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

THIS SIXTH MODIFICATION AGREEMENT is made this 20th of December 2013 by and between Express Scripts Inc. (Contractor) and the State of Maryland, acting through the Department of Budget and Management.

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, a Fourth Modification dated March 23, 2013, and a Fifth Modification dated September 26, 2013 between the Contractor and the State of Maryland, acting through the Department of Budget and Management as follows:

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.

Medicare Part D Employer-Only Sponsored Group Waiver Plan Prescription Drug Services Amendment

RECITALS

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

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

C. Department currently provides a prescription drug benefit (the "Current Benefit") to its Part D Eligible Retirees (as defined below) pursuant to a non-Medicare, self-insured welfare benefit plan, offered through the State Employee and Retiree Health and Welfare Benefits Program (the "Plan"); and

D. Department desires to contract with Contractor to offer a prescription drug benefit to Department's Part D Eligible Retirees pursuant to an EGWP that is substantially similar in design to the Current Benefit (the "EGWP Benefit," as further defined below), and as part of the Plan; and

E. For purposes of this Modification and consistent with the terms of the Contract, Contractor is authorized to use its subsidiary, Express Scripts Insurance Company (ESIC), to perform services under this Modification; and

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

G. The EGWP Benefit replaces the Plan's Retiree Drug Subsidy Program (the "Current Benefit") for the Department's Part D Eligible Retirees.

NOW, THEREFORE, in consideration of the mutual representations, warranties and covenants herein contained in this Amendment, the parties agree to amend the Commercial Agreement. Except as modified herein, all other terms and conditions of the Contract shall remain in full force and effect.

Article I - Definitions

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

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

1.2 "Average Wholesale Price" or "AWP" means the average wholesale price of a prescription drug as identified by drug pricing services such as Medi-Span or other source recognized in the retail prescription drug industry selected by Contractor (the "Pricing Source"). The applicable AWP shall be the 11-digit NDC for the product on the date dispensed, and 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 NDC code for the package size from which the prescription drug was dispensed.

1.3 "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 as amended by a First Modification dated May 4, 2012, a Second Modification dated August 13, 2012, a Third Modification dated October 19, 2012, a Fourth Modification dated March 23, 2013, and a Fifth Modification dated September 26, 2013 (the "Contract").

1.4 "Contractor" means Express Scripts, Inc.

1.5 "Copayment" or "Copay" means that portion of the charge for each Covered Product dispensed to an EGWP Enrollee that is the responsibility of such EGWP Enrollee (e.g., copayment, coinsurance, cost sharing, and/or deductibles under initial coverage limits and up to annual out-of-pocket thresholds) as provided under the EGWP Benefit, as shown in the Set-Up Forms.

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

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

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

1.9 "Covered Product(s)" means those prescription drugs, supplies, and other items that are covered under the EGWP Benefit, or treated as covered pursuant to a coverage determination or appeal.

1.10 "CuraScript" means CuraScript, Inc. or another pharmacy wholly-owned or operated by Contractor or its affiliate ESIC that primarily dispenses Specialty Products.

1.11 "Department" means the Maryland Department of Budget and Management.

1.12 "EGWP Benefit" means the prescription drug benefit to be administered by Contractor under this Agreement, as defined in the Recitals above and as further described in the Plan document, its summary plan description, and its summary of benefits, the latter of which is attached hereto as **Appendix A**, as may be amended from time to time in accordance with the terms of this Modification.

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

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

1.15 "EGWP Plus" means a prescription drug benefit plan design that provides coverage beyond the standard Part D benefit, and is defined by CMS as other health or prescription drug coverage, and as such, the Coverage Gap Discount is applied before any additional coverage beyond the standard Part D benefit.

1.16 "Enrollee Submitted Claim" means (a) a claim submitted by an Enrollee for Covered Products dispensed by a pharmacy other than a Participating Pharmacy, (b) a claim submitted by an Enrollee for a vaccination, or (c) a claim for Covered Products filled at a Participating Pharmacy for which the Enrollee paid the entire cost of the Covered Product.

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

1.18 "ESIC" means Express Scripts Insurance Company, an affiliate of Express Scripts, Inc, designated to perform EGWP benefit services for the Department per the requirements of this Modification.

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

1.20 "MAC List" means a list of prescription drug products identified as readily available as Generic Drugs, 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.

1.21 "Mail Service Pharmacy" means any duly licensed pharmacy and/or any duly licensed pharmacy owned, operated or subcontracted by Contractor or its affiliate ESIC, other than CuraScript, where prescriptions are filled and delivered to EGWP Enrollees via mail delivery service.

1.22 "Manufacturer Administrative Fees" means those administrative fees paid by pharmaceutical manufacturers to Contractor or ESIC pursuant to a contract between Contractor or ESIC and the manufacturer and directly in connection with Contractor or ESIC administering, invoicing, allocating and collecting the Rebates under the Medicare Rebate Program.

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

1.24 "Medicare Rebate Program" means Contractor's manufacturer rebate program under which Contractor or ESIC contracts with pharmaceutical manufacturers for Rebates payable on selected Covered Products that are reimbursed through Medicare Part D, as such program may change from time to time.

1.25 "Modification" means this Modification Agreement.

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

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

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

1.29 "Participating Pharmacy" means any licensed retail pharmacy with which Contractor or ESIC has executed an agreement to provide Covered Products to EGWP Enrollees.

