

# EXECUTION COPY

## INTEGRATED PRESCRIPTION DRUG PROGRAM MASTER AGREEMENT

**THIS AGREEMENT** is entered into as of the 1st day of July 2011 (the "Effective Date") between Medco Health Solutions, Inc., located at 100 Parsons Pond Drive, Franklin Lakes, New Jersey 07417, and The State of Delaware, located at Statewide Benefits, Office of Management and Budget, 500 W. Loockerman Street, Suite 320, Dover, Delaware 19904 ("SPONSOR").

**WHEREAS**, SPONSOR provides for the payment of prescription drugs and related services for persons eligible to receive such benefits through affiliation with a group that has a contract or other arrangement in effect with SPONSOR; and

**WHEREAS**, Medco Health Solutions, Inc. provides prescription drug benefits programs and, in connection therewith, has established networks of participating retail pharmacies and operates a system for the processing, fulfillment and payment of claims for prescription drugs furnished by such pharmacies; and

**WHEREAS**, Medco Health Solutions, Inc.'s Medco By Mail mail order pharmacy subsidiaries are licensed pharmacies which provide prescription drugs via a mail order service; and

**WHEREAS**, SPONSOR desires to retain the services of Medco Health Solutions, Inc. and its subsidiaries, including Medco Health, L.L.C., as applicable, which holds TPA licenses in certain states (collectively, "Medco"), to provide a prescription drug benefit program (the "Program"), including, but not limited to, retail pharmacy, mail order pharmacy, and specialty drug pharmacy services for eligible persons, point-of-care, physician office communications and cost containment initiatives developed and implemented by Medco, which may include communications with prescribers, patients and/or participating pharmacies, and financial incentives to participating pharmacies for their participation in such initiatives (collectively, "PBM Services").

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants contained herein, the parties hereto agree as follows:

### **1. DEFINITIONS**

- 1.1. "AWP" means the average wholesale price of the Covered Drug, as set forth in the current price list in First DataBank's National Drug Data File, if available, or other nationally recognized source determined by Medco. Under the Retail Pharmacy Program, AWP is based on the package size submitted, and for Compound Prescriptions is 1.25 times the AWP of each ingredient. Under the Mail Order Pharmacy Program, Medco will use the manufacturer's full 11-digit NDC code to determine AWP based on AWP on the date the drug is dispensed. If First DataBank or other applicable source changes the methodology for calculating AWP or ceases publishing or replaces AWP, or Medco utilizes another recognized pricing source or pricing benchmark other than AWP, in a way that changes the economics of the Program, the parties agree to modify the Program Pricing Terms to preserve the parties' relative economics before such changed methodology or other event.
- 1.2. "Brand Name Drugs" means all brand drugs set forth in First DataBank's National Drug Data File, or such other nationally recognized source, as reasonably determined by Medco.
- 1.3. "Business Days" or "business days" means all days except Saturdays, Sundays, and federal holidays. All references to "day(s)" are to calendar days unless "business day" is specified.
- 1.4. "Compound Prescription" means a prescription that meets the following criteria: two or more solid, semi-solid, or liquid ingredients, at least one of which is a Covered Drug, that are weighed or measured then prepared according to the prescriber's order and the pharmacist's art.

- 1.5. "Contract Quarter" means the full three (3) month period commencing on the Effective Date, and each full consecutive three (3) month period thereafter that this Agreement remains in effect.
- 1.6. "Contract Year" means the full twelve (12) month period commencing on the Effective Date, and each full consecutive twelve (12) month period thereafter that this Agreement remains in effect.
- 1.7. "Copayment" and/or "Coinsurance" means the amount to be paid by an Eligible Person for each prescription or authorized refill as determined in accordance with the Plan Design(s).
- 1.8. "Covered Drugs" means drugs which, under state or federal law, require a prescription, including Compound Prescriptions. Excluded from Covered Drugs are (i) cosmetic drugs, (ii) appliances, devices, bandages, heat lamps, braces, splints, and artificial appliances, (iii) health and beauty aids, cosmetics and dietary supplements, and (iv) OTC products ("Exclusions"). Additional Covered Drugs and/or Exclusions applicable to any individual Group will be designated by SPONSOR in the applicable Plan Design.
- 1.9. "Dependent" means the lawful spouse of the member, a legal dependent, and children that have not attained the age of twenty-six (26). Coverage for dependent children terminates at the end of the month the dependent child attains the age of twenty-six (26) or at the end of the month of employment by the member.
- 1.10. "Dispensing Fee" means the amount payable by SPONSOR pursuant to Sections 1 and 3.2 of Schedule A of this Agreement for a Participating Pharmacy or Medco to dispense a prescription or authorized refill to an Eligible Person.
- 1.11. "Eligible Person" means each person who, through affiliation with a Group, is eligible for prescription drug benefits pursuant to this Agreement, and such person's qualified dependents.
- 1.12. "Generic Drug" means a generic drug set forth in First DataBank's National Drug Data File, or such other nationally recognized source, as reasonably determined by Medco.
- 1.13. "Group" means a group of Eligible Persons that have the same Plan Design as designated by SPONSOR.
- 1.14. "Initial Term" means the two-year period concurrent with the State of Delaware fiscal years of July 1 through June 30; specifically July 1, 2011, through June 30, 2013.
- 1.15. "Integrated Program" means a program in which Eligible Persons enrolled in such program may have prescriptions dispensed either (i) by a Participating Pharmacy under the Retail Pharmacy Program or (ii) by Medco under the Mail Order Pharmacy Program. Reference to the Retail Pharmacy Program and/or Mail Order Pharmacy Program herein will include services performed by Medco for Eligible Persons enrolled in the Integrated Program.
- 1.16. "MAC" or the "Maximum Allowable Cost" consists of a list of off-patent drugs subject to maximum allowable cost payment schedules developed or selected by Medco. The payment schedules specify the maximum unit ingredient cost payable by SPONSOR for drugs on the MAC list. The MAC list and payment schedules are frequently updated.
- 1.17. "Mail Order Pharmacy Program" means the program described in Section 4 in which Eligible Persons may submit a prescription along with the applicable Copayment/Coinsurance to Medco for dispensing via mail order.
- 1.18. "Maintenance Identification Cards" means new Identification Cards issued to individuals who first become Eligible Persons after the Effective Date (exclusive of new Groups or Group re-enrollments) and replacement Identification Cards for Eligible Persons who have lost or had their Identification Cards stolen.

- 1.19. "Minimum Enrollment" means an enrollment of not less than 60,000 Primary Eligible Participants under the Program.
- 1.20. "Participating Pharmacy" means a retail pharmacy that has entered into an arrangement with Medco that specifies the terms and conditions of the pharmacy's participation in Medco's network/networks servicing SPONSOR's Program, including the rates that Medco will pay the pharmacy.
- 1.21. "Plan Design" means Program drug coverage, days' supply limitation, Copayment/Coinsurance, Formulary (including Formulary drug selection), and other Program specifications applicable to the Program designated by SPONSOR as set forth in this Agreement or otherwise documented between the parties.
- 1.22. "Primary Eligible Participant" means each Eligible Person, excluding Eligible Persons who are qualified dependents.
- 1.23. "Program Pricing Terms" means the (i) financial or pricing terms, allowances, guarantees and incentives set forth in Schedule A of this Agreement, and (ii) performance standards and penalties set forth in Section 5 of this Agreement, and (iii) rebates and guaranteed rebates as set forth in Section 6 of this Agreement.
- 1.24. "Retail Maintenance Program" means the program under this Agreement by which Medco has entered into a contractual relationship with Participating Pharmacies, for the dispensing of Covered Drugs for a days supply greater than sixty (60) days and no greater than ninety (90) days under the Retail Maintenance Program. The Program coverage (Covered Drugs/Exclusions/Limitations) and days supply limitation each under the Retail Maintenance Program will be as set forth in the applicable Plan Design as designated by SPONSOR.
- 1.25. "Retail Maintenance Program Prescription" means a prescription dispensed exclusively by the retail maintenance provider or providers which Medco has entered into a contractual arrangement with respect to the Retail Maintenance Program, for a days supply greater than sixty (60) days and no greater than ninety (90) days.
- 1.26. "Retail Pharmacy Program" means the program described in Section 3 in which Eligible Persons may purchase Covered Drugs from a Participating Pharmacy upon verification of Program eligibility and payment of the applicable Copayment/Coinsurance, and the claim is submitted by the Participating Pharmacy to Medco for payment in accordance with this Agreement and the applicable Medco Participating Pharmacy agreement.
- 1.27. "Specialty Drugs" means pharmaceutical products that are generally biotechnological in nature, with many requiring injection or non-oral methods of administration, and that may have special shipping or handling requirements. Some of the disease categories currently in Medco's specialty pharmacy programs include cancer, cystic fibrosis, Gaucher disease, growth hormone deficiency, hemophilia, immune deficiency, Hepatitis C, infertility, multiple sclerosis, rheumatoid arthritis, and RSV prophylaxis.
- 1.28. "TelePAID® System" or "TelePAID®" means Medco's real time, online system for adjudicating prescription drug claims submitted by retail pharmacies.

## **2. SPONSOR FURNISHED INFORMATION**

SPONSOR will promptly furnish, in a format acceptable to Medco, all information necessary for Medco to render the services set forth herein. Such information will include, but is not limited to:

- 2.1. The name of each Group and whether such Group will be enrolled under the Retail Pharmacy Program, Mail Order Pharmacy Program, or Integrated Program.
- 2.2. The commencement date and termination date of coverage for each Group.
- 2.3. A file of each Group's Eligible Persons, and subsequent timely additions and deletions to such file as changes occur. SPONSOR will pay for any Covered Drug dispensed to a person reported by SPONSOR as no longer an Eligible Person, if such notification is not received by Medco at least two (2) full business days prior to the dispensing date of such prescription. Additionally, Medco agrees to implement terminations or qualifying events as indicated in the eligibility data file provided by SPONSOR or the provider of eligibility data, as designated by SPONSOR, within two (2) business days.
- 2.4. Designation, in writing, of those Plan Design features to be determined by SPONSOR for each Group.
- 2.5. The reimbursement terms applicable to direct reimbursement claims submitted by Eligible Persons under the Retail Pharmacy Program.
- 2.6. The type, number, and description of Medco identification cards ("Identification Cards") required for each Group enrolled in the Retail Pharmacy Program.

### 3. RETAIL PHARMACY PROGRAM

The specific features of the Retail Pharmacy Program are as follows:

- 3.1. **Program Coverage** - The Program coverage (Covered Drugs/Exclusions) and days' supply limitation for each Group covered under the Retail Pharmacy Program will be as set forth in each Group's applicable Plan Design designated by SPONSOR. Up to a sixty (60) day supply of Covered Drugs per prescription or refill may be dispensed under the Retail Pharmacy Program; provided, however, Retail Maintenance Prescriptions may be dispensed for a days supply of up to ninety (90) days, subject to the applicable Plan Design.
- 3.2. **Participating Pharmacy Networks** - Medco will maintain a Participating Pharmacy Network reasonably necessary to provide services under the Retail Pharmacy Program. Medco will comply with 18 Del. C. Chapter 73, the Pharmacy Access Act, in creating and administrating the Participating Pharmacy Network.
- 3.3. **Identification Cards** - Medco will (i) produce Identification Cards for those Eligible Persons designated by SPONSOR, with an accompanying explanatory brochure, and (ii) make direct reimbursement claim forms available through the [medco.com](http://medco.com) internet site for use by Eligible Persons who have not received their Identification Cards, or have had them lost or stolen. Medco will distribute Identification Cards and claim forms to the designated Eligible Persons. All costs associated with distributing and/or mailing such materials are the responsibility of SPONSOR. If SPONSOR elects to re-issue Welcome Packets to its entire membership for the Contract Year commencing July 1, 2011, then Medco will credit SPONSOR with up to \$100,000 for the documented costs related to such full re-issuance.
- 3.4. **Claim Adjudication** - Medco will adjudicate claims for prescription drug benefits in accordance with Medco's TelePAID® System and the applicable Plan Design. Disapproved claims will be transmitted via TelePAID® to the submitting pharmacy with a brief explanation of the cause or causes for disapproval. Should SPONSOR determine that a previously disapproved claim should be approved, and so direct Medco, adjudication of the claim will be accomplished promptly by Medco. Medco is obligated to pay Participating Pharmacies for all claims adjudicated through the

TelePAID® System. SPONSOR will pay Medco for these claims pursuant to Section 1 of Schedule A. Medco will promptly refer to SPONSOR all non-routine inquiries by insurance departments, attorneys, claimants, or other persons following the denial of any claims.

- 3.5. **Administrative Services** - Medco will provide, as applicable, the Base Administrative Services and the Additional Administrative Services set forth in Schedule A.
- 3.6. **Pricing** - The Program Pricing Terms applicable to the Retail Pharmacy Program are set forth in Schedule A, in addition to the performance standards and penalties set forth in Section 5 and the rebates and guaranteed rebates set forth in Section 6 of this Agreement.

#### 4. **MAIL ORDER PHARMACY PROGRAM**

##### 4.1. **Program Coverage**

- 4.1.1 The Program coverage (Covered Drugs/Exclusions) and days' supply limitation for each Group covered under the Mail Order Pharmacy Program will be as set forth in each Group's applicable Plan Design designated by SPONSOR.
- 4.1.2 Medco's mail order pharmacies will not be required to dispense prescriptions for greater than a ninety (90) day supply of Covered Drugs per prescription or refill, subject to the professional judgment of the dispensing pharmacist, limitations imposed on controlled substances and manufacturer's recommendations. Prescriptions may be refilled providing the prescription so states. Prescriptions will not be filled (i) more than twelve (12) months after issuance, (ii) more than six (6) months after issuance for controlled drug substances, or (iii) if prohibited by applicable law or regulation. Medco may dispense prescriptions to an Eligible Person for a vacation supply which may be greater than a ninety (90) day supply of Covered Drugs.

##### 4.2. **Dispensing Procedures**

- 4.2.1 Medco's mail order pharmacies will dispense Covered Drugs to Eligible Persons, and dispense generic drugs when authorized, in accordance with (i) applicable law and regulations in the state in which Medco's mail order pharmacy is located, and (ii) the terms of this Agreement and Plan Design(s). Any prescriptions that are not dispensed will be returned to the applicable Eligible Person with an explanation as to why it could not be dispensed in accordance with Medco's standard operating procedures.
- 4.2.2 All matters pertaining to the dispensing of Covered Drugs or the practice of pharmacy in general are subject to the professional judgment of the dispensing pharmacist.
- 4.2.3 Any drug which cannot be dispensed in accordance with Medco's mail order pharmacy dispensing protocols due to FDA or manufacturer requirements may be excluded from dispensing by Medco.

