

**ADMINISTRATIVE SERVICES AGREEMENT**

**by and between**

**RxBenefits, Inc.**

**and**

**Indian River County Board of County Commissioners**

**EFFECTIVE AS OF: May 1, 2018**

## **ADMINISTRATIVE SERVICES AGREEMENT**

**THIS ADMINISTRATIVE SERVICES AGREEMENT**, dated effective as of 12:01 a.m. local time in Birmingham, Alabama on May 1, 2018 ("Effective Date"), is made and entered by and between **RxBenefits, Inc.**, an Alabama corporation ("Administrator"), and **Indian River County Board of County Commissioners** ("Client"). Administrator and Client are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

### **Recitals**

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

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

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

### **Agreement**

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

### **ARTICLE I – CERTAIN DEFINITIONS**

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

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

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

"Average Wholesale Price" or "AWP" means the average wholesale price of a prescription drug as identified by drug pricing services such as Medi-Span or other source recognized in the retail prescription drug industry selected by ESI (the "Pricing Source"). The applicable AWP shall be the 11-digit NDC for the product on the date dispensed, and for prescriptions filled in Participating Pharmacies, Mail Service Pharmacy and ESI Specialty Pharmacy. Actual package size will be used for dispensing. PBM will not charge Client a higher AWP price based on repackaged products and actual package size will be used for dispensing at Participating



Pharmacies (retail), Mail Service Pharmacy and ESI Specialty Pharmacy. AWP used to calculate the Prescription Drug Claim is the current, post-settlement AWP. If the Pricing Source discontinues the reporting of AWP or materially changes the manner in which AWP is calculated, then ESI reserves the right to make an equitable adjustment as necessary to maintain the parties' relative economics and the pricing intent of this Agreement.

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

"Brand Drug" means a prescription drug identified as such in ESI's master drug file using indicators from a master drug file using indicators from Medispan on their provided (M,N,O,Y) codes. The multisource code field in Medi-Span contains an "M" (co-branded product), "O" (originator brand), or an "N" (single source brand); on the basis of a standard Brand/Generic Algorithm utilized by ESI across all clients. Notwithstanding the foregoing, certain prescription drug medications that are licensed and then currently marketed as brand name drugs, where there exists at least one (1) competing prescription medication that is a generic equivalent and interchangeable with the marketed brand name drug, may process as "Generic Drugs" for Prescription Drug Claim adjudication and Member Copayment purposes.

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

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

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

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

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

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

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

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

"ESI National Plus Network" means ESI's broadest Participating Pharmacy network.<sup>1</sup>

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<sup>1</sup> The ESI National Plus Network was historically referred to as the "EN50 Network" in ESI's network provider agreements with Participating Pharmacies, and is subject to future name change.

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

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

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

"Generic Drug" means a prescription drug, whether identified by its chemical, proprietary, or non-proprietary name, that is therapeutically equivalent and interchangeable with drugs having an identical amount of the same active ingredient(s) and approved by the FDA and which is identified as such in ESI's master drug file using indicators from Medispan on their provided (M,N,O,Y) codes. The multisource code field in Medi-Span contains an "M" (co-branded product), "O" (originator brand), or an "N" (single source brand); on the basis of a standard Brand/Generic Algorithm utilized by ESI for all of its clients, a copy of which may be made available for review by Client upon request.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Prescription Drug Program" means the specific pharmacy benefit management services and benefit design adopted by, and applicable to, Client under this Agreement.

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

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

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

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

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

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

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

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

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

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

## **ARTICLE II – ADMINISTRATIVE SERVICES PROVIDED**

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



### ARTICLE III – DUTIES OF CLIENT

- A. Client shall be solely responsible for determining the eligibility of its employees and their dependents to participate and receive benefits under the Plan.
- B. Administrator has established and shall maintain a website located at [www.rxbenefits.com](http://www.rxbenefits.com) (the “Website”) through which Client shall have the ability to access, revise and update the eligibility and enrollment information of Client’s Members. Client agrees that it shall be solely responsible for effecting timely revisions and updates to the enrollment information through the Website (or, in the alternative, through a secure file transfer protocol (ftp) site or via secure electronic data file in a format acceptable to Administrator delivered to Administrator via electronic mail) and shall be responsible for the accuracy of the enrollment information and any and all revisions and updates to the enrollment information. Upon becoming aware of errors in the enrollment information, Client shall promptly correct the information as necessary through the Website or via other acceptable alternative means provided for above in this Article III.B. Administrator shall not be responsible for Prescription Drug Claims payments made to Members or ineligible and former employees of Client who are no longer or, if applicable, should never have been Members, based on information that is or was inaccurate, was not updated or not updated on a timely basis, or otherwise revised as required by Client or this Agreement. Administrator agrees that revisions and updates to the enrollment or other applicable Member or Prescription Drug Claim information made as described above will be considered for purposes of this Agreement revised and updated within 48 hours of receipt by Administrator of written notice from Client of such revision or update. For emergency revisions and updates that need to be effective on the same day and not the next business day, Client must call in or fax such revisions and updates to Administrator during Administrator’s normal business hours and follow up with Administrator as appropriate to ensure such revisions and updates become effective on the same day to the extent reasonably possible. In addition, to the extent such emergency revisions are communicated by Client to Administrator orally (e.g., via telephone), Client agrees (and it shall be Client’s sole responsibility) to provide Administrator with a written description in reasonable detail setting forth the emergency revisions and/or updates within 48 hours after such emergency revisions/updates were orally communicated by Client to Administrator.
- C. Administrator will provide unique alphanumeric passwords (“Passwords”) to Client that will permit Client to access, revise, and update the enrollment information on the Website. Client will distribute the Passwords to the individuals named on the list of authorized users (the “Users”), which is included in Section A of the Client Application. Client is responsible for all uses of the Passwords, whether or not authorized by Client. Client is responsible for maintaining the confidentiality of the Passwords and ensuring that the Users maintain such confidentiality also. Client agrees to immediately notify Administrator of any unauthorized use of the Passwords of which Client becomes aware or has a reasonable basis to believe. To amend the list of Users, Client must notify Administrator in writing of such amendment(s). Within one (1) business day after the business day on which Administrator receives such amendment(s) in writing from Client, Administrator will deactivate the Password(s) issued to any deleted User(s) and will activate and issue new Password(s) for any new User(s) identified by Client. Although the Website is password protected, Administrator cannot and does not guarantee (and expressly disclaims and all such liability herein) that Client’s enrollment information will not be subject to unauthorized access by third parties, and Client hereby, knowingly and voluntarily, releases, discharges and holds harmless Administrator and its directors, officers, employees, agents and other representatives (collectively, “Representatives”) from and against all Losses resulting from, arising out of or relating to any unauthorized access or otherwise, except where such Losses result solely from the willful or intentional act or misconduct of Administrator. The foregoing release and discharge provided for in the immediately preceding sentence shall apply to any enrollment information of Client and/or its Members regardless of the medium or means in which it is stored, maintained, updated, revised or exchanged (i.e., whether on the Website, through a file transfer protocol (ftp) site, via electronic data file or otherwise). In addition, notwithstanding anything in this Agreement to the contrary, Administrator shall not (and Client acknowledges and understands that Administrator) shall not be liable or otherwise held responsible for fraudulent Prescription Drug Claims submitted by any Member, other third party acting or purporting to act on any Member’s behalf or any unauthorized party using any Member’s prescription drug card, information or otherwise.

- D. Client expressly understands, acknowledges and agrees that any and all information, data, documentation or software disclosed by Administrator and/or PBM in the course of conducting its business and performing administrative and related services for Members and/or Client are confidential and proprietary to, and a valuable trade secret of, Administrator and/or PBM and that any disclosure or unauthorized use - that is, any use other than to evaluate Administrator's performance under this Agreement - will cause irreparable harm and damage to Administrator and/or PBM. Notwithstanding anything to the contrary in this Agreement or in any document submitted to Client by Administrator (including, but not limited to, any confidentiality agreement), Administrator understands and acknowledges that any Confidential Information disclosed to Client by Administrator may potentially be subject to disclosure under the state or federal open records acts (each, an "Act"). Upon receipt of any request or demand by any person or entity seeking release of Confidential Information and/or prior to any release or disclosure of Confidential Information to any person or entity that Client or its Representatives deem necessary or required under the Act or otherwise, Client shall immediately notify Administrator in writing of such request, demand or obligation (a "Disclosure Request"). If Administrator fails to give express written consent to the disclosure of the Confidential Information subject to the Disclosure Request within three (3) business days of receiving written notice from Client of such Disclosure Request (initiated by any person other than Client or its Representatives), Client shall not disclose such information and Administrator shall defend and indemnify Client against any action brought to compel compliance with the Act, and against any out-of-pocket expense, including, but not limited to, court costs, all other costs of litigation, attorney's fees, fines, and statutory damages, to the extent arising from Administrator's failure to consent to disclosure of the requested Confidential Information. Without in any way limiting Administrator's defense and indemnification obligations under the preceding sentence, Administrator, at its own expense and at any time, may seek or initiate action to quash, limit, modify, narrow the scope of, and/or otherwise intervene, obtain a protective order and/or defend against, any requested disclosure subject to such Disclosure Request (an "Administrator Intervention"). Client agrees to reasonably cooperate with Administrator in any Administrator Intervention. If Client is ultimately legally compelled to disclose Confidential Information pursuant to a Disclosure Request, Client shall disclose only the minimum required pursuant to and in order to comply with the court order or other legal compulsion. Except as provided in this Subsection D of Article III, and except as may be necessary to defend or prosecute litigation between the parties hereto, Client shall not, directly or indirectly, release or disclose or otherwise use or attempt to use any patient-specific prescription information, trade secrets, proprietary software and technical processing, financial, pricing or other confidential information of Administrator and/or PBM obtained by Client from Administrator and/or PBM (regardless of the reason such information was provided or obtained) to any other party or for the benefit of any other party without the prior written consent of Administrator and/or PBM, which consent may be withheld by Administrator and/or PBM in their sole and absolute discretion.
- E. Client expressly represents and warrants that (i) it has provided notice to its employees and their dependents regarding participation in the Plan and Client's disclosure or anticipated disclosure of employee or dependent confidential information to Administrator in connection with the Plan and applicable law, and (ii) it has obtained all consents and/or other approvals or authorizations (either in writing or through opt-out procedures) from each Primary Member or, if applicable, each dependent Member or other applicable party, regarding such disclosures to Administrator for purposes of this Agreement and the services provided to Client and Members hereunder, and relating to the use and disclosure of information by Administrator or other applicable parties, including without limitation PHI under HIPAA as permitted under this Agreement or as otherwise reasonably necessary to effect and/or carry out the purposes and intent of this Agreement and the services to be performed and rendered by Administrator, PBM, Client or other applicable third parties with respect to this Agreement. PBM and/or Administrator may use, disclose, reproduce or adapt information obtained in connection with this Agreement, including Prescription Drug Claims as well as eligibility information, which is not identifiable on a Member basis. PBM and/or Administrator shall maintain the confidentiality of this information to the extent required by applicable law, and may not use the information in any way prohibited by applicable law.
- F. Should Client identify erroneous, mistaken or incorrect Prescription Drug Claims payments made by Administrator, refunds in the amount of any such erroneous Prescription Drug Claims payments to Client shall be made by Administrator within 30 days after receipt by Administrator of written notice from Client identifying such errors and providing reasonable documentation to support them. Client acknowledges, covenants and agrees that such refunds made by Administrator as provided in this Article III.F shall be the

