



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular <input type="checkbox"/> Statutory
Council Meeting Date:	11/22/10
Department:	Human Resources
Department Head	LaShon Ross
Agenda Coordinator (include phone #): Daryll McCarthy, x5216	

CAPTION

Approval of the agreement with CaremarkPCS Health, L.L.C. for pharmacy benefit management services at the estimated cost of \$4,000,000 annually for pharmacy claims, entered into through an existing agreement with PEBA (Public Employee Benefits Alliance), and authorizing the City Manager or his designee to execute all necessary documents.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 010-11, 11-12 & 12-13	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	23,417,213	8,000,000	31,417,213
Encumbered/Expended Amount	0	-558,271	0	-558,271
This Item	0	-4,000,000	-8,000,000	-12,000,000
BALANCE	0	18,858,942	0	18,858,942

FUND(S): HEALTH CLAIMS FUND

COMMENTS: Funds are included in the 2010-11 Health Claims Fund for pharmacy benefit management services for pharmacy claims. This item is a three year contract for the estimated amount of \$12,000,000, approximately \$4,000,000 per year for 2010-11, 2011-12, and 2012-13. Future year payments will be made from approved budget appropriations.

STRATEGIC PLAN GOAL: Pharmacy benefit management services for pharmacy claims for the City's self-funded health plan relate to the City's Goal of Financially Strong City with Service Excellence.

SUMMARY OF ITEM

Staff recommends acceptance of the agreement with CaremarkPCS Health, L.L.C. for pharmacy benefit management services, conditioned upon the timely execution of necessary contract documents. CaremarkPCS Health, L.L.C. will provide pharmacy and prescription benefit services for the self-funded plan for full-time City of Plano employees and qualified retirees. The cost for the pharmacy claims is estimated at \$4,000,000 annually. This will be a three (3) year agreement commencing on January 1, 2011, with optional renewals.

The City entered into a purchasing alliance for employee benefits with the Public Employees Benefit Alliance (PEBA) in Texas. Through participation in this initiative, the City of Plano has an opportunity to join the contract for a pharmacy benefit manager service with Caremark.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Recommendation Letter Agreement with CaremarkPCS Health, L.L.C.	Other Departments, Boards, Commissions or Agencies

Memorandum

To: Thomas H. Muehlenbeck, City Manager
From: Sydney Covey, Compensation & Benefits Manager
Through: LaShon Ross, Deputy City Manager & Director Human Resources
Date: 11/9/2010
Re: Pharmacy Benefit Manager

In February 2006 the City entered into a purchasing alliance for employee benefits with the Public Employees Benefit Alliance (PEBA) in Texas. Through participation in this initiative, the City of Plano had an opportunity to join the contract for a pharmacy benefit manager service with Caremark. As you are aware, PEBA, through administration from TML, manages the bid proposal process. PEBA managed the bid process for pharmacy benefit manager this year for a new contract. Caremark again was the successful proposal. This Caremark agreement will be effective beginning plan year January 1, 2011.

The Benefits team has reviewed the Caremark agreement and recommends that the City of Plano enter into a contract with Caremark for Pharmacy Benefit Management services. In this environment of increasing medical costs, it is prudent to utilize opportunities to keep costs from increasing at double digit rates. Based on the savings analysis performed by Caremark on the 12 months (July '09 – July '10) of Plano's activity, it is anticipated with the enhanced rates we will see about an 11% savings.

PEBA pricing options with Caremark also includes:

- ❖ National Network (over 61,000 pharmacies)
- ❖ Four tiered copay which is in place today with this provider
- ❖ Continued Maintenance Choice option which our participants appreciate
- ❖ Copays which are determined by City
- ❖ Over the Counter prescription options
- ❖ Specialty pharmacy benefit
- ❖ Front-end employee deductible
- ❖ Performance guarantees
- ❖ Customer Service accountability and service goals
- ❖ Customer service team dedicated to PEBA members

Caremark is the largest provider of PMB services. They continue to provide the City with exceptional customer service and information and data that supports the City's goals and philosophy of a long term objective to provide a competitive benefit program.

Please contact me should you have any further questions regarding this recommendation.

PARTICIPATING GROUP AGREEMENT

This Prescription Benefit Services Agreement (the “Agreement”), dated as of January 1, 2011 (the “Effective Date”), is between CaremarkPCS Health, L.L.C., a Delaware limited liability company, (“Caremark”) (formerly known as CaremarkPCS Health, L.P.), and City of Plano Risk Pool, located at 1520 Avenue K, Plano, Texas 75074, on behalf of the City of Plano Risk Pool Pharmacy Benefit Plan (collectively, the “Participating Group”).

City of Plano Risk Pool has established a health benefit plan(s), as defined herein, for its Plan Participants and desires to retain Caremark to provide certain prescription benefit management, disease management and specialty pharmacy services with respect to Participating Group’s health benefit plan(s).

Participating Group is a member of the Public Employees Benefit Alliance (“PEBA”) and is eligible for Services to be provided by Caremark as stated herein provided that Participating Group remains an active member of PEBA.

Caremark desires to provide such services pursuant to the terms and conditions of this Agreement.

Now, therefore, in consideration of the mutual promises set forth herein, the parties hereto agree as follows:

1. Definitions.

- 1.1. **“AWP”** means the “average wholesale price” for a standard package size of a prescription drug from the most current pricing information provided to Caremark by First DataBank®, Medi-Span Prescription Pricing Guide (with supplements), or following prior notice to Participating Group, any other nationally available reporting service of pharmaceutical prices as utilized by Caremark as a pricing source for prescription drug pricing. The standard package size applicable to a mail service pharmacy shall mean one hundred (100) units (i.e., pills, tablets, capsules, etc.), unless only a smaller package size is available from the manufacturer, or the actual package size dispensed for liquids and topical treatments. The standard package size applicable to a Participating Pharmacy shall be the actual package size dispensed from a Participating Pharmacy as reported by such Participating Pharmacy to Caremark.
- 1.2. **“Change in Law”** means any (i) change in or adoption of any Law, (ii) change in the judicial or administrative interpretation of any Law, or (iii) change in the enforcement of any Law, in each case occurring after the date Caremark begins providing services or the Effective Date, whichever is earlier.
- 1.3. **“Claims”** means those prescription drug claims processed through Caremark’s on-line claims adjudication system or otherwise transmitted or processed in accordance with the terms of this Agreement in connection with Participating Group’s Plan as defined herein.
- 1.4. **“Confidential Information”** means, any trade secrets or confidential or proprietary information relating to the business of the other party, including, but not limited to, information regarding contracts, audit results, SAS70 reports, pricing, finances, discounts or rebates; manuals; computer programs, systems and capabilities; databases, innovations and copyrighted materials; the value of which might be lost if the proprietary nature or confidentiality of such Confidential Information is not maintained and specifically includes but is not limited to the terms and conditions of this Agreement including any and all of the contents of Exhibit 1. “Confidential Information” does not include Protected Health Information, the use and disclosure of which is governed by Section 12 of this Agreement.

- 1.5. **“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.
- 1.6. **“Cost Share”** means the amount which a Plan Participant is required to pay for a prescription in accordance with the PDD, as defined herein, which may be a deductible, a percentage of the prescription price, a fixed amount and/or other charge or penalty.
- 1.7. **“Drug Interchange”** means any substitution initiated by Caremark of a prescription drug that is not on the PDL or the Prescribing Guide, as defined herein, for a clinically comparable drug on the PDL or Prescribing Guide. Drug Interchange shall not include any substitution initiated by Caremark that is (i) due to a drug utilization review; (ii) due to Plan Participant safety reasons; (iii) due to market unavailability of the originally prescribed drug; (iv) a generic substitution of a brand drug; or (v) due to the originally prescribed drug not being covered by the Plan.
- 1.8. **“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.
- 1.9. **“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations promulgated there under.
- 1.10. **“Law”** means any applicable federal, state, or local constitution, charter, act, statute, law, ordinance, code, rule, regulation, order, or other legislative or administrative action of the United States of America, or any State, or any agency, department, authority, political subdivision or other instrumentality thereof or a decree or judgment or order of a court.
- 1.11. **“Losses”** means claims, liabilities, demands, damages, losses, costs or expenses of any kind, including, without limitation, reasonable attorneys’ fees and expenses.
- 1.12. **“Maximum Allowable Cost”** or **“MAC”** means the unit price that has been established by Caremark for a multi-source drug (i.e., a drug with more than two sources) included on the MAC drug list applicable to Participating Group, which list may be amended from time to time by Caremark in maintaining its generic pricing program. Participating Group acknowledges that the MAC list applicable to Participating Group is not the same as the MAC list published by the Centers for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration, or “HCFA MAC”). A copy of such MAC drug list shall be provided to Participating Group prior to execution of this Agreement and thereafter upon Participating Group’s reasonable request.
- 1.13. **“Participating Pharmacy”** shall mean a retail pharmacy that participates in the Caremark network selected by Participating Group pursuant to an agreement between the pharmacy and Caremark.
- 1.14. **“PDL”** means one or more list(s) of preferred pharmaceutical products, created and managed by Caremark, as amended from time to time, which: (a) has been approved by Caremark’s Pharmacy and Therapeutics Committee, and (b) reflects Caremark’s recommendations as to which pharmaceutical products should be given favorable consideration by plans and their participants.
- 1.15. **“Plan”** means the health benefit plan(s) sponsored by Participating Group of which the prescription drug benefit is a part.
- 1.16. **“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. The parties agree, however, that the Participating Group is not subject to ERISA.
- 1.17. **“Plan Design Document”** or **“PDD”** means the document prepared by Caremark and approved in writing by Participating Group that may be amended by Participating Group, from time to time, in accordance with this Agreement, which documents the relevant parts of Participating Group’s Plan for prescription drug benefits and which is used by Caremark to process Claims under this Agreement.
- 1.18. **“Plan Participant”** means each individual who Participating Group identifies in the eligibility file to be eligible for prescription drug benefits under its plan.
- 1.19. **“Prescriber”** means a health care practitioner licensed or authorized by Law to issue an order for a prescription drug.

