

**SECOND AMENDMENT TO
EXPRESS SCRIPTS, INC.
QUALIFIED VENDOR PROGRAM SERVICES AGREEMENT**

THIS SECOND AMENDMENT TO QUALIFIED VENDOR PROGRAM SERVICES AGREEMENT ("Amendment") is entered into by and between EXPRESS SCRIPTS, INC., a Delaware corporation, ("ESI"), and MERCER HEALTH & BENEFITS LLC, a Delaware limited liability company ("Mercer").

RECITALS

A. Mercer and ESI are parties to a Qualified Vendor Program Services Agreement, dated as of January 1, 2006, as amended from time to time ("Agreement").

B. Mercer and ESI have elected to amend and update the terms and conditions of the Agreement as provided herein.

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

TERMS OF AMENDMENT

1. Definitions. For purposes of this Amendment, any capitalized term not otherwise defined herein shall have the meaning set forth in the Agreement.
2. Prescription Drug Program Agreement. With respect to Everett School Employees Benefit Trust only, Exhibit A, the Prescription Drug Program Agreement, is hereby replaced with the attached Exhibit A, Prescription drug Program Agreement.
3. Medicare QR-PDP Services Addendum. Exhibit A-4 of the Agreement is hereby replaced with the attached Exhibit A-4.
4. Effective Date. This Amendment shall be effective the later of January 1, 2009, or the date that is ten (10) days following ESI's execution of this Amendment.
5. Effect of Amendment. Except as expressly provided herein, the terms and conditions of the Agreement shall remain in full force and effect. In the event of a conflict between this Amendment and the Agreement, the terms of this Amendment shall prevail.
6. Choice of Law. This Amendment shall be construed by and governed in all respects according to the laws of the state indicated in the Agreement.

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

EXPRESS SCRIPTS, INC.

MERCER HEALTH & BENEFITS LLC

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

EXHIBIT A

PRESCRIPTION DRUG PROGRAM AGREEMENT Standard PBM Package

(For Express Scripts Internal Use)

DIV# _____
BPL _____
GROUP #: _____
SALES DIRECTOR: _____
INDUSTRY TYPE: _____

Plan Sponsor Name: Everett School Employees Benefit Trust

Plan Sponsor Tax ID Number: _____

Effective Date: The date ESI receives this signed Prescription Drug Program Agreement without modification ("Effective Date").

Initial Term of Prescription Drug Program Agreement: 2 years

Type of Plan Sponsor: ☐ ENTERPRISE MARKET SPONSOR ☒ X ADVISORY MARKET SPONSOR

Contact Information:

Plan Sponsor Information	
Contact Person: (Name & Title)	Randi Seaberg Director, Human Resources
Company Name:	Everett Public School
Street Address:	3715 Oakes Avenue
City/State/Zip Code:	Everett WA 98201
Phone Number:	(425) 385-4104
Fax Number:	(425) 385-4102

Reporting: ☒ X Management Reports: Party to receive Management Reports? ☐ Plan Sponsor ☐ Person's Name: _____

Medium on which Invoice is to be sent (check one or two): ☒ X Hard Copy (and) ☐ Magnetic Tape (or) ☐ Diskette

Do you want Member names to appear on Billing Statement? ☐ Yes ☐ No

TERMS AND CONDITIONS OF SERVICE

ESI and Mercer have entered into that certain Qualified Vendor Program Services Agreement ("Agreement") which sets forth certain terms and conditions associated with ESI's provision of pharmacy benefit management services under this Prescription Drug Program Agreement. To the extent not defined herein, capitalized terms shall have the meaning ascribed to them in the Agreement.

1. Plan Design; Commencement of Services. Plan Sponsor hereby adopts, acknowledges and agrees that the prescription benefit management services provided by ESI should be provided in accordance with the Agreement, the terms herein, and the specific benefit design reflected on the Express Scripts Set-Up Forms ("Set-Up Forms") adopted by Plan Sponsor and completed prior to implementation of Plan Sponsor's prescription drug program (if ESI assists Plan Sponsor with completion of the Set-Up Forms, it will send Plan Sponsor the completed Set-Up Forms for review and Plan Sponsor agrees that such documentation will constitute the governing Set-Up Forms for Plan Sponsor unless Plan Sponsor notifies ESI in writing within thirty days of receipt of the completed documentation of any discrepancies therein, in which case the parties shall work together in an expeditious manner to correct such discrepancies and issue a revised Set-Up Forms). If Plan Sponsor already has on file with ESI an Set-Up Forms or similar set-up documentation as of the date Plan Sponsor executes this Prescription Drug Program Agreement, Plan Sponsor adopts and directs ESI to use such Set-Up Forms or similar set-up documentation to provide services under Plan Sponsor's prescription drug program, until ESI is otherwise directed in writing by Plan Sponsor. In order to afford ESI with sufficient time to properly implement the Prescription Drug Program, ESI shall have no obligation to commence services pursuant to this Agreement until thirty (30) days following the date on which ESI receives a fully-completed and properly executed copy of this Agreement from Plan Sponsor, plus any other documents necessary for proper implementation. ESI will perform the services hereunder consistent with the applicable performance standards set forth in Exhibit A-1. Penalties set forth in Exhibit A-1 shall be the

sole monetary penalty for failure to meet the performance standards.

2. Eligibility of Members. Plan Sponsor shall provide ESI with an initial Eligibility File under a mutually agreeable time frame prior to the effective date of Plan Sponsor's Prescription Drug Program. Thereafter, Plan Sponsor shall provide ESI with timely updates of the Eligibility File. The Eligibility File shall contain the names of all Members, effective and termination dates, and any other information specified by ESI that is necessary to administer the Prescription Drug Program. All Eligibility Files shall be submitted on-line, or on tape or disk in a format that is acceptable to ESI. Non-conforming formats may be subject to additional charges as set forth in the Fee Schedule.

3. ID Cards. At the option of Plan Sponsor, and for the fees set forth in the Plan Sponsor Pricing Exhibit, ESI shall print and deliver the ID Cards within a mutually agreed upon time frame. All ID Cards shall be NCPDP compliant and have the applicable ESI pharmacy network logos or other method of identifying the fact that ESI is the provider of the prescription drug benefit in a form acceptable to ESI.

4. Pharmacies.

(a) Mail Service Pharmacy. Members may have prescriptions filled through the Mail Service Pharmacy. Prescriptions will be dispensed from the Mail Service Pharmacy in a quantity not to exceed a 90-day supply. In addition, if the prescription and applicable law do not prohibit substitution of a generic drug equivalent to the prescribed drug, or if prescriber consent is obtained, the Mail Service

Pharmacy shall dispense the generic substitute. The Mail Service Pharmacy shall charge and collect from each Member the applicable Copayment, and/or any Deductible based on the plan design selected by Plan Sponsor. Refill reminders and on-line ordering shall be available to Members. ESI may promote the use of the ESI Mail Service Pharmacy to Members through coupons or other financial incentives at ESI's cost, subject to applicable law.

