



COMMITTEE OF THE WHOLE MEETING AGENDA

I. ROLL CALL

II. CONSIDERATION OF PREVIOUS MINUTES

1. Regular Council Meeting 08/17/2021
2. Committee of the Whole 08/17/2021
3. Special-Called Council Meeting 08/30/2021

III. PUBLIC COMMENTS/AGENDA ITEMS

IV. Unfinished Business

Miscellaneous

Resolutions

Ordinances

V. New Business

Miscellaneous

1. Discuss proposal by Mrs. Aiken to install a "beaver preventer" flow through type device behind private residences on Park Drive. (JJ/WS)
2. Discuss potential partnership with C Spire to collocate equipment on the new site of the Coastal Alabama Sea Turtle Center. (JJ/WS)
3. Discuss potential sale of city property. (TK)

Resolutions

1. Resolution awarding the bid for Dinner Theater Catering Services. (RE/JL)
2. Resolution awarding the bid for Christmas Decorations. (RE/TT)
3. Resolution authorizing the execution of an Administrative Services Agreement and Addendum with RxBenefits, Inc., for pharmacy claims related to the employee health benefit plan. (VP)

4. Resolution authorizing the execution of a Performance Contract with Jody Hodo for softball coaching services. (JL)
5. Resolution authorizing execution of a Cooperative Service Agreement with the U.S. Department of Agriculture to supplement nuisance wildlife control services. (PW)
6. Resolution authorizing the execution of a Storage Rental Agreement with FM Holdings, LLC, dba Keel Storage. (NW/WS)

Ordinances

1. Ordinance amending Chapter 30, Article XI of the Code of Ordinances for the City of Orange Beach, Alabama, presently entitled "Habitat Conservation Program." (PW)
2. Set a public hearing date for an ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 0903-PUDA-21, CoastAL PUD Modification. (Suggested date 10/5/2021) (KA)
3. Executive session to discuss pending litigation.

VI. Public Comments/Community Discussion

VII. Adjourn

For current information regarding times and date of meetings of the council and committee of the whole, call 980-info (980-4636) for a recorded message or **visit our web site**
at www.orangebeachal.gov



**COMMITTEE OF THE WHOLE MEETING
SEPTEMBER 7, 2021**

Departments: Administration

Description of Topic:

Regular Council Meeting 08/17/2021

Action Options/Recommendation:

Source of Funding (if applicable) :

ATTACHMENTS:

Description

- ▣ Regular Council Meeting 08/17/2021

**MINUTES OF
REGULAR COUNCIL MEETING
ORANGE BEACH CITY COUNCIL
AUGUST 17, 2021 – 5:00 P.M.
CITY HALL – COUNCIL CHAMBERS**

- I. CALL TO ORDER** Mayor Tony Kennon called the meeting to order at 5:00 P.M.
- II. INVOCATION** Councilmember Jeff Boyd
- III. PLEDGE OF ALLEGIANCE**
- IV. ROLL CALL**

Present: Councilmember Jeff Silvers
Councilmember Jerry Johnson
Councilmember Annette Mitchell
Councilmember Joni Blalock
Councilmember Jeff Boyd
Mayor Tony Kennon

Absent: None

V. CONSIDERATION OF AGENDA

Motion made (Silvers/Mitchell) to approve the agenda as written. Vote unanimous in favor.

VI. CONSIDERATION OF PREVIOUS MINUTES

Work Session	07/20/2021
Regular Council Meeting	07/20/2021
Committee of the Whole	07/20/2021

The reading was waived and minutes were approved as written.

VII. REPORTS OF OFFICERS/COMMITTEES

- | | |
|---|------------------|
| A. <u>City Administrator – Ken Grimes</u> | No report. |
| B. <u>Director, Public Works – Tim Tucker</u> | No report. |
| C. <u>Director, Community Development – Kit Alexander</u> | No report. |
| D. <u>Chief, Police Department – Steve Brown</u> | No report. |
| E. <u>Chief, Fire Department – Mike Kimmerling</u> | No report. |
| F. <u>City Clerk – Renee Eberly</u> | No report. |
| G. <u>Director, Finance – Ford Handley</u> | Report attached. |
| H. <u>Parks & Recreation – Ken Grimes</u> | No report. |
| I. <u>Director, Utilities – Jeff Hartley</u> | No report. |
| J. <u>Director, Coastal Resources – Phillip West</u> | No report. |
| K. <u>Librarian, Public Library – Meagan Bing</u> | No report. |
| L. <u>Director, Municipal Court – Renee Gardner</u> | No report. |
| M. <u>Director, Expect Excellence – Jonathan Langston</u> | No report. |
| N. <u>Mayor/Council</u> | |

Jeanne Fitzgibbon, city employee, invited the audience to sign up for the Full Moon Paddle Relay for Life fundraiser.

Chris Litton, city employee, reminded the audience that the Huey helicopter rides are ongoing at the Wharf.

Mayor Kennon asked for prayers for Brandon Ard, an Orange Beach police officer who is fighting COVID-19. Allen McElroy, resident, mentioned that today is Officer Ard's birthday.

VIII. AUDITING OF ACCOUNTS

Motion made (Mitchell/Johnson) to certify that cash requirements with no related interests are within budget and appropriate for payment. Vote revealed: Silvers, aye; Johnson, aye; Mitchell, aye; Blalock, aye; Boyd, aye; Kennon, aye. **Passed. (6-0).**

Motion made (Mitchell/Boyd) to certify that cash requirements with related interests in Swift Supply are within budget and appropriate for payment. Vote revealed: Silvers, abstain; Johnson, aye; Mitchell, aye; Blalock, aye; Boyd, aye; Kennon, aye. **Passed. (5-0-1).**

IX. PRESENTATIONS

X. RECOGNITIONS

XI. UNFINISHED BUSINESS

Ordinances

1. Second Reading – Ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 0608-PUDA-21, Sunset Park, Lot 25, 4696 Casablanca Dr., Porch Encroachment. **Motion made (Boyd/Mitchell) to adopt the ordinance.** Roll call vote revealed: Silvers, nay; Johnson, nay; Mitchell, nay; Blalock, nay; Boyd, nay; Kennon, nay. **Failed. (0-6).**

XII. NEW BUSINESS

Resolutions

1. Resolution appropriating funds to the Makos Academics, Arts & Athletics Club in the amount of \$217,451.95. **Motion made (Silvers/Blalock) to adopt the resolution.** Vote unanimous in favor.
2. Resolution authorizing execution of a Memorandum of Agreement with the Alabama Gulf Coast Convention and Visitors Bureau, dba Gulf Shores & Orange Beach Sports Commission, to fund athletic facility upgrades. **Motion made (Silvers/Johnson) to adopt the resolution.** Vote unanimous in favor.
3. Resolution adopting the 2021 Baldwin County Multi-Hazard Mitigation Plan. **Motion made (Boyd/Mitchell) to adopt the resolution.** Vote unanimous in favor.
4. Resolution authorizing execution of an agreement between the Baldwin County Commission, the City of Orange Beach, and the Planning Commission of the City of Orange Beach concerning the exercise of subdivision regulations within the planning jurisdiction of the municipal planning commission. **Motion made (Johnson/Mitchell) to adopt the resolution.** Vote unanimous in favor.
5. Resolution declaring certain personal property owned by the City of Orange Beach as surplus and unneeded and authorizing the Mayor and City Clerk to dispose of such property. **Motion made (Silvers/Blalock) to adopt the resolution.** Vote unanimous in favor.
6. Resolution declaring a vehicle owned by the City of Orange Beach as surplus and unneeded and authorizing the donation of said property to the Back Country Trail Foundation, Inc **Motion made (Blalock/Boyd) to adopt the resolution.** Vote unanimous in favor.

7. Resolution authorizing execution of a Second Amended and Restated Fiber Optics Development Agreement and related documents with Camp Fox, LLC, dba Island Fiber, relating to “Fiber to the Home” services. **Motion made (Boyd/Johnson) for unanimous consent to suspend the rules to allow for immediate consideration of this resolution.** Roll call vote revealed: Silvers, aye; Johnson, aye; Mitchell, aye; Blalock, aye; Boyd, aye; Kennon, aye. **Passed. (6-0).** **Motion made (Johnson/Boyd) to adopt the resolution.** Roll call vote revealed: Silvers, aye; Johnson, aye; Mitchell, aye; Blalock, aye; Boyd, aye; Kennon, aye. **Passed. (6-0).**
8. Resolution awarding the bid for Fire Station 5 Bay Relocation to Sun Coast Builders, Inc., in an amount not to exceed \$163,200. **Motion made (Boyd/Mitchell) to adopt the resolution.** Vote unanimous in favor.
9. Resolution declaring the Fire Station No. 5 Apparatus Bay Structure located at the Wharf Shopping Center owned by the City of Orange Beach as surplus and unneeded and authorizing the sale of said property to Wharf Retail Properties, L.L.C. **Motion made (Blalock/Silvers) to adopt the resolution.** Vote unanimous in favor.
10. Resolution authorizing the purchase of Two Used Vehicles for the Police Department from the Alabama Department of Economic and Community Affairs (ADECA) in the amount of \$28,000. **Motion made (Johnson/Mitchell) to adopt the resolution.** Vote unanimous in favor.
11. Resolution appropriating funds to the South Baldwin Regional Medical Center for the purpose of sponsoring employee appreciation days in the amount of \$1,000. **Motion made (Silvers/Boyd) to adopt the resolution.** Vote unanimous in favor.

Public Hearings

1. Public hearing for an ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 0704-PUD-21, Romar Beach Hotel PUD.

Griffin Powell, Planner II, presented the case overview.

Councilmember Mitchell commended the improved coastal look, but asked the developer to improve it further.

Ben Boles, Beach Music Properties, spoke in opposition.

Councilmember Boyd explained other factors weighing on his decision such as the future of the Romar Beach Baptist Church.

Mayor Kennon and Council discussed the intensity of the project. Councilmember Mitchell shared that Planning Commission Attorney John Lawler had stated that this project would be a “downzoning” by all definitions.

Ian Boles, Beach Music Properties and father of Ben Boles, spoke in opposition.

Chris Callaghan, resident, spoke generally in support of planned unit developments (PUDs).

Paul Smith, founding pastor of Romar Beach Baptist Church, stated that he would keep the property a church if a purchase could be made successfully if the property went to foreclosure.

There being no further comments, the public hearing adjourned.

Ordinances

1. First Reading – Ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 0704-PUD-21, Romar Beach Hotel PUD. **Motion made (Boyd/Mitchell) for unanimous**

consent to suspend the rules to allow for immediate consideration of this ordinance. Roll call vote revealed: Silvers, aye; Johnson, aye; Mitchell, aye; Blalock, aye; Boyd, aye; Kennon, aye. **Passed. (6-0).** **Motion made (Boyd/Blalock) to adopt the ordinance with the condition that the developer enhance the coastal look of the project and submit revised architectural drawings with design elements to be approved by City Council prior to construction.** Roll call vote revealed: Silvers, aye; Johnson, aye; Mitchell, aye; Blalock, aye; Boyd, aye; Kennon, aye. **Passed. (6-0).** reading.

XIII. PUBLIC COMMENTS

None

XIV. ADJOURN

There being no further business to come before the council, motion made (Mitchell/Blalock) to adjourn. Vote unanimous in favor.

Time: 5:50 P.M.

APPROVED this the 21st day of September, 2021.

Renee Eberly
City Clerk



**COMMITTEE OF THE WHOLE MEETING
SEPTEMBER 7, 2021**

Departments: Administration

Description of Topic:

Committee of the Whole 08/17/2021

Action Options/Recommendation:

Source of Funding (if applicable) :

ATTACHMENTS:

Description

- ▣ Committee of the Whole 08/17/2021

**MINUTES OF
COMMITTEE OF THE WHOLE MEETING
ORANGE BEACH CITY COUNCIL
AUGUST 17, 2021 – 5:51 P.M.
CITY HALL – COUNCIL CHAMBERS**

The Orange Beach City Council met to review potential items for the September 7, 2021, agenda.

The following members were present:

Councilmember Jeff Silvers
Councilmember Jerry Johnson
Councilmember Annette Mitchell
Councilmember Joni Blalock
Councilmember Jeff Boyd
Mayor Tony Kennon

The following members were absent:

None

The following items were discussed:

1. Resolution appointing Chris Callaghan as Municipal Court Judge for the City of Orange Beach.
2. Resolution appropriating funds to support the Safe Harbor Animal Coalition in a prorated amount of \$3,333.33 for FY2021.
3. Resolution appropriating funds to the National Sojourners, Inc., 531 Baldwin County Chapter for the purpose of sponsoring local events benefiting first responders in the amount of \$500.
4. Resolution authorizing the sole source purchase of a replacement pump for the Mariner Lakes Lift Station from Jim House & Associates, Inc., for the Utilities Department in the amount of \$18,558.
5. Resolution authorizing the execution of the Alabama Association of Fire Chiefs Mutual Aid Consortium Agreement.
6. Resolution authorizing a franchise for Rock & Roll Off's, LLC, to remove and dispose of commercial solid waste and to remove and transport construction and demolition debris.
7. Reminder: Public hearing and first reading for an ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 0802-PUDA-21, Summer Salt PUD Modification, Addition of 7 Lots to Phase 2 on September 7, 2021.
8. Reminder: Public hearing for the vacation of a right-of-way located east of Andrews Lane on September 7, 2021.

There being no further business, the meeting adjourned.

Time: 5:58 P.M

APPROVED this 21st day of September, 2021.

Renee Eberly
City Clerk



**COMMITTEE OF THE WHOLE MEETING
SEPTEMBER 7, 2021**

Departments: Administration

Description of Topic:

Special-Called Council Meeting 08/30/2021

Action Options/Recommendation:

Source of Funding (if applicable) :

ATTACHMENTS:

Description

- ▣ Special-Called Council Meeting 08/30/2021

**MINUTES OF
SPECIAL-CALLED COUNCIL MEETING
ORANGE BEACH CITY COUNCIL
AUGUST 30, 2021 – 11:00 A.M.
CITY HALL – COUNCIL CHAMBERS**

- I. CALL TO ORDER** Mayor Tony Kennon called the meeting to order at 11:03 A.M.
- II. INVOCATION** Ken Grimes, City Administrator
- III. PLEDGE OF ALLEGIANCE**
- IV. ROLL CALL**

Present: Councilmember Jeff Silvers
Councilmember Jerry Johnson
Councilmember Annette Mitchell
Councilmember Joni Blalock [Joined remotely]
Councilmember Jeff Boyd [Joined remotely]
Mayor Tony Kennon

Absent: None

There being a quorum present, the meeting was opened for the transaction of business.

- V. CONSIDERATION OF AGENDA: Motion made (Mitchell/Silvers) to approve the agenda as presented.** Vote unanimous in favor.

- VI. NEW BUSINESS**

Resolutions

1. Resolution declaring a local state of emergency in response to Hurricane Ida. **Motion made (Silvers/Mitchell) to adopt the resolution.** Vote unanimous in favor.

- VII. ADJOURN**

There being no further business to come before the council, motion made (Mitchell/Silvers) to adjourn. Vote unanimous in favor.

Time: 11:08 A.M.

APPROVED this the 21st day of September, 2021.

Renee Eberly
City Clerk

ITEM 1.



COMMITTEE OF THE WHOLE MEETING SEPTEMBER 7, 2021

Departments: Coastal Resources

Description of Topic:

Discuss proposal by Mrs. Aiken to install a "beaver preventer" flow through type device behind private residences on Park Drive. (JJ/WS)

Action Options/Recommendation:

Source of Funding (if applicable) :



**COMMITTEE OF THE WHOLE MEETING
SEPTEMBER 7, 2021**

Departments: Coastal Resources

Description of Topic:

Discuss potential partnership with C Spire to collocate equipment on the new site of the Coastal Alabama Sea Turtle Center. (JJ/WS)

Action Options/Recommendation:

Source of Funding (if applicable) :

ITEM 3.



**COMMITTEE OF THE WHOLE MEETING
SEPTEMBER 7, 2021**

Departments: Administration

Description of Topic:

Discuss potential sale of city property. (TK)

Action Options/Recommendation:

Source of Funding (if applicable) :

ITEM 1.



**COMMITTEE OF THE WHOLE MEETING
SEPTEMBER 7, 2021**

Departments: Administration

Description of Topic:

Resolution awarding the bid for Dinner Theater Catering Services. (RE/JL)

Action Options/Recommendation:

Bid opening scheduled for Thursday, September 16th.

Source of Funding (if applicable) :



**COMMITTEE OF THE WHOLE MEETING
SEPTEMBER 7, 2021**

Departments: Administration

Description of Topic:

Resolution awarding the bid for Christmas Decorations. (RE/TT)

Action Options/Recommendation:

Bid opening scheduled for Thursday, September 16th.

Source of Funding (if applicable) :



COMMITTEE OF THE WHOLE MEETING SEPTEMBER 7, 2021

Departments: Administration

Description of Topic:

Resolution authorizing the execution of an Administrative Services Agreement and Addendum with RxBenefits, Inc., for pharmacy claims related to the employee health benefit plan. (VP)

Action Options/Recommendation:

The Administrative Services Agreement (ASA) is the governing document that guarantees the services RxBenefits will perform on behalf of the City of Orange Beach. This contains the terms and definitions pertinent to pharmacy claims (generic, brand, average wholesale price, etc.) as well as payment and termination.

The Pricing Addendum (PA) contains the discount and rebate guarantees that RxBenefits will deliver to the City of Orange Beach for this one-year term. As our pricing improves each year, this portion of our agreement will update with these improvements over time.

Source of Funding (if applicable) :

Budgeted

ATTACHMENTS:

Description

- ▣ Resolution
- ▣ Agreement
- ▣ Addendum

RESOLUTION NO. 21-xxx

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN
ADMINISTRATIVE SERVICES AGREEMENT AND ADDENDUM WITH
RXBENEFITS, INC., FOR
PHARMACY CLAIMS RELATED TO THE EMPLOYEE HEALTH BENEFIT PLAN**

FINDINGS:

1. The City of Orange Beach and RxBenefits, Inc., have reached an agreement (attached Exhibit A) and addendum (attached Exhibit B) whereby RxBenefits, Inc., will provide pharmacy claim services related to the employee health benefit plan for the City of Orange Beach.
2. After having reviewed the agreement, the City Council has determined that the provisions are in the best interest of the City of Orange Beach, Alabama.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ORANGE BEACH, ALABAMA, AS FOLLOWS:

1. That the Mayor is hereby authorized to execute the agreement and addendum in substantially the form and of substantially the content now before the Council between the City of Orange Beach and RxBenefits, Inc., as an act for and on behalf of the City of Orange Beach subject to final approval by the City Attorney; and
2. That this Resolution shall become effective immediately upon its adoption.

ADOPTED THIS 21st DAY OF SEPTEMBER, 2021.

Renee Eberly
City Clerk

C E R T I F I C A T E

I, Renee Eberly, City Clerk of the City of Orange Beach, Alabama, do hereby certify that the foregoing is a true and correct copy of Resolution No. 21-xxx, which was duly and legally adopted at a regular meeting of the City Council on September 21, 2021.

City Clerk

ADMINISTRATIVE SERVICES AGREEMENT

by and between

RxBenefits, Inc.

and

City of Orange Beach

EFFECTIVE AS OF: January 1, 2021

ADMINISTRATIVE SERVICES AGREEMENT

THIS ADMINISTRATIVE SERVICES AGREEMENT, dated effective as of 12:01 a.m. local time in Birmingham, Alabama on **January 1, 2021** ("Effective Date"), is made and entered by and between **RxBenefits, Inc.**, an Alabama corporation ("Administrator"), and **City of Orange Beach** ("Client"). Administrator and Client are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

Recitals

A. Client has indicated a desire to enter into a contractual relationship with Administrator in order to procure the administration of prescription drug benefits to Client's Members (defined below) by Client's execution of this Agreement (defined below), including without limitation the Client application attached to this Agreement and incorporated herein by reference as Exhibit A (the "Client Application");

B. Administrator desires to administer the prescription drug benefits specified in Client's Plan described herein in a ministerial capacity, subject to all the terms and conditions thereof; and

C. Administrator has entered into an agreement with an independent, third-party pharmacy benefit manager, Express Scripts, Inc. (hereinafter referred to as "PBM" or "ESI"), for the purpose of being able to provide a network of pharmacies and related pharmacy benefit management programs and services for utilization by Client and its Members as administered through Administrator working in conjunction with Client, all as more fully provided for in this Agreement.

Agreement

NOW, THEREFORE in consideration of the mutual covenants, duties and obligations made by the Parties herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I – CERTAIN DEFINITIONS

A. The initially capitalized terms below in this Section A of Article I shall have the following meanings when used in this Agreement. In addition, there are other initially capitalized terms that are defined in other parts of this Agreement and such terms shall have the meanings ascribed to them in such other parts of this Agreement whenever they are used in this Agreement.

"340B Claim" means a claim for prescription drugs or other items: (i) dispensed from a 340B covered entity (as defined in section 340B of the Public Health Service Act); or (ii) otherwise identified by the pharmacy or ESI as being a claim eligible for 340B pricing.

"Agreement" means this Administrative Services Agreement between Administrator and Client, the Client Application and all other exhibits, supplements, amendments, addenda and/or schedules to this Administrative Services Agreement.

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

"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 ESI (the “Pricing Source”). The applicable AWP shall be the 11-digit NDC for the product on the date dispensed, and for prescriptions filled in Participating Pharmacies, Mail Service Pharmacy and ESI Specialty Pharmacy. Actual package size will be used for dispensing. PBM will not charge Client a higher AWP price based on repackaged products and actual package size will be used for dispensing at Participating Pharmacies (retail), Mail Service Pharmacy and ESI Specialty Pharmacy. AWP used to calculate the Prescription Drug Claim is the current, post-settlement AWP. If the Pricing Source discontinues the reporting of AWP or materially changes the manner in which AWP is calculated, then ESI reserves the right to make an equitable adjustment as necessary to maintain the parties’ relative economics and the pricing intent of this Agreement.

“Brand/Generic Algorithm” or “BGA” means ESI’s standard and proprietary brand/generic algorithm utilized by ESI, a copy of which may be made available for review by Client upon request. The purposes of the algorithm are to utilize a comprehensive and logical algorithm to determine the brand or generic status of products in the ESI master drug file using a combination of industry standard attributes, to stabilize products “flipping” between brand and generic status as may be the case when a single indicator is used from industry pricing sources, and to reduce Client, Member and provider confusion due to fluctuations in brand/generic status.

“Brand Drug” means a prescription drug identified as such in ESI’s master drug file using indicators from First Databank (or other source nationally recognized in the prescription drug industry used by ESI for all clients) on the basis of a standard Brand/Generic Algorithm utilized by ESI for all of its clients, a copy of which may be made available for review by Administrator, Client, or its Auditor upon request. Notwithstanding the foregoing, certain prescription drug medications that are licensed and then currently marketed as brand name drugs, where there exists at least one (1) competing prescription medication that is a generic equivalent and interchangeable with the marketed brand name drug, may process as “Generic Drugs” for Prescription Drug Claim adjudication and Member Copayment purposes.

“Business Days” or “business days” means all days except Saturdays, Sundays, and federal holidays. All references to “day(s)” are to calendar days unless “business day” is specified.

“Contract Year” means the full twelve (12) month period commencing on the Effective Date and each full consecutive twelve (12) month period thereafter that this Agreement remains in effect.

“Copayment” means that portion of the charge for each Covered Drug dispensed to the Member that is the responsibility of the Member (e.g., copayment, coinsurance and/or deductible) as indicated on the Set-Up Forms.

“Cost Share” means the amount which a Member is required to pay for a prescription or authorized refill in accordance with the Plan Design, which may be a deductible, a percentage of the prescription price, a fixed amount and/or other charge or penalty.