- 1.20. **“Prescribing Guide”** means the Caremark Prescribing Guide, as modified and published from time to time, which has been approved by Caremark’s pharmacy and therapeutics committee.
- 1.21. **“Protected Health Information” or “PHI”** shall have the meaning given such term at 45 C.F.R. 160.103, but limited to that information created or received by Caremark in its capacity as a pharmacy benefit manager (and not as a mail service pharmacy or other health care provider) on behalf of the Plan.
- 1.22. **“Rebates”** shall have the meaning ascribed to such term in Exhibit 1 of this Agreement.
- 1.23. **“Services”** means the prescription drugs, including biotech, biological and/or other specialty drugs, and all related products and services provided by Caremark under this Agreement.
- 1.24. **“Specialty Drugs”** means certain pharmaceuticals and/or biotech or biological drugs that are used in the management of specific chronic or genetic disease, including but not limited to, injectible, infused, or oral medications, or otherwise require special handling, including those listed in Attachment 1 of Exhibit 1 (which Caremark may amend from time to time).
- 1.25. **“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 Section 9.1).
- 1.26. **“Usual and Customary” or “U&C”** means a Participating Pharmacy’s usual selling price for a prescription drug if the product were not eligible for coverage under the Plan.
2. **Caremark Services.** Caremark shall provide the Services hereunder in accordance with the PDD and the terms of this Agreement. Caremark may make changes to the Services from time to time and may use Claims information to improve or recommend additional Services to Participating Group provided such changes do not materially alter any of the provisions of this Agreement.
 - 2.1 Mail Service Pharmacy. Caremark shall be Participating Group’s exclusive mail service pharmacy, and shall provide the following products and services:
 - (a) Provide Participating Group with a reasonable number of copies of Caremark’s standard informational materials explaining the mail service pharmacy and the forms that must be used by Plan Participants to utilize mail service;
 - (b) Dispense through its mail service pharmacy new or refill Prescriptions upon receipt from a Plan Participant of (i) a Prescription and a completed order or refill order form and (ii) any applicable Cost Share;
 - (c) Fill Prescriptions subject to the professional judgment of the dispensing pharmacist, good pharmacy practices in accordance with local community standards, and product labeling and guidelines;
 - (d) Provide certain utilization management and clinical services as described in this Agreement;
 - (e) Ship all drugs to Plan Participants via U.S. Postal Service or other appropriate carriers to the address provided by Participating Group and/or the Plan Participant. Caremark shall not be liable to either Participating Group or Plan Participant for any delay in delivery resulting from circumstances beyond Caremark’s reasonable control as set forth in Section 13.3; and
 - (f) Comply with Caremark’s terms and conditions applicable to mail pharmacy services in effect as may be amended from time to time.
 - 2.2 Retail Pharmacy Network. Caremark contracts with Participating Pharmacies, which are independent contractors, to provide prescription drugs and related products and services with respect to the Plan In so doing, Caremark shall:
 - (a) Require Participating Pharmacies to service Plan Participants during their normal business hours, in all applicable geographic areas;

- (b) Include in its standard retail network agreements that Participating Pharmacies must comply with Caremark's terms and conditions applicable to participation in the retail pharmacy network in effect as may be amended from time to time;
- (c) Provide information to Participating Pharmacies concerning drug interaction, safety edits, and information relating to generic substitution and therapeutic intervention programs selected by Participating Group;
- (d) Subject to Section 2.2(g) direct Participating Pharmacies to collect all applicable Cost Shares or the lesser of Cost Share or U&C from Plan Participants;
- (e) Provide and maintain toll free telephone access to Participating Pharmacies to address claim submission and clinical drug utilization review issues;
- (f) Maintain a database of Participating Pharmacies so that Plan Participants and Participating Group may locate a Participating Pharmacy using Caremark's website;
- (g) Maintain a claims adjudication system to process payments of paper and electronic claims in accordance with the PDD; and
- (h) Be solely responsible for payment to the Participating Pharmacies of the charge for Prescriptions dispensed (exclusive of Cost Shares), provided that the foregoing shall not release Participating Group from any payment obligation to Caremark under this Agreement.

2.3 Participating Pharmacy Audit.

- (a) Periodic Audit. Caremark will conduct periodic on-site and off-site audits of Caremark selected Participating Pharmacies to verify the Participating Pharmacy's compliance with its retail pharmacy network agreement with Caremark ("Periodic Audits"). Caremark will have the sole right to audit Participating Pharmacies.
- (b) Audit Discrepancies. To the extent Caremark determines, as the result of its Periodic Audits, that amounts have not been billed in accordance with Caremark's retail pharmacy network agreement ("Audit Discrepancies"), Caremark will make reasonable attempts to reconcile such Audit Discrepancies. In the event the Audit Discrepancy has a financial impact to Participating Group, Caremark will reconcile Participating Group's invoice based upon recovered Audit Discrepancies. Caremark will retain twenty percent (20%) of all recovered Audit Discrepancies to help cover its collection and audit costs. Caremark will notify Participating Group of any Audit Discrepancy that has impacted Participating Group's financial obligation to Caremark by greater than \$1,000 that Caremark determines to be reasonably uncollectible by Caremark. Participating Group acknowledges and agrees that Caremark may, but is not required to, initiate any collection action to collect any Audit Discrepancies. In the event Caremark does initiate a collection action against a Participating Pharmacy for any Audit Discrepancy, Caremark may offset any reasonable costs, including reasonable attorneys' fees and expenses, arising from any such action. Caremark's obligation to conduct Periodic Audits and to attempt collection and reconciliation, as described, will be Caremark's sole obligation with respect to remedying Audit Discrepancies.

2.4 Implementation.

- (a) Participating Group or Participating Group's designee has provided or shall provide to Caremark prior to the Effective Date: (i) the governing Plan documents, a summary plan description, and an executed PDD. Any delays by Participating Group or its designee in providing this information may delay the implementation of Services by Caremark
- (b) Caremark will provide Participating Group with implementation kits for distribution to new Plan Participants. The implementation kits will include the following materials: (a) introductory cover letter; (b) standard identification cards for use within the retail network which shall include Caremark's name and toll free number; (c) a standard client benefit

- brochure; (d) mail service order form; (e) paper claim reimbursement form, if applicable; and (f) PDL brochure, if applicable. If Participating Group chooses to have Caremark prepare envelopes for mailing kits to Plan Participants, Participating Group must provide at least one data tape containing Plan Participant address information in a mutually acceptable format. Individual Plan Participant mailings will be at Participating Group's expense.
- (c) Any customized material requested by Participating Group shall be subject to an additional charge.

2.5 Eligibility. Participating Group, or Participating Group's designee, at Participating Group's sole expense, will provide Caremark all information concerning its Plan and Plan Participants needed to perform the Services, including any updates thereto ("Eligibility Information"). This Eligibility Information must be complete and accurate, provided timely, and in a format and media acceptable to Caremark. Participating Group acknowledges and agrees that Caremark will not use Social Security Numbers on Plan Participants' identification cards and will instead use alternate identification numbers assigned and provided by Participating Group. Participating Group acknowledges that Caremark, Plan Participant's Prescriber or Participating Pharmacy shall be able to rely on the Eligibility Information provided by Participating Group.