(b) Specialty Products. Members may have prescriptions filled through CuraScript on an exclusive basis if Plan Sponsor selects the CareLogic Exclusive Option, or through CuraScript and Participating Pharmacies if Plan Sponsor elects the CareLogic Open option (each as described in Exhibit A-1).

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

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

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

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

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

The aforementioned services do not include home infusion supplies and related home health services.

(ii) ESI shall notify Plan Sponsors of new Specialty Products that are introduced to the market and added to the CareLogic Drug List on or after the Effective Date of this Agreement with their applicable CareLogic Drug List reimbursement rates ("Notice"). Unless otherwise agreed between ESI and a Plan Sponsor, Plan Sponsors shall agree as follows:

(A) If Plan Sponsor has expressly excluded a specific therapy class or product on a Set-Up Form, Specialty Products in such excluded classes will automatically be deemed excluded from coverage and will reject as "NDC Not Covered" through Participating Pharmacies, Mail Service Pharmacy and CuraScript; otherwise, all other Specialty Products shall be implemented as Covered Drugs at the rate specified in the applicable CareLogic Drug List or Notice, and Plan Sponsor acknowledges and agrees to same. If Plan Sponsor desires to cover otherwise excluded Specialty Products, such Plan

Sponsor must notify ESI in writing that it desires to cover the Specialty Product before ESI will adjudicate as a Covered Drug, and if ESI receives such confirmation of coverage from Plan Sponsor such Specialty Product will be loaded thereafter as a Covered Drug at the applicable CareLogic Drug List reimbursement rate set forth in the Notice.

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

(c) Participating Pharmacies. Upon presentation of an ID Card, Members may obtain prescriptions for Covered Drugs through the Participating Pharmacy network selected by Plan Sponsor. Any additions to or deletions from the network shall be in ESI's sole discretion. Participating Pharmacies will dispense prescriptions to Members in a quantity not to exceed a monthly supply. The parties acknowledge and agree that ESI does not direct or exercise any direction or control over, and shall not be liable for any liability relating to, the professional judgment exercised by any pharmacist or employee of a Participating Pharmacy in dispensing prescriptions or otherwise providing pharmaceutical related services at a Participating Pharmacy.

(d) Pharmacy Audits. To compensate ESI for the cost of conducting audits, ESI shall retain an audit fee from any recovered overpayments detected in an audit in the amount set forth on the Plan Sponsor Pricing Exhibit. The balance of any such overpayments will be paid to the Plan Sponsor or offset against future amounts due by Plan Sponsor. ESI shall attempt recovery of overpayments through offset or demand of amounts due. ESI shall not be required to institute litigation to recover any overpayments.

5. Claims Processing.

(a) On-Line Claims Processing. In accordance with the Set-Up Forms, ESI will perform claims processing services for Covered Drugs dispensed by a Participating Pharmacy, Mail Service Pharmacy, or CuraScript. Such services include: (i) verifying eligibility, Formulary, benefit design in accordance with Set-Up Form and utilization history; (ii) performing DUR and (iii) adjudicating the claims. ESI shall direct Participating Pharmacies to charge and collect the applicable Copayment from Members for each Covered Drug dispensed; provided, a Member's Copayment charged for a Covered Drug shall be the lesser of the applicable Copayment or the U&C. The parties acknowledge that ESI does not direct or exercise any discretion or control over the professional judgment or actions of any pharmacist or employee of any Participating Pharmacy. In all cases, the Plan Sponsor shall have the final responsibility for all decisions with respect to coverage of the Prescription Drug program and the benefits allowable thereunder, including determining whether any rejected or disputed claim shall be covered. ESI shall attempt to recover pharmacy overpayments through offset or demand, but ESI shall not be required to institute litigation to recover any such overpayments. The balance of any such overpayment will be paid to Plan Sponsor or offset against future amounts owed by Plan Sponsor.

(b) Member-Submitted Claims. ESI shall process Member-Submitted Claims, which include Medicaid subrogation and other governmental claims. Members (or agency) shall be responsible for submitting claims directly to

ESI on a form provided by ESI within the required time period. Plan Sponsor shall reimburse ESI for all amounts paid for Member-Submitted Claims and for the applicable Member-Submitted Claim administrative fee set forth in the Fee Schedule.

(c) Prior Authorization. For the fees set forth on the Fee Schedule (if applicable), ESI shall provide prior authorization ("PA") services as specified and directed by Plan Sponsor for drugs designated on the Set-Up Form. PA drugs must meet Plan Sponsor-approved guidelines ("Guidelines") before they are deemed to be Covered Drugs. Plan Sponsor authorizes ESI to approve coverage for an otherwise excluded event of co-morbidities, complications and other factors not otherwise expressly set forth in the Guidelines. In determining whether to authorize dispensing of such drug under the PA program, ESI shall apply only the Guidelines and may rely entirely upon information about the Member and the diagnosis of the Member's condition provided to it from sources deemed reliable to ESI at the time that the prescription is to be dispensed. Plan Sponsor acknowledges that prior authorization programs are based on objective criteria and the limited amount of patient information available to ESI. ESI shall not undertake, and is not required hereunder, to determine medical necessity, to make diagnoses or substitute ESI's judgment for the professional judgment and responsibility of the physician. Appeals and final determinations to confirm or override a denial shall not be conducted by ESI.

(d) ERISA Claims Procedures. If Plan Sponsor is subject to ERISA, ESI will process initial claims for benefits for Member Submitted Claims and prior authorization requests in a manner consistent with the ERISA requirements for claim processing set forth in 29 CFR Part 2560 (as published in the Federal Register, November 21, 2000) ("Claims Rules"), except that ESI shall not be responsible for ensuring compliance with any aspect of the requirements relating to functions performed, or materials prepared by, Plan Sponsor. In addition, Plan Sponsor agrees that:

(i) ESI will not conduct any appeals of denied "claims for benefits." If Plan Sponsor does not desire to conduct appeals itself, Plan Sponsor may elect to have ESI facilitate appeals through the UM Company for the fees set forth in the Plan Sponsor Pricing Exhibit, or through a third party of Plan Sponsor's choice. ESI will route to UM Company (or other Sponsor designated entity) Member appeals properly sent to ESI's designated address: (current address is: MCMC, LLC, Attn: ESI ERISA Fiduciary Team, 88 Black Falcon Avenue, Suite 353, Boston, MA 02210).

