



AGREEMENT PURSUANT TO SOLICITATION

**CITY OF MESA AGREEMENT NUMBER 2021083-2021251- 2021252
COMMERCIAL AND EMPLOYER GROUP WAIVER PROGRAM MEDICARE PART D AND WRAP
PHARMACY BENEFIT MANAGER SERVICES**

CITY OF MESA, Arizona (“City”)

Department Name	City of Mesa – Purchasing Division
Mailing Address	P.O. Box 1466 Mesa, AZ 85211-1466
Delivery Address	20 East Main St, Suite 450 Mesa, AZ 85201
Attention	Kristy Garcia, NIGP-CPP, CPPO, CPPB Procurement Supervisor
E-Mail	Kristy.Garcia@MesaAZ.gov
Phone	(480) 644-5052

With a copy to: City of Mesa – Human Resources
Attn: Janice Ashley, Employee Benefits Administrator
P.O. Box 1466
Mesa, AZ 85211-1466
Janice.Ashley@MesaAZ.gov

AND

MEDIMPACT HEALTHCARE SYSTEMS, INC., (“Contractor”)

Mailing Address	10181 Scripps Gateway Court San Diego, CA 92131
Remit to Address	10181 Scripps Gateway Court San Diego, CA 92131
Attention	Vanessa Fiorello, Sales Director
E-Mail	Vanessa.Fiorillo@MedImpact.com
Phone	(858) 790-6512
Fax	(858) 621-5147

CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This Agreement pursuant to solicitation ("Agreement") is entered into this 23rd day of June 2021, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City" or "Client"), and MedImpact Healthcare Systems, Inc., a California corporation ("Contractor" or "MedImpact"). The City and Contractor are each a "Party" to the Agreement or together are "Parties" to the Agreement.

RECITALS

- A. The City issued solicitation number **2021083** ("Solicitation") for **Commercial Pharmacy Benefit Manager Services ("Commercial"), Employer Group Waiver Program (Medicare Part D Prescription Drug ("EGWP") Services Plus Wrap Program Services, and Specialty Drug Advocacy Services**, to which Contractor provided a response ("Response") for **Commercial and EGWP Plus Wrap Pharmacy Benefit Manager Services**; and
- B. The City Selected Contractor's Response as being in the best interest of the City and wishes to engage Contractor in providing the services/materials described in the Solicitation and Response.

In consideration of the reciprocal promises contained in the Agreement, and for other valuable and good consideration, which the Parties acknowledge the receipt and sufficiency of, the Parties agree to the following Terms & Conditions.

TERMS & CONDITIONS

1. **Term**. This Agreement is for a term beginning on **January 1, 2022 and ending on December 31, 2026**. The use of the word "Term" in the Agreement includes the aforementioned period as well as any applicable extensions or renewals in accordance with this Section 1.
 - 1.1 **Renewals**. On the mutual written agreement of the Parties, the Term may be renewed up to a maximum of two (2) years. Any renewal(s) will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term. Additionally, MedImpact will offer renewal terms at least one hundred eighty (180) days prior to the end of the contract Term that reflect competitive market rates unless a later date is mutually agreed upon.
 - 1.2 **Extension for Procurement Processes**. Upon the expiration of the Term of this Agreement, including any renewals permitted herein, at the City's sole discretion this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City's procurement processes in the selection of a vendor to provide the services/materials provided under this Agreement. The City will notify the Contractor in writing of its intent to extend the Agreement at least thirty (30) calendar days prior to the expiration of the Term. Any extension under this Subsection 1.2 will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
2. **List of Services and Fees - Scope of Work**. The Contractor will provide the necessary staff, services, and associated resources to provide the City with the services, materials, and obligations attached to this Agreement as **Exhibit B** ("List of Services and Fees (Scope of Work)") Contractor will be responsible for all costs and expenses incurred by Contractor that are incident to the performance of the List of Services and Fees (Scope of Work) unless otherwise stated in **Exhibit B**. Contractor will supply all equipment and instrumentalities necessary to perform the List of Services and Fees (Scope of Work).

The Agreement is based on the Solicitation and Response which are hereby incorporated by reference into the Agreement as if written out and included herein. In addition to the requirements specifically set forth in the List of Services and Fees (Scope of Work) and the Description of Services Work Order, the Parties acknowledge and agree that the Contractor shall perform in accordance with all terms,

conditions, specifications, and other requirements set forth within the Solicitation and Response unless modified herein.

3. **Orders.** The City may use the Internet to communicate with Contractor and to place work orders/authorizations as permitted under this Agreement.
4. **Document Order of Precedence.** In the event of any inconsistency between the terms of the body of the Agreement, the Exhibits, the Solicitation, and Response, the language of the documents will control in the following order.
 - a. Agreement
 - b. Exhibits
 1. Mesa Standard Terms & Conditions
 2. List of Services and Fees (Scope of Work)
 3. Other Exhibits and Work Orders not listed above
 - c. Solicitation including any addenda
 - d. Contractor Response

5. **Payment.**

The payment terms in this Section 5 shall apply to Commercial Claims and Services only. The payment terms for EGWP are set forth in Exhibit B-7. In the event of a conflict in payment terms in this Section 5 and Exhibit B-7, Exhibit B-7 shall prevail for payment terms related to EGWP.

5.1 **General.** Subject to the provisions of the Agreement, the City will pay Contractor the claims amounts, dispensing and utilization management fees, taxes (if applicable) and other sum(s) described in **Exhibit B** and subsections **B-1, B-2, B-3, B-3-a, B-4, B-4, B-5, B-6 and B-7** ("List of Services and Fees (Scope of Work), Pharmacy Network Pricing, Rebates, Financial Terms and Conditions, Credits/Allowances, Generic Dispensing Rate Guarantee – Commercial and EGWP Addendum") in consideration of Contractor's performance of the List of Services and Fees (Scope of Work), during the Term.

5.2 **Prices.** All pricing shall be firm for the Term and all extensions or renewals of the Term except where otherwise provided in this Agreement and include all costs of the Contractor providing the materials/service including transportation, insurance, and warranty costs. No fuel surcharges will be accepted unless allowed in this Agreement. The City shall not be invoiced at prices higher than those stated in the Agreement.

The Contractor further agrees that any reductions in the price of the materials or services covered by this Agreement will apply to the undelivered balance. The Contractor shall promptly notify the City of such price reductions.

No price modifications will be accepted without proper request by the Contractor and response by the City's Purchasing Division.

5.3 **Renewal and Extension Pricing.** Any extension of the Agreement will be at the same pricing as the initial Term. If the Agreement is renewed in accordance with Section 1, pricing may be adjusted for amounts other than inflation that represent actual costs to the Contractor based on the mutual agreement of the parties. The Contractor may submit a request for a price adjustment along with appropriate supporting documentation demonstrating the cost to the Contractor. Renewal prices shall be firm for the term of the renewal period and may be adjusted thereafter as outlined in the previous section. There is no guarantee the City will accept a price adjustment.

5.4 **Invoices.** Contractor shall provide City of Mesa with statements/invoices (each a "Statement" or "Invoice") for Pricing contemplated in Exhibit B., no more frequently than on a weekly plus

end of the month basis, for the month then completed. Annual or quarterly Pricing as may apply, may be billed up to fifteen (15) days in advance of the effective date of the Pricing. Any new or changed Pricing during the Term will go into effect as of the next Statement cycle coincident to the effective date of the new or changed Pricing.

Payment will be made to Contractor following the City's receipt of a properly completed invoice. No terms set forth in any invoice, purchase order or similar document issued by Contractor will be deemed accepted by the City; the terms of the contractual relationship between the Parties are as set forth in this Agreement. Any issues regarding billing or invoicing must be directed to the City Department/Division requesting the service or material from the Contractor. A properly completed invoice should contain, at a minimum, all of the following:

- a. Contractor name, address, and contact information;
- b. City billing information;
- c. City contract number as listed on the first page of the Agreement;
- d. Invoice number and date;
- e. Payment terms;
- f. Date of service or delivery;
- g. Description of materials or services provided;
- h. If materials provided, the quantity delivered and pricing of each unit;
- i. Applicable Taxes;
- j. If applicable, mileage or travel costs; and
- k. Total amount due.

5.5 **Payment of Funds.** Upon receipt of each Statement, City of Mesa shall fund the full amount of Pricing included in the Statement within five (5) business days, to the bank account(s) designated by Contractor. Contractor acknowledges the City may, at its option and where available, use a Credit Card/Procurement Card to make payment for orders under the Agreement with no additional charge/fee. Otherwise, payment will be through a traditional method of a check or wire, as agreed by the Parties during implementation processes. Except as otherwise provided below for manifest material errors, if City has questions regarding any amounts included on the Statement, City is still obligated to pay the full amount of the Statement within the time period set forth herein, and then the parties shall work together in good faith to resolve any such questions. If Client determines there is a manifest material error on the Statement, Client shall notify MedImpact immediately that such amounts will be withheld, and the parties will work together to promptly resolve the issue. However, Client will release funds sufficient to cover amounts equal to the average of the prior two (2) weekly Statements.

5.6 **Disallowed Costs, Overpayment.** If at any time the City determines that a cost for which payment was made to Contractor is a disallowed cost, such as an overpayment or a charge for materials/service not in accordance with the Agreement, the City will notify Contractor in writing of the disallowance; such notice will state the means of correction which may be, but is not limited to, adjustment of any future claim/invoice submitted by Contractor in the amount of the disallowance, or to require repayment of the disallowed amount by Contractor. Contractor will be provided with the opportunity to respond to the notice.

6. **Insurance.**

6.1 Contractor must obtain and maintain at its expense throughout the term of Contractor's agreement, at a minimum, the types and amounts of insurance set forth in this Section 6 from insurance companies authorized to do business in the State of Arizona; the insurance must cover the materials/service to be provided by Contractor under the Agreement. For any insurance required under the Agreement, Contractor will name the City of Mesa, its agents, representatives, officials, volunteers, officers, elected officials, and employees as a certificate holder, as evidenced by providing a proper insurance certificate.

- 6.2 Nothing in this Section 6 limits Contractor's responsibility to the City. The insurance requirements herein are minimum requirements for the Agreement and in no way limit any indemnity promise(s) contained in the Agreement.
- 6.3 The City does not warrant the minimum limits contained herein are sufficient to protect Contractor and subcontractor(s) from liabilities that might arise out of performance under the Agreement by Contractor, its agents, representatives, employees, or subcontractor(s). Contractor is encouraged to purchase additional insurance as Contractor determines may be necessary.
- 6.4 Each insurance policy required under the Agreement must be in effect at or prior to the execution of the Agreement and remain in effect for the term of the Agreement.
- 6.5 Prior to the execution of the Agreement, Contractor will provide the City with a Certificate of Insurance (using an appropriate "ACORD" or equivalent certificate) signed by the issuer with applicable endorsements. The City reserves the right to request additional copies of any or all of the policies, endorsements, or notices relating thereto required under the Agreement.
- 6.6 When the City requires a Certificate of Insurance to be furnished, Contractor's insurance is primary of all other sources available. When the City is a certificate holder and/or an additional insured, Contractor agrees no policy will expire, be canceled, or be materially changed to affect the coverage available without advance written notice to the City.
- 6.7 The general liability insurance policy(ies) required by the Agreement must contain a waiver of transfer rights of recovery (waiver of subrogation) against the City, its agents, representatives, officials, volunteers, officers, elected officials, and employees for any claims arising out of the work of Contractor.
- 6.8 All insurance certificates and applicable endorsements are subject to review and acceptance by the City's Risk Management Division.
- 6.9 **Types and Amounts of Insurance.** Contractor must obtain and retain throughout the term of the Agreement, at a minimum, the following:
- 6.9.1 Worker's compensation insurance in accordance with the provisions of Arizona law. If Contractor operates with no employees, Contractor must provide the City with written proof Contractor has no employees. If employees are hired during the course of this Agreement, Contractor must procure worker's compensations in accordance with Arizona law.
 - 6.9.2 The Contractor shall maintain at all times during the term of this contract, a minimum amount of \$1 million per occurrence/\$2 million aggregate Commercial General Liability insurance, including Contractual Liability. For General Liability insurance, the City of Mesa, their agents, officials, volunteers, officers, elected officials or employees shall be named as a certificate holder, as evidenced by providing an additional insured endorsement.
 - 6.9.3 Automobile liability, bodily injury, and property damage with a limit of \$1 million per occurrence including owned, hired, and non-owned autos.
 - 6.9.4 Professional Liability (Errors and Omissions Liability), the Contractor shall maintain at all times during the term of this contract, a minimum amount of \$1 million per aggregate Professional Liability insurance.

7. **Requirements Contract.** Contractor acknowledges and agrees the Agreement is a requirements contract; the Agreement does not guarantee any purchases will be made (minimum or maximum).

Orders will only be placed when the City identifies a need and issues a purchase order or a written notice to proceed. The City reserves the right to cancel purchase orders or a notice to proceed within a reasonable period of time of issuance; any such cancellation will be in writing. Should a purchase order or notice to proceed be canceled, the City agrees to reimburse Contractor for any actual and documented costs incurred by Contractor. The City will not reimburse Contractor for any avoidable costs incurred after receipt of cancellation including, but not limited to, lost profits, shipment of product, or performance of services.

8. **Notices.** All notices to be given pursuant to the Agreement will be delivered to the Contractor as listed on Page 1 of this Agreement. Notice will be delivered pursuant to the requirements set forth the Mesa Standard Terms and Conditions that is attached to the Agreement as **Exhibit C**.
9. **Representations of Contractor.** To the best of Contractor's knowledge, Contractor agrees that:
 - a. Contractor has no obligations, legal or otherwise, inconsistent with the terms of the Agreement or with Contractor's undertaking of the relationship with the City;
 - b. Performance of the services called for by the Agreement do not and will not violate any applicable law, rule, regulation, or any proprietary or other right of any third party;
 - c. Contractor will not use in the performance of Contractor's responsibilities under the Agreement any proprietary information or trade secret of a former employer of its employees (other than City, if applicable); and
 - d. Contractor has not entered into and will not enter into any agreement, whether oral or written, in conflict with the Agreement.
10. **Mesa Standard Terms and Conditions.** **Exhibit C** to the Agreement is the Mesa Standard Terms and Conditions as modified by the Parties, which are incorporated by reference into the Agreement as though fully set forth herein. In the event of any inconsistency between the terms of the Agreement and the Mesa Standard Terms and Conditions, the language of the Agreement will control. The Parties or a Party are referred to as a "party" or "parties" in the Mesa Standard Terms and Conditions. The Term is referred to as the "term" in the Mesa Standard Terms and Conditions.
11. **Counterparts and Facsimile or Electronic Signatures.** This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original and all of which, taken together, will constitute one agreement. A facsimile or other electronically delivered signature to the Agreement will be deemed an original and binding upon the Party against whom enforcement is sought.
12. **Incorporation of Recitals and Exhibits.** All Recitals and Exhibits to the Agreement are hereby incorporated by reference into the Agreement as if written out and included herein. In the event of any inconsistency between the terms of the body of the Agreement and the Exhibits, the language of the Agreement will control.

Exhibits to this Agreement are the following:

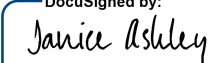
- (A) Defined Terms
- (B) Services and Fee Schedules, Pharmacy Network Pricing, Rebates, Financial Terms and Conditions, Credits/Allowances, and EGWP Pricing Addendum
- (C) Mesa Standard Terms and Conditions
- (D) Business Associate Agreement
- (E) Performance Guarantees
- (F) Audit Protocols
- (G) MedImpact Standard Terms and Conditions
- (H) Delegation Agreement

- 13. **Attorneys' Fees.** The prevailing Party in any litigation arising out of the Agreement will be entitled to the recovery of its reasonable attorney's fees, court costs, and other litigation related costs and fees from the other Party.
- 14. **Additional Acts.** The Parties agree to execute promptly such other documents and to perform such other acts as may be reasonably necessary to carry out the purpose and intent of the Agreement.
- 15. **Headings.** The headings of the Agreement are for reference only and will not limit or define the meaning of any provision of the Agreement.

By executing below, each Party acknowledges that it understands, approves, and accepts all of the terms of the Agreement and the attached exhibits.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

CITY OF MESA, ARIZONA

DocuSigned by:

 By: _____
8A4B37D38956478...

Janice Ashley
Printed Name

Employee Benefits Administrator
Title

october 25, 2021
Date

MEDIMPACT HEALTHCARE SYSTEMS, INC.

DocuSigned by:

 By: _____
A9A66B274C66440...

Ray Marsella
Printed Name

SVP Chief Revenue Officer
Title

october 25, 2021
Date

REVIEWED BY:


DocuSigned by:

 By: _____
F82B750F78344E7
 Kristy Garcia, NIGP-CPP, CPPO, CPPB
 Procurement Supervisor

EXHIBIT A DEFINED TERMS

1.1 Average Wholesale Price or AWP means the average wholesale price for a given pharmaceutical product as published by drug pricing services such as Medi-Span or other third-party pricing sources which MedImpact may select (“Pricing Source”). As of the Effective Date, MedImpact uses Medi-Span as its Pricing Source for AWP. AWP will be updated in MedImpact’s online claims adjudication system on at least a weekly basis with data received from the Pricing Source, which if not received timely could result in delays. The applicable AWP for prescriptions dispensed shall be based on the actual NDC submitted by the pharmacy. AWP does not represent a true wholesale price, but rather is a fluctuating benchmark provided by third-party pricing sources.

1.2 Benefit Plan means the benefit plan(s) pursuant to which Covered Benefits are provided to Eligible Members.

1.3 Benefit Plan Information means the information required by MedImpact to process Claims and provide Services under this Agreement, including processing parameters, coverage rules, and other information, provided to MedImpact in accordance with this Agreement.

1.4 Brand Drug will include 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.

1.5 Business Day means all days except Saturdays, Sundays, and MedImpact designated holidays. All references to “day” or “days” in this Agreement are to calendar days unless “Business Day” is specified.

1.6 Claim means those requests for payment for prescription services, drugs, devices, supplies, or other related items that are processed through MedImpact’s online claims adjudication system or otherwise sent to and/or processed by or through MedImpact in accordance with the terms of this Agreement, including requests for payment from Participating Pharmacies, Member Submitted Claims, and Subrogation Claims.

1.7 Claims Processing Fee means the per Claim fee identified in Exhibit B of this Agreement.

1.8 Client-Contracted Participating Pharmacies means those licensed pharmacies that are owned and operated by Client or contracted directly with Client to provide Covered Benefits for Eligible Members, and do not utilize MedImpact’s contracted rates for Client Claims. Client-Contracted Participating Pharmacies may include retail, long term care, home infusion, ITU, mail order, and/or specialty pharmacies, if applicable.

1.9 Copayment means that portion of the cost for each Covered Benefit dispensed to an Eligible Member that is the responsibility of the Eligible Member (e.g., copayment as a fixed dollar amount, coinsurance percentage, deductible, and/or other ancillary charges for which an Eligible Member may be responsible), as set forth in the Benefit Plan Information.

1.10 Covered Benefits mean those outpatient drugs, products, services, testing and/or diagnostics, or supplies that are prescribed by a prescriber and/or covered under a Benefit Plan as set forth in the Benefit Plan Information.

1.11 Direct Member Reimbursement (“DMR”) Claims means a Claim submitted by an individual (not a pharmacy) for coverage under a Benefit Plan for a prescription that was dispensed by a pharmacy for which the individual paid the full amount of the cost of the drug.

1.12 Dispensing Fee means the fee billed to Client for the filling of a single prescription order for an Eligible Member as set forth in Exhibit B.

1.13 Effective Date means the earlier of the date this Agreement is fully executed by both parties or the Implementation Date.

1.14 Eligible Members mean those individuals and their dependents, if applicable, who are entitled to Covered Benefits under a Benefit Plan as identified in the Eligible Member List in effect with MedImpact as of the date the Covered Benefit is provided.

1.15 Eligible Members List means the list of Eligible Members provided to MedImpact in accordance with this Agreement. The Eligible Members List shall be prepared, maintained, and updated by Client, and delivered to MedImpact in accordance with this Agreement.

1.16 ERISA means the Employee Retirement Income Security Act, as amended, 29 U.S.C. 1001 et seq., and the regulations promulgated thereunder. Contractor acknowledges that Client’s Benefit Plan is not subject to ERISA.

1.17 Formulary means the list of outpatient prescription drugs, devices, and supplies that are covered by the Benefit Plan according to the Benefit Plan Information.

1.18 Generic Drug will include 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. Generics will be defined as Single-Source Generic and Multi-Source Generic products as defined in this Exhibit A.

1.19 Government Agency(ies) means government agencies, including but not limited to the Centers for Medicare & Medicaid Services (“CMS”), Office of Inspector General (“OIG”), Health and Human Services (“HHS”), state Medicaid agencies, Veteran’s Administration (“VA”) facilities, Indian Health Services and Bureau of Indian Affairs (“IHS”), and Department of Defense (“DOD”) military treatment facilities (or other similar facilities) (“MTF”), or the agencies’ or facilities’ third-party representatives.

1.20 HIPAA/HITECH means Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the Health Information Technology for Economic and Clinical Health Act (“HITECH”), and the regulations promulgated thereunder.

1.21 Identification Cards or ID Cards mean printed identification cards containing information about the Benefit Plan and Covered Benefits to which the Eligible Members are entitled.

1.22 Implementation Date shall have the meaning set forth in Section 1 Term of this Agreement.

1.23 Law means all applicable federal, state, and local laws, rules, regulations, acts, statutes, ordinances, codes, constitutions, charters, or orders of a Government Agency.

1.24 MAC means the then current maximum allowable cost payable for products on the applicable MAC List pursuant to the applicable maximum allowable cost pricing schedule(s) developed, selected, and/or updated by MedImpact from time to time.

1.25 MAC List means a list of products subject to maximum allowable cost pricing schedules, which such list(s) is developed, selected, and/or updated (including the addition to or removal of products) by MedImpact from time to time.

1.26 Mail Order Pharmacy means a MID licensed pharmacy authorized to provide mail order pharmacy services.

1.27 MID means MedImpact Direct, LLC, a wholly-owned subsidiary of MedImpact.

1.28 Multi Source Generics will be defined as non-innovator products that are available from three or more manufacturers: the innovator (the manufacturer with the New Drug Application approval) and two or more manufacturers with Abbreviated New Drug Application approvals or marketing agreements for an authorized / branded generic.

1.29 Over the counter (“OTC”) products are products that may be dispensed without a prescription (e.g., diabetic test strips) but require a prescription for coverage. For purposes of MedImpact's drug classification and pricing offer, MedImpact will treat OTC products like Brands or Generics as defined above.

1.30 Participating Pharmacies means those pharmacies that have contracted directly with MedImpact or an affiliate of MedImpact to provide Covered Benefits for Eligible Members, and may include retail, long-term care, home infusion, ITU, mail order, and/or specialty pharmacies, and shall also mean and refer to Client-Contracted Participating Pharmacies (if applicable) unless otherwise stated.