2.6 PDL Management.

- (a) Participating Group hereby adopts as part of the Plan design, the PDL and the Prescribing Guide.
- (b) Changes made to the PDL may be based upon, among other things, new products, customer safety, clinical appropriateness, efficacy, cost effectiveness, changes in availability of products, new clinical information and other considerations, changes in the pharmaceutical industry, new legislation and regulations, and/or new recommendations developed by Caremark based on its experience. Caremark shall make reasonable effort to provide Participating Group with thirty (30) days notice prior to the addition or removal of a drug from the PDL. In the event safety concerns or regulatory action require Caremark to remove a drug sooner, Caremark shall notify Participating Group of the removal of the drug from the PDL within five (5) business days.
- (c) Caremark shall implement a Drug Interchange program(s) as approved by the Pharmacy and Therapeutics Committee under which Caremark's mail service pharmacy shall, upon receipt of a Prescription for a drug that is not on the PDL, contact Prescribers, as appropriate, to obtain approval for substitution of a clinically comparable drug on the PDL, if any. In accordance with its standard policies, Caremark shall credit Participating Group for any Prescription returned to Caremark due to an error made by Caremark in effectuating the Drug Interchange program described in this Section 2.6(c). Participating Group acknowledges that the adoption of therapeutic interventions may result in an increase of Rebates payable by pharmaceutical manufacturers pursuant to their agreements with Caremark.
- (d) Participating Group acknowledges Prescriber shall have final authority over the drug prescribed to a Plan Participant, regardless of benefit coverage.
- (e) Caremark may implement therapeutic intervention programs for Participating Pharmacies to promote the use of the PDL by encouraging Participating Pharmacies to ("PerformanceRx Program") (i) identify appropriate opportunities for converting a Prescription from a non-PDL drug to a drug on the PDL, and (ii) contact the Plan Participant and the Prescriber to request that the Prescription be changed to a PDL drug. If appropriate, Participating Pharmacies may be compensated by Caremark for the services they provide in connection with the PerformanceRx Program.

2.7 Generic Substitution Program.

- (a) Generic substitution may be conducted through Caremark's mail service pharmacies under a program which automatically substitutes brand name drugs with generic equivalents, where available, unless (i) the Prescriber issues the Prescription with a "dispense as written" notation, or (ii) the Plan Participant has notified Caremark to dispense the brand name drug only.
- (b) Generic messaging intended to promote at the point-of-sale generic substitution of multi-source brand drugs. Participating Group acknowledges that a pharmacist may override such messaging if the Prescriber or the Plan Participant has notified the Participating Pharmacy to dispense the brand name drug only.

2.8 Utilization Management/Clinical Programs.

- (a) Concurrent Drug Utilization Review ("DUR") Services. Caremark will provide its automated concurrent DUR Services including but not limited to: (i) drug to drug interactions; (ii) therapeutic duplications; (iii) known drug sensitivity; (iv) over-utilization; (v) insufficient or excessive drug usage; and (vi) early or late refills. Pharmacists are directed to review the messages as they are received and to use their professional judgment as to whether action is required.
- (b) DUR Limitations. The information generated in connection with DUR Services is intended as a supplement to, and not as a substitute for, the knowledge, expertise, skill, and judgment of Prescriber or pharmacists in providing patient care. Prescribers are individually responsible for acting or not acting upon information generated and transmitted through the DUR Services, and for performing services in each jurisdiction consistent with the scope of their licenses. In performing DUR Services, Caremark will not, and is not required by this Agreement, to deny Claims or require Prescriber, pharmacist, other health care provider, or Plan Participant compliance with any norm or suggested drug regimen, or in any way substitute Caremark's judgment for the professional judgment or responsibility of the Prescriber, pharmacist, or other health care provider.

The DUR Services are necessarily limited by the amount, type and accuracy of Plan Participant information made available to Caremark. Notwithstanding anything set forth in this Agreement, Caremark will have no obligation to acquire information concerning any Plan Participant beyond the information that is included in Caremark's eligibility file or the Claims submitted by Participating Pharmacies in connection with the Plan.

Caremark will update DUR databases on a reasonable basis to reflect changes in available standards for pharmaceutical prescribing; no database used by Caremark will contain all available information on accepted medical practices or prescribing practices. Caremark shall be entitled to rely upon nationally available reporting services such as First Data Bank or Medi-Span in connection with DUR Services provided to Participating Group. The absence of a warning for a given drug or drug combination shall not be construed to indicate that the drug or drug combination is safe, appropriate or effective for any Plan Participant.

- (c) Clinical Services Programs. Caremark shall provide clinical programs, as mutually agreed to by the parties.

To the extent applicable for DUR services, Participating Group may be asked to sign a Prior Authorization Program Acknowledgment which describes the program parameters and indicates that it is administered by Caremark at the direction of the Participating Group.

- (d) Additional Clinical Service Programs. Caremark shall perform additional clinical programs as described in Exhibit 1.
- 2.9 Plan Participant Services. Caremark shall operate toll-free customer service lines twenty-four (24) hours a day, seven (7) days a week for the purpose of responding to inquiries from Plan Participants. Caremark shall also provide telephonic emergency pharmacist services twenty four (24) hours a day, seven (7) days a week.
- 2.10 Communication Materials. In addition to materials provided under Section 2.4(c), Caremark shall produce and provide the following communication materials:
- (a) PDL Brochures. Caremark shall periodically distribute PDL brochures directly to Prescribers.
 - (b) Website. Caremark will provide an Internet website where Plan Participants can access information with respect to Plan specific drug information, the PDL, Cost Shares, Participating Pharmacy listings and Prescriptions.
 - (c) Drug Recalls. Caremark, in its discretion, may provide communications to Plan Participants and/or Participating Group regarding drug recalls or withdrawals by a pharmaceutical manufacturer and/or the Federal Food and Drug Administration. Participating Group acknowledges that pharmaceutical manufacturer or distributor shall be responsible for any refunds or reimbursements. Caremark shall not have any obligation or provide Participating Group any refund or reimbursement for any drug recall. In the event Caremark receives any reimbursement from a pharmaceutical manufacturer due to a drug recall, Caremark will remit to Participating Group a pro-rata share of such reimbursement as determined by Participating Group's utilization of such drug compared to Caremark's entire book of business.
- 2.11 Reports and Claims Data. Caremark shall provide reports and detailed Claim data to Participating Group as follows:
- (a) Standard Reports. Caremark shall prepare and provide Participating Group with its standard management and utilization reports.
 - (b) Non-Standard Reports. At Participating Group's expense, Caremark may prepare and provide non-standard management and utilization reports, and ad hoc reports within an agreed-upon time and format, and at an agreed upon rate.
 - (c) Claims Tapes. With the issuance of each invoice, Caremark shall provide Participating Group up to two (2) sets of complete Claims data in Caremark's standard format. At Participating Group's expense, request and direction, Caremark may provide detailed electronic files or Claim detail reports to Participating Group's designated third parties. Under no circumstances shall Participating Group release or provide any Claims data including pricing and other Confidential Information, to a third party, without the third party signing a confidentiality agreement with Caremark. The confidentiality agreement will contain commercially reasonable terms.
 - (d) SAS 70. If requested, Caremark shall provide Participating Group with a copy of its most recent Type II SAS 70 report, or equivalent successor report, in accordance with the terms and conditions of such report.

- 2.12 Plan Enhancements for Non-Covered Drugs Caremark may provide to Plan Participants filling Prescriptions at Participating Pharmacies discounts on Prescription drugs that are not covered under the Plan. Claims that process with such discounts are excluded from any and all commitments Caremark may have to Participating Group under this Agreement, including those relating to pricing, rates, and/or Rebates. Participating Group acknowledges that Caremark will retain Rebates, if any, and charge Plan Participant fees that may be part of a Plan Participant's Prescription price for claims processed through this program to assist Caremark in funding this program. Participating Group acknowledges that this program may be considered to be a prescription discount card program under some state laws and Participating Group agrees to comply with all applicable Laws concerning programs involving discounts on Prescription.
- 2.13 Drug Classification. Caremark shall use either the First DataBank National Drug Data File (NDDF) or Medi-Span Master Drug Database (MDDDB), and their associated files, as updated regularly by First DataBank and Medi-Span, or another nationally available reporting services of pharmaceutical drug information as selected by Caremark for the purpose of Claims processing and classifying drugs (e.g. legend vs. over the counter, brand vs. generic) in connection with this Agreement.
- 2.14 Specialty Pharmacy. Notwithstanding specialty drugs that are paid through the Participating Group's medical plan benefits, Caremark shall be the exclusive in-network provider of Specialty Drugs and shall provide the products and services, as follows:
- (a) Dispense new or refill Prescription orders for Specialty Drugs upon receipt from a Plan Participant of (i) a Prescription and a completed order or refill order form and (ii) the applicable Cost Share;
 - (b) Fill Prescriptions for Specialty Drugs subject to the professional judgment of the dispensing pharmacist, good pharmacy practices in accordance with local community standards, product labeling and guidelines;
 - (c) Provide certain utilization management and clinical services as described in this Agreement;
 - (d) Ship all Prescription orders to Plan Participants via U. S. Postal Service or other appropriate carriers to the address provided by Participating Group and/or the Plan Participant. Caremark shall not be liable to either Participating Group or Plan Participant for any delay in delivery resulting from circumstances beyond Caremark's control as set forth in Section 13.3.
 - (e) Bill Participating Group's medical benefits provider when appropriate, and pursuant to instructions from Participating Groups medical benefits provider;
 - (f) Provide routine supplies required for the administration of the Specialty Drug (such as needles, syringes, alcohol swabs) to the extent deemed appropriate by Caremark; and
 - (g) Comply with, and include in its standard retail network agreements that any Participating Pharmacy providing Specialty Drugs to Plan Participants must comply with, Caremark's terms and conditions applicable to specialty pharmacy services in effect from time to time.
- 2.15 Government Agency Submitted Claims. Participating Group acknowledges that government agencies may seek eligibility or similar data from Caremark regarding Plan Participants and may submit to Caremark Claims for, on behalf of and/or in the name of Plan Participants. Participating Group authorizes Caremark to provide such data as requested by government agencies or their authorized agents and further authorizes Caremark to process such Claims in accordance with applicable laws and regulations. The administrative fee for processing paper Claims submitted by government agencies will be invoiced in accordance with Exhibit 1. Participating Group will pay Caremark for amounts paid by Caremark to government agencies in accordance with its payment obligations under this Agreement.