“Covered Drug(s)” means those prescription drugs, supplies, Specialty Products (if selected on the Set-Up Forms) and other items that are covered under the Prescription Drug Program, each as indicated on the Set-Up Forms.

“Dispensing Fee” means the amount payable by Client as a dispensing fee per prescription or authorized refill to a Member as set forth on Exhibit A to this Agreement.

“Eligibility Files” means the list submitted by Client to Administrator in reasonably acceptable electronic format indicating persons eligible for drug benefit coverage services under the Client’s Plan.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

“ESI National Plus Network” means ESI’s broadest Participating Pharmacy network.¹

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

“Fees” means, with respect to Client, all the fees specified on the applicable Exhibits attached hereto and all other amounts due by Client hereunder, which Client (or, if applicable, any Member) is required to pay pursuant to the terms and conditions of this Agreement. In the event ESI, Administrator and Client agree upon a modification of the Fees from time to time, Client shall be responsible for timely communicating such changes to Members and for obtaining the necessary consents, if any, required from Client and/or Members in order to implement the new pricing.

“Formulary” means the list of FDA-approved prescription drugs and supplies developed by ESI’s Pharmacy and Therapeutics Committee and/or customized by Client, and which is selected and/or adopted by Client. The drugs and supplies included on the Formulary will be modified by ESI from time to time as a result of factors, including, but not limited to, medical appropriateness, manufacturer Rebate arrangements, and patent expirations. Additions and/or deletions to the Formulary are hereby adopted by Client, subject to Client’s discretion to elect not to implement any such addition or deletion through the Set-Up Form process, which such election shall be considered a Client change to the Formulary.

“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 and which is identified as such in ESI’s master drug file using indicators from First Databank (or other source nationally recognized in the prescription drug industry used by ESI for all clients) on the basis of a standard Brand/Generic Algorithm utilized by ESI for all of its clients, a copy of which may be made available for review by Administrator, Client or its Auditor upon request.

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

“Limited Distribution Claims” means those prescription drug products including but not limited to Specialty medications that enter the market with exclusive and/or supply limitations or restrictions that limit marketplace competition.

“Losses” means any and all liabilities, damages, claims, causes of action, judgments, demands, penalties, fines, assessments, costs, expenses, fees (including without limitation attorneys’ fees and other professional fees) and other losses of any kind or nature whatsoever.

“MAC” or “Maximum Allowable Cost” consists of a list of off-patent drugs subject to maximum allowable cost payment schedules developed or selected by ESI. The payment schedules specify the maximum unit ingredient cost payable by or on behalf of Client and its Members for drugs on the MAC List. The MAC List and payment schedules are frequently updated.

“MAC List” means a list of off-patent prescription drugs or supplies subject to maximum reimbursement payment schedules developed or selected by ESI.

¹ The ESI National Plus Network was historically referred to as the “EN50 Network” in ESI’s network provider agreements with Participating Pharmacies, and is subject to future name change.

“Mail Service Pharmacy” means a pharmacy wholly-owned or operated by ESI or one or more of its affiliates, other than an ESI Specialty Pharmacy, where prescriptions are filled and delivered to Members via mail delivery service.

“Manufacturer Administrative Fees” means those administrative fees paid by manufacturers to, ESI pursuant to a contract between ESI and the manufacturer in connection with ESI’s administering, invoicing, allocating and collecting the Rebates under the Rebate program.

“Member” means each person who is eligible to receive prescription drug benefits as indicated by or on behalf of Client in the Eligibility Files.

“Member Submitted Claim” means a paper claim submitted by a Member for Covered Drugs dispensed by a pharmacy for which the Member paid cash.

“Over-the-Counter (OTC)” means those Prescription Drug Claims for Covered Drugs that a Member is typically able to obtain without a prescription or may require a prescription for higher strengths and/or concentrations such as but not limited to multivitamins, water soluble vitamins, etc.

“Pass-Through” means the actual ingredient cost and dispensing fee amount paid by ESI for the Prescription Drug Claim when the claim is adjudicated to the Participating Pharmacy, as set forth in the specific Participating Pharmacy remittances related to Client’s claims.

“PDL” means the PBM Performance Drug List, which is a list of preferred pharmaceutical products, created and maintained by PBM, as amended from time to time, which: (a) has been approved by PBM’s pharmacy and therapeutics committee; and (b) reflects PBM’s recommendations as to which pharmaceutical products should be given favorable consideration by plans and their participants.

“Participating Pharmacy” means any licensed retail pharmacy with which ESI or one or more of its affiliates has executed an agreement to provide Covered Drugs to Members but shall not include any mail order or specialty pharmacy affiliated with any such Participating Pharmacy. Participating Pharmacies are independent contractors of ESI.

“Plan” means the self-funded prescription drug benefit plan(s) administered and/or sponsored by Client.

“Plan Administrator” means the Plan sponsor or committee designated by the Plan sponsor with respect to the Plan, as contemplated by Section 3(16)(A) of ERISA.

“Plan Design” means drug coverage, days’ supply limitation, Cost Share, Formulary (including Formulary drug selection and relative cost indication) and other Prescription Drug Program specifications applicable to the Prescription Drug Program designated for Client as set forth in this Agreement or otherwise documented between the Parties.

“PMPM” means per Member per month fee, if applicable, as determined by Administrator from the Eligibility Files.

“Prescription Drug Claim” means a Member Submitted Claim, Subrogation 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 specific pharmacy benefit management services and benefit design adopted by, and applicable to, Client under this Agreement.

“Primary Member” means each Member, excluding Members who are qualified dependents.

“Protected Health Information” or “PHI” shall have the meaning given such term by HIPAA but limited to that information created or received by PBM in its capacity as a subcontractor to Administrator or by Administrator in its capacity as a business associate to the Plan.

“Rebates” mean retrospective formulary rebates that are paid to ESI pursuant to the terms of a formulary rebate contract negotiated independently by ESI with a pharmaceutical manufacturer and directly attributable to the utilization of certain Covered Drugs by Members. Rebates do not include Manufacturer Administrative Fees; product discounts or fees related to the procurement of prescription drug inventories, ESI Specialty Pharmacy or the Mail Service Pharmacy; fees received by ESI from pharmaceutical manufacturers for care management or other services provided in connection with the dispensing of products; or other fee-for-service arrangements whereby pharmaceutical manufacturers generally report the fees paid to ESI or its affiliates for services rendered as “bona fide service fees” pursuant to federal laws and regulations (collectively, “Other Pharma Revenue”). Such laws and regulations, as well as ESI’s contracts with pharmaceutical manufacturers, generally prohibit ESI from sharing any such “bona fide service fees” earned by ESI, whether wholly or in part, with any ESI client. ESI represents and warrants that it will not enter into any agreement with a pharmaceutical manufacturer for Other Pharma Revenue with the intent to reduce Rebates.

“Representatives” of a Party means such Party’s directors, officers, managers, employees, agents and other representatives.

“Set-Up Forms” means any standard Administrator or PBM document or form, which when completed and signed by or on behalf of Client (electronic communications from Client indicating Client’s approval of a Set-Up Form shall satisfy the foregoing), will describe the essential elements adopted by Client for its Prescription Drug Program, including implementation rules, coverage and benefit designs, and clinical and trend programs, as may be amended by Client from time to time.

“Single Source Products” means a prescription medication that is: (i) approved by the FDA under a generic drug ANDA application and is licensed and then currently marketed by only one generic drug manufacturers under separate ANDA applications; or (ii) subject to patent litigation.

“Specialty Product List” (for those Clients that are non-Exclusive) means the standard list of Specialty Products and their reimbursement rates under the applicable (exclusive or open) option, maintained and updated by ESI from time to time. The Specialty Product List is available to Client upon request.

“Specialty Products” means those injectable and non-injectable drugs on the Specialty Product List. Specialty Products typically have one or more of several key characteristics, including frequent dosing adjustments and intensive clinical monitoring to decrease the potential for drug toxicity and increase the probability for beneficial treatment outcomes; intensive patient training and compliance assistance to facilitate therapeutic goals; limited or exclusive product availability and distribution; specialized product handling and/or administration requirements and/or cost in excess of \$500 for a 30 day supply.

“Subrogation Claim” means subrogation claims submitted by any state or a person or entity acting on behalf of a state under Medicaid or similar United States or state government health care programs, for which Client is deemed to be the primary payor by operation of applicable federal or state laws.

“Term” shall mean the time period between the Effective Date and termination of this Agreement, including the Initial Term, as extended by any Renewal Term (as such terms are defined in Article VI.A).

“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 ESI by the Participating Pharmacy.

ARTICLE II – ADMINISTRATIVE SERVICES PROVIDED

- A. Administrator shall administer the prescription drug benefits provided by the Client's Plan, subject to all of the terms and conditions of this Agreement, as the same may be amended from time to time.
- B. Administrator shall provide such assistance as may reasonably be necessary to Client's personnel in enrollment of eligible employees and former employees and dependents eligible under the Plan. Administrator shall maintain up-to-date eligibility status records on all enrolled Members as submitted by Client for purposes of appropriate adjudication of Prescription Drug Claims under the Plan.
- C. Administrator shall issue (or cause to be issued) prescription drug cards to each Member-employee who is enrolled in Client's Plan and who is declared eligible by Client, as evidence of such Member-employee's entitlement to prescription drug card benefits under the Plan.
- D. Upon reasonable request, Administrator shall provide Client with costs projections and analyses of Prescription Drug Claims and such other statistical data as may reasonably be requested by Client in connection with Client's management, oversight and control of the Plan.
- E. Administrator shall invoice Client for the Prescription Drug Claims due to be paid and shall collect Prescription Drug Claims due, plus monthly Transaction Fees and any other fees payable by Client under Article IV hereof and/or the Client Application.

ARTICLE III – DUTIES OF CLIENT

- A. Client shall be solely responsible for determining the eligibility of its employees and their dependents to participate and receive benefits under the Plan.
- B. Administrator has established and shall maintain a website located at www.rxbenefits.com (the "Website") through which Client shall have the ability to access, revise and update the eligibility and enrollment information of Client's Members. Client agrees that it shall be solely responsible for effecting timely revisions and updates to the enrollment information through the Website (or, in the alternative, through a secure file transfer protocol (ftp) site or via secure electronic data file in a format acceptable to Administrator delivered to Administrator via electronic mail) and shall be responsible for the accuracy of the enrollment information and any and all revisions and updates to the enrollment information. Upon becoming aware of errors in the enrollment information, Client shall promptly correct the information as necessary through the Website or via other acceptable alternative means provided for above in this Article III.B. Administrator shall not be responsible for Prescription Drug Claims payments made to Members or ineligible and former employees of Client who are no longer or, if applicable, should never have been Members, based on information that is or was inaccurate, was not updated or not updated on a timely basis, or otherwise revised as required by Client or this Agreement. Administrator agrees that revisions and updates to the enrollment or other applicable Member or Prescription Drug Claim information made as described above will be considered for purposes of this Agreement revised and updated within 48 hours of receipt by Administrator of written notice from Client of such revision or update. For emergency revisions and updates that need to be effective on the same day and not the next business day, Client must call in or fax such revisions and updates to Administrator during Administrator's normal business hours and follow up with Administrator as appropriate to ensure such revisions and updates become effective on the same day to the extent reasonably possible. In addition, to the extent such emergency revisions are communicated by Client to Administrator orally (e.g., via telephone), Client agrees (and it shall be Client's sole responsibility) to provide Administrator with a written description in reasonable detail setting forth the emergency revisions and/or updates within 48 hours after such emergency revisions/updates were orally communicated by Client to Administrator.
- C. Administrator will provide unique alphanumeric passwords ("Passwords") to Client that will permit Client to access, revise, and update the enrollment information on the Website. Client will distribute the Passwords to the individuals named on the list of authorized users (the "Users"), which is included in Section A of the Client Application. Client is responsible for all uses of the Passwords, whether or not authorized by Client. Client

is responsible for maintaining the confidentiality of the Passwords and ensuring that the Users maintain such confidentiality also. Client agrees to immediately notify Administrator of any unauthorized use of the Passwords of which Client becomes aware or has a reasonable basis to believe to have occurred. Client shall indemnify, defend and hold harmless Administrator and its Representatives from and against all Losses resulting from, arising out of or relating to any unauthorized use or access, except where such Losses result solely from the willful or intentional act or misconduct or negligence of Administrator. To amend the list of Users, Client must notify Administrator in writing of such amendment(s). Within one (1) business day after the business day on which Administrator receives such amendment(s) in writing from Client, Administrator will deactivate the Password(s) issued to any deleted User(s) and will activate and issue new Password(s) for any new User(s) identified by Client. Notwithstanding anything in this Agreement to the contrary, Administrator shall not (and Client acknowledges and understands that Administrator shall not) be liable or otherwise held responsible for fraudulent Prescription Drug Claims submitted by any Member, other third party acting or purporting to act on any Member's behalf or any unauthorized party using any Member's prescription drug card, information or otherwise.

- D. Client expressly understands, acknowledges and agrees that any and all information, data, documentation or software disclosed by Administrator and/or PBM in the course of conducting its business and performing administrative and related services for Members and/or Client are confidential and proprietary to, and a valuable trade secret of, Administrator and/or PBM and that any disclosure or unauthorized use - that is, any use other than to evaluate Administrator's performance under this Agreement - will cause irreparable harm and damage to Administrator and/or PBM. Client shall not, directly or indirectly, release or disclose or otherwise use or attempt to use any patient-specific prescription information, trade secrets, proprietary software and technical processing, financial, pricing or other confidential information of Administrator and/or PBM obtained by Client from Administrator and/or PBM (regardless of the reason such information was provided or obtained) to any other party or for the benefit of any other party without the prior written consent of Administrator and/or PBM, which consent may be withheld by Administrator and/or PBM in their sole and absolute discretion.
- E. Client expressly represents and warrants that (i) it has provided notice to its employees and their dependents regarding participation in the Plan and Client's disclosure or anticipated disclosure of employee or dependent confidential information to Administrator in connection with the Plan and applicable law, and (ii) it has obtained all required consents and/or other approvals or authorizations (either in writing or through opt-out procedures) from each Primary Member or, if applicable, each dependent Member or other applicable party, regarding such disclosures to Administrator for purposes of this Agreement and the services provided to Client and Members hereunder, and relating to the use and disclosure of information by Administrator or other applicable parties, including without limitation PHI under HIPAA as permitted under this Agreement or as otherwise reasonably necessary to effect and/or carry out the purposes and intent of this Agreement and the services to be performed and rendered by Administrator, PBM, Client or other applicable third parties with respect to this Agreement. Further, to the extent applicable, Client hereby authorizes PBM to contract with pharmaceutical companies for Rebates as a group purchasing organization for the Plan. PBM and/or Administrator may use, disclose, reproduce or adapt information obtained in connection with this Agreement, including Prescription Drug Claims as well as eligibility information, which is not identifiable on a Member basis. PBM and/or Administrator shall maintain the confidentiality of this information to the extent required by applicable law and may not use the information in any way prohibited by applicable law.
- F. Should Client identify erroneous, mistaken or incorrect Prescription Drug Claims payments made by Administrator, refunds in the amount of any such erroneous Prescription Drug Claims payments to Client shall be made by Administrator within 30 days after the Claim has been reprocessed, following receipt by Administrator of written notice from Client identifying such errors and providing reasonable documentation to support them. Client acknowledges, covenants and agrees that such refunds made by Administrator as provided in this Article III.F shall be the sole and exclusive remedy of Client and any Member against Administrator, its Representatives or any third party (including PBM) resulting from any such erroneous, mistaken or incorrect Prescription Drug Claims payments made by or to Administrator, and Client further covenants and agrees to hold harmless and indemnify Administrator and its Representatives for any Losses beyond such refunds claimed by any party from Administrator. The Parties acknowledge that Administrator

may seek to recover any overpayments from the Members, the providers of service or any other party unjustly enriched as a result of such overpayments at any time after notice or awareness of any such error.

- G. Without limiting the generality or scope of any other provision of this Agreement, Administrator shall not be held responsible or liable for any performance standard or obligation required of it hereunder if Client (or Client's designee(s)) or any Member fails to provide Administrator with accurate, timely and complete information as necessary and/or required to meet any such performance standard or obligation under this Agreement or otherwise.

ARTICLE IV – FINANCIAL ARRANGEMENT

- A. Administrator will invoice Client every two (2) weeks for the applicable Fees payable for the previous two (2) weeks. Administrator will invoice Client for the Transaction Fees, as applicable and regardless of the amount of Prescription Drug Claims activity, if any. All invoices will be due and payable 7 days from receipt by Client and shall in no event be received by Administrator later than the due date stated in the invoice. Refer to Article V, below, for rules applicable to late payment of invoices. Client shall not (and acknowledges that it shall not) have any right to offset any disputed amounts or amounts due and/or payable or purported to be due and/or payable from Administrator and/or PBM from any payments of Client except as specifically approved in writing by Administrator.
- B. Administrator may charge Client administration fees (a) per Member-employee per calendar month payable on a monthly basis, and/or (b) per Prescription Drug Claim made by Members payable on a bi-monthly basis (collectively, the "Transaction Fees"). The Transaction Fees to be paid by Client to Administrator under this Agreement are as specified in the Client Application.
- C. Client acknowledges and understands that PBM, through its contractual arrangement with Administrator, guarantees certain Rebates as set forth in the Client Application. The Parties further acknowledge and understand that no Rebates or similar discounts or payments will be paid to the Parties with respect to any Prescription Drug Claims reimbursed on a unit basis by Medicaid agencies or other federal or state healthcare programs.
- D. Client acknowledges and is aware that Administrator, pursuant to its contractual agreement with PBM, is paid by PBM an administrative services credit payment per mail and retail Prescription Drug Claim administered by Administrator on behalf of each Member in the Plan (the "PBM Service Credit"); and (b) may also receive from PBM a one-time per Member implementation and marketing credit payment designed to reimburse Administrator for actual expenses and out-of-pocket costs incurred by Administrator to market and implement PBM products and services and transition Client (and its Members) to PBM's benefit offerings (the "Implementation Credit"). It shall be Administrator's responsibility to obtain and collect such PBM Service Credit and the Implementation Credit directly from PBM and Client shall have no responsibility (payment or otherwise) with respect to such credit due to Administrator. The Parties acknowledge and agree that (1) Administrator shall be responsible for any and all transition and implementation costs it incurs (exclusive of any Implementation Credit received by it as described above) with respect to the marketing and transition of Client (and its Members) to benefit offerings administered by Administrator for Client, and (2) Client shall be responsible for any and all transition and implementation costs it incurs with respect to the transition and implementation of such benefit offerings. To the extent applicable to the Parties, it is the Parties' intention that, for purposes of the Federal Anti-Kickback Statute and any required government reporting, the PBM Service Credit and Implementation Credit shall constitute and shall be treated by Administrator and Client as a discount against the price of drugs within the meaning of 42 U.S.C. § 1320a-7b(b)(3)(A). By executing this Agreement, each of Administrator and Client hereby agrees that the PBM Service Credit and any Implementation Credit shall be so treated and reported, as and to the extent applicable to each such Party.
- E. Client acknowledges that Administrator may, in its sole discretion, compensate brokers and/or third-party consultants from monies received or due to be received by Administrator.
- F. Client expressly acknowledges, agrees, understands and confirms that (i) Administrator receives or may receive fees, Rebates, commissions, payments and other remuneration from and through various sources,

including Client and PBM, (ii) Administrator has disclosed to Client herein that it receives or may receive such fees, Rebates, commissions, payments and other remuneration from such sources, and (iii) upon reasonable advance written request by Client through its authorized Representative, Administrator agrees, if required to do so by applicable law, to provide Client with any additional information or data within Administrator's possession or control, including without limitation specific payment or financial information, relating to this Agreement and the terms hereof, both in connection with the execution of this Agreement by the Parties as of the Effective Date and thereafter during the Term of this Agreement, whether or not in connection with any filing with respect to Client's Plan or otherwise required of Client or the Plan under applicable law, provided that such information will be made available by Administrator at mutually convenient and reasonable times, intervals and places and at no out-of-pocket cost or expense to Administrator. In the event any information requested by Client pursuant to sub-section (iii) of this Article IV.F is subject to an obligation or covenant of confidentiality, Administrator agrees to exercise commercially reasonable efforts (provided, however, that such efforts shall not require Administrator to incur any out-of-pocket cost or expense) to obtain permission or consent to disclose to Client any such information in Administrator's possession and/or control, subject to Client's execution of a confidentiality agreement with Administrator and any other applicable party in a form reasonably acceptable to Administrator and any such other applicable party. Administrator may pay Client's benefit advisor a service fee which may be in the form of a commission, marketing fee, incentive or other allowance. Notwithstanding any provision of this Agreement to the contrary, Administrator shall only be responsible for payment of Rebates to Client pursuant to the terms of this Agreement if such Rebates are actually received by Administrator during the Term of this Agreement. In no event shall Administrator be obligated to pay Rebates to Client until Administrator receives payment for the same Rebates from PBM. In the event Client terminates the Agreement outside the terms and conditions in the Agreement, Client forfeits the right to receive any Rebates received by Administrator on Client's behalf after the date of such termination. Client acknowledges that Administrator shall not be obligated to pay Client any Rebates described herein until this Agreement is signed by Client.

ARTICLE V – LATE PAYMENT

- A. If the Fees for Prescription Drug Claims, the Transaction Fees or any other applicable payments specified or provided for in this Agreement are not paid by Client and received by Administrator by the due date of the applicable invoice, then Client shall pay Administrator a service charge equal to five percent (5%) (or the maximum amount allowable under applicable law if such amount is less than 5%) of all then past due amounts. In addition to such service charge, any past due amounts (inclusive of service charges) will incur interest beginning on the due date and continuing thereafter until fully paid at a rate of ten percent (10%) per annum (or the maximum amount allowable under applicable law if such amount is less than ten percent (10%)).
- B. Furthermore, if payment of the Fees for Prescription Drug Claims, the Transaction Fees or any other applicable payments payable by Client are not received by the due date of the applicable invoice, Administrator may, at its option, cease or suspend the provision of administrative services provided by Administrator under this Agreement, and deactivate all prescription drug cards issued to the Members. Consult Article VI for Administrator's option and right to terminate this Agreement at any time if Client fails to make full and timely payment of such charges and fees (including any applicable service charges and interest) to Administrator.
- C. If at any time Administrator reasonably determines that Client may have difficulty meeting its financial commitments under this Agreement, Administrator may request from Client financial information, reasonable assurances, or both, satisfactory to Administrator as to Client's ability to timely and fully meet its commitments and responsibilities hereunder. Such assurances may include, without limitation, Administrator requiring Client to make a deposit in such amount reasonably sufficient in Administrator's judgment to secure Client's payment obligations. If Client provides Administrator with such a deposit, Administrator may apply the deposit to past due balances and shall return the remaining deposit, if any, after the termination of this Agreement and the payment of all amounts payable to Administrator hereunder. Any deposit made by Client hereunder shall not be deemed a Plan asset.
- D. Administrator's failure to charge or collect a service charge and/or interest from Client shall not waive or otherwise limit in any respect any future right of Administrator under this Agreement to charge or collect a service charge and/or interest from Client.