1.31 Rebates mean retrospective formulary rebates that are paid to MedImpact pursuant to the terms of a contract between MedImpact and pharmaceutical manufacturer(s), rebate aggregator(s), and/or other rebate intermediary(ies), and directly attributable to the utilization of certain Covered Benefits by Eligible Members. Rebates will include rebates and other manufacturer revenues for purposes of your offer (and inputs in the Pricing Offer worksheets), which is defined as all revenue you receive from outside sources related to the Plan's utilization or enrollment in programs. These would include but are not limited to access fees, market share fees, rebates, formulary access fees, inflation protection/penalty payments, administrative fees and marketing grants from pharmaceutical manufacturers, wholesalers and data warehouse vendors.

1.32 Services shall have the meaning set forth in Exhibit B of this Agreement.

1.33 Single Source Generics will be defined as the non-innovator product that is available from two manufacturers: the innovator (one with the New Drug Application approval) and another with either an Abbreviated New Drug Application approval or a marketing agreement for an authorized / branded generic.

1.34 Specialty Drug means drugs that have one (1) or more of the following characteristics as identified through MedImpact's specialty drug determination process:

- High cost
- Treats complex clinical conditions
- May require special handling or storage
- Requires robust patient education and monitoring

1.35 Specialty Drug List means MedImpact's list of Specialty Drugs that identifies standard Specialty Drugs and is available upon request.

1.36 Specialty Pharmacy means MID if and when it operates a specialty pharmacy, otherwise it shall mean such licensed closed door specialty pharmacies with which MID or MedImpact contracts for the provision of MID specialty pharmacy services, or both.

1.37 Subrogation Claim means those claims submitted by any Government Agency (or any person or entity acting on behalf of a Government Agency) on behalf of or in the name of an Eligible Member for which Client is responsible as a third-party payer by operation of applicable Laws.

**EXHIBIT B
SERVICES AND FEE SCHEDULES, REBATES AND CREDITS**

Exhibit B shall consist of the following:

Exhibit B-1: List of Services and Fees (Scope of Work) – Commercial

Exhibit B-2: Pharmacy Network Pricing – Commercial and EGWP

Exhibit B-3: Rebates

Exhibit B-3-a: Minimum Rebate Guarantee – Commercial and EGWP

Exhibit B-4: Financial Terms, Conditions, and Disclosures

Exhibit B-5: Credits/Allowances

Exhibit B-6: Generic Dispensing Rate Guarantee (Commercial Plan only)

Exhibit B-7: Employer Group Waiver Plan Addendum

All references to Exhibit B in this Agreement shall include collectively the sub-Exhibit B's listed above.

Exhibit B-1**List of Services and Fees (Scope of Work)
Commercial****1. Claims Processing Fee.**

\$0.00 per approved paid electronically submitted Claim

- 2. Administrative Services.** The Service descriptions for the Administrative Services identified in this Exhibit B-1 shall be described in detail in a separate Work Order and mutually agreed to in writing by the parties.

	Services	Fee
	CLAIMS PROCESSING SERVICES	
2.1	Eligibility Information Benefit Plan Information	Included
2.1.1	Manual Eligibility Maintenance	Members and/or Physicians: \$5.00/record; Groups/ Divisions: \$10.00/record
2.2	Standard Claims Processing Services	Included
2.2.1	Direct Member Reimbursement (“DMR”)	\$2.50 per DMR Claim
2.2.2	MedReconciliation™ (Subrogation Claims)	\$4.00 per Subrogation Claim
2.2.3	Reprocessing of Claims/Retroactive Claim Adjustments	\$9.00 per Claim for manual adjustments Claims adjustments via file load subject to custom IT programming fee below
	PHARMACY NETWORK ADMINISTRATION SERVICES	
2.3	Pharmacy Network Management	Standard MedImpact managed network included

	Services	Fee
2.3.1	Pharmacy and Provider Call Center Support	Included
2.3.2	Client directed custom pharmacy communications (e.g., via fax or mail) <i>This Service is applicable if and when requested or used by Client, and shall be subject to <u>Section 2 of Exhibit B-4.</u></i>	\$0.50 per pharmacy per communication
2.3.3	MedImpact Direct Mail Order Pharmacy Program	Included Open refill transfer files (ORTF): Quoted upon request
2.3.4	MedImpact Direct Specialty Pharmacy Program	Included Open refill transfer files (ORTF): Quoted upon request
2.3.5	iRx Program™ (Discount Card Program)	Included
2.4	Standard Pharmacy Fraud, Waste, and Abuse (FWA)	Included, plus 25% contingency fee
2.4.1	Client Requested Desk Audits <i>This Service is applicable if and when requested or used by Client, and shall be subject to <u>Section 2 of Exhibit B-4.</u></i>	\$1,400 per pharmacy location
2.4.2	Client Requested On-site Audits <i>This Service is applicable if and when requested or used by Client, and shall be subject to <u>Section 2 of Exhibit B-4.</u></i>	\$2,500 per pharmacy location
2.4.3	Custom FWA Audit Reports <i>This Service is applicable if and when requested or used by Client, and shall be subject to <u>Section 2 of Exhibit B-4.</u></i>	Quoted upon request
REBATE CONTRACTING AND ADMINISTRATION		
2.5	MedImpact Rebate Program MedImpact will contract for and administer Rebates in accordance with <u>Exhibit B-3.</u>	100% of Rebates to be passed through to Client
CLIENT SERVICES		
2.6	Standard Implementation Services	Included
2.7	Account Management	Included
2.8	Client Mailings – Standard	-\$0.02 per Claim - Pass through cost
2.8.1	Client Mailings – Custom As requested by Client.	Quoted upon request
MEMBER SERVICES		
2.9	Member Call Center Support (available 24 hours a day 365 days a year)	Included

	Services	Fee
2.10	Production of standard ID cards (Teslin)	Included
2.11	Consumer Portal	Included
	REPORTING, DATA FILES, AND DATA MANAGEMENT TOOLS	
2.12	Reporting, Data Files, and Data Management Tools <i>Customized and/or ad hoc reports are subject to additional fees. Reports and data management tools are subject to change and, upon notice to Client, discontinuation.</i>	(See below)
2.12.1	MedAccess®	Included
2.12.2	MedOptimize®	Included
2.12.3	MedImpact Online Reports (MOR)	Included
2.12.4	Custom IT programming / Additional or Customized Reports <i>This Service is applicable if and when requested or used by Client, and shall be subject to <u>Section 2 of Exhibit B-4</u>.</i>	\$225.00 per hour
2.12.5	Paid Claims Data File	Included

3. Clinical Services.

	Services	Fee
	CLINICAL SERVICES	
3.1	MedImpact Standard Formulary	Included
3.2	Clinical Program Management (CPM) Consultative Services	Included
3.3	Client Clinical Consultations	\$275 per hour
3.4	MedConnect®	Included
3.5	Clinical Pipeline	Included
	CLINICAL TREND MANAGEMENT PACKAGE	
3.6	Medium Impact Clinical Trend Management Package	\$0.25 PMPM i.e. approx. \$3,100 per month X 12 = \$37,500 yr
	INDIVIDUAL CLINICAL TREND MANAGEMENT PROGRAMS	
3.7	Clinical Prior Authorization – Fully Delegated	\$45 per PA Customization of any PA processes may result in additional fees, which will be quoted upon Client request

	Services	Fee
3.8	Appeals Administration <u>Administrative Appeals:</u> Administrative <u>First Level Clinical Appeals (internal review):</u> <u>Second Level Clinical Appeals (external review):</u>	\$100 each \$225 each \$350 each
CARE QUALITY AND SAFETY MANAGEMENT PROGRAMS		
3.9	Standard Concurrent DUR	Included
3.10	Operational Prior Authorization – Administrative Overrides	Included
3.11	Drug Recall / Withdrawal Process	Included
OPIOID OVERUTILIZATION & SAFETY CONTROLS PROGRAMS Programs meet CMS Guidance.		
3.12	Opioid Overutilization & Safety Controls Programs Opioid Cumulative Dosing at POS	\$0.02 PMPM

CLINICAL PROGRAMS PRICING AND SAVINGS GUARANTEE NOTES

- a. MedImpact reserves the right to amend pricing and/or guarantee if there is a ten percent (10%) or greater change in the number or demographic profile of Eligible Members included in the Benefit Plan, or any material change in the benefit design parameters from that which was originally presented to MedImpact and upon which the pricing is based.
- b. Significant overall cost savings may be achieved through implementation of Clinical Trend Management programs. While this approach may yield the best overall net-cost solution, Client acknowledges that this may also reduce Rebate return.
- c. Clinical Trend Management edit programs and packages will undergo continuous modification, typically on a quarterly basis or more frequently as appropriate, based upon decisions made by MedImpact's National Pharmacy & Therapeutic Committee and Formulary Committee in response to: (i) the release of new drug products by the United States Food & Drug Administration, (ii) changes in treatment guidelines issued by national medical organizations, and (iii) improvements in drug therapy as identified in the medical literature. As a part of ongoing quality improvement and recognition of the dynamic clinical, marketplace, and regulatory environment, MedImpact may add, delete, or implement modifications at its discretion to components of the programs. Client will be notified in advance of any such modification.
- d. Any Law, regulation, market, industry, or coverage change that impedes MedImpact's ability to apply MedImpact recommended clinical management programs in any way during the Term may require that MedImpact alter the services or reduce or eliminate any guarantee offered as described herein. Client will be notified in advance of any such modifications.
- e. The fees for programs set forth herein reflect pricing for standard programs. Modifications to any of the standard program components set forth herein will be quoted upon request.
- f. Other clinical programs not described above are quoted upon request.

Other Services.

Services other than those described herein (including, without limitation, special research projects, reports, and consultative services), non-standard services, and standard services, forms, materials and documents in an amount which MedImpact determines to be unreasonable or excessive, are subject to additional fees.

Exhibit B-2
Pharmacy Network Pricing
Commercial and EGWP

1. Claim Rates.

COMMERCIAL

The pharmacy network guarantees specified below in this Exhibit B-2 are those pharmacy discounts and Dispensing Fees that Client has agreed to pay. These rates may be greater or less than the actual reimbursement rate (AWP discount or MAC, plus Dispensing Fee) paid to each applicable Participating Pharmacy. Client acknowledges and agrees that, as part of MedImpact's total compensation for providing services, including administering the pharmacy network, MedImpact shall retain the difference, if any, between the reimbursement paid by MedImpact to Participating Pharmacies for Claims and the payment received by MedImpact from Client for Claims.

EGWP

MedImpact shall pass through the amount paid to the Participating Pharmacy, which shall be the same amount that MedImpact will bill Client. The pharmacy network guarantees specified below in this Exhibit B-2 are representative pharmacy discounts and Dispensing Fees. However, Client will pay hereunder, the actual reimbursement rate (AWP discount or MAC, plus Dispensing Fee) paid to each applicable Participating Pharmacy. The actual reimbursement paid to a Participating Pharmacy may be greater or less than the guarantees identified in this Exhibit B.

2. Pharmacy Network Guarantees.

COMMERCIAL AND WRAP PROGRAMS

Retail (includes specialty at retail):

January 1, 2022 – December 31, 2022

Brand Effective Rate: AWP – 19.25% + \$0.45 Dispensing Fee

Generic Effective Rate: AWP – 84.75% + \$0.45 Dispensing Fee

January 1, 2023 – December 31, 2023

Brand Effective Rate: AWP – 19.25% + \$0.45 Dispensing Fee

Generic Effective Rate: AWP – 85.00% + \$0.45 Dispensing Fee

January 1, 2024 – December 31, 2024

Brand Effective Rate: AWP – 19.25% + \$0.45 Dispensing Fee

Generic Effective Rate: AWP – 85.25% + \$0.45 Dispensing Fee

January 1, 2025 – December 31, 2025

Brand Effective Rate: AWP – 19.25% + \$0.45 Dispensing Fee

Generic Effective Rate: AWP – 85.50% + \$0.45 Dispensing Fee

January 1, 2026 – December 31, 2026

Brand Effective Rate: AWP – 19.25% + \$0.45 Dispensing Fee

Generic Effective Rate: AWP – 85.75% + \$0.45 Dispensing Fee

†Choice90^{Rx} (Retail 84+ days' supply):

[†]Copyright © 2012-2021 MedImpact Healthcare Systems, Inc.

January 1, 2022 – December 31, 2022

Brand Effective Rate: AWP – 24.50% + \$0.00 Dispensing Fee

Generic Effective Rate: AWP – 89.50% + \$0.00 Dispensing Fee

January 1, 2023 – December 31, 2023

Brand Effective Rate: AWP – 24.50% + \$0.00 Dispensing Fee

Generic Effective Rate: AWP – 89.75% + \$0.00 Dispensing Fee

January 1, 2024 – December 31, 2024

Brand Effective Rate: AWP – 24.50% + \$0.00 Dispensing Fee

Generic Effective Rate: AWP – 90.00% + \$0.00 Dispensing Fee

January 1, 2025 – December 31, 2025

Brand Effective Rate: AWP – 24.50% + \$0.00 Dispensing Fee

Generic Effective Rate: AWP – 90.25% + \$0.00 Dispensing Fee

January 1, 2026 – December 31, 2026

Brand Effective Rate: AWP – 24.50% + \$0.00 Dispensing Fee

Generic Effective Rate: AWP – 90.50% + \$0.00 Dispensing Fee

Mail Order (MID):

Mail order will be arranged and/or provided through the MedImpact Direct Mail Order Pharmacy Program. Mail pricing is based on a minimum average days' supply of eighty-four (84) or greater.

January 1, 2022 – December 31, 2022

Brand Effective Rate: AWP – 25.00% + \$0.00 Dispensing Fee

Generic Effective Rate: AWP – 88.00% + \$0.00 Dispensing Fee

January 1, 2023 – December 31, 2023

Brand Effective Rate: AWP – 25.00% + \$0.00 Dispensing Fee

Generic Effective Rate: AWP – 88.25% + \$0.00 Dispensing Fee

January 1, 2024 – December 31, 2024

Brand Effective Rate: AWP – 25.00% + \$0.00 Dispensing Fee

Generic Effective Rate: AWP – 88.50% + \$0.00 Dispensing Fee

January 1, 2025 – December 31, 2025

Brand Effective Rate: AWP – 25.00% + \$0.00 Dispensing Fee

Generic Effective Rate: AWP – 88.75% + \$0.00 Dispensing Fee

January 1, 2026 – December 31, 2026

Brand Effective Rate: AWP – 25.00% + \$0.00 Dispensing Fee

Generic Effective Rate: AWP – 89.00% + \$0.00 Dispensing Fee

Specialty Pharmacy (MID)*:

Specialty will be arranged and/or provided through the MedImpact Direct Specialty Pharmacy Program. MedImpact will maintain a price list of specialty rates for Specialty Pharmacies. MedImpact will update such price lists on at least a monthly basis, including the addition of any newly introduced specialty products to the market or any national drug code (“NDC”) additions for existing specialty products. Such price list shall be made available to Client upon request.

January 1, 2022 – December 31, 2026

Overall Effective Rate: AWP – 21.50% + \$0.00 Dispensing Fee

*Specialty Pharmacy guarantees are not applicable if Client utilizes a specialty ancillary funding company.

EGWP PROGRAMS**Retail (includes specialty at retail):**

January 1, 2022 – December 31, 2022

Brand Effective Rate: AWP – 19.10% + \$0.60 Dispensing Fee
 Generic Effective Rate: AWP – 84.50% + \$0.60 Dispensing Fee

January 1, 2023 – December 31, 2023

Brand Effective Rate: AWP – 19.10% + \$0.60 Dispensing Fee
 Generic Effective Rate: AWP – 84.75% + \$0.60 Dispensing Fee

January 1, 2024 – December 31, 2024

Brand Effective Rate: AWP – 19.10% + \$0.60 Dispensing Fee
 Generic Effective Rate: AWP – 85.00% + \$0.60 Dispensing Fee

January 1, 2025 – December 31, 2025

Brand Effective Rate: AWP – 19.10% + \$0.60 Dispensing Fee
 Generic Effective Rate: AWP – 85.25% + \$0.60 Dispensing Fee

January 1, 2026 – December 31, 2026

Brand Effective Rate: AWP – 19.10% + \$0.60 Dispensing Fee
 Generic Effective Rate: AWP – 85.50% + \$0.60 Dispensing Fee

†Choice90^{Rx} (Retail 84+ days' supply):

†Copyright © 2012-2021 MedImpact Healthcare Systems, Inc.

January 1, 2022 – December 31, 2022

Brand Effective Rate: AWP – 23.00% + \$0.00 Dispensing Fee
 Generic Effective Rate: AWP – 90.50% + \$0.00 Dispensing Fee

January 1, 2023 – December 31, 2023

Brand Effective Rate: AWP – 23.00% + \$0.00 Dispensing Fee
 Generic Effective Rate: AWP – 90.75% + \$0.00 Dispensing Fee

January 1, 2024 – December 31, 2024

Brand Effective Rate: AWP – 23.00% + \$0.00 Dispensing Fee
 Generic Effective Rate: AWP – 91.00% + \$0.00 Dispensing Fee

January 1, 2025 – December 31, 2025

Brand Effective Rate: AWP – 23.00% + \$0.00 Dispensing Fee
 Generic Effective Rate: AWP – 91.25% + \$0.00 Dispensing Fee

January 1, 2026 – December 31, 2026

Brand Effective Rate: AWP – 23.00% + \$0.00 Dispensing Fee
 Generic Effective Rate: AWP – 91.50% + \$0.00 Dispensing Fee

Mail Order (MID):

Mail order will be arranged and/or provided through the MedImpact Direct Mail Order Pharmacy Program. Mail pricing is based on a minimum average days' supply of eighty-four (84) or greater.

January 1, 2022 – December 31, 2022

Brand Effective Rate: AWP – 25.00% + \$0.00 Dispensing Fee
 Generic Effective Rate: AWP – 88.00% + \$0.00 Dispensing Fee

January 1, 2023 – December 31, 2023

Brand Effective Rate: AWP – 25.00% + \$0.00 Dispensing Fee
 Generic Effective Rate: AWP – 88.25% + \$0.00 Dispensing Fee

January 1, 2024 – December 31, 2024

Brand Effective Rate: AWP – 25.00% + \$0.00 Dispensing Fee

Generic Effective Rate: AWP – 88.50% + \$0.00 Dispensing Fee

January 1, 2025 – December 31, 2025

Brand Effective Rate: AWP – 25.00% + \$0.00 Dispensing Fee

Generic Effective Rate: AWP – 88.75% + \$0.00 Dispensing Fee

January 1, 2026 – December 31, 2026

Brand Effective Rate: AWP – 13.00% + \$0.00 Dispensing Fee

Generic Effective Rate: AWP – 80.00% + \$0.00 Dispensing Fee

Home Infusion

January 1, 2022 – December 31, 2022

Brand Effective Rate: AWP – 13.00% + \$4.00 Dispensing Fee

Generic Effective Rate: AWP – 80.00% + \$4.00 Dispensing Fee

January 1, 2023 – December 31, 2023

Brand Effective Rate: AWP – 13.00% + \$4.00 Dispensing Fee

Generic Effective Rate: AWP – 80.00% + \$4.00 Dispensing Fee

January 1, 2024 – December 31, 2024

Brand Effective Rate: AWP – 13.00% + \$4.00 Dispensing Fee

Generic Effective Rate: AWP – 80.00% + \$4.00 Dispensing Fee

January 1, 2025 – December 31, 2025

Brand Effective Rate: AWP – 13.00% + \$4.00 Dispensing Fee

Generic Effective Rate: AWP – 80.00% + \$4.00 Dispensing Fee

January 1, 2026 – December 31, 2026

Brand Effective Rate: AWP – 13.00% + \$4.00 Dispensing Fee

Generic Effective Rate: AWP – 80.00% + \$4.00 Dispensing Fee

Long Term Care Network

January 1, 2022 – December 31, 2022

Brand Effective Rate: AWP – 10.75% + \$5.30 Dispensing Fee

Generic Effective Rate: AWP – 80.00% + \$5.00 Dispensing Fee

January 1, 2023 – December 31, 2023

Brand Effective Rate: AWP – 10.75% + \$5.30 Dispensing Fee

Generic Effective Rate: AWP – 80.00% + \$5.00 Dispensing Fee

January 1, 2024 – December 31, 2024

Brand Effective Rate: AWP – 10.75% + \$5.30 Dispensing Fee

Generic Effective Rate: AWP – 80.00% + \$5.00 Dispensing Fee

January 1, 2025 – December 31, 2025

Brand Effective Rate: AWP – 10.75% + \$5.30 Dispensing Fee

Generic Effective Rate: AWP – 80.00% + \$5.00 Dispensing Fee

January 1, 2026 – December 31, 2026

Brand Effective Rate: AWP – 10.75% + \$5.30 Dispensing Fee

Generic Effective Rate: AWP – 80.00% + \$5.00 Dispensing Fee

Indian/Tribal/Urban: Pass through

Specialty Pharmacy (MID) INCLUDES Specialty Limited Distribution Drugs (LDD)*:

Specialty will be arranged and/or provided through the MedImpact Direct Specialty Pharmacy Program. MedImpact will maintain a price list of specialty rates for Specialty Pharmacies. MedImpact will update such price lists on at least a monthly basis, including the addition of any newly introduced specialty products to the

market or any national drug code (“NDC”) additions for existing specialty products. Such price list shall be made available to Client upon request.

January 1, 2022 – December 31, 2026

Overall Effective Rate: AWP – 19.75% + \$0.00 Dispensing Fee

*Specialty Pharmacy guarantees are not applicable if Client utilizes a specialty ancillary funding company.

“**Brand Effective Rate**” shall mean the rate agreed to by the parties (as specified above) across all Brand Drug Claims as determined on an aggregated basis (i.e. not Claim by Claim). Notwithstanding anything to the contrary in this Agreement, Brand Drug Claims for purposes of the Brand Effective Rate calculation includes single source Brand Drugs, multi-source Brand Drugs, and biosimilars.

“**Generic Effective Rate**” shall mean the rate agreed to by the parties (as specified above) across all Generic Drug Claims as determined on an aggregated basis (i.e. not Claim by Claim). Notwithstanding anything to the contrary in this Agreement, Generic Drug Claims for purposes of the Generic Effective Rate calculation includes Generic Drugs available through one (1) or more manufacturers, , and which have an “A” rating according to the United States Food and Drug Administration (FDA) Orange Book, regardless of whether such Generic Drug is subject to a MAC price.

Guarantee – COMMERCIAL & EGWP. MedImpact will guarantee the network performance on an individual component basis for the above pharmacy network rates, subject to the exclusions in this Exhibit B. A component being the ingredient cost rate and the Dispensing Fee separately in each component (component being retail brand 30 day supply, retail generic 30 day supply. etc.). There will be no cross subsidization within or among distribution channels (retail, mail, Choice 90, specialty). Over performance in one component may not be used to offset underperformance in another component. Network performance measurements will include Claims that adjudicate at or below Copayment at the discounted rate. In addition, the guarantees may be adjusted if more than thirty percent (30%) of Claims are filled under a one hundred percent (100%) Copayment or high deductible benefit design, or if more than five percent (5%) of Claims are filled in Massachusetts, Hawaii, Alaska, and Puerto Rico.

