcontractor will identify the source used by the PDP Sponsor for the prescription drug pricing standard of reimbursement and agree to a contractual provision that updates to such a standard occur not less frequently than once every 7 (seven) days beginning with an initial update on January 1 of each year, to accurately reflect the market price of acquiring the drug.

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EXHIBIT B

As provided in the Agreement, MCLIC may provide services under this Agreement through one or more of its Affiliates, including Express Scripts, Inc. ("ESI"). The following financial disclosure statement relates to the rebate programs and other financial arrangements that may be used by Express Scripts, Inc. ("ESI") in connection with MCLIC's administration of the EGWP Benefit under this Agreement.

FINANCIAL DISCLOSURE TO ESI PBM CLIENTS

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

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

Brand/Generic Classifications – Prescription drugs may be classified as either a "brand" or "generic;" however, the reference to a drug by its chemical name does not necessarily mean that the product is recognized as a generic for adjudication, pricing or copay purposes. For purposes of pharmacy reimbursement, ESI distinguishes brands and generics through a proprietary algorithm ("BGA") that uses certain published elements provided by First DataBank (FDB) including price indicators, Generic Indicator, Generic Manufacturer Indicator, Generic Name Drug Indicator, Innovator, Drug Class and ANDA. The BGA uses these data elements in a hierarchical process to categorize the products as brand or generic. The BGA also has processes to resolve discrepancies and prevent "flipping" between brand and generic status due to price fluctuations and marketplace availability changes. The elements listed above and sources are subject to change based on the availability of the specific fields. Updated summaries of the BGA are available upon request. Brand or generic classification for client reimbursement purposes is either based on the BGA or specific code indicators from Medi-Span or a combination of the two as reflected in the client's specific contract terms. Application of an alternative methodology based on specific client contract terms does not affect ESI's application of its BGA for ESI's other contracts.

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

Manufacturer Formulary Rebates, Associated Administrative Fees, and PBM Service Fees – ESI contracts for its own account to obtain formulary rebates attributable to the utilization of certain brand drugs and supplies (and possibly certain authorized generics marketed under a brand manufacturer's new drug application). Formulary rebate amounts received vary based on client specific utilization, the volume of utilization as well as formulary position applicable to the drug or supplies, and adherence to various formulary management controls, benefit design requirements, claims volume, and other similar factors, and in certain instances also may vary based on the product's market-share. ESI often pays an amount equal to all or a portion of the formulary rebates it receives to a client based on the client's PBM agreement terms. ESI retains the financial benefit of the use of any funds held until payment of formulary rebate amounts is made to the client. ESI or its affiliates may maintain non-client specific aggregate guarantees and may

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realize positive margin. In addition, ESI provides administrative services to contracted manufacturers, which include, for example, maintenance and operation of systems and other infrastructure necessary for invoicing and processing rebates, pharmacy discount programs, access to drug utilization data, as allowed by law, for purposes of verifying and evaluating applicable payments, and for other purposes related to the manufacturer's products. ESI receives administrative fees from the participating manufacturers for these services. These administrative fees are calculated based on the price of the drug or supplies along with the volume of utilization and do not exceed the greater of (i) 4.58% of the average wholesale price, or (ii) 5.5% of the wholesale acquisition cost of the products. In its capacity as a PBM company, ESI also may receive other compensation from manufacturers for the performance of various services, including, for example, formulary compliance initiatives, clinical services, therapy management services, education services, medical benefit management services, and the sale of non-patient identifiable claim information. This compensation is not part of the formulary rebates or associated administrative fees.

Copies of ESI's standard formularies may be reviewed at www.express-scripts.com/wps/portal/. In addition to formulary considerations, other plan design elements are described in ESI's Plan Design Review Guide, which may be reviewed at www.express-scripts.com/wps/portal/.

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

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

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

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

Other Manufacturer Arrangements – ESI also maintains other lines of business that may involve discount and service fee relationships with pharmaceutical manufacturers and wholesale distributors. Examples of these businesses include a wholesale distribution business, group purchasing organizations (and related group purchasing organization fees), a medical benefit management company, and United BioSource Corporation ("UBC"). Compensation derived through these business arrangements is not considered for PBM formulary placement, and is in addition to other amounts described herein. Of particular note, UBC partners with life sciences and pharmaceutical companies to develop, commercialize, and support safe, effective use and access to pharmaceutical products. UBC maintains a team of research scientists, biomedical experts, research

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operations professionals, technologists and clinicians who work with clients to conduct and support clinical trials, create, and validate and administer pre and post product safety and risk management programs. UBC also works on behalf of pharmaceutical manufacturers to provide product and disease state education programs, reimbursement assistance, and other support services to the public at large. These service fees are not part of the formulary rebates or associated administrative fees.

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

December 1, 2014

THIS EXHIBIT REPRESENTS ESI'S FINANCIAL POLICIES. ESI MAY PERIODICALLY UPDATE THIS EXHIBIT AND THE FINANCIAL DISCLOSURES CONTAINED HEREIN TO REFLECT CHANGES IN ITS BUSINESS PROCESSES; THE CURRENT FINANCIAL DISCLOSURE IS AVAILABLE UPON REQUEST AND ACCESSIBLE ON EXPRESS-SCRIPTS.COM AT WWW.EXPRESS-SCRIPTS.COM/WPS/PORTAL/.

Document comparison by Workshare Compare on Tuesday, December 22, 2015
10:50:25 PM

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Document 1 ID	interwovenSite://BLMMS108/IMANAGE/218338/6
Description	#218338v6<IMANAGE> - North Dakota Public Employees EGWP (Sanford) (from 205447v5) - ESI Changes post call
Document 2 ID	interwovenSite://BLMMS108/IMANAGE/218338/7
Description	#218338v7<IMANAGE> - North Dakota Public Employees EGWP (Sanford) (from 205447v5)(12-22-15)
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	8
Deletions	6
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	14