1.30 "Pass-Through" means the actual ingredient cost and dispensing fee paid by Contractor to the Participating Pharmacy, as set forth in the specific Participating Pharmacy remittances related to Department's claims.

1.31 "Pharmacy" or "Pharmacies" refers from time to time to any or all Participating Pharmacies, Mail Service Pharmacy, or CuraScript as the context of the provision dictates.

1.32 "Prescription Drug Claim" means an EGWP Enrollee Submitted Claim or claim for payment of a Covered Product submitted to Contractor by a Pharmacy.

1.33 "Prescription Drug Plan" or "PDP" shall have the meaning set forth in the Medicare Drug Rules.

1.34 "Rebates" retains its definition from the Contract and incorporated documents except that, to the extent required by Federal law, the term "rebates" does not include fee-for-service arrangements whereby pharmaceutical manufacturers report the fees paid to Contractor or ESIC for services rendered as "bona fide service fees" pursuant to federal laws and regulations, including, but not limited to the Medicaid "Best Price" rule (collectively, "Other Pharma Revenue"). Such laws and regulations, as well as Contractor's contracts with pharmaceutical manufacturers, generally prohibit Contractor from sharing any such "bona fide service fees" earned by Contractor, whether wholly or

in part, with Department. Contractor represents and warrants that it will not enter into any agreement with a pharmaceutical manufacturer for Other Pharma Revenue in exchange for a reduction of Rebates.

1.35 "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.

1.36 "Set-Up Forms" means any standard Contractor document or form, which when completed and signed by Department (electronic communications from Department indicating Department's approval of a Set-Up Form shall satisfy the foregoing), will describe the essential benefit elements and coverage rules adopted by Department.

1.37 "Specialty Product List" means the standard list of Specialty Products and their reimbursement rates under the applicable (exclusive or open) option as updated from time to time.

1.38 "Specialty Products" means those injectable and non-injectable drugs on the Specialty Product List and/or 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.

1.39 "State" means the State of Maryland.

1.40 "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.

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

1.42 "Usual and Customary Price" or "U&C" means the retail price charged by a Participating Pharmacy for the particular drug in a cash transaction on the date the drug is dispensed as reported to Contractor or ESIC by the Participating Pharmacy.

1.43 "Vaccine Claim" means (i) a Medicare Part D covered vaccine claim for reimbursement submitted by a Participating Pharmacy, ESI Mail Pharmacy, CuraScript, physician, or other entity and (ii) a Medicare Part B covered vaccine claim submitted by a Participating Pharmacy. Vaccine Claim is a Prescription Drug Claim for purposes of this Agreement.

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

2.1 Medicare Part D. Department and Contractor acknowledge and agree as follows:

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

(b) The design of and administration of the EGWP Benefit is subject to the applicable requirements of the Medicare Drug Rules. Department shall cooperate with Contractor and, upon Contractor's request, do, execute, acknowledge and deliver such further acts, reports and instruments as may be reasonably required or appropriate to administer the EGWP Benefit in compliance with the Medicare Drug Rules, applicable state insurance laws and other applicable laws.

2.2 HIPAA. The Department, the Plan and Contractor agree that, in addition to the Business Associate Agreement contained in the HIPAA Administrative Requirements, attached as J-4 of the Technical Proposal and RFP, for the purposes of HIPAA compliance, Contractor and the Plan are each a Covered Entity, and that, with respect to the EGWP Benefit, Contractor and the Plan shall be deemed to be an Organized Health Care Arrangement. Contractor and the Plan may transmit and receive PHI as necessary for the operation of the EGWP Benefit. The Plan shall be responsible for distribution of the EGWP Benefit Notice of Privacy Practices to EGWP Enrollees in the form provided to the Plan by Contractor unless otherwise agreed to by the parties. In addition, Contractor may transmit PHI to the Plan for payment purposes and any other purpose permitted by HIPAA. Department hereby represents and warrants that: (i) the Plan's documents have been amended to meet the specification requirements set forth at 45 C.F.R. §164.504(f); (ii) Department will use and disclose PHI solely in accordance with these provisions; and (iii) accordingly, Contractor, at the direction of the Plan, may disclose PHI to Department consistent with the terms of this Section 2.2. Capitalized terms used in this Section 2.2 and not otherwise defined in this Modification shall have the meaning set forth in HIPAA.

2.3 Group Enrollment. Subject to each individual's right to opt out, as described below, Department shall enroll Part D Eligible Retirees in the EGWP Benefit through a group enrollment process, as further described in and permitted under the Medicare Drug Rules. Department agrees that it will comply with all applicable requirements for group enrollment in EGWPs as set forth in the Medicare Drug Rules and related CMS guidance, and as described and required by Contractor's policies, procedures and client handbook.

2.4 Enrollment File. No later than thirty (30) days prior to the Effective Date and the first day of each EGWP Benefit enrollment period thereafter, so long as this Modification is in effect, Department shall provide an Enrollment File to Contractor via the communication medium reasonably requested by Contractor that lists those Part D Eligible Retirees for whom Department intends to make application for enrollment in the EGWP Benefit (i.e., those Part D

Eligible Retirees who have not opted out of the group enrollment process) for that contract year. Department represents and warrants that all information it provides to Contractor in the Enrollment File will be complete and correct. Department shall communicate all new enrollments (i.e., individuals who become eligible to participate in the EGWP Benefit outside of an annual election period), requested retroactive enrollments of Part D Eligible Retirees, and disenrollments from the EGWP Benefit via the communication medium reasonably requested by Contractor. Contractor agrees to process retroactive enrollment requests pursuant to the requirements of the Medicare Drug Rules.