Exclusions. The following Claims are excluded from network performance measurements:

1. over the counter (OTC) drug Claims
2. compound Claims
3. vaccine Claims
4. paper Claims (DMR)
5. pharmacy submitted paper Claims
6. discount card programs Claims
7. usual and customary (U&C) Claims
8. new to market authorized generic Claims
9. Subrogation Claims
10. Claims from entities eligible for federal supply schedule prices
11. 340B Claims
12. Client-Contracted Participating Pharmacy Claims
13. Claims from Client required pharmacy participants outside of MedImpact’s network control.

Reconciliation - Commercial. MedImpact will report performance on a quarterly basis and reconcile the guarantees annually. Any shortfall identified during the annual reconciliation will be covered dollar for dollar by MedImpact. Any over performance above the guarantees shall be returned to Client. Any such amounts shall be credited to Client within ninety (90) days after the end of the Agreement year.

Reconciliation - EGWP. MedImpact will report performance on a quarterly basis and reconcile the guarantees annually. Any shortfall identified during the annual reconciliation will be covered dollar for dollar by MedImpact and any such amounts shall be credited to Client within ninety (90) days after the end of the Agreement year.

3. Other Pharmacy Networks/Pricing.

MedImpact shall provide Client the following additional pharmacy networks/pricing, which are excluded from the pharmacy network guarantees:

MedNetwork® Vaccine Program - Commercial. MedImpact shall make available to Client the MedNetwork Vaccine program at Participating Pharmacies. Client will be billed the cost of the vaccine (the lesser of U&C, the AWP discount plus Dispensing Fee, or MAC plus Dispensing Fee), the Participating Pharmacy's professional administration fee, and a \$3.00 per vaccine Claim fee that MedImpact will receive as compensation for administering the MedNetwork Vaccine program. MedImpact's fee shall be billed to Client separately. Different network configurations are available to Client with varying professional administration fee cost savings. Client's selected network configuration will be memorialized in the program implementation form. MedImpact shall notify Client of any change to Participating Pharmacy professional administration fees.

MedNetwork® Vaccine Program - EGWP. MedImpact shall make available to Client the MedNetwork Vaccine program at Participating Pharmacies. Client will be billed the cost of the vaccine (the lesser of U&C, the AWP discount plus Dispensing Fee, or MAC plus Dispensing Fee), the Participating Pharmacy's professional administration fee, and a \$2.00 per vaccine Claim fee that MedImpact will receive as compensation for administering the MedNetwork Vaccine program. MedImpact's fee shall be billed to Client separately. Different network configurations are available to Client with varying professional administration fee cost savings. Client's selected network configuration will be memorialized in the program implementation form. MedImpact shall notify Client of any change to Participating Pharmacy professional administration fees.

Exhibit B-3

Rebates

1. Rebate Contracting and Administration.

Client hereby appoints MedImpact as its exclusive agent for the purpose of negotiating and arranging for Rebates on the purchase of Covered Benefits. Client represents and warrants that it does not have any existing direct rebate and/or chargeback agreements, 340B discounts, Group Purchasing Organization arrangements or any other discount that would make Client ineligible for rebate qualification with any pharmaceutical manufacturer or otherwise and also agrees that during the Term of this Agreement Client will not negotiate or arrange for rebates on the purchase of Covered Benefits from any pharmaceutical manufacturer and/or third party rebate aggregators and/or intermediaries.

In the event of a breach of this Section by Client, MedImpact may immediately terminate this Agreement or Client's participation in the rebate program and may retain 100% of any and all Rebates that have not been remitted to Client as of the date of such termination. In addition, the parties agree that in the event of a breach of this Section by Client, because of the difficulty of ascertaining the amount of damages in the event of such a breach, MedImpact shall be entitled to recover, at its option, as liquidated damages and not as a penalty, its unrealized revenue in connection herewith, which shall be equal to the average quarterly Rebates payable to Client prior to termination multiplied by the number of quarters left under the then current Term of this Agreement. Such amount shall become immediately due and payable upon notice from MedImpact. The parties further agree that the existence of this remedy will not preclude MedImpact from seeking or receiving injunctive relief.

2. Rebate Eligibility.

Client shall be eligible to receive Rebates for Covered Benefits dispensed during the Term of this Agreement to Eligible Members who are covered by a Benefit Plan that meets the following criteria:

STANDARD FORMULARY - COMMERCIAL

- Client adopts, publishes, presents, and distributes MedImpact's standard non-exclusionary Portfolio drug Formulary and preferred product list, including all subsequent revisions;
- Client, Benefit Plan, and Claims meet any other eligibility inclusion criteria of the pharmaceutical manufacturers, rebate aggregator, and/or rebate intermediary and as otherwise set forth in this Agreement.

STANDARD FORMULARY – EGWP

- Client adopts, publishes, presents, and distributes MedImpact's standard Advantage drug Formulary and preferred product list, including all subsequent revisions;
- Client, Benefit Plan, and Claims meet any other eligibility inclusion criteria of the pharmaceutical manufacturers, rebate aggregator, and/or rebate intermediary and as otherwise set forth in this Agreement.

If drug utilization has been submitted to pharmaceutical manufacturers and/or third party rebate aggregators and/or intermediaries by any entity other than MedImpact including, but not limited to: (i) Medicaid; (ii) Medicare; (iii) other state or federal health care program which receives rebates, discounts, chargebacks directly from pharmaceutical manufacturers; or (iv) other forms of price reduction directly from pharmaceutical manufacturers, including but not limited to 340B discounts, this utilization shall not be eligible to participate in MedImpact's rebate programs or receive Rebates hereunder. Client shall use best efforts to clearly identify these Eligible Member Claims and provide this information to MedImpact. Client is solely responsible for the reimbursement of any Rebates improperly received based on such drug utilization, audit costs charged to MedImpact, and any other documented costs incurred by MedImpact, and such responsibility shall survive termination or expiration of this Agreement. Notwithstanding the foregoing, this provision shall not be construed to prohibit Client from participating in Medicare or Medicaid risk contracting.

3. Rebate Payment.

As long as Client continues to participate and remains eligible to participate in MedImpact's Rebate program (through the rebate administration program or otherwise), MedImpact shall, on behalf of Client, receive the Rebates paid by pharmaceutical manufacturers and/or third party rebate aggregators and/or intermediaries for eligible Claims under this Agreement. MedImpact shall issue payment to Client for the guaranteed Rebate amounts set forth in Exhibit B-

3-a on a quarterly basis within ninety (90) days after the close of the quarter, subject to Section 5 below.

Client acknowledges and agrees that it shall not have a right to interest on, or the time value of, any Rebate payments received by MedImpact or monies under this Agreement and that Rebate payments will not be issued to Client unless this Agreement has been executed by the parties. Upon termination of this Agreement, MedImpact may delay remittance of Rebates to Client to allow for final adjustments. Notwithstanding any other provision of this Agreement and unless otherwise prohibited (by Law or otherwise), MedImpact shall have no payment obligation to Client for Rebate amounts received greater than one hundred eighty (180) days after termination of this Agreement.

Client waives, releases, and forever discharges MedImpact from any claims, demands, losses, attorneys' fees, costs, expenses, or liabilities of any nature, whether known or unknown, arising from (i) a failure by a pharmaceutical manufacturer and/or third party rebate aggregators and/or intermediaries to pay any Rebate; (ii) a breach of an agreement by a pharmaceutical manufacturer and/or third party rebate aggregator and/or intermediary related to this Agreement; (iii) any Rebate amounts MedImpact does not bill to a pharmaceutical manufacturer and/or third party rebate aggregator and/or intermediary; and (iv) negligence or misconduct of a pharmaceutical manufacturer and/or third party rebate aggregator and/or intermediary.

As part of the standard reporting package, Client will have access to MedOptimize for regular Rebate reporting, and MedImpact will make available to Client standard quarterly Rebate reports which set forth a summary of estimated Rebates and actual Rebates received.

4. Rebate Disclosure – Other Manufacturer Revenue.

The amount MedImpact receives for Rebates from rebate aggregators and/or intermediaries may be different from the amount such rebate aggregators and/or intermediaries receive through their own pharmaceutical manufacturer or intermediary agreements, which such difference may be retained by the rebate aggregator and/or intermediary as its compensation, and the term "Rebate" as used in this Agreement does not include this compensation, which belongs exclusively to the rebate aggregator or intermediary.

5. Minimum Rebate Guarantee.

As long as Client continues to participate and remains eligible to participate in MedImpact's Rebate program (through the rebate administration program or otherwise), MedImpact shall guarantee the Rebate amounts identified in Exhibit B-3-a (the "Rebate Rate"), provided Client: (i) timely implements the MedImpact standard Portfolio Formulary for Commercial and the MedImpact standard Advantage drug Formulary for EGWP, including any existing and future MedImpact Formulary changes and programs, benefit designs, and strategies; and (ii) complies with all obligations under this Agreement. The "Minimum Rebate Guarantee" shall equal the product of: (a) the number of paid claims processed by MedImpact during the applicable period that are eligible for the Rebate guarantee; and (b) the Rebate Rate, subject to the Minimum Rebate Guarantee terms and conditions set forth in Exhibit B-3-a. On an annual basis, MedImpact shall reconcile (i.e. "true-up") (i) the guaranteed Rebate amounts paid to Client, to (ii) the actual Rebates received, reconciled, and verified by MedImpact, within one hundred fifty (150) days after the end of each Agreement year, and any over performance identified during the annual reconciliation will be credited to Client.

Client acknowledges that the Minimum Rebate Guarantee shall become null and void if either party's performance of its duties under this Agreement is made materially more burdensome or expensive, or the duties to be performed are materially changed due to a Change in Law, including a Law passed or adopted which has a direct or indirect impact on the enforceability or performance of Rebate services and/or revenue hereunder.

Exhibit B-3-a**Minimum Rebate Guarantee – Commercial and EGWP****COMMERCIAL****MEDIMPACT STANDARD PORTFOLIO FORMULARY WITH MEDIUM EDIT PACKAGE REBATE GUARANTEES**

Year	Retail 30	Retail 90	Mail Order	Specialty*
2022	\$174.68	\$513.75	\$524.03	\$1,541.25
2023	\$185.16	\$544.58	\$555.47	\$1,633.73
2024	\$196.26	\$577.25	\$588.79	\$1,731.75
2025	\$208.04	\$611.88	\$624.12	\$1,835.65
2026	\$220.52	\$648.60	\$661.57	\$1,945.79

* Specialty Rebate guarantees are not applicable if Client utilizes a specialty ancillary funding company, however, in such case, one hundred percent (100%) of Specialty Rebates will be passed through to Client.

EGWP**MEDIMPACT STANDARD ADVANTAGE FORMULARY WITH MEDIUM EDIT PACKAGE REBATE GUARANTEES**

Year	Retail 30	Retail 90	Mail Order	Specialty*	LTC	Home Infusion	ITU
2022	\$170.80	\$512.40	\$502.35	\$1,507.05	\$170.80	\$170.80	\$0.00
2023	\$181.05	\$543.14	\$532.49	\$1,597.47	\$181.05	\$181.05	\$181.05
2024	\$191.91	\$575.73	\$564.44	\$1,693.32	\$191.91	\$191.91	\$0.00
2025	\$203.42	\$610.27	\$598.31	\$1,794.92	\$203.42	\$203.42	\$0.00
2026	\$215.63	\$646.89	\$634.21	\$1,902.62	\$215.63	\$215.63	\$0.00

* Specialty Rebate guarantees are not applicable if Client utilizes a specialty ancillary funding company, however, in such case, one hundred percent (100%) of Specialty Rebates will be passed through to Client.

Minimum Rebate Guarantees are subject to the following:

1. Rebate guarantees are based on Client's use of MedImpact's standard Portfolio Formulary with Medium edit package and Copayment design provided at the time of the 2021 RFP.
2. Rebate guarantees may be adjusted if Client's utilization is less than ninety-five percent (95%) compliant with Formulary preferred Brand Drugs (defined below).
3. Rebate guarantees are contingent upon Client's use of the MedImpact Direct Mail Order Pharmacy Program and MedImpact Direct Specialty Pharmacy Program. Guarantees may be adjusted if a different vendor is selected by Client for mail and/or specialty wrap networks.
4. Specialty guarantees are based on standard Specialty Drugs as identified on MedImpact's Specialty Drug List.
5. Rebate guarantees may be adjusted if the percentage of Claims filled through Client-Contracted Participating Pharmacies increases by greater than ten percent (10%) during the Term of this Agreement as compared to Client's utilization prior to this Agreement.

6. Notwithstanding any Brand Drug definition in this Agreement to the contrary, Rebate guarantees are on a per federal legend Brand Drug claim basis as identified by using Medi-Span indicators and MedImpact's standard policies for products that are approved by the U.S. Food and Drug Administration (FDA) in which federal or state Law requires to be dispensed to the public on prescription of a licensed physician or other licensed provider.
7. The following are excluded from the Rebate guarantees:
 - a. compound drug Claims
 - b. Eligible Member submitted (DMR) Claims
 - c. over the counter (OTC) drug Claims
 - d. vaccine Claims
 - e. Subrogation Claims
 - f. biosimilar Claims
 - g. multi-source brand Claims not having a DAW 1 or 2
 - h. Claims older than one hundred eighty (180) days
 - i. 340B pharmacies
 - j. repackaged NDC Claims
 - k. secondary payer Claims
 - l. Claims from entities eligible for federal supply schedule prices
 - m. Claims where the Eligible Member pays more than fifty percent (50%) of the cost of the Claim outside of the deductible
 - n. one hundred percent (100%) Eligible Member Copayment Claims
 - o. Claims in which Client implements any exception logic to allow Formulary excluded or non-preferred Claims to process.
 - p. Non Drug Claims (excluding insulin and diabetic test strips)
8. In the event market factors outside of MedImpact's control (i) cause brand name medications to become available as a generic, authorized generic, or biosimilar, (ii) cause a significant price decline of a brand name medication, or (iii) Client prefers a generic at a higher net cost than the brand, MedImpact may adjust the Rebate guarantees.

Any deviations from the above criteria may result in alternative Rebate guarantees.

Exhibit B-4

Financial Terms, Conditions, and Disclosures

1. **Claims Processing Fees** shall begin on the Implementation Date.
2. **Subsequent Implementations.** The implementation of programs or services not selected as of the Implementation Date or additional programs or services not specified in this Agreement may be subject to the then current pricing for such programs and/or services.
3. **Exclusive Provider.** The financial terms set forth in Exhibit B are conditioned on MedImpact being the exclusive provider of Services for Client and Client's compliance with the terms and conditions set forth in this Agreement.
4. **Pharmacy Copayment.** Participating Pharmacies shall collect from Eligible Members the lesser of the discounted rate with the Participating Pharmacy, the Participating Pharmacy's usual and customary charge, or the applicable Copayment.
5. **Transaction Fees.** Client acknowledges that Participating Pharmacies, including retail, mail, and specialty, may be responsible for applicable transaction and/or service charges associated with the submission of Claims information to MedImpact either electronically or on a standard paper claim form and/or for certain services provided by MedImpact. Such charges may be deducted by MedImpact from any amounts owed to such Participating Pharmacies.
6. **Pricing Benchmark.** The parties understand there are market, industry, legal, government, regulatory, and other third-party forces and activities which could lead to changes relating to, or elimination of, the AWP pricing benchmark that could alter the financial positions of the parties as intended under this Agreement. The parties agree that their mutual intent has been and is to maintain pricing and financial stability as intended and not to advantage either party to the detriment of the other. Accordingly, to preserve this mutual intent, MedImpact may make the following modifications as reasonably and equitably necessary to maintain the pricing intent under this Agreement: (i) change Pricing Sources, (ii) switch to a new pricing benchmark other than AWP, (iii) maintain AWP as the pricing benchmark with an appropriate adjustment, and/or (iv) modify network rates, rebates, and guarantees. Any such change will be done so as to maintain comparable pricing in the aggregate under this Agreement. MedImpact will provide Client with at least ninety (90) days' notice of any such change (or if such notice is not practicable, as much notice as is reasonable under the circumstances). If Client disputes the financial impact of the change, Client shall notify MedImpact in writing within sixty (60) days of receipt of the notice of change, and the parties shall cooperate in good faith to resolve such dispute.
7. **New Term.** MedImpact may change the Fees hereunder, effective on or after the close of the Initial Term or any Renewal Term of this Agreement, upon not less than one hundred eighty (180) days' notice to Client. If any change in such Fees is not acceptable to Client, then Client shall so notify MedImpact in writing within thirty (30) days of the receipt of the notice of change, in which case the parties shall work together in good faith to resolve the objection. If the parties are unable to resolve the objection, then either party may provide notice of non-renewal/termination in accordance with Section 8 "Notices" of this Agreement. If Client does not timely provide a written objection to MedImpact, the new Fees shall be effective as of the first day of the Renewal Term.
8. **Pharmacy Insolvency.** In the event that a Participating Pharmacy (other than a Client-Contracted Participating Pharmacy) makes an assignment for the benefit of creditors, files a voluntary or involuntary petition in bankruptcy, is adjudicated insolvent or bankrupt, or a receiver or trustee is appointed, MedImpact shall have the right, but not the obligation, to participate in such proceedings on behalf of Client. Should MedImpact elect to participate in such proceedings, MedImpact shall have the right to deduct from any amounts otherwise payable to Client, Client's pro rata share of any reasonable costs and fees (including attorneys' fees) incurred by MedImpact in any such proceedings, and all such amounts shall become immediately due and owing by Client following notification by MedImpact. Notwithstanding the foregoing or any participation by MedImpact in an insolvency proceeding, Client shall retain all liability for payment of Claims, and MedImpact shall have no liability, whatsoever, to any pharmacy, governmental entity, or any other party to an insolvency for amounts owed to pharmacies or Eligible Members, or for MedImpact's share of rebates retained or received under the terms of this Agreement.

9. Independent Sources of Revenue. Nothing in this Agreement shall preclude MedImpact from pursuing independent sources of revenue from pharmaceutical manufacturers, rebate aggregators, and/or intermediaries or from engaging in other revenue-producing relationships with pharmaceutical manufacturers, rebate aggregators, and/or intermediaries.

10. Change in Circumstance. In the event one or more of the following occurs, MedImpact will have the right, upon notice, to make an equitable adjustment to the financial terms of this Agreement (e.g., Claims Processing Fee, other administrative fees, pharmacy rates and/or Dispensing Fees, Rebates, and/or any financial guarantees) as necessary to return MedImpact to its contracted economic position as of the effective date of such event:

- (a) there is a material change in the conditions or assumptions stated in this Agreement or in the size, demographics, and/or gender distribution of Client's membership compared to data/information provided by Client to MedImpact;
- (b) there are not a minimum of 14,104 Eligible Members as of the Implementation Date, or there is a change by at least ten percent (10%) after the first month of the Term;
- (c) Client does not adopt the pharmacy network suggested by MedImpact, Client requires a change to the pharmacy network, there is a significant change to the pharmacy network or ownership of pharmacies in the network outside of MedImpact's control, or the addition of Client-owned or Client-Contracted Participating Pharmacies;
- (d) Client establishes Copayment structures, plan design, or Formulary requirements that do not support Rebate agreements and/or Participating Pharmacy agreements or arrangements;
- (e) Client does not use MedImpact's standard Formulary or changes its Formulary, changes its benefit designs, and/or otherwise takes an action that is not aligned with MedImpact's recommendation on new product(s) to market;
- (f) Eligible Members are part of a 100% Copayment plan;
- (g) partial termination of this Agreement in any way for any reason (for avoidance of doubt, this does not give Client partial termination rights or termination rights beyond those specified in Section 1 "Term" of this Agreement);
- (h) Client makes any change that impacts MedImpact's anticipated economic benefits under this Agreement.
- (i) MedImpact will provide improvements in pricing terms if Client's membership increases by fifteen percent (15%) or more. Improvements will apply on the date that the increase in membership is effective.

11. Market Check. After the first twelve (12) months of the Initial Term, and every other year thereafter, upon Client's request, MedImpact will offer a Market Check proposal (improved terms for the upcoming plan year(s)) that reflects competitive market rates for which Client's elected third party may respond. The market check will determine the competitiveness of the pricing terms set forth in the Agreement by comparing the aggregate value of the upcoming contract year's pricing terms to what Client may receive via a competitive procurement, which will be determined by Client-elected third party using relevant benchmarks offers for plans comparable to Client in enrollment and utilization. MedImpact will provide comments to the Market Check report / request for improvement within ten (10) Business Days of receipt. If Market Check report indicates current market conditions can yield savings of 1% or more in cost net of Rebates (i.e. gross costs including the impact of administrative fees and Rebate guarantees), then the parties will discuss in good faith a revision to the current pricing terms and other applicable contract provisions that will at least match the best offer in the marketplace, including improvements in discount guarantees.

Within thirty (30) days from the date of the Market Check Report is delivered, if Client determines that negotiations are not likely to reach mutual agreement, Client will have the right to terminate the agreement without financial penalty (e.g., loss of rebates earned but not yet paid, repayment of implementation/renewal/ongoing credits). If the Market Check project results in agreement for revised pricing terms, MedImpact will implement the revised pricing terms effective no later than the first day of the contract year for which the Market Check terms are being negotiated (regardless of a signed agreement). MedImpact will send a draft amendment to Client with the revised pricing terms negotiated via the Market Check within ten (10) business days from the date agreement with terms is reached. MedImpact will respond to requests for changes to the draft agreement or amendments within ten (10) business days from the date the questions and/or requests the changes are made.

Exhibit B-5

Credits/Allowances

Pharmacy Management Fund

Client will receive an annual three dollars and fifty cents (\$3.50) per Eligible Member per year (PMPY) (based on eligibility on January 1st each year) pharmacy management fund which can be applied toward the following services:

- Drug File Access fee
- File conversions requiring custom programming (on-going maintenance)
- Physician panel or facility configuration
- Customization of Consumer Portal
- Custom communications including Formulary notifications
- Customization of MedImpact standard reports
- Clinical programs approved by MedImpact
- On-site training
- Consultant or broker fees
- Pre- or post-implementation audit allowance

Requests to apply funds, along with valid receipts from vendors other than MedImpact, must be submitted by Client to MedImpact within one hundred twenty (120) days of the expense being incurred. MedImpact shall make all final payment determinations. For the avoidance of doubt, any unused amounts become null and void upon expiration or termination of this Agreement for any reason.