ARTICLE VI – TERM AND TERMINATION

- A. The initial term of this Agreement shall commence on the Effective Date and shall continue in effect, unless sooner terminated as provided herein, for a period of one (1) year after the Effective Date (the “Initial Term”). Unless either Party gives the other Party written notice of its intention to terminate (given in the manner prescribed in Article VIII.B below) at least ninety (90) days in advance of the expiration of then applicable Initial Term or Renewal Term (as the case may be), the Term of this Agreement shall automatically renew and extend for additional one (1) year renewal terms (each, a “Renewal Term”) without any additional act on the part of either Party (unless sooner terminated as provided herein and subject to the consequences of any such termination). Administrator may terminate this Agreement at any time if its contractual arrangement with PBM terminates by giving at least ninety (90) days prior written notice of the termination of this Agreement to Client.
- B. Either Party may terminate this Agreement upon written notice to the other Party if, as a result of any change in law, the rights or obligations of the requesting Party would be materially and adversely affected. Any such termination shall be effective on the day immediately preceding the effective date of such change in law, subject to the provisions of immediately following sentence. Notwithstanding the foregoing sentence, the Parties hereby agree to use prompt, good faith efforts to renegotiate the terms of this Agreement. If the Parties successfully conclude such negotiations prior to the effective date of the change in law, this Agreement shall not terminate and shall be amended to reflect the negotiated terms mutually agreed upon by the Parties. In the event the Parties are unable to successfully conclude and reach mutual agreement through such good faith negotiations, this Agreement shall terminate as provided above and herein.
- C. On and after the date of termination of this Agreement, Administrator shall be obligated to complete such administrative services provided for in this Agreement as have been commenced prior to the date of termination. Therefore, Prescription Drug Claims incurred or reported after the date of termination are the sole responsibility of Client and are not the responsibility of Administrator. Furthermore, termination of this Agreement shall not relieve Client of its obligation to pay Administrator for any outstanding Prescription Drug Claims, charges, fees (including without limitation any applicable service charges), interest and reasonable collection costs and attorneys’ fees incurred by Administrator associated with such collections. Upon termination of this Agreement, Administrator shall not have any obligation to transition Claims files and/or histories (or other information prior to such information being scrubbed of PBM’s or Administrator’s confidential, proprietary or trade secret information) to the extent that they contain PBM and/or Administrator cost, pricing and/or other proprietary, financial information to Client’s new prescription benefit manager or any other third party. With respect to any files requested by Client or its new prescription benefit manager, any associated charges shall be the responsibility of Client.
- D. Administrator may, in its sole and absolute discretion, suspend performance or terminate this Agreement at any time without giving any advance notice, written or otherwise, to Client (or to any other party) and without penalty or liability for any Losses if (1) Client fails to make timely payment of the Fees for Prescription Drug Claims, the Transaction Fees or any other applicable payments owed to Administrator in accordance with the terms and conditions of this Agreement or, if requested, does not provide a deposit to Administrator as provided in Article V.C above, (2) Client makes an assignment for the benefit of creditors, (3) Client is the subject of a voluntary or involuntary petition for bankruptcy or is adjudicated insolvent or bankrupt, or (4) a receiver or trustee is appointed for any portion of Client’s property.
- E. Termination of this Agreement shall not terminate either Party’s rights and obligations under Article III.C, Article III.D, Article IV (Financial Arrangement), Article V (Late Payment), Article VI.C, Article VII (Indemnification), Article VIII.B (Notices), Article VIII.C (Applicable Law; Venue; Consent to Jurisdiction), Article VIII.D (Entire Agreement; Construction), Article VIII.F (Relationship of the Parties), Article VIII.I (Confidential and Proprietary Information), Article IX (ERISA, COBRA & HIPAA Duties) and the Client Application (as amended, if applicable), and all such rights and obligations shall expressly survive any such termination.

ARTICLE VII – INDEMNIFICATION

- A. Except as otherwise provided in this Agreement, Client and Administrator agree to hold harmless and to indemnify each other and each other's Representatives from and against any Losses arising out of or related to the indemnifying Party's breach or violation of this Agreement.
- B. Client acknowledges that: (1) Administrator and its Representatives do not bear any liability for Losses under the Plan; (2) Administrator and its Representatives neither insure nor underwrite the liability of Client under the Plan; and (3) Administrator's execution of this Agreement shall not be deemed as the assumption by Administrator or its Representatives of any responsibilities, obligations or duties other than those required of Administrator pursuant to the express terms and conditions of this Agreement.
- C. Client further agrees to hold harmless and to indemnify Administrator and its Representatives from and against all Losses arising out of or in connection with (1) Client's default in the performance of any duty, requirement or obligation of Client under this Agreement, the Plan or otherwise owed to Client's employees and their dependents (whether or not in relation to this Agreement or the Plan), (2) the acts or omissions of any Representative of Client (whether or not in relation to this Agreement or the Plan) or (3) any representations, warranties, covenants or statements, whether written, oral or otherwise, made by Client to its Representatives and/or their dependents.
- D. Each Party's liability to the other Party and its Representatives hereunder shall not exceed the actual proximate Losses caused by or arising from the indemnifying Party's breach or violation of, or failure to perform, any term or provision of this Agreement. In no event whatsoever shall either Party or any of its Representatives be liable for any indirect, special, incidental, consequential, exemplary or punitive damages (in each case, to the fullest extent that such damages may be waived by contract under applicable law), 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.

ARTICLE VIII – GENERAL PROVISIONS

- A. **Changes in Agreement.** This Agreement may be amended at any time, without prior notice to any Member, by mutual written agreement executed by Administrator (through its duly authorized Representative) and Client (through its duly authorized Representative). No employee, agent or other Representative of Administrator is authorized to amend or vary the terms and conditions of this Agreement or to make any agreement or promise not specifically contained herein or to waive any provision hereof other than by the means prescribed above in this Article VIII.A.
- B. **Notices.** Any notices to be given hereunder shall be deemed sufficiently given when in writing and (1) actually delivered to the Party to be notified or (2) placed in an envelope directed to the Party to be notified at the following addresses and deposited in the United States mail by certified or registered mail, postage prepaid:

If to Administrator at: RxBenefits, Inc.
Attn: Legal
3700 Colonnade Parkway, Suite 600
Birmingham, AL 35243

If to Client at: City of Orange Beach
Attn:
P.O. Box 458
Orange Beach, Alabama 36561

Such addresses may be changed by either Party by written notice as to the new notice address given to the other Party as provided in this Article VIII.B. Client shall act as agent of its employees (and such employees' dependents, as and whenever applicable) to receive all notices to them hereunder and to notify the employees and their participating dependents affected thereby. It also shall be the responsibility of Client to notify all

employees (and their dependents) of the expiration or termination of this Agreement by a Party pursuant to Article VI or otherwise. In the case of changes in, or termination of, the Agreement, notice to or by Client shall be deemed to constitute notice to all employees of Client and their dependents, and no further notice need be given by Administrator to any employee or dependent in order to effectuate any change in, or termination of, this Agreement or the benefits or coverage provided for herein or made available hereby.

- C. **Applicable Law; Venue; Consent to Jurisdiction.** This Agreement shall be governed by, and construed and interpreted in accordance with, the internal laws of the State of Alabama without regard to conflicts of law principles thereof. The Parties agree that the exclusive venue for any action, suit, claim, counterclaim, cross-claim or otherwise with respect to this Agreement and/or the subject matter hereof shall be in the Federal and state courts sitting in Shelby County, Alabama (the “Alabama Courts”), and each Party knowingly and voluntarily hereby submits and consents to the jurisdiction of said courts over such Party and hereby expressly waives and releases any and all defenses, claims or other rights or remedies it may have or may assert or allege to establish that jurisdiction or venue in the Alabama Courts is in error, improper or otherwise invalid in any respect. As such, each Party agrees that any such Alabama Courts shall have *in personam* jurisdiction over it and consents to service of process in any manner authorized by Alabama law. Each Party further covenants not to sue the other Party (or such other Party’s Representatives) in any court or jurisdiction other than the Alabama Courts.

D. **Entire Agreement; Construction.**

1. This Agreement (as defined in Article I (Certain Definitions)) constitutes the entire agreement and understanding of the Parties and supersedes any prior oral or written communication between the Parties with respect to the subject matter hereof. All Recitals to this Agreement set forth above and all Exhibits attached hereto are hereby incorporated into and made a part of this Agreement.
2. In the event any provision of this Agreement shall be determined invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather this Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions and the rights and obligations of the Parties shall be construed and enforced accordingly; provided, that if the invalidation or unenforceability of such provision(s) shall, in the reasonable, good faith opinion of either Party, have a material adverse effect on such Party’s rights or obligations under this Agreement, then the Agreement may be terminated by such Party upon thirty (30) days advance written notice by such Party to the other Party.
3. The Parties hereto agree that no provisions of this Agreement or any related document shall be construed for or against or interpreted to the advantage or disadvantage of any Party hereto by any court or otherwise by reason of any Party’s having or being deemed to have structured or drafted such provision, each Party hereby expressly acknowledging its participation and/or its right and ability to participate, in the structuring and drafting hereof. The Parties further acknowledge that: (i) this Agreement is the product of good faith, arm’s length negotiations between them; (ii) such Parties possess substantially equal bargaining power; and (iii) each Party has had the opportunity to obtain the advice of legal counsel regarding the negotiations and execution of this Agreement.
4. This Agreement is not a third-party beneficiary contract, nor shall this Agreement create (or be construed or deemed to create) any rights or remedies, whether legal, equitable or otherwise, on behalf of Members or any other third parties as against Administrator.
5. This Agreement is not a contract of insurance and Administrator is not an insurer or underwriter of Client’s liability under, or with respect to, the Plan. Except as otherwise provided in this Agreement, Client has and will retain the ultimate responsibility for payment of Prescription Drug Claims and other expenses under the Plan.
6. The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement.

E. **Authority; Counterparts.** Each signatory to this Agreement represents and warrants that he/she has full corporate or company authority to sign this Agreement on behalf of his/her respective Party and to legally bind and obligate such Party by so signing. Additionally, upon such signature by such authorized signatory(ies) of Client in each signature block of this Agreement (and the Client Application and the Business Associate Agreement made a part of this Agreement), Client represents, warrants, covenants and agrees that it has the necessary power and authority, corporate, company or otherwise (and that all necessary action has been taken for Client), to enter into this Agreement and such other agreements and to consummate the transactions provided for herein and therein. This Agreement (including the exhibits hereto) may be executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Facsimile signatures or signatures transmitted by electronic mail shall be deemed to be original signatures for all purposes.

F. **Relationship of the Parties.**

1. Administrator and Client are, and shall at all times be, solely independent contractors. Neither Party nor its Representatives is, nor shall such Party or its Representatives be construed to be, by any Party to this Agreement or by any third party, an employee, joint venturer, partner, principal, agent, master, servant, fiduciary or other Representative of the other Party. Neither Party is authorized to assume or create any obligations, duties or liabilities, express or implied, on behalf of or in the name of the other Party, except as otherwise expressly provided to the contrary in this Agreement. Furthermore, Client acknowledges, agrees and understands that Administrator, on the one hand, and PBM and any other contracting parties of Administrator, on the other hand, are unaffiliated entities and independent parties who are solely independent contractors of one another.
2. Client acknowledges that: (i) Client shall be responsible, in its sole discretion, for the selection of any consultants or experts to provide advice to Client as to liabilities under the Plan or duties or obligations of the Plan or Client under applicable law or otherwise; and (ii) Client is not contracting hereunder with Administrator for the provision of any such advice by Administrator. To the contrary, the Parties expressly acknowledge that Administrator will not provide such advice to Client, and that neither Party has any obligation or responsibility to advise the other Party about such other Party's compliance or noncompliance with any law, regulation, statute, rule or otherwise (including without limitation under ERISA, the Internal Revenue Code, the Public Health Services Act and/or any regulation with respect to the any of the foregoing).
3. Client expressly acknowledges and agrees that: (i) Administrator is not (nor shall it be deemed to be at any time) a "fiduciary" for any purpose under ERISA, the Internal Revenue Code and/or the Public Health Services Act (and any regulations thereunder), applicable state law, common law or otherwise; (ii) Administrator is not (nor shall it be deemed to be at any time) the administrator of the Plan for any purpose; (iii) Client (and not Administrator) possesses and expressly retains at all times during this Agreement and thereafter the sole and absolute authority and responsibility to design, amend, terminate, modify, in whole or in part, all or any portion of the Plan, including without limitation the sole and absolute authority to control and administer the Plan and any assets of the Plan, and such authority and responsibility cannot be delegated to Administrator; and (iv) Client (and not Administrator) has complete discretionary, binding and final authority to construe the terms of the Plan, to interpret ambiguous Plan language, to make factual determinations regarding the payment of Prescription Drug Claims or provision of benefits, to review denied Prescription Drug Claims and to resolve complaints by Members.

G. **Compliance with Laws; Force Majeure.**

1. Each Party hereby certifies and shall perform its duties and obligations under this Agreement in a manner that complies with all federal, state, local and other laws and regulations applicable to such Party and its performance hereunder, including without limitation the federal anti-kickback statute set forth at 42 U.S.C. § 1320a-7b(b) ("Anti-Kickback Statute"), the Public Contracts Anti-Kickback Statute, and/or the federal "Stark Law" set forth at 42 U.S.C. § 1395nn ("Stark Law"), as and to the extent applicable to each such Party. Each Party is responsible for obtaining its own legal advice

concerning its compliance with applicable laws. If Administrator's performance of its duties and obligations under this Agreement is made materially more burdensome or expensive due to a change in federal, state or local laws or regulations or the interpretation or enforcement thereof, the Parties shall, at the option of Administrator, negotiate promptly and in good faith an appropriate adjustment to the fees, costs, expenses and/or charges paid to Administrator hereunder or other amendment to this Agreement reasonably necessary in light of the change in law or regulation or the interpretation or enforcement thereof. If the Parties cannot agree on such adjusted amounts or amended terms, then either Party may terminate this Agreement upon thirty (30) days prior written notice to the other Party.

2. Neither PBM nor Administrator shall be obligated at any time to provide the prescription drug benefit and related services identified in this Agreement to Client or Client's Members if Client or, if applicable, Members, are located in a state requiring a prescription benefit manager to be a fiduciary to Client or Members, in any capacity, contrary to or inconsistent with the terms and conditions specifically identified in this Agreement. In the event any state law or regulation requires PBM or Administrator to be a fiduciary to Client or a Member contrary to or inconsistent with the terms and conditions identified in this Agreement, Administrator may elect not to provide such prescription drug benefit and related services identified in this Agreement to the impacted Members upon thirty (30) days prior written notice to Client.
3. Each Party, upon giving prompt written notice thereof to the other Party, shall not be liable for delay or failure to perform hereunder, if such delay or failure is due to a cause or causes beyond the reasonable control of such Party (a "Force Majeure Event"). For purposes of this Agreement, a Force Majeure Event may include, but shall not be limited to, acts of God or the public enemy, fire, flood, storms, explosion, earthquake, war, terrorism, malicious mischief, accident, transportation tie-up, riot or civil insurrection, embargo, boycott, lock-out, strike or labor disturbance, slowdown or labor stoppage of any kind or act of any government, foreign or domestic. Each Party shall have the option, but not the obligation, to terminate this Agreement in its entirety if the other Party fails to perform any material obligation of this Agreement because of the occurrence of a Force Majeure Event and either (i) the other Party does not cure such breach within thirty (30) days after the occurrence of the Force Majeure Event, or (ii) such failure is not reasonably subject to cure within such period. The non-breaching Party must provide written notice of termination to the breaching Party.

H. Access to Information; Audit Rights; Government Agency Submitted Claims.

1. Administrator and Client will allow each other reasonable access at reasonable times to administrative information relating to this Agreement and the Parties' respective duties, obligations and benefits described herein, upon the giving of reasonable advance notice by the requesting Party (subject to any limitations with respect to information that is not in the possession or control of Administrator or is otherwise subject to a covenant of confidentiality in favor of a third party). The requesting Party agrees to execute a confidentiality agreement in form and content satisfactory to the disclosing Party as a condition precedent to being permitted such access to such information.
2. Client, or a mutually acceptable independent, third party auditor retained by Client, may conduct, with at least sixty (60) days prior written notice and at Client's sole cost and expense, an annual Prescription Drug Claims audit of Administrator's data that directly relates to Prescription Drug Claims billings for the prior Agreement year. The scope and manner of such a Prescription Drug Claims audit (including applicable guidelines and timelines) shall be as reasonably determined by Administrator and communicated to Client sufficiently in advance of any such audit. Client agrees that it will execute (and shall cause any mutually acceptable independent, third party auditor taking part in any such audit to execute) a confidentiality agreement in form and content reasonably acceptable to Administrator prior to conducting any such audit. Any request by Client to permit an auditor to perform an audit will constitute Client's direction and authorization to Administrator to disclose PHI to auditor. In the event of an audit by a mutually acceptable independent third party, Administrator and Client shall be provided with a copy of any proposed audit report or other written materials documenting such audit and Administrator will have a reasonable opportunity to comment

on any such report or written materials documenting such audit before such are finalized. Upon finalization of audit results and agreement between Client and Administrator on any identified adjustments or discrepancies, if any, the period under review will be considered closed by the Parties and such agreed upon adjustment payments, if any, shall be paid by the appropriate party within thirty (30) days of execution by the Parties of an appropriate release document covering the audit period. Client acknowledges that it shall not be entitled to audit documents that Administrator is barred from disclosing by applicable law or pursuant to an obligation of confidentiality to a third party or that are not under the direction or control of Administrator. Administrator will make 100% of claims available to the Client or a mutually acceptable third party retained by Client to audit the processing contract. Client further acknowledges that there shall be a blackout period for audits from November 1 – February 1 each year.

3. Client acknowledges that government agencies, including without limitation federal and state governmental payors, may seek eligibility or similar data from Administrator or PBM regarding Members and may submit to Administrator or PBM claims for reimbursement for prescription drug benefits provided to such government agencies (or their agents) to Members (“Government Claims”). Client authorizes (a) Administrator and PBM to provide such data as requested by government agencies, including without limitation federal and state governmental payors, and/or their authorized agents and (b) Administrator and/or PBM to process such Government Claims. Client acknowledges that Administrator may advance payment for Government Claims on behalf of Client during the Term of this Agreement. Client shall reimburse Administrator, in accordance with Client’s payment obligations under this Agreement, for all amounts advanced by Administrator for payment of Government Claims. Client acknowledges that Government Claims submitted by or on behalf of a state Medicaid Agency or other governmental payor shall be paid by or on behalf of Client if submitted within three (3) years from the original date of fill unless a longer period is required by applicable law. In addition, Government Claims submitted by or on behalf of a state Medicaid agency or other governmental payor may not be denied on the basis of the format of the Government Claim or failure to present proper documentation at the point-of-sale. Client shall also reimburse Administrator for any adjustments or reconciliations to previously processed Government Claims that may be payable to government agencies in accordance with applicable laws and regulations. The administrative fee for processing Government Claims shall be invoiced at the paper submitted claim rate already agreed to by the Parties or as otherwise agreed upon in writing by Administrator and Client. Administrator reserves the right to (a) terminate these services upon ninety (90) days prior notice to Client or (b) delegate these services to a third party claims processor other than PBM. Notwithstanding any provision of this Agreement to the contrary, Client acknowledges and agrees that Client shall be solely responsible for processing and making payment of any Government Claims applicable to Client and its Members received after the effective date of the termination or expiration of this Agreement.

I. Confidential and Proprietary Information.

1. The term “Confidential Information” includes, but is not limited to, this Agreement or any information of either Client or Administrator (including without limitation its designees) disclosed or made available before the Effective Date, now or in the future (whether oral, written, electronic, visual or fixed in any tangible medium of expression) relating to either party’s services, operations, systems, programs, inventions, techniques, suppliers, customers and prospective customers, contractors, costs and pricing data, trade secrets, know-how, processes, plans, designs and other information of or relating to either party’s business. Confidential Information does not include Protected Health Information, the use and disclosure of which is governed by Article IX.C (including Exhibit B) of this Agreement. Without limiting the foregoing in any way, Client acknowledges and agrees, for itself and its Representatives, that the following financial fields constitute Confidential Information of Administrator for purposes of this Agreement and shall not be disclosed by Client to any third parties without the express, prior written consent of Administrator: (a) total AWP; (b) ingredient cost; (c) dispensing fees; (d) drug cost; (e) patient amount paid; (f) total amount paid; (g) sales tax; (h) U&C charges; (i) specialty indicator; and (j) brand/generic indicator.

2. Administrator and Client shall not disclose or make use of any Confidential Information except as permitted under this Agreement without the prior written consent of the non-disclosing party, which consent may be conditioned upon the execution of a confidentiality agreement. Each party may disclose Confidential Information of the other party only to its authorized Representatives who have a need to know the Confidential Information in order to accomplish the purpose of this Agreement and who (i) have been informed of the confidential and proprietary nature of the Confidential Information; and (ii) with respect to Representatives, have agreed in writing not to disclose it to others and to treat it in accordance with the requirements of this Section. Administrator or Client, as applicable, shall be responsible to the other Party for any breach of this Agreement by its respective Representatives.
 3. The foregoing shall not apply to such Confidential Information to the extent: (i) the information is or becomes generally available or known to the public through no fault of the receiving party; (ii) the information was already known by or available to the receiving party prior to the disclosure by the other party on a non-confidential basis; (iii) the information is subsequently disclosed to the receiving party by a third party who is not under any obligation of confidentiality to the disclosing party; (iv) the information has already been or is hereafter independently acquired or developed by the receiving party without violating any confidentiality agreement or other similar obligation; or (v) the information is required to be disclosed pursuant to a court order. Except in accordance with the requirements of this Article VIII.I.3, neither Party nor its Representatives may disclose, or permit to be disclosed, Confidential Information of the other party as an expert witness in any proceeding, or in response to a request for information by oral questions, interrogatories, document requests, subpoena, civil investigative demand, formal or informal investigation by any government agency, judicial process or otherwise. If either Party, or any of its respective Representatives, is requested to disclose the Confidential Information of the other party for any of the reasons described in the preceding sentence such Party shall give prompt prior written notice to the other Party to allow the other party to seek an appropriate protective order or modification of any requested disclosure. The receiving party agrees to reasonably cooperate with the disclosing party in any action by the disclosing party to obtain a protective order or other appropriate remedy. If the receiving party is ultimately legally compelled to disclose such Confidential Information, the receiving party shall disclose only the minimum required pursuant to and in order to comply with the court order or other legal compulsion.
 4. Without limiting any other rights and remedies available under this Agreement or otherwise, any unauthorized disclosure or use of Confidential Information would cause Administrator or Client, as applicable, immediate and irreparable injury or loss that may not be adequately compensated with money damages. Accordingly, if either Party fails to comply with this Article VIII.I, the other Party will be entitled to seek to obtain specific performance including immediate issuance of a temporary restraining order or preliminary injunction enforcing this Agreement, and to judgment for Losses caused by the breach, and to seek to obtain any other remedies provided by law or in equity.
 5. The confidentiality provisions of this Agreement supersede any and all prior oral or written communication(s) or agreement(s) of the Parties with respect to the confidential information of either Party, including, but not limited to, any mutual nondisclosure agreement between or among the Parties and/or Client's broker or consultant.
- J. **Assignment.** Neither party may assign this Agreement without the prior written consent of the other party, provided such consent will not be unreasonably withheld. However, Administrator may assign this Agreement or delegate the duties to be performed by or behalf of Administrator under this Agreement without the consent of Client as part of the sale of all, or substantially all, of the assets of Administrator or similar sale or disposition of Administrator that would, upon consummation, be deemed to constitute an assignment of this Agreement under applicable law.
- K. **Disclosure of Information to Third Parties.** Client acknowledges, understands and agrees that it may be necessary or desirable for Administrator to disclose information obtained from, provided by or otherwise regarding or relating to Client, Client's Plan, and/or Client's employees and Members (excluding any

information that constitutes PHI under HIPAA) to certain vendors, consultants, brokers or other third parties in connection with Administrator's services, duties and/or obligations rendered by, or required of, Administrator under this Agreement or otherwise relating to its performance hereunder.

- L. **Exclusivity.** PBM and Administrator shall be the exclusive providers of each of the Services described in this Agreement for the Plan receiving Services as set forth in this Agreement, provided that PBM will be a provider of specialty products and services if Client elects an "open specialty" relationship with the PBM. Client acknowledges and agrees that it will not, directly or indirectly, or engage any prescription benefit manager or other third party, to provide concurrently to Client or its Plan any service that is similar to one of the Services provided by Administrator or PBM, including without limitation, retail pharmacy network contracting, pharmacy claims processing, mail pharmacy services, formulary and rebate administration services, and specialty pharmacy services to the extent an exclusive option has been selected. Client acknowledges and agrees that a breach of this Section shall be deemed a material breach of this Agreement and shall entitle PBM and Administrator to modify pricing terms of this Agreement.