(ii) In the event Sponsor elects to utilize the UM Company through ESI, the UM Company will be responsible for conducting the appeal on behalf of Sponsor in accordance with the Claims Rules. Plan Sponsor acknowledges and agrees that:

(A) ESI is not acting as a fiduciary in connection with the appeals being conducted by the UM Company, and ESI shall not be named by Sponsor as a fiduciary in connection with such appeals; the UM Company, and not ESI, will be conducting appeals on behalf of Sponsor; the UM Company is an independent contractor of ESI, and ESI does not in any way control or direct the UM Company with respect to appeals conducted by the UM Company; and ESI shall not be liable for any injury or damages arising as a result of the UM Company's negligence or otherwise.

(B) the UM Company shall have full authority and full discretion to conduct appeals for which it has been designated by Sponsor and shall have full authority and full discretion to interpret the terms of Plan Sponsor's plan with respect to those appeals and to make all findings of fact with respect to those appeals and the UM Company's determination on appeal shall be final and legally binding on all parties; and if an appeal is approved or denied, the UM Company will be responsible for

sending approval or denial letters consistent with the content and timing required under the Claims Rules.

(C) ESI represents to Plan Sponsor that ESI's agreement with UM Company provides that ESI shall require the UM Company to contractually agree that it will conduct appeals in accordance with the Claims Rules and Plan Sponsor's plan; Plan Sponsor is a third party beneficiary of such agreement and the remedies set forth therein; and the UM Company will indemnify Plan Sponsor for third party claims caused by the UM Company's negligence or willful misconduct. ESI's agreement with the UM Company is incorporated herein by reference and a copy is available upon request.

6. Clinical Programs. The clinical programs made available by ESI are set forth in Exhibit A-1 and are subject to change from time to time by ESI at its discretion. In all cases with respect to the clinical programs, the prescribing physician, in consultation with the Member, shall have final authority over the drug that is dispensed to the member. (a) ESI's drug utilization review processes are not intended to substitute for the professional judgment of the prescriber, the dispensing pharmacist or any other health care professional providing services to the Member. Accordingly, ESI will not be liable for any damages arising from the use, or lack of use of the drug utilization review process, except that ESI shall be responsible for proper maintenance and update of the drug utilization review system. (b) Plan Sponsor agrees to permit ESI to contact Members, Members' physicians and Participating Pharmacies to support and administer the base clinical programs and supplemental clinical programs adopted by Plan Sponsor hereunder, including, but not limited to, Drug Choice Management. Plan Sponsor shall provide ESI with Members' addresses and such other information as may be reasonably necessary to facilitate such communications. In all cases the prescribing physician shall have final authority over the drug that is dispensed to the Member.

7. Medicare (QRPDP) Services. The parties agree that as relates to any qualified retiree prescription drug plan ("QRPDP") established by Plan Sponsor under Medicare for the purpose of applying for subsidy payments as defined under 42 CFR 423.886, ESI shall provide the services under the terms and conditions set forth in Exhibit A-4 hereto.

8. Billing and Payments. Plan Sponsor shall be responsible to ESI for timely payment of all fees (the "Fees") applicable to the particular plan design selected by Plan Sponsor as set forth in Exhibit A-1 to this Prescription Drug Program Agreement. Plan Sponsor acknowledges that it has reviewed such Plan Sponsor Pricing Exhibit and agrees to all such Fees. ESI will bill Plan Sponsor, weekly or twice per month, at ESI's discretion, for all applicable Fees. Plan Sponsor agrees to pay ESI by wire or ACH transfer within two (2) business days from the date of Plan Sponsor's invoice. In addition to the foregoing, the Standard Terms Summary sets forth certain additional payment terms and conditions, which shall apply and are incorporated herein by reference.

(a) Any Fees not paid by Plan Sponsor on the due date, thereof, shall bear interest at the rate of eighteen percent (18%) per annum (1.5% per month) or, if lower, the highest interest rate permitted by law. Plan Sponsor shall promptly reimburse ESI for all collection costs and expenses incurred by ESI, including but not limited to attorneys' fees, in connection with attempting to recover overdue Fee payments. If Plan Sponsor disputes any item on any invoice, Plan Sponsor shall state the amount in dispute in writing within thirty (30) days of the date of the invoice. Plan Sponsor shall pay the full amount owed by the applicable due date and shall notify ESI of the disputed amount. If, upon resolution of the dispute, it is determined that Plan Sponsor is entitled to a refund of the disputed amount, ESI will promptly refund the disputed amount.

(b) Plan Sponsor shall pay ESI for all claims for Covered Drugs dispensed to a Member on or before the later of (i) the date of the Member's termination, or (ii) the date three (3) business days after ESI receives notification of the Member's termination in an Eligibility File or other written notice, or the date one (1) business day after ESI receives such notification electronically. ESI shall not be responsible for ensuring the accuracy of the Eligibility Files, and shall be entitled to payment from Plan Sponsor for claims accepted by ESI for Members shown as eligible on the date the claim was adjudicated. ESI shall not bear the risk of fraudulent claims submitted by Members or by unauthorized persons using a Member's ID Card or identification number, except in the event of ESI's negligence.

(c) In the event Plan Sponsor is delinquent in payment of fees for two consecutive months, ESI shall have the sole option to require that the Plan Sponsor provide to ESI a deposit in an amount equal to the average monthly invoice amount for the previous three (3) months, or if there is less than three (3) months billing history, then such deposit shall be based on the average monthly invoice of the actual billing history. ESI shall retain the deposit until the termination of the Prescription Drug Program Agreement. Any balance of such deposit or security remaining upon termination of the Prescription Drug Program Agreement shall be promptly returned to Plan Sponsor upon payment of all Fees due as of such termination following any run-off provisions. Any such deposit provided to ESI will be placed in ESI's general assets and Plan Sponsor represents that such deposit provided by Plan Sponsor will not be composed of, in whole or in part, employee contributions under Plan Sponsor's employee welfare benefit plan.

(d) Members shall be required to pay their applicable Copayments and/or Deductibles to ESI prior to the dispensing of a prescription through the ESI Mail Service Pharmacy and are responsible for payment of any Member fees.

(e) Plan Sponsor shall pay ESI in accordance with the Prescription Drug Program Agreement for all claims for Covered Drugs dispensed and services provided to Members on or before the effective date of termination of the Prescription Drug Program Agreement ("Termination Date"). Claims submitted by Participating Pharmacies or Member-Submitted Claims filed with ESI after sixty (60) days from the Termination Date shall be processed and adjudicated in accordance with a mutually determined run-off plan. Notwithstanding the preceding, ESI may request that a Plan Sponsor pay a reasonable deposit in the event ESI is requested to process after the Termination Date claims incurred on or prior to such date by such Plan Sponsor's Members.