Exhibit B-6**Generic Dispensing Rate Guarantee (Commercial only)**

Commercial	GDR Guarantee
Retail 30	
Year 1	Prior year + 0.8%
Year 2	Prior year + 0.6%
Year 3	Prior year + 0.7%
Year 4	Prior year + 0.3%
Year 5	Prior year + 0.2%
Retail 90	
Year 1	Prior year + 0.7%
Year 2	Prior year + 0.5%
Year 3	Prior year + 0.6%
Year 4	Prior year + 0.3%
Year 5	Prior year + 0.2%
Mail	
Year 1	Prior year + 0.7%
Year 2	Prior year + 0.5%
Year 3	Prior year + 0.6%
Year 4	Prior year + 0.3%
Year 5	Prior year + 0.2%

Exhibit B-7**Employer Group Waiver Plan Addendum**

WHEREAS, Client provides coverage, including pharmacy coverage, to Eligible Members of Client, some of whom are Medicare-eligible;

WHEREAS, the Centers for Medicare and Medicaid Services (“CMS”) have adopted regulations set forth in 42 C.F.R. Parts 423 (“CMS regulations”) implementing the Medicare Prescription Drug Benefit (“Part D”) established by Section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 as codified in Section 1860D-1 through 1860D-41 of the Social Security Act, which regulations allow for a CMS-approved employer group retiree-only Prescription Drug Program (“Employer Group Waiver Plan PDP” “EGWP”);

WHEREAS, Client intends to offer an EGWP Plan product to Part D Eligible Members, in accordance with CMS regulations; and

WHEREAS, MedImpact Healthcare Systems, Inc. has engaged as a subcontractor MG Insurance Company (“MG”), an approved CMS-contracted PDP sponsor for an EGWP in accordance with CMS regulations, in order to deliver an EGWP to Part D eligible Eligible Members; and

NOW THEREFORE, in consideration of the mutual promises and this Employer Group Waiver Plan (“Addendum”) herein contained, MedImpact and Client hereby agree as follows:

ARTICLE 1 - DEFINITIONS

The capitalized terms used in this Addendum shall have the meanings stated herein. Other terms used in this Addendum shall have the meanings stated in the PDP Final Rules.

- 1.1 Act. The term “Act” shall mean the Medicare Prescription Drug, Improvement and Modernization Act of 2003, as amended from time to time.
- 1.2 Annual LICS Subsidy. The term “Annual LICS Subsidy” shall mean the amount received from or paid to CMS by MG for the low income subsidy Eligible Members based on an annual settlement with CMS.
- 1.3 Annual Reinsurance Subsidy. The term “Annual Reinsurance Subsidy” shall mean the amount received from or paid to CMS by MG based on an annual settlement with CMS (only applicable to calendar year plans).
- 1.4 CMS. The term “CMS” shall mean Centers for Medicare and Medicaid Services.
- 1.5 CMS Contract. The term “CMS Contract” shall mean the written Addendum that CMS-contracted PDP sponsor has entered into with CMS in accordance with the PDP Final Rules, pursuant to which CMS-contracted PDP sponsor is approved as a Part D plan sponsor to offer a Medicare Part D EGWP.
- 1.6 Coverage Gap Discount. The term “Coverage Gap Discount” shall mean any reimbursement

provided by pharmaceutical manufacturers to Part D plan sponsors for claims adjudicated in the Part D coverage gap.

- 1.7 Coverage Cost. The term “Coverage Cost” shall mean the amount due for coverage from Eligible Members.
- 1.8 Direct Subsidy. The term “Direct Subsidy” shall mean monthly payments from CMS received by MG to subsidize the cost of providing prescription drug coverage for VibrantRx.
- 1.9 Enrollment Information. The term “Enrollment Information” shall mean the eligibility and enrollment information to be provided by Client as set forth in Article 2 of this Addendum.
- 1.10 Late Enrollment Penalty. The term “Late Enrollment Penalty” or “LEP” shall mean the amount added to the Part D plan coverage cost of an individual who did not obtain creditable prescription coverage when he or she was first eligible for Part D or who had a break in creditable prescription drug coverage of at least sixty three (63) consecutive days after he or she was eligible for Part D. The LEP is included in the plan coverage cost due from the Eligible Member each month.
- 1.11 LICS Subsidy. The term “LICS Subsidy” shall mean monthly low-income cost share subsidy payments received by MG from CMS, reflecting estimated claim cost sharing elements that CMS is funding for low-income subsidy eligible Eligible Members.
- 1.12 LIPS Subsidy. The term “LIPS Subsidy” shall mean monthly low-income coverage cost subsidy payments received from CMS by MedImpact, reflecting estimated coverage cost contributions that CMS is funding for low-income subsidy eligible Eligible Members.
- 1.13 VibrantRx. For purposes of this Addendum only, the term “VibrantRx” shall mean the Medicare Part D employer group waiver plan sponsored by MG and approved by CMS, which includes, among others, the Formulary, the Participating Pharmacy network, certain clinical programs, and other Services provided for herein.
- 1.14 Eligible Membership Data File. The term “Eligible Membership Data File” shall mean the eligibility and enrollment information confirmed by CMS and communicated to Client in accordance with Section 4.2 of this Addendum.
- 1.15 Miscellaneous Adjustments. The term “Miscellaneous Adjustments” shall mean such positive or negative adjustments, including but not limited to Eligible Member co-payment adjustments, plan-to-plan reconciliations and overpayments.
- 1.16 PDP Final Rules. The term “PDP Final Rules” shall mean the Medicare Prescription Drug Benefit Plan Final Rules contained in 42 CFR Part 423.

ARTICLE 2 - DUTIES TO BE PERFORMED BY CLIENT

- 2.1 Eligible Membership Data File. Client acknowledges and agrees that EGWP Eligible Members are Medicare Part D eligible retirees of Client (and Part D eligible spouses and dependents of such retirees) enrolled in the VibrantRx Plan. Client acknowledges and agrees that Eligible Members shall be limited to those retirees of Client who (i) are Medicare Part D eligible beneficiaries; (ii) are receiving or are eligible to receive coverage under an “employer-sponsored group prescription drug plan” within the meaning of 42 CFR Section 423.454; and (iii) permanently reside in the defined service area of the VibrantRx Plan; and their eligible spouses and dependents. Upon receipt

of the Eligible Membership Data File in accordance with Section 4.2 (Enrollment Information Confirmation/Processing) of this Addendum, Client shall promptly identify and provide to MedImpact missing, incomplete, and/or inaccurate Enrollment Information.

- 2.2 Disenrollment Requests. Client shall accept voluntary disenrollment requests from Eligible Members and will direct all Eligible Members to submit voluntary disenrollment requests directly to Client. When Client receives a voluntary disenrollment request from an Eligible Member, Client will immediately forward such request to MedImpact along with other updated enrollment information.
- 2.3 Disenrollment Information. Client shall provide such information required by MedImpact to submit a complete disenrollment request to CMS and for MedImpact to send required notifications to Eligible Members related to such disenrollment in a timely manner.
- 2.4 Retroactive Enrollment/Disenrollment. Client agrees to provide information required by MedImpact for the timely submission of enrollment and disenrollment requests in order to reduce the occurrence of retroactive enrollment and disenrollment. For example, retroactive enrollment and disenrollment would include those instances where Client has received recorded documentation of an election intention from an Eligible Member up to three (3) months prior to the prospective effective date and the communication of this request from Client to MedImpact was delayed beyond the requested effective date, which may include elections for enrollment, disenrollment, and plan changes.
- 2.5 Coverage Costs. Client shall collect all Coverage Costs from Eligible Members in accordance with all CMS requirements and applicable Laws.
- 2.6 Eligible Member Communications.
- 2.6.1 Upon Addendum of the parties, and receipt of pre-enrollment marketing materials for the VibrantRx Plan from MedImpact, Client shall distribute and/or provide such marketing materials to Client retirees who are eligible to be Eligible Members in accordance with the requirements provided by MedImpact to Client, as may be amended from time to time. Only such marketing materials provided by MedImpact may be used by Client with respect to the VibrantRx Plan. As used in this Addendum, “marketing materials” mean any and all written correspondence or documentation that reference MedImpact or the VibrantRx Plan and/or that are intended to solicit, negotiate, or effectuate Medicare Part D coverage related hereto, and as otherwise defined by CMS, which may include but are not necessarily limited to brochures, letters, PowerPoint presentations, postcards, flyers, facsimiles, applications, and/or other literature. All such marketing materials distributed by Client to potential Eligible Members shall be disseminated in a timely manner and in accordance with CMS requirements.
- 2.6.2 Client acknowledges and agrees certain communications to Eligible Members are required pursuant to CMS requirements, which may include: (i) enrollment and disenrollment procedures, including opt-out procedures and rights; (ii) Eligible Member procedural rights; (iii) potential for contract termination; (iv) benefits; (v) types of pharmacies in the pharmacy network; (vi) out-of-network pharmacy access; (vii) Formulary; (viii) cost-sharing, including rate increase notices; (ix) service area information, (x) evidence of coverage, (xi) explanation of benefits, (xii) transition letters, and (xiii) notifications in response to coverage determinations, appeals, and/or grievances. Unless otherwise agreed to in writing by the parties, Client acknowledges and agrees that MedImpact will send such

communications as set forth herein in accordance with Sections 4.5 and 5.4 of this Addendum. Client further acknowledges and agrees that MedImpact may obtain authorizations from Eligible Members as required for MedImpact to perform the Services provided for in this Addendum or in any amendment or addendum hereto, as well as for MedImpact to contact Eligible Members, their physicians, and Participating Pharmacies in order to perform any of the activities contemplated by this Addendum and/or the VibrantRx Plan. Client agrees that it will not oppose or interfere with the distribution of any documents and/or materials by MedImpact to Eligible Members. Client further agrees to provide, within the time periods required by MedImpact, all information required to make such communications and to distribute such documents and/or materials in a timely manner.

- 2.7 Compliance with Law. Client agrees to comply with all applicable CMS requirements and Laws and to assist and cooperate with MedImpact for its compliance with applicable CMS requirements and Laws. Client acknowledges and agrees that data and information provided in connection with this Addendum is used for purposes of obtaining Federal funds. Client shall certify, based on Client's best knowledge, information, and belief, the accuracy, completeness, and truthfulness of the data and information provided by Client to MedImpact.

ARTICLE 3 - RECORDS

- 3.1 Retention. Client shall maintain all books, records, documents, and evidence of Coverage Costs and related accounting procedures and practices in connection with this Addendum in accordance with Law, and shall keep all other records that must be retained by Law in the format(s) required by Law or at the party's discretion as allowed by Law. Without limiting the generality of the foregoing, Client agrees to maintain for ten (10) years, books, records, and documents related to its obligations under this Addendum, including but not limited to obligations regarding low income subsidy under this Addendum.
- A.
- 3.2 Government Audit Rights. Client shall make its books and other records available in accordance with 42 CFR 423.504(d) and 42 CFR 423.505(d) and (e). In this regard, HHS, the Comptroller General, CMS, and their designees shall have the right to audit, evaluate, and inspect any books, contracts, records, computer or other electronic systems, including medical records and documentation involving transactions related to the VibrantRx Plan and/or this Addendum (including Coverage Costs, low income subsidies, and privacy and security of protected health information and other personally identifiable information, enrollment and disenrollment) and any additional relevant information that CMS may require, and these rights continue for a period of ten (10) years from the final date of the contract period or from the date of completion of any audit, whichever is later. HHS, the Comptroller General, CMS, and their designees shall have direct access (e.g., on site access) to Client, and Client will make such books, records, computer or other electronic systems, directly available to HHS, the Comptroller General, CMS, or their designee for such inspection, evaluation, and audit.

ARTICLE 4 - DUTIES TO BE PERFORMED BY MEDIMPACT

- 4.1 Benefit Plan Administration. MedImpact will be responsible for VibrantRx Plan administration including enrollment/disenrollment processing; billing; customer Service; claims processing and payment; concurrent drug utilization review; fraud, waste and abuse monitoring; e-prescribing; pharmacy network management; rebate administration; and clinical management including medication therapy management. MG shall: (i) retain the sole and absolute authority over the VibrantRx Plan, and (ii) have complete discretionary, binding, and final authority to construe the

terms of the VibrantRx Plan.

- 4.2 Enrollment Information Confirmation/Processing. Upon receipt of complete Enrollment Information from Client, MedImpact will use a group enrollment process to submit the Enrollment Information to CMS on behalf of MG in accordance with CMS requirements for confirmation from CMS as to eligibility status, effective date of enrollment, and eligibility for low income subsidy (“LIS”) for Eligible Members. Following CMS confirmation, MedImpact will provide Client with a list of the Eligible Members, their effective dates of enrollment, and LIS status where applicable (“Eligible Membership Data File”). MedImpact cannot ensure a particular effective date until all Enrollment Information has been provided to, and determined sufficient by CMS.
- 4.3 Disenrollment Requests. Upon receipt of an Eligible Member voluntary disenrollment request, MedImpact (on behalf of MG) shall determine if Eligible Member is eligible for disenrollment at the time requested pursuant to VibrantRx Plan rules regarding enrollment and disenrollment periods.
- 4.4 CMS Required Reporting. MedImpact shall be responsible for preparing and submitting CMS required reporting.
- 4.5 Eligible Member Communications.
- 4.5.1 Pre-Enrollment Marketing Materials. MedImpact shall make available to Client pre-enrollment marketing materials for the VibrantRx Plan, including, but not limited to, VibrantRx Plan description and Eligible Member marketing materials developed by or on behalf of MG in accordance with CMS requirements.
- 4.5.2 CMS Required Communications/Documents. MedImpact, on behalf of MG, shall issue to Eligible Members communications and other documents required by CMS, which may include: (i) enrollment and disenrollment procedures; (ii) Eligible Member procedural rights; (iii) potential for contract termination; (iv) benefits; (v) types of pharmacies in the pharmacy network; (vi) out-of-network pharmacy access; (vii) Formulary; (viii) cost-sharing, including rate increase notices; (ix) service area; and (x) evidence of coverage.
- 4.5.3 Standard Materials. MedImpact will utilize MG standard marketing and their Eligible Member materials and documents. Additional charges may apply in the event that the parties agree upon the development of customized materials and/or documents for Client. Any such customized materials and/or documents shall be approved by MG in writing prior to distribution to Eligible Members.

ARTICLE 5 - CLAIMS AND PAYMENTS

- 5.1 Claims Statements. MedImpact shall provide Client with a statement for the amount due for EGWP Claims (“Statement”) on a weekly cycle; provided, however, that MedImpact may change its Statement cycle upon thirty (30) days prior written notice to Client. Upon receipt of each Statement for Claims, Client shall wire the full amount of the Statement within five (5) Business Days to the bank account designated by MedImpact and established for that purpose. Except as otherwise provided below for manifest material errors, if City has questions regarding any amounts included on the Statement, City is still obligated to pay the full amount of the Statement within the time period set forth herein, and then the parties shall work together in good faith to resolve any such questions. If Client determines there is a manifest material error on the Statement, Client shall notify MedImpact immediately that such amounts will be withheld, and the parties will work together to

promptly resolve the issue. However, Client will release funds sufficient to cover amounts equal to the average of the prior two (2) weekly Statements.

Except as otherwise provided above for manifest material errors, Should Client fail to pay any amount due under this Addendum within the time frame set forth herein, Client shall be subject to interest charged on all amounts due at an amount equal to one and one-half percent (1.5%) per month, to accrue on a daily basis on any unpaid balances and interest payable to Participating Pharmacies as established by CMS 42 CFR § 423.520(e). In addition, Client shall be responsible for all costs of collection and agrees to reimburse MedImpact for such costs and expenses, including reasonable attorneys' fees.

In the event MedImpact renders Claims payments to Participating Pharmacies and/or Eligible Members prior to receipt of Claims payment from Client, such payments shall not constitute a waiver of any of MedImpact's remedies with respect to non-payment and shall not establish a course of dealing between MedImpact and Client.

The parties acknowledge and agree that MG is the CMS approved plan sponsor, which has ultimate financial risk with CMS. In the event MedImpact fails to perform its obligations under this Section 5.1, upon thirty (30) days advance written notice to MedImpact of such failure and such failure remains uncured at the end of the thirty (30) day period, MG may exercise MedImpact's rights and obligations under this Article 5.

- 5.2 Fee Invoices. At the conclusion of each Statement cycle, MedImpact will invoice Client for all fees and charges ("Invoice") set forth in Article 8 of this Exhibit B-7. Client shall pay such Invoices by wire transfer of funds as directed by MedImpact within five (5) Business Days of receipt. Annual fees, also set forth in Article 8 of this Exhibit B-7, will be charged on the initial Invoice, and thereafter on the Invoice for the first month of each new Agreement year, and monthly fees will be charged the month following the month in which the Service is provided.
- 5.3 CMS Paid Funds Passed-Through to Client. Client acknowledges that MG is the Plan Sponsor of record with CMS and as such payments from CMS will be made to MG. MG will direct MedImpact to pay to Client the sums below applicable to Eligible Members in VibrantRx within (10) Business Days of receipt from CMS and will provide the CMS MMR and PPR files to Client for purposes of reconciliation. Client acknowledges and agrees that although CMS publishes a schedule of anticipated payment dates, the schedule is subject to change and payment timing is at the discretion of CMS; payment delays on the part of CMS will result in payment delays to the Client and MedImpact, shall have no liability to Client for any such delays. The following are the types of funds MG may receive from CMS that will be paid to Client pursuant to this Section 5.3:
- 5.3.1 Direct Subsidy. Client agrees and acknowledges that the Direct Subsidy is calculated based on the CMS assigned risk score and the subsidy could be increased or reduced based on that assignment in CMS' sole discretion. Client further acknowledges that MedImpact cannot influence or change the risk score.
- 5.3.2. LICS Subsidy. Client agrees that it will comply with CMS requirements and Laws applicable to LICS Subsidy payments.
- 5.3.3 LIPS Subsidy. Client agrees that it will comply with CMS requirements and Laws applicable to LIPS Subsidy payments, including, but not limited to, the following:

5.3.3.1 MedImpact on behalf of MG shall identify in its Statements sent to Client those

Eligible Members that it is notified by CMS that are LIS-eligible beneficiaries, and the amount of the LIPS Subsidy applicable to such LIS-eligible Eligible Members. Client agrees to deduct from Coverage Costs invoiced to LIS-eligible beneficiary Eligible Members any LIPS Subsidies for LIS-eligible beneficiary Eligible Members, which MedImpact shall show in a monthly statement to Client as and when received from CMS so that Client can ensure that the value of the subsidy is passed through to Eligible Members.

- 5.3.3.2 Client shall periodically reconcile Coverage Cost Statements and payments to take into account any CMS corrections with respect to LIS status. In all cases, Client shall refund any LIPS Subsidy amounts owing to an Eligible Member to the Eligible Member within (45) days from the date that MG receives from CMS the LIPS Subsidy amount payment for such Eligible Member.
- 5.3.3.3 Client acknowledges and agrees that if the total amount of the Coverage Cost (which includes the portion paid by the Eligible Member and the portion paid by Client) is less than the monthly LIPS Subsidy amount, any portion of the LIPS Subsidy amount above the total monthly Coverage Cost must be returned to CMS. Similarly, if there is no Coverage Cost charged to the Eligible Member or paid by Client, the entire LIPS Subsidy amount must be returned to CMS and cannot be retained by Client or Eligible Member. Client shall work diligently and in good faith with MedImpact to return any LIPS Subsidy amounts that are required to be returned to CMS.
- 5.3.3.4 If LIPS Subsidy amount for which a Eligible Member is eligible is less than the portion of the monthly Coverage Cost paid by the Eligible Member, the Client shall communicate to the Eligible Member the financial consequences of the LIS-eligible Eligible Member enrolling in the VibrantRx Plan as compared to enrolling in another PDP with a monthly Coverage Cost equal to or below the LIPS Subsidy amount.
- 5.3.4 Coverage Gap Discount. Client acknowledges that MG is the plan sponsor of record with CMS and as such payments from the vendor that processes coverage gap discount payments on CMS' behalf will be paid to MedImpact on a quarterly basis. MedImpact on behalf of MG, will pass through these payments to Client within ten (10) days of receipt and will provide reconciliation to the Client for such payments.
- 5.3.5 Annual Reinsurance Subsidy. Client acknowledges that MG and CMS will conduct an annual reinsurance settlement based on Client's claims experience. MedImpact, on behalf of MG, will pay any amounts due to the Client as a result of this settlement within ten (10) Business Days of receipt from CMS.
- 5.4 Late Enrollment Penalties. MedImpact will provide a monthly file of beneficiaries who owe a Late Enrollment Penalty to the Client. Client will be responsible for collecting the LEP from Eligible Members. Regardless of whether Client collects the LEP from Eligible Members, Client shall remit the total LEP amount due from Eligible Members to MedImpact no later than the 15th day of each month.
- 5.5 CMS Reconciliations Resulting in Money Owed To or From Client. Client acknowledges that throughout the plan year, there may be additional money that is owed to CMS from Client or from CMS to Client (e.g., the Annual LICS Subsidy; Miscellaneous Adjustments). As the plan sponsor of record, MG will receive any funds due from CMS on behalf of Client and MedImpact, on behalf of MG, will pay those funds to Client within (10) Business Days of receipt. Conversely, if Client

owes money to CMS, Client will remit such funds to MedImpact for payment to CMS within (10) Business Days of notice by MedImpact, that such funds are owed by Client.

5.7 Offset. In the event of any uncured payment default, Client hereby authorizes MG and/or MedImpact, as applicable, to offset the amount of such payment defaults and collection costs against any Client related amounts otherwise payable to Client (including, without limitation, CMS paid funds to be passed through to Client as described in Section 5.3 and any rebate amounts) or Client's deposit (as described in Section 5.8 below), if any.

5.8 Security Deposits. Should Client fail to pay any amount due under this Agreement within the time frame set forth herein for two (2) consecutive payment periods, MedImpact shall have the option to require Client to provide MedImpact a deposit in an amount equal to twice the average Statement amount over the previous six (6) months, or, if there is less than six (6) months billing history, then such deposit shall be twice the average Statement amount over the actual billing history.

ARTICLE 6 - TERM AND TERMINATION

6.1 Annual Changes. On an annual basis, MedImpact may notify Client in writing of any changes to the VibrantRx Plan and pricing contained in Article 8 of this Exhibit B-7 (as amended hereunder) for the upcoming Renewal Term at least thirty (30) days prior to the beginning of the CMS PDP Annual Coordinated Election Period that precedes the Renewal Term. In the event Client objects to any such modifications in the VibrantRx Plan or pricing, Client shall have fifteen (15) days after receipt of the notice of such change to provide a written notice to MedImpact seeking a modification and/or termination of this Addendum. If (i) Client does not timely seek a modification or termination as set forth herein or (ii) Client does seek a modification, but the parties do not agree in writing to a modification and Client fails to terminate the Addendum in writing within such fifteen (15) day period, this Addendum shall continue in effect under the Renewal Term based on the revised VibrantRx Plan and pricing provided by MedImpact to Client. In such case, Article 8 shall be deemed so modified without further writing or signature. In the event that CMS does not release information necessary for MedImpact to provide VibrantRx Plan and pricing changes for a Renewal Term in sufficient time for MedImpact to satisfy the notification requirements set forth in this provision, the parties will mutually agree to a modification of such time frames consistent with applicable CMS requirements.

6.2 CMS Contract Termination. In the event MG does not execute its CMS Contract for any year, or in the event the CMS Contract is terminated or expires after the Effective Date of this Addendum, this Addendum shall terminate concurrently with termination of the CMS Contract.

6.3 Immediate Termination. This Addendum may be terminated immediately upon written notice by one party to the other party as follows:

- a. By either party, if the other party commits any fraud in connection with the duties, Services, or actions being performed on behalf of the other party under this Addendum.
- b. By MedImpact, if Client publishes, distributes, or uses any marketing materials or other materials referring to MedImpact or the VibrantRx Plan without MedImpact's express prior written consent.
- c. By MedImpact, if Client communicates with any Eligible Member or potential Eligible Member for the purpose of replacing, canceling, or otherwise terminating participation in the VibrantRx Plan.