sole and exclusive remedy of Client and any Member against Administrator, its Representatives or any third party (including PBM) resulting from any such erroneous, mistaken or incorrect Prescription Drug Claims payments made by or to Administrator, and Client further covenants and agrees to hold harmless and indemnify Administrator and its Representatives for any Losses beyond such refunds claimed by any party from Administrator. The Parties acknowledge that Administrator may seek to recover any overpayments from the Members, the providers of service or any other party unjustly enriched as a result of such overpayments at any time after notice or awareness of any such error.

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

#### ARTICLE IV – FINANCIAL ARRANGEMENT

- A. Administrator will invoice Client every two (2) weeks for the applicable Fees payable for the previous two (2) weeks. Administrator will invoice Client for the Administration Fees, as applicable and regardless of the amount of Prescription Drug Claims activity, if any. All invoices will be due and payable 7 days from receipt by Client and shall in no event be received by Administrator later than the due date stated in the invoice. Refer to Article V, below, for rules applicable to late payment of invoices. Client shall not (and acknowledges that it shall not) have any right to offset any disputed amounts or amounts due and/or payable or purported to be due and/or payable from Administrator and/or PBM from any payments of Client except as specifically approved in writing by Administrator.
- B. Administrator may charge Client administration fees (a) per Member-employee per calendar month payable on a monthly basis, and/or (b) per Prescription Drug Claim made by Members payable on a bi-monthly basis (collectively, the "Transaction Fees"). The Transaction Fees to be paid by Client to Administrator under this Agreement are as specified in the Client Application.
- C. Client acknowledges and understands that PBM, through its contractual arrangement with Administrator, guarantees certain Rebates as set forth in the Client Application. The Parties further acknowledge and understand that no Rebates or similar discounts or payments will be paid to the Parties with respect to any Prescription Drug Claims reimbursed on a unit basis by Medicaid agencies or other federal or state healthcare programs. Client acknowledges that Administrator may receive Rebates from PBM associated with certain Prescription Drug Claims of Members under Client's Plan.
- D. Client acknowledges and is aware that Administrator, pursuant to its contractual agreement with PBM, is paid by PBM an administrative services credit payment per mail and retail Prescription Drug Claim administered by Administrator on behalf of each Member in the Plan (the "PBM Service Credit"). It shall be Administrator's sole responsibility to obtain and collect such PBM Service Credit directly from PBM and Client shall have no responsibility (payment or otherwise) with respect to such credit due to Administrator. Administrator will also receive from PBM and thereafter promptly remit to Client a one-time \$5.00 per Member implementation and marketing credit payment designed to reimburse Client for the expenses and out-of-pocket costs incurred by Client to transition Client (and its Members) to PBM's benefit offerings (the "Implementation Credit"). The Parties acknowledge and agree that (1) Administrator shall be responsible for any and all transition and implementation costs it incurs with respect to the marketing and transition of Client (and its Members) to benefit offerings administered by Administrator for Client, and (2) Client shall be responsible for any and all transition and implementation costs it incurs (exclusive of any Implementation Credit received by it as described above) with respect to the transition and implementation of such benefit offerings. To the extent applicable to the parties, it is the parties' intention that, for purposes of the Federal Anti-Kickback Statute and any required government reporting, the PBM Service Credit and Implementation Credit shall constitute and shall be treated by Administrator and Client as a discount against the price of drugs within the meaning of 42 U.S.C. § 1320a-7b(b)(3)(A). By executing this Agreement, each of Administrator and Client hereby agrees that the PBM Service Credit and any Implementation Credit shall be so treated and reported, as and to the extent applicable to each such party.



- E. Client acknowledges that Administrator may, in its sole discretion, compensate brokers and/or third-party consultants from monies received or due to be received by Administrator pursuant to the provisions of this Agreement.
- F. Client expressly acknowledges, agrees, understands and confirms that (i) Administrator receives or may receive fees, rebates, commissions, payments and other remuneration from and through various sources, including Client and PBM, (ii) Administrator has disclosed to Client herein that it receives or may receive such fees, rebates, commissions, payments and other remuneration from such sources, and (iii) upon reasonable advance written request by Client, through its authorized representative, Administrator agrees to provide Client with any additional information or data within Administrator's possession or control, including without limitation specific payment or financial information, relating to this Agreement and the terms hereof, both in connection with the execution of this Agreement by the Parties as of the Effective Date and thereafter during the Term of this Agreement, whether or not in connection with any filing with respect to Client's Plan or otherwise required of Client or the Plan under applicable law, provided that such information will be made available by Administrator at mutually convenient and reasonable times, intervals and places and at no out-of-pocket cost or expense to Administrator. In the event any information requested by Client pursuant to sub-section (iii) of this Article IV.F is subject to an obligation or covenant of confidentiality, Administrator agrees to exercise commercially reasonable efforts (provided, however, that such efforts shall not require Administrator to incur any out-of-pocket cost or expense) to obtain permission to disclose to Client any such information in Administrator's possession and/or control, subject to Client's execution of a confidentiality agreement with Administrator and any other applicable party in a form reasonably acceptable to Administrator and any such other applicable party. Administrator may pay Client's benefit advisor a service fee which may be in the form of a commission, marketing fee, incentive or other allowance.

#### ARTICLE V – LATE PAYMENT

- A. If the Fees for Prescription Drug Claims, the Transaction Fees, the Administration Fees or any other applicable payments specified or provided for in this Agreement are not paid by Client and received by Administrator by the due date of the applicable invoice, then Client shall pay Administrator a service charge equal to five percent (5%) (or the maximum amount allowable under applicable law if such amount is less than 5%) of all then past due amounts. In addition to such service charge, any past due amounts (inclusive of service charges) will incur interest beginning on the due date and continuing thereafter until fully paid at a rate of twelve percent (12%) per annum (or the maximum amount allowable under applicable law if such amount is less than 12%).
- B. Furthermore, if payment of the Fees for Prescription Drug Claims, the Transaction Fees, the Administration Fees or any other applicable payments payable by Client are not received by the due date of the applicable invoice, Administrator may, at its option and upon seven (7) days' notice to Client and the same seven (7) days' opportunity to cure, cease or suspend the provision of administrative services provided by Administrator under this Agreement, and deactivate all prescription drug cards issued to the Members. Consult Article VI for Administrator's option and right to terminate this Agreement at any time if Client fails to make full and timely payment of such charges and fees (including any applicable late fees and interest) to Administrator.
- C. If at any time Administrator reasonably determines that Client may have difficulty meeting its financial commitments under this Agreement, Administrator may request from Client financial information, reasonable assurances, or both, satisfactory to Administrator as to Client's ability to timely and fully meet its commitments and responsibilities hereunder. Such assurances may include, without limitation, Administrator requiring Client to make a deposit in such amount reasonably sufficient in Administrator's judgment to secure Client's payment obligations. If Client provides Administrator with such a deposit, Administrator may apply the deposit to past due balances and shall return the remaining deposit, if any, after the termination of this Agreement and the payment of all amounts payable to Administrator hereunder. Any deposit made by Client hereunder shall not be deemed a Plan asset.



- D. Administrator's failure to charge or collect a service charge and/or interest from Client shall not waive or otherwise limit in any respect any future right of Administrator under this Agreement to charge or collect a service charge and/or interest from Client.