- 2.16 Performance Guarantees. Caremark agrees to provide the performance guarantees described in Exhibit 1.
- 2.17 Appeals. Caremark shall conduct all appeals and grievances in accordance with the terms and conditions described in Exhibit 4.
- 2.18 iBenefit Report. At Participating Group's request and subject to the fees described in Exhibit 1, Caremark shall mail the iBenefit report to Plan Participants with savings opportunities on an annual basis.
- 2.19 ExtraCare Health Discount Card. Caremark shall provide Plan Participants with an ExtraCare Health discount card ("ExtraCare Card"). The ExtraCare Card provides the ability to earn rewards for purchases at CVS/pharmacy store or online at CVS.com and to receive a 20% discount on all CVS-branded health care-related items that are FSA-eligible at CVS/pharmacy stores; provided that no rewards or discounts are available for the purchase of certain items such as prescription drugs (including Cost Shares).

Participating Group has either mailed or authorized Caremark on its behalf to mail a letter to all Plan Participants reflecting that the ExtraCare Card is being provided as a health plan benefit. Participating Group acknowledges that it shall be responsible for amending any applicable ERISA or other plan documents, to the extent Participating Group deems necessary, to reflect the addition of the ExtraCare Card benefit. Participating Group further acknowledges that it is offering the ExtraCare Card to the Plan Participants as a value-added item or service under HIPAA.

3. Maintenance of Records. Caremark shall maintain records with respect to the processing, payment, and denial of Claims by Caremark and shall retain such records for a period of seven (7) years after the transaction occurred or as otherwise required by applicable Law.
4. Use of Deidentified Data. Claims, as well as eligibility information which is deidentified in accordance with HIPAA and other applicable law, and which is not identifiable on a Participating Group or Plan Participant basis, may be used, disclosed, reproduced, adapted or sold by Caremark. Such deidentified data may be provided to nationally recognized data integration firms to support appropriate administration of Caremark's drug management programs. This benchmarking data enables Caremark to compare against other drug population sets and improve programs and Services for clients.

5. Audit Rights.

5.1 Claims Audits.

- (a) During the Term of this Agreement as defined as, upon not less than sixty (60) days prior written notice and subject to Section 5.2, Participating Group, or a mutually acceptable independent third party retained by Participating Group, may conduct an annual Claims audit of Caremark data that directly relates to Claims billings during the twelve (12) months prior to the date of the review. The scope of the Claims audit shall be in accordance with, and shall not exceed, the guidelines set forth in Exhibit 3. Participating Group shall be responsible for all reasonable expenses of the Claims audit, including Caremark's costs related to the provision of records. Participating Group acknowledges that it shall not be entitled to audit: (i) documents that Caremark is barred from disclosing by applicable Law or pursuant to an obligation of confidentiality to a third party; and (ii) agreements with vendors, pharmaceutical manufacturers, or distributors, Participating Pharmacies or other providers of products or

services to Caremark.

- (b) Any independent third party auditor engaged by Participating Group shall execute a confidentiality agreement with Caremark in a form and substance reasonably acceptable to Caremark prior to conducting a Claims audit, ensuring that all information gathered during such audit and all details and terms of this Agreement, including pricing and rebate information, will be treated as confidential to Caremark and will not be revealed in any manner or form by or to any third party.
- (c) Any adjustments, payments and/or reimbursements determined to be necessary as a result of any examination or audit shall be paid by the appropriate party within thirty (30) days of execution by the party receiving payment and/or reimbursement of an appropriate release document covering the audit period.

6. Obligations of Participating Group.

6.1 Implementation.

- (a) Prior to the Effective Date, Participating Group, or Participating Group's designee, has furnished the Plan documents, summary plan descriptions and/or a written description of the Plan design sufficient to enable Caremark to prepare the PDD.
- (b) Participating Group represents and warrants that it has obtained from Plan Participants all consents and/or authorizations required, if any, for Caremark to perform the Services and for the use and disclosure of information including PHI, as permitted under this Agreement.
- (c) Participating Group represents and warrants that the PDD accurately reflects the terms of the Plan and agrees to approve, in writing, any amendments to the PDD.
- (d) Participating Group has and will disclose to Plan Participants any and all matters relating to the Plan and Services as required by Law to be disclosed.

6.2 Payment. Participating Group shall pay Caremark for the Services hereunder in accordance with the terms set forth in Section 7 and Exhibit 1.

6.3 Control of Plan. Participating Group, as Plan Administrator, retains the sole and absolute authority to design, amend, terminate or modify, in whole or in part, all or any portion of the Plan, including the sole authority to control and administer the Plan and Plan assets. Except as expressly stated herein, nothing in this Agreement shall be deemed to confer upon Caremark the status of plan administrator or fiduciary as defined in ERISA, or applicable state law, or any responsibility for the terms or validity of the Plan. Caremark agrees to be a fiduciary solely for the purpose of initial claim adjudication and reviewing appeals relating to the coverage of prescription drug benefits, as further described in Exhibit 4. Participating Group represents and warrants that the Plan is in full compliance with all applicable Laws. Furthermore, because Caremark is not an insurer, plan sponsor, third party administrator or Plan Administrator, Caremark shall have no responsibility for (i) any funding of Plan benefits; (ii) any insurance coverage for, the Plan, Plan Administrators or the Plan Participants; or (iii) the nature or quality of professional health services rendered to Plan Participants (except in Caremark's capacity as a mail service or specialty pharmacy).

6.4 PDD Changes. Participating Group shall provide Caremark with ninety (90) days prior written notice of any requested changes to the PDD, which changes shall be consistent with the scope and nature of the Services to be performed by Caremark under this Agreement. In addition, Participating Group shall notify its Plan Participants of the change prior to its effective date at

Participating Group's expense. Caremark will not be responsible or liable to Participating Group or Plan Participants for Losses resulting from failure to implement Plan design changes which are not communicated in writing to Caremark in accordance with the first sentence of this Section. Participating Group also shall notify Caremark in writing at least thirty (30) days in advance of any change in its third party administrator or insurance carrier that results in a change in any of the Services provided by Caremark under the terms of this Agreement.

- 6.5 Pharmacy Network. Participating Group hereby selects (i) Caremark's national network as the retail pharmacy network of Participating Pharmacies, (ii) Caremark as the exclusive mail service pharmacy to provide mail service prescription drugs to Plan Participants; and (iii) Caremark as the exclusive "in-network" specialty pharmacy to provide Specialty Drugs to Plan Participants. Participating Group shall distribute the mail service information materials and forms to all Plan Participants.
- 6.6 Participating Group's Obligation. Caremark shall not be held responsible to any performance standard or obligation if Participating Group, or Participating Group's designee, fails to provide Caremark with accurate, timely and complete information as needed to meet such performance standard or obligation.
- 6.7 Plan Participant Cost Share. Caremark may, but shall not be obligated to, dispense a prescription even if the prescription is not accompanied by the Cost Share. Caremark will credit any amount submitted by Plan Participant in excess of the Plan Participant's Cost Share. In the event a Plan Participant submits to Caremark an insufficient Cost Share and the Plan Participant fails to remit the balance of the Cost Share amount to Caremark within thirty (30) days of Caremark's request, then Caremark shall have the right to invoice Participating Group for, and Participating Group shall have an obligation to pay Caremark, the amount of the uncollected Cost Share(s). Shipping of prescriptions submitted without the appropriate Cost Share may be delayed and these delayed shipments shall not be included in the measurement of any applicable performance guarantees.
- 6.8 Exclusivity. Participating Group shall make Caremark the exclusive provider of the Services described in this Agreement to the Plan and its Plan Participants. Notwithstanding the foregoing, this Section shall not be construed as to prohibit Participating Group from offering Specialty Drug coverage as a medical benefit under a managed care, HMO, PPO or similar benefit plan.

7. Invoicing and Payment.

- 7.1 Invoicing. Caremark shall invoice Participating Group, which may be via facsimile or electronically, in Caremark's standard format, in accordance with the financial terms set forth in Exhibit 1 according to the following schedule:
- (a) Claims. Caremark shall issue Participating Group an invoice for prescription claims four (4) times monthly.
- (b) Administrative Fees. Caremark shall issue Participating Group an invoice for administrative fees four (4) times monthly.
- 7.2 Payment. Participating Group shall pay Caremark all invoiced amounts for Claims and administrative fees in accordance with the terms of Exhibit 1.
- 7.3 Late Payments. At the option of Caremark, payments not received in accordance with Section 7.2 shall bear a service fee of eighteen percent (18%) per annum (or, if less, the highest rate allowed by Law).