- d. By MedImpact, if MG loses its authority to offer an EGWP within the states in which Client operates.

6.4 Effect of Addendum Termination. If this Addendum is terminated: (i) MedImpact shall have the right to disenroll Eligible Members from the VibrantRx Plan in accordance with MedImpact’s policies and procedures and CMS requirements; (ii) MedImpact may continue its relationship with Eligible Members upon the termination of their enrollment in the VibrantRx Plan and subject to CMS requirements shall continue in effect until the end of the calendar year in which the termination is effective; (iii) all further obligations of the parties under this Addendum shall terminate but no termination under this Addendum shall affect the rights and obligations of the parties accruing prior to the effective date of such termination; (iv) termination will not affect any right to offset hereunder.

ARTICLE 7 – GENERAL PROVISIONS

- 7.1 Exclusivity. During the term of this Addendum, Client agrees that it shall not sponsor, endorse, or offer any competing Part D EGWP plan to Eligible Members or prospective Eligible Members or provide any incentive, financial or otherwise, for enrolling in a Part D EGWP plan other than the VibrantRx.
- 7.2 CMS Release of Information. Notwithstanding anything to the contrary herein, the parties agree that CMS may release contact information to states, state pharmaceutical assistance programs (“SPAP”s), providers, Part D plan sponsors, and others who need the contact information for legitimate purposes to the extent required by CMS.

ARTICLE 8 - EGWP ADMINISTRATIVE FEE

The all-inclusive administrative fee of \$10.00 per Eligible Member per month (PMPM) includes these Services:

1. Best Available Evidence
2. Choice 90 Optimization
3. CMS Required Reporting - Coverage Determinations & Redeterminations (CDR), Re-Openings, Grievances, Opioid utilization reporting – IDURC
4. Coordination of Benefits and Coordination of Benefits Recovery
5. Coverage Determinations & Redeterminations (CDR)
6. Coverage Gap Discount
7. Daily Cost Sharing
8. Denied Claims Management
9. DIR
10. DMR (Direct member reimbursement)
11. Eligibility and Enrollment Processing with CMS
12. Emergency Preparedness
13. End Stage Renal Disease Processing and Recovery
14. Excluded Provider and Precluded Provider Processing
15. Financial Information Reporting
16. Foreign Language / Alternate Format Requirements
17. Formulary Management including wrap
18. Grievance and CTM Management
19. Hospice Processing and Recovery
20. LTC (Long Term Care) Processes and Reporting
21. Maximum Out-of-Pocket

22. MedAdjust
23. MedPrescription™ Insight Program
24. Member Explanation of Benefits
25. MTMP (Medication Therapy Management Program)
26. Network Compliance and Fraud, Waste and Abuse – Standard
27. Opioid utilization – IDURC
28. Perpetual Grandfathering
29. Pharmacy Directory
30. Prescriber Validation
31. Prescription Drug Event
32. Prompt Payment of Pharmacy Claims
33. Regulatory Compliance
34. Short Cycle Dispensing in the LTC Setting
35. Straddle Claim Processing
36. Subsidy Management and Reporting
37. Transition of Care
38. TrOOP Facilitation / Nx Transactions
39. Utilization Management
40. Vaccine Administration

EXHIBIT C
MESA STANDARD TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR.** It is expressly understood that the relationship of Contractor to the City will be that of an independent contractor. Contractor and all persons employed by Contractor, either directly or indirectly, are Contractor's employees, not City employees. Accordingly, Contractor and Contractor's employees are not entitled to any benefits provided to City employees including, but not limited to, health benefits, enrollment in a retirement system, paid time off or other rights afforded City employees. Contractor employees will not be regarded as City employees or agents for any purpose, including the payment of unemployment or workers' compensation. If any Contractor employees or subcontractors assert a claim for wages or other employment benefits against the City, Contractor will defend, indemnify, and hold harmless the City from all such claims.
2. **SUBCONTRACTING.** Contractor may not subcontract work under this Agreement without the express written permission of the City. If Contractor has received authorization to subcontract work, it is agreed that all subcontractors performing work under the Agreement must comply with its provisions. Further, all agreements between Contractor and its subcontractors must provide that the terms and conditions of this Agreement be substantially incorporated therein.
3. **ASSIGNMENT.** This Agreement may not be assigned, either in whole or in part, without first receiving the City's written consent. Any attempted assignment, either in whole or in part, without such consent will be null and void and in such event the City will have the right, at its option, to terminate the Agreement. No granting of consent to any assignment will relieve Contractor from any of its obligations and liabilities under the Agreement.
4. **SUCCESSORS AND ASSIGNS, BINDING EFFECT.** This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.
5. **NO THIRD-PARTY BENEFICIARIES.** This Agreement is intended for the exclusive benefit of the parties. Nothing set forth in this Agreement is intended to create, or will create any benefits, rights, or responsibilities in any third parties.
6. **NON-EXCLUSIVITY.** The City, in its sole discretion, reserves the right to request the materials or services set forth herein from other sources when deemed necessary and appropriate. No exclusive rights are encompassed through this Agreement. **AMENDMENTS.** There will be no oral changes to this Agreement. This Agreement can only be modified in a writing signed by both parties. No charge for extra work or material will be allowed unless approved in writing, in advance, by the City and Contractor.
7. **TIME OF THE ESSENCE.** Time is of the essence to the performance of the parties' obligations under this Agreement.
8. **COMPLIANCE WITH APPLICABLE LAWS.**
 - a. **General.** Contractor must procure all permits/licenses and pay all charges and fees necessary and incidental to the lawful conduct of business. Contractor must stay fully informed of existing and future federal, state, and local laws, ordinances, and regulations that in any manner affect the fulfillment of this Agreement and must comply with the same at its own expense. For avoidance of doubt, in the event compliance with future law, ordinance, or regulation requires provision of new services to City, Contractor may establish a fee and the parties shall amend this Agreement to incorporate such new service and fee. The parties acknowledge and agree that such fee is not prohibited or in conflict with this Section 9.a. ("General.") Contractor bears full responsibility for training, safety, and providing necessary equipment for all Contractor personnel to achieve compliance throughout the term of the Agreement. Upon request, Contractor will demonstrate to the City's satisfaction any programs, procedures, and other activities used to ensure compliance.
 - b. **Drug-Free Workplace.** Contractor is hereby advised that the City has adopted a policy establishing a drug-free workplace for itself and those doing business with the City to ensure

the safety and health of all persons working on City contracts and projects. Contractor will require a drug-free workplace for all Contractor personnel working under this Agreement. Specifically, all Contractor personnel who are working under this Agreement must be notified in writing by Contractor that they are prohibited from the manufacture, distribution, dispensation, possession, or unlawful use of a controlled substance in the workplace. Contractor agrees to prohibit the use of intoxicating substances by all Contractor personnel and will ensure that Contractor personnel do not use or possess illegal drugs while in the course of performing their duties.

- c. **Federal and State Immigration Laws.** Contractor agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this Agreement and to permit the City and its agents to inspect applicable personnel records to verify such compliance as permitted by law. Contractor will ensure and keep appropriate records to demonstrate that all Contractor personnel have a legal right to live and work in the United States.
- i. As applicable to Contractor, under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor will comply with, and subcontractors are contractually obligated to comply with, all federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter collectively the "Contractor Immigration Warranty").
 - ii. A breach of the Contractor Immigration Warranty will constitute a material breach of this Agreement and will subject Contractor to penalties up to and including termination of this Agreement at the sole discretion of the City.
 - iii. For the specific purpose of ensuring Contractor and its subcontractors are complying with the Contractor Immigration Warranty, the City may conduct random verification of certain employment records of any Contractor employee who works on this Agreement and may request verification of subcontractor compliance for those subcontractor employees who work on this Agreement. Contractor agrees to assist the City in regard to any random verification performed.
 - iv. Neither Contractor nor any subcontractor will be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by Sections 274a and 274b of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214(A).
- d. **Nondiscrimination.** Contractor understands and acknowledges that it is the policy of the City of Mesa to promote non-discrimination. As such, Contractor represents and warrants that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, national origin, age, disability, religion, sex, sexual orientation, gender identity and expression, veterans' status, marital status, or genetic information, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. In performance under this Agreement, Contractor and Contractor's personnel will comply with applicable provisions of the following laws (as amended): Title VII of the U.S. Civil Rights Act of 1964, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 *et seq.*), and any other applicable non-discrimination laws and rules.
- e. **State Sponsors of Terrorism Prohibition.** Per A.R.S. § 35-392, Contractor must not be in violation of section 6(j) of the Federal Export Administration Act and subsequently prohibited by the State of Arizona from selling goods or services to the City.
- f. **Israel Boycott Divestments.** In accordance with the requirements of A.R.S. § 35-393.01, if the Agreement requires Contractor to acquire or dispose of services, supplies, information technology or construction with a value of \$100,000 or more, then, by entering into this

Agreement, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Agreement to not engage in, a boycott of goods and services from Israel.

9. **SALES/USE TAX, OTHER TAXES.**

- a. Contractor is responsible for the payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's services under this Agreement including, by way of illustration but not limitation, federal and state income tax, Social Security tax, unemployment insurance taxes, and any other taxes or business license fees, as required. If any taxing authority should deem Contractor or Contractor employees an employee of the City or should otherwise claim the City is liable for the payment of taxes that are Contractor's responsibility under this Agreement, then Contractor will indemnify the City for any tax liability, interest, and penalties imposed upon the City.
- b. The City is exempt from paying certain federal excise taxes and will furnish an exemption certificate upon request. The City is not exempt from state and local sales/use taxes. City shall be responsible for paying sales tax, if any, on prescription drugs pursuant to this Agreement.

10. **AMOUNTS DUE THE CITY.** Contractor must be current and remain current in all obligations, whether or not related to the Agreement, due to the City during the performance of services under the Agreement. Payments to Contractor may be offset by any delinquent amounts due the City or fees and charges owed to the City.

11. **PUBLIC RECORDS.** Contractor acknowledges that the City is a public body, subject to Arizona's public records laws (A.R.S. § 39-121 *et seq.*) and any documents related to this Agreement may be subject to disclosure pursuant to state law in response to a public records request or to subpoena or other judicial process.

- a. If Contractor believes documents related to the Agreement contain trade secrets or other proprietary data, Contractor must have notified the City pursuant to Mesa Procurement Rules Section 2.1 or notified the City with a notification statement specifically identifying the trade secrets or other proprietary data that Contractor believes should remain confidential.
- b. In the event the City determines it is legally required to disclose pursuant to law any documents or information Contractor deems confidential trade secrets or proprietary data, the City, to the extent possible, will provide Contractor with prompt written notice by certified mail, fax, email or other method that tracks delivery status of the requirement to disclose the information so Contractor may seek a protective order from a court having jurisdiction over the matter or obtain other appropriate remedies. The notice will include a time period for Contractor to seek court ordered protection or other legal remedies as deemed appropriate by Contractor. If Contractor does not obtain such court ordered protection by the expiration of said time period, the City may release the information without further notice to Contractor.

12. **AUDITS AND RECORDS.** Contractor must preserve the records related to this Agreement for six (6) years after completion of the Agreement. The City or its authorized agent reserves the right to inspect any records related to the performance of work specified herein. In addition, the City may inspect all payroll, billing or other relevant records kept by Contractor in relation to the Agreement. Contractor will permit such inspections and audits during normal business hours and upon reasonable notice by the City. The audit of records may occur at Contractor's place of business or at City offices, as determined by the City.

13. **BACKGROUND CHECK.** In accordance with the City's current background check policies, the City may conduct criminal, driver history, and all other requested background checks of Contractor personnel who would perform services under the Agreement who will have access to the City's information, data, or facilities. Any officer, employee, or agent that fails the background check must be replaced immediately for any reasonable cause not prohibited by law.

14. **SECURITY CLEARANCE AND REMOVAL OF CONTRACTOR PERSONNEL.** The City will have final authority, based on security reasons: (i) to determine when security clearance of

Contractor personnel is required; (ii) to determine the nature of the security clearance, up to and including fingerprinting Contractor personnel; and (iii) to determine whether any individual or entity may provide services under this Agreement. If the City objects to any Contractor personnel for any reasonable cause not prohibited by law, then Contractor will, upon notice from the City, remove any such individual from performance of services under this Agreement.

15. **DEFAULT.**

- a. A party will be in default of the Agreement if that party:
 - i. Is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's capability to perform under the Agreement;
 - ii. Is the subject of a petition for involuntary bankruptcy not removed within sixty (60) calendar days;
 - iii. Conducts business in an unethical manner as set forth in the City Procurement Rules Article 7 or in an illegal manner; or
 - iv. Fails to carry out any term, promise, or condition of the Agreement.
- b. Contractor will be in default of this Agreement if Contractor is debarred from participating in City procurements and solicitations in accordance with Article 6 of the City's Procurement Rules.
- c. **Notice and Opportunity to Cure.** In the event a party is in default then the other party will provide written notice to the defaulting party of the default. The defaulting party will have thirty (30) days from receipt of the notice to cure the default, unless the default is of a nature that it is reasonably anticipated to affect the health, safety or welfare of the public and, in such an event, the non-defaulting party may require a minimum seven (7) days to cure the default from the date of receipt of the notice; the cure period may be extended by mutual agreement of the parties, but no cure period may exceed ninety (90) days. A default notice will be deemed to be sufficient if it is reasonably calculated to provide notice of the nature and extent of such default. Failure of the non-defaulting party to provide notice of the default does not waive any rights under the Agreement. Failure of the defaulting party to cure the default will entitle the non-defaulting party to the election of remedies specific to the party as set forth in section 17 below.
- d. **Anticipatory Repudiation.** Whenever the City in good faith has reason to question Contractor's intent or ability to perform, the City may demand that Contractor give a written assurance of its intent and ability to perform. In the event demand is made and no written assurance is given within ten (10) calendar days, the City may treat this failure as an anticipatory repudiation of the Agreement entitling the City to terminate the Agreement in accordance with section 17(a) below.

16. **REMEDIES.** The remedies set forth in this Agreement are not exclusive. Election of one remedy will not preclude the use of other remedies. In the event of default:

- a. The non-defaulting party may terminate the Agreement, and the termination will be effective immediately or at such other date as specified by the terminating party.
- b. The non-defaulting party will have all other rights granted under this Agreement and all rights at law or in equity that may be available to it.
- c. Neither party will be liable for incidental, special, or consequential damages.

17. **CONTINUATION DURING DISPUTES.** Contractor agrees that during any dispute between the parties, Contractor will continue to perform its obligations until the dispute is settled, instructed to cease performance by the City, enjoined or prohibited by judicial action, or otherwise required or obligated to cease performance by other provisions in this Agreement. City agrees that during any

dispute between the parties, Cities will continue to perform its obligations to pay in accordance with the Agreement.

18. **TERMINATION FOR CONVENIENCE.** After the first twelve (12) months of the Agreement, the City reserves the right to terminate this Agreement, in part or in whole, for its sole convenience upon thirty (30) calendar days' written notice. Contractor acknowledges that, as with any termination permitted under this Agreement, in the event of a termination for convenience, Contractor is only entitled to payment in accordance with section 22 (Payment to Contractor Upon Termination); Contractor will not be entitled to any anticipated lost profits had the Agreement been performed to completion.
19. **TERMINATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511).** Pursuant to A.R.S. § 38-511, the City may cancel this Agreement within three (3) years after its execution, without penalty or further obligation, if any person significantly involved in initiating, securing, drafting, or creating the Agreement for the City becomes an employee or agent of Contractor.
20. **TERMINATION FOR NON-APPROPRIATION AND MODIFICATION FOR BUDGETARY CONSTRAINT.** The City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If the City reasonably determines it does not have funds to meet its obligations under this Agreement, the City will have the right to terminate the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, the City agrees to provide written notice of its intent to terminate thirty (30) calendar days prior to the stated termination date.
21. **PAYMENT TO CONTRACTOR UPON TERMINATION.** Upon termination of this Agreement for any reason, Contractor will be entitled only to payments authorized under the Agreement for those services performed or materials provided in accordance with the Agreement up to the date of termination, and any authorized expenses already incurred up to such date of termination. The City will make final payment within thirty (30) calendar days after the City has both completed its appraisal of the materials and services provided and received Contractor's properly prepared final invoice.
22. **TERMINATION RUN-OFF PLAN.** Upon termination of this Agreement, the parties will mutually develop a run-off plan providing for: (i) Client's notification to Eligible Members of the timing of any transition to a successor pharmacy benefit administrator/manager at least thirty (30) days prior to the effective date of such termination; and (ii) MedImpact's provision of standard claims data and open prior authorization files for transition to the successor pharmacy benefit administrator/manager in accordance with MedImpact's standard protocol. Upon termination of this Agreement, MedImpact will process only those Claims which are for prescriptions dispensed before the termination date and which are received by MedImpact within ninety (90) days of the termination date. DMR's will be processed by MedImpact for six (6) months post termination. Any Claims submitted and processed after the termination date will be billed and paid for by Client consistent with the terms for pre-termination Claims, and the processing and payment of any Claims received more than ninety (90) days after termination shall be the sole responsibility of Client. Client will pay MedImpact in accordance with this Agreement for any Fees for Services provided during any run-off period.
23. **POST-TERMINATION SERVICES/ACCESS.** MedImpact will provide to Client certain post-termination claim processing services at its then current fees for up to six months post termination, which shall be agreed upon in a separate writing. Unless otherwise specified in such writing, Client shall remit to MedImpact the fees for such services in accordance with the timeframes outlined in Section 5 "Payment" of this Agreement. MedImpact will provide, in a HIPAA-compliant format and within thirty (30) days of request, data to succeeding PBM to help with transition, which may include but not be limited to the following: 24-months of historical paid claims data, open refill mail-order pharmacy prescriptions, open refill specialty pharmacy prescriptions, address files, prior eligibility data, and drug-specific coverage approvals with effective and term dates. Client will not have

access to any MedImpact systems (including MedAccess®) post-termination unless otherwise agreed to by MedImpact prior to the termination date.

24. **NON-WAIVER OF RIGHTS.** There will be no waiver of any provision of this Agreement unless approved in writing and signed by the waiving party. Failure or delay to exercise any rights or remedies provided herein or by law or in equity, or the acceptance of, or payment for, any services hereunder, will not release the other party of any of the warranties or other obligations of the Agreement and will not be deemed a waiver of any such rights or remedies.
25. **INDEMNIFICATION; LIABILITY.**
- a. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold harmless the City, its elected officials, agents, representatives and employees (collectively, including the City, "City Personnel") from and against any and all liabilities, demands, claims, suits, penalties, obligations, losses, damages, causes of action, fines or judgments of any kind, including reasonable costs, attorneys', witnesses' and expert witnesses' fees, and expenses incident thereto (all of the foregoing, collectively "Claims") imposed upon or asserted against City Personnel by a third party relating to, arising out of or resulting from, in whole: (i) services or materials provided under this Agreement by Contractor or its officers', agents', or employees' (collectively, including Contractor, "Contractor Personnel"); (ii) negligent acts, errors, mistakes or omissions of Contractor Personnel; or (iii) failure of Contractor Personnel to comply with or fulfill the obligations established by this Agreement. Contractor's indemnification, duty to defend and hold harmless City Personnel in this Subsection (a) will apply to all Claims against City Personnel except Claims arising solely from the negligence or intentional acts of City Personnel.
 - b. The City assumes no liability for the actions of Contractor Personnel and will not indemnify or hold Contractor Personnel or any third party harmless for Claims relating to, arising out of, or resulting from, in whole or in part, this Agreement or use of Contractor Personnel-provided services or materials.
 - c. City of Mesa shall indemnify and hold Contractor, and its officers, directors, shareholders, employees, successors, agents, and assigns ("Contractor Indemnitees"), harmless from and against any third-party claims, liabilities, damages, judgments, or other losses (including attorneys' fees) imposed upon or incurred by Contractor Indemnitees arising out of or as a result of any intentional acts or negligence of City of Mesa, or its officers, directors, employees, or other agents in connection with the performance of any of their respective obligations under this Agreement, including, without limitation, (i) the provision of inaccurate, untimely, incomplete, and/or false information (including but not limited to implementation forms, Eligible Member Lists, and Benefit Plan Information); and/or (ii) Contractor's reliance on City of Mesa instructions in providing Services hereunder.
 - d. City of Mesa acknowledges and agrees that Contractor shall have the right to rely on the information and instructions provided by City of Mesa in connection with this Agreement and the services provided hereunder. Failure of City of Mesa to timely provide the required information required by Contractor in a format acceptable to Contractor may result in postponement of the scheduled Implementation Date (or change date for updated information). City of Mesa acknowledges and agrees that Contractor may provide participating pharmacies and/or subcontractors with access to City eligible member list information, benefit plan information, and claims data, and that Contractor and the participating pharmacies and/or subcontractors are entitled to rely on the accuracy and completeness of the information provided by City of Mesa, whether provided electronically, manually, or otherwise. Further, Contractor shall have the right to rely on instructions from City of Mesa in connection with the provision of services hereunder. This does not give City of Mesa the right to impose requirements on Contractor beyond those specified in this Agreement.
26. **WARRANTY.** Contractor warrants that the services and materials will conform to the requirements of the Agreement. Additionally, Contractor warrants that all services will be performed in a quality and professional manner. The City's acceptance of services or materials provided by Contractor

will not relieve Contractor from its obligations under this warranty. If the City reasonably determines any materials or services are of a substandard or unsatisfactory manner, Contractor, at no additional charge to the City, will provide materials or redo such services until in accordance with this Agreement and to the City's reasonable satisfaction.

Unless otherwise agreed, Contractor warrants that materials will be new, unused, of most current manufacture and not discontinued, will be free of defects in materials and workmanship, will be provided in accordance with manufacturer's standard warranty for at least one (1) year unless otherwise specified, and will perform in accordance with manufacturer's published specifications.