- 4.3. **Claim Adjudication** - Medco will adjudicate and pay approved claims for prescription drug benefits in accordance with Medco's TelePAID® System and the applicable Plan Design. Should SPONSOR determine that a previously disapproved claim should be approved, and so direct Medco, adjudication of the claim will be accomplished promptly by Medco. SPONSOR will pay Medco for claims adjudicated through the TelePAID® System, pursuant to Section 3 of Schedule A. Medco will promptly refer to SPONSOR all non-routine inquiries by insurance departments, attorneys, claimants, or other persons following the denial of any claims.

- 4.4. **Administrative Services** - Medco will provide, as applicable, the Base Administrative Services and the Additional Administrative Services set forth in Schedule A.

- 4.5. **Pricing** - The Program Pricing Terms applicable to the Mail Order Pharmacy Program are set forth in Schedule A, in addition to the performance standards and penalties set forth in Section 5 and the rebates and guaranteed rebates set forth in Section 6 of this Agreement. Medco will have the responsibility to contract with drug wholesalers and manufacturers regarding Medco's purchase of drugs that are dispensed by it under the Mail Order Pharmacy Program. Medco receives and retains purchase discounts for such purchases from certain manufacturers and wholesalers. Medco will be responsible for any amounts that it owes drug wholesalers or manufacturers that exceeds the amounts it charges and receives from SPONSOR or Eligible Persons, as specified in Section 3 of Schedule A. Medco will retain any payment that it receives from SPONSOR or Eligible Persons as specified in Section 3 of Schedule A that is in excess of the amounts it is obligated to pay to drug wholesalers or manufacturers for the purchase of such drugs that are dispensed under the Mail Order Pharmacy Program.

## 5. **PERFORMANCE STANDARDS AND PENALTIES**

- 5.1. Medco will provide SPONSOR with the Performance Standards set forth in the attached Schedule E. Medco will provide SPONSOR with a quarterly performance standard report within 60 days following the close of the Contract Quarter so that SPONSOR may monitor the ongoing performance of Medco regarding each of the performance standards set forth in Schedule E, excluding 10 (Member Satisfaction Rate), and 13 (Implementation Related Guarantee for Benefit or Plan Design Changes). Medco will provide SPONSOR with an annual report within 60 days following the close of the Contract Year for purposes of measuring and assessing performance penalties, if any, for each of the performance standards set forth above. Should Medco fail to meet one or more of the above performance standard guarantees, then Medco will notify SPONSOR of such event and the appropriate penalty amount, in writing, and will provide Sponsor with the opportunity to comment on the proposed payment amount prior to issuance of the payment. Any penalties assessed against Medco pursuant to this Agreement, will be credited against future billings to SPONSOR under the SPONSOR Program in accordance with Medco's standard procedures, or penalties due and owing, if any, after termination of this Agreement will be paid by check. Notwithstanding anything to the contrary, Medco's maximum liability under this Section 5 for any Contract Year will not exceed [REDACTED] during such Contract Year ("Maximum Liability Amount").

## 6. **FORMULARY**

SPONSOR will be a participating plan sponsor in Medco's Preferred Prescriptions® Formulary as set forth below for the term of this Agreement. SPONSOR will provide Medco with advance notice of each Group that will participate in the Preferred Prescriptions® Formulary.

- 6.1. **Preferred Prescriptions® Formulary** - The Preferred Prescriptions® Formulary is a prescription drug formulary administered by Medco which lists FDA-approved drugs that have been evaluated for inclusion on the Preferred Prescriptions® Formulary. The drugs included on the Preferred Prescriptions® Formulary will be modified by Medco from time to time as a result of factors, including, but not limited to, medical appropriateness, manufacturer rebate arrangements, and patent expirations. Medco will implement Medco's formulary management programs, which may include cost containment initiatives, therapeutic interchange programs, communications with Eligible Persons, Participating Pharmacies and/or physicians (including communications regarding generic substitution programs), and financial incentives to Participating Pharmacies for their participation. Compliance with the Preferred Prescriptions® Formulary and Medco's formulary management program will result in Formulary Rebates as set forth below. Medco reserves the right to modify or replace the Preferred Prescriptions® Formulary (including any modification or replacement, the "Formulary") and formulary compliance methods and cost containment initiatives consistent with good pharmacy practice. SPONSOR agrees that Medco will be the

exclusive formulary administrator for SPONSOR's prescription drug benefit programs during the term of the Agreement. SPONSOR is authorized to use the Formulary only for its own Eligible Persons and only as long as the Program is in effect and administered by Medco.

- 6.2. **Rebates** - Medco and its subsidiaries receive formulary rebates from certain drug manufacturers as a result of the inclusion of those manufacturers' branded products on the Formulary ("Formulary Rebates"). Medco also receives additional rebates and/or fees from certain manufacturers for such products, which may take into account various factors, including the utilization of certain drugs within their respective therapeutic categories for Medco's book of business in aggregate as a result of various commitments and programs, including, but not limited to, formularies ("Additional Rebates and Fees"). Formulary Rebates and Additional Rebates and Fees are jointly referred to as "Total Rebates." Total Rebates does not include payments for services rendered by Medco on behalf of or to pharmaceutical manufacturers, including, for example, adherence, compliance, nursing, and other patient support services; patient referral and assistance services; product launch and other support services; equipment replacement services; clinical and research studies, data, and analytics; and services relating to high-risk biopharmaceuticals. Medco will provide SPONSOR with the greater of (i) 100% of the Total Rebates received by Medco based on the dispensing of each manufacturer's formulary drugs under SPONSOR's Program, or (ii) the Guaranteed Rebates (as defined below). Specialty Drugs are included in calculations, guarantees, credits, and payments regarding Total Rebates and Guaranteed Rebates. Total Rebates due SPONSOR under this Agreement that are received by Medco within eighteen (18) months after termination or expiration of this Agreement will be paid to SPONSOR. Total Rebates received thereafter will be retained by Medco. Prescriptions for Compounds, OTC products, flu shots and vaccines are excluded from all calculations, measurements and payments of Total Rebates and Guaranteed Rebates.
- 6.3. **Guaranteed Rebates** - Within ninety (90) days following the end of each Contract Quarter during the Initial Term that SPONSOR participates in the Formulary, and complies fully with the Formulary management programs implemented by Medco, Medco will provide to SPONSOR Guaranteed Rebate amounts equal to the sum of (i) the applicable amount set forth in Chart A below times the total number of Covered Drug prescriptions, excluding Specialty Drug prescriptions, billed and paid for under SPONSOR's Retail Pharmacy Program, plus (ii) the applicable amount set forth in Chart A below times the total number of Covered Drug prescriptions, excluding Specialty Drug prescriptions, billed and paid for under SPONSOR's Mail Order Pharmacy Program during the same Contract Year plus the applicable amount set forth in Chart A below times the total number of Specialty Drug Covered Drug prescriptions billed and paid for under SPONSOR'S Retail Pharmacy Program during the same Contract Year, plus (iv) the applicable amount set forth in Chart A below times the total number of Specialty Drug Covered Drug prescriptions billed and paid for under SPONSOR's Mail Order Pharmacy Program during the same Contract Year (collectively the "Guaranteed Rebates"). Medco will pay SPONSOR the Guaranteed Rebates due and owing via wire transfer.

**CHART A  
GUARANTEED REBATES\***

CONFIDENTIAL

## CONFIDENTIAL

\*Guarantee amounts are on a per paid claims basis. Prescriptions for Compounds, OTC products, flu shots and vaccines are excluded from all calculations, measurements and payments of Total Rebates and Guaranteed Rebates. Any surplus savings realized in the guaranteed rebates for one Rebate Category shall not be used to fund any shortfall in the guaranteed rebates in another Rebate Category as part of the annual rebate reconciliation with actual Total Rebates.

- 6.4. **Reconciliation of Guaranteed Rebates and Percentage Share of Actual Rebates** – Within one-hundred eighty (180) days following the end of each Contract Year, Medco will calculate and report to SPONSOR its actual Total Rebates received for each such Contract Year on both an aggregate and individual Rebate Category basis. Medco will then compare SPONSOR's total aggregated percentage share of actual Total Rebates for each Rebate Category noted above for such applicable Contract Year to the total sum of Guaranteed Rebates provided by Medco to SPONSOR for each Rebate Category noted above for the same applicable Contract Year. If SPONSOR's total aggregated percentage share of actual Total Rebates received for each individual Rebate Category noted above for such applicable Contract Year is greater than the total sum of the Guaranteed Rebates provided by Medco to SPONSOR for the same such Rebate Category for the same applicable Contract Year, then Medco will provide SPONSOR the dollar for dollar difference of any such amount with all such amounts due and owing under the Rebate Reconciliation being paid to SPONSOR via wire transfer within one-hundred eighty (180) days following the end of the Contract Year.
- 6.5. If a government action, change in law or regulation, change in the interpretation of law or regulation, or action by any drug manufacturer or by SPONSOR has an adverse effect on the availability of Total Rebates or the Program Pricing Terms, the parties will discuss in good faith a reasonable modification to the Program Pricing Terms to preserve, on an equitable basis, the parties' relative economics before such action or change. If the parties are unable to agree upon a modification to the Program Pricing Terms within sixty (60) days, then either party may terminate this Agreement upon written notice to the other party.
- 6.6. Any lines of SPONSOR's business, or any Group of Eligible Persons, for which SPONSOR funds less than 50% of the costs of Covered Drugs under the Plan Design will not be entitled to Formulary Rebates and Additional Rebates and Fees. Calculations and guarantees under Sections 6.2 and 6.3 will not include prescriptions dispensed for any such lines of business or Groups, claims for drugs purchased by a pharmacy pursuant to the 340B program, and government subrogation claims.

## 7. **BILLING/PAYMENT**

- 7.1. Medco will provide SPONSOR with a bi-weekly consolidated electronic invoice via a File Transfer Protocol (FTP) or other mutually acceptable media for services provided by Medco under the Program, in accordance with the Program Pricing set forth in Schedule A. All invoices will be paid in full by SPONSOR within two (2) business days, excluding federal and state holidays, of receipt by the Automated Clearing House (ACH) in accordance with ACH procedures.

- 7.2. SPONSOR will pay Medco for administrative products and services provided by Medco under the Program in accordance with the Administrative Fee provisions set forth in Schedule A. Medco will provide SPONSOR with an Administrative Fee invoice in accordance with Medco's four (4) week Administrative Fee cycle. SPONSOR will pay Administrative Fee invoices in full within fifteen (15) days of the invoice date.
- 7.3. Failure by SPONSOR to make any payments in accordance with the terms of this Agreement will constitute a payment default. Notwithstanding Section 10.2 of this Agreement, if SPONSOR fails to cure any such payment default within three (3) days, in addition to other available remedies, Medco may cease performing any or all of its obligations under, or may terminate, this Agreement upon notice to SPONSOR. After the three (3) day grace period, there will be a late payment fee of 1% per month on the balance due, accruing as of the due date. SPONSOR will reimburse Medco for all collection costs incurred by Medco as a result of any payment default by SPONSOR under this Agreement.

## **8. RECORDS**

- 8.1. Medco will maintain all claims records relating to services performed under this Agreement as required by applicable law. For purposes of this Section 8.1, the term "claim records" includes those SPONSOR specific records necessary to confirm Medco's compliance with claims processing, operational services, and performance standards provided by Medco under this Agreement. Such claims records will be in their original form, on microfilm, microfiche, or other form determined by Medco. SPONSOR claims records may be audited by SPONSOR or its representative reasonably acceptable to Medco, subject to execution of a confidentiality agreement. Medco will provide SPONSOR's auditor with a Claims Detail Layout file for 100% of the claims processed for SPONSOR for a period of twenty-four (24) months prior to the agreed-upon audit date at no cost. Data beyond twenty-four (24) months will be made available to SPONSOR upon its written request and at a cost to be quoted by Medco at its then current standard audit cost. SPONSOR may conduct a claims audit once annually from January through September on an agreed-upon date at Medco's offices as scheduled by agreement of the parties, but not sooner than sixty (60) days after execution of a confidentiality agreement. Subject to Section 9.3, Medco may retain copies of such claims records for its own use.
- 8.2. SPONSOR will provide Medco with an audit scope document in accordance with standard accounting principles which will be discussed with Medco, and Medco will prepare on-site information and documents and provide access to systems for the on-site portion of the audit. If additional information is requested by SPONSOR as part of the audit, Medco will accommodate all such reasonable requests. The auditor may select up to 300 claims for further investigation and Medco will respond to such request within sixty (60) days from the date of the receipt of the claims.
- 8.3. As part of the audit to verify pass-through pricing, Medco will provide both its client billable and participating pharmacy payable amount for the sampling of claims records indicated by SPONSOR. If, in all instances, the amount billed to SPONSOR equals the amount paid to the Participating Retail Pharmacy as documented on the claim record then no further review of the retail pharmacy contract will be warranted. If, however, in any instance, the amount billed to SPONSOR is not equal to the amount paid to the Participating Retail Pharmacy then a further review and audit of Participating Retail Pharmacy contract will be provided.
- 8.4. Medco's agreements with pharmaceutical manufacturers are subject to confidentiality agreements. Any audit of Medco's agreements with pharmaceutical manufacturers may be conducted by (1) an auditing firm reasonably acceptable to Medco whose audit department is a separate stand alone function of its business and that carries insurance for professional malpractice of at least \$2,000,000, or (2) any mutually agreed upon accounting firm, or (3) State of Delaware Comptroller employee auditor. Medco will provide SPONSOR's auditor with complete access to

the pharmaceutical manufacturer agreements and all applicable amendments and additional information as necessary to allow the auditor to determine Medco's compliance with Section 6 above in respect to Total Rebates. The confirmation of rebate audit may be conducted once annually from January through September at Medco's offices as scheduled by agreement of the parties, but not sooner than ninety (90) days after execution of a confidentiality agreement.