9. Use of Records: HIPAA and Business Associate Agreement Terms.

(a) Use of Prescription Drug Records. Plan Sponsor and ESI shall maintain the confidentiality of any Personal Health Information ("PHI") in accordance with applicable laws and regulations. Plan Sponsor hereby represents and warrants to ESI that Plan Sponsor and Mercer are legally entitled to provide PHI to ESI, and to receive PHI relating to a Member's prescription drug utilization from ESI. All PHI, records, reports and other data provided by ESI to Plan Sponsor under this Agreement are solely for the treatment, payment and/or health care operation functions associated with Plan Sponsor's health plan, and ESI disclaims all liability arising out of Plan Sponsor's receipt, use or dissemination of such information, records, reports or data. Plan Sponsor grants ESI permission to use both during and after the term of this Agreement and/or to transfer to third parties the anonymized PHI (Member de-identified) drug and related medical data collected by ESI or provided to ESI by Plan Sponsor for research, provider profiling and other databases for benchmarking, drug trend, cost analyses, cost comparisons

or other business purposes of ESI and its affiliates. Subject to applicable law, ESI shall be entitled to communicate with Members regarding benefit design cost savings, availability and use of the Mail Service Pharmacy, as well as provide web-based refill and related service features, and as necessary to conduct applicable clinical programs.

(b) HIPAA and Business Associate Agreement Terms. As required by the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), ESI agrees to comply with the business associate provisions of HIPAA, and the Business Associate Agreement posted at www.express-scripts.com, the terms and conditions of which are incorporated herein by reference. Plan Sponsor agrees to such terms and conditions on behalf of its health plan as a duly authorized signatory of its health plan.

(c) De-identified Claims Data. Subject to applicable law, Plan Sponsor grants ESI permission to use both during and after the term of this Prescription Drug Program Agreement and/or transfer to third parties the anonymized PHI (de-identified in accordance with HIPAA) drug and related medical data collected by ESI or provided to ESI by Plan Sponsor. ESI shall retain full ownership rights over all compilations, analyses and reports prepared by ESI other than those reports prepared specifically for Plan Sponsor under this Prescription Drug Program Agreement.

10. Intermediary. If selected on the Benefit Design Worksheet attached hereto, ESI will accept eligibility information from the entity or person indicated on the Benefit Design Worksheet on behalf of Plan Sponsor, and will facilitate payment of amounts due by Plan Sponsor through such person or entity, provided that Plan Sponsor provides ESI with all necessary information to effect such arrangement and that ESI, in its discretion, does not object to such arrangement. Notwithstanding anything to the contrary herein, however, Plan Sponsor acknowledges that appointment of such person or entity to perform the aforementioned functions in no way relieves Plan Sponsor of said obligations and, therefore, Plan Sponsor unconditionally guarantees the performance of such person or entity, and, in the event of default by such person or entity of any payment obligation or obligation with respect to eligibility information, Plan Sponsor shall be responsible for all such payment and eligibility information obligations hereunder, and Plan Sponsor waives any requirement that ESI exhaust any right or take any action against such person or entity before seeking from Plan Sponsor any amounts due hereunder. ESI shall have no obligation whatsoever to pay such person or entity designated by Plan Sponsor on the Benefit Design Worksheet for services rendered in connection herewith. Disclosure of PHI by ESI to such person or entity designated by Plan Sponsor on the Benefit Design Worksheet for the purposes stated herein shall not be deemed to be a violation of the terms set forth in Section 3 hereof or the Business Associate Agreement attached hereto.

11. Program Reporting. ESI shall make available ESI's standard management information reporting capabilities to Plan Sponsor. These standard applications include a quarterly Executive Report package, key statistics, and a pre-formatted report library, which are subject to change from time to time in ESI's discretion. Standard reports are free of charge. In addition, upon request, ESI may develop special reporting packages for the standard hourly rates specified in the Plan Sponsor Pricing Exhibit.

12. Fees and Rebates.

(a) The reimbursement rates, fees, Commissions and Performance Standards are set forth in Exhibit A-1.

(b) Only to the extent expressly provided in the Plan Sponsor Pricing Exhibit, ESI will pay Rebates to Plan Sponsor, subject to Plan Sponsor complying with all of the following requirements: (i) Plan Sponsor's election of, and

conformance to (a) ESI's National Preferred Formulary or the formulary selected by Plan Sponsor; or (b) Plan Sponsor's adoption and conformance to the applicable plan design requirements; (iii) 100% of Members included in Plan Sponsor's applicable benefit plan design(s); (iv) the distribution of the Formulary (or a summary thereof) to Members and/or physicians, as applicable; and (v) compliance with other reasonable, generally applicable requirements for participation in the Rebate Program, as are communicated by ESI to Plan Sponsor from time to time. Upon notice to Plan Sponsor, ESI shall have the right to make an equitable adjustment to the Rebates if a Plan Sponsor changes its Formulary, benefit design or otherwise takes an action that has the effect of lowering the amount of Rebates eligible to be earned with respect to such Plan Sponsor or Rebate revenue is materially decreased because of brand products moving off-patent to generic status. Certain Member Submitted Claims and OTC products, and claims for 100% copayment (cash and carry) plans not offered in connection with a health plan benefit shall not be eligible for Rebates.

(c) Plan Sponsor's eligibility to receive payments for Rebates may change over time due to changes in laws (including interpretation thereof) governing prescription drug pricing (including Rebates, or changes in ESI's contracts with pharmaceutical manufacturers). ESI shall be entitled to retain, and shall have all right, title and interest to, any and all Rebates that are not expressly allocated and paid to Plan Sponsor pursuant to the terms and conditions herein and the Plan Sponsor Pricing Exhibit.

(d) Amounts representing Rebates to which a Plan Sponsor is entitled shall be paid on a quarterly basis approximately 150 days following the end of each quarterly period; provided, however, that ESI shall make quarterly payments as provided herein only to the extent of the allocable Rebate payments it receives approximately 120 days following the end of the quarterly period. Payments equal to allocable Rebate amounts that ESI receives later than 120 days following the end of a quarter shall be included by ESI in the next quarterly payment. Plan Sponsor shall have no right to interest on, or the time value of, any Rebate payments received by ESI during the collection period or moneys payable as described herein. ESI may delay payment of Rebates to allow for final adjustments upon termination of a Plan Sponsor's Prescription Drug Program.

(e) Plan Sponsor shall be eligible for Rebates under its Prescription Drug Program Agreement only so long as Plan Sponsor, and its affiliates or its agents, do not contract directly or indirectly with anyone else for discounts, utilization limits, rebates or other financial incentives on pharmaceutical products or formulary programs for claims processed by ESI pursuant to the Prescription Drug Program Agreement, without the prior written consent of ESI. In the event that Plan Sponsor, or any of Plan Sponsor's affiliates or agents, negotiates or arranges with a pharmaceutical manufacturer for rebates or similar discounts for any Covered Drugs hereunder, but without limiting ESI's right to other remedies, ESI may withhold Rebates earned by, but not yet paid to Plan Sponsor as necessary to prevent duplicative rebates on Covered Drugs. To the extent Plan Sponsor knowingly negotiates and/or contracts for discounts or rebates on claims for Covered Drugs without prior written approval of ESI, such activity shall be deemed to be a material breach of Plan Sponsor's Prescription Drug Program Agreement, entitling ESI to suspend or discontinue payment of Rebates thereunder.