27. **THE CITY'S RIGHT TO RECOVER AGAINST THIRD PARTIES.** Contractor will do nothing to prejudice the City's right to recover against third parties for any loss, destruction, or damage to City property and will, at the City's request and expense, furnish to the City reasonable assistance and cooperation in obtaining recovery, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the City.
28. **NO GUARANTEE OF WORK.** Contractor acknowledges and agrees: (i) it is not entitled to deliver any specific amount of materials or services, or any materials or services at all, under this Agreement; and (ii) the materials or services will be requested by the City on an as needed basis, at the sole discretion of the City. Any document referencing quantities or performance frequencies represent the City's best estimate of current requirements, but will not bind the City to purchase, accept, or pay for materials or services which exceed its actual needs.
29. **OWNERSHIP.** All deliverables, services, and information provided by Contractor or the City pursuant to this Agreement (whether electronically or manually generated) including without limitation, reports, test plans, and survey results, graphics, and technical tables, originally prepared in the performance of this Agreement, are the property of the City and will not be used or released by Contractor or any other person except with prior written permission by the City. For avoidance of doubt, Contractor pharmacy claims pricing included in deliverables, services and information (but excluding drug pricing estimates provided to covered members in Contractor's website portal customer service call center) is proprietary and confidential to Contractor and is not the property of the City and will not be used or released by the City or any other person except with the prior written permission by Contractor and/or subject to such person executing a non-disclosure agreement with Contractor. MedImpact will not sell City data to MedImpact contracted vendors or pharmaceutical manufactures without written City approval.
30. **USE OF NAME.** Contractor will not use the name of the City of Mesa in any advertising or publicity without obtaining the prior written consent of the City. City of Mesa will not use the name of Contractor in any advertising or publicity without obtaining the prior written consent of Contractor.
31. **PROHIBITED ACTS.** Contractor acknowledges the applicability of A.R.S. § 38-504 which prohibits a person who, within the preceding twelve (12) months, is or was a public officer or employee of the City from representing another person (including Contractor) before the City on any matter for which the officer or employee was directly concerned and personally participated in during their service or employment by a substantial and material exercise of administrative discretion. Further, while employed by the City and for two (2) years thereafter, public officers or employees are prohibited from disclosing or using, without appropriate authorization, any confidential information acquired by such person in the course of his or her official duties at the City.
32. **FOB DESTINATION FREIGHT PREPAID AND ALLOWED.** All deliveries will be FOB destination freight prepaid and allowed unless otherwise agreed.
33. **RISK OF LOSS.** Contractor agrees to bear all risk of loss, injury, or destruction of Contractor's goods or equipment incidental to Contractor providing the services and materials under this Agreement and such loss, injury, or destruction will not release Contractor from any obligation hereunder.
34. **SAFEGUARDING CITY PROPERTY.** Contractor will be responsible for any damage or loss to City real or personal property when such property is the responsibility of or in the custody of **Contractor or its personnel.**

35. **WARRANTY OF RIGHTS.** Contractor warrants it has title to, or the right to allow the City to use, the materials and services being provided, and that the City may use same without suit, trouble, or hindrance from Contractor or third parties.
36. **PROPRIETARY RIGHTS INDEMNIFICATION.** Without limiting the warranty in section 34, Contractor will without limitation and at its expense defend the City against all claims asserted by any person that anything provided by Contractor infringes a patent, copyright, trade secret or other intellectual property right and must, without limitation, pay the costs, damages and attorneys' fees awarded against the City in any such action, or pay any settlement of such action or claim. Each party agrees to notify the other promptly of any matters to which this provision may apply and to cooperate with each other in connection with such defense or settlement. If a preliminary or final judgment is obtained against the City's use or operation of the items provided by Contractor hereunder or any part thereof by reason of any alleged infringement, Contractor will, at its expense and without limitation, either: (a) modify the item so that it becomes non-infringing; (b) procure for the City the right to continue to use the item; (c) substitute for the infringing item other item(s) having at least equivalent capability; or (d) refund to the City an amount equal to the price paid, less reasonable usage, from the time of installation acceptance through cessation of use, which amount will be calculated on a useful life not less than five (5) years, plus any additional costs the City may incur to acquire substitute supplies or services.
37. **CONTRACT ADMINISTRATION.** The contract will be administered by the applicable Purchasing Officer and/or an authorized representative from the using department (collectively "Contractor Administrators"); all questions regarding the Agreement will be referred to the Contract Administrators. If authorized by the Contract Administrators, supplements or amendments may be written to the Agreement for the addition or deletion of services. Payment will be negotiated and determined by the Contract Administrators.
38. **FORCE MAJEURE.** Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, acts of terrorism, riots, fire, explosion, legislation, floods, earthquakes, epidemics, pandemics or outbreak of communicable disease (weather arising from known or unknown pathogens), and/or governmental regulation. The party whose performance is so affected will, within five (5) calendar days of the unforeseeable circumstance, notify the other party of all pertinent facts and identify the force majeure event. The party whose performance is so affected must also take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so or to minimize or eliminate the effect thereof. The delivery or performance date will be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay, provided however, under no circumstances will delays caused by a force majeure extend beyond one hundred-twenty (120) calendar days from the scheduled delivery or completion date of a task unless agreed upon by the parties. As soon as the force majeure conditions cease, the parties shall resume their respective obligations as set forth under this Agreement.
39. **COOPERATIVE USE OF CONTRACT.** The City has entered into various cooperative purchasing agreements with other Arizona government agencies, including the Strategic Alliance for Volume Expenditures (SAVE) cooperative. Under the SAVE Cooperative Purchasing Agreement, any contract may be extended for use by other municipalities, school districts and government agencies in the State of Arizona with the approval of Contractor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency.

The City currently holds or may enter into Intergovernmental Governmental Agreements (IGA) with numerous governmental entities. These agreements allow the entities, with the approval of Contractor, to purchase their requirements under the terms and conditions of this Agreement.

A contractor, subcontractor or vendor or any employee of a contractor, subcontractor or vendor who is contracted to provide services on a regular basis at an individual school shall obtain a valid fingerprint clearance card pursuant to title 41, chapter 12, article 3.1. A school district governing board shall adopt policies to exempt a person from the requirements of this subsection if the

person's normal job duties are not likely to result in independent access to or unsupervised contact with pupils. A school district, its governing board members, its school council members, and its employees are exempt from civil liability for the consequences of adoption and implementation of policies and procedures pursuant to this subsection unless the school district, its governing board members, its school council members, or its employees are guilty of gross negligence or intentional misconduct.

Additionally, Contractor will comply with the governing body's fingerprinting policy of each individual school district and public entity. Contractor, subcontractors, vendors, and their employees will not provide services on school district properties until authorized by the school district.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City is not responsible for any disputes arising out of transactions made by others.

40. **FUEL CHARGES AND PRICE INCREASES.** No fuel surcharges will be accepted. No price increases will be accepted without proper request by Contractor and response by the City's Purchasing Division.
41. **NOTICES.** All notices to be given pursuant to this Agreement must be delivered to the parties at their respective addresses. Notices may be sent via personally delivery, certified or registered mail with postage prepaid, overnight courier, or facsimile. If provided by personal delivery, receipt will be deemed effective upon delivery. If sent via certified or registered mail, receipt will be deemed effective three (3) calendar days after being deposited in the United States mail. If sent via overnight courier, or facsimile, receipt will be deemed effective two (2) calendar days after the sending thereof.
42. **GOVERNING LAW, FORUM.** This Agreement is governed by the laws of the State of Arizona. The exclusive forum selected for any proceeding or suit, in law or equity, arising from or incident to this Agreement will be Maricopa County, Arizona.
43. **INTEGRATION CLAUSE.** This Agreement, including all attachments and exhibits hereto, supersede all prior oral or written agreements, if any, between the parties and constitutes the entire agreement between the parties with respect to the work to be performed.
44. **PROVISIONS REQUIRED BY LAW.** Any provision required by law to be in this Agreement is a part of this Agreement as if fully stated herein.
45. **SEVERABILITY.** If any provision of this Agreement is declared void or unenforceable, such provision will be severed from this Agreement, which will otherwise remain in full force and effect. The parties will negotiate diligently in good faith for such amendment(s) of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.
46. **SURVIVING PROVISIONS.** Notwithstanding any completion, termination, or other expiration of this Agreement, all provisions which, by the terms of reasonable interpretation thereof, set forth rights and obligations that extend beyond completion, termination, or other expiration of this Agreement, will survive, and remain in full force and effect. Except as specifically provided in this Agreement, completion, termination, or other expiration of this Agreement will not release any party from any liability or obligation arising prior to the date of termination.
47. **A.R.S. SECTIONS 1-501 and 1-502.** Pursuant to A.R.S §§ 1-501 and 1-502, any person who applies to the City for a local public benefit (the definition of which includes a grant, contract, or loan) must demonstrate his or her lawful presence in the United States. As this Agreement is deemed a local public benefit, if Contractor is an individual (natural) person or sole proprietorship, Contractor agrees to sign and submit the necessary documentation to prove compliance with the statutes if applicable.
48. **AUTHORITY.** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each is properly authorized and empowered to enter into the Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

49. **UNIFORM ADMINISTRATIVE REQUIREMENTS.** By entering into this Agreement, the Contractor agrees to comply with all applicable provisions of Title 2, Subtitle A, Chapter II, PART 200— UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS contained in Title 2 C.F.R. § 200 et seq.
50. **PCI DSS COMPLIANCE.** In the event any Contractor engages in payment card transactions as a part of the services provided to the City, Contractor shall comply with the Payment Card Industry Data Security Standards (“PCI DSS”) and any amendments or restatements of the PCI DSS during the Term of this Agreement. Contractor accepts responsibility for the security of the City’s and/or any customer’s credit card data in its possession, even if all or a portion of the services to City are subcontracted to third parties.

EXHIBIT D
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) is entered into by and between MedImpact Healthcare Systems, Inc. (“Business Associate”) and the City of Mesa (“Covered Entity”) and is hereby made a part of the Professional Services Agreement Pursuant to Solicitation 20211083-2021251 between the parties.

WHEREAS, Business Associate and Covered Entity desire and are committed to complying with all relevant federal and state laws with respect to the confidentiality and security of Protected Health Information (PHI), including, but not limited to, the federal Health Insurance Portability and Accountability Act of 1996, and accompanying regulations, as amended from time to time (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH), and any regulations promulgated thereunder.

NOW, THEREFORE, for valuable consideration the receipt of which is hereby acknowledged, and intending to establish a business associate relationship under 45 CFR §§ 160 and 164, the parties hereby agree as follows:

I. Definitions

- A. “Breach” shall be defined as set out in 45 CFR §164.402.
- B. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean MedImpact Healthcare Systems, Inc.
- C. “CFR” means the Code of Federal Regulations. A reference to a CFR section means that section as amended from time to time; provided that if future amendments change the designation of a section referred to herein, or transfer a substantive regulatory provision referred to herein to a different section, the section references herein shall be deemed to be amended accordingly.
- D. “Compliance Date(s)” shall mean the date(s) established by the Secretary or the United States Congress as the effective compliance date(s) of applicability and enforceability of the Privacy Rule, Security Rule and HITECH Standards.
- E. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean the City of Mesa.
- F. “Data Aggregation” shall be defined as set out in 45 CFR § 164.501.
- G. “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 CFR §164.501 and shall include a group of records that is: (i) the enrollment, payment, Claims adjudication and case or medical management record systems maintained by or for Covered Entity by Business Associate or (2) used, in whole or in part, by or for Covered Entity to make decisions about Individuals.
- H. “Electronic Protected Health Information” (EPHI) shall have the same meaning as the term “electronic protected health information” in 45 CFR §160.103, limited to the information received from or created on behalf of Covered Entity by Business Associate in a business associate capacity (and not as a pharmacy or other health care provider).
- I. “Health Care Operations” shall have the same meaning as the term “health care operations” in 45 CFR 164.501.
- J. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

- K. "HITECH Standards" shall mean the privacy, security, and security breach notification provisions applicable to a Business Associate under Subtitle D of the Health Information Technology for Economic and Clinical Health Act, which is Title XIII of the American Recovery and Reinvestment Act of 2009, as such law may be amended from time to time, and any regulations promulgated thereunder, as of their applicable Compliance Dates.
- L. "Individual" shall have the same meaning as the term "individual" in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- M. "Minimum Necessary" means the standard set forth in 45 CFR § 164.502(b) and 45 CFR § 164.514(d).
- N. "Notice of Privacy Practices" means the notice required under 45 CFR 164.520 that covered entities are required to develop and distribute providing a clear explanation of and individual's privacy rights and the covered entity's privacy practices.
- O. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR parts 160 and 164, subparts A and E.
- P. "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in 45 CFR §160.103, and shall include EPHI where appropriate, limited to the information received from or created on behalf of Covered Entity by Business Associate in a business associate capacity (and not as a pharmacy or other health care provider).
- Q. "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR §164.501.
- R. "Security Incident" shall have the same meaning as the term "security incident" in 45 CFR §164.304.
- S. "Security Rule" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR parts 160 and 164, subparts A and C.
- T. "Subcontractor" shall mean a person or entity to which a business associate delegates a function, activity, or service in a capacity other than as a member of the workforce of such business associate.
- U. "Unsecured PHI" shall have the same meaning as "unsecured protected health information" in 45 CFR §164.402.
- V. "Use" means, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

Terms used, but not otherwise defined, shall have the same meaning as those terms in the Privacy Rule, Security Rule and HITECH Standards.

II. Obligations and Activities of Business Associate

- A. Business Associate agrees not to use or disclose PHI other than as permitted or required by this BAA or as Required by Law. Business Associate will take reasonable efforts to limit requests for, use and disclosure of PHI to the minimum necessary to accomplish the intended request, use or disclosure in accordance with and subject to the exceptions in 45 CFR 164.502(b).

- B. Business Associate agrees to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to EPHI, to prevent use or disclosure of PHI other than as provided for by this BAA. Business Associate shall implement administrative, physical, and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the Security Rule.
- C. Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this BAA promptly after Business Associate has actual knowledge of such use or disclosure, including breaches of unsecured PHI as required at 45 CFR 164.410, and any successful security incident of which it becomes aware. Following the discovery of a Breach of Unsecured PHI, Business Associate shall notify Covered Entity of such Breach without unreasonable delay, and in no event later than 60 calendar days after such discovery. The notification will include the identification of each individual whose Unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the Breach. A Breach shall be treated as discovered as of the first day on which such Breach is known or reasonably should have been known to Business Associate.
- D. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this BAA or applicable HIPAA regulations.
- E. In accordance with 45 CFR § 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate agrees to include in its agreement with any agent or subcontractor to whom it provides PHI on behalf of the Covered Entity conditions with respect to such information that are at least as restrictive as those that apply through this BAA to Business Associate. Business Associate agrees to ensure that any agents, including sub-agents, to whom it provides EPHI received from, or created or received by Business Associate on behalf of the Covered Entity, agree in writing to implement the same reasonable and appropriate safeguards that apply to Business Associate to protect the Covered Entity's EPHI.
- F. Business Associate agrees to make available to Covered Entity PHI in a designated record, within a reasonable time after Covered Entity's written request, as necessary to satisfy Covered Entity's obligations to respond to a request for access to PHI as provided under 45 CFR §164.524 or to respond to a request to amend PHI as required under 45 CFR §164.526. Business Associate shall refer to Covered Entity all such written requests that Business Associate may receive from Individuals. Business Associate shall not give any individual access to PHI unless approved in writing by Covered Entity. If Covered Entity requests Business Associate to amend PHI in Business Associate's possession in order to comply with 45 CFR §164.526, Business Associate shall effectuate such amendments no later than the date they are required to be made by 45 CFR §164.526; provided that if Business Associate receives such a request from Covered Entity less than ten (10) business days prior to such date, Business Associate will effectuate such amendments as soon as is reasonably practicable. Business Associate shall not amend any PHI at the request of any individual unless directed to by the Covered Entity.
- G. Business Associate agrees to provide to Covered Entity within a reasonable time such information necessary to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures as provided under 45 CFR §164.528. Business Associate shall refer to Covered Entity all such written requests which Business Associate may receive from Individuals.
- H. To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate agrees to comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations(s).
- I. Upon reasonable notice, Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI available to the U.S. Secretary of Health and

Human Services, or an officer or employee of that Department to whom relevant authority has been delegated, at Covered Entity's expense in a reasonable time and manner.

- J. Notwithstanding any other provision in this BAA, Business Associate hereby acknowledges and agrees that to the extent it is functioning as a Business Associate of Covered Entity, Business Associate will comply with the applicable HITECH Business Associate provisions and with the applicable obligations of a Business Associate as prescribed by HIPAA and the HITECH Act commencing on the Compliance Date of each such provision. Business Associate and the Covered Entity further agree that the provisions of HIPAA and the HITECH Act that apply to Business Associates and that are required to be incorporated by reference in a Business Associate Agreement are incorporated into this BAA between Business Associate and Covered Entity as if set forth in this BAA in their entirety and are effective as of the Compliance Date.

III. Permitted Uses and Disclosures by Business Associate

Except as otherwise limited in this BAA, Business Associate may:

- A. Use or disclose PHI to perform services for or on behalf of the Covered Entity as described in the Services Agreement between the parties to which this BAA is made an exhibit if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by the Covered Entity.
- B. Use or disclose PHI as required by law.
- C. Business Associate agrees to make any uses and disclosures and requests for PHI consistent with Covered Entity's minimum necessary policies and procedures.
- D. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth below:
1. Use PHI for the proper management and administration of Business Associate or to fulfill any present or future legal responsibilities of Business Associate.
 2. Disclose PHI for the proper management and administration of Business Associate or to fulfill any present or future legal responsibilities of Business Associate, provided that such disclosure is either Required by Law or Business Associate obtains reasonable assurances from any person to whom PHI is disclosed that such person will: (i) keep such information confidential, (ii) use or further disclose such information only for the purpose for which it was disclosed to such person or as Required by Law, and (iii) notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 3. Use or disclose PHI to provide data aggregation services relating to the health care operations of the Covered Entity, as provided in 45 CFR §164.501.
- E. Business Associate may create de-identified data, provided that the Business Associate de-identifies the information in accordance with the Privacy Rule. De-identified information does not constitute PHI and is not subject to the terms and conditions of this BAA.
- F. Business Associate may use or disclose PHI to respond to requests for PHI either accompanied by an authorization that meets the requirements of 45 CFR 164.508 or from a covered entity or health care provider in accordance with 45 CFR 164.506(c).

- G. Business Associate may use PHI to create a limited data set in accordance with 45 CFR §164.514, which limited data set may be used and disclosed by Business Associate as permitted by law, including HIPAA.
- H. Business Associate may use or disclose PHI as authorized in writing by Covered Entity.
- I. Except as permitted in this BAA, Business Associate is prohibited from using or disclosing any PHI received from Covered Entity for any commercial purposes of Business Associate, including, for example, "data mining."

IV. Obligations of Covered Entity

- A. Covered Entity shall notify Business Associate of any facts or circumstances that affect Business Associate's use or disclosure of PHI. Such facts and circumstances include, but are not limited to: (i) any limitation or change in Covered Entity's notice of privacy practices, (ii) any changes in, or withdrawal of, an authorization provided to Covered Entity by an Individual pursuant to 45 CFR §164.508; and (iii) any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522 to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- B. Covered Entity warrants that it will not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule or is not otherwise authorized or permitted under this BAA (i.e. for data aggregation, management and administration, and legal responsibilities of BAA).
- C. Covered Entity acknowledges and agrees that the Privacy Rules allow the Covered Entity to permit Business Associate to disclose or provide access to PHI, other than Summary Health Information, to the Plan Sponsor only after the Plan Sponsor has amended its Plan documents to provide for the permitted and required uses and disclosures of PHI and to require the Plan Sponsor to provide a certification to the Plan that certain required provisions have been incorporated into the Plan documents before the Plan may disclose, either directly or through a Business Associate, any PHI to the Plan Sponsor. Covered Entity hereby warrants and represents that Plan documents have been so amended and that the Plan has received such certification from the Plan Sponsor.
- D. Covered Entity agrees that it will have entered into Business Associate Agreements with any third parties to whom Covered Entity directs and authorizes Business Associate to disclose PHI.
- E. Covered Entity acknowledges that it remains responsible for obtaining any consent, authorization or permission that may be required for Business Associate to provide its services and that it shall not agree to any restrictions or make any changes to its Notice of Privacy Practices that would limit the uses and disclosures of PHI otherwise permitted herein except as mutually agreed by the parties in a written amendment to this BAA.

V. Effective Date; Termination

- A. The effective date of this BAA shall be the date the Professional Services Agreement is signed by both parties (or the date this BAA is signed by both parties, if earlier).
- B. This BAA shall terminate on the date the Services Agreement terminates.
- C. Upon Covered Entity's knowledge of a material breach or violation of this BAA by Business Associate, Covered Entity, in its sole discretion, may: 1) elect to immediately terminate this BAA (and any related contracts that require this BAA to be in effect, which may be terminated for Covered Entity's or the City's convenience and not for breach) without penalty to Covered Entity on any such contract or agreement, or 2) notify Business Associate of such breach or violation and allow Business Associate thirty (30) days to cure the breach or end the violation. In the event

Business Associate does not cure the breach or end the violation, Covered Entity shall have the right to immediately terminate this BAA and any underlying services agreement if feasible, or if termination is not feasible, Covered Entity shall report the breach or violation to the Secretary.

- D. Upon Business Associate's knowledge of a material breach or violation of this BAA by Covered Entity, Business Associate shall notify Covered Entity of such breach or violation and Covered Entity shall have thirty (30) days to cure the breach or end the violation. In the event Covered Entity does not cure the breach or end the violation, Business Associate shall have the right to immediately terminate this BAA and any underlying services agreement if feasible, or if termination is not feasible, Business Associate shall report the breach or violation to the Secretary.
- E. Upon termination of this BAA, Business Associate will return to Covered Entity, or if return is not feasible, destroy, any and all PHI that it created or received on behalf of Covered Entity and retain no copies thereof. If the return or destruction of the PHI is determined by Business Associate not to be feasible, Business Associate shall continue to protect such PHI and shall limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible. If return or destruction of the PHI is feasible but Business Associate is required by law to retain such information or copies thereof, Business Associate will continue to protect and maintain the PHI for the period of time required under applicable law after which time Business Associate shall return or destroy the PHI.
- F. Business Associate's obligations under this BAA under this Section V shall survive the termination of this BAA with respect to any PHI so long as it remains in the possession of Business Associate or is required by law to be maintained by Business Associate.

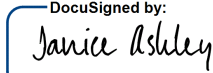
VI. Other Provisions

- A. The parties acknowledge that the foregoing provisions are designed to comply with the mandates of the Privacy and Security Rules and the HITECH Standards. Covered Entity or Business Associate may provide written notice to the other party to the extent that any final regulation or amendment to final regulations promulgated by the Secretary under HITECH requires changes to this Business Associate Agreement. Such written notice shall include any additional amendment required by any such final regulation and the parties shall work in good faith to reach agreement on an amendment to this BAA that complies with the final regulations. If the parties are unable to reach agreement regarding an amendment within thirty (30) days of the date that a party receives any written notice provided for in this Section VI.A from the other party, either party may terminate this BAA upon ninety (90) days written notice to the other party. Any amendment to the BAA shall be effective only upon execution of a written agreement between the parties.
- B. Except as it relates to the use, security and disclosure of PHI, this BAA is not intended to change the terms and conditions of, or the rights and obligations of the parties under any other services agreement between them.
- C. Each party agrees to defend, indemnify and hold harmless the other party, its affiliates and each of their respective directors, officers, employees, agents or assigns from and against any and all actions, causes of action, claims, suits and demands whatsoever, and from all damages, liabilities, reasonable costs, reasonable charges, fines, government investigations, proceedings, and expenses whatsoever (including reasonable attorneys' fees and expenses related to any litigation or other defense of any claims), which may be asserted or for which they may now or hereafter become subject arising in connection with (i) any misrepresentation, breach of warranty or non-fulfillment of any undertaking directly and solely attributable to the party under this BAA; and (ii) any claims, demands, awards, judgments, actions, and proceedings made by any person or organization arising out of or directly related to the party's performance under this BAA.

- D. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- E. Any ambiguity in this BAA shall be resolved in favor of a meaning that permits the Covered Entity and Business Associate to comply with the Privacy and Security Rules and the HITECH Standards.
- F. This BAA replaces and supersedes in its (their) entirety any prior Business Associate Agreement(s) between the parties.