8. Pharmaceutical Contracts and Rebates.

- 8.1 Participating Group's Authorization. Participating Group authorizes Caremark to contract as a group purchasing organization for the Plan with pharmaceutical manufacturers and distributors for Rebates.
- 8.2 Rebate Limitations. Participating Group waives, releases and forever discharges Caremark from any Losses arising from a pharmaceutical company's (i) failure to pay Rebates; (ii) breach of an agreement related to Rebates; or (iii) negligence or misconduct. Participating Group acknowledges that whether and to what extent pharmaceutical companies are willing to provide Rebates to Participating Group may depend upon a variety of factors, including the content of the PDL adopted by Participating Group, the Plan's design features, Participating Group meeting criteria for Rebates, and the extent of participation in Caremark's formulary management programs, as well as Caremark receiving sufficient information regarding each Claim for submission to pharmaceutical companies for Rebates. Participating Group acknowledges and agrees that Caremark may, but shall not be required to, initiate any collection action to collect any Rebates from a pharmaceutical company. In the event Caremark does initiate collection action against a pharmaceutical company to collect Rebates, Caremark may offset any reasonable costs, including reasonable attorneys' fees and expenses, arising from any such action.
- 8.3 Specialty Drug Rebates. Additional terms regarding Specialty Rebates are contained in Exhibit 1.
- 8.4 Disclosure of Manufacturer Fees. Disclosures regarding pharmaceutical manufacturer fees are contained in Exhibit 1.
- 8.5 Pharmaceutical Manufacturer and Distributor Agreements. Participating Group agrees that during the Term of this Agreement, Participating Group will not negotiate, contract, or agree with any pharmaceutical manufacturer or distributor for the purpose of obtaining rebates or other discounts related to the drug utilization, including the use of over the counter products, of Plan Participants. Participating Group further agrees to cancel any existing agreements, arrangements and/or contracts with any pharmaceutical manufacturer or distributor related to such rebates or discounts as of the Effective Date. In the event of a breach of this Section 8.5 by Participating Group, Caremark may terminate this Agreement or Participating Group's participation in the Rebates and may retain 100% of any and all rebates that have not been remitted to Participating Group as of the date of such termination. The pursuit or award of damages shall in no event preclude the right of Caremark to seek an injunction or other equitable relief to enforce this Section 8.5, or any remedy available at law. Caremark shall have the exclusive right to enter into contracts with any pharmaceutical manufacturer or distributor with respect to rebates or discounts for drug utilization, including the use of over the counter products, of Plan Participants.

9. Term and Termination.

- 9.1 Term. The term of this Agreement shall commence on the Effective Date and expire on December 31, 2013 ("Initial Term") subject to earlier termination as hereinafter set forth. **THE TERM SHALL BE AUTOMATICALLY RENEWED FOR ADDITIONAL ONE (1) YEAR PERIODS (EACH A "RENEWAL TERM") UNLESS EITHER PARTY SENDS NOTICE OF NON-RENEWAL TO THE OTHER PARTY AT LEAST NINETY (90) DAYS PRIOR TO THE END OF THE INITIAL TERM OR ANY RENEWAL TERM.** In the event the governing board of Participating Group does not approve a budget including sufficient funding for the provision of pharmacy benefit services to the Plan for the subsequent contract year (October 1

thru September 30), Participating Group may terminate the Agreement by providing Caremark written notice of termination at least ninety (90) days prior to the end of the current contract year.

9.2 Termination for Cause.

- (a) Either party may terminate this Agreement upon written notice to the other party in the event of a material breach of this Agreement by the other party which is not cured within sixty (60) days of notice thereof. The pursuit or award of damages shall not constitute a penalty or liquidated damages, and shall in no event preclude the right of Caremark to such an injunction or other equitable relief, or any remedy available at law or equity.
- (b) Upon notice Caremark may terminate this Agreement upon Participating Group's breach of Section 6.8.
- (c) Participating Group may terminate this Agreement upon a material breach by Caremark of Exhibit 2 (Business Associate Obligations) of this Agreement if Caremark does not cure the breach or if a cure is not possible, end the violation, within thirty (30) days of receipt of written notice by Caremark of such breach.
- (d) Either party may terminate this Agreement if any court, governmental or regulatory agency issues to the other party an order to cease and desist doing business. The party receiving notice of an order or finding must provide the other party written notice within ten (10) business days of receipt.

9.3 Termination for Change in Law.

- (a) 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 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 Section 9.3(b) below.
- (b) Notwithstanding Section 9.3(a), the parties 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. In the event the parties are unable to successfully conclude such negotiations, this Agreement shall terminate as provided above.
- (c) State Fiduciary Laws. Caremark shall not be obligated at any time to provide Services to Participating Group or, if applicable, Plan Participants if Participating Group or, if applicable, Plan Participants are located in a state requiring a prescription benefit manager to be a fiduciary to Participating Group or a Plan Participant in any capacity contrary to the terms and conditions specifically identified in this Agreement. In the event any state law or regulation requires Caremark to be a fiduciary to Participating Group or a Plan Participant contrary to the terms and conditions identified in this Agreement, Caremark may elect not to provide Services to the impacted Plan Participants upon thirty (30) days prior written notice to Participating Group.

9.4 Obligations Upon Termination.

- (a) Upon termination of this Agreement, Caremark will, at Participating Group's request, provide mutually agreed upon post-termination services at Caremark's prevailing rate.
- (b) Except as provided in Section 9.4(c) below, upon termination of this Agreement, for any reason, Caremark shall return or destroy all PHI created or received by Caremark as a business associate of Participating Group in connection with this Agreement.

- (c) In the event that Caremark determines that returning or destroying the PHI is not feasible, Caremark may retain PHI, provided that Caremark shall extend the protections contained in Exhibit 2 to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Caremark maintains such PHI.
- (d) Upon termination of this Agreement, Caremark will not transition claims files and/or history that contains Participating Group's cost and privacy information to Participating Group's new pharmacy benefit manager.
- (e) In the event that Caremark terminates this Agreement due to a material breach of this Agreement by Participating Group, including without limitation, Sections 8.6 (Pharmaceutical Manufacturer and Distributor Agreements), 10 (Confidentiality) and 6.8 (Exclusivity), if applicable, Caremark shall have no further obligation following the date of such material breach to pay Participating Group any Rebates, or any other amount that may be payable by Caremark to Participating Group, and Caremark may apply all such amounts to Participating Group's payment obligations under this Agreement.

9.5 Termination of PEBA Agreement. In the event that the master coalition prescription benefit services agreement between PEBA and Caremark shall terminate prior to the end of the Term of this Agreement, this Agreement shall not terminate automatically, but shall remain in full force and effect, subject to the terms and conditions hereunder, including but not limited to the rights of either party under this Section 9.

10. Confidential and Proprietary Information.

10.1 Confidential Information.

- (a) Neither Caremark, Participating Group, nor any of Participating Group's officers, employees, advisors, agents or representatives shall 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, inter alia be conditioned upon the execution of a confidentiality agreement prior to any disclosure to a third party. Each party will disclose Confidential Information of the other party only to its officers or employees 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) have agreed not to disclose it to others and to treat it in accordance with the requirements of this Section. Participating Group shall advise its officers, employees, advisors, agents or representatives of the confidentiality provisions set forth in this Agreement and shall be liable for any breach of such confidentiality provisions by its officers, employees, advisors, agents or representatives.
- (b) 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 party who disclosed the information; (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 non-appealable court order. If either party is required to disclose the Confidential Information of the other party as part of a judicial process, government investigation, legal proceeding, or other similar process, such party, if it is reasonably possible to do so, shall give such prior written notice to the other party to allow the other party to seek an appropriate protective order or modification of any disclosure.

- (c) Any unauthorized disclosure or use of Confidential Information including but not limited to, the sharing of this Agreement any of the financial terms related to this Agreement, or claims tapes with any consulting agents, advisors, brokers, or any other third party, would cause Caremark or Participating Group immediate and irreparable injury or loss that may not be adequately compensated with money damages. Accordingly, if either party fails to comply with this Section 10, the other party will be entitled to 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 any other remedies provided by Law.

Notwithstanding the foregoing, Confidential Information may be disclosed by Participating Group in response to a request made pursuant to an applicable state Public Records Law, insofar as disclosure is required by that Law. Participating Group shall provide Caremark with (i) notice of its intent to disclose Confidential Information and (ii) an opportunity for Caremark to object to such disclosure in accordance with Law. Caremark acknowledges that PEBA and the Participating Groups are subject to the Texas Public Information Act, Chapter 522, Texas Government Code.

