

FIFTH MODIFICATION TO PHARMACY BENEFITS PLAN MANAGEMENT SERVICES AND PHARMACY PURCHASING POOL MANAGEMENT CONTRACT

THIS FIFTH MODIFICATION AGREEMENT is made this 26 of September 2013 by and between Express Scripts Inc. (Contractor) and the State of Maryland, acting through the Department of Budget and Management.

WHEREAS, on January 17, 2013, the Department of Health and Human Services (“DHHS”) issued a final rule that implemented a number of provisions of the Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted as part of the American Recovery and Reinvestment Act of 2009, to strengthen the privacy and security protections for health information established under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Covered entities and business associates are required to comply with the applicable requirements of the final rule by September 23, 2013.

IN CONSIDERATION of the promises and the covenants herein contained, the parties agree to modify the Contract for Pharmacy Benefits Plan Management Services and Pharmacy Purchasing Pool Management dated February 12, 2012, as amended by a First Modification dated May 4, 2012, a Second Modification dated August 13, 2012, a Third Modification dated October 19, 2012, and a Fourth Modification dated March 23, 2013 between the Contractor and the State of Maryland, acting through the Department of Budget and Management as follows:

1. Definitions

In this Modification, the following words have the meanings indicated:

- 1.1 “Contract” means the Contract for Pharmacy Benefits Plan Management Services and Pharmacy Purchasing Pool Management between the Contractor and the State of Maryland acting through the Department of Budget and Management dated February 12, 2012.
- 1.2 “Contractor” means Express Scripts, Inc.
- 1.3 “Department” means the Maryland Department of Budget and Management.
- 1.4 “HIPAA” means the Health Insurance Portability and Accountability Act, enacted August 21, 1996 as amended from time to time and including changes made under the Health Information Technology for Economic and Clinical Health Act (HITECH).
- 1.5 “HITECH” means the Health Information Technology for Economic and Clinical Health Act, enacted under Title XIII of the American Recovery and Reinvestment Act of 2009 and as amended from time to time.
- 1.6 “Modification” means this Modification Agreement.
- 1.7 “PHI” means Protected Health Information, as the phrase is defined in 45 CFR §164.501.

- 1.8 "RFP" means the Request for Proposals for Pharmacy Benefits Plan Management Services and Pharmacy Purchasing Pool Management, No. F10B0400006, dated December 8, 2009, including addenda, attachments, and Excel worksheets, as amended through August 16, 2010.
- 1.9 "State" means the State of Maryland.
- 1.10 "Technical Proposal" means Contractor's Technical Proposal, dated March 12, 2010, as supplemented and revised by the Contractor's subsequent responses to questions, requests for cure, and Best and Final Offer (BAFO) submissions through November 12, 2010.

2. Scope of Modification

This Modification amends the Contract specifically as described herein. Except as specifically revised by the terms of this Modification, all of the terms of the Contract shall remain in full force and effect and shall apply to this Modification.

3. HIPAA Compliance

The Administrative Requirements (AR) of the Contract, included as Attachment J-4 in the Technical Proposal and RFP, are amended as follows to comply with changes to the privacy and security rules of HIPAA:

HIPAA (AR-101 – AR-110)

- **AR-101(d) is amended to now read:** In compliance with 45 CFR 164.308(b), the Contractor agrees to ensure, through written contract, that any agent, including a subcontractor, to whom the Contractor provides electronic PHI agrees to implement reasonable and appropriate safeguards.
- **AR-102(f) is amended to now read:** In compliance with 45 CFR § 164.504(e)(5), the Contractor shall ensure, through written contract, that any agent, including a subcontractor, to whom it provides PHI received from, created by, or received by the Contractor agrees to the same restrictions and conditions that apply to the Contractor with respect to such information. This obligation shall apply in connection with PHI created, retained, used, disclosed, or transmitted in connection with the plan(s) administered by the Contractor.
- **AR-103 is amended to now read:** The Contractor shall comply with the prohibitions against remuneration in exchange for PHI pursuant to 45 CFR 164.508(a)(4) and §13405(d)(1) and (2) of the HITECH Act as if it were a covered entity in connection with the benefit plan administered by the Contractor pursuant to this RFP and Contract. The

Contractor shall prohibit its business associates, agents and subcontractors who receive, use, disclose, create, retain, maintain, or transmit PHI from receiving remuneration in exchange for PHI on the same terms.

- **AR-104 is amended to now read:** The Contractor shall comply with the limitations on marketing and fundraising communications provided in 45 CFR 164.508(a)(3) and §13406 of the HITECH Act as if it were a covered entity in connection with the benefits plan.
- **AR-105(b)(1) is amended to now read:** The Contractor shall promptly notify the Department of a breach of unsecured PHI in its possession following the first day on which the Contractor (or Contractor's employee, officer, agent or subcontractor) knows of such breach or following the first day on which Contractor (or Contractor's employee, officer, agent or subcontractor) should have known of such breach. Such notice shall occur without unreasonable delay and in no event more than 30 days following discovery of the breach. Such notice shall occur even if the breach is not of a Member of the State's Plan.
- **AR-105(b)(2) is amended to now read:** In the event that Contractor determines that there is no risk of an unauthorized access, acquisition, use, or disclosure compromises the security or privacy of the PHI of a Participant, Contractor shall promptly notify the Department of the event and the basis for that determination. Such notice shall occur as soon as is reasonable but in no event more than 30 days following discovery of the unauthorized access, acquisition, use or disclosure of PHI of a Participant. Such determination shall be in writing and signed by an appropriate officer or employee of Contractor.
- **AR-105(f)(1) is amended to now read:** In the event of a breach described in 45 CFR §164.408(b), Contractor shall provide to Department all information required by that subsection to be submitted to the Secretary of DHHS. The information shall be provided without unreasonable delay and in no event more than 30 days following discovery of the breach. Upon request, Contractor shall submit the required breach notice to the Secretary of DHHS on behalf of the Department, the State, the group plan(s), and the Program.

IN WITNESS THEREOF, the parties have executed this Fifth Modification Agreement as of the date hereinabove set forth.

CONTRACTOR:
Express Scripts, Inc.

[Redacted Signature]

By: _____
Sean Donnelly
President - Commercial Division

Date 9/20/13

[Redacted Signature]

Witness _____

STATE OF MARYLAND:
DEPARTMENT OF BUDGET AND
MANAGEMENT

[Redacted Signature]

By: T. Eloise Foster, Secretary

Date 9/20/13

[Redacted Signature]

Witness _____

APPROVED FOR FORM AND LEGAL SUFFICIENCY
THIS 24th DAY OF September, 2013.

[Redacted Signature]

ASSISTANT ATTORNEY GENERAL