IN WITNESS WHEREOF, that parties hereto have caused this BAA to be executed by their respective duly authorized officers or agents as of the date first written below.

For City of Mesa
(Covered Entity)

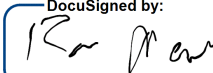
By: 
DocuSigned by:
8A4B37D38956478...

Name (print): Janice Ashley

Title: Employee Benefits Administrator

Date signed: June 23, 2021

For MedImpact Healthcare Systems, Inc.
(Business Associate)

By: 
DocuSigned by:
A9A88B274C86446...

Name (print): Ray Marsella

Title: SVP Chief Revenue Officer

Date signed: June 23, 2021

EXHIBIT E
PERFORMANCE GUARANTEES

- 1) Performance Guarantee Effective Dates. The Implementation Performance Guarantees set forth below shall become effective once the implementation project plan is agreed upon by Client and MedImpact. The Ongoing Performance Guarantees set forth below shall become effective on the Implementation Date of this Agreement. Notwithstanding the foregoing, if this Agreement is not fully executed prior to the Implementation Date, then the Ongoing Performance Guarantees shall be effective the first day of the calendar quarter following the latest signature date of this Agreement. Performance Guarantee amounts will not be paid to Client unless and until this Agreement has been fully executed.
- 2) Performance Guarantee Amounts. The total amounts at risk for Implementation and Ongoing Performance Guarantees are calculated on a per Eligible Member basis. The total number of Eligible Members shall be calculated on the Implementation Date, and then on January 1st each year thereafter for Ongoing Performance Guarantees. The total amounts at risk shall be distributed evenly among the respective Implementation Performance Guarantees and Ongoing Performance Guarantees. Alternatively, upon providing written notice to MedImpact no later than thirty (30) days prior to the Implementation Date, or thirty (30) days prior to the beginning of a subsequent Measurement Period (as defined below), Client may choose to allocate amounts at risk among the Ongoing Performance Guarantees, so long as not more than twenty percent (20%) of the total amount at risk is allocated to any one Performance Guarantee. Performance Guarantees with a zero percent (0%) allocation will not be reported on. Should Client provide alternate allocations, such alternate allocations shall remain in place unless and until amounts at risk are reallocated by Client, or new Performance Guarantees are agreed upon by the parties.
- 3) Reporting and Reconciliation. Implementation Performance Guarantees will be reported to Client within ninety (90) days after the Implementation Date. In the event MedImpact does not meet a given Implementation Performance Guarantee, MedImpact shall remit the applicable Performance Guarantee amount to Client within one hundred twenty (120) days after the Implementation Date. The Ongoing Performance Guarantees set forth in this Exhibit are measured as indicated below, and reported quarterly. MedImpact will provide Client a quarterly Ongoing Performance Guarantee report based on a three (3) month calendar quarter (the "Reporting Quarter") within ninety (90) days from the end of the Reporting Quarter. Performance Guarantees are reconciled based on aggregate annual average results for a twelve (12) month calendar year (the "Measurement Period") and reported to Client within ninety (90) days from the end of the Measurement Period. In the event MedImpact does not meet a given Ongoing Performance Guarantee, MedImpact shall remit the applicable Performance Guarantee amount to Client within one hundred twenty (120) days from the end of the Measurement Period. If the Ongoing Performance Guarantees are effective for less than a full Measurement Period, then the Performance Guarantee amounts will be prorated for the portion of the Measurement Period. Any Performance Guarantee reporting or remittance deadlines that fall on a non-Business Day shall be deemed to mean the next Business Day.
- 4) The parties acknowledge and agree that:
 - a) Implementation Performance Guarantees are contingent upon Client meeting the agreed upon project plan requirements and dates; Client's failure to meet the agreed upon project plan requirements and dates shall make Implementation Performance Guarantees null and void;
 - b) Performance Guarantees are measured on a Client specific basis unless otherwise noted below;
 - c) Should Client not provide information in the time and manner required by MedImpact, MedImpact shall have no obligation for any Performance Guarantee amounts associated with an affected Performance Guarantee;
 - d) Calculations that result in non-whole number values (i.e. ending 0.01 – 0.99) will be rounded to the nearest whole number using traditional rounding logic (0.01 – 0.49 round down and 0.5 - 0.99 round up);
 - e) If a given Performance Guarantee does not meet a mutually agreed upon minimum threshold for measurement and reporting purposes during the Reporting Quarter or Measurement Period, as applicable, then the Performance Guarantee amounts may be void;
 - f) If Client utilizes more than one third party vendor related to a Performance Guarantee, then only the primary vendor will be reported on for that Performance Guarantee;
 - g) In no event shall failure to meet a Performance Guarantee give rise to MedImpact being subject to Performance Guarantee amounts for any other Performance Guarantee(s) during the same Measurement Period;
 - h) No Claim(s) shall be subject to Performance Guarantee amounts in more than one Measurement Period;

- i) Notwithstanding any other provision of this Agreement, Client's remedy for MedImpact's failure to meet the Performance Guarantees is limited to the Performance Guarantee amounts listed in this Exhibit, and shall not otherwise be eligible for a remedy under any other provision of this Agreement;
- j) Notwithstanding any other provision of this Agreement, the following shall not be factored into or included in the measurement or reporting of the Performance Guarantees: (i) Subrogation Claims, (ii) medical specialty management Services, (iii) Client-Contracted Participating Pharmacies or non-preferred pharmacy vendors, (iv) cash card or one hundred percent (100%) Copayment Benefit Plans, and (v) all other Services not explicitly referenced in the Performance Guarantees below; and
- k) All Performance Guarantees are subject to the force majeure clause set forth in this Agreement.

Implementation Guarantees - Commercial

Maximum amount at risk: \$25.00 per Eligible Member

Performance Guarantee Category	Metric Description	Measured	Amount at Risk
Accuracy of Load Eligibility	Files will be loaded with 99% accuracy.	1 time	1%
Timeliness of Eligibility Load	99% of eligibility files will be loaded and tested as defined in the implementation project plan as established by MedImpact and the client.	1 time	1%
Accuracy of Eligible Member Welcome Packet and ID Cards	Eligible Member ID cards and welcome kits will be 99% accurate in terms of plan and Eligible Member information (e.g., Eligible Member identification number, plan number, etc.)	1 time	20%
Timeliness of Eligible Member Welcome Packet and ID Cards	99% of Eligible Member ID cards and welcome kits will be mailed to Eligible Members on a mutually agreed upon date documented in the implementation project plan.	1 time	20%
Accuracy of Benefit Plan Design Implementation	Plan design will be implemented with 99% accuracy within timeframe specified in the implementation work plan.	1 time	20%
Timeliness of Benefit Plan Design Implementation	MedImpact will follow the implementation project plan and meet mutually agreeable milestone dates as established by MedImpact and the client.	1 time	8%
Timeliness of Customer Service	A dedicated toll-free telephone number for Eligible Member	1 time	5%

During Open Enrollment	questions/assistance will be established by the date agreed upon in the Implementation Project Plan, but at least five (5) Business Days before open enrollment materials are mailed, and maintained during open enrollment.		
Implementation Updates	The Implementation Project Manager will provide regular weekly updates to Client, tracking the status of the implementation.	1 time	1%
Post-Implementation Review Meeting	Vendor will conduct a post-implementation review meeting with Client within sixty (60) days after the effective date or a later time if requested by Client.	1 time	1%
Timeliness of Client Inquiries Response	Vendor representative will acknowledge 100% of inquiries/concerns raised from Client, and/or their designees, within one (1) Business Day from when the requests are sent (documented via email), and provide a date when the next update will be provided.	1 time	1%
Timeliness of Inquiry/Issue Resolution	Vendor representative will work to resolve any implementation questions/issues raised by Client within five (5) Business Day from when the inquiry/requests are sent (documented via email), or a later date if mutually agreed upon.	1 time	1%
Timeliness of Contract Change Requests	MedImpact will respond to the first contract review (contract change requests/inquiries) within ten (10) Business Days from its receipt and will respond to follow-up inquiries about the same items initially identified within ten (10) Business Days. The response times may be extended if mutually agreed upon in writing in advance.	1 time	1%

Implementation Survey	<p>An Implementation performance survey will be completed.</p> <p>The survey tool defines satisfaction as:</p> <ul style="list-style-type: none"> • Completely Satisfied (5) • Very Satisfied (4) • Satisfied (3) • Dissatisfied (2) • Very Dissatisfied (1) <p>The average results will be 3 or better on a 5-point scale. Survey results will be calculated and presented to the client in a timely manner. This to be measured 90 days after survey is completed.</p>	1 time	20%
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Implementation Guarantees - EGWP

Maximum amount at risk: \$25.00 per Eligible Member

Performance Guarantee Category	Metric Description	Measured	Amount at Risk
Accuracy of Load Eligibility	99% of electronically transmitted eligibility files are processed accurately based on receipt of a clean and complete eligibility file in a mutually agreed upon format.	1 time	5%
Timeliness of ID Cards	99% or greater of Eligible Members will be sent accurate ID cards and other CMS required materials within 10 days of approval from CMS.	1 time	20%
Accuracy of Benefit Plan Design Implementation	Plan design will be implemented with 99% accuracy within timeframe specified in the implementation work plan.	1 time	20%
Timeliness of Benefit Plan Design Implementation	MedImpact will follow the implementation project plan and meet mutually agreeable milestone dates as established by MedImpact and the client.	1 time	5%

Customer Service Number	A dedicated toll-free telephone number for Eligible Member assistance will be established and fully functioning by the date established in the implementation timeline (before open enrollment begins) and maintained in operation during the first part of the plan year.	1 time	10%
Implementation Manager Updates	The Implementation Project Manager will provide regular weekly updates to Client, tracking the status of the implementation, including one face-to-face or virtual kickoff meeting.	1 time	5%
Claim Stat Reporting	Claim stat (e.g. paid vs. rejected) reports will be provided to Client every day for the first month of implementation for purposes of identifying trends and errors.	1 time	5%
Post-Implementation Review Meeting	Vendor will conduct a post-implementation review meeting with Client within 30 days after the effective date.	1 time	5%
Resolution of Implementation Issues	Using MedImpact's established client tracking log, 98% of the issues that cannot be resolved within 2 business days will be noted on the log within 1 business day of receipt by the account team. If an action is not resolved within 3 business days, then a work plan will be developed with mutually agreed upon deliverable dates. To be measured 90 days post go-live.	1 time	5%
Client Agreement	MedImpact will respond to service agreement reviews provided in writing by client or client's representative (e.g., redline draft) within 10 business days following receipt of formal requests/comments. Client and client representative will adhere	1 time	5%

	to the same timelines. Client or client's representative's failure to adhere to the same timelines shall make this metric null and void.		
Implementation Survey	<p>An Implementation performance survey will be completed.</p> <p>The survey tool defines satisfaction as: Completely Satisfied (5) Very Satisfied (4) Satisfied (3) Dissatisfied (2) Very Dissatisfied (1)</p> <p>The average results will be 3 or better on a 5-point scale. Survey results will be calculated and presented to the client in a timely manner. This to be measured 90 days after survey is completed.</p>	1 time	20%

Ongoing Performance Guarantees - Commercial

Annual maximum amount at risk: \$18.00 per Eligible Member per year

Performance Guarantee Category	Metric Description	Measured	Amount at Risk
IT Systems			
System Availability	99% system availability. Based on MedImpact's book of business.	Quarterly	1%
Claims System Changes	MedImpact will provide 90 days notice of any changes planned to the Claims processing system.	Quarterly	1%
Claim Accuracy			
Paper Claims Processing Time	99% of Claims will be processed within 14 business days.	Quarterly	1%
Claim Processing Accuracy	99% of all audited Claims will be adjudicated accurately based upon the plan design. Measurement: A random sampling of 3% or 200 Claims per quarter, whichever is less, will be reviewed with error percentage extrapolated to represent total Claims volume.	Annually	1%
File Management			
Eligibility Data/Posting	99% of Eligible Member eligibility changes and/or updates will be loaded within 24 hours of receiving file(s). 99% of files will be loaded without error.	Quarterly	1%
Account Management			
Account Management Response Timeliness	MedImpact account team personnel will respond to client inquiries by email within an average of 1 business day.	Quarterly	1%
Issue Tracking	Using MedImpact's established client tracking log, 98% of the issues that cannot be resolved within 2 business days will be noted on the log within 1 business day of receipt by the account team.	Quarterly	1%
Issue Resolution	100% of open issues will be resolved within five (5) Business Days or a later date if mutually agreed upon as reasonable.	Quarterly	1%
Quarterly Meetings	Vendor will make an account management representative available for a minimum of four (4) meetings per year with Client (or such other number as is agreed to by Vendor and Client) to discuss the performance of the plan, potential opportunities, industry trends, etc.	Annually	1%
Reporting			

Report Distribution Timeliness	98% of standard online reports will be available within 15 days of end of period.	Quarterly	5%
Contact Center			
Customer Service Call Center	A toll free line must be set up and fully-functioning by the Effective Date and will be maintained during the term of the contract.	Quarterly	5%
Call Abandonment Rate	Eligible Member call abandonment rate will be 2% or less. Based on MedImpact's book of business.	Quarterly	10%
Average Call Answering Time	Eligible Member calls will be answered in an average of 30 seconds or less by a live agent. Based on MedImpact's book of business.	Quarterly	1%
Calls Blocked	Call blockage rate will be 2% or less. Based on MedImpact's book of business.	Quarterly	1%
First-Call Resolution	95% of initial calls resolved during the first point of contact. Based on MedImpact's book of business.	Quarterly	5%
Response to written inquiries	99% of written Eligible Member inquiries will be responded to within 48 business hours.	Quarterly	1%
ID Cards - Mail Date	99% of new Client and replacement ID cards will be mailed within 5 business days of receipt of a clean and accurate eligibility file from the client.	Quarterly	5%
ID Cards - Accuracy	99% accuracy - Eligible Member ID cards and welcome booklets will be accurate in terms of plan and Eligible Member information (e.g., Eligible Member identification number, plan number, etc.)	Quarterly	1%
Mail Order – MedImpact Direct			
Dispensing Timeliness with No Pharmacist intervention	Clean prescriptions received by 5:00 pm CT are shipped within an average of 2 business days. A minimum number of 1,500 Claims per quarter are required for the performance guarantee to apply.	Quarterly	1%
Dispensing Timeliness with Pharmacist intervention	Intervention prescriptions requiring clinical review (including out of stock) received by 5:00 pm CT are shipped within an average of 5 business days. A minimum number of 1,500 Claims per quarter are required for the performance guarantee to apply.	Quarterly	1%
Mail Pharmacy Dispensing Accuracy	99.8% mail order dispensing accuracy rate.	Quarterly	1%

	A minimum number of 1,500 Claims per quarter are required for the performance guarantee to apply; based on MedImpact Direct Mail's book of business.		
Specialty – MedImpact Direct			
Prescription Order Timeliness	98% of specialty prescriptions shall be delivered by the needs by date, as established by physician and/or Eligible Member. A minimum number of 1,500 Claims per quarter are required for the performance guarantee to apply.	Quarterly	1%
Dispensing Timeliness with No Pharmacist intervention	98% of specialty prescriptions shall be delivered by the needs by date, as established by physician and/or Eligible Member. A minimum number of 1,500 Claims per quarter are required for the performance guarantee to apply.	Quarterly	1%
Specialty Pharmacy Dispensing Accuracy	99.8% specialty dispensing accuracy rate. A minimum number of 1,500 Claims per quarter are required for the performance guarantee to apply; based on MedImpact Direct Specialty's book of business.	Quarterly	1%
Specialty Adherence	MedImpact will achieve an MPR, in the aggregate, for the following therapies: Multiple Sclerosis = 85%, Hepatitis C = 95%, and Oncology = 90%. A minimum number of 1,500 Claims per quarter are required for the performance guarantee to apply.	Quarterly	1%
Benefits			
Benefit Design Change Requests	MedImpact will complete 95% of requests in the following timelines: <ul style="list-style-type: none"> • Simple change requests (e.g., formulary changes, standard benefit updates, etc.): 5 business days • Complex change requests (e.g., custom benefit updates, etc.): 15 business days. • Other requests, including system changes: As mutually agreed upon Client must provide all complete and accurate information necessary to complete request. Due date(s) may be changed upon mutually agreement.	Quarterly	5%
Pharmacy Networks			

GeoAccess	<p>Urban Zip Code - 90% of Eligible Member zip code within 2 miles of 1 Participating Pharmacy.</p> <p>Suburban Zip Code - 90% of Eligible Member zip code within 5 miles of 1 Participating Pharmacy.</p> <p>Rural Zip Code - 70% of Eligible Member zip code within 15 miles of 1 Participating Pharmacy.</p> <p>This metric is measured based upon a national broad network and the condition that a credentialed Participating Pharmacy location is available within the specified standard.</p>	Quarterly	5%
Surveys			
Member Satisfaction	<p>At least 85% of Eligible Members surveyed will be satisfied with MedImpact's service (covering retail, mail order, and specialty as applicable). The survey tool defines satisfaction as:</p> <ul style="list-style-type: none"> • Completely Satisfied (5) • Very Satisfied (4) • Satisfied (3) • Dissatisfied (2) • Very Dissatisfied (1) <p>MedImpact is responsible for survey design, data collection, analysis, and costs associated with conducting the online survey.</p>	Annual	20%
Client Satisfaction Survey	<p>MedImpact will conduct an annual account management satisfaction survey. Satisfaction is defined as an average rating of 3 or higher on the following 5-point scale:</p> <ul style="list-style-type: none"> • Completely Satisfied (5) • Very Satisfied (4) • Satisfied (3) • Dissatisfied (2) • Very Dissatisfied (1) <p>MedImpact is responsible for survey design, data collection, analysis and costs associated with conducting the online survey. A minimum of 4 surveys must be completed by client contacts.</p>	Annual	20%

Ongoing Performance Guarantees - EGWP

Annual maximum amount at risk: \$18.00 per Eligible Member per year

Performance Guarantee Category	Metric Description	Measured	Amount at Risk
IT Systems			
System Availability	99% system availability. Based on MedImpact's book of business.	Quarterly	1%
Claim Accuracy			
Claim Processing Accuracy	99% of all audited Claims will be adjudicated accurately based upon the plan design. Measurement: A random sampling of 3% or 200 Claims per quarter, whichever is less, will be reviewed with error percentage extrapolated to represent total Claims volume.	Annually	1%
File Management			
Eligibility Data/Posting	99% of Eligible Member eligibility changes and/or updates will be loaded within 24 hours of receiving file(s). 99% of files will be loaded without error.	Quarterly	1%
Account Management			
Account Management Response Timeliness	MedImpact account team personnel will respond to client inquiries by email within an average of 1 business day.	Quarterly	1%
Issue Tracking	Using MedImpact's established client tracking log, 98% of the issues that cannot be resolved within 2 business days will be noted on the log within 1 business day of receipt by the account team.	Quarterly	1%
Issue Resolution	100% of open issues will be resolved within five (5) Business Days or a later date if mutually agreed upon as reasonable.	Quarterly	1%
Communication Material Accuracy	All Eligible Member communication material must be accurate and pre-approved by Client in writing.	Quarterly	1%
Reporting			
EGWP Specific Reporting Requirements	MedImpact will provide reporting and payments for monthly CMS subsidies, monthly prospective reinsurance, quarterly coverage gap, annual reinsurance, annual LICs, and any additional EGWP reports within requested time periods	Quarterly	1%
Contact Center			

Call Abandonment Rate	Eligible Member call abandonment rate will be 2% or less. Based on MedImpact's book of business.	Quarterly	10%
Call Answering Time	80% of calls answered within 30 seconds or less for caller to reach a live person. Based on MedImpact's book of business.	Quarterly	8%
Calls Blocked	Call blockage rate will be 2% or less. Based on MedImpact's book of business.	Quarterly	1%
First-Call Resolution	95% of initial calls resolved during the first point of contact. Based on MedImpact's book of business.	Quarterly	10%
Response to written inquiries	99% of written Eligible Member inquiries will be responded to within 48 business hours.	Quarterly	1%
ID Cards & CMS Welcome Kit	99% or greater of Eligible Members will be sent accurate ID cards and other CMS required materials within 10 days of approval from CMS.		10%
Mail Order – MedImpact Direct			
Dispensing Timeliness with No Pharmacist intervention	Clean prescriptions received by 5:00 pm CT are shipped within an average of 2 business days. A minimum number of 1,500 Claims per quarter are required for the performance guarantee to apply.	Quarterly	1%
Dispensing Timeliness with Pharmacist intervention	Intervention prescriptions requiring clinical review (including out of stock) received by 5:00 pm CT are shipped within an average of 5 business days. A minimum number of 1,500 Claims per quarter are required for the performance guarantee to apply.	Quarterly	1%
Mail Pharmacy Dispensing Accuracy	99.8% mail order dispensing accuracy rate. A minimum number of 1,500 Claims per quarter are required for the performance guarantee to apply; based on MedImpact Direct Mail's book of business.	Quarterly	1%
Specialty – MedImpact Direct			
Specialty Pharmacy Dispensing Accuracy	99.8% specialty dispensing accuracy rate. A minimum number of 1,500 Claims per quarter are required for the performance guarantee to apply; based on MedImpact Direct Specialty's book of business.	Quarterly	1%

Specialty Adherence	MedImpact will achieve an MPR, in the aggregate, for the following therapies: Multiple Sclerosis = 85%, Hepatitis C = 95%, and Oncology = 90%. A minimum number of 1,500 Claims per quarter are required for the performance guarantee to apply.	Quarterly	1%
Benefits			
Benefit Design Change Requests	MedImpact will complete 95% of requests in the following timelines: <ul style="list-style-type: none"> • Simple change requests (e.g., formulary changes, standard benefit updates, etc.): 5 business days • Complex change requests (e.g., custom benefit updates, etc.): 15 business days. • Other requests, including system changes: As mutually agreed upon Client must provide all complete and accurate information necessary to complete request. Due date(s) may be changed upon mutually agreement.	Quarterly	1%
Pharmacy Networks			
GeoAccess	Urban Zip Code - 90% of Eligible Member zip code within 2 miles of 1 Participating Pharmacy. Suburban Zip Code - 90% of Eligible Member zip code within 5 miles of 1 Participating Pharmacy. Rural Zip Code - 70% of Eligible Member zip code within 15 miles of 1 Participating Pharmacy. This metric is measured based upon a national broad network and the condition that a credentialed Participating Pharmacy location is available within the specified standard.	Quarterly	5%
Network Pharmacy Audits	MedImpact will audit 3% of utilizing network pharmacies annually that fill a minimum of 2,400 client Claims per year.	Quarterly	1%
Surveys			
Member Satisfaction	At least 85% of Eligible Members surveyed will be satisfied with MedImpact's service (covering retail, mail order, and specialty as	Annual	20%

	<p>applicable). The survey tool defines satisfaction as:</p> <ul style="list-style-type: none"> • Completely Satisfied (5) • Very Satisfied (4) • Satisfied (3) • Dissatisfied (2) • Very Dissatisfied (1) <p>MedImpact is responsible for survey design, data collection, analysis, and costs associated with conducting the online survey.</p>		
Client Satisfaction Survey	<p>MedImpact will conduct an annual account management satisfaction survey. Satisfaction is defined as an average rating of 3 or higher on the following 5-point scale:</p> <ul style="list-style-type: none"> • Completely Satisfied (5) • Very Satisfied (4) • Satisfied (3) • Dissatisfied (2) • Very Dissatisfied (1) <p>MedImpact is responsible for survey design, data collection, analysis and costs associated with conducting the online survey. A minimum of 4 surveys must be completed by client contacts.</p>	Annual	20%

EXHIBIT F**AUDIT PROTOCOLS**

1. Notice of Audits. Client shall provide MedImpact at least ninety (90) days' prior written notice of its intent to audit, which such notice shall be sent to MedImpact via email at ExternalComplianceSupport@medimpact.com, with a hard copy mailed to MedImpact Healthcare Systems, Inc., Attn: External Compliance Support, 10181 Scripps Gateway Court, San Diego, CA 92131. The notice shall provide sufficient detail regarding the intended scope of the audit.