- 10.2 Proprietary Information to Caremark. Participating Group acknowledges that the PDL is proprietary to Caremark. Further, all Caremark databases, as well as the software, hard coding, and logic used to generate the compilations of information contained in Caremark’s claims adjudication system and in all other databases developed by Caremark or its designees in connection with performing Services, and the format of all reports, printouts, and copies, and any prior and future versions thereof by any name, are the property of Caremark and are protected by copyright which shall be owned by Caremark.

11. Indemnification.

- 11.1 To the extent permitted by law, Caremark shall defend, indemnify and hold harmless Participating Group and each of its officers, directors, employees, subsidiaries and affiliates (the “Participating Group Parties”) from and against any and all Losses incurred by any Participating Group Parties to the extent arising out of or relating to Caremark’s negligence or breach of its obligations or warranties set forth in this Agreement, except to the extent such Losses are caused by the negligence or willful misconduct of any Participating Group Party.
- 11.2 To the extent permitted by law without waiving any rights, defenses or immunities afforded by state or federal law, Participating Group shall defend, indemnify and hold harmless Caremark and each of its officers, directors, employees, subsidiaries and affiliates (the “Caremark Parties”) from and against any and all Losses incurred by any Caremark Parties arising out of or relating to (i) Participating Group’s negligence or breach of its obligations or warranties set forth in this Agreement, except to the extent such Losses are caused by the negligence or willful misconduct of any Caremark Party, (ii) any legal defects in the design of the Plan, or (iii) any deficiencies in the PDD.
- 11.3 The party seeking indemnification shall notify the other party in writing within thirty (30) days of the assertion of any claim or the commencement of any action or proceeding for which indemnity may be sought under this Agreement. Failure to notify the other party shall not result in the waiver of indemnity rights with respect to such claim, suit, action or proceeding unless such failure materially prejudices the ability of the indemnifying party to defend such claim, suit, action or proceeding. The parties shall cooperate with each other in the defense and settlement of any such claim, action or proceeding.

12. **Business Associate Relationship.** The parties acknowledge and agree that Caremark is a Business Associate, as defined under HIPAA, of the Plan in connection with the provision of certain Services, and is a health care provider and Covered Entity, and not a Business Associate of Participating Group, under HIPAA in connection with its provision of certain other Services. To the extent Caremark acts as a Business Associate of the Plan, and in accordance with HIPAA, Caremark shall adhere to the applicable requirements established for Business Associates as set forth in Exhibit 2.

13. **General Provisions.**

13.1 **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, either party may assign this Agreement or delegate the duties to be performed under this Agreement without the consent of the other party to any of its subsidiaries or affiliates at any time, or as part of a sale of all, or substantially all, of the assets to which this Agreement pertains.

13.2 **Compliance with Law.**

(a) Each party shall comply with the provisions of all applicable Law relating to the performance of its obligations under this Agreement. Neither party has any responsibility to advise the other about such party's compliance with any Law. Participating Group represents that its Plan complies with all applicable Laws. Caremark makes no representation that the Plan is in compliance with any applicable Law.

(b) To the extent applicable, each party certifies that it shall not violate the federal anti-kickback statute, set forth at 42 U.S.C. § 1320a-7b(b) ("Anti-Kickback Statute"), or the federal "Stark Law," set forth at 42 U.S.C. § 1395nn ("Stark Law"), with respect to the performance of its obligations under this Agreement. Further, Caremark shall ensure that individuals meeting the definition of "Covered Persons" (as such term is defined in the Corporate Integrity Agreement between the Office of Inspector General of the Department of Health and Human Services and AdvancePCS) shall comply with Caremark's Compliance Program, including training related to the Anti-Kickback Statute and the Stark Law. In addition, Caremark's Code of Conduct and policies and procedures on the Anti-Kickback Statute and Stark Law may be accessed at <http://www.caremark.com/wps/portal/s.155/3370?cms=CMS-2-007764>.

13.3 **Force Majeure.** Except for payment obligations, neither party shall be liable for failure or delay of performance arising from an act of God or other events beyond the reasonable control of such party, such as the acts of a regulatory agency, fires, floods, explosions, strikes, labor stoppages, and acts of terrorism, war or rebellion.

13.4 **Limitation of Liability.**

(a) Except as otherwise expressly set forth in this Agreement, Caremark makes no additional representations or warranties, including without limitation, warranties of merchantability or fitness for a particular purpose.

(b) The parties' respective liability under this Agreement, if any, shall be subject to the limitation stated in Exhibit 1.

(c) Caremark will not be liable for any claim which is asserted by Participating Group more than twelve (12) months after Participating Group is or reasonably should have been aware of such claim, and will in no event be liable for any claim which is asserted by Participating Group more than thirty-six (36) months after the event resulting in damage or loss.

- (d) Caremark does not direct or exercise any control over the professional judgment exercised by any pharmacist in dispensing prescriptions or otherwise providing pharmaceutical related services at a Participating Pharmacy. Participating Pharmacies are independent contractors, not subcontractors or agents of Caremark, and Caremark shall have no liability to Participating Group for a claim arising out of any act or omission of any Participating Pharmacy or its agents or employees.
- (e) Caremark shall be entitled to rely on First Data Bank, Medi-Span or any other nationally available reporting service of pharmaceutical prices selected by Caremark to determine AWP for purposes of establishing the pricing provided to Participating Group under this Agreement. Participating Group acknowledges that Caremark does not establish AWP, and Caremark shall have no liability to Participating Group arising from the use of First DataBank, Medi-Span or any other nationally available reporting service. Participating Group acknowledges that if the reporting source for determining Participating Group's AWP should not continue to support AWP, Participating Group shall cooperate with Caremark to negotiate the pricing hereunder to maintain the parties' respective economic position under this Agreement as of the Effective Date.

13.5 Pricing Assumptions. This Agreement is subject to the pricing assumptions stated in Exhibit 1.

13.6 General. Except as otherwise provided herein, this Agreement may not be modified except in a writing signed by both parties. If any provision of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect the remainder of this Agreement, which shall remain in full force and effect and enforceable in accordance with its terms. This Agreement attached hereto supersedes all prior or contemporaneous understandings or contracts regarding the subject matter of this Agreement, including, but not limited to, Caremark's response to a request for proposal, a best and final offer document or final offer document or finalist presentation, and any memorandum of understanding, and constitute the entire agreement existing between the parties with respect thereto. No waiver or discharge of any breach of this Agreement shall be effective unless it is in writing and signed by the party granting such waiver or discharge. Any waiver of any breach of any provision of this Agreement shall not be a waiver of any subsequent breach of any provision of this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The 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.

13.7 Governing Law/Venue. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Texas without regard to its conflict of laws rules. Any suit brought hereunder (including any action to compel arbitration or to enforce any award or judgment reentered thereby) shall be brought in the state or federal courts sitting in Collin County, Texas the parties hereby waiving any claim or defense that such forum is not convenient or proper. Each party agrees that any such court shall have in persona jurisdiction over it and consents to service of process in any manner authorized by Texas law.

13.8 Notices. Any notice given under this Agreement shall be given in writing, and sent by hand delivery, facsimile transmission (receipt confirmed), overnight courier that provides confirmation of delivery, or certified mail, return receipt requested, to the applicable party at its address set forth below:

If to Caremark:

2211 Sanders Road, 10th Floor
Northbrook, Illinois 60062
Attn: Vice President and Senior Counsel, Healthcare Services
Fax No: (847) 559-4879

With a copy to:

445 Great Circle Road
Nashville, Tennessee 37228
Attn: General Counsel
Fax No: (615) 743-6611

If to Participating Group:

1520 Avenue K
Plano, Texas 75074
Attn: Sydney Covey
Fax No.: (972) 941-7239

or to such other address or to the attention of such other person as either party may designate in writing pursuant to this Section 13.8. Written notices shall be deemed received on the date actually delivered to the other party.

- 13.9 Commercially Unavailable Products. This Agreement does not require Caremark to dispense those products to which Caremark has no reasonable access.
- 13.10 Independent Contractors. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating a relationship of employer and employee, principal and agent, or joint venture of the parties hereto; it being understood and agreed that no provision contained in this Agreement nor any acts of the parties hereto shall be deemed to place Caremark in any relationship with Participating Group other than as an independent contractor.
- 13.11 Third Party Beneficiary. This Agreement has been entered into solely for the benefit of Participating Group and Caremark and is not intended to create any legal, equitable, or beneficial interest in any third party or to vest in any third party any interest as to enforcement or performance, including but not limited to, Participating Pharmacies or Plan Participants.
- 13.12 Government Programs. To the extent required by applicable law or contractual commitment, Participating Group agrees to fully and accurately disclose and report to Medicare, Medicaid or other government health care programs any discount or rebate or other credit received by Participating Group under this Agreement, whether reflected in the fees for the products and services or otherwise provided hereunder, as discounts against the price of the drugs under all applicable state or federal programs that provide reimbursement to Participating Group for products or services provided by Caremark. It is the intention of the parties, that for purposes of the Federal Anti-kickback Statute, any discount, rebate or other Participating Group credit, shall constitute and be treated as discount against the price of drugs within the meaning of 42 U.S.C. §1320a 7b(b)(3)(A).
- 13.13 Government Program Business. Participating Group represents and warrants that:

- (a) it is not a party to a risk contract under Sections 1876(g) or 1903(m) of the Social Security Act;
- (b) it is not a Medicare Part C health plan that receives a capitated payment from Medicare and has its total Medicare beneficiary cost sharing approved by the Centers for Medicare and Medicaid Services under Section 1854 of the Social Security Act; or
- (c) it does not provide or arrange for items and services for Medicaid enrollees in accordance with a risk-based contract with a state agency subject to the upper payment limits in 42 C.F.R § 447.361 or an equivalent payment cap approved by the U.S. Secretary of Health and Human Services.