#### ARTICLE VI – TERM AND TERMINATION

- A. The initial term of this Agreement shall commence on the Effective Date and shall continue in effect, unless sooner terminated as provided herein, for a period of one (1) year after the Effective Date (the "Initial Term"). Unless either Party gives the other Party written notice of its intention to terminate (given in the manner prescribed in Article VIII.B below) at least sixty (60) days in advance of the expiration of then applicable Initial Term or Renewal Term (as the case may be), the Term of this Agreement shall automatically renew and extend for additional one (1) year renewal terms (each, a "Renewal Term") without any additional act on the part of either Party (unless sooner terminated as provided herein and subject to the consequences of any such termination). Administrator may terminate this Agreement at any time if its contractual arrangement with PBM terminates by giving at least sixty (60) days prior written notice of the termination of this Agreement to Client.
- B. Either Party may terminate this Agreement upon written notice to the other Party if, as a result of any change in law, the rights or obligations of the requesting Party would be materially and adversely affected. Any such termination shall be effective on the day immediately preceding the effective date of such change in law, subject to the provisions of immediately following sentence. Notwithstanding the foregoing sentence, the Parties hereby agree to use prompt, good faith efforts to renegotiate the terms of this Agreement. If the Parties successfully conclude such negotiations prior to the effective date of the change in law, this Agreement shall not terminate and shall be amended to reflect the negotiated terms mutually agreed upon by the Parties. In the event the Parties are unable to successfully conclude and reach mutual agreement through such good faith negotiations, this Agreement shall terminate as provided above and herein.
- C. On and after the date of termination of this Agreement, Administrator shall be obligated to complete such administrative services provided for in this Agreement as have been commenced prior to the date of termination. Therefore, Prescription Drug Claims incurred or reported after the date of termination are the sole responsibility of Client and are not the responsibility of Administrator. Furthermore, termination of this Agreement shall not relieve Client of its obligation to pay Administrator for any outstanding Prescription Drug Claims, charges, fees (including without limitation any applicable service charges), interest and reasonable collection costs and attorneys' fees incurred by Administrator associated with such collections. However, upon termination of this Agreement, Administrator shall not have any obligation to transition Prescription Drug Claims files and/or history that contains PBM and/or Administrator cost and pricing information to Client's new prescription benefit manager or any other third party.
- D. Administrator may, in its sole and absolute discretion, suspend performance or terminate this Agreement at any time without giving any advance notice, written or otherwise, to Client (or to any other party) and without penalty or liability for any Losses if (1) Client fails to make timely payment of the Fees for Prescription Drug Claims, the Administration Fees or any other applicable payments owed to Administrator in accordance with the terms and conditions of this Agreement or, if requested, does not provide a deposit to Administrator as provided in Article V.C above, (2) Client makes an assignment for the benefit of creditors, (3) Client is the subject of a voluntary or involuntary petition for bankruptcy or is adjudicated insolvent or bankrupt, or (4) a receiver or trustee is appointed for any portion of Client's property.
- E. Termination of this Agreement shall not terminate either Party's rights and obligations under Article III.C, Article III.D, Article IV (Financial Arrangement), Article V (Late Payment), Article VI.C, Article VII (Indemnification), Article VIII.B (Notices), Article VIII.C (Applicable Law; Venue; Consent to Jurisdiction), Article VIII.D (Entire Agreement; Construction), Article VIII.F (Relationship of the Parties), Article IX (ERISA, COBRA & HIPAA Duties) and the Client Application (as amended, if applicable), and all such rights and obligations shall expressly survive any such termination.

#### ARTICLE VII – INDEMNIFICATION

- A. Except as otherwise provided in this Agreement, Client and Administrator agree to hold harmless and to indemnify each other and each other's Representatives from and against any Losses related to the indemnifying Party's breach or violation of this Agreement or related to the sole negligence or willful misconduct of the indemnifying Party.
- B. Client acknowledges that: (1) Administrator and its Representatives do not bear any liability for Losses under the Plan; (2) Administrator and its Representatives do not insure nor underwrite the liability of Client under the Plan; and (3) Administrator's execution of this Agreement shall not be deemed as the assumption by Administrator or its Representatives of any responsibilities, obligations or duties other than those required of Administrator pursuant to the express terms and conditions of this Agreement.
- C. Client further agrees to hold harmless and to indemnify Administrator and its Representatives from and against all Losses arising from (i) Client's default in the performance of any duty, requirement or obligation of Client under this Agreement, the Plan or otherwise owed to Client's employees and their dependents (whether or not in relation to this Agreement or the Plan), (ii) the acts or omissions of any Representative of Client (whether or not in relation to this Agreement or the Plan) or (iii) any representations, warranties, covenants or statements, whether written, oral or otherwise, made by Client to its Representatives and/or their dependents. Administrator agrees to hold harmless and to indemnify Client and its Representatives from and against all Losses arising from (y) Administrator's default in the performance of any duty, requirement or obligation of Administrator under this Agreement, or (z) the acts or omissions of any Representative of Administrator (whether or not in relation to this Agreement).
- D. Each Party's liability to the other Party and its Representatives hereunder shall not exceed the actual proximate Losses caused by or arising from the indemnifying Party's breach or violation of, or failure to perform, any term or provision of this Agreement. In no event whatsoever shall either Party or any of its Representatives be liable for any indirect, special, incidental, consequential, exemplary or punitive damages (in each case, to the fullest extent that such damages may be waived by contract under applicable law), or any damages for lost profits relating to a relationship with a third party, however caused or arising, whether or not they have been informed of the possibility of their occurrence.

#### ARTICLE VIII – GENERAL PROVISIONS

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

If to Administrator at: RxBenefits, Inc.  
P.O. Box 382377  
Birmingham, AL 35238-2377  
Attn: Lauren Simmons

If to Client at: Indian River County Board of County Commissioners  
1801 27th Street  
Vero Beach, FL 32960-3365  
Attn: \_\_\_\_\_

Such addresses may be changed by either Party by written notice as to the new notice address given to the other Party as provided in this Article VIII.B. Client shall act as agent of its employees (and such employees'

dependents, as and whenever applicable) to receive all notices to them hereunder and to notify the employees and their participating dependents affected thereby. It also shall be the responsibility of Client to notify all employees (and their dependents) of termination of this Agreement by Administrator pursuant to Article VII or otherwise. In the case of changes in, or termination of, the Agreement, notice to or by Client shall be deemed to constitute notice to all employees and their dependents, and no further notice need be given by Administrator to any employee or dependent in order to effectuate any change in, or termination of, this Agreement or the benefits or coverage provided for herein or made available hereby.

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

D. **Entire Agreement; Construction.**

1. This Agreement (as defined in Article I (Certain Definitions)) constitutes the entire agreement and understanding of the Parties and supersedes any prior oral or written communication between the Parties with respect to the subject matter hereof. This Agreement may be amended or modified at any time (without notice to any Member or other third party) in writing, signed by authorized representatives of both Administrator and Client. No Representative of the Administrator is authorized to amend or vary the terms and conditions of this Agreement or to make any agreement or promise not specifically contained herein or to waive any provision hereof other than by the means prescribed above in this Article VIII.D.1.
2. In the event any provision of this Agreement shall be determined invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather this Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions and the rights and obligations of the Parties shall be construed and enforced accordingly; provided, that if the invalidation or unenforceability of such provision(s) shall, in the reasonable, good faith opinion of either Party, have a material adverse effect on such Party's rights or obligations under this Agreement, then the Agreement may be terminated by such Party upon thirty (30) days advance written notice by such Party to the other Party.
3. The Parties acknowledge that: (i) this Agreement is the product of good faith, arm's length negotiations between them; (ii) such Parties possess substantially equal bargaining power; and (iii) each Party has had the opportunity to obtain the advice of legal counsel regarding the negotiations and execution of this Agreement.
4. This Agreement is not a third party beneficiary contract, nor shall this Agreement create (or be construed or deemed to create) any rights or remedies, whether legal, equitable or otherwise, on behalf of Members or any other third parties as against Administrator.
5. This Agreement is not a contract of insurance and Administrator is not an insurer or underwriter of Client's liability under, or with respect to, the Plan. Except as otherwise provided in this Agreement, Client has and will retain the ultimate responsibility for payment of Prescription Drug Claims and other expenses under the Plan.

6. The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement.

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

F. **Relationship of the Parties.**

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

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

1. Each Party hereby certifies and shall perform its duties and obligations under this Agreement in a manner that complies with all federal, state, local and other laws and regulations applicable to such



Party and its performance hereunder, including without limitation the federal anti-kickback statute set forth at 42 U.S.C. § 1320a-7b(b) ("Anti-Kickback Statute"), the Public Contracts Anti-Kickback Statute, and/or the federal "Stark Law" set forth at 42 U.S.C. § 1395nn ("Stark Law"), as and to the extent applicable to each such Party. Each Party is responsible for obtaining its own legal advice concerning its compliance with applicable laws. If Administrator's performance of its duties and obligations under this Agreement is made materially more burdensome or expensive due to a change in federal, state or local laws or regulations or the interpretation or enforcement thereof, the Parties shall, at the option of Administrator, negotiate promptly and in good faith an appropriate adjustment to the fees, costs, expenses and/or charges paid to Administrator hereunder or other amendment to this Agreement reasonably necessary in light of the change in law or regulation or the interpretation or enforcement thereof. If the Parties cannot agree on such adjusted amounts or amended terms, then either Party may terminate this Agreement upon thirty (30) days prior written notice to the other Party.

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

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

1. Administrator and Client will allow each other reasonable access at reasonable times to administrative information relating to this Agreement and the Parties' respective duties, obligations and benefits described herein, upon the giving of reasonable advance notice by the requesting Party (subject to any limitations with respect to information that is not in the possession or control of Administrator or is otherwise subject to a covenant of confidentiality in favor of a third party). The requesting Party agrees to execute a confidentiality agreement in form and content satisfactory to the disclosing Party as a condition precedent to being permitted such access to such information, so long as such agreement is consistent with law.
2. Client, or a mutually acceptable independent, third party auditor retained by Client, may conduct, with at least sixty (60) days prior written notice and at Client's sole cost and expense, an annual Prescription Drug Claims audit of Administrator's data that directly relates to Prescription Drug Claims billings for the prior Agreement year. The scope and manner of such a Prescription Drug Claims audit (including applicable guidelines and timelines) shall be as reasonably determined by Administrator and communicated to Client sufficiently in advance of any such audit. Any such audit shall be conducted in accordance with PBM's audit protocol then in place (a copy of which

will be provided to Client upon request therefor). Client agrees that it will execute (and shall cause any mutually acceptable independent, third party auditor taking part in any such audit to execute) a confidentiality agreement in form and content reasonably acceptable to Administrator and PBM prior to conducting any such audit, so long as such agreement is consistent with law. Any request by Client to permit an auditor to perform an audit will constitute Client's direction and authorization to Administrator and PBM to disclose PHI to auditor. In the event of an audit by a mutually acceptable independent third party, Administrator and Client shall be provided with a copy of any proposed audit report or other written materials documenting such audit and Administrator will have a reasonable opportunity to comment on any such report or written materials documenting such audit before such are finalized. Upon finalization of audit results and agreement between Client and Administrator on any identified adjustments or discrepancies, if any, the period under review will be considered closed by the Parties and such agreed upon adjustment payments, if any, shall be paid by the appropriate party within thirty (30) days of execution by the Parties of an appropriate release document covering the audit period. Client acknowledges that it shall not be entitled to audit documents that Administrator is barred from disclosing by applicable law or pursuant to an obligation of confidentiality to a third party or that are not under the direction or control of Administrator. Administrator will make 100% of claims available to the Client or a mutually acceptable third party retained by Client to audit the processing contract.