2. Purpose of Audit/Documentation Required. Provided that Client is current in the payment of amounts due under its Agreement with MedImpact, Client may, during the Term of this Agreement and up to one (1) year post-termination, conduct one (1) audit on an annual basis between February and October on an agreed upon date, of MedImpact's business records that directly relate to MedImpact's compliance with this Agreement with respect to the Services and billings made to Client. Such audit shall be limited to the transactions occurring during the Term of this Agreement over the twelve (12) month period immediately preceding such audit. At no time may Client audit any twelve (12) month audit period (in whole or in part) more than once or any individual Claim more than once.

3. Procedure of Audits. A Client audit of MedImpact shall be conducted at MedImpact's headquarters during normal business hours. MedImpact may, in its sole discretion, allow Client to audit offsite (as opposed to onsite), in which case MedImpact will provide data and other information via an agreed upon secure electronic method (e.g., email, FTP site). Audits shall be conducted without undue interference to MedImpact's business activity, in accordance with reasonable audit practices, and at Client's own cost and expense. MedImpact shall provide reasonable audit related support (e.g. claim files, claim research, etc.) at no cost to Client

4. Audit Reports/Discrepancies. If a completed audit reveals a discrepancy, then Client shall deliver written notice of the discrepancy to MedImpact within ten (10) Business Days of conducting the audit. In all cases, audit findings revealing a discrepancy must be delivered to MedImpact within three (3) months after the audit is conducted or fifteen (15) months after termination of this Agreement for any reason, whichever is sooner. The written notice of discrepancy shall set forth in reasonable detail the basis of such discrepancy and identify the version of the files/data exchanged that are the basis for the finding (including the date the file/data was provided). The parties shall use reasonable efforts to resolve any discrepancies within thirty (30) days following delivery of the notice, and such resolution shall be final, binding, and conclusive upon the parties. If a discrepancy reveals that a party owes the other party money, the party owing such amounts shall pay the amounts due to the other party within thirty (30) days of the delivery of the conclusive audit findings.

5. Third-Party Auditor Requirements. All third-party auditors shall execute a confidentiality/non-disclosure agreement acceptable to MedImpact prior to conducting any inspection or audit. Any auditor performing an audit under this Agreement shall represent and warrant that it is not providing litigation services to any person or entity in connection with any lawsuit, investigation, or other proceeding that is pending or contemplated against MedImpact. "Litigation services" includes examining pharmacy claims or any other documents or information or providing advice, analysis, and/or opinions as a disclosed or undisclosed expert or consultant. The auditor must agree that it will not provide litigation services for one (1) year after completion of the audit in any lawsuit, investigation, or other proceeding against MedImpact, except for litigation services to Client. By signing this Agreement, Client authorizes MedImpact to disclose Client data and Eligible Member PHI to Client's auditors.

6. Rebate Audits. In addition to all other provisions in this Exhibit, Rebate audits are also subject to the provisions outlined in this Section. Client and MedImpact agree that an independent firm agreeable to

both parties shall conduct such audit, and that such firm will sign a confidentiality agreement with MedImpact ensuring that all details and terms of applicable rebate contracts with MedImpact (except the total aggregate amount due to Client) will be treated as confidential to MedImpact and will not be revealed in any manner or form by or to any person or entity including Client. Rebate audits shall be of a reasonable sample of pharmaceutical manufacturer agreements and/or MedImpact's agreement(s) with rebate aggregators and/or intermediaries, as applicable to Client, and shall be limited to validating the accuracy of the rebate amounts reported and distributed to Client by MedImpact. Such audit must be conducted at MedImpact's office where the records are located. Auditors shall not copy, notate, or otherwise capture the terms of any rebate contract, in whole or in part, in any medium, whether written, recorded, or via computer. MedImpact shall be entitled to review auditor's notes to ensure compliance with this requirement.

7. Participating Pharmacies, Subcontractors, and Other Third-Parties. Client acknowledges that it shall not be entitled to directly audit MedImpact Participating Pharmacies, subcontractors, and other third-party entities (including, but not limited to, pharmaceutical manufacturers, rebate aggregators and intermediaries, and vendors). Client's access to such entities shall be limited to MedImpact's books and records.

8. Audit Support. Client will notify MedImpact within two (2) Business Days of receiving notice of a Government Agency engagement, including but not limited to, audit, market conduct exam, survey, or other audit-like activity, that requires support from MedImpact. Client's failure to provide notice as required by this Section may affect MedImpact's ability to provide support within requested or mandated timeframes.

EXHIBIT G**MEDIMPACT STANDARD TERMS AND CONDITIONS**

1. **Provision of Required Information.** Throughout the Term of this Agreement, Client shall provide to MedImpact information in a format and at a frequency required by MedImpact for MedImpact to perform the Services, including but not limited to, regular and timely Eligible Member Lists and Benefit Plan Information. Client shall be solely responsible for ensuring the accuracy and completeness of its Eligible Members List and Benefit Plan Information provided to MedImpact and shall be obligated to pay for Claims accepted by MedImpact based on that information. Retroactive modification of the Eligible Members List and/or Benefit Plan Information will not relieve Client of liability for those Claims processed prior to such modifications being implemented in MedImpact systems.
2. **Reliance on Client Information.** Client acknowledges and agrees that MedImpact shall have the right to rely on the information and instructions provided by Client in connection with this Agreement and the Services provided hereunder. Failure of Client to timely provide the required information in a format acceptable to MedImpact may result in postponement of the scheduled Implementation Date (or change date for updated information). Client acknowledges and agrees that MedImpact may provide Participating Pharmacies and/or subcontractors with access to Eligible Member List information, Benefit Plan Information, and Claims data, and that MedImpact and the Participating Pharmacies and/or subcontractors are entitled to rely on the accuracy and completeness of the information provided by Client, whether provided electronically, manually, or otherwise. Further, MedImpact shall have the right to rely on instructions from Client in connection with the provision of Services hereunder. This does not give Client the right to impose requirements on MedImpact beyond those specified in this Agreement.
3. **Review of Reports, Statements, and Other Materials.** Upon Client's or its designee's(s') receipt of reports (including but not limited to all pharmacy network guarantee reports, Rebate reports, and quarterly and annual Performance Guarantee reports, etc., as applicable), Statements, and other materials (including but not limited to all service requests (SRs), benefit change requests (BCRs), pharmacy operations change requests, acceptance tests, statements of work (SOWs), etc., as applicable), Client shall be responsible for promptly reviewing and confirming that the reports, Statements, and other materials are accurate and complete and for promptly notifying MedImpact in writing of any errors or objections to such reports, Statements, and/or other materials. Unless Client notifies MedImpact in writing of any errors or objections within ninety (90) days from receipt of such report, Statement, and/or other materials, all the information contained therein will be deemed accurate, complete, and acceptable to Client.
4. **MedImpact Status.** The parties acknowledge that MedImpact is a service provider of Client and is acting in a ministerial capacity in the performance of its obligations under this Agreement. Nothing in this Agreement shall be construed or deemed to confer upon MedImpact any responsibility for or control over the terms or validity of any Benefit Plan, and MedImpact shall have no discretionary authority over or responsibility for any Benefit Plan, but rather MedImpact provides administrative services for Client. Client acknowledges and agrees that neither it nor any Benefit Plan intends MedImpact to be a fiduciary (as defined under state or federal Law, including ERISA), and neither will name MedImpact or any of MedImpact's affiliates as a plan fiduciary. MedImpact is not an insurer, plan sponsor, provider of health services, or a fiduciary, and MedImpact shall have no responsibility for: (i) any funding of Client benefits; (ii) any insurance coverage relating to Client, any Benefit Plan, or Eligible Members; (iii) the nature or quality of professional health services rendered to Eligible Members; or (iv) management or disposition of assets of the Benefit Plan, if any exist. Upon reasonable notice, MedImpact will have the right to terminate Services with respect to any Benefit Plan (or, if applicable, Eligible Members) located in a state requiring a pharmacy benefit manager to be a fiduciary to Client, a Benefit Plan, or an Eligible Member, in any capacity.

5. Third-party Data Access. Client acknowledges and agrees that MedImpact may provide Client's third-party vendors with access to Client Claims and other information (e.g., via access to MedAccess® or secure email file submissions) upon Client's request or direction. MedImpact shall require such third-party vendors of Client to execute a non-disclosure/confidentiality and/or license agreement prior to providing such data access. Client acknowledges and agrees that MedImpact will not share either party's confidential information with Client's third-party vendors until such non-disclosure/confidentiality and/or license agreement is executed. Client represents and warrants that it shall have and maintain a business associate agreement and confidentiality agreement in connection herewith with such third-party vendors.

6. Database Limitation. MedImpact relies on Medi-Span, First Databank, and/or other industry comparable databases in providing Client with claims adjudication, drug utilization review, and other Services under this Agreement. The data available from MedImpact through such databases and the Services provided hereunder are limited by the amount, type, and accuracy of information made available to MedImpact by the databases, Client, Participating Pharmacies, Eligible Members, and prescribers. MedImpact has no obligation to acquire information about an Eligible Member beyond that provided as part of the Eligible Members List and Claims information submitted by Participating Pharmacies. MedImpact does not warrant the accuracy of reports, alerts, codes, prices, or other data contained in such databases. The clinical information contained in these databases and the Formulary is intended as a supplement to, and not a substitute for, the knowledge, expertise, skill, and judgment of physicians, pharmacists, and/or other healthcare professionals involved in Eligible Members' care. The absence of a warning for a given drug or drug combination shall not be construed to indicate that the drug or drug combination is safe, appropriate, or effective for any Eligible Member. EXCEPT AS EXPRESSLY WARRANTED IN THIS AGREEMENT, MEDIMPACT DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES OF ANY KIND, INCLUDING THE SUITABILITY FOR ANY PARTICULAR PURPOSE OF THE DATA GENERATED THROUGH THE MEDIMPACT SOFTWARE SYSTEM.

7. MedImpact Proprietary Software and Information. Client acknowledges that MedImpact owns, licenses, or otherwise holds the rights to the entire proprietary software system used by MedImpact in processing Claims and preparing reports, including, without limitation, computer programs and applications, system and program documentation, and other documentation relating thereto (collectively the "MedImpact Software System"), and the MedImpact Software System is the exclusive and sole property of MedImpact. Client further acknowledges that MedImpact owns, licenses, or otherwise holds all rights to its programs, reports, MAC Lists, pricing schedules, Formularies, and other services provided to Client under this Agreement (collectively "MedImpact Business Information"), and the MedImpact Business Information is the exclusive and sole property of MedImpact. MedImpact grants Client (and Client's third-party vendors, if applicable, a limited, non-exclusive, non-transferable license to MedImpact Software System applications, as applicable to Client. MedImpact retains all license rights not expressly granted by this license grant. Client disclaims any rights to the MedImpact Software System (including access to any applicable source codes), the MedImpact Business Information, and any resultant reports, procedures, or forms developed by MedImpact, any development or modification of the MedImpact Software System and/or MedImpact Business Information as a result of any customization performed by any party, as well as any program, report, MedImpact Formulary, or service provided hereunder, all of which shall be the property of MedImpact and are protected by copyright which shall be owned by MedImpact. In addition, Client acknowledges and agrees that use of the MedImpact Software System is subject to the respective terms of use, disclaimer, and privacy policy and Client hereby agrees with those terms and conditions prior to using the MedImpact Software System. If a conflict exists between terms and conditions of this Agreement and terms and conditions of another agreement between Client and MedImpact specific to a particular MedImpact Software System application, the specific term or condition in the other agreement that is in conflict with this Agreement shall supersede and control as it relates to the particular software or application. MedImpact may provide hyperlinks to other websites for the convenience of Client. Client

understands and agrees that by clicking on the links they will be taken to websites that may not be owned or operated by MedImpact and are subject to the terms of use of those respective sites. When using the MedImpact Software System, these hyperlinks and related sites are for informational purposes only and should not be solely relied on when using the MedImpact Software System.

MedImpact may, in its sole discretion, make changes to the MedImpact Software System including adding or removing software applications or reports provided through the MedImpact Software System. Client acknowledges and agrees that MedImpact may, in its sole discretion, eliminate or remove certain reports, software application, or MedImpact Software System components. In the event MedImpact removes, eliminates, or discontinues a report, software application, or component from the MedImpact Software System, MedImpact will provide Client ninety (90) days prior written notice of such change. MedImpact will provide Client information about MedImpact alternatives to replace the removed report, software application, or component, if available.

Notwithstanding anything in this Agreement to the contrary, the parties acknowledge that in the event of any breach or threatened breach of this Section 8, any remedy at law is inadequate and MedImpact will suffer irreparable injury if such conduct is not prohibited, and therefore MedImpact is entitled, among other rights and remedies, to injunctive relief, enjoining or restraining such breach or threatened breach. The parties further agree that the existence of this remedy will not preclude MedImpact from seeking or receiving other relief. In no event will Client have the right to access the MedImpact Software System and/or MedImpact Business Information after termination of this Agreement.

8. Confidential Information. The term “Confidential Information” (whether oral or written), means information of a confidential or proprietary nature relating to the subject matter described in this Agreement which is taken from or disclosed by one party (the “Disclosing Party”) by or to the other (the “Receiving Party”), whether prepared by a party, its advisors, or otherwise, and whether furnished prior to or after the Effective Date. Without limiting the generality of the foregoing, for avoidance of doubt, MedImpact’s Confidential Information includes this Agreement, MedImpact’s reporting and other web-based and computer applications and systems (including but not limited to MedAccess®), adjudication systems, system formats, and databanks; MedImpact’s Formulary, along with clinical and formulary management operations and programs; policies and procedures, information and contracts relating to Rebates and other manufacturer revenue; pricing information, including MAC Lists and pricing schedules, and MedImpact’s contracts with Participating Pharmacies. Confidential Information shall not include information which, as evidenced in writing: (a) is or becomes publicly available or otherwise in the public domain through no breach of this Agreement; or (b) is learned by the Receiving Party from a third-party expressly entitled to disclose it.

8.1 Treatment of Confidential Information. The Receiving Party agrees to hold the Disclosing Party’s Confidential Information in strict confidence and to take reasonable precautions to protect such Confidential Information (including, without limitation, marking such information as confidential and proprietary and using all precautions Receiving Party employs with respect to its own Confidential Information). The Receiving Party shall only permit access and use of any Confidential Information to its employees and other individuals within the Receiving Party’s organization, including its advisors, consultants, and subcontractors who need to use the information to perform such Receiving Party’s obligations under this Agreement, who have been informed of the confidential and proprietary nature of the Confidential Information, and have been directed to treat the Confidential Information in accordance with the terms of this Agreement. The Receiving Party further agrees not to disclose any Confidential Information to any third party, not to use, analyze, transcribe, transmit, decompile, disassemble, or reverse engineer any Confidential Information unless required in the performance of the Receiving Party’s duties under this Agreement, not to use any Confidential Information for its own or any third party’s benefit unless authorized by this Agreement or by the Disclosing Party in writing, and not to alter or remove any legend,

marking, or notice provided by the Disclosing Party on its Confidential Information regarding the confidential and proprietary nature of such information. Notwithstanding the foregoing, Client shall require its advisors, consultants, and subcontractors to enter into a MedImpact standard non-disclosure agreement with MedImpact prior to the Client's disclosure of Confidential Information to such advisors, consultants, and subcontractors. Without limiting the generality of the foregoing, Client will not, and will not permit any advisors, consultants, or subcontractors to, attempt to access MedImpact's systems or networks connected to MedImpact's systems by circumventing MedImpact's system access control measures (*e.g., hacking, password mining, etc.*) or breach the security or authentication measures of MedImpact's systems and networks. The Receiving Party shall be responsible for any failure of its employees and other individuals within such Receiving Party's organization, and its advisors, consultants, and subcontractors, to comply with the terms of this Agreement. Receiving Party may make disclosures required by Law or court order provided Receiving Party has given the Disclosing Party immediate written notice of the request so that the Disclosing Party can object or otherwise intervene and provided that the Receiving Party uses diligent, reasonable efforts to limit disclosure and to obtain confidential treatment or a protective order. Notwithstanding the foregoing, any disclosure of Rebate contract terms and data permitted hereunder must be subject to a protective order.

8.2 No Transfer of Right or Title. Receiving Party acknowledges that it shall not acquire any rights or title to any Confidential Information merely by virtue of its use or access to such Confidential Information hereunder. Neither the execution of this Agreement nor the furnishing of any Confidential Information hereunder shall be construed as granting the Receiving Party, either expressly, by implication, or otherwise, any license under any invention or patent now or hereafter owned by or controlled by the Disclosing Party. None of the information that may be submitted or exchanged by the parties shall constitute any representation, warranty, assurance, guarantee, or inducement by a party to the other with respect to the infringement of patents, copyrights, trademarks, trade secrets, or any other rights of third persons.

8.3 Remedies. Each party agrees that any disclosure or use of Confidential Information in violation of this Section 8 would cause immediate and irreparable injury or loss that may not be adequately compensated by monetary damages. Therefore in the event of any breach or threatened breach of this Section 8, each party shall be entitled to injunctive relief and specific performance, enjoining or restraining such breach or threatened breach, in addition to all other remedies available at Law or in equity.

9. Escheatment/Unclaimed Property. Client, as the "holder" (as defined under unclaimed property Laws) of uncashed checks made out to Eligible Members for DMR Claims, shall be responsible for any required due diligence activities and escheating such amounts to the applicable states. As such, MedImpact will provide Client with reports, in MedImpact's standard format, containing sufficient information to allow Client to perform the escheatment activities as required under each state's respective unclaimed property Laws related to these uncashed DMR checks. Such reports will be provided to Client twice a year on or about January 31st and July 31st for such DMR checks that have remained uncashed for at least six (6) months post issuance. In addition, MedImpact will remit a check to Client in an amount equal to the aggregate amount as reflected in each such report and MedImpact shall have no further obligations related to any due diligence or escheatment requirements for such DMR Claim payments.

10. Performance Outside of the United States. Client acknowledges and agrees that non-member facing Services may be performed at a location outside of the United States. Services performed at a location outside of the United States shall comply with applicable Law, including HIPAA/HITECH. MedImpact shall remain liable to Client for the performance of each permitted subcontractor.

EXHIBIT H

Delegation Agreement

- A. MedImpact shall provide those utilization management services (“Delegated Services”) set forth in Schedule 1 (“Delegated Utilization Management Services”) attached hereto and incorporated into the Agreement by reference. MedImpact shall provide the Delegated Services in accordance with Client’s requirements (hereinafter “UM Program”) and applicable standard of NCQA. Client shall retain all utilization management functions not specified in this Exhibit as MedImpact’s responsibility.
- B. MedImpact shall promptly notify Client of any material change in MedImpact’s ability to fulfill the Delegated Services, and shall not make any material change to the Delegated Services without Client’s written approval.
- C. MedImpact shall provide Client with semiannual, or at such greater frequency as is mutually agreed upon by the parties, reports regarding MedImpact’s performance of the Delegated Services in a mutually agreed upon format and level of detail and as further set forth in Schedule 1. Based on these reports, Client may determine that a periodic visit (e.g. annually) is indicated to evaluate MedImpact’s performance of the Delegated Services. Client may conduct an annual assessment of the Delegated Services specifically the UM Program, a review of applicable policies and procedures, a file review of utilization management denials and appeals files against NCQA standard.
- D. In the event that Client determines in its reasonable discretion that MedImpact is not performing the Delegated Services in a satisfactory manner, Client shall provide MedImpact with written notice of such deficiencies and Client and MedImpact shall jointly develop a corrective action plan. In the event that the parties are unable to agree upon a corrective action plan, or MedImpact’s performance continues to be deficient, as reasonably determined by Client, following the corrective action plan, Client shall have the right to terminate Delegated Services with at least thirty (30) days prior written notice to MedImpact.
- E. MedImpact may delegate or subcontract its responsibilities under this Exhibit or the Agreement provided that such further delegation shall be subject to the terms of the Agreement and applicable NCQA standards.

Schedule 1

Delegated Utilization Management Services

MedImpact's delegated pharmacy management program includes the following:

- a. Pharmacy Management. Defined pharmacy management scope, structure, processes and assigned responsibility and relevant program documents, policies and procedures and supporting documentation which is updated in accordance with current practice and regulatory and accreditation standards.
- b. Timeliness. Timely and complete pharmacy management decisions and notifications in compliance with policies and procedures and standards established by State, Federal, URAC and NCQA standards.
- c. Denials. Issuance of denial letters and/or explanations of benefits and notifications of appeals rights. Written notification of denials are in compliance with NCQA, URAC, and State and Federal standards and each member is informed in writing of the member's right to file an appeal when a request for services is denied.
- d. Clinical Criteria. Relevant clinical information and consultations with treating physicians utilized in coverage determinations based on medical necessity; Determinations are based on approved clinical criteria and/or pharmacy policy as outlined in MedImpact policies and procedures; approved criteria is utilized in the determination of benefit coverage and medical necessity determinations.
- e. Consistency. Evaluation measures to ensure staff knowledge of criteria and appropriate application of criteria in a consistent manner by pharmacy management review staff, including appropriate qualified professionals for each level of utilization management decision making. MedImpact will make available to Client the annual inter-rater reliability report for Client's review
- f. Communications Services. Communications services that are available 24 hours per day, 7 days per week, and 365 days per year that facilitate communication access and availability of staff regarding utilization management issues and accommodating for language and hearing impaired. Staff will identify themselves by name, title and organization name when initiating or returning calls regarding UM issues.
- g. Reporting. MedImpact will make available to Client, in the time and manner agreed to by the Parties, its standard reports on authorizations, denials, UM cases handled by type, and utilization.
- h. Monitoring. A monitoring process exists to ensure all components of the pharmacy management medical necessity case review and determinations are in compliance with Client, NCQA, URAC, State and Federal requirements and performance standards. MedImpact will support Client's right to conduct

oversight of MedImpact's UM program, in accordance with the Service Agreement audit provisions.

- i. Quality Management. Quality issues identified through the pharmacy management process are investigated and confirmed quality issues reported to Client.

Appeals. As applicable, compliant processes to participate in the timely handling and resolution of member appeals.