13.14 Survival. Sections 4 (Use of Data), 6.2 (Payment), 6.3 (Control of Plan), 9.4 (Obligations Upon Termination), 10 (Confidential and Proprietary Information), 11 (Indemnification), 13.4 (Limitation of Liability) and 13.14 (Survival) shall survive the termination or expiration of this Agreement.

13.15 Use of Name. Each party shall use the other party’s name, logo and trademark only in the manner specified by the other party in writing, or as expressly permitted by this Agreement.

13.16 Attorney Fees. If either party institutes an action or proceeding to enforce any rights arising under this Agreement, the party prevailing in such action or proceeding will be paid all reasonable attorneys’ fees and costs to enforce such rights by the other party, such fees and costs to be set by the court, not by a jury, and to be included in the judgment entered in such proceeding.

13.17 Authority. Each party represents and warrants that it has the necessary power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement.

13.18 Third Party Recoveries. Caremark shall use reasonable commercial efforts to distribute among its clients recoveries received from third parties during the Term to the extent such recoveries may reasonably be allocated to Caremark’s clients based on the utilization of products by Plan Participants. Caremark may offset its reasonable costs arising from collection and distribution of such recovery, including reasonable attorneys’ fees and expenses. Caremark shall have no obligation to initiate or participate in any legal proceeding seeking third party recoveries.

14. Exhibits. The following Exhibits are hereby incorporated into and made a part of this Agreement:

<u>Exhibit</u>	<u>Description</u>
1	Financial and Confidential and Proprietary Terms
2	Business Associate Obligations
3	Audit Guidelines
4	Appeals
5	Affidavit of No Prohibited Interest
6	City of Plano Contractor Insurance Requirements and Agreement

* * * * *

The parties hereto have caused this Prescription Benefit Services Agreement to be executed by their duly authorized representatives.

CAREMARKPCS HEALTH, L.L.C.:

CITY OF PLANO RISK POOL:

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

Approved as to Form:

By: _____
City Attorney

Exhibit 1
Financial and Confidential and Proprietary Terms

[The terms and conditions of Exhibit 1, which constitute the confidential and proprietary trade secrets of Caremark, have been redacted from this copy of the Agreement so that this copy may be reproduced and disclosed generally.]

Caremark claims the terms of Exhibit 1 of the Agreement to be Confidential Information as described in the Section 10 of the Agreement. The parties acknowledge that the Agreement is subject to disclosure under the Texas Public Information Act (“PIA”). The City of Plano Risk Pool (the “Risk Pool”) acknowledges and agrees that Caremark considers certain information included in Exhibit 1 confidential proprietary and exempt from disclosure under § 552.110 of the PIA. In accordance with Section 10 of the Agreement and § 552.305 of the PIA, in the event that the Risk Pool receives a request for disclosure under the PIA, the Risk Pool shall decline to release information Caremark has designated as proprietary and exempt from disclosure for the purpose of requesting an attorney general decision. The Risk Pool shall provide Caremark with (i) prior written notice no later than the 10th business day after the Risk Pool receives the request for the information and (ii) an opportunity for Caremark to object to disclosure of non-public, confidential and proprietary information included in these materials that is exempt from disclosure under applicable law. Caremark acknowledges that the Risk Pool is subject to the Texas Public Information Act, Chapter 522, Texas Government Code.]

Exhibit 2
Business Associate Obligations

In accordance with the Standards for Privacy of Individually Identifiable Health Information, at 45 CFR part 160 and part 164, subparts A and E (“The Privacy Rule”) and the Standards for Security of Electronic PHI, at 45 CFR parts 160 and 164, subpart C (the “Security Rule”), under HIPAA, Caremark shall, to the extent it acts in its capacity as a Business Associate to the Plan, adhere to the applicable requirements established in the Privacy Rule and Security Rules for Business Associates as set forth below.

1. **Definitions.** Capitalized terms used, but not otherwise defined, in this Exhibit or the Agreement shall have the same meaning as those terms in the Privacy Rule or Security Rule or the HITECH Act.

- A. “ARRA” shall mean the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (2009), and specifically, Title XIII, the Health Information Technology for Economic and Clinical Health Act).
- B. “Business Associate” shall mean Caremark.
- C. “Compliance Date” shall mean, in each case, the date by which compliance is required under the referenced provision of ARRA or if specified therein, its implementing regulations, as applicable; provided that, in any case for which that date occurs prior to the Effective Date of this Exhibit, the Compliance Date shall mean the effective date of this Exhibit.
- D. “*HITECH Act*” shall mean the Health Information Technology for Economic and Clinical Health Act, which is at Section 13400, *et. seq.* of ARRA, as implemented in regulations issued by the Secretary and as of the applicable Compliance Date specified in such regulations.
- E. “Individual” shall have the same meaning as the term “individual” in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- F. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information, at 45 CFR part 160 and part 164, subparts A and E.
- G. “Protected Health Information” (“PHI”) and “Electronic Protected Health Information” (“EPHI”). PHI and EPHI shall have the same meaning given such terms in 45 CFR 160.103, but limited to the information created or received by Caremark in its capacity as a pharmacy benefits manager (and not a mail pharmacy or other health care provider) on behalf of Participating Group and Plan.
- H. “Security Rule” shall mean the Standards for Security of Electronic Protected Health Information, at 45 CFR parts 160 and 164, subpart C.

2. **Obligations and Activities of Caremark.**

- A. Caremark agrees not to use or disclose PHI other than as permitted or required by the Agreement or this Exhibit, or as permitted or required by Law.
- B. Caremark agrees to use commercially reasonable safeguards to protect against any use or disclosure of the PHI not provided for by the Agreement or this Exhibit. Caremark also agrees to (i) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, maintains, or transmits on behalf of Participating Group as required by 45 CFR 164.314(a)(2)(i)(A); and (ii) report to Participating Group any Security Incidents involving EPHI of which it becomes aware.
- C. Caremark agrees to mitigate, to the extent practicable, any harmful effect that is known to Caremark of a use or disclosure of PHI by Caremark in violation of this Exhibit.
- D. Caremark agrees to report to Participating Group any use or disclosure of the PHI not provided for by the Agreement or this Exhibit of which it becomes aware.
- E. Caremark agrees to require that any agent, including a subcontractor, to whom it delegates any function or activity it has undertaken to perform on behalf of Participating Group, and to whom it provides PHI received from or created on behalf of Participating Group, agrees to substantially the same restrictions and conditions on the use or disclosure of PHI as apply through this Exhibit to Caremark.
- F. Upon the Participating Group's written request, and in a reasonable time and manner, Caremark agrees to provide to Participating Group such PHI maintained by Caremark in a Designated Record Set for Participating Group to respond to a request for access under 45 CFR 164.524. Caremark agrees that if it maintains PHI in an Electronic Health Record, as defined in the HITECH Act, it shall provide such access in electronic format if so requested by Participating Group, to the extent required by and in accordance with Section 13405(e) of the HITECH Act.
- G. Upon the Participating Group's written request, and in a reasonable time and manner, Caremark agrees to make such amendments to PHI maintained by it in a Designated Record Set for Participating Group to respond to a request for amendment under 45 CFR 164.526.
- H. Caremark agrees to make its internal practices, policies, procedures, books, and records relating to the use and disclosure of PHI received from, or created or received by Caremark on behalf of Participating Group, available for inspection and copying by the Secretary for purposes of the Secretary determining Participating Group's compliance with the Privacy Rule.
- I. Caremark agrees to document such disclosures of PHI made by it, and information related to such disclosures, as would be required for Participating Group to respond to a request by an Individual for an accounting of disclosures of PHI under 45 CFR 164.528.
- J. Upon written request by Participating Group, and in a reasonable time and manner, Caremark agrees to provide to Participating Group information collected in accordance with Paragraph I of this Section for Participating Group to provide an accounting under 45 CFR 164.528. In addition, upon Participating Group's written request on behalf of an Individual, Caremark agrees to provide an accounting of such disclosures of PHI

maintained in an Electronic Health Record as required by and in accordance with Section 13405(c) of the HITECH Act.