3. Client acknowledges that government agencies may seek eligibility or similar data from Administrator or PBM regarding Members and may submit to Administrator or PBM claims for reimbursement for prescription drug benefits provided to such government agencies (or their agents) to Members ("Government Claims"). Administrator authorizes Administrator and PBM to provide such data as requested by government agencies or their authorized agents and further authorizes Administrator and/or PBM to process such Government Claims. Client acknowledges that Administrator may advance payment for Government Claims on behalf of Client. Client shall reimburse Administrator, in accordance with Client's payment obligations under this Agreement, for all amounts advanced by Administrator for payment of Government Claims. Client acknowledges that Government Claims submitted by or on behalf of a state Medicaid Agency shall be paid if submitted within three (3) years from the original date of fill unless a longer period is required by applicable law. In addition, Government Claims submitted by or on behalf of a state Medicaid agency may not be denied on the basis of the format of the Government Claim or failure to present proper documentation at the point-of-sale. Client shall also reimburse Administrator for any adjustments or reconciliations to previously processed Government Claims that may be payable to government agencies in accordance with applicable laws and regulations. The administrative fee for processing Government Claims shall be invoiced at the paper submitted claim rate already agreed to by the Parties or as otherwise agreed upon in writing by Administrator and Client. Administrator reserves the right to (a) terminate these services upon ninety (90) days prior notice to Client, or (b) delegate these services to a third party claims processor other than PBM.

#### **I. Confidential and Proprietary Information.**

1. The term "Confidential Information" includes, but is not limited to, this Agreement or any information of either Client or Administrator (including without limitation its designees) (whether oral, written, electronic, visual or fixed in any tangible medium of expression) relating to either party's services, operations, systems, programs, inventions, techniques, suppliers, customers and prospective customers, contractors, costs and pricing data, trade secrets, know-how, processes, plans, designs and other information of or relating to either party's business. Confidential Information does not include Protected Health Information, the use and disclosure of which is governed by Article IX.C (including Exhibit B) of this Agreement.
2. Unless otherwise provided by law and subject to Section III(D) herein, Administrator and Client shall not disclose or make use of any Confidential Information except as permitted under this Agreement without the prior written consent of the non-disclosing party, which consent may be conditioned upon the execution of a confidentiality agreement. Each party may disclose Confidential Information of the other party only to its authorized Representatives who have a need

to know the Confidential Information in order to accomplish the purpose of this Agreement and who (i) have been informed of the confidential and proprietary nature of the Confidential Information; and (ii) with respect to Representatives, have agreed in writing not to disclose it to others and to treat it in accordance with the requirements of this Section. Administrator or Client, as applicable, shall be responsible to the other Party for any breach of this Agreement by its respective Representatives.

3. The foregoing shall not apply to such Confidential Information to the extent: (i) the information is or becomes generally available or known to the public through no fault of the receiving party; (ii) the information was already known by or available to the receiving party prior to the disclosure by the other party on a non-confidential basis; (iii) the information is subsequently disclosed to the receiving party by a third party who is not under any obligation of confidentiality to the disclosing party; (iv) the information has already been or is hereafter independently acquired or developed by the receiving party without violating any confidentiality agreement or other similar obligation; or (v) the information is required to be disclosed pursuant to a court order or (vi) pursuant to law and subject to Section III(D) herein. Except in accordance with the requirements of this Article VIII.I.3, neither Party nor its Representatives may disclose, or permit to be disclosed, Confidential Information of the other party as an expert witness in any proceeding, or in response to a request for information by oral questions, interrogatories, document requests, subpoena, civil investigative demand, formal or informal investigation by any government agency, judicial process or otherwise. If either Party, or any of its respective Representatives, is requested to disclose the Confidential Information of the other party for any of the reasons described in the preceding sentence such Party shall give prompt prior written notice to the other Party to allow the other party to seek an appropriate protective order or modification of any requested disclosure. The receiving party agrees to reasonably cooperate with the disclosing party in any action by the disclosing party to obtain a protective order or other appropriate remedy. If the receiving party is ultimately legally compelled to disclose such Confidential Information, the receiving party shall disclose the minimum required pursuant to the court order or other legal compulsion.
  4. Without limiting any other rights and remedies available under this Agreement or otherwise, any unauthorized disclosure or use of Confidential Information would cause Administrator or Client, as applicable, immediate and irreparable injury or loss that may not be adequately compensated with money damages. Accordingly, if either Party fails to comply with this Article VIII.I, the other Party will be entitled to seek to obtain specific performance including immediate issuance of a temporary restraining order or preliminary injunction enforcing this Agreement, and to judgment for Losses caused by the breach, and to seek to obtain any other remedies provided by law or in equity.
- J. **Exhibits and Recitals.** All Recitals to this Agreement set forth above and all Exhibits attached hereto are hereby fully incorporated into and made a part of this Agreement by this reference.
- K. **Assignment.** Neither party may assign this Agreement without the prior written consent of the other party, provided such consent will not be unreasonably withheld. However, Administrator may assign this Agreement or delegate the duties to be performed by or behalf of Administrator under this Agreement without the consent of Administrator as part of the sale of all, or substantially all, of the assets of Administrator or similar sale or disposition of Administrator that would, upon consummation, be deemed to constitute an assignment of this Agreement under applicable law.
- L. **Disclosure of Client Information to Third Parties; Confidentiality.** Client acknowledges, understands and agrees that it may be necessary or desirable for Administrator to disclose information obtained from, provided by or otherwise regarding or relating to Client, Client's Plan, and/or Client's employees and Members (excluding any information that constitutes PHI under HIPAA) to certain vendors, consultants, brokers or other third parties in connection with Administrator's services, duties and/or obligations rendered by, or required of, Administrator under this Agreement or otherwise relating to its performance hereunder. In connection with any such disclosures and in an effort to protect the confidentiality of such disclosed information, Administrator and Client each agree to execute and deliver a confidential data release and indemnification agreement in a mutually agreed upon form.

## ARTICLE IX – ERISA, COBRA AND HIPAA DUTIES

A. **ERISA.** If Client's offering of the Prescription Drug Program provided for in this Agreement constitutes part of a "welfare plan" within the meaning of Section 3(1) of the ERISA, it is understood and agreed that the duties of Client and Administrator are as follows:

1. **Plan and Summary Description:** It shall be the duty of Client (and not the duty of Administrator) to furnish any Plan, summary plan description or summary of material modifications to participants and beneficiaries as required by ERISA and any regulations under it. It shall be the duty of Administrator to provide Client, upon request, with a summary of benefits available under the Plan for use in conjunction with the summary plan description and summary of material modifications.
2. **Annual and Summary Annual Reports:** It shall be the duty of Client to furnish any annual reports to participants and/or governmental agencies as required by ERISA, the Internal Revenue Code and any regulations thereunder. It shall be the duty of Administrator to send to Client, upon Client's reasonable request, such information which Administrator has within its possession as will permit Client to make the annual reports. It shall be the duty of Client to provide the Members with summary annual reports as required by ERISA and any regulations under it.
3. **Plan Administrator:** It is expressly understood and agreed by the Parties to this Agreement that any and all duties assigned by ERISA and any regulations thereunder to the Plan Administrator including, but not limited to, those duties specified in the Plan shall be deemed for purposes of this Agreement as duties of Client and not those of Administrator.

B. **Continuation Coverage.** It is also expressly understood and agreed by the Parties to this Agreement that the compliance with continuation coverage requirements imposed on group health plans by ERISA, the Internal Revenue Code and the Public Health Service Act (including the regulations thereunder) shall be the sole obligation of Client under this Agreement and not the obligation of Administrator. Further, Administrator will not accept payment directly from any employee or former employee (or dependent of such employee or former employee) who is eligible for continuation coverage under the Plan. It shall be the responsibility of Client (and not Administrator), or such other third party administrator handling the group health plan of which the Prescription Drug Program is a part, to collect the premiums due from the employee or former employee (or dependent of such employee or former employee) for continuation coverage and to satisfy any and all other COBRA duties and responsibilities relating thereto.

C. **HIPAA and Privacy and Security.**

1. Client also shall be solely responsible for any and all duties and responsibilities under HIPAA and similar state law that may apply to the Prescription Drug Program offered under this Agreement at any time, including but not limited to those provisions relating to portability, non-discrimination, privacy and security. The Parties will cause a HIPAA Business Associate Agreement in the form attached hereto as Exhibit B to be signed by their respective authorized representatives as of the Effective Date and will comply with the obligations required of the Parties therein.
2. Prescription Drug Claims, as well as eligibility information, which is de-identified in accordance with HIPAA and other applicable law, and which is not identifiable on a Member basis, may be used, disclosed, reproduced, adapted or sold by PBM. Such de-identified data may be provided to nationally recognized data integration firms to support appropriate administration of PBM's drug management programs as this benchmarking data enables PBM to compare against other drug population sets and seek to improve programs and services for clients.

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



Administrator:

RxBenefits, Inc.