13. Plan Sponsor Audits. Plan Sponsor shall have a right to audit ESI, provided any such audit shall be in accordance with, and subject to, ESI's standard audit protocols, which are incorporated herein by reference and are subject to change from time to time by ESI at its discretion.

14. Compliance with Law; Change in Law and Pricing Benchmarks.

(a) Each party shall be responsible for ensuring its compliance with any laws and regulations applicable to its business, including maintaining any necessary licenses and permits. Plan Sponsor shall be responsible for any governmental or regulatory charges imposed upon this Prescription Drug Program, other than taxes passed on the net income of ESI. If ESI's performance of its duties under this Prescription Drug Program Agreement or the Prescription Drug Program is made materially more burdensome or expensive due to a change in federal, state or local laws or regulations or the interpretation thereof, the parties shall negotiate an appropriate adjustment to the fees paid to ESI. If the parties cannot agree on an adjusted fee, then ESI may terminate this Prescription Drug Program Agreement upon 30 days' prior written notice to Plan Sponsor.

(b) The parties understand that pricing indices historically used, (and that are the basis in this Agreement), for determining the financial components of pharmacy billing rates are outside the control of Plan Sponsor and ESI, and that there are currently extra-market industry, legal, government and regulatory activities which may lead to changes relating to, or elimination of, these pricing indices that could alter the financial positions of the parties as intended under this Agreement. The parties agree that, upon entering into this Agreement and thereafter, their mutual intent has been and is to maintain pricing stability as intended and not to advantage either party to the detriment of the other. Accordingly, if any or all of the following occur:

(i) ESI changes the AWP source across its book of business (e.g., from First Databank to MediSpan); or

(ii) ESI maintains the AWP as the pricing index with an appropriate adjustment as described below, in the event the AWP methodology and/or its calculation is changed, whether by the existing or alternative sources; or

(iii) ESI transitions the pricing index from AWP to another index or benchmark (e.g., to Wholesale Acquisition Cost);

Participating Pharmacy, CuraScript and Mail Service Pharmacy rates, Rebates and guarantees, as applicable, will be modified as reasonably and equitably necessary to maintain the pricing intent under this Agreement. ESI shall provide Mercer with at least 90 days notice of the change (or if such notice is not practicable, as much notice as is reasonable under the circumstances), and written illustration of the financial impact of the pricing source or index change (e.g., specific drug examples). Mercer will notify Plan Sponsor of the illustration and financial impact. If Mercer or Plan Sponsor disputes the illustration or the financial impact of the pricing source, the parties agree to cooperate in good faith to resolve such disputes.

(c) Plan Sponsor shall be responsible for disclosing to Members any and all information relating to the Prescription Drug Program to the extent required by law. It shall be Plan Sponsor's obligation to communicate the terms of the Prescription Drug Program to Members and to provide Members with any documents required under ERISA (e.g., SPD) or other applicable law. ESI SHALL NOT BE DEEMED TO BE A FIDUCIARY (AS DEFINED IN ERISA) OF SUCH PROGRAM, AND PLAN SPONSOR SHALL NOT NAME ESI AS A FIDUCIARY OF ITS PLAN. ESI HAS NO POWER TO MAKE ANY DECISIONS AS TO PLAN POLICY, INTERPRETATIONS, PRACTICES OR PROCEDURES, BUT RATHER PROVIDES ADMINISTRATIVE SERVICES WITHIN A FRAMEWORK OF POLICIES, GUIDELINES, RULES, PRACTICES AND PROCEDURES CHOSEN BY PLAN SPONSOR. ESI DOES NOT HAVE DISCRETIONARY AUTHORITY OR CONTROL RESPECTING MANAGEMENT OF PLAN SPONSOR'S PLAN AND DOES NOT EXERCISE ANY AUTHORITY OR CONTROL RESPECTING THE

MANAGEMENT OR DISPOSITION OF THE ASSETS OF PLAN SPONSOR'S PLAN, IF ANY EXIST.

15. Commissions.

(a) UNLESS OTHERWISE WAIVED AND AS AUTHORIZED BY PLAN SPONSOR, ESI WILL PAY COMMISSIONS TO MERCER FOR SERVICES RENDERED TO PLAN SPONSOR IN CONNECTION WITH THIS PRESCRIPTION DRUG PROGRAM AGREEMENT AS SHOWN ON EXHIBIT A-1 ON BEHALF OF PLAN SPONSOR, WHICH MAY BE ON A PER PRESCRIPTION BASIS AND WHICH MAY VARY BASED ON PLAN DESIGN, OR PBM PRICING, OR OTHER FACTORS. PLAN SPONSOR, ON BEHALF OF ITSELF AND ITS APPLICABLE HEALTH PLAN(S), ACKNOWLEDGES AND AGREES (A) THAT THE FEES CHARGED PLAN SPONSOR INCLUDE AMOUNTS TO PAY THE COMMISSIONS; (B) THAT IT CONSENTS TO THE PAYMENT OF COMMISSIONS WHICH ARE PAID FOR BROKER SERVICES PROVIDED TO PLAN SPONSOR AND (C) SUCH FEES REPRESENT THE FAIR MARKET VALUE OF THE BROKER SERVICES PROVIDED. NO VOLUME BASED COMMISSIONS SHALL BE PAID BY ESI FOR ANY QR-PDP PRESCRIPTION DRUG CLAIMS; PROVIDED THAT THE PARTIES RESERVE THE RIGHT TO MUTUALLY NEGOTIATE AND AGREE TO ESTABLISH NON-VOLUME BASED COMMISSION ARRANGEMENTS FOR QR-PDP PLANS. IF THE COMMISSION AMOUNT CHANGES FOLLOWING AN AMENDMENT OF THE PLAN SPONSOR PRICING EXHIBIT, MERCER AND PLAN SPONSOR AGREE THAT MERCER SHALL NOTIFY PLAN SPONSOR OF SUCH CHANGE IN WRITING WITHOUT THE NEED TO AMEND THIS PRESCRIPTION DRUG PROGRAM AGREEMENT, AND THAT UNLESS PLAN SPONSOR OBJECTS TO THE CHANGE, ESI MAY RELY ON MERCER'S CONFIRMATION OF NOTICE AS PLAN SPONSOR APPROVAL. To the extent additional commission information necessary for Plan Sponsor to satisfy its duties under ERISA or other applicable law, including the duty to file annual reports, cannot be obtained by Plan Sponsor from Mercer, ESI will provide such information upon written request.