- 8.5. Any auditor performing an audit under this Section 8 will warrant and represent that it is not providing Litigation Services to any person or entity in connection with any lawsuit, investigation, or other proceeding that is pending or contemplated against Medco. "Litigation Services" include (a) examining pharmacy claims or any other documents or information, or (b) providing advice, analysis, and/or opinions as a disclosed or undisclosed expert or consultant. The auditor must agree that, for one (1) year after completion of the audit, it will not provide Litigation Services in any lawsuit, investigation, or other proceeding against Medco, except for Litigation Services to SPONSOR.
- 8.6. SPONSOR will furnish its most recent audited financial statement to Medco upon request.
- 8.7. Medco agrees that it will on an annual basis provide Service Organization Control ("SOC") Report I that address the internal control over financial reporting of Medco's Services. The parties understand and agree that the SOC 1 report may include multiple reports to reflect all processes and locations utilized by Medco in performing the Services. All SOC reports will be prepared by external auditors selected by Medco with appropriate credentials. Upon the SPONSOR's request, Medco will confirm directly with the SPONSOR's auditors to confirm separately any SOC report or bridge letters. Medco will cause the SOC reports to be delivered to SPONSOR promptly after such reports are delivered to Medco by the Medco's auditors. Upon the request of the SPONSOR, Medco will deliver to the SPONSOR a letter or report ("Bridge Letter") to address any time gap between the date of the SOC reports delivered by Medco and the date of the SPONSOR's audit that relies on such reports. SOC reports are prepared under the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Attestation Engagements (SSAE) 16. The SOC reports supersede any SAS 70 report for periods ending on or after June 15, 2011.

## **9. CONFIDENTIAL INFORMATION**

- 9.1. Subject to the State of Delaware Freedom of Information Act, 29 Del. C. §10001, *et. seq.*, the Confidential Information of a party (the "disclosing party") which is disclosed to the other party (the "receiving party") will be held by the receiving party in strictest confidence at all times and will not be used by the receiving party (or its affiliates, employees, officers, directors or limited liability company managers ("Representatives")) for any purpose not previously authorized by the disclosing party, except as necessary for Medco to perform the services under this Agreement. The Confidential Information of the disclosing party will not be disclosed or divulged by the receiving party to anyone, except with the prior written permission of the disclosing party and on the condition that the party to whom the Confidential Information is disclosed agrees in writing in advance to be bound by these terms and conditions. The receiving party may disclose the Confidential Information to those of its Representatives who need to review the Confidential Information for the purposes authorized by the disclosing party but only after the receiving party has informed them of the confidential nature of the Confidential Information and directs them to treat the Confidential Information in accordance with the terms of this Agreement. The disclosing party retains all right, title and interest in and to its Confidential Information.

The term "Confidential Information" includes, but is not limited to, any information of either the receiving or disclosing party (whether oral, written, visual or fixed in any medium of expression), relating to either party's services, operations, systems, programs, inventions, techniques, suppliers, customers and prospective customers, contractors, cost and pricing data, trade secrets, know-how, processes, plans, reports, designs and any other information of or relating to either party's

business, including its therapeutic, disease management, and health education programs, but does not include information which (a) was known to the receiving party before it was disclosed to the receiving party by the disclosing party, (b) was or becomes available to the receiving party from a source other than the disclosing party, provided such fact is evidenced in writing and the source is not bound by a confidentiality obligation to the disclosing party, or (c) is developed by the receiving party independently of the disclosing party's Confidential Information, provided that such fact can be documented. Each party will also keep the terms of this Agreement confidential as Confidential Information, except as required by law or regulation.

If the receiving party is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, any informal or formal investigation by any government or governmental agency or authority, law or regulation, or otherwise) to disclose any of the Confidential Information, including a request made through the State of Delaware Freedom of Information Act, the receiving party will notify the disclosing party promptly in writing so that the disclosing party may seek a protective order or other appropriate remedy or, in its sole discretion, waive compliance with the terms of this Agreement. The receiving party agrees not to oppose any action by the disclosing party to obtain a protective order or other appropriate remedy. If no such protective order or other remedy is obtained, or the disclosing party waives compliance with the terms of this Agreement, the receiving party will furnish only that portion of the Confidential Information which it is advised by counsel is legally required and will exercise its reasonable best efforts to obtain reliable assurance that confidential treatment will be accorded the Confidential Information.

- 9.2. SPONSOR and Medco may not utilize the service marks, trademarks, or tradenames of any other party to this Agreement, or any service marks, trademarks, or tradenames so similar as likely to cause confusion, without express written approval of such other party. The programs implemented by Medco will remain the sole property of Medco and will only be used by SPONSOR in connection with the Program and so long as Medco administers the Program.
- 9.3. Medco and SPONSOR will comply with all applicable laws and regulations regarding patient confidentiality as provided in the Business Associate Agreement between the parties. (The Business Associate Agreement is attached hereto as Schedule H.) Medco will not furnish any SPONSOR identifiable data or information to any third party without the written consent of SPONSOR, except as reasonably necessary to implement and operate the Program and fulfill its obligations pursuant to this Agreement or as required by applicable law. The restrictions set forth in this Section 9.3 will not apply to claims data or information which is not identifiable on a SPONSOR basis.

## **10. TERM OF AGREEMENT**

- 10.1. This Agreement will remain in effect for an initial term of two (2) years from the Effective Date (the "Initial Term"), July 1, 2011, through June 30, 2013, and thereafter SPONSOR will have the option to renew for three (3) successive one-year terms by giving written notice, at least one hundred fifty (150) days prior to the end of any such term, to Medco of its intent to renew this Agreement as of the end of the then current term. SPONSOR and Medco agree to participate in good faith negotiations regarding the terms of this Agreement at least one hundred eighty days (180) days prior to the commencement of third term year and each term year thereafter, if any. Notwithstanding the issuance of a termination notice, Medco agrees to continue to render services hereunder and SPONSOR agrees to pay for services of Medco in accordance with the terms of this Agreement for any claims incurred for prescription drug benefits by Eligible Persons while this Agreement was in force.
- 10.2. In the event of a material breach of this Agreement, the party alleging such breach will give written notice thereof to the other parties. If such breach is not cured within thirty (30) days of

receipt of such notice, the non-breaching party may terminate this Agreement upon written notice to the other party.

10.3. SPONSOR may also terminate this Agreement as follows.

10.3.1 The SPONSOR may, by written notice to Medco, terminate this Agreement if it is found after notice and hearing by the SPONSOR that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Medco or any agent or representative of Medco to any officer or employee of the SPONSOR with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

10.3.2 In the event this Agreement is terminated as provided in 10.3.1 hereof, the SPONSOR shall be entitled to pursue the same remedies against Medco it could pursue in the event of a breach of this Agreement by Medco.

10.3.3 The rights and remedies of the SPONSOR provided in Section 10.3 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

10.4. SPONSOR may terminate this Agreement, with or without cause, upon thirty (30) days prior written notice. Medco may terminate this Agreement for cause upon no less than one-hundred eighty(180) days written notice.

## 11. FORCE MAJEURE

Neither Medco nor SPONSOR will be deemed to have breached this Agreement or be held liable for any failure or delay in the performance of all or any portion of its obligations under this Agreement if prevented from doing so by a cause or causes beyond its control. Without limiting the generality of the foregoing, such causes include acts of God or the public enemy, fires, floods, storms, earthquakes, riots, strikes, boycotts, lock-outs, acts of terrorism, acts of war or war-operations, restraints of government, power or communications line failure or other circumstances beyond such party's control, or by reason of the judgment, ruling or order of any court or agency of competent jurisdiction, or change of law or regulation (or change in the interpretation thereof) subsequent to the execution of this Agreement.

## 12. INDEMNIFICATION/LIMITATION OF LIABILITY

12.1. Medco shall indemnify and hold harmless the SPONSOR, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of the Medco, its agents or employees, or (B) Medco's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) Medco shall have been notified in writing by the SPONSOR of any notice of such claim; and (ii) Medco shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

12.2. Medco shall indemnify and hold harmless the SPONSOR of Delaware, its agents and employees, from any and all liability, suits, actions or claims, including any claims or expenses with respect to the resolution of any data security breaches/ or incidents, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of the Medco, its agents or employees, or (B) Medco's breach of this Agreement, provided as to (A) or (B) that (i) Medco shall have been notified promptly in writing by the SPONSOR of Delaware of any notice of such claim; and (ii) Medco shall have control of the defense of any action on such claim and all negotiations for its settlement or compromise.

- 12.3. Medco's obligation to indemnify SPONSOR or any other person or entity under this Section 12 with respect to a SPONSOR claim shall be reduced to the comparative extent that such SPONSOR claim results from acts or omissions constituting negligence, bad faith, willful malfeasance, or reckless disregard or breach of any representation, warranty, covenant, or other obligation of SPONSOR in this Agreement. Medco shall not be liable for any loss, injury, penalty, fines or damage resulting from any failure of SPONSOR, its agents, or assigns, to meet its obligations to Medco under this Agreement or under law.
- 12.4. Medco will maintain, during the term of this Agreement, professional liability coverage with limits not less than \$5,000,000 per occurrence and \$20,000,000 in the aggregate per policy year. The Certificate of Insurance and/or copies of the insurance policies shall be filed with the SPONSOR.
- 12.5. Except as provided in Section 12.3 above, neither Medco nor any subsidiary, affiliate, or any of their respective directors, officers, or employees, will be responsible for any actions resulting from the provision of or failure to provide pharmaceutical goods or services or any other action or failure to act by any retail pharmacy, pharmaceutical manufacturer, or other pharmaceutical providers in connection with this Agreement.
- 12.6. The liability of Medco to SPONSOR for any negligent or willful misconduct by Medco will be limited to the per occurrence liability insurance amount specified in this Section 12.4. No such limitation on Medco's liability will apply to any Actions brought against Medco by an Eligible Person.
- 12.7. Medco or SPONSOR will not be liable to each other for incidental, consequential, punitive, special, or exemplary damages.

### **13. EXCLUSIVITY**

Medco will be the exclusive provider and administrator of PBM Services to SPONSOR and its subsidiaries while this Agreement is in effect. Nothing contained herein, however, will prohibit Medco or any affiliated entity from providing or administering PBM Services and related programs and services to any other entity while this Agreement is in effect.

### **14. MARKET CHECK**

- 14.1 During the second quarter of the second Contract Year, SPONSOR may conduct a market check with the assistance of an independent pharmacy benefit management consultant to verify that the Program Pricing Terms are competitive to the pricing terms and conditions then available in the market, as measured on the total, aggregate basis of such pricing terms, and as described herein ("Market Check"). The Market Check will compare the total, aggregate value of the program pricing terms, using the most recent and available twelve months of data, with the total, aggregate value of the program pricing terms then available in the market for similar services to plan sponsors having the same or similar characteristics as SPONSOR, as detailed below. Each such comparison will be based on the specific, total, aggregate value of the program pricing terms offered by a single vendor to a single plan, and not individual or the best price points available from multiple vendors or a single vendor to multiple plans having the following characteristics: (1) the same or smaller number of covered lives and the same or smaller total amount of drug spend, (2) the same state or sales region, and (3) the similar features of all of the following: plan designs, pricing structures (e.g., pass-through or traditional pricing models), contract term lengths, and drug utilization. Moreover, similar plan design features include, by way of illustration, but not by limitation, copay/coinsurance structure, formulary type and rules, use of an integrated retail and mail order pharmacy program, mail penetration rate, generic dispensing rate, size of retail pharmacy network, type of specialty pharmacy program (e.g., exclusive or non-exclusive) and, if available, demographics (including the size of the active employees versus retiree population). Comparison of the program pricing terms will include, but not be limited to, the mail and retail

pharmacy pricing for Brand Name Drugs, Generic Drugs and Specialty Drugs (taking into account guaranteed values), administrative fees, allowances, other financial guarantees, rebates, all in aggregate, together with consideration of the relevant definitions, such as those for brand name drug and generic drug, and the pricing benchmark and source.

- 14.2 A copy of the Market Check report prepared by the consultant (the "Report") will be submitted to both SPONSOR and Medco. Upon Medco's request, SPONSOR and/or the consultant will provide Medco with a list of the specific, individual clients used for the comparison (such list may be provided on a blinded basis) and such list will show on an individual client basis a comparison of each of the factors delineated above. Consultant will also provide a reasonably detailed description of the methods and assumptions used in the analysis including but not limited to any such methods and assumptions relating to the calculation of the individual pricing components and the net plan costs (defined as ingredient costs, plus dispensing and administrative fees, minus sponsor rebates, and copayments/coinsurance) ("Net Plan Costs").
- 14.3 Medco will provide its comments to SPONSOR and the consultant within fifteen (15) business days of receipt of the Report. If the Report indicates that market conditions would yield a savings in Net Plan Costs of more than 2%, then the parties shall negotiate in good faith a modification to the Program Pricing Terms. The agreed upon revised Program Pricing Terms will become effective on the first day of the Contract Year following the issuance of the Report or sixty (60) days following a fully executed amendment or agreement reflecting the revised program pricing terms and any other applicable provisions of the Agreement, whichever is later. Each party shall be responsible for its own costs related to the Market Check.

## 15. GENERAL

- 15.1. **Independent Contractor** - The relationship between Medco and SPONSOR will solely be that of independent contractors engaged in the operation of their own respective businesses.

### 15.2 Assignment

- 15.2.1 Any attempt by Medco to assign or otherwise transfer any interest in this Agreement without the prior written consent of the SPONSOR shall be void, and such consent shall not be unreasonably withheld; provided, however, that services to be performed by Medco hereunder may be performed by its subsidiaries, affiliates, divisions and/or designees.
- 15.2.2 Other than graphics, printing, and mailing, and other non-core services, no core services specified by this Agreement shall not be subcontracted by Medco, without prior written approval of the SPONSOR. The SPONSOR approves the subcontracting of the following services: call center to APAC Teleservices, Inc., disease management program to Healthways, and paper claim processing to ACS (Affiliated Computer Services). The duties and obligations of the parties will be binding upon, and inure to the benefit of, successors, assigns, or merged or consolidated entities of the parties. Approval by the SPONSOR of Medco's request to subcontract or acceptance of or payment for subcontracted work by the SPONSOR shall not in any way relieve Medco of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.
- 15.2.3 Medco shall be and remain liable for all damages to the SPONSOR caused by negligent performance or non-performance of work under this Agreement by Medco, its subcontractor or its sub-subcontractor. The compensation due shall not be affected by the SPONSOR's approval of Medco's request to subcontract.

15.3 **No Third-Party Beneficiary** - This Agreement has been entered into solely for the benefit of SPONSOR and Medco, and is not intended to create any legal, equitable, or beneficial interest in any third party or to vest in any third party any interest as to enforcement or performance.

15.4. **Notices** - All notices required under this Agreement will be in writing and sent by certified mail, return receipt requested, hand delivery or overnight delivery by a nationally recognized service addressed as follows:

If to SPONSOR:                   The State of Delaware  
Statewide Benefits, Office of Management and Budget  
500 W. Lookerman Street, Suite 320  
Dover, DE 19904  
Attention: Brenda Lakeman, Director

If to Medco:                       Medco Health Solutions, Inc.  
100 Parsons Pond Drive  
Franklin Lakes, NJ 07417  
Attention: Elizabeth Ferguson  
Vice President and Assistant General Counsel

15.5. **Amendments** - This Agreement may be amended only in writing when signed by a duly authorized representative of each party.