By:

Lauren Simmons

Printed Name: Lauren Simmons

Its: Director of Compliance and Legal Affairs

Client:

Indian River County Board of County Commissioners

By:

Peter D. O'Bryan

Printed Name: Peter D. O'Bryan

Its: Chairman



ATTEST: Jeffrey R. Smith, Clerk  
of Court and Comptroller

[Exhibit A (Client Application) Follows]

BY:

Shonda J. Zurek  
Deputy Clerk

BCC Approved: January 23, 2018

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

BY

Dylan Reingold  
DYLAN REINGOLD  
COUNTY ATTORNEY

## EXHIBIT A

### CLIENT APPLICATION

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

#### A. INFORMATION ABOUT CLIENT

<b>Client Name:</b> Indian River County Board of County Commissioners	<b>HR/Primary Contact:</b>	<b>Phone</b>
<b>Mail Address:</b> 1801 27th Street	<b>HR Contact Email:</b>	<b>Fax:</b> _____
<b>City/State/Zip:</b> Vero Beach, FL 32960-3365	<b>Billing Contact:</b>	<b>Phone:</b>
<b>Main Phone:</b>	<b>Billing Contact Email:</b>	<b>Fax:</b> _____
<b>Send Invoices and Confidential Standard Reports to:</b>		
<b>Authorized Website Users of Client (User's Name and E-mail Address):</b> _____ _____ _____		

\* Note: Client may add or delete Authorized Website Users by providing written notice of such changes to Administrator pursuant to the notice provisions of Article VIII.B of the Agreement.

#### B. PLAN DESIGN; MEMBER COST SHARE

##### Member Cost Share:

Please see current Summary of Benefits.

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

C. **SERVICES; FORMULARY; PRICING GUARANTEES.**

1. **Base Administrative Services:** The following services are the base administrative services made available to Client and its Members pursuant to the Agreement (including this Exhibit A) (the "Base Administrative Services"), as applicable:
  - Administration of eligibility submitted via tape or telecommunication
  - Eligibility maintenance
  - Client support system for on-line access to current eligibility
  - Administration of Client's Plan Design
  - In-network claims adjudication via on-line claims adjudication system
  - Designated Account Team
  - Client clinical and plan consulting, analysis and cost projections
  - Annual analysis of program utilization and impact of plan design and managed care interventions
  - Welcome Package and ID Cards for new Members
  - Standard Member communications
  - Toll-free telephone access to customer service for the program for use by Members and Client's benefits personnel and representatives
2. **Additional Administrative Services:** Client will pay for additional administrative services (the "Additional Administrative Services") beyond those included in the Base Administrative Services that are requested by Client and provided or made available by Administrator under the program as follows:

I. **Administrative Fees**

<b>PBM Services – No Additional Fee</b>	
Customer service for Members	Electronic claims processing
Electronic/on-line eligibility submission	Plan setup
Standard coordination of benefits (COB) (reject for primary carrier)	Software training for access to our on-line system(s)
FSA eligibility feeds	
<b>Network Pharmacy Services</b>	
Pharmacy help desk	Pharmacy reimbursement
Pharmacy network management	Network development (upon request)
<b>Home Delivery Services</b>	
Benefit education	Prescription delivery – standard
<b>Reporting Services</b>	
Web-based client reporting –	Annual Strategic Account Plan report
Ad-hoc desktop parametric reports	Billing reports
Claims detail extract file electronic (NCPDP format)	Inquiry access to claims processing system
Load 12 months claims history for clinical reports and reporting	
<b>Website Services</b>	
Express-Scripts.com — access to reporting tools, eligibility update capability, contact directory, sales and marketing information, and benefit and enrollment support secured through Risk Base Authentication	Express Preview <sup>SM</sup> enrollment option — available during open enrollment to enable members to evaluate prescription benefit plan options
Express-Scripts.com for Members — access to benefit, drug, health and wellness information; prescription ordering capability; and customer service	

<b>Implementation Package and Member Communications</b>	
New Member packets (includes two standard resin ID cards) Member replacement cards printed via web (For hard-copy card replacement, charges are passed through from the PBM)	Implementation support
<b>Clinical</b>	
Concurrent Drug Utilization Review (DUR) Retrospective Drug Utilization Review (RDUR)  Prior Authorization – Administrative a. Non-clinical Prior Authorization b. Lost/stolen overrides c. Vacation supplies	Call4Generics

<b>PBM Services</b>	<b>Fees</b>
Transaction Fees Payable for Administrative Services (per Article IV.B of the Agreement)	\$0.65 per Prescription Drug Claim made by Members payable on a bi-monthly basis
Member-submitted paper claims processing fee	\$2.50/claim
Medicaid subrogation claims fee	\$2.50/claim
Advanced Utilization Management (AUM Bundle)	\$0.51 / PMPM
<b>Combined Benefit Management</b>	
Services to manage combined medical-pharmacy benefits that are not a consumer-directed health (CDH) plan. Services include ongoing management of the data exchange platform with the medical vendor/TPA, production monitoring and quality control, and designated operations team. Combined benefit types may include deductible, out of pocket, spending account, and lifetime maximum.	\$0.10 PMPM per combined accumulator up to maximum of \$0.20 PMPM for existing connection with medical carrier or TPA.  Fees to establish connection with new medical carrier or TPA are quoted upon request.
<b>Network Pharmacy Services</b>	
Network Pharmacy Audit Program	20% of audit recoveries
<b>Reviews and Appeals Management</b>	
Initial Determinations (i.e. coverage reviews) and Level One Appeals for the Coverage Authorization Program, consisting of: Prior Authorization Step Therapy Drug Quantity Management	Included in the existing utilization management PMPM charge <b>OR</b> Included in the existing PA charge of \$55 per review
Initial Determinations and Level One Appeals for the Benefit Review Program, consisting of reviews known as: Plan Design Related Requests Plan Exclusion Reviews (clinical or administrative reviews of non-covered drugs) Copay Reviews Plan Limit Reviews (e.g. age, gender, days' supply limits) Plan Rule/Administrative Reviews/Non-clinical Reviews Clinical Benefit Reviews Direct Claim Reject Reviews	\$55 per review

PBM Services	Fees
Final and Binding Appeals – Level Two Appeals * and/or Urgent Appeals** *Level One for clients with only one level of appeal ** Appeals can be urgent at Level One or Level Two and decisions are final and binding.	\$0.00 per review* (incremental to PMPM fees or per review fees above) * this additional fee is applied to each initial determination.
External Reviews by Independent Review Organizations - for non-grandfathered plans	\$800 per review
<b>Comprehensive Consumer Driven Health (CDH) Solution</b>	
Consumer Choice Plan Technical Bi-directional data exchange; dedicated operations; 24-hour a day, seven-days a week monitoring and quality control; performance reporting; and analytics Member Advocacy Dedicated CDH member services, open enrollment tools and member communications library, robust online features, and preventive care Health Choices Medication Adherence Monitoring and Outreach and proactive, personalized member communications Drug Choices Benefit Coaching, Prescription Benefit Review Statements, proactive, personalized member communications	All services: \$0.65 PMPM Technical and Member Advocacy: \$0.35 PMPM Health Choices and Drug Choices: \$0.30 PMPM  *these charges would be in addition to any pricing adjustments if greater than ten percent of Client's total utilization for all Plans is attributable to a CDHC.
<b>Medicare Part D – Retiree Drug Subsidy (RDS)</b>	
Part D subsidy enhanced service (ESI sends reports to CMS on behalf of Client) (i) Notice of Creditable Coverage	\$1.12 PMPM for Medicare-qualified Members with a minimum annual fee of \$7,500 \$1.35/letter + postage
Part D Subsidy standard service (ESI sends reports to Client)  A. Notice of Creditable Coverage	\$0.62 PMPM for Medicare-qualified Members with a minimum annual fee of \$5,000 \$1.35/letter + postage

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

Retail: Lowest of (i) the U&C price, (ii) Plan copayments/coinsurance, or (iii) discounted AWP (including MAC price, when MAC pricing is applicable).

Mail Order: Lower of (i) Plan copayments/coinsurance or (ii) discounted AWP (including MAC price, when MAC pricing is applicable).

### 3.1 **Pricing Guarantees.**

(a) **Ingredient Cost Guarantee.** ESI will guarantee an average aggregate annual discount as reflected below on Client utilization to be calculated as follows:

[1-(total discounted AWP ingredient cost (excluding dispensing fees and claims with ancillary charges, and prior to application of Copayments) of applicable Prescription Drug Claims for the annual period divided by total undiscounted AWP ingredient cost (both amounts will be calculated as of the date of adjudication) for the annual period)].

Notwithstanding anything herein to the contrary: (i) a Prescription Drug Claim that processes at the Brand rates (Participating Pharmacy Reimbursement Rates) and (Mail Pharmacy Reimbursement Rates), as indicated on the ingredient cost field of the Prescription Drug Claim's data record, shall be reconciled as part of the Brand guarantee below; and (ii) a Prescription Drug Claim that processes at the Generic rates (Participating Pharmacy Reimbursement Rates) and (Mail Pharmacy Reimbursement Rates) above, as indicated on the ingredient cost field of the Prescription Drug Claim's data record, shall be reconciled as part of the Generic guarantee below. The only Prescription Drug Claims that shall be excluded from the reconciliation of the pricing guarantees are as identified in the "Claims Excluded" column of the table below. All other Prescription Drug Claims shall be included in the reconciliation of the guarantees.

Type of Guarantee	Participating Pharmacy	Smart90 Walgreens Network" extended (84-90) days' supply	Mail Service Pharmacy	Claims Excluded
Brand	AWP – 17.80%	AWP – 24.80%	AWP – 24.80%	OTC, compounds, Member Submitted Claims, Subrogation Claims, vaccines, Specialty Products, biosimilar products, long term care pharmacy claims and products filled through in-house or 340b pharmacies (if applicable), Devices; Direct/Member Submitted Claims, Non-Traditional Providers (Military/Veterans/Home Infusion/LTC/Tribal/Indian/Urban), U&C Claims, Reversed/Rejected Claims
Generic	AWP – 81.80%	AWP – 84.80%	AWP – 84.80%	OTC, compounds, Member Submitted Claims, Subrogation Claims, vaccines, Specialty Products, biosimilar products, long term care pharmacy claims and products filled through in-house or 340b pharmacies (if applicable), Devices; Direct/Member Submitted Claims, Non-Traditional Providers (Military/Veterans/Home Infusion/LTC/Tribal/Indian/Urban), U&C Claims, Reversed/Rejected Claims



(b) Dispensing Fee. ESI will guarantee a maximum average aggregate annual per claim dispensing fee on Client utilization to be calculated as follows:

[total dispensing fee of applicable claims for the annual period divided by total claims for the annual period].