16. Implementation Payment. Subject to the terms and conditions set forth herein, provided Plan Sponsor is not already receiving services from ESI as of, or immediately prior to, the date on which Plan Sponsor is implemented under this Prescription Drug Program Agreement, and if indicated on the first page of this Prescription Drug Program Agreement, ESI will pay Plan Sponsor a one-time implementation payment of up to \$3.00 per Member of Plan Sponsor as of Plan Sponsor's implementation date, to reimburse Plan Sponsor for the actual, fair market value of expenses incurred by Plan Sponsor in transitioning to ESI, subject to the following:

(i) Sponsor must submit adequate documentation of implementation expenses within 180 days of implementation with the completed form attached as Exhibit A-2 ("Reimbursement Form"), at which time a final reimbursement of eligible expenses will be made.

(ii) Plan Sponsor represents and warrants that: (a) it will only use the Implementation Payment as reimbursement for its actual implementation expenses incurred in transferring to ESI; (b) the amount of the Implementation Payment is equal to or less than the fair market value of the actual implementation expenses to be incurred by Plan Sponsor in transitioning to ESI; and (c) the expenses for which Plan Sponsor is receiving the Implementation Payment are reasonable and consistent with the fair market value associated with such expenses in an arm's length transaction. Implementation Payments may not be used in connection with the Medicare Part D program. Plan Sponsor may elect to have its payment directed to Mercer if indicated on the Reimbursement Form, and Plan Sponsor shall indemnify, defend and hold ESI harmless in the event of any disputes over transfer of all or a portion of Plan Sponsor's

Implementation Payments to Mercer. ESI intends to amortize the Implementation Payment over the Initial Term of the Agreement on a straight-line basis, unless otherwise required by law or accepted accounting principles. Plan Sponsor shall notify and disclose the amount and the terms of the Implementation Payment to Members and other third parties to the extent required by applicable laws and regulations and that it will only use such Implementation Payment in a manner consistent with the applicable law. In the event of a termination of this Prescription Drug Program Agreement prior to the expiration of the Initial Term, Plan Sponsor will promptly reimburse ESI an amount equal to the unamortized portion of the implementation payment. Any reimbursement payment made to ESI by Plan Sponsor will not be in lieu of any rights or remedies ESI may have in connection with the termination of this Prescription Drug Program Agreement.

Commissions, Implementation Payments and Rebates are not payable until this Prescription Drug Program Agreement is executed.

17. Disclosure of Certain Financial Matters. In addition to any administrative fees that may be paid to ESI pursuant to the PBM Agreement or this Prescription Drug Program Agreement, ESI derives margin from fees and revenue in one or more of the ways described in the ESI Financial Disclosure to PBM Plan Sponsors set forth in Exhibit A-3 hereto ("Financial Disclosure To ESI PBM Plan Sponsors"). In negotiating any of the fees and revenues described in the Financial Disclosure to ESI PBM Plan Sponsors or in this Prescription Drug Program Agreement or the PBM Agreement, ESI acts on its own behalf, and not for the benefit of or as agent for the Plan Sponsor, Members or any employee welfare benefit plan. Except for the Rebate amounts to which Plan Sponsor is expressly entitled to receive, if any, as indicated in the Plan Sponsor Pricing Exhibit of the Agreement, Plan Sponsor acknowledges and agrees that ESI will retain all interest, Rebate administrative fees, revenues, any portion of Rebates thereon, and all Participating Pharmacy discounts, if any, in addition to any administrative and other fees paid by Plan Sponsor to ESI. Plan Sponsor acknowledges for itself, its Members and its employee welfare plan(s) that, except as may be expressly provided herein, neither it, any Member, nor the plan(s), has a right to receive, or possesses any beneficial interest in, any such revenues, discounts or payments.

18. Term; Termination. The initial term of this Prescription Drug Program Agreement shall commence on the date on which ESI receives a fully-completed and executed copy of this Prescription Drug Program Agreement from Plan Sponsor, and shall continue thereafter for two (2) years (the "Initial Term"). Thereafter, this Prescription Drug Program Agreement shall be subject to automatic renewal for successive one year terms unless either ESI or Plan Sponsor gives notice to the other party of its intention not to renew this Prescription Drug Program Agreement at least ninety (90) days prior to the end of the initial or then-current renewal term of this Prescription Drug Program Agreement, with such termination of this Prescription Drug Program Agreement effective as of the end of the then current term. If Plan Sponsor terminates this Prescription Drug Program Agreement prior to the end of the initial term or any subsequent renewal term and/or does not provide proper notice, ESI shall have no obligation to remit any earned, unpaid residual Rebates. Upon written notice to Plan Sponsor, ESI may immediately terminate this Prescription Drug Program Agreement, or immediately suspend its performance hereunder: (a) if Plan Sponsor becomes insolvent or enters bankruptcy, (b) upon the commencement of a voluntary or involuntary case under Title 11 of the U.S. Code against Plan Sponsor, (c) if Plan Sponsor makes a general assignment for the benefit of its creditors, (d) if Plan Sponsor is unable to pay its debts hereunder as they become due, or (e) if Plan Sponsor materially breaches this

Agreement. ESI shall have the right to immediately terminate PBM Services to Plan Sponsor (or, if applicable, Members) located in a state requiring a pharmacy benefit manager to be a fiduciary to Mercer, Plan Sponsor, a Member or other third party relating to this Agreement. Upon written notice to ESI, Plan Sponsor may immediately terminate this Prescription Drug Program Agreement if ESI materially breaches this Prescription Drug Program Agreement and does not cure such breach within thirty (30) days of receipt by ESI of Plan Sponsor's written notice of such breach.

19. Termination for Non-Payment. ESI may terminate or suspend its performance hereunder immediately and cease providing or authorizing provision of Covered Drugs to Members upon written notice to Plan Sponsor if Plan Sponsor fails to pay ESI or provide a deposit, if required, in accordance with this Agreement. ESI also may suspend Mail Service Pharmacy or ESI Specialty Pharmacy Services to a Member who is in default of payment of any Copayments or Deductibles in such pharmacy. At any time, if ESI has reasonable grounds for insecurity as to the ability of Plan Sponsor to meet its financial commitments hereunder based on payment record, Plan Sponsor's latest financial information or claims volume, ESI may require adequate assurance of Plan Sponsor's future performance, as applicable, which may include the requirement that Plan Sponsor provide security to ESI an amount equal to \$20.00 per eligible Member. If at any time during the term of this Agreement Plan Sponsor shall experience one unprofitable year, with profitability to be measured by a positive net profit, positive cash flow from operations, and an equity position equal to at least the value of ESI's receivable investment, or if ESI has reasonable grounds for insecurity as to the ability of Plan Sponsor to meet its financial commitments because of Plan Sponsor's published financial data or funding levels falling below regulatory requirements, or state or federal regulatory agency statements, findings or notice, ESI may require Plan Sponsor to provide security reasonably acceptable to ESI in accordance with its standard practices.