15.6. **Financial Responsibility** - If Medco has reasonable grounds to believe that SPONSOR may not meet its payment obligations under this Agreement as they become due, Medco may request information and/or reasonable assurances (including a deposit) from SPONSOR as to its financial responsibility. If the information or assurances are not furnished to Medco within five (5) days, or are not satisfactory in Medco's reasonable judgment, Medco may immediately terminate this Agreement, or suspend performance pending receipt of the requested information or assurances.

15.7. **Plan Design** - The Program Pricing Terms set forth in this Agreement are based upon the Plan Designs, Minimum Enrollment, information/data provided by SPONSOR during or after the proposal/renewal process, and Program specifications agreed to between the parties as reflected in this Agreement and as otherwise hereafter agreed to by the parties in writing. The Program Pricing Terms are also based upon SPONSOR funding 50% or greater of the costs of Covered Drugs for its Eligible Persons. Any modification of the Plan Design or Program specifications, failure to maintain Minimum Enrollment, changes in the information/data provided, or inclusion of Eligible Persons or Groups with Covered Drugs funded less than 50% by SPONSOR may result in a modification by Medco of the Program Pricing Terms retroactive to the date of the change/event. SPONSOR will provide Medco with at least sixty (60) days' prior notice of approved Plan Design changes. When administering the dissemination of Plan Design changes to Eligible Persons as requested by SPONSOR, Medco will provide Eligible Persons with prior notice of such changes as mutually agreed upon by SPONSOR and Medco. If the number of SPONSOR's Eligible Persons eligible for Medicare is materially reduced or eliminated for any reason, Medco may communicate with those persons at Medco's expense regarding Part D options, including Medco Part D services, and the Program Pricing Terms may be modified to reflect the reduction or elimination.

15.8. **Interpretation of Plan** - SPONSOR will not name or represent that Medco is, and Medco will not be, a Plan Administrator or, except as specifically set forth in this Section, a fiduciary of any prescription drug benefit plan (the "Plan"), and the regulations promulgated under ERISA. SPONSOR will have complete discretionary, binding, and final authority to construe the terms of the Plan, to interpret ambiguous Plan language, to make factual determinations regarding the payment of claims or provisions of benefits, to review denied claims and to resolve complaints by Eligible Persons.

Notwithstanding the foregoing, SPONSOR delegates to Medco the limited authority and discretion solely to undertake administrative and/or clinical initial determinations, first-level, second-level and urgent appeals of claims eligibility and benefit applications determinations filed by Eligible Persons with SPONSOR's Program. Medco will process and determine all filed administrative and/or clinical first-level, second-level and urgent appeals under the procedures and within the time frames specified in the Department of Labor claims processing regulations, 29 C.F.R. § 2560.503-1 (the "Claims Procedure Regulations"). For this purpose, Medco agrees that it shall be the appropriate named fiduciary in accordance with Section 2560.501-1(h) of the Claims Procedure Regulations. Medco's decisions will be conclusive and binding and not subject to further review by SPONSOR. If, however, with respect to a claim or appeal, any of the duties, whether delegated to Medco or not, are assumed or acted upon by SPONSOR, or by any agent or vendor of such entity ( e.g. utilization management vendor), then Medco will not have any fiduciary duties or discretionary authority with respect to claim or appeal, and SPONSOR will be deemed to have such fiduciary duties and discretionary authority and will be solely liable for claim or appeal. Notwithstanding the services of Medco under this Section, all decisions concerning the rendering of health care services are determined by the Eligible Person's physician, hospital or other health care provider and the Eligible Person.

15.9. **Taxes and TPA** SPONSOR is a sovereign entity, and shall not be liable for the payment of federal, state, and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement. Any applicable sales, use, or other similarly assessed and administered tax imposed on items dispensed, or services provided hereunder, or any other amounts Medco may incur or be required to pay arising from or relating to Medco's performance of services as a third-party administrator in any jurisdiction, will be the sole responsibility of SPONSOR or its Eligible Persons. If Medco is legally obligated to collect and remit sales, use, or other similarly assessed and administered tax in a particular jurisdiction, or to incur or pay any amount relating to third-party administrator services, the tax or other amount will be reflected on the applicable invoice or subsequently invoiced at such time as Medco becomes aware of such obligation or as such obligation becomes due.

15.10. **Governing Law** - This Agreement will be construed and governed in accordance with the laws of the State of Delaware, except when federal law has precedence. However, all matters relating to the Mail Order Pharmacy Program operations of Medco will be governed by the laws of the state in which Medco's mail order pharmacy is located. Medco consents to the exclusive jurisdiction and venue of the courts of the State of Delaware.

15.11. **Non-Appropriation of Funds** - Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated the SPONSOR may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of the SPONSOR requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and the SPONSOR's obligations under it shall be extinguished at the end of the fiscal year in which the SPONSOR fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

15.12. **Enforceability** - If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced

accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

- 15.13. **Section Headings** - Section headings are inserted for convenience only and will not be used in any way to construe the terms of this Agreement.
- 15.14. **Waiver** - The waiver of any breach or violation of any term or provision hereof will not constitute a waiver of any subsequent breach or violation of the same or any other term or provision. No waiver or relinquishment by a party of any right or remedy under this Agreement will occur unless the waiver or relinquishment is in a written document signed by an officer of the party.
- 15.15. **Approvals** - Whenever approval of any party is required under this Agreement, such approval will not be unreasonably withheld.
- 15.16. **Organization** - Each party is duly organized, validly existing and in good standing, and has the power to own its property and to carry on its business as now being conducted by it. Medco and all sub-contractors represent that they are properly licensed and authorized to transact business in the State of Delaware as applicable and provided in 30 *Del. C.* §2502.
- 15.17. **Authorization** - The execution and delivery of this Agreement and the consummation of the transactions contemplated herein on its part, has been duly authorized by all necessary action by each party.
- 15.18. **No Conflict of Interest or Other Restrictions** - No party has a conflict of interest which would impact its ability to perform fairly its obligations under this Agreement, and no party is subject to any restrictions, contractual or otherwise, which prevent or would prevent it from entering into this Agreement or carrying out its obligations hereunder.
- 15.19. **No Violation** - Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will be a violation or default of any term or provision of the party's governance documents (e.g., its certificate of incorporation or bylaws or operating agreement) or of any material contract, commitment, indenture, or other agreement or restriction to which it is a party or by which it is bound.
- 15.20. **Binding Effect** - This Agreement has been duly executed and delivered by each party, and is a valid and binding obligation of each party, enforceable against such party in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and general principles of equity.
- 15.21. **Original Agreement/Counterparts** - The parties will execute two identical originals of this Agreement. Each party will retain one of the originals. This Agreement may be executed in one or more counterparts, any one of which need not contain the signatures of more than one party, but all counterparts taken together will constitute one instrument.
- 15.22. **Public Announcement** - Except as required by law or regulation, neither party will make any public announcement nor issue any press release relating to this Agreement without the written consent of the other party. This provision does not restrict either party from submitting necessary or appropriate filings with the SEC.
- 15.23. **Dispute Resolution**. Except for those matters subject to emergent or injunctive relief, in the event that any dispute relating to this Agreement arises between SPONSOR and Medco, either party may, by written notice, demand a meeting regarding the dispute, to be attended by executive officers of each party, who will attempt in good faith to resolve the dispute. If the dispute cannot be resolved through executive negotiations within thirty (30) business days after the date of the

initial notice, each party will retain all rights to bring an action regarding such matter in accordance with law.

- 15.24. **Entire Agreement** - This agreement and its Schedules shall constitute the entire agreement between the SPONSOR and Medco with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); and (b) the SPONSOR's request for proposals, dated October 1, 2010 ("RFP"). The RFP is specifically incorporated into this Agreement and made a part hereof.

- 15.25. **Construction** - SPONSOR and Medco have participated jointly in the negotiation of this Agreement, and each has had the advice of legal counsel to review, comment upon, and draft this Agreement. Accordingly, it is agreed that no rule of construction shall apply against any party or in favor of any party, and any uncertainty or ambiguity shall not be interpreted against any one party and in favor of the other.

- 15.26. **Survival** - The provisions of Section 7.33, Billing/Payment, Section 9, Confidentiality, and Section 12, Indemnification, and the last sentence of Section 10.1, Term of Agreement will survive the termination of this Agreement.

- 15.27. **Compliance with Law** - Medco will comply with all applicable federal, state and local laws and regulations related to the performance of its services under this Agreement. Medco reserves the right to seek an equitable adjustment in the Program Pricing Terms to the extent, if any, there is a change in law that has a material impact on the economics or provision of Services under this Agreement. In addition, Medco and SPONSOR shall take all actions necessary and appropriate to assure that they comply with all applicable federal, state, and local laws and regulations, including, without limitation, the Anti-Kickback Statute, the Public Contracts Anti-Kickback Act, the Stark Law, and laws and regulations relating to disclosure or notification of plan benefits or the terms of rebate administration under this Agreement to SPONSOR's Groups. Medco's Code of Conduct and its policies and procedures relating to compliance with the above-named laws are available at [www.medcohealth.com/medco/corporate/home.jsp](http://www.medcohealth.com/medco/corporate/home.jsp) by clicking on the Investors tab and then the Corporate Governance link.

- 15.28. **Nondiscrimination**. Medco agrees that it will not discriminate against any employee or applicant for employment because of race, creed, color, sex, or national origin. Medco shall comply with all federal and State laws, regulations and policies pertaining to the prevention of discriminatory employment practices. Failure to perform under this covenant constitutes a material breach of contract.

- 15.29. **Termination; Funding Out**. The continuation of this Agreement is dependent upon the continuing availability of funds appropriated by the General Assembly of the State that are available for expenditure under this Agreement; accordingly, this Agreement may be terminated on the earlier of (i) the first day of the first fiscal year of the State for which no such funds will be appropriated or otherwise made available, or in which no funds are available for purposes of this

Agreement; or (ii), upon the exhaustion of previously appropriated or available funds. In such circumstances the SPONSOR may terminate this Agreement by giving Medco written notice of such nonappropriation or unavailability of funds. All payment obligations of the SPONSOR will cease upon the date of termination specified in such notice. Notwithstanding the foregoing, the SPONSOR agrees (i) not to effect termination of this Agreement under this provision, if funds are available for this or functionally similar services, and (ii) to use reasonable efforts to obtain approval for necessary funds to continue this Agreement by taking appropriate actions to request adequate funds for such purpose. If a notice of termination is given by the SPONSOR hereunder, the SPONSOR's obligations to pay any amounts due or to perform any covenants requiring or resulting in the expenditure of money are expressly limited to the extent of the specific appropriations made to fund this Agreement, and nothing in this Agreement shall be construed as creating any monetary obligation on the part of the SPONSOR or the State beyond the amount set forth in this sentence.

- 15.30. **Improper Solicitation or Fees.** Medco warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the SPONSOR shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
- 15.31. Medco will make available to SPONSOR within fifteen business days from its filing of its 10-Q and 10-K SEC filings the legal proceedings section for SPONSOR'S review.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date indicated below.

**MEDCO HEALTH SOLUTIONS, INC.**

**THE STATE OF DELAWARE  
OFFICE OF MANAGEMENT AND  
BUDGET**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: Vice President and Assistant General Counsel

TITLE: Director, Statewide Benefits

DATE: 6/21/2011

DATE: 6/23/11

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PERMFORM 26456.29 (02/04/11) gsm

**SCHEDULE A**  
**PROGRAM PRICING TERMS**

**CONFIDENTIAL**

**SCHEDULE B**

**SPECIALTY DRUGS UNDER THE  
MAIL ORDER PHARMACY PROGRAM**

**CONFIDENTIAL**

## SCHEDULE C

### MEDICARE PART D PRESCRIPTION DRUG PROGRAM EMPLOYER SUBSIDY SERVICES

#### 1. DEFINITIONS

“Qualifying Covered Retiree” means an Eligible Person who is inactive, eligible for Medicare, and qualifies for the CMS 28% tax-free Subsidy under CMS regulations, 42 C.F.R. Section 423.880 *et seq.*, and guidance, as determined and communicated by SPONSOR to Medco and verified by CMS.

“Part D Subsidy Services” means those portions of the Base Part D Subsidy Services set forth in the attached Exhibit B that are selected by SPONSOR as reflected in the pricing terms attached as Exhibit A and, to the extent of SPONSOR’s election indicated in Exhibit B, Optional Part D Subsidy Services. Base Part D Subsidy Services and Optional Part D Subsidy Services are described in Exhibit B.

Unless otherwise defined in this Amendment, all terms with initial capitals shall have the meanings assigned to those terms in the PBM Agreement or, if applicable, the CMS regulations at 42 CFR 423.880 *et seq.*

#### 2. CMS REQUIRED PROVISIONS

- 2.1 Medco will perform the services described in Exhibit B as selected by SPONSOR and memorialized in the attached Exhibit A pricing terms. Medco will participate in SPONSOR’s Medicare Qualified Retiree Prescription Drug Plan, and its activities will be consistent and comply with SPONSOR’s obligations as a Sponsor under 42 CFR 423.880, 423.882, and 423.884(c)(3).
- 2.2 Medco and SPONSOR will abide by all applicable Federal and State laws and regulations and CMS guidance related to the Part D Subsidy program. 42 CFR § 423.884(c)(3)(i). SPONSOR and Medco acknowledge that the information provided in connection with this Amendment is used for purposes of obtaining Federal funds. 42 CFR §423.884(c)(3)(iii).
- 2.3 To the extent applicable to the Part D Subsidy Program, Medco will make its books and other records available in accordance with 42 CFR § 423.888(c), which gives HHS, the Comptroller General or their authorized designees, the right to inspect. SPONSOR, and to the extent applicable Medco, shall maintain the following records for six (6) years after the expiration of the plan year in which the costs were incurred or longer in the event of (or if SPONSOR should know that the records are subject to, and inform Medco in writing of) an ongoing investigation, litigation or negotiation involving civil, administrative or criminal liability, in accordance with 42 CFR § 423.888(d)(1) through (3): reports and working documents of the actuaries who wrote the attestation submitted in accordance with 42 CFR § 423.884(a); all documentation of costs incurred and other relevant information utilized for calculating the amount of the Subsidy payment including the underlying claims data; any other records specified in applicable CMS guidance.

#### 3. PRICING

The Pricing Terms for the provision of Part D Subsidy Services as set forth in Exhibit A.