Type of Guarantee	Participating Pharmacy	Smart90 Walgreens Network" extended (84-90) days' supply	Mail Service Pharmacy	Claims Excluded
<b>Generic Drug Dispensing Fee/Claim*</b>	\$0.80	\$0.00	\$0.00	OTC, compounds, Member Submitted Claims, Subrogation Claims, vaccines, Specialty Products, biosimilar products, long term care pharmacy claims and products filled through in-house or 340b pharmacies (if applicable), Devices; Direct/Member Submitted Claims, Non-Traditional Providers (Military/Veterans/Home Infusion/LTC/Tribal/Indian/Urban), U&C Claims, Reversed/Rejected Claims
<b>Brand Dispensing Fee/Claim*</b>	\$0.80	\$0.00	\$0.00	OTC, compounds, Member Submitted Claims, Subrogation Claims, vaccines, Specialty Products, biosimilar products, long term care pharmacy claims and products filled through in-house or 340b pharmacies (if applicable), Devices; Direct/Member Submitted Claims, Non-Traditional Providers (Military/Veterans/Home Infusion/LTC/Tribal/Indian/Urban), U&C Claims, Reversed/Rejected Claims

\* Dispensing Fees are inclusive of shipping and handling. If carrier rates (i.e., U.S. mail and/or applicable commercial courier services) increase during the term of this Agreement, the Dispensing Fee guarantees will not be increased to reflect such increase(s).

Guarantees will be measured and reconciled on an annual basis. To the extent Client changes its benefit design or Formulary during the term of the Agreement, the guarantee will be equitably adjusted if there is a material impact on the discount achieved. Subject to the remaining terms of this Agreement, ESI will pay the difference of Client's cost for any shortfall between the actual result and the guaranteed result. For purposes of measurement of any pricing guarantee in this Agreement or Amendments to this Agreement, over performance in any component will not be used to offset performance in any other measured pricing component.

### 3.2 Specialty Products

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

	<b>Ingredient Cost</b>	<b>Dispensing Fee</b>
<b>Exclusive ESI Specialty Pharmacy</b>	See Exclusive Specialty Product List	\$0.00
<b>Participating Pharmacy Specialty Products</b>	Participating Pharmacy Specialty Product List Lesser of AWP discount, U&C or MRA (as applicable)	\$0.82

(b) Pricing for ASES is as follows:

- (i) For Specialty Products needing an additional charge to cover costs of all ASES required to administer the Specialty Products, the following standard per diem and nursing fee rates shall apply. Exceptions to the standard per diem and nursing rates are set forth in (ii), below, which list may be updated from time to time by ESI. Pricing for home infusion supplies and services provided at Participating Pharmacies (for example, limited distribution products not then available through ESI Specialty Pharmacy or overrides) will be pass through.

Standard Per Diem	\$65/dose
Standard Nursing Fee/ First 2 Hours	\$150
Standard Nursing Hourly	\$75

- (ii) Additional exceptions to AWP Discount Rates and Standard Per Diem & Nursing Fees

<b>Brand Name</b>	<b>AWP Discount</b>	<b>Per Diem</b>
EPOPROSTENOL	1.0%	\$65/day
REMODULIN	5.0%	\$65/day

The AWP discount includes Phone Support Nursing, Supplies, Pump, first two training visits, and Coordination of In-Person Nursing. In-home nursing that is requested/needed beyond the first two training visits will be charged at a rate of \$150 for the first two hours and \$75 for every hour after.

(c) Specialty Products will be excluded from the non-specialty price guarantees set forth in the Agreement. In no event will the Mail Service Pharmacy or Participating Pharmacy pricing terms specified in the Agreement, including, but not limited to, the annual average ingredient cost discount guarantees, apply to Specialty Products.

(d) Unless otherwise set forth in an agreement directly between ESI Specialty Pharmacy and Client, if a Specialty Product dispensed or ASES provided by ESI Specialty Pharmacy is billed to Client directly by ESI Specialty Pharmacy instead of being processed through ESI and Administrator, Client agrees to timely pay ESI Specialty Pharmacy for such claim pursuant to the rates above and within thirty (30) days of Client's, or its designee's,



receipt of such electronic or paper claim from ESI Specialty Pharmacy. ESI Specialty Pharmacy shall have 360 days from the date of service to submit such electronic or paper claim.

(e) **SPECIALTY NET EFFECTIVE DISCOUNT GUARANTEE** - Administrator guarantees that the overall annual net effective discount for the products listed on the Specialty Products List will be at least AWP (-) minus 18.50% for Client (excluding limited distribution products). Within one hundred eighty days (180) following the end of each contract year ESI will calculate the actual net effective discount for the products listed on the Specialty Price List that were dispensed through the mail order channel to determine if the guarantee has been met. If the actual overall net effective discount is less than the guaranteed net effective discount ESI will reimburse Client the full dollar amount of the difference between the actual and guaranteed net effective discounts. Client will retain any amount that the actual net effective discount exceeds the guaranteed net effective discount. The calculation for the actual net effective discount will be as follows: ((Total Ingredient Cost for the products listed on the Specialty Price List) divided by (Total AWP for the products listed on the Specialty Price List)) minus 1. This guarantee is contingent on Client's participation in the National Preferred Formulary and an exclusive specialty arrangement.

**3.3 Influenza and Other Vaccinations.** Vaccinations shall adjudicate at the lower of:

(a)

	<i>Participating Pharmacy</i>	<i>Participating Pharmacy</i>
	<b>INFLUENZA</b>	<b>OTHER VACCINES</b>
<b>Ingredient Cost</b> +	Participating Pharmacy Ingredient Cost as set forth in the Agreement	Participating Pharmacy Ingredient Cost as set forth in the Agreement
<b>Dispensing Fee</b> +	Participating Pharmacy Dispensing Fee as set forth in the Agreement	Participating Pharmacy Dispensing Fee as set forth in the Agreement
<b>Professional Service Fee (PSF); cost for pharmacist to administer the vaccine</b>	Pass-Through (capped at \$15 per vaccine claim)	Pass-Through (capped at \$20 per vaccine claim)
<b>Vaccine Program Fee *</b>	\$2.50 per vaccine claim	\$2.50 per vaccine claim

\* The Vaccine Program Fee will be billed separately to Client as part of the administrative invoice according to the billing frequency set forth in the Agreement. This Vaccine Program Fee will apply to any vaccine claims, whether at contracted rates or U&C, and is in addition to any per Prescription Drug Claim administrative fee set forth in the Agreement.

**OR**

(b) the combined ingredient cost, dispensing fee (if any) and professional service fee (if any) that the Participating Pharmacy generally charges an individual paying cash, without coverage for prescription drug benefits, plus the Vaccine Program Fee set forth above.

Coverage is subject to Plan provisions. No vaccine claims will be included in any guarantees set forth in the Agreement and/or amendments thereto.

**D. REBATES**

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

Formulary:	ESI National Preferred			
	National Plus Network	Smart90 Walgreens Network" extended (84-90) days' supply <sup>(1)</sup>	Home Delivery	Specialty
Rebates per Brand Rx	\$148.00	\$430.00	\$430.00	\$1,075.00

**<sup>(1)</sup> Smart90 Walgreens Network**

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

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

**How Smart90 Walgreens Works:**

- Members obtain 90-day supply of maintenance prescriptions via home delivery from Express Scripts or at one of more than 8,000 Walgreen's pharmacies.
- Member pays the same 90-day copay whether filling through the Express Scripts Pharmacy or through one of the Walgreen's pharmacy locations

Members who continue to fill 30-day supplies of maintenance medications or use a non-preferred pharmacy after two courtesy fills pay 100% of the prescription cost.

2. **Exclusions**

Member Submitted Claims, Subrogation Claims, biosimilar products, OTC products, vaccines, claims older than 180 days, claims through Client-owned or 340b pharmacies, and claims pursuant to a 100% Member Copayment plan are not eligible for the guaranteed Rebate amounts set forth in Section 1. above.

3. **Rebate Payment Terms**

Subject to the conditions set forth herein, Administrator will receive from ESI the quarterly Rebate payments within approximately one hundred eighty (180) days following calendar quarter adjudicated for Rebates received during the prior calendar quarter. Administrator shall pay Client the guaranteed amounts set forth in Section 1 above within approximately thirty (30) days following receipt of the Rebate payments from ESI.

4. **Conditions**

- 4.1. ESI contracts with pharmaceutical manufacturers for Rebates on its own behalf and for its own benefit, and not on behalf of Client. Accordingly, ESI retains all right, title and interest to any and all actual Rebates received from manufacturers. ESI will pay Client amounts equal to the Rebate amounts allocated to Client, as specified above, from ESI's general assets (neither Client, its Members, nor Client's plan retains any beneficial or proprietary interest in ESI's general assets). Client acknowledges and agrees that neither it, its Members, nor its Plan will have a right to interest on, or the time value of, any Rebate payments received by ESI during the collection period or moneys payable under this Section. No amounts for Rebates will be paid until this Agreement is executed by Client. ESI will have the right to apply Client's allocated Rebate amount to unpaid Fees.
- 4.2 Client acknowledges that it may be eligible for Rebate amounts under this Agreement only so long as Client, its affiliates, or its agents do not contract directly or indirectly with anyone else for discounts, utilization limits, rebates or other financial incentives on pharmaceutical products or formulary programs for claims processed by ESI pursuant to the Agreement, without the prior written consent of ESI. In the event that Client negotiates or arranges with a pharmaceutical manufacturer for Rebates or similar discounts for any Covered Drugs hereunder, but without limiting ESI's right to other remedies, ESI may immediately withhold any Rebate amounts earned by, but not yet paid to, Client as necessary to prevent duplicative rebates on Covered Drugs. To the extent Client knowingly negotiates and/or contracts for discounts or rebates on claims for Covered Drugs without prior written approval of ESI, such activity will be deemed to be a material breach of this Agreement, entitling ESI to suspend payment of Rebate amounts hereunder and to renegotiate the terms and conditions of this Agreement.
- 4.3 Under its Rebate program, ESI may implement ESI's Formulary management programs and controls, which may include, among other things, cost containment initiatives, and communications with Members, Participating Pharmacies, and/or physicians. ESI reserves the right to modify or replace such programs from time to time. Guaranteed Rebate amounts, if any, set forth herein, are conditioned on adherence to various Formulary management controls, benefit design requirements, claims volume, and other factors stated in the applicable pharmaceutical manufacturer agreements, as communicated by ESI to Client from time to time. If any government action, change in law or regulation, change in the interpretation of any law or regulation, or any action by a pharmaceutical manufacturer has an adverse effect on the availability of Rebates, then ESI may make an adjustment to the Rebate terms and guaranteed Rebate amounts, if any, hereunder.
- 4.4 Rebate Acknowledgment; No Representation; Rebate Limitations. Client acknowledges that Administrator is not making any representation, warranty or guaranty of any kind or nature, either express, implied or otherwise, regarding the amount of Rebates to be paid or remitted to Client pursuant to this Agreement, except as specifically set forth in writing herein. In addition, Client waives, releases and forever discharges PBM and Administrator from any Losses arising from a pharmaceutical company's (a) failure to pay Rebates; (b) breach of an agreement related to Rebates; or (c) negligence or misconduct. Client acknowledges that whether and to what extent pharmaceutical companies are willing to provide Rebates to Client may depend upon a variety of factors, including the content of the PDL, the Plan's design features, Client meeting criteria for Rebates, and the extent of participation in PBM's formulary management programs, as well as PBM/Administrator receiving sufficient information regarding each Claim for submission to pharmaceutical companies for Rebates. Client acknowledges and agrees that PBM may, but shall not be required to, initiate any collection action to collect any Rebates from a pharmaceutical company. In the event PBM does initiate collection action