2.5 Implementation.

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

(b) Incomplete Enrollment File Information. Department's submission to Contractor of an inaccurate or incomplete Enrollment File (e.g., missing date of birth, last name, first name, etc.) or otherwise of incomplete information with respect to any individual Part D Eligible Retiree may result in a rejection of the Part D Eligible Retiree's enrollment in the EGWP Benefit. Contractor will provide Department with regular reports providing the details of all such incomplete information needed to enroll Part D Eligible Retirees. Department acknowledges and agrees that Contractor may contact Department's Part D Eligible Retirees to obtain the information required hereunder and that Contractor will update the Enrollment File on Department's behalf to reflect additional information needed to complete enrollment of the Part D Eligible Retirees in the EGWP Benefit. If Contractor, using reasonable efforts, is not able to obtain all missing information from a Part D Eligible Retiree within twenty-one (21) days after receiving Department's initial request for enrollment of the Part D Eligible Retiree in the EGWP Benefit, then Department's request shall be deemed cancelled and Contractor or ESIC shall

notify the individual of his or her non-enrollment in the EGWP Benefit and shall take all other action as required by applicable law.

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

2.6 Individual Disenrollment. If Department or Contractor determines that an EGWP Enrollee is no longer eligible to participate as an EGWP Enrollee in the EGWP Benefit (an "Ineligible Enrollee"), such Ineligible Enrollee shall be disenrolled in accordance with the Medicare Drug Rules.

2.7 Group Disenrollment. If, upon the expiration of the then current term of this Modification, Department plans to disenroll its EGWP Enrollees from the EGWP Benefit using a group disenrollment process, then Department shall implement the following procedures:

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

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

2.8 Voluntary Disenrollment. If an EGWP Enrollee makes a voluntary request to be disenrolled from the EGWP Benefit (the "Voluntary Disenrollee") to Department, then Department shall notify Contractor at least sixty (60) days prior to the effective date of such Voluntary Disenrollee's disenrollment, in a manner and format agreed upon by the parties. If Department does not timely notify Contractor of such Voluntary Disenrollee's disenrollment in the EGWP Benefit, then Contractor shall submit a retroactive disenrollment request to CMS. Department acknowledges that CMS may only grant up to a ninety (90) day retroactive disenrollment in such instances. If the Voluntary Disenrollee makes his or her request directly to Contractor, then Contractor shall direct the Voluntary Disenrollee to initiate the disenrollment with the Department.

2.9 Responsibility for Claims After Loss of Eligibility or Disenrollment. Except for Prescription Drug Claims that are paid due to Contractor's negligence, Department shall be responsible for reimbursing Contractor pursuant to Section 5.1 for all Prescription Drug Claims processed by Contractor: (a) with respect to an Ineligible Enrollee during any period in which the Enrollment File indicated that such Ineligible Enrollee was eligible; and (b) with respect to a

Voluntary Disenrollee, in the event Department did not provide timely notice to Contractor of such disenrollment as set forth in this Article II.

2.10 Effect On / Effect Of Contract. By requesting a Member's enrollment as an EGWP Enrollee in the EGWP Benefit, Department represents that such EGWP Enrollee's eligibility as a Member in the Commercial Benefit will immediately terminate. An EGWP Enrollee may not have dual coverage under the EGWP Benefit and the Commercial Benefit; and therefore, after any EGWP Enrollee's enrollment in the EGWP Benefit, all Prescription Drug Claims and Member Submitted Claims submitted to ESI under the Contract shall be treated as Prescription Drug Claims under this Modification and shall be processed by Contractor in accordance with the EGWP Benefit.

2.11 Retroactive Payments / Enrollment and Disenrollment. Contractor may receive or recoup payments from CMS based upon retroactive enrollments to the EGWP Benefit or retroactive disenrollments from the EGWP Benefit under this Modification. To the extent Contractor has agreed in this Modification to pay Department amounts equal to such payments, Contractor shall pay such amounts to Department within forty-five (45) days of Contractor's receipt of payments from CMS; provided, further, that any related PMPM Fees (as defined in Section 5.2(b)) associated with the retroactive enrollment or disenrollment, as the case may be, shall be adjusted in accordance with the applicable terms of this Modification.

ARTICLE III – PRESCRIPTION DRUG SERVICES

3.1 Exclusivity. Department acknowledges and agrees that, in the event Department offers its Part D Eligible Retirees more than one Part D benefit option, the eligibility determinations, enrollment and disenrollment and other administration of such Part D options will require extensive coordination with the administration of the EGWP Benefit. For these reasons, Department agrees that Department shall use Contractor as Department's exclusive provider of all Medicare Part D services for its Part D Eligible Retirees during the term of this Modification.