ARTICLE IX – ERISA, COBRA AND HIPAA DUTIES

- A. **ERISA.** If Client's offering of the Prescription Drug Program provided for in this Agreement constitutes part of a "welfare plan" within the meaning of Section 3(1) of the ERISA, it is understood and agreed that the duties of Client and Administrator are as follows:
1. **Plan and Summary Description:** It shall be the duty of Client (and not the duty of Administrator) to furnish any Plan, summary plan description or summary of material modifications to Members and beneficiaries as required by ERISA and any regulations under it. It shall be the duty of Administrator to provide Client, upon request, with a summary of benefits available under the Plan for use in conjunction with the summary plan description and summary of material modifications.
 2. **Annual and Summary Annual Reports:** It shall be the duty of Client to furnish any annual reports to participants and/or governmental agencies as required by ERISA, the Internal Revenue Code and any regulations thereunder. It shall be the duty of Administrator to send to Client, upon Client's reasonable request, such information which Administrator has within its possession as will permit Client to make the annual reports. It shall be the duty of Client to provide the Members with summary annual reports as required by ERISA and any regulations under it.
 3. **Plan Administrator:** It is expressly understood and agreed by the Parties to this Agreement that any and all duties assigned by ERISA and any regulations thereunder to the Plan Administrator including, but not limited to, those duties specified in the Plan shall be deemed for purposes of this Agreement as duties of Client and not those of Administrator.
- B. **Continuation Coverage.** It is also expressly understood and agreed by the Parties to this Agreement that the compliance with continuation coverage requirements imposed on group health plans by ERISA, the Internal Revenue Code and the Public Health Service Act (including the regulations thereunder) shall be the sole obligation of Client under this Agreement and not the obligation of Administrator. Further, Administrator will not accept payment directly from any employee or former employee (or dependent of such employee or former employee) that is eligible for continuation coverage under the Plan. It shall be the responsibility of Client (and not Administrator), or such other third party administrator handling the group health plan of which the Prescription Drug Program is a part, to collect the premiums due from the employee or former employee (or dependent of such employee or former employee) for continuation coverage and to satisfy any and all other COBRA duties and responsibilities relating thereto.
- C. **HIPAA and Privacy and Security.**
1. Client shall be solely responsible for any and all duties and responsibilities applicable to Client under HIPAA and similar state law that may apply to the Prescription Drug Program offered under this

Agreement at any time, including but not limited to those provisions applicable to Client relating to portability, non-discrimination, privacy and security. The Parties will cause a HIPAA Business Associate Agreement in the form attached hereto as Exhibit B.

2. Prescription Drug Claims, as well as eligibility information, which is de-identified in accordance with HIPAA and other applicable law, and which is not identifiable on a Member basis, may be used, disclosed, reproduced, adapted or sold by PBM and/or Administrator. Such de-identified data may be provided to nationally recognized data integration firms to support appropriate administration of PBM's drug management programs as this benchmarking data enables PBM to compare against other drug population sets and seek to improve programs and services for clients or otherwise.

IN WITNESS WHEREOF, Administrator and Client have caused this Agreement to be executed and delivered by their respective authorized Representatives as of the Effective Date.

Client:
City of Orange Beach

By: _____

Printed Name: Tiffany Powers

Its: Senior Client Executive

Administrator:
RxBenefits, Inc.

By: _____

Printed Name: Lauren Simmons

Its: Sr. Director of Compliance & Legal Affairs

[Exhibit A (Client Application) Follows]

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EXHIBIT A

CLIENT APPLICATION

January 1, 2021

[IMPORTANT – PLEASE READ CAREFULLY: Client should complete Section A and carefully review this Exhibit A, which has been completed by Administrator, in order to ensure the accuracy and completeness of such information. Client shall promptly notify Administrator of any inaccuracy or omission with respect to such terms and conditions, if applicable (including, without limitation, the Client Information in Section A).]

A. INFORMATION ABOUT CLIENT

Client's Name: City of Orange Beach

Client's Mail Address: P.O. Box 458, Orange Beach, Alabama 36561

B. PLAN DESIGN; MEMBER COST SHARE

Member Cost Share:

Please see current Summary of Benefits.

Client represents and warrants that the design of Client's Plan as reflected in a Plan Design document for Client ("PDD"), accurately reflects the applicable terms of Client's Plan for purposes of this Agreement. Client shall provide Administrator with ninety (90) days prior written notice of any proposed changes to the design of Client's Plan (including the PDD), which changes shall be consistent with the scope and nature of the services to be provided by Administrator under this Agreement. Client agrees that it is responsible for Losses resulting from (a) any failure to implement Plan Design changes which are not communicated in writing to Administrator, or (b) implementation of verbal or written direction regarding exception or overrides to the PDD. In addition, Client shall notify Members of any Plan Design changes prior to the effective date of any such changes as required by applicable law.

C. SERVICES; FORMULARY; PRICING GUARANTEES.

1. Base Administrative Services: The following services are the base administrative services made available to Client and its Members pursuant to the Agreement (including this Exhibit A) (the "Base Administrative Services"), as applicable:

- Administration of eligibility submitted via tape or telecommunication
- Eligibility maintenance
- Client support system for on-line access to current eligibility
- Administration of Client's Plan Design
- In-network claims adjudication via on-line claims adjudication system
- Designated Account Team
- Client clinical and plan consulting, analysis and cost projections
- Annual analysis of program utilization and impact of plan design and managed care interventions
- Welcome Package and ID Cards for new Members
- Standard Member communications
- Toll-free telephone access to customer service for the program for use by Members and Client's benefits personnel and Representatives

2. Additional Administrative Services: Client will pay for additional administrative services (the "Additional

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Administrative Services”) beyond those included in the Base Administrative Services that are requested by Client and provided or made available by Administrator under the program as follows:

2.1 Administrative Fees

Administrative Services	Fees
Transaction Fees Payable for Administrative Services (per Article IV.B of the Agreement)	\$0.65 per Prescription Drug Claim made by Members payable on a bi-monthly basis
Transaction Fees Payable for Administrator’s Clinical Advantage Program (individual prices listed in table below)	\$1.45 per claim maximum , may vary depending on final elections
Manufacturer Copay Assistance Programs	Fees
• Out of Pocket Protection (Accumulation)	No Charge / Not Elected
• Out of Pocket Protection + Variable Copay Assistance Program	No Charge / Not Elected
• SaveOnSP	\$0.40 per claim minimum / Not Elected
• Out of Pocket Protection + SaveOnSP	\$0.40 per claim minimum / Not Elected
Reviews and Appeals Management	
• Low Clinical Value Exclusions (LCV)	\$0.30 per claim / Not Elected
• High Dollar Claim Review (HDCR)	\$0.75 per claim / Not Elected
Initial Determinations (i.e. coverage reviews) and Level One Non-Urgent Appeals for the Coverage Authorization Program, consisting of: Prior Authorization Step Therapy Drug Quantity Management	Included in the existing utilization management PMPM charge OR Included in the existing PA charge of \$55 per initial determination* OR No Charge if Client elects HDCR
Initial Determinations and Level One Non-Urgent Appeals for benefit reviews. Examples: copay review, plan excluded drug coverage review, administrative plan design review.	\$55 per initial determination OR No Charge if Client elects HDCR
Final and Binding Appeals – Level Two Appeals and/or Urgent Appeals for UM, formulary, and benefit reviews.	\$10.00 per review* OR No Charge if Client elects HDCR
External Reviews by Independent Review Organizations - for non-grandfathered plans	\$800 per review OR No Charge if Client elects HDCR
Miscellaneous	
Third Party Integration Fees	Charges passed through from provider or mutually agreed upon by Parties

The following terms and conditions apply only if client does not elect HDCR:

- * Initial determination – this is the first review of drug coverage based on the plan’s conditions of coverage. Initial determinations are also referred to as initial reviews, coverage reviews, prior authorization reviews, UM reviews, or benefit reviews.
- The Level 2 and Urgent Appeal Service is an optional service for Clients to enroll in and there is an incremental fee of \$10 per initial determination.
 - Level 2 and Urgent Appeals are not included in the UM package fees.
 - The Level 2 and Urgent Appeal Service fee is not charged per appeal. It is charged for each initial review. This allows Client to better estimate their appeal costs since it is based on the number of initial determinations. The fees cover the legal and operational costs involved with handling final and binding appeal reviews, which includes, but is not limited to the following: staffing of clinical

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professionals and supportive personnel, notifications to patients and prescribers, and maintaining a process aligned with state and Federal regulations.

- Charges for the Level 2 and Urgent Appeal Service are billed on the monthly admin invoice for completed initial determination for UM, formulary, and benefit reviews. No subsequent charges are incurred when cases are appealed.
- Appeals can be deemed urgent at Level 1 or Level 2. Urgent appeal decisions are final and binding. If a Level 1 Appeal is processed as urgent, there is no Level 2 appeal.

PBM Services	Fees
Advanced Utilization Management (AUM Bundle)	\$0.75 / PMPM or Passed through from PBM
Member-submitted paper claims processing fee	\$3.00 per claim
Medicaid or Medicare subrogation claims fee	\$3.00 per claim
Opioid Program	\$0.32 / PMPM (If Elected)
ACA Statin "Trend Management" Program	\$0.03 / PMPM (If Elected)
Combined Benefit Management	
Services to manage combined medical-pharmacy benefits that are not a consumer-directed health (CDH) plan. Services include ongoing management of the data exchange platform with the medical vendor/TPA, production monitoring and quality control, and designated operations team. Combined benefit types may include deductible, out of pocket, spending account, and lifetime maximum.	<p>\$0.10 PMPM per combined accumulator up to maximum of \$0.20 PMPM for existing connection with medical carrier or TPA.</p> <p>Fees to establish connection with new medical carrier or TPA are quoted upon request.</p>
Network Pharmacy Services	
Network Pharmacy Audit Program	20% of audit recoveries

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Comprehensive Consumer Driven Health (CDH) Solution	
<u>Technical</u> Bi-directional data exchange; dedicated operations; 24-hour a day, seven-days a week monitoring and quality control; performance reporting; and analytics <u>Decision Support</u> Dedicated CDH member services, Prescription Benefit Review Statements, Retail Pricing Transparency <u>Member Adherence</u> ScreenRx Preventive Medications <u>Member Education</u> Proactive, personalized member communications open enrollment tools and member communications library, robust online features, and preventive care proactive, personalized member communications	\$0.48 PMPM *these charges would be in addition to any pricing adjustments if greater than ten percent of Client's total utilization for all Plans is attributable to a CDHC.
ScreenRx for PPO Plans	\$0.25 PMPM (If Elected)
Medicare Part D – Retiree Drug Subsidy (RDS)	
Part D subsidy enhanced service (ESI sends reports to CMS on behalf of Client)	\$1.12 PMPM for Medicare-qualified Members with a minimum annual fee of \$7,500
(i) Notice of Creditable Coverage	\$1.35/letter + postage
Part D Subsidy standard service (ESI sends reports to Client)	\$0.62 PMPM for Medicare-qualified Members with a minimum annual fee of \$5,000
A. Notice of Creditable Coverage	\$1.35/letter + postage
Communication with physicians and/or members (e.g., program descriptions, notifications, formulary compliance, non-Medicare EOBs, etc.	\$1.75/letter + postage
Medicare EOB	\$1.75/letter + postage
Custom non-standard materials	Priced upon Request
Electronic Pharmacy Benefit Eligibility Verification	
Eligibility confirmation of pharmacy benefit coverage shared with prescribers and other healthcare professionals through their Electronic Medical Records (EMR) or other digital channels. Pass-through charge to Sponsor at ESI's preferred rate with data switch such as Surescripts.	
Miscellaneous	
Coordination of Benefits <ul style="list-style-type: none"> - Custom reimbursement formula - Setup and ongoing maintenance - Product support 	\$0.01 PMPM, If Elected
Formulary Services Fee <ul style="list-style-type: none"> - High Performance Formulary 	\$10,000 Implementation Fee + \$0.05 PMPM, If Elected
Medicare Part B Solution <ul style="list-style-type: none"> - Integrated Retail & Mail Program - Retail Only Program - Program Introductory Letter 	<ul style="list-style-type: none"> - \$0.42 PMPM - \$0.20 PMPM - \$1.35/letter + postage

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PBM Services – No Additional Fee	
Customer service for Members	Electronic claims processing
Electronic/on-line eligibility submission	Plan setup
Standard coordination of benefits (COB) (reject for primary carrier)	Software training for access to our on-line system(s)
FSA eligibility feeds	
A. Network Pharmacy Services	
Pharmacy help desk	Pharmacy reimbursement
Pharmacy network management	Network development (upon request)
B. Home Delivery Services	
Benefit education	Prescription delivery – standard
Reporting Services	
Web-based client reporting –	Annual Strategic Account Plan report
Ad-hoc desktop parametric reports	Billing reports
Claims detail extract file electronic (NCPDP format)	Inquiry access to claims processing system
Load 12 months claims history for clinical reports and reporting	
Website Services	
Express-Scripts.com for Members — access to benefit, drug, health and wellness information; prescription ordering capability; and customer service	
Implementation Package and Member Communications	
<ul style="list-style-type: none"> New Member packets (includes two standard resin ID cards) Member replacement cards printed via web (For hard-copy cards, charges are passed through from the PBM) 	
<ul style="list-style-type: none"> Member-requested replacement packets or Client requested re-carding 	\$1.50 + postage per packet or card
Clinical	
Concurrent Drug Utilization Review (DUR) Overrides <ul style="list-style-type: none"> a. Sponsor-requested overrides b. Lost/stolen overrides c. Vacation supplies 	No Charge

2.2 Administrator Clinical Programs

- If elected, the **Low Clinical Value (“LCV”)** exclusion option prevents unnecessary spending by removing LCV medications from the formulary without impact to client rebates while providing equal or more effective medicines at a lower cost. LCV medications are drugs that treat common conditions that do not provide any additional or superior therapeutic value when compared to currently existing therapies already in the marketplace. These medications are excluded in addition to any products that would normally be excluded by PBM Formulary. This exclusion occurs without affecting rebate minimum guarantees or contracted discount rates. Administrator reserves the right to amend, from time to time, the list of low clinical value medications. The list of low clinical value medications may be updated quarterly. Client may request a current list of LCV medications.
- If elected, Administrator’s **High Dollar Claim Review program (“HDCR”)**, will provide Client with umbrella protection against high-cost prescription claims for approved formulary drugs.

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Prescription claims over the threshold dollar amount are flagged prior to payment and reviewed for clinical appropriateness. This additional level of clinical oversight protects against unnecessary spending, saving clients money and providing improved visibility into claim reviews, decision processes, and cost savings. The following may apply:

- RxBenefits manages the clinical review process for high dollar claims, providing oversight of the process. We communicate trends and savings results to clients through detailed reporting and analytics;
- Review turnaround time is dependent on prescriber activity and whether additional information is required. If additional information is required, the reviewer will attempt to contact physician at least once daily for three days; direct contact with the prescriber will discontinue after the third day. The majority of reviews are completed with a disposition within 24 to 72 hours;
- Following a clinical review, one of four actions will occur: the medication is **approved**, the medication claim is **denied**, the doctor may decide to **withdraw** and prescribe a different medication, or the reviewer can **dismiss** the claim due to lack of communication from the prescriber; or
- If denied, an appeal process is available.
- The appeal process:
 - If an initial review is denied, the Member may appeal the decision to have a different pharmacist reviewer evaluate the prior authorization.
 - If the denial is upheld upon first appeal, a second appeal may be made, which is completed in consultation with a peer physician reviewer from an Independent Review Organization.
 - If the denial is again upheld upon second appeal, a final appeal for a Federal External Review completed by an Independent Review Organization may be made.
 - If the denial is upheld by the final review, the appeal process has been exhausted and the decision is final and binding.
- **Foundational Utilization Management (“UM”).** UM is a bundling of evidence-based clinical programs commonly used to provide appropriate clinical oversight of prescription drug claims. UM ensures the correct clinical evaluation processes are in place. Appropriate quantity limit (“QL”) promotes FDA-approved dispensing guidelines by ensuring appropriate quantities are dispensed. Step Therapy (“ST”) ensures the most clinically appropriate item is used first as part of adhering to accepted guidelines. When faced with two similar agents, the lowest cost option is promoted first. Prior Authorizations (“PA”) ensure FDA-approved guidelines with respect to indications are being met. Utilizing the PBM or customized criteria, RxBenefits has carved out the QL/ST exception review process as well as all specialty and non-specialty PA reviews to be independently reviewed and documented utilizing a documentation system that allows for ease of auditing through increased visibility of clinical decisions. This component requires that a client elect a standard Utilization Management Programs promoted by Administrator. NOTE: Client must have HDCR component in place to elect UM. The following may apply:
 - Review turnaround time is dependent on prescriber activity and whether additional information is required. If additional information is required, the reviewer will attempt to contact physician at least once daily for three days; direct contact with the prescriber will discontinue after the third day. The majority of reviews are completed with a disposition within 24 to 72 hours;
 - Following a clinical review, one of four actions will occur: the medication is **approved**, the medication claim is **denied**, the doctor may decide to **withdraw** and prescribe a different medication, or the reviewer can **dismiss** the claim due to lack of communication from the prescriber; or
 - If denied, an appeal process is available.

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- If elected, PBM's ***Manufacturer Assistance Program for Specialty Medications ("MAP")***, consists of 1 or 2 components when available, dependent on the specific plan design: (1) Accumulator Protection using Manufacturer Copay assistance dollars to help lower member out-of-pocket costs and client costs where funds are not applied to member deductible and member out-of-pocket maximum totals; and (2) Accumulator Protection Plus Variable Cost-Share, where plan changes can maximize available assistance funds to offset plan costs and cover the members' cost-share but does not apply to their deductible and out-of-pocket maximum, yielding high savings potential, or Therapeutic Interchange Programs where the specialty pharmacy will move members to preferred agents in order to allow the usage of copay assistance funds from manufacturers. Requires exclusive specialty pharmacy relationship.
 - If elected, the **SaveOnSP program** is a benefit design change implemented by PBM in conjunction with a third-party vendor, SaveOnSP. Within the SaveOnSP program, certain specialty medications are classified as non-essential health benefits. This means that any funds spent on these drugs no longer apply to the members' accumulators. In addition, the targeted drugs are assigned higher copays. In all cases, SaveOnSP helps the member coordinate manufacturer-sponsored copay assistance. SaveOnSP targets drugs in six of the top ten specialty categories.
- If elected, PBM's **Advanced Opioid ManagementSM program** reaches out to physicians, pharmacists and patients at key touchpoints to minimize early exposure to opioids and to prevent patients from progressing to overuse and abuse. Patients will be required to start therapy with no more than a 7-day supply of short-acting medications (with certain exceptions). Member Education will start at the first fill. Doctors will be notified at the point of care when specific signs of misuse and abuse are observed.

3. **Pricing Terms.** The financial terms set forth are conditioned on such exclusive arrangement and all other specified conditions set forth in Exhibit A of the Agreement. Client will pay to Administrator the amounts set forth below, net of applicable Copayments. The application of Brand Drug and Generic Drug pricing below may be subject to certain "dispensed as written" (DAW) protocols and Client defined plan design and coverage policies for adjudication and Member Copayment purposes. Sales or excise tax or other governmental surcharge, if any, will be the responsibility of Client.

Members will always pay based on the logic below:

- Retail: Lowest of (i) the U&C price, (ii) Plan copayments/coinsurance, or (iii) discounted AWP (including MAC price, when MAC pricing is applicable).
- Mail Order: Lower of (i) Plan copayments/coinsurance or (ii) discounted AWP (including MAC price, when MAC pricing is applicable).
- If no adjudication rates are specified herein, each claim will be adjudicated to Client at the applicable ingredient cost and will be reconciled to the applicable guarantee as set forth herein. The discounted ingredient cost will be the lesser of MAC (as applicable), U&C or the applicable AWP discount. Claims dispensed at ESI Mail Pharmacy will be adjudicated to Client at the applicable ingredient cost and will be reconciled to the applicable guarantee as set forth herein.

3.1 **Pricing.**

- (a) **Ingredient Cost.** Administrator will offer an average aggregate annual discount as reflected below on Client utilization to be calculated as follows. The pricing below will be implemented as of the Addendum Effective Date. The pricing below will be guaranteed upon the start of Client's Renewal Term (as described in Article VI(A) of the Agreement) that begins on or after the Addendum Effective Date.

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[1-(total discounted AWP ingredient cost (including any retrospective pharmacy payments) but excluding dispensing fees and ancillary charges, and prior to application of Copayments) of applicable Prescription Drug Claims for the annual period divided by total undiscounted AWP ingredient cost (both amounts will be calculated as of the date of adjudication) for the annual period)]. Discounted ingredient cost will be the lesser of MAC (as applicable), U&C or AWP discount.

Notwithstanding anything herein to the contrary: (i) a Prescription Drug Claim that processes at the Brand rates (Participating Pharmacy Reimbursement Rates) and (Mail Pharmacy Reimbursement Rates), as indicated on the ingredient cost field of the Prescription Drug Claim's data record, shall be reconciled as part of the Brand guarantee below; and (ii) a Prescription Drug Claim that processes at the Generic Drug rates (Participating Pharmacy Reimbursement Rates) and (Mail Pharmacy Reimbursement Rates) above, as indicated on the ingredient cost field of the Prescription Drug Claim's data record, shall be reconciled as part of the Generic Drug guarantee below. The only Prescription Drug Claims that may be excluded from the reconciliation of the pricing guarantees are as identified in the "Claims Excluded" paragraph below in addition to claims dispensed in Puerto Rico, Guam, Northern Mariana Islands, Virgin Islands, Hawaii, Massachusetts, Alaska, and rural pharmacies. All other Prescription Drug Claims may be included in the reconciliation of the guarantees.

PARTICIPATING PHARMACY	
BRAND	AWP – 19.25%
GENERIC	AWP – 84.00%
RETAIL MAINTENANCE NETWORK (84-90 DAYS' SUPPLY)	
BRAND	AWP – 21.75%
GENERIC	AWP – 84.00%
MAIL SERVICE PHARMACY	
BRAND	AWP – 25.00%
GENERIC	AWP – 87.00%

Claims Excluded: OTC products (excluding insulin, diabetic strips, and test strips), compounds, U&C claims, Member Submitted Claims, Subrogation Claims, Coordination of Benefit Claims, Exclusive and Limited Distribution Products/Claims, vaccines, Specialty Products (other than specialty guarantee), biosimilar products (other than Specialty Product guarantee, if applicable), long term care pharmacy claims and/or claims with ancillary charges and products filled through in-house or 340b pharmacies (if applicable).

- (b) Dispensing Fee. ESI will guarantee an average aggregate annual per Prescription Drug Claim dispensing fee on Client utilization to be calculated as follows:

[total dispensing fee of applicable Prescription Drug Claims for the annual period divided by total of applicable Prescription Drug Claims for the annual period which will represent the same underlying claims dataset used to calculate the "Ingredient Cost Guarantee" of this Exhibit A]. Dispensing fees will be calculated using the lesser of MAC (as applicable), U&C or AWP discount adjudication methodology.

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PARTICIPATING PHARMACY	
BRAND	\$0.50 dispensing fee
GENERIC	\$0.50 dispensing fee
RETAIL MAINTENANCE NETWORK (84-90 DAYS' SUPPLY)	
BRAND	\$0.50 dispensing fee
GENERIC	\$0.50 dispensing fee
MAIL SERVICE PHARMACY	
BRAND	\$0.00 dispensing fee
GENERIC	\$0.00 dispensing fee

Claims Excluded: OTC products (excluding insulin, diabetic strips, and test strips), compounds, U&C claims, Member Submitted Claims, Subrogation Claims, Coordination of Benefit Claims, Exclusive and Limited Distribution Products/Claims, vaccines, Specialty Products (other than specialty guarantee), biosimilar products (other than Specialty Product guarantee, if applicable), long term care pharmacy claims and/or claims with ancillary charges and products filled through in-house or 340b pharmacies (if applicable).