against a pharmaceutical company to collect Rebates, PBM may offset any reasonable costs, including reasonable attorneys' fees and expenses, arising from any such action.

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

#### **ESI's Inflation Protection Program**

ESI is pleased to offer our Inflation Protection Program to your organization. Under the program, ESI will pay to Sponsor \$2.00 per Formulary Brand Drug claim (the "Sponsor Inflation Payment"). Subject to the conditions set forth herein, ESI shall pay Sponsor the Sponsor Inflation Payment within approximately one hundred and eighty (180) days following the end of each calendar quarter for utilization occurring during such quarter. Non-Formulary claims will be excluded.

#### **Terms and Conditions of the Inflation Protection Program**

The following claims will be excluded from all calculations related to the Inflation Protection Program: Medicare claims, Medicaid claims, any other government health care program claims, OTCs, member submitted claims, subrogation claims, compounds, Generic Drugs, claims submitted by Sponsor owned, in-house, or on-site pharmacies, 340B claims, claims submitted through a 100% member cost-share program, Biosimilars, drugs where the quantity or packaging has been changed by the manufacturer from the past year, and drugs for which there was no utilization in the calendar year prior to the calendar year for which the Inflation Guarantee payment is being determined.

If Sponsor makes material changes to its Formulary or benefit design that negatively impact ESI's ability to control inflation relative to Sponsor's Formulary drug mix, then ESI reserves the right to make an equitable adjustment to the Inflation Guarantee.

ESI's Inflation Protection Program, and the underlying economics, is separate and apart from, rebates and manufacturer administrative fees and the amounts described above will be paid to Sponsor in addition to any rebate payments to which Sponsor is entitled. Sponsor will not be entitled to receive any amounts related to drug price inflation or a related guarantee other than as set forth above.

#### **The following pricing assumptions shall apply for purposes of this Agreement:**

1. If Client decides to implement a mandatory generic, mandatory mail, step therapy or other program during the Term, ESI has agreed that proposed pricing terms other than rebate guarantees will remain unchanged.
2. ESI must agree to propose pricing based on its broad national retail network that includes all major national and regional pharmacy chains.
3. Pricing is not based upon the assumption that ESI will be the exclusive PBM. Client reserves the right to purchase specialty products from other sources. Client will have the option to select an open or exclusive specialty provider. Additionally, Administrator will work with Client as needed to re-direct specialty medications to a preferred provider.

#### **DISCOUNTS**

4. The proposed "effective" generic discount and the generic discount guarantee calculation INCLUDES the following:
  - MAC Generics
  - Non-MAC Generics
  - Single Source Generics

Multi-Source Generics  
Generics in their FDC-granted exclusivity period  
Patent litigated claims  
Generics with limited supply  
Generic medications prescribed and/or dispensed in conjunction with a specialty medication

5. All Claims filled in Most Favored Nation states are INCLUDED in discount guarantees.
6. All Claims filled in rural pharmacies are INCLUDED in discount guarantees.
7. Ingredient Cost (including Member share) is defined as the lesser of the following:  
    AWP-Discount %;  
    MAC Price; or  
    Usual & Customary Price.
8. Discount will always be calculated using this formula (all Claims, including ZBDs):  
 $(1 - [\text{Ingredient Cost}] / [\text{AWP Price}]) \times 100$ .
9. "Gross Cost" is defined as:  $[\text{Ingredient Cost}] + [\text{Dispensing Fee}] + [\text{Sales Tax}]$ .
10. ESI agrees to apply Client-specific guarantees to all pricing components:  
    Discounts  
    Rebates  
    Admin Fees  
    Dispensing Fees
11. During the Term, contract guarantees will not change unless one of the following items occurs which could change the economics of the pricing arrangement and would need to be evaluated: (i) a change in assumption or plan design; (ii) change in law; and/or (iii) change in pricing benchmarks.
12. There will be NO dispensing fee applied to Reversed/Rejected Claims.

#### CLAIMS ADJUDICATION

13. There will be no price floors for amount paid on any Prescription Drug Claims.

#### REBATES

14. Rebate revenue will not have any impact on discount guarantee reporting and/or true up.
15. Rebates will be paid for brand Prescription Drug Claims and at a flat minimum dollar-for-dollar guarantee basis
16. Contract rebate guarantees are not subject to change as a result of known brand patent expirations.
17. The rebate guarantees are not subject to formulary percentage criteria.

#### DATA

18. Audit files will be supplied to Client and Client's consultant directly from the source system and should include all Prescription Drug Claims processed including, but not limited to, paid, reversed and denied Prescription Drug Claims.
19. ESI will provide the above mentioned extract at no charge to Client.



20. At no charge, ESI must be able to transfer data to Client's other vendor partners (e.g., medical plan administrator, stop loss vendor, disease management vendor, catastrophic claimant advocate, etc.), with an appropriate non-disclosure agreement in place.
21. ESI can provide the fully identified NCPDP expanded format to Client's consultant on a quarterly basis at no additional charge for use by both the InfoLock team and the Pharmacy Analytics Team.
22. InfoLock Data feeds that are in place will be honored even after termination at no cost to Client or Client's consultant. In other words, if the Agreement is not renewed following the Term, InfoLock must still receive the 4th quarter data even though it will not be available until after termination of this Agreement.

#### AUDITS

23. Third Party Audits- Client may employ a third party auditor, at Client's sole cost and expense, to conduct audits of the terms of this Exhibit A, including, but not limited to:
  - Pharmacy Claims transactions
  - Financial performance guarantees
24. Client's consultant (Lockton) may perform a pre-implementation audit prior to the Effective Date.

#### MISCELLANEOUS

25. Any costs bidding entities may incur as it relates to attending meetings, site visits or negotiations are the responsibility of Administrator.
26. Client will not be responsible for any unpaid Member co-payment or co-insurance amounts.
27. Client may not terminate this Agreement without cause and may only terminate this Agreement as expressly provided for in Article VI of the Agreement.
28. If this Agreement is terminated prior to the completion of a Contract Year, the financial guarantees associated with that partial Contract Year will still apply and be reconciled accordingly.
29. Coordination of Benefits claims accounted for in the claims data and discount guarantees by a flag indicating that a transaction utilized COB functionality within the RxCLAIM system. COB claims are excluded from pricing guarantees, but are assessed an administrative fee if applicable.

RxBenefits - ESI will be able to support Client's custom/current Rx Plan Design.

#### **E. EXECUTION BY CLIENT**

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

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

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

ATTEST: Jeffrey R. Smith,  
Clerk of Court  
and Comptroller

BY: Phoneda S. Gable  
Deputy Clerk

CLIENT:

Indian River County Board of County Commissioners

By: Peter D. O'Bryan

Printed Name: Peter D. O'Bryan

Its: Chairman



BCC Approved: January 23, 2018

Acknowledged, agreed to and accepted by:

ADMINISTRATOR:

RxBenefits, Inc.

By: Lauren Simmons

Printed Name: Lauren Simmons

Its: Director of Compliance and Legal Affairs

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

BY: Dylan Reingold

DYLAN REINGOLD  
COUNTY ATTORNEY

## **EXHIBIT B**

### **BUSINESS ASSOCIATE AGREEMENT**

**THIS BUSINESS ASSOCIATE AGREEMENT** (this "Agreement"), by and between Indian River County Board of County Commissioners' Health Plan (the "Plan") and Indian River County Board of County Commissioners (the "Company") (the Plan and the Company are collectively referred to herein as the "Company"), and RxBenefits, Inc. (the "Business Associate"), is effective as of January 1, 201\_.

#### ***RECITALS***

**WHEREAS**, due to the services (the "Services") performed by the Business Associate with respect to the Plan, Protected Health Information ("PHI") and Electronic Protected Health Information subject to the Privacy Regulations and the Security Regulations, promulgated by the United States Department of Health and Human Services ("HHS") under the Health Insurance Portability and Accountability Act of 1996 (the "Regulations"), may be transmitted, created, received, and/or maintained; and

**WHEREAS**, to the extent required by the Regulations, the Business Associate and the Company desire to comply with the "Business Associate" requirements of the Regulations and to memorialize their agreements with respect to such compliance.

#### ***AGREEMENT***

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and adequacy of which hereby are acknowledged, the Business Associate and the Company agree as follows:

1. Definitions. Unless otherwise defined herein, capitalized terms shall have the same meanings as set forth in the Regulations.