20. Force Majeure. Neither party shall lose any rights under this Agreement or be liable in any manner for any delay to perform its obligations hereunder which are beyond a party's reasonable control, including, without limitation, any delay or failure due to strikes, labor disputes, riots, earthquakes, storms, epidemics, floods or other extreme weather conditions, fires, explosions, acts of terrorism, embargoes, war or other outbreak of hostilities, government acts or regulations, or the failure or inability of carriers, suppliers, delivery services, or telecommunications providers to provide services necessary to enable a party to perform its obligations hereunder, or any other reason where failure to perform is beyond the party's reasonable control; provided, however, that this clause may not be invoked to excuse a party's payment obligations hereunder.

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

Express Scripts, Inc.
Attn: President
One Express Way
St. Louis, Missouri 63121
With copy to Legal Department

Fax No. (800) 417-8163

Plan Sponsor
Attn: President
Address set forth on Prescription Drug Program Agreement

22. Successors and Assigns. This Prescription Drug Program Agreement will be binding upon, and inure to the benefit of and be enforceable by, the respective successors and permitted assigns of the parties hereto, provided that this Prescription Drug Program Agreement may not be assigned by Plan Sponsor without the prior written consent of ESI, which consent shall not unreasonably be withheld after a standard credit evaluation. ESI shall retain full responsibility and liability for the performance of this Prescription Drug Program Agreement by its wholly-owned subsidiaries.

23. Exclusivity. During the term of this Prescription Drug Program Agreement, Plan Sponsor shall use ESI as the exclusive provider of pharmacy benefit management services for all its self-funded welfare benefit plans that offer a prescription benefit, including, but not limited to, pharmacy network management services, prescription drug claims processing, Mail Service Pharmacy services (to the extent covered by the plans), and Specialty Products services (to the extent covered by the plans).

24. Proprietary Information. Each party agrees that information of the other party, including, but not limited to, the following, shall constitute confidential and proprietary information ("Proprietary Information") unless otherwise public: (a) with respect to ESI: reporting and system web-based applications, system formats, databanks, clinical or formulary management operations or programs, information concerning Rebates, prescription drug evaluation criteria, drug pricing information and Participating Pharmacy agreements; and (b) with respect to Plan Sponsor: Plan Sponsor and Member information files, business operations and strategies, are confidential and proprietary. Neither party shall use a party's Proprietary Information, or disclose it to any third party, at any time during or after termination of this Prescription Drug Program Agreement, except as specifically contemplated by this Prescription Drug Program Agreement or upon prior written consent or as otherwise required by law. Upon termination of this Prescription Drug Program Agreement, each party shall cease using the other's Proprietary Information, and all such information shall be returned or destroyed at the owner's direction.

25. Indemnification.

(a) ESI will indemnify and hold Plan Sponsor harmless from and against any loss, cost, damage, expense or other liability, including, without limitation, reasonable costs and attorneys' fees ("Costs") incurred in connection with any and all third party claims, suits, investigations or enforcement actions ("Claims") which may be asserted against, imposed upon or incurred by Plan Sponsor and arising as a result of (i) ESI's negligent acts or negligent omissions or willful misconduct, (ii) ESI's breach of this Agreement, or (iii) Plan Sponsor's use of or access to any ESI proprietary reporting and on-line systems applications, unless Plan Sponsor has modified or altered the applications without ESI's written consent. This Subsection 18(a) shall not be construed to impose liability on ESI to the extent inconsistent with other provisions of this Agreement.

(b) Plan Sponsor will indemnify and hold ESI harmless from and against any Costs for Claims which may be asserted against, imposed upon or incurred by ESI and arising as a result of Plan Sponsor's (i) negligent acts or negligent omissions or willful misconduct, (ii) benefit design and coverage decisions, or (iii) breach of this Agreement.

(c) The indemnified party shall notify the indemnifying party in writing promptly upon learning of any Claim for which indemnification may be sought hereunder, and

shall tender the defense of such claim to the indemnifying party and afford such indemnifying party with a reasonable opportunity to comment on such defense. No party shall indemnify the other with respect to any claim settled without the indemnifying party's written consent.

26. **Miscellaneous.** ESI may amend the Terms and Conditions (the "T&C") of this Prescription Drug Program Agreement at any time upon written notice to Plan Sponsor (the "Notice"). In the event that any amendment to the T&C by ESI would result in a material increase in actual costs to the Plan Sponsor, then Plan Sponsor may provide ESI, within thirty(30) days of its receipt of ESI's Notice, written notice specifying in detail the nature of the asserted material increase in actual costs to Plan Sponsor. In such event, the parties agree to negotiate in good faith a mutually acceptable amendment to the T&C and, if the parties cannot agree on such an amendment, then either party may terminate this Plan Sponsor Agreement upon sixty (60) days prior written notice to the other party. This Prescription Drug Program Agreement shall be governed by and construed in accordance with the internal laws of the State of Missouri. This Prescription Drug Program Agreement supersedes any agreements between the parties hereto. **Sections 5, 7, 9, 14, 16, 17, 21, 24 and 25 of this Prescription Drug Program Agreement shall survive termination for any reason.**

A party's right to terminate the Prescription Drug Program Agreement pursuant to its terms and conditions shall not be exclusive of any other remedies available to the terminating party under this Prescription Drug Program Agreement or otherwise, at law or in equity. Each party's liability to the other hereunder shall in no event exceed the actual proximate losses or damages caused by breach of this Prescription Drug Program Agreement. In no event shall either party or any of their respective affiliates, directors, employees or agents, be liable for any indirect, special, incidental, consequential, exemplary or punitive damages, or any damages for lost profits relating to a relationship with a third party, however caused or arising, whether or not they have been informed of the possibility of their occurrence.

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

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

29. **Severability.** In the event that any provision of this Prescription Drug Program Agreement is invalid or unenforceable, such invalid or unenforceable provision shall not invalidate or affect the other provisions of this Prescription Drug Program Agreement which shall remain in effect and be construed as if such provision were not a part hereof; provided that if the invalidation or unenforceability of such provision shall, in the opinion of either party to the Prescription Drug Program Agreement, have a material effect on such party's

rights or obligations under this Prescription Drug Program Agreement, then the Prescription Drug Program Agreement may be terminated by such party upon thirty (30) days written notice by such party to the other party.

30. **Definitions.** The following terms shall have the means set forth below:

"Average Wholesale Price" or "AWP" means the average wholesale price of a prescription drug as identified by drug pricing services such as First Data Bank or other source recognized in the retail prescription drug industry selected by ESI for all clients. The applicable AWP for prescriptions filled in (a) Participating Pharmacies and CuraScript will be the AWP for the package size from which the prescription drug was dispensed, and (b) in the Mail Service Pharmacy the AWP for the lesser of: (i) the NDC code for the package size from which the prescription drug was dispensed, or (ii) package sizes of 100 units or 16 ounce quantities, or the next larger quantity if such specified quantities are not available.