3.2 Prescription Drug Services. In exchange for the fees set forth in **Appendix A**, Contractor will administer the EGWP Benefit for EGWP Enrollees in accordance with the terms and conditions of this Modification. Such administrative services will include: pharmacy network contracting; Mail Service Pharmacy and Specialty Products services; Prescription Drug Claim processing; Formulary and Rebate administration; Medication Therapy Management; and related services (collectively, "Prescription Drug Services"), as further described in this Article III. Sections 3.7 through 3.10. All Prescription Drug Services shall be provided by Contractor in accordance with the Medicare Drug Rules and the terms of the EGWP Benefit. Department acknowledges and agrees that Contractor may provide Prescription Drug Services under this Modification through its affiliates ESIC and CuraScript. Contractor will have written agreements with each affiliate that will perform services on behalf of Contractor in connection with the EGWP Benefit that meet the requirements the Medicare Drug Rules for subcontractors of PDP Sponsors. Contractor acknowledges that it must receive written approval from the Department prior to the use of any other affiliates to perform any services under this Modification.

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

3.4 Changes to the EGWP Benefit. Department shall have the right to request changes to the terms of the EGWP Benefit from time to time by providing written notice to Contractor. Contractor shall implement any such requested changes, subject to the following conditions: (a) all changes to the EGWP Benefit must be consistent with the Medicare Drug Rules; (b) the EGWP Benefit, after implementation of such changes, must continue to meet the actuarial equivalence standards referenced in Section 3.3 above; (c) EGWP Benefit changes may be implemented only at times and in the manner permitted by the Medicare Drug Rules; and (d) any requested change that would increase Contractor's costs of administering the EGWP Benefit without an equivalent increase in reimbursement to Contractor from Department shall not be implemented unless and until Department and Contractor agree in writing upon a corresponding amendment to the reimbursement terms of this Modification.

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

3.6 Pharmacy Network. Contractor shall develop and maintain a Medicare Part D pharmacy network in accordance with the requirements of CMS and the Contract. Neither Contractor nor ESIC direct or exercise any control over the Participating Pharmacies or the professional judgment exercised by any pharmacist in dispensing prescriptions or otherwise providing pharmaceutical related services at a Participating Pharmacy. Contractor shall have no liability to Department, any EGWP Enrollee or any other person or entity for any act or omission of any Participating Pharmacy or it agents or employees. Upon Department's written request, Contractor will make good faith efforts to add any additional retail pharmacy to the Participating Pharmacy network for Department, provided that such pharmacy meets Contractor's network participation requirements and agrees to Contractor's standard terms and conditions.

3.7 Audits of Participating Pharmacies; Fraud and Abuse. Contractor shall periodically audit Participating Pharmacies to determine compliance with their agreements with Contractor or ESIC and in order to meet the anti-fraud provisions of the Medicare Drug Rules applicable to PDPs. Contractor also shall perform fraud and abuse reviews of EGWP Enrollees and

physicians as required under the Medicare Drug Rules for PDPs. The audits and reviews may be conducted by Contractor's or ESIC's internal auditors or its outside auditors, and at the pharmacy or at Contractor by a review of electronically transmitted claims. Any balance of recovered overpayments will be credited to Department on the next billing cycle after the correction. Contractor shall attempt recovery of identified overpayments through offset, demand or other reasonable means. Contractor shall not be required to institute litigation to collect any overpayments, but shall cooperate with Department in the event Department elects to pursue litigation.

3.8 Claims Processing. Subject to Sections 3.8(a)-(h), Contractor will perform claims processing services for Covered Products dispensed to EGWP Enrollees by a Pharmacy consistent with the applicable standard transaction rules required under HIPAA. Contractor also shall process EGWP Enrollee Submitted Claims.

(a) Application of Discounts. Prescription Drug Claims will be processed based on the rates set forth in **Appendix A**, including Prescription Drug Claims for which no benefits are payable to the EGWP Enrollee for Covered Products because of the application of any deductible or 100% co-insurance requirement following satisfaction of any initial coverage limit consistent with the Medicare Drug Rules.

(b) COB. Contractor will coordinate benefits with state pharmaceutical assistance programs and entities providing other prescription drug coverage consistent with the Medicare Drug Rules.

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

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

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

(f) Coverage Determinations and Appeals.

(i) The parties acknowledge and agree that Contractor is required under the Medicare Drug Rules to maintain oversight of coverage determinations under the EGWP Benefit, including prior authorizations and EGWP Enrollee Submitted Claims determinations, and to maintain an appeals process for EGWP Enrollees. Department acknowledges and agrees that Contractor may conduct appeals though an independent, third party utilization management company with which Contractor contracts to provide

appeal services (the "UM Company"). In such instance, Contractor shall require the UM Company to conduct appeals of denied "claims for benefits" in a manner consistent with the requirements of the Medicare Drug Rules and shall ensure that the contract with the UM Company complies with the applicable delegation requirements of the Medicare Drug Rules, including without limitation 42 C.F.R. §423.505.