Dispensing Fees are inclusive of shipping and handling. If carrier rates (i.e., U.S. mail and/or applicable commercial courier services) increase during the Term of this Agreement, the Dispensing Fee guarantees will be increased to reflect such increase(s).

Guarantees will be measured and reconciled on an annual basis within 180 days of the end of each Contract Year. The guarantees are annual guarantees - if this Agreement is terminated prior to the completion of the then current contract year (hereinafter, a "Partial Contract Year"), then the guarantees will not apply for such Partial Contract Year. To the extent Client changes its benefit design or Formulary during the Term of the Agreement, the guarantee will be equitably adjusted if there is a material impact on the discount achieved. Subject to the remaining terms of this Agreement, Administrator will pay the difference of Client's cost for any shortfall between the actual result and the guaranteed result. Shortfall payments for financial guarantees, if any, will not be paid until this Agreement is signed. Guarantees for pricing components are measured and reconciled in the aggregate across all pricing components. Any dollar savings generated in excess of one component may be used to offset a short fall for any other component.

Notwithstanding anything in this Agreement to the contrary, the Generic average annual ingredient cost discount guarantees set forth above will include only those Prescription Drug Claims that processed to Client for payment where the underlying prescription drug product was identified by Medi-Span as having a Multi-Source Indicator code identifier of "Y" on the date dispensed (or was identified by Medi-Span as having a Multi-Source Indicator identifier of an "M," "N," or "O" on the date dispensed, but was substituted and dispensed by the Mail Service Pharmacy as its "house generic"), unless such Prescription Drug Claim is otherwise excluded above. The Brand average annual ingredient discount guarantees set forth above will include only those Prescription Drug Claims that processed to Client for payment where the underlying prescription drug product was identified by Medi-Span as having a Multi-Source Indicator code identifier of "M," "N," or "O" on the date dispensed (except in cases where the underlying prescription drug product was substituted and dispensed by the Mail Service Pharmacy as its "house generic"), unless such Prescription Drug Claim is otherwise excluded above. The application of brand and generic pricing may be subject to certain "dispensed as written" (DAW) protocols and Client or Plan defined plan design and coverage policies for adjudication and Member Copayment purposes. If Medi-Span discontinues reporting Multi-Source Indicator identifiers, Administrator reserves the right to make an equitable adjustment as necessary to maintain the parties' relative economics and the pricing intent of this Agreement. Notwithstanding anything in this Agreement to the contrary, any rebate guarantees set forth in this Agreement will be reconciled using ESI's proprietary brand/generic algorithm.

Any claim that is considered a single source generic will be included in the generic reconciliation.

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3.2 Specialty Products

- (a) Exclusive Care. ESI Specialty Pharmacy is the exclusive provider of Specialty Products for the reimbursement rates shown on the Exclusive ESI Specialty Pharmacy Specialty Product List. Any Specialty Product dispensed at a Participating Pharmacy (for example, limited distribution products not then available through ESI Specialty Pharmacy or overrides) will be reimbursed at the standard Participating Pharmacy Specialty Product rates shown below. Upon ESI Specialty Pharmacy acquisition of limited distribution products, Members will obtain prescriptions through ESI Specialty Pharmacy.

	Ingredient Cost	Dispensing Fee*
Exclusive ESI Specialty Pharmacy	See Exclusive Specialty Product List	\$0.00
Participating Pharmacy Specialty Products	Participating Pharmacy Specialty Product List	\$0.50

* Dispensing Fees are inclusive of shipping and handling. If carrier rates (i.e., U.S. mail and/or applicable commercial courier services) increase during the Term of this Agreement, the Dispensing Fee guarantees will be increased to reflect such increase(s).

- (b) ASES. For Specialty Products needing an additional charge to cover costs of all ASES required to administer the Specialty Products, Administrator, ESI or ESI Specialty Pharmacy will bill at the following standard per diem and nursing fee rates set forth below, maintained and updated by ESI from time to time. If ESI elects to bill Client's medical plan for ASES, Administrator will work with ESI to coordinate the invoicing and payment of ASES through Client's medical plan. If Client's medical plan will not cover the cost of ASES billed through ESI or ESI Specialty Pharmacy, Client shall be responsible for the costs of all ASES. If a Specialty Product dispensed or ASES provided by ESI Specialty Pharmacy is billed to Administrator or a Client directly by ESI Specialty Pharmacy instead of being processed through ESI, Client will timely pay Administrator, and Administrator will timely pay ESI Specialty Pharmacy for such claim pursuant to the rates below. ESI Specialty Pharmacy shall have 360 days from the date of service to submit such electronic or paper claim.

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Therapeutic Class	Brand Name	Nursing & Per Diem
Immune Deficiency	All Immune Deficiency Drugs requiring Per Diem	\$60.00 / Infusion
Enzyme Deficiency	All Enzyme Deficiency Drugs required Per Diem	\$60.00 / Infusion
Miscellaneous Specialty Conditions	Duopa	\$65.00 / Day
Miscellaneous Specialty Conditions	Soliris	\$60.00 Infusion
PAH	Flolan, Veletri, Epoprostenol Sodium (generic-Flolan/Veletri), and Remodulin	\$65.00 / Day
PAH	Ventavis	\$65.00 / Day
PAH	Tyvaso	\$30.00 / Day
Inflammatory Conditions	Remicade	\$60.00 / Infusion
Alpha 1 Deficiency	All Alpha 1 Deficiency Drugs requiring Per Diem	\$55.00/Infusion
Nursing Rates	All drugs / therapies requiring nursing	\$150.00 per initial visit up to two (2) hours/\$75.00 per additional hour or a fraction thereof

- (c) Specialty Products will be excluded from the non-specialty price guarantees set forth in the Agreement. In no event will the Mail Service Pharmacy or Participating Pharmacy pricing terms specified in the Agreement, including, but not limited to, the annual average ingredient cost discount guarantees, apply to Specialty Products.
- (d) **SPECIALTY NET EFFECTIVE DISCOUNT GUARANTEE** - Administrator guarantees that the overall annual net effective discount for the products listed on the Specialty Products List will be at least AWP (-) minus 20.50% for Client (excluding limited distribution products). Within one hundred and eighty (180) days following the end of each Contract Year, Administrator will calculate the actual net effective discount for the products listed on the Specialty Products List to determine if the guarantee has been met. If the actual overall net effective discount is less than the guaranteed net effective discount Administrator will reimburse Client the full dollar amount of the difference between the actual and guaranteed net effective discounts. Client will retain any amount that the actual net effective discount exceeds the guaranteed net effective discount. The calculation for the actual net effective discount will be as follows: ((Total Ingredient Cost for the products listed on the Specialty Products List) divided by (Total AWP for the products listed on the Specialty Products List)) minus 1. This guarantee is contingent on Client's participation in the National Preferred Formulary or Basic Formulary and an exclusive specialty arrangement.

3.3 Vaccine Claims (NO VACCINE CLAIMS WILL BE INCLUDED IN ANY PRICING OR REBATE GUARANTEE SET FORTH IN THE AGREEMENT).

- (a) General Terms applicable to Vaccine Claims
1. "Vaccine Claim" means a claim for a Covered Drug which is a vaccine.
 2. "Vaccine Vendor Transaction Fee" means the data interchange fee that ESI is charged by its third party vendor to convert Vaccine Claims submitted electronically by physicians to NCPDP 5.1 format in order for ESI to process the claim.
 3. Vaccine Claims shall adjudicate at the lower of U&C or the amounts shown in the table below. In the case of Vaccine Claims, the U&C shall be the retail price charged by a

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Participating Pharmacy for the particular vaccine, including administration and dispensing fees, in a cash transaction on the date the vaccine is dispensed as reported to ESI by the Participating Pharmacy.

4. The Vaccine Administration Fee for Vaccine Claims for Members enrolled in Client's Medicaid programs, if any, will be capped at the maximum reimbursable amount under the state Medicaid program in which the Member is enrolled.
5. All Vaccine Claims will be subject to any Administrative Fees set forth in the Agreement.
6. Vaccine Claims will be charged a program fee of \$2.50 per Vaccine Claim (except for Medicare Part D covered Vaccine Claims, if applicable). The Vaccine Program Fee will be billed separately to Client as part of the administrative invoice according to the billing frequency set forth in this Agreement.

(b) Commercial (Including Medicaid and Exchange, if applicable)

	Participating Pharmacy INFLUENZA	Participating Pharmacy ALL OTHER VACCINES	Member Submitted Vaccine Claims (excluding foreign claims)
Vaccine Administration Fee	Pass-Through (capped at \$15 per vaccine claim)	Pass-Through (capped at \$20 per vaccine claim)	Submitted amount
Ingredient Cost	Participating Pharmacy Ingredient Cost as set forth in the Agreement	Participating Pharmacy Ingredient Cost as set forth in the Agreement	Submitted amount
Dispensing Fee	Participating Pharmacy Dispensing Fee as set forth in the Agreement	Participating Pharmacy Dispensing Fee as set forth in the Agreement	Submitted amount
Administrative Fee/Vaccine Claim	Administrative Fee per Prescription Drug Claim as set forth in the Agreement		Administrative Fee per Prescription Drug Claim (plus manual claim administrative fee) as set forth in the Agreement
Vaccine Program Fee	\$2.50 per vaccine claim		N/A

(c) Medicare Part D Covered Vaccine Claims: Medicare Part D Vaccine Claims shall adjudicate at the lower of U&C or the amounts shown in the table below.

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	Participating Pharmacies/ESI Mail Pharmacy/ESI Specialty Pharmacy	Member Submitted Vaccine Claims (excluding foreign claims)	Vaccine Claims Submitted Electronically by Physicians
Vaccine Administration Fee	Pass-Through (capped at \$15 for influenza/\$20 all other vaccines per Vaccine Claim)	Lower of submitted amount or pharmacy contracted rate (capped at \$15 for influenza/\$20.00 all other vaccines if administered at a Participating Pharmacy)	Pass-Through (capped at \$15 for influenza/\$20 all other vaccines per Vaccine Claim)
Ingredient Cost	Pass-Through	Lower of submitted amount or pharmacy contracted rate	Pass-Through
Dispensing Fee	Pass-Through	Lower of submitted amount or pharmacy contracted rate	Pass-Through
Vendor Transaction Fee	N/A	N/A	Pass through at ESI cost for Vendor Transaction Fee (currently \$3.75, subject to change)

D. REBATES

1. **Rebate Amounts.** Subject to: (i) the conditions set forth in Sections 2 through 4 below and elsewhere in this Agreement; and (ii) Client meeting the Plan Design conditions identified in the table below, the following guaranteed amounts will be payable to Client during the Term of this Agreement:

REBATES PER BRAND Rx	FORMULARY: ESI NATIONAL PREFERRED
NATIONAL PLUS NETWORK	\$189.00 per Brand claim
RETAIL MAINTENANCE NETWORK (84-90 DAYS' SUPPLY)	\$449.00 per Brand claim
HOME DELIVERY PRODUCTS	\$542.00 per Brand claim
SPECIALTY PRODUCTS	\$1,500.00 per Brand claim

- (1) The Extended Days' Supply pricing set forth in this Agreement shall be subject to certain requirements, as follows. Extended Days' Supply shall mean; (1) for all lines of business other than Medicare or EGWP, any supply of a covered drug of 84 days or greater; and (2) for Medicare or EGWP, if applicable, any supply of a covered drug of 35 days or greater. Certain Participating Pharmacies have agreed to participate in the extended (84 – 90) day supply network (“Maintenance Network”) for maintenance drugs. Rebate Amounts in the 84 – 90 Days' Supply column in the table set forth above are applicable only if Client implements a plan design that requires Members to fill such days' supply at a Maintenance Network Participating Pharmacy (i.e., Client must implement a plan design whereby Members who fill extended days' supply prescriptions at a Participating Pharmacy other than a Maintenance Network Participating Pharmacy do not receive benefit coverage under the Plan for such prescription). If no such plan design is implemented, Rebate Amounts for such days' supply will be the same as for Prescription Drug Claims for less than an 84 days' supply, and Rebate Amounts for an 84 – 90 days' supply in the table set forth above shall not apply, even if a Maintenance Network Participating Pharmacy is used.

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OR – IF SMART 90 WAG OR CVS, USE THIS FOOTNOTE AND ADDITIONAL DESCRIPTION:

- (1) The Extended Days' Supply pricing set forth in this Agreement shall be subject to certain requirements, as follows. Extended Days' Supply shall mean; (1) for all lines of business other than Medicare or EGWP, any supply of a covered drug of 84 days or greater; and (2) for Medicare or EGWP, if applicable, any supply of a covered drug of 35 days or greater.

Smart90 Walgreens Network

Certain participating pharmacies have agreed to participate, together with the Mail Service Pharmacy, in the Express Scripts' "Smart90 Walgreens Network" extended (84-90) days' supply network for maintenance drugs (such participating pharmacies and the Mail Service Pharmacy are hereinafter collectively referred to as "Express Scripts' Smart90 Walgreens Network"). Pricing in the 84-90 Days' Supply column in the table set forth above is applicable only if Client implements a plan design that requires members: (i) to fill maintenance drugs (based on Express Scripts' standard list of identified maintenance drugs) in extended (84-90) days' supply quantities only (i.e., no 30 day fills except for initial courtesy fill(s)); and (ii) to fill such extended days' supply at either the Mail Service Pharmacy or a participating pharmacy in the Express Scripts Smart90 Walgreens Network (i.e., [Client] must implement a plan design whereby members who fill maintenance drugs for less than an extended (84-90) days' supply or who fill an extended (84-90) days' supply at a participating pharmacy other than an Express Scripts Smart90 Walgreens Network participating pharmacy do not receive benefit coverage under the Plan for such prescription). If no such plan design is implemented, the pricing for such days' supply will be the same as for prescription drug claims for less than an 84 days' supply, and pricing for an 84-90 days' supply in the table set forth above shall not apply, even if an Express Scripts Smart90 Walgreens Network participating pharmacy is used. The co-payment amount must also be level between the Smart90 Walgreens Network and the Express Scripts Mail Order Pharmacy.

Smart90® Walgreens is an innovative plan design that motivates members to fill 90-day supplies of their maintenance medications. Members have the choice to fill 90-day supplies through Express Scripts' home delivery pharmacy services or at Walgreens pharmacies. When members do so, plan savings increase due to more aggressively discounted pricing compared to non-preferred retail pharmacies.

How Smart90 Walgreens Works:

- Members obtain 90-day supply of maintenance prescriptions via home delivery from Express Scripts or at one of more than 8,000 Walgreen's pharmacies.
 - Member pays the same 90-day copay whether filling through the Express Scripts Pharmacy or through one of the Walgreen's pharmacy locations
 - Members who continue to fill 30-day supplies of maintenance medications or use a non-preferred pharmacy after two courtesy fills pay 100% of the prescription cost.
2. **Exclusions.** Member Submitted Claims, Subrogation Claims, Coordination of Benefit Claims, Exclusive and Limited Distribution Products, biosimilar products, OTC products (except for insulin and diabetic strips and test strips), vaccines, claims older than 180 days, claims through Client-owned or 340b pharmacies, and claims pursuant to a 100% Member Copayment plan are not eligible for the guaranteed Rebate amounts set forth in Section 1 above.
 3. **Rebate Payment Terms.** Subject to the conditions set forth herein, Administrator will receive from ESI the quarterly Rebate payments within approximately one hundred eighty (180) days following calendar quarter adjudicated for Rebates received during the prior calendar quarter. Upon receipt, Administrator will credit Client's account.
 4. **Conditions**

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- 4.1.** ESI contracts with pharmaceutical manufacturers for Rebates on its own behalf and for its own benefit, and not on behalf of Client. Accordingly, ESI retains all right, title and interest to any and all actual Rebates received from manufacturers. ESI will pay to Administrator (and Administrator shall pay to Client) amounts equal to the Rebate amounts allocated to Client, as specified above, from ESI's general assets (neither Client, its Members, nor Client's Plan retains any beneficial or proprietary interest in ESI's general assets). Client acknowledges and agrees that neither it, its Members, nor its Plan will have a right to interest on, or the time value of, any Rebate payments received by ESI during the collection period or moneys payable under this Section. No amounts for Rebates will be paid until this Agreement is executed by Client. ESI and Administrator will have the right to apply Client's allocated Rebate amount to unpaid Fees. ESI will retain Manufacturer Administrative Fees on Specialty Products.
- 4.2** ESI reserves the right to adjust the Rebate guarantees if Rebate revenue is materially decreased because Brand Drugs move off-patent to generic status or due to a Change in Law.
- 4.3** Client acknowledges that it may be eligible for Rebate amounts under this Agreement only so long as Client, 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 Prescription Drug Claims processed by ESI pursuant to the Agreement, without the prior written consent of ESI. In the event that Client 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 immediately withhold any Rebate amounts earned by, but not yet paid to, Client as necessary to prevent duplicative Rebates on Covered Drugs. To the extent Client knowingly negotiates and/or contracts for discounts or Rebates on claims for Covered Drugs without prior written approval of ESI, such activity will be deemed to be a material breach of this Agreement, entitling ESI to suspend payment of Rebate amounts hereunder and to renegotiate the terms and conditions of this Agreement.
- 4.4** Under its Rebate program, ESI may implement ESI's Formulary management programs and controls, which may include, among other things, cost containment initiatives, and communications with Members, Participating Pharmacies, and/or physicians. ESI reserves the right to modify or replace such programs from time to time. Guaranteed Rebate amounts, if any, set forth herein, are conditioned on adherence to various Formulary management controls, benefit design requirements, claims volume, and other factors stated in the applicable pharmaceutical manufacturer agreements, as communicated by ESI to Client from time to time. If any government action, change in law or regulation, change in the interpretation of any law or regulation, or any action by a pharmaceutical manufacturer has an adverse effect on the availability of Rebates, then ESI and Administrator may make an adjustment to the Rebate terms and guaranteed Rebate amounts, if any, hereunder.
- 4.5** The Rebate guarantees set forth in this Agreement are based on current market share assumptions and benefit design. If Client's mix or utilization of drugs in the Hepatitis C or PCSK9 classes materially differ from the data provided to Administrator for the purposes of establishing pricing or from Client's historical mix and utilization, ESI and/or Administrator may equitably adjust the Rebate guarantees accordingly.
- 4.6** Rebate Acknowledgment; No Representation; Rebate Limitations. Client acknowledges that Administrator is not making any representation, warranty or guaranty of any kind or nature, either express, implied or otherwise, regarding the amount of Rebates to be paid or remitted to Client pursuant to this Agreement, except as specifically set forth in writing herein. In addition, Client waives, releases and forever discharges ESI and Administrator from any Losses arising from a pharmaceutical company's (a) failure to pay Rebates; (b) breach of an agreement related to Rebates; or (c) negligence or misconduct affecting Rebates. Client acknowledges that whether and to what extent pharmaceutical companies are willing to provide Rebates to Client may depend upon a variety of factors, including the content of the PDL, the Plan's design features, Client meeting criteria for Rebates, and the extent of participation in ESI's formulary management programs, as well as ESI/Administrator receiving sufficient information regarding each Claim for submission to

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pharmaceutical companies for Rebates. Client acknowledges and agrees that ESI may, but shall not be required to, initiate any collection action to collect any Rebates from a pharmaceutical company. In the event ESI does initiate collection action against a pharmaceutical company to collect Rebates, ESI may offset any reasonable costs, including reasonable attorneys' fees and expenses, arising from any such action. Notwithstanding any provision of this Agreement to the contrary, Administrator shall only be responsible for payment of Rebates to Client pursuant to the terms of this Agreement if such Rebates are actually received by Administrator during the Term of this Agreement. In no event shall Administrator be obligated to pay Rebates to Client until Administrator receives payment for the same Rebates from ESI. In the event Client terminates the Agreement outside the terms and conditions in the Agreement, Client forfeits the right to receive any Rebates received by Administrator on Client's behalf after the date of such termination. Client acknowledges that Administrator shall not be obligated to pay Client any Rebates described herein until this Agreement is signed by Client.

5. Rebate amounts paid to Client pursuant to this Agreement are intended to be treated as "discounts" pursuant to the federal anti-kickback statute set forth at 42 U.S.C. §1320a-7b and implementing regulations. Client is obligated if requested by the Secretary of the United States Department of Health and Human Services, or as otherwise required by applicable law, to report the Rebate amounts and to provide a copy of this notice. ESI will refrain from doing anything that would impede Client from meeting any such obligation.

E. MISCELLANEOUS

1. Plan Participant Cost Share. Administrator may, but shall not be obligated to, dispense or cause to be dispensed a prescription even if the prescription is not accompanied by the applicable Plan Participant Cost Share described above in this Exhibit A. Administrator will refund any amount submitted by a Plan Participant in excess of the Plan Participant's applicable Plan Participant Cost Share. In the event a Plan Participant submits an insufficient Plan Participant Cost Share and the Plan Participant fails to remit the balance of the Plan Participant Cost Share amount to Administrator (or its designee) within thirty (30) days of Administrator's (or its designee's) request, then Administrator shall have the right to invoice Client for, and Client shall have an obligation to pay Administrator (or its designee), the amount of the uncollected Plan Participant Cost Share(s). Client shall, in turn, have the right to recover uncollected Plan Participant Cost Shares from its Plan Participants at Client's determination. Shipping of prescriptions submitted without the appropriate Plan Participant Cost Share may be delayed.
2. Additional Optional Services: Charges for additional Optional Services not otherwise identified and priced in this Exhibit A (Client Application) shall be quoted upon request and/or as applicable. The Parties acknowledge that the arrangement between Administrator and the PBM is a pass-through arrangement. To the extent Client requests or PBM administers services of PBM that are not outlined in this Agreement, Administrator will pass through any such charges from the PBM to Client.
3. Translation Services. To the extent Client requests translation services from Administrator or PBM (for translating member materials, brochures, etc.) and there is a charge from Administrator's or PBM's translation services provider, such charge will be passed through to Client.

F. EXECUTION BY CLIENT

Client hereby represents and warrants that the information contained in Section A of this Client Application is true and correct in all respects and Client hereby agrees to the specific terms, conditions and financial arrangements set out in Sections B, C, D and E of this Client Application. Client agrees that if any information in Section A changes, Client will give Administrator prompt notice of such changes. Furthermore, Client understands that this Client Application (Exhibit A) is a part of the Administrative Services Agreement between Client and Administrator to which it is attached and incorporated into by reference and that Client is bound by all terms and conditions of such Administrative Services Agreement.

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All capitalized terms used in this Client Application but not specifically defined herein shall have the meanings given to such terms in the Administrative Services Agreement to which this Client Application is attached and made a part of.

SAMPLE

SAMPLE FOR DISCUSSION PURPOSES ONLY. NOT FOR SIGNATURE.

IN WITNESS WHEREOF, Client has caused this Client Application (Exhibit A to the Agreement) to be executed as of the Effective Date. In the event this Client Application is amended by the Parties after the Effective Date, the Parties may substitute such amended Client Application for the former Client Application, provided the Parties set forth the date from and after which such amended Client Application shall be effective (the “date” line at the bottom of the Administrator’s acknowledgment signature block on an amended Client Application shall be such new effective date with respect to such amended Client Application). The Parties further agree that they will attach such amended Client Application to this Agreement and provide a copy of this Agreement with the amended Client Application (Exhibit A) to Administrator and Client for their respective records. Any such amended Client Application must be signed by Client’s authorized representative and acknowledged, agreed to, accepted and dated by Administrator’s authorized representative.