2. Restrictions on Use and Disclosure of PHI. The Business Associate may Use PHI only to perform the permitted and required Uses and Disclosures as provided by this Agreement or as Required By Law. The Business Associate shall make reasonable efforts to limit PHI that is subject to this Agreement to the minimum amount that is necessary to accomplish the intended purpose of a required or permitted Use or Disclosure under this Agreement. To the extent practicable, Business Associate agrees that each use, disclose, or request of PHI shall be limited to PHI in a limited data set, as that term is defined at 45 C.F.R. § 164.514(e)(2). The Business Associate shall not Use or Disclose PHI received from the Company or any participant in the Plan in any manner that would constitute a violation of the Regulations if the Company made the same Use or Disclosure, except that the Business Associate may Use or Disclose such PHI for the Business Associate's proper management and administration and legal responsibilities.

The Business Associate may Disclose PHI for the purposes described in this Section 2 only in the following circumstances: such Disclosure is Required By Law; or the Business Associate obtains reasonable assurances from the person to whom the PHI is Disclosed that it will be held confidentially and Used or further Disclosed only as Required By Law or for the purpose for which it was Disclosed to the person, and the person agrees to notify the Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

3. Agents and Subcontractors Bound by Agreement. If any agent or subcontractor of the Business Associate (other than the Business Associate's Workforce) will have access to PHI that is



received from, or created or received by the Business Associate on behalf of the Company, then the Business Associate will enter into an agreement with such agent or subcontractor whereby the agent or subcontractor agrees to be bound by the terms of this Agreement with respect to PHI.

4. Safeguards for Protection of PHI; Report of Unauthorized Use or Disclosure. The Business Associate agrees that it will implement and use appropriate safeguards to prevent any Use or Disclosure of PHI in violation of this Agreement. The Business Associate agrees that it will report to the Company any Use or Disclosure of PHI, of which the Business Associate becomes aware, that is in violation of this Agreement. The Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a Use or Disclosure of PHI by the Business Associate in violation of this Agreement.

5. Cooperation by the Business Associate. The Business Associate agrees to cooperate with the Company in providing an accounting of Disclosures of PHI received under this Agreement as requested by an individual to whom it relates, except to the extent the Regulations provide otherwise. In the event that Business Associate uses or maintains an electronic health record, Business Associate agrees that such accounting shall include disclosures made to carry out treatment, payment, and health care operations through the use of such electronic health record. Upon receiving a request for an accounting of disclosures directly from an individual who has received an accounting of disclosures from Company, which provided a list of all business associates acting on behalf of the Plan, including Business Associate, Business Associate agrees to provide an accounting of its disclosures of PHI to such individual as required by the Privacy Regulations. In response to such a request from an individual, Business Associate may elect to provide either (i) an accounting of disclosures that includes disclosures of subcontractors and/or agents acting on behalf of Business Associate or (ii) an accounting of disclosures that are made by the Business Associate as well as a list of all subcontractors and/or agents acting on behalf of Business Associate, including contact information such as mailing address, phone, and email address. The Business Associate shall respond to requests from the Company for the information described in this Section 5 and make available such information to the Company within a reasonable period of time to enable the Company to timely respond to any request.

The Company agrees that the Business Associate will not maintain any Designated Record Sets on its behalf and that the Business Associate assumes no responsibility to respond to individuals' requests for access or amendments as provided in Sections 164.524 and 164.526 of the Regulations.

Business Associate agrees that the requirements of the Privacy Regulations shall be applicable to Business Associate in the performance of its obligations pursuant to the Agreement.

Business Associate agrees that it shall not directly or indirectly receive remuneration in exchange for any PHI, unless a valid authorization, as that term is defined at 45 C.F.R. § 164.508, is obtained or the purpose of the exchange meets one of the exceptions set forth in set forth in the 45 C.F.R. 164.502(a)(5)(ii).

6. Documenting Disclosures. In order to cooperate with the Company in accordance with Section 5 above, the Business Associate agrees to document all Disclosures of PHI and information related to such Disclosures as would be required for the Company to respond to an individual's request for an accounting of Disclosures of PHI under Section 164.528 of the Regulations. Such documentation shall include: (a) the date of the Disclosure; (b) the name of the entity or person who received the PHI and, if known, the address of such entity or person; (c) a brief description of the PHI Disclosed; and (d) a brief statement of the purpose of the Disclosure (which would reasonably inform an individual of the basis for the Disclosure).

7. HHS. The Business Associate agrees to make its internal practices, books and records relating to the Use and Disclosure of PHI received from or created or received by the Business Associate on behalf of the Company available to the Company and the Secretary of HHS for purposes of determining the Company's compliance with the Regulations. Notwithstanding this Section 7, no attorney-client privilege or other privilege shall be deemed waived by the Company or the Business Associate.

8. Termination. Company and Business Associate shall each have the right to immediately terminate this agreement upon the violation by the other of a material term of this Agreement or of the Regulations, including violations relating specifically to the permitted and required Uses and Disclosures of PHI by the Company or Business Associate; provided, however, that the breaching party shall be provided the opportunity to cure the breach to the satisfaction of the other within a reasonable period of time. If the breaching-party does not cure the default, the non-breaching party shall be entitled to terminate this Agreement or if it is not feasible to terminate this Agreement, report the problem to the Secretary of HHS.

Upon termination of this Agreement, the Business Associate and the Company agree to determine whether the return or destruction of PHI received from, or created or received by the Business Associate under this Agreement is feasible. If such return or destruction is mutually determined to be feasible, the Business Associate shall promptly return or destroy all such PHI received from or created or received by the Business Associate under this Agreement. If such return or destruction is mutually determined to not be feasible, the protections of this Agreement shall continue to apply to such PHI after termination (including the Business Associate's obligations in Section 5), and further Uses and Disclosures of such PHI shall be restricted to only those purposes that make the return or destruction of the information infeasible. If mutual agreement is not made as to the feasibility of any return or destruction of PHI, the parties agree to use mediation to resolve this issue.

9. Term of Agreement. The term of this Agreement shall be such period of time as the Business Associate is performing the Services. In the event that such Services are terminated, this Agreement also shall terminate, except that the provisions of Sections 8 and 15 shall survive any termination of this Agreement.

10. Notice. All written communications, demands, and notices between the parties hereto must be posted by first class mail, postage paid or express mail to the following addresses:

To the Business Associate:

Lauren Simmons  
RxBenefits, Inc.  
P. O. Box 382377  
Birmingham, Alabama 35238-2377

To the Company:

Attn:  
Indian River County Board of County Commissioners  
1801 27th Street  
Vero Beach, FL 32960-3365

11. Entire Agreement. This Agreement supersedes all previous contracts and constitutes the entire agreement of whatever kind or nature existing between the parties with respect to the subject matter hereof, and no party shall be entitled to benefits other than those specified herein. As between the parties, no oral statement or prior written material not specifically incorporated herein shall be of any force and effect; and the parties specifically acknowledge that in entering into and executing this Agreement, the parties rely solely upon the representations and agreements contained in this Agreement and no others. This Agreement may be amended only by an instrument in writing executed by the parties hereto and may be supplemented only by documents delivered in accordance with the express terms hereof.

12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

13. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein or therein confer, upon any person other than the Company and the Business Associate and their respective successors or assigns in interest, any rights, remedies, obligations, or liabilities whatsoever.

14. Modification For Change in Law. Upon the occurrence of changes or amendments to the Regulations or other law that affect the legality of or any provision in this Agreement, the Company and the Business Associate agree to modify this Agreement to comport with such changes or amendments. Any such modification of this Agreement shall be in writing and signed by the Company and the Business Associate.

15. Indemnification. Each party to this Agreement hereby agrees to indemnify, defend, and hold harmless the other party (including, but not limited to, its directors, employees, officers, and agents) from and against any and all claims, causes of action, liabilities, damages, costs, or expenses (including, but not limited to, attorneys' fees) incurred by the party as a result of the other party's (or any party acting by or through the party) gross negligence or willful misconduct or failure to perform any of its duties or obligations under this Agreement.

16. Security. The Business Associate shall:

- (a) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Company as required by the Regulations;
- (b) Ensure that any agent, including any subcontractor, to whom the Business Associate provides such Electronic Protected Health Information agrees in writing to implement reasonable and appropriate safeguards to protect it;
- (c) Report to the Company any security incident of which the Business Associate becomes aware;
- (d) Make its policies and procedures and documentation required by the Regulations relating to such administrative, physical, and technical safeguards, available to the Company and the Secretary of HHS for purposes of determining the Company's compliance with the Regulations;
- (e) Acknowledge its obligation to comply with the Security Regulations in using and disclosing Electronic Protected Health Information, including but not limited to 45 C.F.R. §§ 164.308 (Administrative safeguards), 164.310 (Physical safeguards), 164.312 (Technical safeguards), and 164.316 (Policies and procedures and documentation requirements) of the Security Regulations.
- (f) Notify the Company without unreasonable delay in writing of the occurrence of a breach, as that term is defined at 45 C.F.R. § 164.402, of which Business Associate becomes aware. Business Associate shall also promptly provide Company such other information required to be provided to individuals under 45 C.F.R. § 164.404(c) as it becomes available after such breach.

17. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Florida without regard to the principles of conflicts of laws of said state.

IN WITNESS WHEREOF, the parties herein have caused this Business Associate Agreement to be executed by their duly authorized representatives as of the date first written above.

PLAN:

Indian River County Board of County  
Commissioners' Health Plan

By: Peter D. O'Bryan  
Peter D. O'Bryan

Its: Chairman



COMPANY:

Indian River County Board of County  
Commissioners

By: Peter D. O'Bryan  
Peter D. O'Bryan

Its: Chairman

BCC Approved: January 23, 2018

BUSINESS ASSOCIATE:

RxBenefits, Inc.

By: Laura Simmons

Its: Director of Compliance and Legal Affairs

ATTEST: Jeffrey R. Smith, Clerk  
of Court and Comptroller

BY:

Shonda V. Finkle  
Deputy Clerk

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

BY

Dylan Reingold  
DYLAN REINGOLD  
COUNTY ATTORNEY