#### 4. MEDCO OBLIGATIONS

Medco shall, upon request, provide SPONSOR the Part D Subsidy Services set forth in Exhibit B as selected by SPONSOR and memorialized in the pricing terms set forth in Exhibit A, except as may be modified by the parties in writing. SPONSOR, acting on behalf of the Plan, authorizes Medco to use and disclose Protected Health Information to perform Part D Subsidy Services and assist the Plan in complying with its obligation to disclose information to CMS as necessary to enable SPONSOR to claim the Subsidy. Subject to the information provided by Sponsor, Medco shall provide accurate data. Medco shall ensure that any disclosure of information pursuant to this Amendment complies with (or is exempt from) the requirements of the Health Insurance Portability and Accountability Act concerning data security and the disclosure of protected health information.

## **5. SPONSOR OBLIGATIONS**

- 5.1 SPONSOR shall provide CMS and Medco with the eligibility file with the Qualifying Covered Retirees. Medco shall collect from CMS and remit to SPONSOR the verifications of eligibility by CMS for the Qualifying Covered Retirees. SPONSOR shall provide Medco with periodic updates to the Qualifying Covered Retiree eligibility file, as required by CMS. Medco shall have no involvement with, nor responsibility for, the eligibility determination. SPONSOR is also responsible for claims of Eligible Persons, even if it is later determined that such claims are not eligible for the Part D Subsidy. SPONSOR reserves the right to determine for which enrollee populations SPONSOR will apply for the Subsidy. SPONSOR shall elect to submit the updates to CMS on a monthly or quarterly basis, consistent with applicable CMS directives.
- 5.2 Upon SPONSOR's request, Medco shall submit to CMS the initial Qualifying Covered Retiree eligibility file for calendar year 2006 and necessary information. Thereafter, for subsequent years, SPONSOR shall provide the eligibility file to Medco no later than fifteen (15) business days prior to the date the submission is due to CMS. SPONSOR acknowledges that for those subsequent years, initial submission may be due to CMS at least 90 days before the start of the plan year.
- 5.3 SPONSOR has not delegated to Medco the responsibility for filing an actuarial equivalence attestation with CMS, in accordance with CMS directives. SPONSOR acknowledges that CMS has required the actuarial attestation to be submitted to CMS on the date SPONSOR's Subsidy application is filed with CMS.
- 5.4 SPONSOR acknowledges that it is required to submit an application for the Subsidy to CMS on an annual basis. If this Amendment is renewed for subsequent term(s), SPONSOR shall provide an updated eligibility file with the Qualifying Covered Retirees and all necessary information to Medco at least fifteen (15) business days before the application is due to CMS for each subsequent year.
- 5.5 SPONSOR acknowledges that deviation from the requirements in this Section 5 and CMS requirements may result in noncompliance that will affect SPONSOR's eligibility for the Subsidy.
- 5.6 SPONSOR shall reasonably cooperate with Medco in providing any information required to be submitted to CMS or necessary for any submission to CMS. SPONSOR acknowledges that information provided to Medco in connection with the Program may affect the calculation of CMS payments to SPONSOR and that inaccuracies to CMS in such information may result in Federal civil action and/or criminal prosecution. SPONSOR agrees that all of the information it will submit to Medco in connection with the Program shall be accurate, complete, and truthful, and shall indemnify Medco for any claims resulting from its failure to do so.

## **6. BILLING/PAYMENT**

All invoices will be issued by Medco and paid in full by SPONSOR in accordance with the terms for payment of administrative fee invoices contained in the Billing/Payment section of the PBM Agreement.

**7. TERM OF AGREEMENT FOR PART D SUBSIDY SERVICES**

This Amendment for Part D Subsidy Services will remain in effect from the Effective Date through the end of the PBM Agreement. Notwithstanding the issuance of any termination notice, Medco agrees to continue to render services hereunder and SPONSOR agrees to pay for services of Medco in accordance with the terms of this Amendment while this Agreement is in force. Notwithstanding any other provisions to the contrary in this Amendment, this Amendment shall automatically terminate in the event and on the date that SPONSOR's status as a Sponsor under 42 CFR 423.880 *et seq.* terminates.

**8. [RESERVED]**

**9. PLAN DESIGN**

The Pricing Terms set forth in Exhibit A of this Amendment are based upon the Part D Subsidy Services, CMS regulations and guidance as of August 1, 2010, and Program specifications as reflected in this Amendment. Any modification of the CMS regulations or guidance, or Program specifications, may result in a modification by Medco of the Pricing Terms retroactive to the effective date of such modification.

**10. SURVIVAL**

The provisions of Sections 2 (CMS Provisions), and 4.1 (to the extent of the disclosure of Protected Health Information), will survive the termination of this Amendment.

The terms and conditions set forth herein for the provision of Part D Subsidy Services are supplemental to the terms and conditions of the PBM Agreement and, as such, all terms and conditions of the PBM Agreement shall remain in full force and effect.

**EXHIBIT A TO SCHEDULE C  
PRICING TERMS FOR  
PART D SUBSIDY SERVICES**

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**Exhibit B to Schedule C**  
**DESCRIPTION OF PROGRAM SERVICES FOR**  
**PART D SUBSIDY SERVICES**

**1. BASE SERVICES**

Base Services consist of the following:

**1.1 Application Support**

Medco's application assistance includes:

- a. reviewing the Retiree Drug Subsidy Plan Sponsor application upon its release by CMS and providing guidance and responsibility determination between Medco and SPONSOR for its completion;
- b. assisting SPONSOR with appropriate language for use in the application;
- c. providing the appropriate claims information or other information required by the application; and
- d. providing a template work plan which will include installation and implementation guidelines.

**1.2 Eligibility Updates, CMS Subsidy Interface and Billing**

**1.2.1 Eligibility.** CMS requires Plan Sponsors to submit Qualifying Covered Retiree eligibility updates on a monthly basis to keep an accurate account of Subsidy-eligible enrollees. Upon SPONSOR's request, Medco will perform the following eligibility and CMS interface functions:

- 1.2.1.1** Medco will serve as the eligibility update interface between SPONSOR and CMS, provided, however, that (i) in the event SPONSOR has entered into a Voluntary Data Sharing Agreement (VDSA) with CMS, that VDSA will not be used for Part D Subsidy Services, nor (ii) SPONSOR does not require the consolidation of multiple eligibility files from multiple third party vendors.
- 1.2.1.2** Upon receipt of the Subsidy eligibility determination by CMS, Medco will provide SPONSOR with a control feedback file. SPONSOR will make the appropriate revisions to their eligibility file and return the file to Medco, including any directions for transferring members determined to be ineligible by CMS into a new group, if required.
- 1.2.1.3** Medco will provide SPONSOR with a proposed revised eligibility record layout that includes new fields for Medicare HIC numbers, a Medicare-eligible indicator, and a Qualifying Covered Retiree indicator.
- 1.2.1.4** SPONSOR will confirm the accuracy of the revised eligibility lay out prior to providing this information back to CMS. Social Security numbers, dates of birth, member names, addresses, and relationships to the member (member or spouse) must also be provided to CMS. SPONSOR must ensure that all of the required data elements are populated and sent to Medco. In the event SPONSOR (i) has entered into and will use a VDSA with CMS for services under this Amendment, or (ii) requires the consolidation of multiple eligibility files from multiple third party vendors, Medco will not provide the eligibility update interface.

- 1.2.2 Billing. To the extent requested by SPONSOR, Medco will prepare and transmit to CMS via mainframe, the Part D Subsidy billing package, which will contain both summary and detailed per retiree information for the Part D Subsidy. Medco will calculate the allowable gross costs and associated Subsidy amount (net of any rebates received by Medco on behalf of SPONSOR's membership, regardless of the rebates paid by Medco to SPONSOR, adjusted for annual financial guarantees, if any), and provide the information to SPONSOR for approval and payment request to CMS.
- 1.2.3 Medco offers SPONSOR the option of a monthly, quarterly, interim annual or, if SPONSOR does not use a VDSA with CMS for Part D Subsidy Services, annual billing cycle (assuming CMS continues to allow these options). The annual billing option is not available if SPONSOR has a VDSA in effect with CMS. SPONSOR shall advise Medco at the time of the application, if it wishes to receive payments from CMS on a monthly, quarterly, interim annual or annual basis so that Medco may prepare submissions accordingly. The monthly and quarterly options will utilize estimated rebates to calculate the Subsidy amount, whereas the annual option will utilize actual rebates earned and certain annual guarantees deemed to be price concessions. As estimated rebates will be utilized for monthly, quarterly, and interim annual Subsidy filings, Medco will calculate a rebate and annual guarantees deemed to be price concession "true up" to adjust the Subsidy billing according to actual rebates as required by CMS no later than 15 months after the end of the Plan year. *If SPONSOR wishes to challenge specific CMS eligibility or payment determinations, it will be responsible for filing appeal with CMS.*
- 1.2.4 Medco's Subsidy billing services can only be utilized (i) if Medco manages the eligibility interface with CMS, or, (ii) in the event SPONSOR has entered into and uses a VDSA with CMS for services under this Amendment, or SPONSOR requires the consolidation of multiple eligibility files from multiple third party vendors, if SPONSOR provides complete and accurate eligibility information, including Qualifying Covered Retirees eligibility, the Subsidy eligibility period applicable to those Retirees, and CMS verifications, to Medco. The Subsidy billing process relies on knowing for which individuals SPONSOR can collect the Subsidy. SPONSOR shall be solely responsible for actual approval and submission via the CMS Drug Retiree Drug Subsidy ("RDS") website of the data.

### 1.3 Member Communications Template Language

Medco will provide SPONSOR with sample member communication language to use with Medicare-eligible populations. Production support and mailing of these communications are subject to an additional fee. Medco will provide template member communication language for the following member communication materials:

- a. Notice of Creditable Coverage letter (upon release of CMS guidance)
- b. Quarterly Newsletter Articles
- c. Frequently Asked Questions (FAQs) and their corresponding responses to be used in member communications or CSR training
- d. Medicare Part D specific content for benefit materials, "Welcome Kits"\*<sup>2</sup>, and Open Enrollment campaigns

\* If Medco currently provides Welcome Kits under the PBM Agreement, Medco will continue to do so under current contract provision. This refers only to Medicare-specific content.

**2. SECONDARY SERVICES**

To the extent requested by SPONSOR, Secondary Services include the following: Submission to the True Out of Pocket ("TrOOP") facilitator, of TrOOP costs for the secondary claims of SPONSOR's enrollees enrolled in Part D.

## SCHEDULE D

### MEDICARE PART B PROGRAM

This Schedule sets forth the terms and conditions pursuant to which Medco Health Solutions, Inc. and certain of its subsidiaries ("Medco") will provide a program (the "Part B Program") to facilitate benefits coordination for SPONSOR and its Eligible Persons that are entitled to receive primary coverage for Medicare Part B drugs/supplies pursuant to this PBM Agreement (the "Agreement").

1. **Medco Mail Service.** If SPONSOR elects to enroll in the Mail Service component of the Medicare Part B Program then for Medco mail service prescriptions for certain Medicare Part B eligible drugs and supplies (each a "Part B Eligible Drug/Supply") for Eligible Persons covered under Medicare Part B as primary ("Part B Eligible Persons"), Medco will promptly forward prescription information to a Medco subsidiary that is a licensed Medicare Part B provider. Such Medco subsidiary will dispense the Part B Eligible Drug/Supply and submit the claim to CMS for Part B reimbursement. Upon CMS reimbursement of a claim, Medco will submit the prescription for any outstanding amount due under secondary coverage adjudication according to SPONSOR's plan rules for Medicare Part B COB, including Part B Eligible Person Copayment /Coinsurance, as applicable.
2. **Retail.** For Part B Eligible Drug/Supply prescriptions presented at Participating Pharmacies, Medco will provide electronic messaging to Participating Pharmacies to reject coverage for the prescription (subject to pharmacy override) and communicate the availability of Part B coverage at the Participating Pharmacy point-of-sale. Medco will maintain a list of the Part B Eligible Drugs/Supplies to identify prescriptions that will include the point-of-service messaging.
3. **Communications.** Medco will provide an initial announcement letter and will coordinate with SPONSOR to educate Part B Eligible Persons about the Part B Program. The Part B Program may include communications by Medco with Part B Eligible Persons and/or physicians in connection with the operations of the Part B Program, and/or the compilation of any data necessary in order to file claims with CMS for reimbursement. SPONSOR is responsible for informing its Part B Eligible Persons of any changes in their plan benefit.
4. **Identification of Part B Eligible Members.** SPONSOR will identify the Part B Eligible Persons to Medco in accordance with SPONSOR's standard eligibility data sent to Medco. Medco will use and rely on this information to identify those Part B Eligible Persons who are receiving Part B Eligible Drugs/Supplies.
5. **Fees and Reports.** SPONSOR will pay Medco (i) [REDACTED] request forwarded to the Medco subsidiary that is a licensed Part B provider if SPONSOR elects to enroll in the Mail Service component of the Medicare Part B Program, and (ii) [REDACTED] message at point of sale for a Part B Eligible Drug/Supply. SPONSOR shall also pay Medco for postage, on the announcement letter, and any customization of the announcement letter shall be subject to an agreed-upon fee. The Part B Program fees will be included in SPONSOR's Administrative Fee invoice as set forth in the Agreement. Medco will provide SPONSOR with a quarterly report listing the savings realized by SPONSOR for such period based on the Part B Program.
6. **Termination.** Either party reserves the right to terminate this Part B Program upon 60 days written notice to the other party with or without cause.