CLIENT:
City of Orange Beach

By: _____

Printed Name: _____

Its: _____

Acknowledged, agreed to and accepted by:

ADMINISTRATOR:
RxBenefits, Inc.

By: _____

Printed Name: Lauren Simmons

Its: Sr. Director of Compliance & Legal Affairs

ADDENDUM TO ADMINISTRATIVE SERVICES AGREEMENT

THIS ADDENDUM TO ADMINISTRATIVE SERVICES AGREEMENT (this “Addendum”), entered into effective as of January 1, 2021 (the “Addendum Effective Date”), is made by and between **RxBenefits, Inc.** (“Administrator”), and **City of Orange Beach** (“Client”). The parties, intending to be legally bound, hereby agree as follows:

1. Administrator and Client are parties to that certain Administrative Services Agreement dated January 1, 2021 (the “Agreement”).
2. Administrator and Client hereby execute this Addendum for the purpose of documenting that Exhibit A (Client Application) to the Agreement has been amended and restated to reflect, among other things, new pricing terms. Such amended and restated Exhibit A (Client Application) shall be attached and affixed to the Agreement as Exhibit A (Client Application) in lieu of the prior Exhibit A (Client Application) upon execution of this Addendum by the parties’ authorized representatives below and shall be in full force and effect as said Exhibit A from and after the Addendum Effective Date.
3. Except for the amendment and restatement of Exhibit A (Client Application) effected hereby, the Agreement shall not otherwise be modified, altered or amended in any respect and is hereby ratified and incorporated herein.

IN WITNESS WHEREOF, the undersigned parties have entered into and executed this Addendum effective as of the Addendum Effective Date.

EXHIBIT A**CLIENT APPLICATION****January 1, 2021**

[IMPORTANT – PLEASE READ CAREFULLY: Client should complete Section A and carefully review this Exhibit A, which has been completed by Administrator, in order to ensure the accuracy and completeness of such information. Client shall promptly notify Administrator of any inaccuracy or omission with respect to such terms and conditions, if applicable (including, without limitation, the Client Information in Section A).]

A. INFORMATION ABOUT CLIENT

Client's Name: City of Orange Beach

Client's Mailing Address:

P.O. Box 458, Orange Beach, Alabama 36561

B. PLAN DESIGN; MEMBER COST SHARE

Member Cost Share:

Please see current Summary of Benefits.

Client represents and warrants that the design of Client's Plan as reflected in a Plan Design document for Client ("PDD"), accurately reflects the applicable terms of Client's Plan for purposes of this Agreement. Client shall provide Administrator with ninety (90) days prior written notice of any proposed changes to the design of Client's Plan (including the PDD), which changes shall be consistent with the scope and nature of the services to be provided by Administrator under this Agreement. Client agrees that it is responsible for Losses resulting from (a) any failure to implement Plan Design changes which are not communicated in writing to Administrator, or (b) implementation of verbal or written direction regarding exception or overrides to the PDD. In addition, Client shall notify Members of any Plan Design changes prior to the effective date of any such changes as requested by applicable law.

C. SERVICES; FORMULARY.

1. Base Administrative Services: The following services are the base administrative services made available to Client and its Members pursuant to the Agreement (including this Exhibit A) (the "Base Administrative Services"), as applicable:

- Administration of eligibility submitted via tape or telecommunication
- Eligibility maintenance
- Client support system for on-line access to current eligibility
- Administration of Client's Plan Design
- In-network claims adjudication via on-line claims adjudication system
- Designated Account Team
- Client clinical and plan consulting, analysis and cost projections
- Annual analysis of program utilization and impact of plan design and managed care interventions
- Welcome Package and ID Cards for new Members
- Standard Member communications
- Toll-free telephone access to customer service for the program for use by Members and Client's benefits personnel and Representatives

2. **Additional Administrative Services:** Client will pay for additional administrative services (the “**Additional Administrative Services**”) beyond those included in the Base Administrative Services that are requested by Client and provided or made available by Administrator under the program as follows:

2.1 Administrative Fees

Administrative Services	Fees
Transaction Fees Payable for Administrative Services (per Article IV.B of the Agreement)	\$2.15 per Prescription Drug Claim made by Members payable on a bi-monthly basis
Transaction Fees Payable for Administrator’s Clinical Advantage Program (individual prices listed in table below)	\$1.05 per claim
Manufacturer Copay Assistance Programs	Fees
• Out of Pocket Protection (Accumulation)	No Charge (Elected)
• Out of Pocket Protection + Variable Copay Assistance Program	Not Elected
• SaveOnSP	Not Elected
• Out of Pocket Protection + SaveOnSP	Not Elected
Reviews and Appeals Management	
• Low Clinical Value Exclusions (LCV)	\$0.30 per claim (Elected)
• High Dollar Claim Review (HDCR)	\$0.75 per claim (Elected)
Initial Determinations (i.e. coverage reviews) and Level One Non-Urgent Appeals for the Coverage Authorization Program, consisting of: Prior Authorization Step Therapy Drug Quantity Management	Included in the existing utilization management PMPM charge OR Included in the existing PA charge of \$55 per initial determination* OR No Charge if Client elects HDCR
Initial Determinations and Level One Non-Urgent Appeals for benefit reviews. Examples: copay review, plan excluded drug coverage review, administrative plan design review.	\$55 per initial determination OR No Charge if Client elects HDCR
Final and Binding Appeals – Level Two Appeals and/or Urgent Appeals for UM, formulary, and benefit reviews.	\$10.00 per review* OR No Charge if Client elects HDCR
External Reviews by Independent Review Organizations - for non-grandfathered plans	\$800 per review OR No Charge if Client elects HDCR
Miscellaneous	
Third Party Integration Fees	Charges passed through from provider or mutually agreed upon by Parties

The following terms and conditions apply only if client does not elect HDCR:

- * Initial determination – this is the first review of drug coverage based on the plan’s conditions of coverage. Initial determinations are also referred to as initial reviews, coverage reviews, prior authorization reviews, UM reviews, or benefit reviews.
- The Level 2 and Urgent Appeal Service is an optional service for Clients to enroll in and there is an incremental fee of \$10 per initial determination.
 - Level 2 and Urgent Appeals are not included in the UM package fees.
 - The Level 2 and Urgent Appeal Service fee is not charged per appeal. It is charged for each initial review. This allows Client to better estimate their appeal costs since it is based on the number of initial determinations. The fees cover the legal and operational costs involved with handling final and binding appeal reviews, which includes, but is not limited to the following: staffing of clinical

professionals and supportive personnel, notifications to patients and prescribers, and maintaining a process aligned with state and Federal regulations.

- Charges for the Level 2 and Urgent Appeal Service are billed on the monthly admin invoice for completed initial determination for UM, formulary, and benefit reviews. No subsequent charges are incurred when cases are appealed.
- Appeals can be deemed urgent at Level 1 or Level 2. Urgent appeal decisions are final and binding. If a Level 1 Appeal is processed as urgent, there is no Level 2 appeal.

PBM Services	Fees
Advanced Utilization Management (AUM Bundle)	\$0.57 / PMPM or Passed through from PBM
Member-submitted paper claims processing fee	\$3.00 per claim
Medicaid or Medicare subrogation claims fee	\$3.00 per claim
Opioid Program	\$0.32 / PMPM (If Elected)
ACA Statin "Trend Management" Program	\$0.03 / PMPM (If Elected)
Combined Benefit Management	
Services to manage combined medical-pharmacy benefits that are not a consumer-directed health (CDH) plan. Services include ongoing management of the data exchange platform with the medical vendor/TPA, production monitoring and quality control, and designated operations team. Combined benefit types may include deductible, out of pocket, spending account, and lifetime maximum.	<p>\$0.10 PMPM per combined accumulator up to maximum of \$0.20 PMPM for existing connection with medical carrier or TPA.</p> <p>Fees to establish connection with new medical carrier or TPA are quoted upon request.</p>
Network Pharmacy Services	
Network Pharmacy Audit Program	20% of audit recoveries

Comprehensive Consumer Driven Health (CDH) Solution	
<u>Technical</u> Bi-directional data exchange; dedicated operations; 24-hour a day, seven-days a week monitoring and quality control; performance reporting; and analytics <u>Decision Support</u> Dedicated CDH member services, Prescription Benefit Review Statements, Retail Pricing Transparency <u>Member Adherence</u> ScreenRx Preventive Medications <u>Member Education</u> Proactive, personalized member communications open enrollment tools and member communications library, robust online features, and preventive care proactive, personalized member communications	\$0.48 PMPM *these charges would be in addition to any pricing adjustments if greater than ten percent of Client's total utilization for all Plans is attributable to a CDHC.
ScreenRx for PPO Plans	\$0.25 PMPM (If Elected)
Medicare Part D – Retiree Drug Subsidy (RDS)	
Part D subsidy enhanced service (ESI sends reports to CMS on behalf of Client)	\$1.12 PMPM for Medicare-qualified Members with a minimum annual fee of \$7,500
(i) Notice of Creditable Coverage	\$1.35/letter + postage
Part D Subsidy standard service (ESI sends reports to Client)	\$0.62 PMPM for Medicare-qualified Members with a minimum annual fee of \$5,000
A. Notice of Creditable Coverage	\$1.35/letter + postage
Communication with physicians and/or members (e.g., program descriptions, notifications, formulary compliance, non-Medicare EOBs, etc.	\$1.75/letter + postage
Medicare EOB	\$1.75 / letter + postage
Custom non-standard materials	Priced upon Request
Electronic Pharmacy Benefit Eligibility Verification	
Eligibility confirmation of pharmacy benefit coverage shared with prescribers and other healthcare professionals through their Electronic Medical Records (EMR) or other digital channels. Pass-through charge to Sponsor at ESI's preferred rate with data switch such as Surescripts.	
Miscellaneous	
Coordination of Benefits - Custom reimbursement formula - Setup and ongoing maintenance - Product support	\$0.01 PMPM, If Elected
Formulary Services Fee - High Performance Formulary	\$10,000 Implementation Fee + \$0.05 PMPM, If Elected
Medicare Part B Solution - Integrated Retail & Mail Program - Retail Only Program - Program Introductory Letter	- \$0.42 PMPM - \$0.20 PMPM - \$1.35/letter + postage

PBM Services – No Additional Fee	
Customer service for Members	Electronic claims processing
Electronic/on-line eligibility submission	Plan setup
Standard coordination of benefits (COB) (reject for primary carrier)	Software training for access to our on-line system(s)
FSA eligibility feeds	
A. Network Pharmacy Services	
Pharmacy help desk	Pharmacy reimbursement
Pharmacy network management	Network development (upon request)
B. Home Delivery Services	
Benefit education	Prescription delivery – standard
Reporting Services	
Web-based client reporting –	Annual Strategic Account Plan report
Ad-hoc desktop parametric reports	Billing reports
Claims detail extract file electronic (NCPDP format)	Inquiry access to claims processing system
Load 12 months claims history for clinical reports and reporting	
Website Services	
Express-Scripts.com for Members — access to benefit, drug, health and wellness information; prescription ordering capability; and customer service	
Implementation Package and Member Communications	
<ul style="list-style-type: none"> New Member packets (includes two standard resin ID cards) Member replacement cards printed via web (For hard-copy cards, charges are passed through from the PBM) 	
<ul style="list-style-type: none"> Member-requested replacement packets or Client requested re-carding 	\$1.50 + postage per packet or card
Clinical	
Concurrent Drug Utilization Review (DUR) Overrides <ul style="list-style-type: none"> a. Sponsor-requested overrides b. Lost/stolen overrides c. Vacation supplies 	No Charge

2.2 Administrator Clinical Programs

- If elected, the **Low Clinical Value (“LCV”)** exclusion option prevents unnecessary spending by removing LCV medications from the formulary without impact to client rebates while providing equal or more effective medicines at a lower cost. LCV medications are drugs that treat common conditions that do not provide any additional or superior therapeutic value when compared to currently existing therapies already in the marketplace. These medications are excluded in addition to any products that would normally be excluded by PBM Formulary. This exclusion occurs without affecting rebate minimum guarantees or contracted discount rates. Administrator reserves the right to amend, from time to time, the list of low clinical value medications. The list of low clinical value medications may be updated quarterly. Client may request a current list of LCV medications.
- If elected, Administrator’s **High Dollar Claim Review program (“HDCR”)**, will provide Client with umbrella protection against high-cost prescription claims for approved formulary drugs. Prescription claims over the threshold dollar amount are flagged prior to payment and reviewed

for clinical appropriateness. This additional level of clinical oversight protects against unnecessary spending, saving clients money and providing improved visibility into claim reviews, decision processes, and cost savings. The following may apply:

- RxBenefits manages the clinical review process for high dollar claims, providing oversight of the process. We communicate trends and savings results to clients through detailed reporting and analytics;
- Review turnaround time is dependent on prescriber activity and whether additional information is required. If additional information is required, the reviewer will attempt to contact physician at least once daily for three days; direct contact with the prescriber will discontinue after the third day. The majority of reviews are completed with a disposition within 24 to 72 hours;
- Following a clinical review, one of four actions will occur: the medication is **approved**, the medication claim is **denied**, the doctor may decide to **withdraw** and prescribe a different medication, or the reviewer can **dismiss** the claim due to lack of communication from the prescriber; or
- If denied, an appeal process is available.
- The appeal process:
 - If an initial review is denied, the Member may appeal the decision to have a different pharmacist reviewer evaluate the prior authorization.
 - If the denial is upheld upon first appeal, a second appeal may be made, which is completed in consultation with a peer physician reviewer from an Independent Review Organization.
 - If the denial is again upheld upon second appeal, a final appeal for a Federal External Review completed by an Independent Review Organization may be made.
 - If the denial is upheld by the final review, the appeal process has been exhausted and the decision is final and binding.
- **Foundational Utilization Management (“UM”).** UM is a bundling of evidence-based clinical programs commonly used to provide appropriate clinical oversight of prescription drug claims. UM ensures the correct clinical evaluation processes are in place. Appropriate quantity limit (“QL”) promotes FDA-approved dispensing guidelines by ensuring appropriate quantities are dispensed. Step Therapy (“ST”) ensures the most clinically appropriate item is used first as part of adhering to accepted guidelines. When faced with two similar agents, the lowest cost option is promoted first. Prior Authorizations (“PA”) ensure FDA-approved guidelines with respect to indications are being met. Utilizing the PBM or customized criteria, RxBenefits has carved out the QL/ST exception review process as well as all specialty and non-specialty PA reviews to be independently reviewed and documented utilizing a documentation system that allows for ease of auditing through increased visibility of clinical decisions. This component requires that a client elect a standard Utilization Management Programs promoted by Administrator. NOTE: Client must have HDCR component in place to elect UM. The following may apply:
 - Review turnaround time is dependent on prescriber activity and whether additional information is required. If additional information is required, the reviewer will attempt to contact physician at least once daily for three days; direct contact with the prescriber will discontinue after the third day. The majority of reviews are completed with a disposition within 24 to 72 hours;
 - Following a clinical review, one of four actions will occur: the medication is **approved**, the medication claim is **denied**, the doctor may decide to **withdraw** and prescribe a different medication, or the reviewer can **dismiss** the claim due to lack of communication from the prescriber; or
 - If denied, an appeal process is available.
 - If elected, PBM’s **Manufacturer Assistance Program for Specialty Medications (“MAP”)**, consists of 1 or 2 components when available, dependent on the specific plan design: (1) Accumulator Protection using Manufacturer Copay assistance dollars to help lower member

out-of-pocket costs and client costs where funds are not applied to member deductible and member out-of-pocket maximum totals; and (2) Accumulator Protection Plus Variable Cost-Share, where plan changes can maximize available assistance funds to offset plan costs and cover the members' cost-share but does not apply to their deductible and out-of-pocket maximum, yielding high savings potential, or Therapeutic Interchange Programs where the specialty pharmacy will move members to preferred agents in order to allow the usage of copay assistance funds from manufacturers. Requires exclusive specialty pharmacy relationship.

- If elected, the **SaveOnSP program** is a benefit design change implemented by PBM in conjunction with a third-party vendor, SaveOnSP. Within the SaveOnSP program, certain specialty medications are classified as non-essential health benefits. This means that any funds spent on these drugs no longer apply to the members' accumulators. In addition, the targeted drugs are assigned higher copays. In all cases, SaveonSP helps the member coordinate manufacturer-sponsored copay assistance. SaveOnSP targets drugs in six of the top ten specialty categories.
- If elected, PBM's **Advanced Opioid ManagementSM program** reaches out to physicians, pharmacists and patients at key touchpoints to minimize early exposure to opioids and to prevent patients from progressing to overuse and abuse. Patients will be required to start therapy with no more than a 7-day supply of short-acting medications (with certain exceptions). Member Education will start at the first fill. Doctors will be notified at the point of care when specific signs of misuse and abuse are observed.

3. **Pricing Terms.** The financial terms set forth are conditioned on such exclusive arrangement and all other specified conditions set forth in Exhibit A of the Agreement. Client will pay to Administrator the amounts set forth below, net of applicable Copayments. The application of Brand Drug and Generic Drug pricing below may be subject to certain "dispensed as written" (DAW) protocols and Client defined plan design and coverage policies for adjudication and Member Copayment purposes. Sales or excise tax or other governmental surcharge, if any, will be the responsibility of Client.

Members will always pay based on the logic below:

- Retail: Lowest of (i) the U&C price, (ii) Plan copayments/coinsurance, or (iii) discounted AWP (including MAC price, when MAC pricing is applicable).
- Mail Order: Lower of (i) Plan copayments/coinsurance or (ii) discounted AWP (including MAC price, when MAC pricing is applicable).
- If no adjudication rates are specified herein, each claim will be adjudicated to Client at the applicable ingredient cost and will be reconciled to the applicable guarantee as set forth herein. The discounted ingredient cost will be the lesser of MAC (as applicable), U&C or the applicable AWP discount. Claims dispensed at ESI Mail Pharmacy will be adjudicated to Client at the applicable ingredient cost and will be reconciled to the applicable guarantee as set forth herein.

3.1 **Pricing.**

- (a) **Ingredient Cost.** Administrator will offer an average aggregate annual discount as reflected below on Client utilization to be calculated as follows. The pricing below will be implemented as of the Addendum Effective Date. The pricing below will be guaranteed upon the start of Client's Renewal Term (as described in Article VI(A) of the Agreement) that begins on or after the Addendum Effective Date.

[1-(total discounted AWP ingredient cost (including any retrospective pharmacy payments) but excluding dispensing fees and ancillary charges, and prior to application of Copayments) of applicable Prescription Drug Claims for the annual period divided by total undiscounted AWP ingredient cost (both amounts will be calculated as of the date of adjudication) for the annual period)]. Discounted ingredient cost will be the lesser of MAC (as applicable), U&C or AWP discount.

Notwithstanding anything herein to the contrary: (i) a Prescription Drug Claim that processes at the Brand rates (Participating Pharmacy Reimbursement Rates) and (Mail Pharmacy Reimbursement Rates), as indicated on the ingredient cost field of the Prescription Drug Claim's data record, shall be reconciled as part of the Brand guarantee below; and (ii) a Prescription Drug Claim that processes at the Generic Drug rates (Participating Pharmacy Reimbursement Rates) and (Mail Pharmacy Reimbursement Rates) above, as indicated on the ingredient cost field of the Prescription Drug Claim's data record, shall be reconciled as part of the Generic Drug guarantee below. The only Prescription Drug Claims that may be excluded from the reconciliation of the pricing guarantees are as identified in the "Claims Excluded" paragraph below, in addition to claims dispensed in Puerto Rico, Guam, Northern Mariana Islands, Virgin Islands, Hawaii, Massachusetts, Alaska, and rural pharmacies. All other Prescription Drug Claims may be included in the reconciliation of the guarantees.

PARTICIPATING PHARMACY	
BRAND	AWP – 19.50%
GENERIC	AWP – 84.50%
RETAIL MAINTENANCE NETWORK (84-90 DAYS' SUPPLY)	
BRAND	AWP – 22.00%
GENERIC	AWP – 84.50%
MAIL SERVICE PHARMACY	
BRAND	AWP – 25.00%
GENERIC	AWP – 87.00%

Claims Excluded: OTC products (excluding insulin, diabetic strips, and test strips), compounds, U&C claims, Member Submitted Claims, Subrogation Claims, Coordination of Benefit Claims, Exclusive and Limited Distribution Products/Claims, vaccines, Specialty Products (other than specialty guarantee), biosimilar products (other than Specialty Product guarantee, if applicable), long term care pharmacy claims and/or claims with ancillary charges and products filled through in-house or 340b pharmacies (if applicable)

- (b) Dispensing Fee. ESI will guarantee an average aggregate annual per Prescription Drug Claim dispensing fee on Client utilization to be calculated as follows:

[total dispensing fee of applicable Prescription Drug Claims for the annual period divided by total of applicable Prescription Drug Claims for the annual period which will represent the same underlying claims dataset used to calculate the "Ingredient Cost Guarantee" of this Exhibit A]. Dispensing fees will be calculated using the lesser of MAC (as applicable), U&C or AWP discount adjudication methodology.

PARTICIPATING PHARMACY	
BRAND	\$0.50 dispensing fee
GENERIC	\$0.50 dispensing fee
RETAIL MAINTENANCE NETWORK (84-90 DAYS' SUPPLY)	
BRAND	\$0.50 dispensing fee
GENERIC	\$0.50 dispensing fee
MAIL SERVICE PHARMACY	
BRAND	\$0.00 dispensing fee
GENERIC	\$0.00 dispensing fee

Claims Excluded: OTC products (excluding insulin, diabetic strips, and test strips), compounds, U&C claims, Member Submitted Claims, Subrogation Claims, Coordination of Benefit Claims, Exclusive and Limited Distribution Products/Claims, vaccines, Specialty Products (other than specialty guarantee), biosimilar products (other than Specialty Product guarantee, if applicable), long term care pharmacy claims and/or claims with ancillary charges and products filled through in-house or 340b pharmacies (if applicable).

Dispensing Fees are inclusive of shipping and handling. If carrier rates (i.e., U.S. mail and/or applicable commercial courier services) increase during the Term of this Agreement, the Dispensing Fee guarantees will be increased to reflect such increase(s).

Guarantees will be measured and reconciled on an annual basis within 180 days of the end of each Contract Year. The guarantees are annual guarantees - if this Agreement is terminated prior to the completion of the then current contract year (hereinafter, a "Partial Contract Year"), then the guarantees will not apply for such Partial Contract Year. To the extent Client changes its benefit design or Formulary during the Term of the Agreement, the guarantee will be equitably adjusted if there is a material impact on the discount achieved. Subject to the remaining terms of this Agreement, Administrator will pay the difference of Client's cost for any shortfall between the actual result and the guaranteed result. Shortfall payments for financial guarantees, if any, will not be paid until this Agreement is signed. Guarantees for pricing components are measured and reconciled in the aggregate across all pricing components. Any dollar savings generated in excess of one component may be used to offset a short fall for any other component.

Notwithstanding anything in this Agreement to the contrary, the Generic average annual ingredient cost discount guarantees set forth above will include only those Prescription Drug Claims that processed to Client for payment where the underlying prescription drug product was identified by Medi-Span as having a Multi-Source Indicator code identifier of "Y" on the date dispensed (or was identified by Medi-Span as having a Multi-Source Indicator identifier of an "M," "N," or "O" on the date dispensed, but was substituted and dispensed by the Mail Service Pharmacy as its "house generic"), unless such Prescription Drug Claim is otherwise excluded above. The Brand average annual ingredient discount guarantees set forth above will include only those Prescription Drug Claims that processed to Client for payment where the underlying prescription drug product was identified by Medi-Span as having a Multi-Source Indicator code identifier of "M," "N," or "O" on the date dispensed (except in cases where the underlying prescription drug product was substituted and dispensed by the Mail Service Pharmacy as its "house generic"), unless such Prescription Drug Claim is otherwise excluded above. The application of brand and generic pricing may be subject to certain "dispensed as written" (DAW) protocols and Client or Plan defined plan design and coverage policies for adjudication and Member Copayment purposes. If Medi-Span discontinues reporting Multi-Source Indicator identifiers, Administrator reserves the right to make an equitable adjustment as necessary to maintain the parties' relative economics and the pricing intent of this Agreement. Notwithstanding anything in this Agreement to the contrary, any rebate guarantees set forth in this Agreement will be reconciled using ESI's proprietary brand/generic algorithm.