(ii) In the event the appeals process being conducted by the UM Company is deemed by any court or governmental agency to be subject to applicable requirements of ERISA in connection with the Plan, Department acknowledges and agrees that: (aa) the UM Company, and not Contractor, will be conducting appeals on behalf of Department and the Plan; (bb) the UM Company is an independent contractor of Contractor, and Contractor does not in any way control or direct the UM Company with respect to appeals conducted by the UM Company; (cc) Contractor is not acting as a fiduciary in connection with the appeals being conducted by the UM Company, and Contractor shall not be named by Department as a fiduciary in connection with such appeals; (dd) Contractor shall not be responsible for overseeing the UM Company's appeal process (except that Contractor shall require the UM Company to contractually agree that it will conduct appeals in accordance with the Medicare Drug Rules and the EGWP Benefit), and Contractor shall not be liable to Department or any EGWP Enrollee for any injury or damages arising as a result of the UM Company's negligence or otherwise; and (ee) the UM Company shall have full authority and full discretion to conduct appeals under the EGWP Benefit and shall have full authority and full discretion to interpret the terms of the 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.

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

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

3.9 Formulary and Medication Management.

(a) P&T Committee and Medicare Formulary. Contractor or ESIC will maintain a pharmacy and therapeutics committee ("P&T Committee") in accordance with the Medicare Drug Rules, which will develop a Medicare Formulary to be selected by Department for the EGWP Benefit consistent with the requirements of the Medicare Drug Rules. In accordance with the Medicare Drug Rules, all Covered Products on the Medicare Formulary shall be Part D drugs (within the meaning of the Medicare Drug Rules) or otherwise permitted to be covered by a PDP under the Medicare Drug Rules. Department acknowledges and agrees that the Medicare Formulary may not be modified by removing Covered Products, adding additional utilization

management restrictions, making the cost-sharing status of a drug less beneficial or otherwise modified in a manner not consistent with the Medicare Drug Rules. To the extent permitted by the Medicare Drug Rules, Department may request enhancements to the Medicare Formulary such as adding additional drugs, removing utilization management restrictions, and improving the cost-sharing status of drugs.

(b) **Medication Therapy Management**. Consistent with the terms of the EGWP Benefit and for the fees identified in **Appendix A**, Contractor or ESIC will implement a Medication Therapy Management program that is designed to ensure that Covered Products prescribed to targeted EGWP Enrollees are appropriately used to optimize therapeutic outcomes through improved medication use; and reduce the risk of adverse events, including adverse drug interactions, in accordance with the Medicare Drug Rules.

3.10 Medicare Rebate Program.

Rebates shall be payable, disclosed, and reported pursuant to the underlying Contract, including applicable exhibits, attachments, amendments and proposals thereto.

3.11 Late Enrollment Penalty. Department agrees to comply with the applicable CMS requirements of the LEP and shall comply with Contractor's LEP policy, including participating with Contractor in the following process:

(a) Department agrees to provide an initial global attestation to Contractor to attest to a creditable coverage for all of its EGWP Enrollees.

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

ARTICLE IV – PROGRAM OPERATIONS

4.1 Program Reporting. Contractor or ESIC shall make available to Department Contractor's or ESIC's standard management information reporting applications. At the request of Department, Contractor or ESIC will develop any additional reporting packages per the Plan's Reporting Requirements.

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

4.3 Claims Data Retention. Contractor will maintain claims data for Covered Products adjudicated by Contractor during the term of this Modification for a period of ten (10) years or such longer period as may be required under the Medicare Drug Rules; provided that, after expiration of the retention period, Contractor shall dispose of such data in accordance with its standard policies and practices and applicable state and federal law.

4.4 Government Audits. Contractor agrees to allow the United States Department of Health and Human Services ("DHHS") and the Comptroller General, or their designees, the right to audit, evaluate, inspect books, contracts, medical records, patient care documentation and other records of Contractor or the Pharmacy, its subcontractors or transferees, as are reasonably necessary to verify the nature and extent of the costs of the services provided to EGWP Enrollees under this Modification, for a period of up to ten (10) years from the final date of the applicable agreement, or the date of the audit completion, whichever is later.

ARTICLE V – MONTHLY PREMIUMS; FEES; BILLING AND PAYMENT

5.1 Monthly Premiums.

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

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

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

(iii) That if Contractor or CMS determines that Department is not performing the premium collection function in compliance with all applicable Medicare Drug Rules and Department is unable to cure such noncompliance within thirty (30) days following notice from Contractor or CMS, then Contractor may, at its sole discretion, either: (i) upon prior written notice to Department, revoke all or a portion of such delegated function as Contractor deems necessary to effectuate Contractor's ultimate responsibility to CMS for the performance of such delegated function under Contractor's contract with CMS; or (ii) negotiate an alternative remedy in lieu of revocation of delegation, so long as such remedy conforms to the requirements of the Medicare Drug Rules; and

(iv) That Department acknowledges should it further contract the performance of the premium collection function to a third party, Department will, consistent with 42 CFR § 423.505, include such language as set forth in Schedule 5.1(a)(iv).