**SCHEDULE E**

**PERFORMANCE STANDARDS AND PENALTIES**

The following performance standards will apply during the term of this Agreement:

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**SCHEDULE E-1**

**STATE OF DELAWARE REPORT SCHEDULE**

File Name: Master Report List FINAL.xls

Master Report/Data Schedule  
 Medco Pharmacy Benefit Manager  
 FY12 (July 1, 2011 to June 30, 2012)  
 FINAL

File Description	Direction	Frequency	Transport Method	Sending Contact	Receiving Contact	Target Date	Penalty Application Date
IVF Grandfathered Claims	Medco to Blue Cross	Bi-Weekly	secure email	Medco Benefits Fulfillment Group	Faith Joslyn P32	3 days after the claims invoice date	7 days after the claims invoice date
IVF Grandfathered Claims	Medco to Aetna	Bi-Weekly	secure email	Medco Benefits Fulfillment Group	Julie Caynor	3 days after the claims invoice date	7 days after the claims invoice date
Claims Detail Layout (Universal File) with Invoice Information	Medco to SOD Financial Ops	Bi-Weekly	CD sent UPS	Medco Billing Department	Casey Oravez	1 day after the claims invoice date	3 days after the claims invoice date
Claims Detail Layout (Universal File)	Medco to Thompson	Bi-Weekly	FTP electronic transfer	Medco Information Exchange Group	electronic portal	1 day after the claims invoice date	3 days after the claims invoice date
Claims Detail Layout (Universal File)	Medco to Alere	Bi-Weekly	FTP electronic transfer	Medco Information Exchange Group	electronic portal	1 day after the claims invoice date	3 days after the claims invoice date
Claims Detail Layout (Universal File)	Medco to BCBS	Bi-Weekly	FTP electronic transfer	Medco Information Exchange Group	electronic portal	1 day after the claims invoice date	3 days after the claims invoice date
HB446 Cycle Reports	Medco to OMB	Monthly	secure email	Medco Account Management Team	Gail Hudson	3 days after the last invoice date of the month	10 days after the last invoice date of the month
Duplicate Dependent Coverage	Medco to SBO	Quarterly	secure email	Medco Account Management Team	Lois Houston	7 days following close of quarter	10 days following the close of the quarter
QB7	Medco to SBO	Quarterly	secure email	Medco Account Management Team	Lois Houston / SBO	45 days following close of quarter	50 days following the close of the quarter
QB7 - OPEB	Medco to SBO	Quarterly	secure email	Medco Account Management Team	Lois Houston / SBO	45 days following close of quarter	50 days following the close of the quarter
Quarterly Review Report	Medco to SBO	Quarterly	hard copies (6 or as requested) and secure email	Medco Account Management Team	Lois Houston / SBO	75 days following close of quarter	80 days following close of quarter for meeting materials. Should SBO staff request a delay for the quarterly meeting, the parties will discuss if the 80 days should be expanded
Medicare D RDS Reconciliation Results	Medco to SBO	Annual	CD sent via UPS	Medco Account Management Team	SBO Director Brenda Lakeman	No later than 15 months following the close of the previous fiscal year	Penalty will be invoked if the RDS reconciliation results are not provided by Medco no later than 15 months after the close of the previous fiscal/plan year. Medco agrees to meet this timeframe provided that the SBO provides final approval on the retiree list no later than 45 days prior to the CMS deadline of 15 months following the close of the plan year.

Please note: references to days are calendar unless otherwise specified.  
 Copy of Medco's invoice calendar will be provided for each year upon request.



Master Report/Data Schedule  
 Medco Pharmacy Benefit Manager  
 FY12 (July 1, 2011 to June 30, 2012)  
 FINAL

File Description	Direction	Frequency	Transport Method	Sending Contact	Receiving Contact	Target Date	Penalty Application Date
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IVF Grandfathered Claims	Medco to Aetna	Bi-Weekly	secure email	Medco Benefits Fulfillment Group	Julie Caynor	3 days after the claims invoice date	7 days after the claims invoice date
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QB7	Medco to SBO	Quarterly	secure email	Medco Account Management Team	Lois Houston	7 days following close of quarter	10 days following the close of the quarter
QB7 - OPEB	Medco to SBO	Quarterly	secure email	Medco Account Management Team	Lois Houston / SBO	45 days following close of quarter	50 days following the close of the quarter
Quarterly Review Report	Medco to SBO	Quarterly	secure email	Medco Account Management Team	Lois Houston / SBO	45 days following close of quarter	50 days following the close of the quarter
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Medicare D RDS Reconciliation Results	Medco to SBO	Annual	CD sent via UPS	Medco Account Management Team	SBO Director Brenda Lakeman	No later than 15 months following the close of the previous fiscal year	Penalty will be invoked if the RDS reconciliation results are not provided by Medco no later than 15 months after the close of the previous fiscal/plan year. Medco agrees to meet this timeframe provided that the SBO provides final approval on the retiree list no later than 45 days prior to the CMS deadline of 15 months following the close of the plan year.

Please note- references to days are calendar unless otherwise specified.  
 Copy of Medco's invoice calendar will be provided for each year upon request.



**SCHEDULE E-2**

**STATE OF DELAWARE**  
**ACCOUNT TEAM SATISFACTION SURVEY**

File Name: Medco Survey FINAL 6-6-11.doc

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*Account Management Team Survey*

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*Medco*

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Account Management Team Survey – Medco

For Reporting Period: FY \_\_\_ Quarter : \_\_\_\_\_  
 Completed by: SBO Vendor Management Team

The Vendor Management Team of the Statewide Benefits Office is using this tool to evaluate the Account Management Team of Medco in serving as a provider of medical services to the employees and pensioners of the State of Delaware.

**Knowledge:** Indicate the extent to which you agree that your Account Management Team:

	Strongly Agree 5	Agree 4	Somewhat Agree 3	Disagree 2	Strongly Disagree 1	
1. Understands your benefits plan	<input type="checkbox"/>	For any "1" or "2" responses, please provide specific comments in the area below				
2. Understands your business needs. Meets with you to establish needs and service expectations.	<input type="checkbox"/>	_____				
3. Understands your service expectations. Develops a business plan that incorporates the agreed upon needs and expectations.	<input type="checkbox"/>	_____				
4. Displays knowledge regarding prescription benefit products and services	<input type="checkbox"/>	_____				
5. Clearly explains your report results	<input type="checkbox"/>	_____				

Average Rating \_\_\_\_\_

**Professionalism:** Indicate the extent to which you agree that your Account Management Team:

	Strongly Agree 5	Agree 4	Somewhat Agree 3	Disagree 2	Strongly Disagree 1	For any "1" or "2" responses, please provide specific comments in the area below
6. Actively listens to and acknowledges your issues and concerns	<input type="checkbox"/>	_____				
7. Provides appropriate verbal communication	<input type="checkbox"/>	_____				
8. Provides appropriate written communication	<input type="checkbox"/>	_____				
9. Works with you to develop a positive working relationship	<input type="checkbox"/>	_____				

Average Rating \_\_\_\_\_

**Proactive Management:** Indicate the extent to which you agree that your Account Management Team:

	Strongly Agree 5	Agree 4	Somewhat Agree 3	Disagree 2	Strongly Disagree 1	For any "1" or "2" responses, please provide specific comments in the area below
10. Actively monitors your account and interacts with you in a frequency that meets your needs	<input type="checkbox"/>	_____				
11. Communicates potential problems/issues	<input type="checkbox"/>	_____				
12. Provides viable alternative solutions that meet your business needs	<input type="checkbox"/>	_____				
13. Manages and understands system requirements and their effect on your business	<input type="checkbox"/>	_____				
14. Sets realistic expectations regarding turn-around time	<input type="checkbox"/>	_____				

Average Rating \_\_\_\_\_

**Accessibility:** Indicate the extent to which you agree that your Account Management Team:

	Strongly Agree 5	Agree 4	Somewhat Agree 3	Disagree 2	Strongly Disagree 1	
15. Available to you on a timely basis	<input type="checkbox"/>	_____				
16. Allocates appropriate time when meeting with you	<input type="checkbox"/>	_____				
17. Demonstrates flexibility with regard to schedule changes	<input type="checkbox"/>	_____				
18. Provides/communicates alternate contacts in the event of their absence	<input type="checkbox"/>	_____				
19. Advises you of schedule limitations upon contact for meetings, conference calls, projects etc.	<input type="checkbox"/>	_____				

Average Rating \_\_\_\_\_

**Responsiveness:** Indicate the extent to which you agree that your Account Management Team:

	Strongly Agree 5	Agree 4	Somewhat Agree 3	Disagree 2	Strongly Disagree 1	
20. Responds to your inquiries in a timely manner	<input type="checkbox"/>	_____				
21. Provides thorough responses to your inquiries	<input type="checkbox"/>	_____				
22. Follows-through regarding outstanding problems/issues/items	<input type="checkbox"/>	_____				
23. Solicits the assistance of product experts when needed	<input type="checkbox"/>	_____				

Average Rating \_\_\_\_\_

Overall Average Rating \_\_\_\_\_

**Please include any other comments or suggested action steps:**

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**SCHEDULE F**

**Letter Regarding Enhanced Reviews and Appeals  
as required by  
Section 2719 of the Public Health Service Act  
for SPONSOR's Non-Grandfathered Groups**



April 18, 2011

Ms. Brenda Lakeman, Director, Statewide Benefits Office  
Statewide Benefits, Office of Management and Budget  
500 W. Loockerman Street, Suite 320  
Dover, DE 19904

Dear Brenda:

This letter will confirm the decision of the State of Delaware ("Sponsor") concerning its and Medco Health Solutions, Inc.'s ("Medco's") roles and responsibilities in support of Sponsor's compliance with the regulations promulgated under Section 2719 of the Public Health Service Act governing internal claims and appeals and external review processes (the "Claims and Appeals Regulations").

Under the Claims and Appeals Regulations, certain sponsors of benefit plans are required to provide enhanced reviews and appeal processes. Medco will continue to provide the reviews and appeals management services provided in our agreement for pharmacy benefit services (the "PBM Agreement") in compliance with such regulations, including but not limited to the new shortened timeframes for benefit determinations involving urgent care.

To facilitate Sponsor's meeting its obligations under the Claims and Appeals Regulations regarding external review processes, and otherwise to meet Sponsor's needs, Medco has entered into an arrangement with the independent review organizations (each, an "IRO," collectively "IROs") listed on Exhibit A, which have been accredited by a nationally recognized private accrediting organization. The IROs will accept on your behalf authority to conduct an independent, external review of an adverse benefit determination and to issue a final external review decision. Sponsor delegates to the IROs the administration of external reviews as specified by the Claims and Appeals Regulations. Sponsor has requested that, and authorizes Medco to, provide to the IROs the appeal files and other related information necessary for the IROs to conduct external reviews and to bill Sponsor for the fees incurred by the IROs in conducting such reviews, as set forth below. Medco will assign external reviews to the IROs on a rotating basis (or other method that Medco believes in good faith to be in compliance with the Claims and Appeals Regulations).

As conditions to this arrangement:

1. Sponsor acknowledges that it, and not Medco, is responsible for determining the independence and/or appropriateness of IROs to handle any external appeals on behalf of Sponsor and for ensuring an effective external review process. Sponsor acknowledges that Medco is providing the IRO arrangements for the convenience of Sponsor, that Medco is not recommending use of any particular IRO, and that Sponsor retains the obligation to ensure Sponsor's obligations (including fiduciary obligations under ERISA, if applicable) are satisfied when selecting, retaining, or otherwise using any IRO to ensure an effective external appeals process.
2. Sponsor shall take such further reasonable actions, execute or provide such other reasonable documents or instructions, and adopt such amendments to the Plan as reasonably determined to be necessary or appropriate by Sponsor, Medco, or the IRO to carry out the purpose and intent of this arrangement, including entering into or signing an appropriate delegation of fiduciary duty and responsibility letter/agreement with the IRO.

3. [This provision intentionally left blank.]

4. Because Medco is not responsible for eligibility determinations under the PBM Agreement, an adverse benefit determination with respect to a claim or appeal made by Medco will not be based on the claimant's failure to meet the requirements for eligibility. Assuming that claimant exhausts the internal review process, or has a claim or appeal that is eligible for an accelerated external review, such adverse benefit determination will be eligible for external review.

5. Effective July 1, 2011, with respect to non-grandfathered plans under the Affordable Care Act, Sponsor shall pay for the following administrative services provided by Medco as follows. This Section 5 replaces the applicable sections of the PBM Agreement:

<b>Reviews and Appeals Management (Enhanced)</b>	
<ul style="list-style-type: none"><li>• Medco's Coverage Authorization Program, consisting of: prior authorization, step therapy, quantity duration/dose duration, quantity per dispensing event capabilities, and dose optimization (coverage option), including initial determinations and first-level appeals</li></ul>	Included in UM Bundle. If no UM Bundle [REDACTED]
<ul style="list-style-type: none"><li>• Reviews and Appeals Management - Plan Design including initial determinations and first-level appeals</li></ul>	[REDACTED]
<ul style="list-style-type: none"><li>• Second level and urgent appeals, including transmission of case to IROs or other external review entities:<ul style="list-style-type: none"><li>○ Coverage Authorization requests</li><li>○ Plan Design-related requests</li></ul></li></ul>	[REDACTED] incremental to per case fees above or Utilization Management Program fee (UM bundle), as applicable)

6. Effective July 1, 2011, Sponsor shall pay to the IROs the fees set forth on Exhibit A. As an administrative convenience to Sponsor, Medco will include such charges on Sponsor's administrative invoice and will pay the IROs after Sponsor has made payment to Medco, but shall have no other obligation regarding such payment. Sponsor shall be responsible to the IROs for any charges for which Sponsor does not pay Medco and the IROs may also pursue payment against Sponsor directly (and the IRO may receive a copy of this agreement in the event any IRO is required to seek such payment from Sponsor).

7. The pricing and/or services for any or all of the IROs may change in the future. In such event, Medco will notify Sponsor of such changes. In order to ensure continuity of services, Sponsor will be deemed to have agreed to continue to utilize the services of such IRO(s) at the new price(s) and/or conditions unless Sponsor notifies Medco in writing within ten (10) days after receiving Medco's notice that Sponsor is terminating this IRO arrangement as set forth in Section 10.

8. The pricing set forth in this letter is based upon applicable law and regulations in effect as of November 1, 2010. Any modification of applicable law or regulation may result in equitable modification of the pricing terms.

9. Medco may offer Sponsor the opportunity to access the external review services of additional IROs. In the event Medco does so and Sponsor agrees in writing to access the services of particular IROs, the provisions of this letter shall apply, unless Medco and Sponsor otherwise agree. Nothing in this Agreement shall require Medco to offer access to additional external review services.

10. Sponsor may terminate this IRO arrangement or use of the IROs under this arrangement upon ten (10) days written notice to Medco. Medco may terminate the IRO arrangement upon thirty (30) days' written notice to Sponsor (as to any or all IROs) or as otherwise provided in the PBM Agreement or as permitted by law, and may suspend this IRO arrangement in the event of non-payment for services upon written notice to Sponsor.

11. Medco and Sponsor shall take all actions necessary and appropriate to assure that they comply with all applicable federal, state, and local laws and regulations, including, without limitation, the Anti-Kickback

Statute, the Public Contracts Anti-Kickback Act, and the Stark Law. Medco's Code of Conduct and its policies and procedures relating to compliance with the above-named laws are available at [www.medcohealth.com/medco/corporate/home.jsp](http://www.medcohealth.com/medco/corporate/home.jsp) by clicking on the Investors tab and then the Corporate Governance link.