"Brand Drug" means a prescription drug product that is not a Generic Drug.

"CareLogic Drug List" means the standard list of Specialty Products and their Exclusive and Open reimbursement rates provided to Plan Sponsor with the Prescription Drug Program Agreement and as updated from time to time. ESI will provide additional and/or updated CareLogic Drug Lists at any time upon request.

"Compound Drugs" means a customized medication derived from two or more raw chemicals, powders and devices, of which at least one ingredient is a federal legend drug, prepared by a pharmacist according to a doctor's specifications.

"Copayment" means that portion of the charge for each Covered Drug dispensed to the Member, including coinsurance, that is the responsibility of the Member under the Prescription Drug Program (or, if less, the U&C of the Covered Drug).

"Covered Drug(s)" means those prescription drugs, supplies, Specialty Products and other items that are covered under the Prescription Drug Program,

"CuraScript" means CuraScript, Inc. or another pharmacy wholly-owned or operated by ESI or its wholly-owned subsidiaries that primarily dispenses Specialty Products. For purposes of this Agreement, CuraScript is not considered a Mail Service Pharmacy.

"Deductible" means the aggregate annual amount the Member is required to pay for Covered Drugs before becoming entitled to the benefits under the Prescription Drug Program.

"Eligibility File" means the list submitted by or on behalf of a Plan Sponsor to ESI indicating persons eligible for the particular Prescription Drug Program.

"Fees" means all amounts due under the particular plan design adopted by Plan Sponsor, as such amounts are set forth in the Plan Sponsor Pricing Exhibit and the Prescription Drug Program Agreement. Plan Sponsor acknowledges that it has reviewed and understands all such fees set forth in Exhibit A-1.

"Fee Schedule" means the Exhibit A-1 attached to this Prescription Drug Program Agreement, which sets forth the financial terms relating to Plan Sponsor's elected prescription drug program.

"Formulary" means the list of FDA-approved prescription drugs and supplies developed by ESI's Pharmacy and Therapeutics Committee which classifies items for purposes of benefit design and coverage decisions. The Formulary may be modified from time to time in ESI's sole discretion, as a result of factors described above and new therapeutic agents that become available. A copy of the Formulary as in effect from time to time will be delivered to Plan Sponsor.

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

"ID Card" means ESI's standard (NCPDP format) printed identification card containing specific information about the prescription drug benefits to which the Member is entitled.

"Mail Service Pharmacy" means a duly licensed pharmacy operated by ESI, its subsidiaries or other contracted pharmacy, where prescriptions are filled and delivered to Members via the United States Postal Service, United Parcel Service or other delivery service.

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

"MAC List" means a list of prescription drug products identified as readily available as a Generic Drug, generally equivalent to a Brand Drug (in which case the Brand Drug may also be on the MAC List) and which are deemed to require pricing management due to the number of manufacturers, utilization and pricing volatility. The MAC List is intended to result in a weighted average discount range of 47% to 59%, but Plan Sponsor's actual experience may vary within, or above or below this range depending upon Plan Sponsor's Generic Drug and Brand Drug mix and plan design.

"MRA" or "Maximum Reimbursement Amount" is the price charged to Plan Sponsor for a prescription drug product on the MAC List.

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

"Member" means each person who is eligible to receive prescription drug benefits as indicated by or on behalf of a Plan Sponsor to ESI in the Eligibility Files.

"Member Submitted Claim" means (i) a claim submitted by a Member for Covered Drugs dispensed by a pharmacy other than a Participating Pharmacy; (ii) a claim submitted by a Member for Covered Drugs filled at a Participating Pharmacy for which the Member paid cash; or (iii) subrogation claims submitted by a state under Medicaid or similar government health care programs.

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

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

"Prescription Drug Program" means the pharmacy benefit management services and benefit design adopted by Plan Sponsor pursuant to this Agreement.

"Protected Health Information" or "PHI" shall have the meaning ascribed to it under HIPAA.

"Rebates" means retrospective rebates that are paid to ESI, or otherwise retained by ESI, pursuant to the terms of a rebate contract negotiated independently by ESI with a pharmaceutical manufacturer, and directly attributable to the utilization of certain pharmaceuticals by Members. Rebates do not include Manufacturer Administrative Fees, or product discounts or similar remuneration received by subsidiary pharmacies of ESI as more fully described in Attachment 1 to this Prescription Drug Program Agreement.

"Rebate Program" means ESI's manufacturer Rebate Program under which ESI contracts independently with pharmaceutical manufacturers for Rebates payable on selected Covered Drugs, as such program may change from time to time. In negotiating the terms of the Rebate Program, ESI acts on its own behalf, and not for the benefit of or as an agent for Plan Sponsor or any Member.

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

"Single Source Generic Drug" means a Generic Drug licensed and currently marketed from only one non repackager generic labeler within a generic class number (GCN).

"Specialty Products" means those injectable and non-injectable drugs on the CareLogic Drug List and typically having one or more of several key characteristics, including: frequent dosing adjustments and intensive clinical monitoring to decrease the potential for drug toxicity and increase the probability for beneficial treatment outcomes; intensive patient training and compliance assistance to facilitate therapeutic goals; limited or exclusive product availability and distribution; specialized product handling and/or administration requirements and/or cost in excess of \$500 for a 30 day supply. Specialty Products elected for coverage shall be considered "Covered Drugs" as defined in the Agreement.

"U&C" means the retail price, including any minimum price charged by a Participating Pharmacy for the particular drug in a cash transaction on the date the drug is dispensed, as reported to ESI by the Participating Pharmacy.

THE UNDERSIGNED AGREE THAT THIS PRESCRIPTION DRUG PROGRAM AGREEMENT ACCURATELY DESCRIBES THE PRESCRIPTION DRUG PROGRAM TO BE PROVIDED TO PLAN SPONSOR. PLAN SPONSOR FURTHER EXPRESSLY AGREES TO THE TERMS AND CONDITIONS SET FORTH IN THIS PRESCRIPTION DRUG PROGRAM AGREEMENT.

NAME OF PLAN SPONSOR (PRINT): Everett School Employee Date: 10-9-09
Benefit Trust

By: Molly Ringo Name: Molly Ringo Title: Chair
SIGNATURE (PRINT NAME)

EXPRESS SCRIPTS, INC., on behalf of itself and its subsidiaries

By: _____ Name: _____ Title: _____
SIGNATURE (PRINTED NAME)

IMPLEMENTATION OF THE PRESCRIPTION DRUG PROGRAM DETAILED HEREIN INCLUDING PAYMENT OF
REBATES AND/OR COMMISSIONS, IF ANY, SHALL NOT BE INITIATED UNTIL THIS PRESCRIPTION DRUG
PROGRAM AGREEMENT IS EXECUTED BY CLIENT AND ESI.