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

(i) Department may subsidize different amounts for different classes of EGWP Enrollees provided such classes are reasonable and based on objective business criteria, such as years of service, business location, job category, and nature of compensation (e.g., salaried vs. hourly). Different classes cannot be based on eligibility for the Low Income Subsidy;

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

(iii) Department may not charge an EGWP Enrollee more than the sum of his or her monthly beneficiary premium attributable to basic prescription drug coverage and 100% of the monthly beneficiary premium attributable to his or her supplemental prescription drug coverage, if any;

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

(v) If Department is not able to reduce the up-front monthly beneficiary premium as described in subsection (iv) above, Department shall directly refund to the

EGWP Enrollee (or shall allow Contractor to do so), within forty-five (45) days of original receipt from CMS of the Low Income Subsidy premium, the full premium subsidy amount up to the monthly beneficiary premium amount previously collected from the EGWP Enrollee;

(vi) If the Low Income Subsidy amount for which an EGWP Enrollee is eligible is less than the portion of the monthly beneficiary premium paid by the EGWP Enrollee, then Department must communicate to the EGWP Enrollee the financial consequences for the beneficiary of enrolling in the EGWP Benefit as compared to enrolling in another Medicare Part D plan with a monthly beneficiary premium equal to or below the Low Income Subsidy amount; and

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

(c) **Reporting and Auditing of Premium Amounts; Non-Payment by EGWP Enrollees.** Upon reasonable advance written notice, Contractor shall have access to Department's records in order to audit the monthly premium amounts collected from EGWP Enrollees for the purposes of fulfilling reporting requirements under the Medicare Drug Rules or applicable state insurance laws related to collection of such premium amounts or to otherwise assess compliance with the Medicare Drug Rules in connection with the collection of such premium amounts. Any audits performed by Contractor pursuant to this Section 5.1(c) will be at Contractor's expense. Department acknowledges and agrees that Contractor shall be responsible to Department for non-payment by any EGWP Enrollee of any monthly premium amount due by such EGWP Enrollee for participation in the EGWP Benefit. Department further acknowledges and agrees that in the event that either Department or Contractor (through any audit) determines that Department has collected a greater premium amount from an EGWP Enrollee than is due, that Department shall promptly refund any such overpayment to the EGWP Enrollee.

5.2 Billing. For purposes of this EGWP plan only:

(a) "Claims Reimbursement Amount" means, with respect to any period, the amount equal to: (i) The aggregate amount of reimbursement due from Department to Contractor for Covered Products dispensed to EGWP Enrollees by the Pharmacies, and, if applicable, for EGWP Enrollee Submitted Claims during such period, including dispensing fees and all associated claims processing administrative fees, based on the reimbursement rates and pricing terms set forth herein; minus (ii) Monthly beneficiary premiums paid to Contractor by EGWP Enrollees (but not including premiums collected by Department on Contractor's behalf pursuant to Section 5.1(b) to the extent such premium funds are not transferred by Department to Contractor), if any.

Enrollees (but not including premiums collected by Department on Contractor's behalf pursuant to Section 5.1(b) to the extent such premium funds are not transferred by Department to Contractor), if any.

(b) "PMPM Fees" means, with respect to any period, all per EGWP Enrollee per month administrative fees ("PMPM Fees") as set forth herein for such period.

5.3.1 CMS Reimbursement.

(a) **CMS Reimbursement Payment Terms.** Contractor will pay Department an amount equal to the total amount paid to Contractor by CMS for the following: (1) advance monthly payments paid to Contractor, if any, by CMS with respect to EGWP Enrollees, (2) reinsurance subsidy payments, if any, paid to Contractor by CMS with respect to the EGWP Benefit, (3) low-income subsidy payments paid to Contractor by CMS, if any, with respect to EGWP Enrollees and subject to the provisions of Section 5.1(b) of this Modification, and (4) any other reimbursement payment by CMS to Contractor, if any, for coverage provided to EGWP Enrollees under the EGWP Benefit for such period (each as further defined in the Medicare Drug Rules) (collectively, "CMS Reimbursement"). Contractor will pay amounts representing CMS Reimbursement, allocated pursuant to the terms of this Modification, on a monthly basis approximately forty-five (45) days after Contractor's receipt of the CMS Reimbursement from CMS. Contractor retain all right, title and interest to any and all actual CMS Reimbursement received from CMS, except that Contractor shall pay Department amounts equal to the CMS Reimbursement amounts allocated to Department,.

(b) **CMS Reimbursement Reporting.** At least quarterly, Contractor will provide Department an accounting of all CMS Reimbursement received by Contractor from CMS pursuant to the Medicare Drug Rules with respect to the EGWP Benefit.

5.3.2 CMS-Required Reconciliation / Reinsurance.

(a) **End-of-Year Reconciliation**. The parties acknowledge that pursuant to the Medicare Drug Rules, approximately eleven (11) months after the conclusion of each plan year, CMS will reconcile payment year disbursements, including, but not limited to, CMS Reimbursements (as defined above) and Coverage Gap Discount Payments (as defined below), with updated enrollment and health status data, actual low-income cost-sharing costs, actual allowable reinsurance costs, and other pertinent information. Upon any payment adjustments made by CMS as a result of such reconciliation the following shall occur: (i) if Contractor receives any additional payments from CMS as a result of previous underpayments discovered during the reconciliation, Contractor will pay amounts equal to such amounts to Department subject to the remaining terms of this Modification; and (ii) with respect to any amounts requested, recovered or withheld by CMS as a result of previous overpayments discovered during the reconciliation, if Contractor has paid amounts to Department pursuant to this Modification for CMS Reimbursement received by Contractor and CMS determines during the reconciliation process that such CMS Reimbursement has been overpaid to Contractor, Department shall repay to Contractor such amounts previously paid by Contractor. All such

(b) **End-of-Year Reinsurance Payments**. The parties acknowledge that pursuant to the Medicare Drug Rules, approximately eleven (11) months after the conclusion of each plan year and after CMS' end-of-year reconciliation described in subsection (a) immediately above, CMS will make final payment to Contractor for reinsurance for the immediately preceding coverage year based upon CMS obtaining all information necessary to determine the amount of the reinsurance payment. No later than forty five (45) days after Contractor's receipt of such reinsurance payment, if any, Contractor agrees to pay an amount equal to such reinsurance payment received by Contractor to Department subject to the remaining terms of this Modification; provided, however, that if CMS subsequently recovers any such reinsurance payments from Contractor due to a CMS reconciliation or other process described in the Medicare Drug Rules, then Department shall be obligated to repay to Contractor such amounts previously paid to Department.