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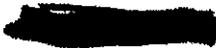
**SCHEDULE G**

**UTILIZATION MANAGEMENT PROGRAM DOCUMENT**

**State of Delaware**

Utilization Management Fee

Medco Health's utilization management offering to State of Delaware is comprised of three highly integrated and flexible components - Coverage Authorization, Preferred Drug Education, and Drug Utilization Review. These components are tailored to meet State of Delaware's individual needs. Together, these components of utilization management work in concert to lower State of Delaware's drug costs while helping to ensure member health, safety and satisfaction. The proposed pricing for State of Delaware is as follows:



The results of these programs are reported using a highly credible, claims based savings methodology that is consistent across all programs and eliminates double counting of savings. We guarantee that the results will show a return on investment of 4 to 1 or:



Edits and programs included in the utilization management fee are:

Administrative Authorization edits including the following:

- Missing/Invalid group #
- Patient age exceeds minimum age
- Claim too old
- Patient is not covered
- Duplicate claim
- Filled after coverage terminated
- NDC not covered
- Filled after coverage expired
- Filled before coverage effective

Coverage Authorization programs including Initial Determination and First Level Appeals for the following:

- Prior Authorization edits for:
  - Botulinum Toxins
  - Cancer Therapy (Afinitor)
  - Cancer Therapy (Gleevec)
  - Cancer Therapy (Iressa)
  - Cancer Therapy (Nexavar)
  - Cancer Therapy (Sprycel)
  - Cancer Therapy (Sutent)
  - Cancer Therapy (Tarceva)
  - Cancer Therapy (Tasigna)
  - Cancer Therapy (Temodar)
  - Cancer Therapy (Tykerb)
  - Cancer Therapy (Votrient)
  - Cancer Therapy (Zolinza)
  - Dermatologicals/Misc (Solodyn)
  - Erythroid Stimulant

Growth Hormones  
Misc. Dermatologicals (Amevive)  
Misc. Dermatologicals (Raptiva)  
Misc. Dermatologicals (Regranex gel)  
Misc. Dermatologicals (Retin-A & co-brands All dosage forms)  
Misc. Dermatologicals (Tazorac Cream)  
Misc. Pulmonary Agents (Xolair)  
Multiple Sclerosis Therapy  
RSV Agents

- Step Therapy edits for:
  - Anti-Convulsant Agents (Lyrica)
  - Antinarcotic Agents (Provigil)
  - COX 2 Inhibitors
  - Misc. Dermatologicals (Protopic/Elidel)
  - Misc. Rheumatologicals (Enbrel)
  - Misc. Rheumatologicals (Humira)
  - Misc. Rheumatologicals (Kineret)
  - Misc. Rheumatologicals (Remicade)
  - Osteoporosis Therapy (Forteo)
  - Pain Management (Actiq & Fentora)
  - Revatio
- Dispensing Quantity edits for:
  - Intranasal Corticosteroids
- Quantity/Dose Duration edits for:
  - Antibiotic Agents (Xifaxan)
  - Antifungal Agents
  - Erectile Dysfunction Agents
  - Migraine Therapy
  - PPI, Formulary Coverage Review
  - Smoking Deterrents
  - SSRI, Formulary Coverage Review
  - Vaginitis Therapy

Preferred Drug Education programs including:

- Home delivery initiated program
  - Generic substitution
- Physician-authorized interchange programs at home delivery
  - Non-plan preferred brand to plan-preferred brand/generic alternatives
  - Brand to generic equivalent
- Physician-authorized interchange programs at retail
  - Non-plan preferred brand to plan-preferred brand/generic alternatives
- Member interchange programs at home delivery
  - Pharmacist to member telecounseling on generic equivalent
  - Direct mail education on generic equivalent

Concurrent DUR via TelePAID® & Retrospective DUR including\*:

- Alerts to physicians and pharmacists
  - Severe drug interactions
  - Drug interaction
  - Drug allergy
  - Drug disease
  - Therapy duplication
  - Excessive daily dosing
  - Excessive duration of therapy
  - Sub-therapeutic dosing
  - Gender contraindications
  - Refill-too-soon
  - Refill-too-late
  - Potential drug name confusion
  
- Alerts for special populations:
  - Seniors (Excessive daily dosing, Drug age contraindications, Drug disease, Drug interactions)
  - Pediatrics (Drug age contraindications, Excessive daily dosing)
  - Women's health (Drug pregnancy, Oral contraceptives, Fertility agents)
  - Cancer patients (Lethal course of chemotherapy)
  
- Enhanced alerting to pharmacists:
  - Stockpiling prevention reject
  
- Physician Practice Summaries (Profiling) to summarize physician prescribing patterns for:
  - General summary of prescribing statistics
  - Generic Prescribing
  - High Utilization analysis

*\* Savings from participation in the Concurrent DUR edits will be excluded from the guarantee calculation. The savings guarantee calculation will only include savings associated with the edits listed under Coverage authorization programs (prior authorization edits, step therapy edits, dispensing quantity edits and quantity/dose duration edits) as well as savings resulting from Retrospective DUR. If State of Delaware is looking for other alternatives beyond this offering, Medco Health can provide State of Delaware with the flexibility of additional options that include varying clinical capabilities and associated costs and savings.*

*In addition to any obligations to comply with law set forth in any agreements between the parties, Medco and State of Delaware shall comply with the Anti-Kickback Statute, the Public Contracts Anti-Kickback Act, and the Stark Law in respect to the performance of this and such other agreements. Medco's Code of Conduct and its policies and procedures relating to compliance with the above-named laws are available on [www.medco.com](http://www.medco.com).*

**SCHEDULE H**  
**BUSINESS ASSOCIATE AGREEMENT**

## Business Associate Agreement

This Business Associate Agreement ("BA Agreement") is undertaken pursuant to the parties' performance of a certain contract ("Contract") dated as of July 1, 2011 by and between the State of Delaware by and through the State Employee Benefits Committee ("Plan Sponsor"), on its own behalf and on behalf of the group health plan it sponsors for employees or other covered persons (the "Plan"), and Medio Health Solutions, Inc. ("Contractor").

In the performance of services on behalf of the Plan pursuant to the Contract, and in order for Contractor to use, disclose or create certain information pursuant to the terms of the Contract, some of which may constitute Protected Health Information ("PHI") (defined below), Contractor is a Business Associate of the Plan as that term is defined by the Health Insurance Portability and Accountability Act of 1996, including the modifications required under the American Recovery and Reinvestment Act of 2009 ("ARRA"), and its implementing Administrative Simplification regulations (45 C.F.R. §§142, 160, 162 and 164) ("HIPAA"). Accordingly, Contractor, the Plan and Plan Sponsor mutually agree to modify the Contract to incorporate the terms of this BA Agreement to comply with the requirements of HIPAA, and to include additional provisions that Plan Sponsor, the Plan and Contractor desire to have as part of the Contract.

Therefore, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the parties agree as follows:

### I. DEFINITIONS

- A. **Covered Entity.** "Covered Entity" shall mean the Plan.
- B. **Individual.** "Individual" shall have the same meaning as the term "Individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- C. **Required By Law.** "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.501.
- D. **Secretary.** "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- E. **Protected Health Information.** "Protected Health Information" or "PHI" shall mean individually identifiable information created or received by a health care provider, health plan, employer or health care clearinghouse, that: (i) relates to the past, present, or future physical or mental health or condition of an individual, provision of health care to the individual, or the past, present or future payment for provision of health care to the individual; (ii) identifies the individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the individual; and (iii) is transmitted or maintained in an electronic medium, or in any other form or medium. "PHI" shall be limited to the information created or received by Contractor from or on behalf of Covered Entity.
- F. **Standard Transactions.** "Standard Transaction(s)" shall mean a transaction that complies with the standards set forth at 45 C.F.R. §162.
- G. **Designated Record Set.** "Designated Record Set" shall have the meaning given to such term in 45 C.F.R. §164.501.
- H. **Covered Person.** "Covered Person" means the Covered Employee and the Covered Employee's legal spouse and/or unmarried dependent children as specified in the Plan or elsewhere in the Contract as Employee or Insured.

- I. **Summary Health Information.** "Summary Health Information" means information, which may be PHI, (1) that summarizes the claims history, claims expenses, or types of claims experienced by Covered Persons for whom a Plan Sponsor has provided health care benefits under the Plan, and (2) from which the identifiers specified in 45 CFR §164.514(b)(2)(i) have been deleted (except that the zip code information described in 45 CFR §164.514(b)(2)(i)(B) may be aggregated to the level of a five (5) digit zip code).
- J. **Electronic PHI.** "Electronic PHI" shall mean PHI that is subject to the Security Rule, limited to such information created, received, maintained, or transmitted electronically.
- K. **Security Incident.** "Security Incident" shall have the same meaning as "security incident" in 45 CFR 164.304, limited to any such incident involving Electronic PHI.
- L. **Security Rule.** "Security Rule" shall mean the Security Standards for the Protection of Electronic PHI at 45 CFR §§160, 162 and 164.
- M. **Breach.** "Breach" shall mean an unauthorized acquisition, use or disclosure of protected health information (PHI) which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information. For purposes of this definition, "compromises the security or privacy of such information" means poses a significant risk of financial, reputational or other harm to individual.
- N. **Secured PHI.** "Secured PHI" shall mean PHI when it is rendered unusable, unreadable, or indecipherable. Methodologies that render PHI secure are as follows:
- Encryption of electronic data per National Institute Standards and Technology guidelines
  - Destruction of electronic media as per NIST Standards
  - Destruction or shredding of paper, film or other hard copy media
- O. **Unsecured PHI.** "Unsecured PHI" is "unsecure" when it is not rendered unusable, unreadable or indecipherable to authorized individuals through the use of a technology or methodology specified by the Department of Health and Human Services.
- P. All other capitalized terms used in this BA Agreement shall have the meanings set forth in the applicable definitions under the HIPAA Privacy/Security Rule or the Standards for Electronic Transactions.

## II. **PERMITTED USES AND DISCLOSURES BY CONTRACTOR**

- A. During the continuance of the Contract, Contractor will perform services necessary in connection with the Plan as outlined in the Contract. These services may include Payment activities, Health Care Operations, and Data Aggregation as these terms are defined in 45 CFR §164.501. In connection with the services to be performed pursuant to the Contract, Contractor is permitted or required to use or disclose PHI it creates or receives for or from the Plan or to request PHI on the Plan's behalf as provided below.
- B. **Functions and Activities on the Plan's Behalf.** Unless otherwise limited in this BA Agreement, Contractor may use or disclose PHI to perform functions, activities, or services for, or on behalf of, the Plan as specified in the Contract including the de-identification of PHI which will be done pursuant to 45 CFR §164.514(b). Contractor may also use or disclose PHI in any other manner consistent with a legally sufficient authorization executed by the Eligible Person or Individual of the subject information. Contractor may decide in its own reasonable discretion what uses and disclosures of PHI are required for it to perform administrative services for the Plan as outlined in this BA Agreement and in the Contract as well as in accordance with the law.

1. Use for Contractor's Operations. Contractor may use PHI it creates or receives for or from the Plan for Contractor's proper management and administration or to carry out Contractor's legal responsibilities in connection with services to be provided under the Contract.
  2. Disclosures for Contractor's Operations. Contractor may disclose the minimum necessary of such PHI for Contractor's proper management and administration or to carry out Contractor's legal responsibilities, but only if the following conditions are met:
    - a. The disclosure is required by law; or
    - b. Contractor obtains reasonable assurance, evidenced by written contract, from any person or organization to which Contractor will disclose such PHI that the person or organization will:
      - i) Hold such PHI in confidence and use or further disclose it only for the purpose for which Contractor disclosed it to the person or organization or as required by law; and
      - ii) Promptly notify Contractor (who will in turn promptly notify the Plan) of any instance of which the person or organization becomes aware in which the confidentiality of such PHI was breached.
  3. Minimum Necessary Standard. In performing functions and activities in connection with the Contract, Contractor agrees to make reasonable efforts to use, disclose or request only the minimum necessary PHI to accomplish the intended purpose of the use, disclosure or request.
- C. Data Aggregation Services.** The Plan agrees and recognizes that Contractor performs Data Aggregation services for the Plan, as defined by the HIPAA Privacy Rule. In the course of performing normal and customary services under the Contract, this data aggregation is an essential part of Contractor's work on behalf of the Plan under the Contract. Accordingly, Contractor can perform these data aggregation services in its own discretion, subject to any limitations imposed by the Contract. The term "Data Aggregation" is defined under the HIPAA Privacy Rule to mean, with respect to PHI created or received by a Business Associate in its capacity as the Business Associate of a covered entity, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.
- D. Prohibition on Unauthorized Use or Disclosure**
1. Non-permitted Use and Disclosure of PHI. Contractor will neither use nor disclose PHI it creates or receives for or from the Plan or from another Business Associate of the Plan, except as permitted or required by the Contract and this BA Agreement, as required by law, as otherwise permitted in writing by the Plan, as authorized by a Covered Person.
  2. Disclosure to the Plan and the Plan Business Associates. To the extent permitted or required by the Contract and this BA Agreement, Contractor will disclose PHI to other Business Associates of the Plan which the Plan has identified in a writing provided to Contractor. Contractor shall only disclose such PHI to such Business Associates, in their capacity as Business Associates of the Plan. Other than disclosures permitted by this Section II or as otherwise specifically identified in the Contract, Contractor will not disclose Covered Persons' PHI to the Plan or to a Business Associate of the Plan except as directed by the Plan in writing.

3. No Disclosure to Plan Sponsor. Contractor will not disclose any Covered Persons' PHI to Plan Sponsor, except as permitted by and in accordance with Section VIII or as otherwise specifically identified in the Contract.

### **III. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR**

- A. Contractor will develop, document, implement, maintain and use appropriate administrative, technical and physical safeguards to preserve the integrity and confidentiality of, and to prevent non-permitted use or disclosure of, PHI created or received for or from the Plan.
- B. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of this BA Agreement.
- C. Contractor agrees to report to Covered Entity, without unreasonable delay and in any event within 60 days, any use or disclosure of the PHI not provided for by this BA Agreement or otherwise in writing by the Plan. Contractor shall maintain a written log recording the date, name of Covered Person and description of PHI for all such unauthorized use or disclosure and shall submit such log to the Plan Sponsor annually and by request.
- D. Contractor will require that any agent, including a subcontractor, to whom it provides PHI as permitted by this BA Agreement (or as otherwise permitted with the Plan's prior written approval), agrees to the same restrictions and conditions that apply to Contractor with respect to such information in conformance with the Privacy Rule.
- E. Contractor agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner reasonably designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- F. Contractor agrees to implement administrative, physical, and technical safeguards (as set forth in the Security Rule) that reasonably and appropriately protect the confidentiality and integrity (as set forth in the Security Rule), and the availability of Electronic PHI, if any, that Contractor creates, receives, maintains, or transmits electronically on behalf of Covered Entity. Contractor agrees to establish and maintain security measures sufficient to meet the safe harbor requirements established pursuant to ARRA by making data unreadable, indecipherable, and unusable upon receipt by an unauthorized person. Contractor agrees to provide adequate training to its staff concerning HIPAA and Contractors responsibilities under HIPAA.
- G. Contractor agrees to report to Covered Entity any Security Incident of which Contractor becomes aware.
- H. Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Electronic PHI, agrees to implement reasonable and appropriate safeguards to protect such information.
- I. Contractor agrees to directly provide notice to any effected participants in the event of a Breach and to send a written log each such Breach and notice to participants to the covered entity within 30 days of notification. Contractor agrees to notify participants in accordance with the guidelines and standards set forth by the Department of Health and Human Services under the American Reinvestment & Recovery Act and the HITECH Act.
- J. Covered Entity and Contractor recognize and agree that in some instances Medco may have compliance obligations as a Health Care Provider under the Privacy Rule and nothing herein shall

prohibit, restrict, or otherwise limit compliance with any such obligations by Medco under the Privacy Rule.