Any claim that is considered a single source generic will be included in the generic reconciliation.

3.2 Specialty Products

- (a) **Exclusive Care.** ESI Specialty Pharmacy is the exclusive provider of Specialty Products for the reimbursement rates shown on the Exclusive ESI Specialty Pharmacy Specialty Product List. Any Specialty Product dispensed at a Participating Pharmacy (for example, limited distribution products not then available through ESI Specialty Pharmacy or overrides) will be reimbursed at the standard Participating Pharmacy Specialty Product rates shown below. Upon ESI Specialty Pharmacy acquisition of limited distribution products, Members will obtain prescriptions through ESI Specialty Pharmacy.

	Ingredient Cost	Dispensing Fee*
Exclusive ESI Specialty Pharmacy	See Exclusive Specialty Product List	\$0.00
Participating Pharmacy Specialty Products	Participating Pharmacy Specialty Product List	\$0.50

* Dispensing Fees are inclusive of shipping and handling. If carrier rates (i.e., U.S. mail and/or applicable commercial courier services) increase during the Term of this Agreement, the Dispensing Fee guarantees will be increased to reflect such increase(s).

- (b) **ASES.** For Specialty Products needing an additional charge to cover costs of all ASES required to administer the Specialty Products, Administrator, ESI or ESI Specialty Pharmacy will bill at the following standard per diem and nursing fee rates set forth below, maintained and updated by ESI from time to time. If ESI elects to bill Client's medical plan for ASES, Administrator will work with ESI to coordinate the invoicing and payment of ASES through Client's medical plan. If Client's medical plan will not cover the cost of ASES billed through ESI or ESI Specialty Pharmacy, Client shall be responsible for the costs of all ASES. If a Specialty Product dispensed or ASES provided by ESI Specialty Pharmacy is billed to Administrator or a Client directly by ESI Specialty Pharmacy instead of being processed through ESI, Client will timely pay Administrator, and Administrator will timely pay ESI Specialty Pharmacy for such claim pursuant to the rates below. ESI Specialty Pharmacy shall have 360 days from the date of service to submit such electronic or paper claim.

Therapeutic Class	Brand Name	Nursing & Per Diem
Immune Deficiency	All Immune Deficiency Drugs requiring Per Diem	\$60.00 / Infusion
Enzyme Deficiency	All Enzyme Deficiency Drugs required Per Diem	\$60.00 / Infusion
Miscellaneous Specialty Conditions	Duopa	\$65.00 / Day
Miscellaneous Specialty Conditions	Soliris	\$60.00 Infusion
PAH	Flolan, Veletri, Epoprostenol Sodium (generic-Flolan/Veletri), and Remodulin	\$65.00 / Day
PAH	Ventavis	\$65.00 / Day
PAH	Tyvaso	\$30.00 / Day
Inflammatory Conditions	Remicade	\$60.00 / Infusion
Alpha 1 Deficiency	All Alpha 1 Deficiency Drugs requiring Per Diem	\$55.00/Infusion
Nursing Rates	All drugs / therapies requiring nursing	\$150.00 per initial visit up to two (2) hours/\$75.00 per additional hour or a fraction thereof

- (c) Specialty Products will be excluded from the non-specialty price guarantees set forth in the Agreement. In no event will the Mail Service Pharmacy or Participating Pharmacy pricing terms

specified in the Agreement, including, but not limited to, the annual average ingredient cost discount guarantees, apply to Specialty Products.

- (d) **SPECIALTY NET EFFECTIVE DISCOUNT GUARANTEE** - Administrator guarantees that the overall annual net effective discount for the products listed on the Specialty Products List will be as follows for Client (excluding limited distribution products).

SPECIALTY DRUGS	
Exclusive	AWP – 21.00%

Within one hundred and eighty (180) days following the end of each Contract Year, Administrator will calculate the actual net effective discount for the products listed on the Specialty Products List to determine if the guarantee has been met. If the actual overall net effective discount is less than the guaranteed net effective discount, Administrator will reimburse Client the full dollar amount of the difference between the actual and guaranteed net effective discounts. Client will retain any amount that the actual net effective discount exceeds the guaranteed net effective discount. The calculation for the actual net effective discount will be as follows: ((Total Ingredient Cost for the products listed on the Specialty Products List) divided by (Total AWP for the products listed on the Specialty Products List)) minus 1. This guarantee is contingent on Client's participation in the National Preferred Formulary or Basic Formulary and an exclusive specialty arrangement.

3.3 **Vaccine Claims** (NO VACCINE CLAIMS WILL BE INCLUDED IN ANY PRICING OR REBATE GUARANTEE SET FORTH IN THE AGREEMENT).

- (a) General Terms applicable to Vaccine Claims
1. "Vaccine Claim" means a claim for a Covered Drug which is a vaccine.
 2. "Vaccine Vendor Transaction Fee" means the data interchange fee that ESI is charged by its third party vendor to convert Vaccine Claims submitted electronically by physicians to NCPDP 5.1 format in order for ESI to process the claim.
 3. Vaccine Claims shall adjudicate at the lower of U&C or the amounts shown in the table below. In the case of Vaccine Claims, the U&C shall be the retail price charged by a Participating Pharmacy for the particular vaccine, including administration and dispensing fees, in a cash transaction on the date the vaccine is dispensed as reported to ESI by the Participating Pharmacy.
 4. The Vaccine Administration Fee for Vaccine Claims for Members enrolled in Client's Medicaid programs, if any, will be capped at the maximum reimbursable amount under the state Medicaid program in which the Member is enrolled.
 5. All Vaccine Claims will be subject to any Administrative Fees set forth in the Agreement.
 6. Vaccine Claims will be charged a program fee of \$2.50 per Vaccine Claim (except for Medicare Part D covered Vaccine Claims, if applicable). The Vaccine Program Fee will be billed separately to Client as part of the administrative invoice according to the billing frequency set forth in this Agreement.
- (b) Commercial (Including Medicaid and Exchange, if applicable)

	Participating Pharmacy INFLUENZA	Participating Pharmacy ALL OTHER VACCINES	Member Submitted Vaccine Claims (excluding foreign claims)
Vaccine Administration Fee	Pass-Through (capped at \$15 per vaccine claim)	Pass-Through (capped at \$20 per vaccine claim)	Submitted amount
Ingredient Cost	Participating Pharmacy Ingredient Cost as set forth in the Agreement	Participating Pharmacy Ingredient Cost as set forth in the Agreement	Submitted amount
Dispensing Fee	Participating Pharmacy Dispensing Fee as set forth in the Agreement	Participating Pharmacy Dispensing Fee as set forth in the Agreement	Submitted amount
Administrative Fee/Vaccine Claim	Administrative Fee per Prescription Drug Claim as set forth in the Agreement		Administrative Fee per Prescription Drug Claim (plus manual claim administrative fee) as set forth in the Agreement
Vaccine Program Fee	\$2.50 per vaccine claim		N/A

- (c) Medicare Part D Covered Vaccine Claims: Medicare Part D Vaccine Claims shall adjudicate at the lower of U&C or the amounts shown in the table below.

	Participating Pharmacies/ESI Mail Pharmacy/ESI Specialty Pharmacy	Member Submitted Vaccine Claims (excluding foreign claims)	Vaccine Claims Submitted Electronically by Physicians
Vaccine Administration Fee	Pass-Through (capped at \$15 for influenza/\$20 all other vaccines per Vaccine Claim)	Lower of submitted amount or pharmacy contracted rate (capped at \$15 for influenza/\$20.00 all other vaccines if administered at a Participating Pharmacy)	Pass-Through (capped at \$15 for influenza/\$20 all other vaccines per Vaccine Claim)
Ingredient Cost	Pass-Through	Lower of submitted amount or pharmacy contracted rate	Pass-Through
Dispensing Fee	Pass-Through	Lower of submitted amount or pharmacy contracted rate	Pass-Through
Vendor Transaction Fee	N/A	N/A	Pass through at ESI cost for Vendor Transaction Fee (currently \$3.75, subject to change)

D. REBATES

- Rebate Amounts.** Subject to: (i) the conditions set forth in Sections 2 through 4 below and elsewhere in this Agreement; and (ii) Client meeting the Plan Design conditions identified in the table below, the following guaranteed amounts will be payable to Client during the Term of this Agreement:

REBATES PER BRAND R _x	FORMULARY: ESI NATIONAL PREFERRED
NATIONAL PLUS NETWORK	\$195.00 per Brand claim
RETAIL MAINTENANCE NETWORK (84-90 DAYS' SUPPLY)	\$456.00 per Brand claim
HOME DELIVERY PRODUCTS	\$555.00 per Brand claim
SPECIALTY	\$1,700.00 per Brand claim

- (1) The Extended Days' Supply pricing set forth in this Agreement shall be subject to certain requirements, as follows. Extended Days' Supply shall mean; (1) for all lines of business other than Medicare or EGWP, any supply of a covered drug of 84 days or greater; and (2) for Medicare or EGWP, if applicable, any supply of a covered drug of 35 days or greater. Certain Participating Pharmacies have agreed to participate in the extended (84 – 90) day supply network (“Maintenance Network”) for maintenance drugs. Rebate Amounts in the 84 – 90 Days' Supply column in the table set forth above are applicable only if Client implements a plan design that requires Members to fill such days' supply at a Maintenance Network Participating Pharmacy (i.e., Client must implement a plan design whereby Members who fill extended days' supply prescriptions at a Participating Pharmacy other than a Maintenance Network Participating Pharmacy do not receive benefit coverage under the Plan for such prescription). If no such plan design is implemented, Rebate Amounts for such days' supply will be the same as for Prescription Drug Claims for less than an 84 days' supply, and Rebate Amounts for an 84 – 90 days' supply in the table set forth above shall not apply, even if a Maintenance Network Participating Pharmacy is used.
2. **Exclusions.** Member Submitted Claims, Subrogation Claims, Coordination of Benefit Claims, Exclusive and Limited Distribution Products, biosimilar products, OTC products (except for insulin and diabetic strips and test strips), vaccines, claims older than 180 days, claims through Client-owned or 340b pharmacies, and claims pursuant to a 100% Member Copayment plan are not eligible for the guaranteed Rebate amounts set forth in Section 1 above.
3. **Rebate Payment Terms.** Subject to the conditions set forth herein, Administrator will receive from ESI the quarterly Rebate payments within approximately one hundred eighty (180) days following calendar quarter adjudicated for Rebates received during the prior calendar quarter. Upon receipt, Administrator will credit Client's account.
4. **Conditions**
- 4.1. ESI contracts with pharmaceutical manufacturers for Rebates on its own behalf and for its own benefit, and not on behalf of Client. Accordingly, ESI retains all right, title and interest to any and all actual Rebates received from manufacturers. ESI will pay to Administrator (and Administrator shall pay to Client) amounts equal to the Rebate amounts allocated to Client, as specified above, from ESI's general assets (neither Client, its Members, nor Client's Plan retains any beneficial or proprietary interest in ESI's general assets). Client acknowledges and agrees that neither it, its Members, nor its Plan will have a right to interest on, or the time value of, any Rebate payments received by ESI during the collection period or moneys payable under this Section. No amounts for Rebates will be paid until this Agreement is executed by Client. ESI and Administrator will have the right to apply Client's allocated Rebate amount to unpaid Fees. ESI will retain Manufacturer Administrative Fees on Specialty Products.
- 4.2. ESI reserves the right to adjust the Rebate guarantees if Rebate revenue is materially decreased because Brand Drugs move off-patent to generic status or due to a Change in Law.
- 4.3. Client acknowledges that it may be eligible for Rebate amounts under this Agreement only so long as Client, 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 Prescription Drug Claims processed by ESI pursuant to the Agreement, without the prior written consent of ESI. In the event that Client 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 immediately withhold any Rebate amounts

earned by, but not yet paid to, Client as necessary to prevent duplicative Rebates on Covered Drugs. To the extent Client knowingly negotiates and/or contracts for discounts or Rebates on claims for Covered Drugs without prior written approval of ESI, such activity will be deemed to be a material breach of this Agreement, entitling ESI to suspend payment of Rebate amounts hereunder and to renegotiate the terms and conditions of this Agreement.

- 4.4 Under its Rebate program, ESI may implement ESI's Formulary management programs and controls, which may include, among other things, cost containment initiatives, and communications with Members, Participating Pharmacies, and/or physicians. ESI reserves the right to modify or replace such programs from time to time. Guaranteed Rebate amounts, if any, set forth herein, are conditioned on adherence to various Formulary management controls, benefit design requirements, claims volume, and other factors stated in the applicable pharmaceutical manufacturer agreements, as communicated by ESI to Client from time to time. If any government action, change in law or regulation, change in the interpretation of any law or regulation, or any action by a pharmaceutical manufacturer has an adverse effect on the availability of Rebates, then ESI and Administrator may make an adjustment to the Rebate terms and guaranteed Rebate amounts, if any, hereunder.
- 4.5 The Rebate guarantees set forth in this Agreement are based on current market share assumptions and benefit design. If Client's mix or utilization of drugs in the Hepatitis C or PCSK9 classes materially differ from the data provided to Administrator for the purposes of establishing pricing or from Client's historical mix and utilization, ESI and/or Administrator may equitably adjust the Rebate guarantees accordingly.
- 4.6 Rebate Acknowledgment; No Representation; Rebate Limitations. Client acknowledges that Administrator is not making any representation, warranty or guaranty of any kind or nature, either express, implied or otherwise, regarding the amount of Rebates to be paid or remitted to Client pursuant to this Agreement, except as specifically set forth in writing herein. In addition, Client waives, releases and forever discharges ESI and Administrator from any Losses arising from a pharmaceutical company's (a) failure to pay Rebates; (b) breach of an agreement related to Rebates; or (c) negligence or misconduct affecting Rebates. Client acknowledges that whether and to what extent pharmaceutical companies are willing to provide Rebates to Client may depend upon a variety of factors, including the content of the PDL, the Plan's design features, Client meeting criteria for Rebates, and the extent of participation in ESI's formulary management programs, as well as ESI/Administrator receiving sufficient information regarding each Claim for submission to pharmaceutical companies for Rebates. Client acknowledges and agrees that ESI may, but shall not be required to, initiate any collection action to collect any Rebates from a pharmaceutical company. In the event ESI does initiate collection action against a pharmaceutical company to collect Rebates, ESI may offset any reasonable costs, including reasonable attorneys' fees and expenses, arising from any such action. Notwithstanding any provision of this Agreement to the contrary, Administrator shall only be responsible for payment of Rebates to Client pursuant to the terms of this Agreement if such Rebates are actually received by Administrator during the Term of this Agreement. In no event shall Administrator be obligated to pay Rebates to Client until Administrator receives payment for the same Rebates from ESI. In the event Client terminates the Agreement outside the terms and conditions in the Agreement, Client forfeits the right to receive any Rebates received by Administrator on Client's behalf after the date of such termination. Client acknowledges that Administrator shall not be obligated to pay Client any Rebates described herein until this Agreement is signed by Client.
5. Rebate amounts paid to Client pursuant to this Agreement are intended to be treated as "discounts" pursuant to the federal anti-kickback statute set forth at 42 U.S.C. §1320a-7b and implementing regulations. Client is obligated if requested by the Secretary of the United States Department of Health and Human Services, or as otherwise required by applicable law, to report the Rebate amounts and to provide a copy of this notice. ESI will refrain from doing anything that would impede Client from meeting any such obligation.

E. MISCELLANEOUS

1. Plan Participant Cost Share. Administrator may, but shall not be obligated to, dispense or cause to be dispensed a prescription even if the prescription is not accompanied by the applicable Plan Participant Cost Share described above in this Exhibit A. Administrator will refund any amount submitted by a Plan Participant in excess of the Plan Participant's applicable Plan Participant Cost Share. In the event a Plan Participant submits an insufficient Plan Participant Cost Share and the Plan Participant fails to remit the balance of the Plan Participant Cost Share amount to Administrator (or its designee) within thirty (30) days of Administrator's (or its designee's) request, then Administrator shall have the right to invoice Client for, and Client shall have an obligation to pay Administrator (or its designee), the amount of the uncollected Plan Participant Cost Share(s). Client shall, in turn, have the right to recover uncollected Plan Participant Cost Shares from its Plan Participants at Client's determination. Shipping of prescriptions submitted without the appropriate Plan Participant Cost Share may be delayed.
2. Additional Optional Services: Charges for additional Optional Services not otherwise identified and priced in this Exhibit A (Client Application) shall be quoted upon request and/or as applicable. The Parties acknowledge that the arrangement between Administrator and the PBM is a pass-through arrangement. To the extent Client requests or PBM administers services of PBM that are not outlined in this Agreement, Administrator will pass through any such charges from the PBM to Client.
3. Translation Services. To the extent Client requests translation services from Administrator or PBM (for translating member materials, brochures, etc.) and there is a charge from Administrator's or PBM's translation services provider, such charge will be passed through to Client.

F. EXECUTION BY CLIENT

Client hereby represents and warrants that the information contained in Section A of this Client Application is true and correct in all respects and Client hereby agrees to the specific terms, conditions and financial arrangements set out in Sections B, C, and D and of this Client Application. Client agrees that if any information in Section A changes, Client will give Administrator prompt notice of such changes. Furthermore, Client understands that this Client Application (Exhibit A) is a part of the Administrative Services Agreement between Client and Administrator to which it is attached and incorporated into by reference and that Client is bound by all terms and conditions of such Administrative Services Agreement.

All capitalized terms used in this Client Application but not specifically defined herein shall have the meanings given to such terms in the Administrative Services Agreement to which this Client Application is attached and made a part of.

IN WITNESS WHEREOF, Client has caused this Client Application (Exhibit A to the Agreement) to be executed as of the Effective Date. In the event this Client Application is amended by the Parties after the Effective Date, the Parties may substitute such amended Client Application for the former Client Application, provided the Parties set forth the date from and after which such amended Client Application shall be effective (the “date” line at the bottom of the Administrator’s acknowledgment signature block on an amended Client Application shall be such new effective date with respect to such amended Client Application). The Parties further agree that they will attach such amended Client Application to this Agreement and provide a copy of this Agreement with the amended Client Application (Exhibit A) to Administrator and Client for their respective records. Any such amended Client Application must be signed by Client’s authorized representative and acknowledged, agreed to, accepted and dated by Administrator’s authorized representative.

CLIENT:
City of Orange Beach

By: _____

Printed Name: Ford Handley

Its: Finance Director

Acknowledged, agreed to and accepted by:

ADMINISTRATOR:
RxBenefits, Inc.

By: _____

Printed Name: Lauren Simmons

Its: Sr. Director of Compliance & Legal Affairs



**COMMITTEE OF THE WHOLE MEETING
SEPTEMBER 7, 2021**

Departments: Administration

Description of Topic:

Resolution authorizing the execution of a Performance Contract with Jody Hodo for softball coaching services. (JL)

Action Options/Recommendation:

Source of Funding (if applicable) :

ATTACHMENTS:

Description

- ▣ Resolution
- ▣ Agreement

RESOLUTION NO. 21-xxx

**A RESOLUTION AUTHORIZING THE EXECUTION OF A
PERFORMANCE CONTRACT WITH
JODY HODO FOR SOFTBALL COACHING SERVICES**

FINDINGS:

1. The City of Orange Beach and Jody Hodo have reached an agreement (attached Exhibit A) whereby Jody Hodo will provide softball coaching services for the City of Orange Beach.
2. After having reviewed the agreement, the City Council has determined that the provisions are in the best interest of the City of Orange Beach, Alabama.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ORANGE BEACH, ALABAMA, AS FOLLOWS:

1. That the Mayor is hereby authorized to execute the agreement in substantially the form and of substantially the content now before the Council between the City of Orange Beach and Jody Hodo as an act for and on behalf of the City of Orange Beach subject to final approval by the City Attorney; and
2. That this Resolution shall become effective immediately upon its adoption.

ADOPTED THIS 21st DAY OF SEPTEMBER, 2021.

Renee Eberly
City Clerk

C E R T I F I C A T E

I, Renee Eberly, City Clerk of the City of Orange Beach, Alabama, do hereby certify that the foregoing is a true and correct copy of Resolution No. 21-xxx, which was duly and legally adopted at a regular meeting of the City Council on September 21, 2021.

City Clerk

PERFORMANCE CONTRACT

This Agreement is made and entered into by and between the City of Orange Beach, an Alabama municipal corporation (the “City”) and Jody Hodo (sometimes hereinafter “Contractor”), as follows:

1. Recitals:

- a. Contractor is a Softball Coach who provides instruction for children.
- b. The City desires to engage Contractor to provide such services for the benefit of Orange Beach residents and visitors.
- c. In consideration of the mutual covenants and agreements hereinafter set forth to be kept and performed by the other, and other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, the parties do hereby covenant and agree as follows.

2. Contractor’s Obligations:

- a. Contractor shall offer softball lessons and related skill-development classes for children at the Orange Beach Sportsplex.
- b. Contractor shall provide, at no charge at least twenty hours a year of softball instruction for the City’s Expect Excellence Program and/or the public schools within the City of Orange Beach.
- c. Contractor must have an Orange Beach Business License.
- d. Contractor will schedule lesson times with the Orange Beach Sportsplex staff prior to the lessons.

3. City’s Obligations:

City agrees to make available during normal operational hours an agreed portion of the Sportsplex for the Contractor to provide lessons.

4. Compensation:

Contractor will be permitted to retain the fees earned for the instructional services provided under this Agreement.

5. Term:

The term of this agreement shall begin on September 1, 2021, and end on August 31, 2022, unless terminated earlier in accordance with paragraph 11. This agreement may be renewed annually by resolution adopted by the City Council.

6. Independent Contractor:

- a. Notwithstanding any of the provisions of this Agreement, it is agreed that City has no financial interest in the business of Contractor and shall not be liable for any debts or obligations incurred by Contractor, nor shall City be deemed or construed to be a partner, joint venturer or otherwise interested in the assets of Contractor, or in the sums earned or derived by Contractor, nor shall Contractor at any time or times use the name or credit of City in purchasing or attempting to purchase any car, equipment, supplies or other thing or things whatsoever.
- b. Contractor, in the performance of its operations and obligations hereunder, shall not be deemed to be an agent of City but shall be deemed to be an Independent Contractor in every respect and shall take all steps at its own expense, as City may from time to time request, to indicate that it is an Independent Contractor. City does not and will not assume any responsibility for the means by which or the manner in which the services by Contractor provided for herein are performed, but on the contrary, Contractor shall be wholly responsible therefor.

7. Assignment:

Contractor acknowledges that its identity and peculiar capacity to provide the services described hereinabove constitute a material consideration for City's having entered into this Agreement. Therefore, Contractor shall not transfer or assign this Agreement or any of the rights or privileges granted herein without the prior written consent of City; which such consent shall be granted or denied solely at City's discretion.

8. Insurance:

- a. Contractor shall procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor under this Agreement, including the following, at a minimum:
 - i. Worker's compensation insurance as required by law; and
 - ii. Commercial general liability insurance with minimum coverage limits of \$100,000 per person and \$300,000 per occurrence, naming the City of Orange Beach and the City's officers, employees, and consultants as additional insured. The policy shall be with a carrier and in a form acceptable to the City at the City's sole discretion.
- b. Any insurance carried by the City, its officers, or its employees or contractors is excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.
- c. Contractor shall provide to the City a Certificate of Insurance as evidence that required policies are in full force and effect.