(c) **Plan-to-Plan Reconciliation.** The parties acknowledge that the Medicare Drug Rules provide Contractor with a process through which to coordinate EGWP Enrollees' prescription drug benefits with other providers of prescription drug coverage. Contractor will perform such plan-to-plan coordination and any related reconciliation; provided, that within forty-five (45) days after completion of such coordination or reconciliation process, Contractor shall pay to Department an amount equal to payments recovered for the EGWP Benefit, but at the same time Contractor shall have a right to recoup from Department any amount which Contractor is obligated to pay to any other prescription drug plan pursuant to a plan-to-plan reconciliation.

5.4 Payment. Department shall pay all Fees to Contractor by wire or ACH transfer, debit or other electronic method within seven (7) business days from the date of Department's receipt of the Contractor invoice.

5.5 Manufacturer Coverage Gap Discount.

Pursuant to its CMS contract, Contractor has agreed to administer for EGWP Enrollees at point-of-sale the Coverage Gap Discount authorized by section 1860D-14A of the Social Security Act. In connection with the Coverage Gap Discount, CMS will coordinate the collection of discount payments from manufacturers, and payment to Contractor, through a CMS contractor (the "Coverage Gap Discount Payments"). Subject to Section 5.3(a) above, Contractor agrees to periodically remit to Department amounts equal to 100% of the Coverage Gap Discount Payments received by Contractor within forty-five (45) days following Contractor's receipt of such Coverage Gap Discount Payments. Contractor and ESIC retain all right, title and interest to any and all actual Coverage Gap Discount Payments received from CMS, except that Contractor shall pay Department amounts equal to the Coverage Gap Discount Payments amounts allocated to Department, as specified in this Modification, from Contractor's general assets. Department acknowledges and agrees that neither it nor its EGWP Enrollees shall have a right to interest on, or the time value of, any Coverage Gap Discount Payments received by Contractor during the collection period or moneys payable under this Section. No Coverage Gap Discount Payments shall be paid until this Modification is executed by Department. Notwithstanding anything contained in this Section 5.5, Department shall retain all right, title, and interest to the amounts that Contractor is contractually obligated to pay Department

hereunder, and failure by Contractor to pay such amounts will constitute a breach of this Modification. Notwithstanding anything in this Modification, the Contract, or the Set-Up Form to the contrary, for purposes of Contractor's administration of the EGWP Benefit hereunder and for purposes of determining the amounts payable to Contractor by Department for Prescription Drug Claims for which the Coverage Gap Discount is administered, the applicable Copayment shall be 50% of the Copayment otherwise payable by the EGWP Enrollee under the EGWP Benefit.

If the EGWP Benefit administered by Contractor under this Modification for Department includes EGWP Plus design elements, then the Coverage Gap Discount will be coordinated with the Plan consistent with Medicare Part D Rules.

ARTICLE VI - COMPLIANCE WITH LAW

6.1 Compliance with Law; Change in Law. Contractor and Department hereby agree to perform their respective obligations under this Modification in a manner that is consistent with and complies with the Medicare Drug Rules and with Contractor's contractual obligations under its contract with CMS. Should CMS, for any reason, terminate its contract with Contractor so that Contractor can no longer perform services hereunder, such termination shall be considered a material breach of the Contract as amended by this Modification.

ARTICLE VII – TERMINATION and SURVIVAL

7.1 Obligations Upon Termination. Department or its agent shall pay Contractor in accordance with this Modification for all claims for Covered Products dispensed and services provided to Department and EGWP Enrollees on or before the later of: (i) the effective date of termination, or (ii) the final date that all EGWP Enrollees have been transitioned to a new Part D plan, as applicable (the "Termination Date"). Claims submitted by Participating Pharmacies or EGWP Enrollee Submitted Claims filed with Contractor after the Termination Date shall be processed and adjudicated in accordance with a mutually determined run-off plan. The parties shall cooperate regarding the transition of Department and its EGWP Enrollees to a successor PDP Sponsor in accordance with all applicable Medicare Drug Rules and Contractor will take all reasonable steps to mitigate any disruption in service to EGWP Enrollees. .

7.2 Survival. The parties' rights and obligations under Sections 3.7 and 3.8(f); Articles V, VI and VII shall survive the termination of this Modification for any reason.

ARTICLE VIII - MISCELLANEOUS

8.1 Trademarks. Each party acknowledges each other party's sole and exclusive ownership of its respective trade names, commercial symbols, trademarks, and service marks, whether presently existing or later established (collectively "Marks"). No party shall use the other party's

Marks in advertising or promotional materials or otherwise without the owner's prior written consent.

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

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

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

CONTRACTOR:
Express Scripts, Inc.