#### **IV. INDIVIDUAL RIGHTS OBLIGATIONS**

- A. Access.** Contractor and the Plan agree that, wherever feasible, and to the extent that responsive information is in the possession of Contractor, Contractor will provide access to PHI as required by 45 CFR §164.524 on the Plan's behalf. Contractor will provide such access according to its own procedures for such access. Contractor represents that its procedures for such access comply with the requirements of 45 CFR §164.524. Such provision of access will not relieve the Plan of any additional and independent obligations to provide access where requested by an individual. Accordingly, upon the Plan's written or electronic request or the direct request of a Covered Person or the Covered Person's Personal Representative, Contractor will make available for inspection and obtaining copies by the Plan, or at the Plan's direction by the Covered Person (or the Covered Person's personal representative), any PHI about the Covered Person created or received for or from the Plan in Contractor's custody or control contained in a Designated Record Set, so that the Plan may meet its access obligations under 45 CFR §164.524. All fees related to this access, as determined by Contractor, shall be borne by Covered Persons seeking access to PHI.
- B. Amendment.** Contractor and the Plan agree that, wherever feasible, and to the extent that responsive information is in the possession of Contractor, Contractor will amend PHI as required by 45 CFR §164.526 on the Plan's behalf. Contractor will amend such PHI according to its own procedures for such amendment. Contractor represents that its procedures for such amendment comply with the requirements of 45 CFR §164.526. Such amendment will not relieve the Plan of any additional and independent obligations to amend PHI where requested by an individual. Accordingly, upon the Plan's written or electronic request or the direct request of a Covered Person or the Covered Person's Personal Representative, Contractor will amend such PHI contained in a Designated Record Set, in accordance with the requirements of 45 CFR §164.526. Upon receipt of written or electronic notice from the Plan, Contractor will amend or permit the Plan access to amend any portion of the PHI created or received for or from the Plan in Contractor's custody or control, so that the Plan may meet its amendment obligations under 45 CFR §164.526.
- C. Disclosure Accounting.** So that the Plan may meet its disclosure accounting obligations under 45 CFR §164.528, Contractor and the Plan agree that, wherever feasible and to the extent that disclosures have been made by Contractor, Contractor will provide the accounting that is required under 45 CFR §164.528 on the Plan's behalf. Contractor will provide such accounting according to its own procedures for such accounting. Contractor represents that its procedures for such accounting comply with the requirements of 45 CFR §164.528. Such provision of disclosure accounting will not relieve the Plan of any additional and independent obligations to provide disclosure accounting where requested by an individual. Accordingly, upon the Plan's written or electronic request or the direct request of a Covered Person or the Covered Person's Personal Representative, Contractor will provide an accounting as set forth below.

##### **1. Disclosure Tracking**

Starting as of the Effective Date of the Contract, Contractor will record each disclosure of Covered Persons' PHI, which is not exempted from disclosure accounting that Contractor makes to the Plan or to a third party.

The information about each disclosure that Contractor must record ("Disclosure Information") is (a) the disclosure date, (b) the name and (if known) address of the person or entity to whom Contractor made the disclosure, (c) a brief description of the PHI disclosed, and (d) a brief statement of the purpose of the disclosure.

For repetitive disclosures of Covered Persons' PHI that Contractor makes for a single purpose to the same person or entity (including the Plan), Contractor may record (a) the Disclosure Information for the first of these repetitive disclosures, (b) the frequency, periodicity or number of these repetitive disclosures, and (c) the date of the last of these repetitive disclosures.

2. Exceptions from Disclosure Tracking

Contractor is not required to record disclosure information or otherwise account for disclosures of PHI that this BA Agreement or the Plan in writing permits or requires: (i) for the purpose of the Plan's payment activities or health care operations, (ii) to the individual who is the subject of the PHI disclosed, or to that individual's personal representative; (iii) to persons involved in that individual's health care or payment for health care; (iv) for notification for disaster relief purposes, (v) for national security or intelligence purposes, (vi) to law enforcement officials or correctional institutions regarding inmates; (vii) pursuant to an authorization; (viii) for disclosures of certain PHI made as part of a limited data set; (ix) for certain incidental disclosures that may occur where reasonable safeguards have been implemented; (x) for disclosures prior to April 14, 2003; or (xi) as otherwise excepted under 45 CFR §164.528.

3. Disclosure Tracking Time Periods

Contractor will have available for the Plan or for Covered Persons the Disclosure Information required for the six (6) years immediately preceding the date of the Plan's request for the Disclosure Information (except Contractor will not be required to have Disclosure Information for disclosures occurring before April 14, 2003).

**D. Right to Request Restrictions and Confidential Communications**

So that the Plan may meet its obligations to evaluate requests for restrictions and confidential communications in connection with the disclosure of PHI under 45 CFR §164.522, Contractor and the Plan agree that, wherever feasible and to the extent that communications are within the control of Contractor, Contractor will perform these evaluations on behalf of the Plan. Contractor will evaluate such requests according to its own procedures for such requests, and shall implement such appropriate operational steps as are required by its own procedures. Contractor represents that its procedures for evaluating such requests comply with the requirements of 45 CFR §164.522. Such evaluation will not relieve the Plan of any additional and independent obligations to evaluate restrictions or implement confidential communications where requested by an individual. Accordingly, upon the Plan's written or electronic request or the direct request of a Covered Person or the Covered Person's Personal Representative, Contractor will evaluate requests for restrictions and requests for confidential communications, and will respond to these requests as appropriate under Contractor's procedures.

**V. OBLIGATIONS OF THE COVERED ENTITY**

- A. Covered Entity shall provide Contractor with any changes in, or revocation of, permission by individual to use or disclose PHI, if such changes affect Contractor's permitted or required uses and disclosures.
- B. Covered Entity shall notify Contractor of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522.
- C. Covered Entity shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity except as provided in this BA Agreement. In no event shall Covered Entity request Contractor to disclose to Covered Entity or

agents of Covered Entity any PHI unless such disclosure is the minimum necessary disclosure that satisfies the request and that such disclosure is solely for the purpose of treatment, payment or plan operations.

## **VI. BREACH OF PRIVACY OBLIGATIONS**

Without limiting the rights of the parties under the Contract, the Plan will have the right to terminate the Contract if Contractor has engaged in a pattern of activity or practice that constitutes a material breach or violation of Contractor's obligations regarding PHI under this BA Agreement and, on notice of such material breach or violation from the Plan, fails to take reasonable steps to cure the breach or end the violation.

If Contractor fails to cure the material breach or end the violation after the Plan's notice, the Plan may terminate the Contract by providing Contractor written notice of termination, stating the uncured material breach or violation that provides the basis for the termination and specifying the effective date of the termination. Such termination shall be effective 60 days from this termination notice.

### **A. Effect of Termination.**

#### **1. Return or Destruction upon Contract End**

Upon cancellation, termination, expiration or other conclusion of the Contract, Contractor will if feasible return to the Plan or destroy all PHI, in whatever form or medium (including in any electronic medium under Contractor's custody or control), that Contractor created or received for or from the Plan, including all copies of such PHI that allow identification of any Covered Person who is a subject of the PHI. Contractor will complete such return or destruction as promptly as practical after the effective date of the cancellation, termination, expiration or other conclusion of the Contract.

Following notice and good faith negotiation between Contractor and Plan Sponsor as to the reasonable costs, Plan Sponsor will reimburse Contractor's reasonable cost incurred in returning or destroying such PHI subject to the requisite appropriation by the Delaware General Assembly as required by Title 29 Delaware Code Chapter 65 and Article 8, Section III of the Delaware Constitution.

#### **2. Disposition When Return or Destruction Not Feasible**

The Plan recognizes that in many situations, particularly those involving data aggregation services performed by Contractor for the Plan and others, that it will be infeasible for Contractor to return or destroy PHI. Accordingly, where in Contractor's discretion such return or destruction is infeasible, for any such PHI, upon cancellation, termination, expiration or other conclusion of the Contract, Contractor will limit its further use or disclosure of the PHI to those purposes that make their return to the Plan or destruction infeasible.

## **VII. PLAN SPONSOR'S PERFORMANCE OF PLAN ADMINISTRATION FUNCTIONS**

- A. Communication of PHI.** Except as specifically agreed upon by Contractor, the Plan and Plan Sponsor, and in compliance with any requirements imposed by this Section VIII, all disclosures of PHI from Contractor pursuant to the Contract shall be made to the Plan, except for disclosures related to enrollment or disenrollment in the Plan.
- B. Summary Health Information.** Upon Plan Sponsor's written request for the purpose either to, (a) obtain premium bids for providing health insurance coverage for the Plan, or (b) modify, amend or terminate the Plan, Contractor is authorized to provide Summary Health Information regarding the Covered Persons in the Plan to Plan Sponsor.

- C. **Plan Sponsor Representation.** Plan Sponsor represents and warrants (A) that the Plan has been established and is maintained pursuant to law, (B) that the Plan provides for the allocation and delegation of responsibilities for the Plan, including the responsibilities assigned to Contractor under the Contract, (C) that the Plan includes or incorporates by reference the appropriate terms of the Contract and this BA Agreement, and (D) that the Plan incorporates the provisions required by 45 CFR §164.504.
- D. **Plan Sponsor's Certification.** Contractor will not disclose Covered Persons' PHI to Plan Sponsor, unless and until the Plan authorizes Contractor in writing to disclose the minimum necessary Covered Persons' PHI to Plan Sponsor for the plan administration functions to be performed by Plan Sponsor as specified in the Plan.
- E. **Contractor Reliance.** Contractor may rely on Plan Sponsor's certification and the Plan's written authorization, and will have no obligation to verify that the Plan complies with the requirements of 45 CFR §164.504 or this BA Agreement or that Plan Sponsor is complying with the Plan.
- F. **The Plan Amendment.** Before the Plan will furnish Plan Sponsor's certification described above to Contractor, the Plan will ensure (1) that its Plan establishes the uses and disclosures of Covered Persons' PHI consistent with the requirements of 45 CFR §164 that Plan Sponsor will be permitted and required to make for the plan administration functions Plan Sponsor will perform for the Plan, and (2) that Plan Sponsor agrees to all the applicable conditions imposed by §164.504 on the use or disclosure of PHI.

#### VIII. **MISCELLANEOUS**

- A. **Regulatory References.** A reference in this BA Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- B. **Survival.** The respective rights and obligations of Contractor under Section IV of this BA Agreement shall survive the termination of this BA Agreement.
- C. **Interpretation.** Any ambiguity in this BA Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule. Except to the extent specified by this BA Agreement, all of the terms and conditions of the Contract shall be and remain in full force and effect. In the event of any inconsistency or conflict between this BA Agreement and the Contract, the terms and provisions and conditions of this BA Agreement shall govern and control. Nothing express or implied in this BA Agreement and/or in the Contract is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever. This BA Agreement shall be governed by and construed in accordance with the same internal laws that are applicable to the Contract.
- D. **Duration.** This BA Agreement will continue in full force and effect for as long as the Contract remains in full force and effect. This BA Agreement will terminate upon the cancellation, termination, expiration or other conclusion of the Contract.
- E. **Term.** The Term of this BA Agreement shall be effective as of the date appearing on the signature page, and shall terminate when all of the PHI provided by Covered Entity to Contractor, or created or received by Contractor on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions of this BA Agreement.
- F. **Amendment.** Upon the effective date of any final regulation or amendment to final regulations with respect to PHI, Standard Transactions, the security of health information or other aspects of HIPAA applicable to this BA Agreement or to the Contract, this BA Agreement will automatically amend such that the obligations imposed on Plan Sponsor, the Plan and Contractor remain in

compliance with such regulations, unless (1) Contractor elects to terminate the Contract by providing Plan Sponsor and the Plan notice of termination in accordance with the Contract at least thirty (30) days before the effective date of such final regulation or amendment to final regulations; or (2) Contractor notifies the Plan of its objections to any such amendment. In the event of such an objection, the parties will negotiate in good faith in connection with such changes or amendment to the relevant final regulation.

- G. **Conflicts.** The provisions of this BA Agreement will override and control any conflicting provision of the Contract. All nonconflicting provisions of the Contract will remain in full force and effect.
- H. **Independent Relationship.** None of the provisions of this BA Agreement are intended to create, nor will they be deemed to create any relationship between the parties other than that of independent parties contracting with each other as independent parties solely for the purposes of effecting the provisions of this BA Agreement and the Contract.
- I. **Rights of Third Parties.** This BA Agreement is between Contractor and the Plan and the Plan Sponsor and shall not be construed, interpreted, or deemed to confer any rights whatsoever to any third party or parties.
- J. **Notices.** All notices and notifications under this BA Agreement shall be sent in writing by traceable carrier to the listed persons on behalf of Contractor, the Plan and Plan Sponsor at the addresses indicated on the signature page hereof, or such other address as a party may indicate by at least ten (10) days' prior written notice to the other parties. Notices will be effective upon receipt.
- K. **Expenses.** Unless otherwise stated in this BA Agreement or the Contract, each party shall bear its own costs and expenses related to compliance with the above provisions. Any additional expenses incurred by Contractor in connection with services to be provided pursuant to this BA Agreement shall be included in the Contract.
- L. **Documentation.** All documentation that is required by this BA Agreement or by the HIPAA Privacy Rule must be retained by Contractor for six years from the date of creation or when it was last in effect, whichever is longer.

AGREED By and between the undersigned Parties this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

**For State of Delaware:**

**For Contractor:**

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

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

Title: DIRECTOR - STATEWIDE  
BENEFITS

Title: \_\_\_\_\_  
**Vice President and Assistant General Counsel**

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

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

**Address for Notices:**

**Address for Notices:**

Statewide Benefits Office, OMB  
Attention: Brenda Lakeman, Director  
500 W. Loockerman Street, Suite 320  
Dover, DE 19904

Chief Privacy Officer  
Medco Health Solutions Inc.  
100 Payson Pond Drive  
Franklin Lakes, NJ 07417