9. Indemnity:

Contractor agrees to indemnify and hold the City, its elected and appointed officials, officers, agents, and employees, harmless from all costs, liabilities and claims for damages of any kind, including interest and attorneys' fees, arising in any way out of the performance of this Agreement and/or the activities of Contractor, its principals, directors, agents, servants and employees in the performance of this Agreement, for which the City is alleged to be liable. This section is not as to third parties or to anyone a waiver of any defense of immunity or statutory damages cap otherwise available to Contractor or City and these defenses and matters may be raised in the City's behalf in any action or proceeding arising from this Agreement.

10. Compliance with Law:

Contractor hereby agrees to comply strictly with all the laws of the State of Alabama and of the United States, and the laws and ordinances of any other jurisdiction in which contractor may perform any work pursuant to this agreement.

11. Termination:

This agreement may be terminated by either party for any reason upon thirty (30) days notice of the intent to terminate.

12. Final Agreement:

This Agreement is the final expression of the agreement between the parties, and the complete and exclusive statement of the terms agreed upon, and shall supersede all prior negotiations, understandings or agreements. There are no representations, warranties, or stipulations, either oral or written, not contained herein.

13. Modifications:

Any alterations, variations, modifications, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing and signed by authorized representatives of the party against whom enforcement is sought.

14. Severability:

The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid or unenforceable, such rendering shall not affect the enforceability of the remainder of this Agreement unless the part or parts which are void, invalid or otherwise unenforceable shall substantially impair the value of the entire agreement with respect to any party.

15. Laws Governing:

This Agreement shall be governed by the laws of the State of Alabama, and the appropriate venue for any actions arising out of this Agreement would be Baldwin County, Alabama.

16. Permits, Licensing, etc:

Contractor shall obtain, at its own expense, all necessary licenses, permits, insurance, authorizations and assurances necessary in order to abide by the terms of this Agreement.

17. Confidentiality:

Contractor (including its employees, agents, subcontractors) acknowledges that all confidential business and personal information ("Protected Information") that it may obtain while performing services for the City, is deemed confidential and proprietary to the City. During Contractor's tenure with the City, Contractor agrees to use Protected Information only and strictly as required to perform its services on behalf of the City. Contractor will not disclose Protected Information to any person or entity without the prior written consent of the City and the written agreement of any third party. Contractor agrees to refer any request for public information or records to the City Clerk, who is the custodian of records for the City and is responsible for the disclosure of public records in accordance with the public records laws of the state. Contractor agrees that it will not duplicate or incorporate Protected Information into its own records or databases and that after the conclusion of its services to the City all Protected Information in the Contractor's possession will be turned over to the City. Contractor agrees not to disclose, use, transfer, or transmit the information to any person or entity for any purpose whatsoever. This includes records, passwords, access codes, manuals, statistics, software, audio/video recordings, or storage disks of any kind containing Protected Information.

18. Notices:

All notices of cancellation, requests, demands, or other communications shall be in writing and duly delivered to the addresses appearing below.

City of Orange Beach:

City Clerk
Post Office Box 458
Orange Beach, Alabama 36561

With Required Copy to:

City Attorney
Post Office Box 458
Orange Beach, Alabama 36561

And to Contractor:

Jody Hodo
23925 Cottage Loop
Orange Beach, Alabama 36561

IN WITNESS WHEREOF, we have hereunto set our hands and seal on this the _____ day of _____, 2021.

CITY OF ORANGE BEACH,
An Alabama Municipal Corporation

By: _____
Mayor Anthony T. Kennon

ATTEST:

Renee Eberly, City Clerk

CONTRACTOR:

JODY HODO

By: _____
Jody Hodo, an Individual

STATE OF ALABAMA
COUNTY OF BALDWIN

I, the undersigned Notary Public in and for said County in said State, hereby certify that Tony Kennon and Renee Eberly, whose names as Mayor and City Clerk, respectively, of the City of Orange Beach, an Alabama Municipal Corporation, are signed to the foregoing agreement, and who are known to me, acknowledged before me on this day, that, being informed of the contents of the above and foregoing, they, as such officers and with full authority, executed the same voluntarily for and as the act of said municipal corporation on the day the same bears date.

Given under my hand and seal on the _____ day of _____, 2021.

(SEAL)

Notary Public

My Commission Expires: _____

STATE OF ALABAMA
COUNTY OF BALDWIN

I, the undersigned Notary Public in and for said County in said State, hereby certify that Brandy Reeves is signed to the foregoing agreement, and who is known to me, acknowledged before me on this day, that, being informed of the contents of the above and foregoing, she, as such owner and with full authority, executed the same voluntarily for and as the act of said municipal corporation on the day the same bears date.

Given under my hand and seal on the _____ day of _____, 2021.

(SEAL)

Notary Public

My Commission Expires: _____



**COMMITTEE OF THE WHOLE MEETING
SEPTEMBER 7, 2021**

Departments: Coastal Resources

Description of Topic:

Resolution authorizing execution of a Cooperative Service Agreement with the U.S. Department of Agriculture to supplement nuisance wildlife control services. (PW)

Action Options/Recommendation:

Source of Funding (if applicable) :

ATTACHMENTS:

Description

- ▣ Resolution
- ▣ Service Agreement

RESOLUTION NO. 21-xxx

**A RESOLUTION AUTHORIZING EXECUTION OF A
COOPERATIVE SERVICE AGREEMENT WITH THE
U.S. DEPARTMENT OF AGRICULTURE
TO SUPPLEMENT NUISANCE WILDLIFE CONTROL SERVICES**

FINDINGS:

1. The City of Orange Beach and the U.S. Department of Agriculture have reached an agreement (attached Exhibit A) for the city to provide supplemental nuisance wildlife control services.
2. After having reviewed said agreement, the City Council has determined that the provisions are in the best interest of the City of Orange Beach, Alabama.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ORANGE BEACH, ALABAMA, AS FOLLOWS:

1. That the Mayor is hereby authorized to execute the Cooperative Service Agreement and Work Initiation Document in substantially the form and of substantially the content now before the Council between the City of Orange Beach and the U.S. Department of Agriculture as an act for and on behalf of the City of Orange Beach subject to final approval by the City Attorney; and
2. That this Resolution shall become effective immediately upon its adoption.

ADOPTED THIS 21st DAY OF SEPTEMBER, 2021.

Renee Eberly
City Clerk

C E R T I F I C A T E

I, Renee Eberly, City Clerk of the City of Orange Beach, Alabama, do hereby certify that the foregoing is a true and correct copy of Resolution No. 21-xxx, which was duly and legally adopted at a regular meeting of the City Council on September 21, 2021.

City Clerk

WS Agreement Number: _____-RA
WBS: _____
[optional] Cooperator PO: _____

COOPERATIVE SERVICE AGREEMENT
between
City of Orange Beach and
UNITED STATES DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE (APHIS)
WILDLIFE SERVICES (WS)

ARTICLE 1

The purpose of this agreement is to cooperate in a wildlife damage management project as described in the attached Work Plan.

ARTICLE 2

APHIS-WS has statutory authority under the Acts of March 2, 1931, 46 Stat. 1468-69, 7 U.S.C. §§ 8351-8352, as amended, and December 22, 1987, Public Law No. 100-202, § 101(k), 101 Stat. 1329-331, 7 U.S.C. § 8353, to cooperate with States, local jurisdictions, individuals, public and private agencies, organizations, and institutions while conducting a program of wildlife services involving mammal and bird species that are reservoirs for zoonotic diseases, or animal species that are injurious and/or a nuisance to, among other things, agriculture, horticulture, forestry, animal husbandry, wildlife, and human health and safety.

ARTICLE 3

APHIS-WS and the Cooperator agree:

1. The Cooperator will provide payment upon receipt of quarterly bill to "USDA, APHIS" in the amount of \$6,000.00.
2. The performance of wildlife damage management actions by APHIS-WS under this agreement is contingent upon a determination by APHIS-WS that such actions are in compliance with the National Environmental Policy Act, Endangered Species Act, and any other applicable federal statutes. APHIS-WS will not make a final decision to conduct requested wildlife damage management actions until it has made the determination of such compliance.
3. Nothing in this agreement shall prevent APHIS-WS from entering into separate agreements with any other organization or individual for the purpose of providing wildlife damage management services exclusive of those provided for under this agreement.
4. The Cooperator certifies that APHIS-WS has advised the Cooperator there may be private sector service providers available to provide wildlife damage management services that the Cooperator is seeking from APHIS-WS.
5. The performance of wildlife damage management actions by APHIS-WS under this agreement is contingent upon a determination by APHIS-WS that such actions are in compliance with the National Environmental Policy Act, Endangered Species Act, and any other applicable federal statutes. APHIS-WS will not make a final decision to conduct requested wildlife damage management actions until it has made the determination of such compliance.
6. The cooperating parties agree to coordinate with each other before responding to media requests on work associated with this project.

ARTICLE 4

This agreement is contingent upon the passage by Congress of an appropriation from which expenditures may be legally met and shall not obligate APHIS-WS upon failure of Congress to so appropriate. This agreement also may be reduced or terminated if Congress only provides APHIS-WS funds for a finite period under a Continuing Resolution.

ARTICLE 5

Pursuant to Section 22, Title 41, United States Code, no member of or delegate to Congress shall be admitted to any share or part of this agreement or to any benefit to arise there from.

ARTICLE 6

APHIS-WS assumes no liability for any actions or activities conducted under this agreement except to the extent that recourse or remedies are provided by Congress under the Federal Tort Claims Act (28 USC 1346(b), 2401(b), 2671-2680).

This agreement is not a procurement contract (31 U.S.C. 6303), nor is it considered a grant (31 U.S.C. 6304). In this agreement, APHIS-WS provides goods or services on a cost recovery basis to nonfederal recipients, in accordance with all applicable laws, regulations and policies.

This agreement shall become effective August 15, 2021 and shall continue until August 14, 2022. This agreement may be amended or terminated at any time by mutual agreement of the parties in writing. Further, in the event the Cooperator does not, for any reason, provide necessary funds, APHIS-WS is relieved of the obligation to provide services under this agreement.

As required by Debt Collection Improvement Act of 1996:

Cooperator's Tax ID No.: 63-0888669

APHIS-WS's Tax ID: 41-0696271

Cooperator Name/signer, Address

City of Orange Beach, c/o Wade Stevens
PO Box 2432
Orange Beach, AL 36561

APHIS-WS State Office/signer, Address

Ken Gruver, State Director
6155 Heath Rd
Auburn, AL 36830

Cooperator's Signature

Date

APHIS-WS State Director's Signature

Date

[Optional] Prepared by (APHIS-WS employee):

WS Agreement Number: _____-RA

WBS: _____

[optional] Cooperator PO: _____

WORK PLAN

Wildlife Species: Coyote, Beaver

Description of Damage: Flooding, Natural Resources, T&E

Location: Orange Beach, Baldwin County, AL

Services Provided: Trap and Remove

FINANCIAL PLAN

Cost Element		Full Cost
Personnel Compensation		\$4,100.00
Travel		
Vehicles		\$500.00
Other Services		
Supplies and Materials		
Equipment		\$118.84
Subtotal (Direct Charges)		\$4,718.84
Pooled Job Costs [for non-Over-the Counter projects]	11.00%	\$519.07
Indirect Costs	16.15%	\$762.09
Aviation Flat Rate Collection		
Agreement Total		\$6,000.00
The distribution of the budget from this Financial Plan may vary as necessary to accomplish the purpose of this agreement, but may not exceed: \$6,000.00.		

Financial Point of Contact/Billing Address:

Cooperator Name, Address, Phone Number, Email

Wade Stevens
 PO Box 2432
 Orange Beach, AL 36561
 251-923-4912
 wstevens@orangebeachal.gov

APHIS-WS State Office Name, Address, Phone Number, Email

Josh Falkowski
 6155 Heath Rd
 Auburn, AL 36830
 334-734-0613
 Joshua.falkowski@usda.gov

[Optional] Prepared by (APHIS-WS employee):



**COMMITTEE OF THE WHOLE MEETING
SEPTEMBER 7, 2021**

Departments: Coastal Resources

Description of Topic:

Resolution authorizing the execution of a Storage Rental Agreement with FM Holdings, LLC, dba Keel Storage. (NW/WS)

Action Options/Recommendation:

Temporary storage needed for commodities after a disaster. This will renew the current lease.

Source of Funding (if applicable) :

\$8,400 for the year.

ATTACHMENTS:

Description

- ▣ Resolution
- ▣ Lease

RESOLUTION NO. 21-xxx

**A RESOLUTION AUTHORIZING THE EXECUTION OF A
STORAGE RENTAL AGREEMENT WITH
FM HOLDINGS, LLC (DBA KEEL STORAGE)**

FINDINGS:

1. On October 6, 2020, City Council adopted Resolution No. 20-196 authorizing a storage rental agreement with FM Holdings, LLC, doing business as Keel Storage, for temporary storage to store residual commodities following Hurricane Sally.
2. City staff has requested an extension of this agreement to meet the continued need for storage of emergency commodities.
3. After having reviewed the agreement, the City Council has determined that the provisions are in the best interest of the City of Orange Beach, Alabama.
4. The term of this agreement is for one year beginning October 1, 2021, and ending on September 30, 2022, at the cost of \$700.00 per month with \$500.00 as a security deposit.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ORANGE BEACH, ALABAMA, AS FOLLOWS:

1. That the Mayor is hereby authorized to execute the Storage Rental Agreement as presented to Council between the City of Orange Beach and FM Holdings, LLC, doing business as Keel Storage, on behalf of the City of Orange Beach subject to final approval by the City Attorney; and
2. That this Resolution shall become effective immediately upon its adoption.

ADOPTED THIS 21st DAY OF SEPTEMBER, 2021.

Renee Eberly
City Clerk

C E R T I F I C A T E

I, Renee Eberly, City Clerk of the City of Orange Beach, Alabama, do hereby certify that the foregoing is a true and correct copy of Resolution No. 21-xxx, which was duly and legally adopted at a regular meeting of the City Council on September 21, 2021.

City Clerk

Keel Storage Rental Agreement

UNIT # 12

THIS RENTAL AGREEMENT, made and entered into by FM Holdings, LLC dba Keel Storage hereinafter referred to as "Landlord" and City of Orange Beach hereinafter referred to as "Tenant"

Landlord hereby rents to Tenant and Tenant hereby takes from Landlord, Storage Unit # 12 in the building known as Keel Storage at 27085 Canal Road, Orange Beach, AL 36561, and hereinafter known as "premises", for an annual term, beginning the 1st day of October 2021 and will end on the 30th day of Sept. 2022. Tenant shall pay the rental sum of \$8400 (\$700 month), in advance, for the term of the agreement. The Landlord acknowledges the sum of \$ as the security deposit. This rental Agreement is made and entered into upon condition and covenants as follows.

1. **Rental Payment:** Tenant shall pay rent, in advance, annually by the first day of the rental agreement term. If rent is not received within 5 days of the agreement, a late charge of \$100 will be added.
2. **Use:** The premises may be used and occupied only for the purpose of storing personal property and for no other purpose or purpose without the prior written consent of the Landlord. *There should be no work performed on anything on the premises unless approved by the Landlord. There should be nothing left outside overnight.* All property kept, stored, or maintained within the premises is at TENANT'S SOLE RISK.
3. **Insurance:** Goods are stored at Tenant's sole risk. Tenant should take out insurance cover. The Landlord is not liable for the loss of any goods stored on its premises.
4. **Cleaning Premises:** Upon vacating the premises Tenant agrees to clean the premises thoroughly or to pay Landlord for the cleaning necessary to restore the premises to its condition when Tenant moves out.
5. **Notices:** Tenant should notify Landlord 60 days in advance if they are going to renew or terminate agreement for another annual term.
6. **Keys:** Tenant will receive 1 key and 1 gate opener. Replacement keys are \$50 and replacement gate openers are \$200.

Mail Payments To:

FM Holdings, LLC
PO Box 1683
Orange Beach, AL 36561

or

Drop of Payments at:
24252 Canal Road Suite B
Orange Beach, AL 36561

Tenant (Signature)

Date

There is a 3.5% Convenience fee on
AMEX Payments and a 3% Fee on Visa, MC, & Discover

Tenant (Print)

Date



**COMMITTEE OF THE WHOLE MEETING
SEPTEMBER 7, 2021**

Departments: Coastal Resources

Description of Topic:

Ordinance amending Chapter 30, Article XI of the Code of Ordinances for the City of Orange Beach, Alabama, presently entitled "Habitat Conservation Program." (PW)

Action Options/Recommendation:

Source of Funding (if applicable) :

ATTACHMENTS:

Description

▣ Ordinance

ORDINANCE NO. 2021-xxxx

**AN ORDINANCE AMENDING CHAPTER 30, ARTICLE XI OF THE
CODE OF ORDINANCES FOR THE CITY OF ORANGE BEACH, ALABAMA,
PRESENTLY ENTITLED
“HABITAT CONSERVATION PROGRAM”**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ORANGE BEACH, ALABAMA, AS FOLLOWS:

1. That the title of Chapter 30, Article XI of the Code of Ordinances for the City of Orange Beach presently entitled “Habitat Conservation Program” is hereby amended to read as follows:

ARTICLE XI - PERDIDO KEY HABITAT CONSERVATION ORDINANCE

2. That Chapter 30, Article XI, Section 30-281 of the Code of Ordinances for the City of Orange Beach is hereby amended to read as follows:

Sec. 30-281. - Short title/scope/administration.

This Article may be known as the “Perdido Key Habitat Conservation Ordinance.” Program participation by landowners is voluntary. Only those properties identified in the Orange Beach Perdido Key Habitat Conservation Plan (HCP) shall be eligible for participation. This Article shall be administered by the city's department of coastal resources.

3. That Chapter 30, Article XI, Section 30-286 of the Code of Ordinances for the City of Orange Beach is hereby amended to read as follows:

Sec. 30-286. - Valid dates.

- (a) The authorization of coverage permit is valid only for the dates and areas specified in the permit. The permit shall become invalid if no work is initiated within 12 months from the date the permit is issued or if the work authorized by such permit is suspended or abandoned for a period of 180 days after the date that the work commenced. The city council may grant one or more extensions for a period of 180 days each, which extension request shall be in writing and justifiable cause demonstrated by the applicant for such extension
- (b) No person may construct beyond the dates specified in the permit unless such person makes an extended application before the expiration of the initial permit and a new permit or permit extension is granted.

4. That Chapter 30, Article XI, Section 30-287 of the Code of Ordinances for the City of Orange Beach is hereby amended to read as follows:

Sec. 30-287. - Permit applications/issuance.

- (a) *Application.* Permit applications shall be submitted to the department on such forms as may be required by the director. Applicants shall provide information sufficient to show compliance with this article. By submitting an application, an applicant shall be required to certify that such applicant has read and is familiar with the terms, conditions and requirements of the HCP, the ITP the related documentation referenced therein and a draft of the city's form of authorization of coverage permit, including (i) the requirements of subjecting the subject property to a recorded Conservation Easement and Restrictive Covenants for the impacted areas, (ii) the obligations to maintain and manage the property as required therein, (iii) the obligation to pay the fees set forth herein, and (iv) such other matters as the director may provide, all on such forms and with such content as the director may establish from time to time.

- (b) *Limitation for each eligibility period.* Under the ITP, the acreage of Perdido Key property available for impact is limited to the eligibility threshold for each eligibility period, up to an aggregate of 36.872 acres of total impact. Therefore, unless expressly approved by USFWS, the city is not permitted to issue authorization of coverage permits providing for impact in the aggregate of more than the eligibility threshold in each eligibility period.
- (c) *Priority of applications.* Applications shall generally be accepted on a first-come first-served basis; however, if multiple applications are submitted on the same day which would have the effect of requesting impact of more than the aggregate eligibility threshold available for that eligibility period (taking into account any prior applications which have been accepted for that eligibility period), the director shall establish a methodology for a random drawing to determine the order of priority for that day. Qualified applications shall be received in that order until an application would exceed the aggregate eligibility threshold for that eligibility period.
- (d) *Application partly exceeding eligibility threshold.* For the application that is partly within the applicable eligibility threshold and partly exceeds it, (i) if the amount of excess is less than one acre, the director shall contact USFWS and request approval for an exception, and (ii) if the amount of the excess is greater than one acre or, if the amount of excess is less than one acre and USFWS denies the request for approval, then the applicant shall have the right, for a period of 30 days, to resubmit an application which would have impact within the eligibility threshold (and upon failure to do so, the application shall be deemed rejected), or the applicant may withdraw the application. The city shall have no liability for any denial of such request for approval by USFWS. If the application is withdrawn (or if the applicant fails to resubmit within such time period), the city shall proceed along the same lines with the next succeeding qualified applicant(s) for that day on which the eligibility threshold was exceeded (if applicable).
- (e) *Maintenance of priority for succeeding eligibility period.* Any qualified applicant whose proposed impacted acreage was above the eligibility threshold shall maintain such applicant's priority position for the next succeeding eligibility period, unless such applicant withdraws the application.
- (f) *Issuance.* If the director determines that an applicant has satisfied the requirements of this article and that the proposed impacted acreage is within the eligibility threshold for the applicable eligibility period (as determined above), the director shall issue the authorization of coverage permit or notify the applicant that the permit has been denied and the reason for the denial. No permit shall be issued to any person who has failed to comply with the requirements of this article.
- (g) *Appeal.* Any person who (1) has been denied a permit; (2) has had a permit revoked; or (3) believes that the fees imposed are incorrect or invalid, has the right to appeal the denial, revocation, or fee imposition, upon written request to the city council within ten days from the denial. The city council shall act on a timely written request at its next regularly scheduled meeting following the date that is seven days after the filing of the appeal. The standard of review on appeal to the city council is whether the department exceeded its authority or otherwise abused its discretion. An appeal shall be filed with the city clerk with a conspicuous note on the front stating: "[APPEAL TO CITY COUNCIL REGARDING AUTHORIZATION OF COVERAGE PERMIT]."
- (h) Prior to the issuance of the permit, and as a condition thereto, the applicant shall (i) cause to be surveyed by a duly licensed surveyor, at the applicant's expense, the area to be subject to the Conservation Easement and Restrictive Covenants, (ii) cause the city to be a named addressee of such survey, (iii) cause to be issued by a title company, licensed in the State of Alabama, a title insurance policy in favor of the city in an amount of coverage of at least \$10,000, insuring the city's rights in the Conservation Easement and Restrictive Covenants, and showing that there are

no mortgages, ground leases, liens, charges, dues, monetary encumbrances or judgments higher in priority than the city's coverage under such policy, and (iv) the Conservation Easement and Restrictive Covenants shall have been recorded against the property to be encumbered thereby, and a copy of the recorded instrument provided to the city.

5. That all ordinances or parts of ordinances in conflict are, to the extent of such conflict, repealed; and
6. That this Ordinance shall become effective immediately upon its adoption and publication as required by law.

ADOPTED THIS 21st DAY OF SEPTEMBER, 2021.

Renee Eberly
City Clerk

The City Clerk of the City of Orange Beach, Alabama hereby certifies
that the foregoing **ORDINANCE 2021-xxxx**
was posted on _____ in the following three
(3) public places:
Orange Beach City Hall _____
Orange Beach Post Office _____
Orange Beach Public Library _____

Renee Eberly, City Clerk



**COMMITTEE OF THE WHOLE MEETING
SEPTEMBER 7, 2021**

Departments: Community Development

Description of Topic:

Set a public hearing date for an ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 0903-PUDA-21, CoastAL PUD Modification. (Suggested date 10/5/2021) (KA)

Action Options/Recommendation:

Source of Funding (if applicable) :

ITEM 3.



**COMMITTEE OF THE WHOLE MEETING
SEPTEMBER 7, 2021**

Departments: Administration

Description of Topic:

Executive session to discuss pending litigation.

Action Options/Recommendation:

Source of Funding (if applicable) :