[redacted]
By:

Sean Donnelly
President - Commercial Division

Date 12/13/13

[redacted]
Witness

STATE OF MARYLAND:
DEPARTMENT OF BUDGET AND MANAGEMENT

[redacted]
By: T. Eloise Foster, Secretary

12/20/13
Date

[redacted]
Witness

APPROVED FOR FORM AND LEGAL SUFFICIENCY
THIS 18th DAY OF December, 2013.

[redacted]
ASSISTANT ATTORNEY GENERAL

APPENDIX A

PRICING AND REBATE GUARANTEES
ADMINISTRATIVE SERVICES AND FEES

Redacted pages 22 - 28

SCHEDULE 5.1(a)(iv)

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

The agreement between Client and Subcontractor (the "Subcontract") must clearly identify the parties to the Subcontract.

The Subcontract must describe the functions that are being delegated to and performed by the Subcontractor.

The Subcontract must describe the manner in which Client will monitor the performance of the Subcontractor on an ongoing basis; specifically to monitor compliance with the Medicare Drug Rules.

The Subcontract must describe any reporting requirements that the Subcontractor has to Client.

The Subcontract must describe the payment that the Subcontractor will receive for performance under the Subcontract.

The Subcontractor must agree that the United States Department of Health and Human Services ("DHHS"), the Comptroller General, or their designees have the right to inspect, evaluate, and audit any pertinent contracts, books, documents, papers and records (including medical records and documentation) of the Vendor involving transactions related to the Centers for Medicare and Medicaid Services' ("CMS") contract with Contractor or ESIC for a period of ten (10) years following the expiration or termination of the Subcontract or the date of any audit completion, whichever is later.

The Subcontractor must agree pursuant 42 CFR § 423.505(i)(3)(iv) to produce upon request by CMS, or its designees, any books, contracts, records, including medical records and documentation of the PDP Sponsor, relating to the Part D program, to either the PDP Sponsor to provide to CMS, or directly to CMS or its designees.

The Subcontractor must agree that in no event, including, but not limited to, nonpayment by Client, Client's insolvency, or breach of the Subcontract, will the Subcontractor bill, charge, collects a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against a beneficiary of Client or persons acting on his or her behalf for services provided by the Subcontractor pursuant to the Subcontract.

The Subcontract must: (i) specify that the Subcontractor will perform all services under the Subcontract in a manner that is consistent with and that complies with Contractor's contractual obligations under its contract with CMS; (ii) specify that the Subcontractor agrees to comply with all applicable federal laws, regulations, and CMS instructions; and (iii) provide for revocation of the Subcontractor's delegated activities and reporting responsibilities or specify other remedies in instances when CMS, Client, or Contractor determine that the Subcontractor has not performed satisfactorily.

The Subcontract must require the Subcontractor to agree to comply with state and federal privacy and security requirements, including the confidentiality and security provisions stated in 42 CFR §423.136.

The Subcontract must include an acknowledgment by the parties that information provided in connection with the Subcontract is used for purposes of obtaining federal funds.

If the Subcontract permits the Subcontractor to use a subcontractor to perform any of the services delegated to it under the Subcontract, the Subcontract must require that the Subcontractor include all of the above provisions in a written agreement with such subcontractor.

The Subcontract must be signed by a representative of the Subcontractor with legal authority to bind the Subcontractor.

The Subcontract must contain a representation by Client and the Subcontractor that they shall not knowingly employ, or subcontract with, an individual or an entity that employs or contracts with an individual, who is excluded from participation in Medicare under section 1128 or 1128A of the Act or from participation in a Federal health care program for the provision of health care, utilization review, medical social work, or administrative services.

The Subcontract must contain language clearly indicating that the first tier, downstream, or related entity has agreed to participate in the PDP Sponsor's Medicare Prescription Drug Benefit program. This requirement is not applicable for a network pharmacy if the existing contract would allow participation in this program.

The Subcontract must be for a term of at least the one-year contract period for which the PDP Sponsor's Medicare Part D Application is submitted. However, where the Subcontract is for services or products to be used in preparation for the next contract year's Part D operations (marketing, enrollment), the initial term of such Subcontract must include this period of performance (e.g., contracts for enrollment-related services must have a term beginning no later than November 15 extending through the full contract year ending on December 31 of the next year).

Insofar as the Subcontractor establishes the pharmacy network or select pharmacies to be included in the network, the Subcontractor must agree: i) pursuant 42 CFR § 423.505(i)(5) that the PDP Sponsor retains the right to approve, suspend, or terminate any arrangement with a pharmacy; ii) pursuant 42 CFR §423.505(i)(3)(vi) and consistent with 42 CFR § 423.520 to issue, mail, or otherwise transmit payment of all clean claim to such pharmacies (excluding long-term care and mail order) submitted by or on behalf of pharmacies within 14 days for electronic claims and within 30 days for claims submitted otherwise; iii) pursuant 42 CFR § 423.505(i)(3)(viii)(B) and 42 CFR § 423.505(i)(3)(viii)(A) that if a prescription drug pricing standard is used for reimbursement, Subcontractor will identify the source used by the PDP Sponsor for the prescription drug pricing standard of reimbursement and agree to a contractual provision that updates to such a standard occur not less frequently than once every 7 (seven) days beginning with an initial update on January 1 of each year, to accurately reflect the market price of acquiring the drug.