K. **Breach Notification.** Following the discovery by Caremark of any Breach of Unsecured PHI, Caremark agrees to notify Participating Group of such Breach without unreasonable delay. Such notification shall include, to the extent available, the identity of each Individual whose Unsecured PHI has been, or is reasonably believed by Caremark to have been, accessed, acquired, used, or disclosed during the Breach. At the time of notification or promptly thereafter as such information becomes available, Caremark shall also provide Participating Group with such other information as is required for Participating Group to notify an Individual of the Breach as required by 45 CFR 164.404(c). Except for notifications to the Secretary, which must be done by Participating Group, Caremark agrees that to the extent the Breach is solely as a result of Caremark's failure to implement reasonable and appropriate safeguards as required by this Exhibit, and not due in whole or in part to the acts or omissions of Participating Group, Caremark shall provide the notifications required under 45 CFR 164.404 and 45 CFR 164.406, subject to any delay required by law enforcement pursuant to 45 CFR 164.412.

L. **Security and Privacy Requirements of HITECH Act.** Caremark agrees to comply with Sections 164.308, 164.310, 164.312, and 164.316 of the Security Rule and the additional requirements of the HITECH Act that apply to security and privacy that are made applicable to Covered Entities as required by sections 13401 and 13404(a) respectively of the HITECH Act. Caremark may use and disclose PHI only if such use or disclosure, respectively, is in compliance with the applicable provisions of section 164.504(e) of the Privacy Rule. The parties acknowledge and agree that section 164.504(e)(1)(ii) of the Privacy Rule shall apply to Caremark in the same manner that such section applies to Participating Group with respect to compliance with the standards in section 164.502(e) and 164.504(e) of the Privacy Rule, as required by section 13404(b) of the HITECH Act.

3. **Permitted Uses and Disclosures by Caremark.**

Caremark may use or disclose PHI to perform its Services (including analyzing PHI to recommend changes or improvements in such Services) for or on behalf of, Participating Group as provided in the Agreement. Except as provided in this Exhibit, such uses and disclosures shall be limited to those that would not violate the Privacy Rule if done by Participating Group. In addition, Caremark may use and disclose PHI:

- A. for the proper management and administration of Caremark or to carry out its legal responsibilities; provided that, in the case of any disclosures for this purpose, the disclosure is Required by Law or Caremark obtains reasonable assurances from the person to whom the information is disclosed, that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and that the person will notify Caremark of any instances of which it is aware in which the confidentiality of the information has been breached;
- B. to provide Data Aggregation services to Participating Group as permitted by 45 CFR 164.504(e)(2)(i)(B);
- C. to de-identify the information or create a limited data set in accordance with 45 CFR

§164.514, which de-identified information or limited data set may be used and disclosed by Caremark as permitted by law, including HIPAA;

- D. pursuant to an individual authorization in accordance with 45 CFR §164.508;
- E. to report violations of law to appropriate federal and state authorities, consistent with 45 CFR §164.502(j)(1);
- F. for treatment, payment and health care operations of health care providers and other Covered Entities as permitted by 45 CFR 164.506(c); and
- G. as otherwise authorized in writing by Participating Group.

4. **Obligations of Participating Group**

Participating Group shall provide to Caremark a written list of the names of those individuals in its Workforce that are authorized to receive or access PHI on its behalf, and to provide reasonable prior written notice to Caremark of any changes to such list. In the absence of Participating Group providing such list, Caremark may assume that those individuals that are member of the Workforce of Plan Sponsor/Participating Group who request or receive PHI are performing plan administration activities for Participating Group, and are authorized to receive or access PHI on its behalf.

5. **Miscellaneous.**

- A. Regulatory References. A reference in this Exhibit to a section in the Privacy Rule means the section as in effect or as amended, and as of its applicable Compliance Date.
- B. Changes to this Exhibit. The parties agree to negotiate in good faith to amend this Exhibit or the Agreement as necessary to comply with any changes in the Privacy Rule or Security Rule.
- C. Interpretation. Any ambiguity in this Exhibit shall be resolved to permit the parties to comply with the Privacy Rule, Security Rule and HITECH Act.

Exhibit 3 **Audit Guidelines**

An audit of the Services is intended to enable Participating Group to confirm that Caremark has complied with its obligations under the Agreement related to administration of the PDD. To accomplish the review in an efficient and timely manner, the following guidelines will apply to the audit process:

Audit Notification Letter

A Participating Group request for an audit of Caremark will be directed to the Participating Group Contract Audit Manager either in writing on Participating Group's letterhead, or by e-mail.

Teleconference

Upon Caremark's receipt of a request for an audit, Caremark will organize and conduct an initial teleconference between Participating Group and Caremark. This teleconference will address the following:

- Individual audit participants
- Requirement and purpose of an approved confidentiality agreement (for use with outside audit firms or other Participating Group representatives, as applicable)
- Onsite requirements
- Mutually established timelines
- Claims tape needs and costs
- Prescription copies: timelines, availability and cost
- Guidelines for acceptable verification of audit questions
- Caremark's right to respond within a reasonable time after questions arise and before audit results are disseminated by the auditor to Participating Group
- Audit Process Confirmation Letter
- Other appropriate issues.

Mutually Agreed Timelines

Participating Group and Caremark will mutually agree upon an audit timeline, taking into consideration individual circumstances and constraints. An example of a standard timeline is as follows (from the time a signed confidentiality agreement is secured):

- Claim tape request – two (2) weeks
- Standard screen prints – two (2) weeks
- Mail service prescription copies – six (6) weeks
- Audit Report Reply – one (1) month.

1.1. Response to Sampling Questions

The Participating Group can submit to Caremark questions related to provided claim samples. Answers to sampling questions are normally provided within two (2) weeks after the questions have been presented.

1.2. Claims Tape Requests

Claims tape specifications shall be clarified during the initial teleconference and processed in the order of receipt of a signed Confidentiality Agreement. Delivery to the specified party normally takes place within two (2) weeks.

1.3. Audit Report

In the event of an audit by a third party, Caremark and Participating Group will be provided a copy of any proposed audit report and Caremark will have a reasonable opportunity to comment on any such report before it is finalized.

1.4. Close of Audit

Upon finalization of audit results and agreement between Participating Group and Caremark on any identified financial discrepancies, the period under review will be considered closed.

Exhibit 4
APPEALS

APPEALS PROGRAM

1. Participating Group represents that its Plan is NOT governed by ERISA.
2. Participating Group represents and warrants to Caremark that the Appeals Program, as defined in Section 5 below, satisfies any and all laws applicable to the Plan with respect to appeals from denials of Claims for prescription drug benefits. Participating Group shall promptly notify Caremark in writing in the event a change in law causes the Appeals Program to be in non-compliance with applicable laws. Upon such notice, Caremark shall have the option of revising its Appeals Program to be in compliance with such change in law or terminating this Appeals Program.
3. Caremark may from time to time modify the Appeals Program. In the event of any such modification, Caremark shall provide Participating Group with written notice of such modification at least thirty (30) days prior its implementation. If Participating Group determines that any such modification would cause the Appeals Program to be in non-compliance with applicable laws, Participating Group shall so notify Caremark prior to the end of the thirty (30) day period. Caremark shall then have the option of further modifying its Appeals Program to be in compliance with applicable laws or terminating this Appeals Program. If Participating Group does not so notify Caremark, then Caremark shall implement the modification and shall continue to rely on the representation and warranty set forth in Section 2 above.
4. Participating Group represents that it will provide Caremark with a current and accurate copy of the Plan Document, as defined herein. The “Plan Document” shall be the written document, which sets forth the Plan design and all other information concerning Participating Group’s prescription drug benefit plan including, but not limited to, eligibility for such benefits, the benefits to be provided, limitations on such benefits and the Plan’s claims and review procedures. Throughout the Term of this Agreement, Participating Group, at its expense, will provide Caremark with sufficient advance notice of any proposed amendments to the Plan Document.
5. Caremark will provide Participating Group with the appeals program described in Sections 5.a. and 5.b. below (“Appeals Program”).
 - a. *Review of Benefit Coverage.* Caremark shall conduct appeals relating to eligibility and coverage of prescription drug benefit determinations. Such reviews will be based on the Plan Document provisions and criteria approved by the Plan, with respect to coverage of prescription drug benefits only, and shall not include a review of medical necessity as may be defined under the terms of the Plan Document. With respect to such review of benefit coverage, Caremark shall have the sole and absolute discretion to interpret the Plan Document and to make factual findings. The decision of Caremark shall be final, subject to judicial review only for abuse of discretion. Caremark may, in its sole discretion, consider the opinions of additional medical and/or legal experts with respect to interpretation of the Plan Document. Under the Appeals Program, Caremark agrees to be a fiduciary solely for the purpose of reviewing appeals relating to the coverage of

- prescription drug benefits. Caremark will review appeals in accordance with the rules and procedures established by Caremark to govern appeals from the denials of claims, as may be amended from time to time.
- b. *Review of Medical Necessity.* Caremark has contracted with an independent vendor or vendors for the processing of appeals resulting from a denial of authorization of prescription benefits where the Plan beneficiary is entitled to obtain a review of the denial by an independent physician specialist. Caremark has entered or will enter into an agreement with the independent vendor(s), which provides for an appeals process consistent with the Appeals Program. With respect to such reviews, the independent vendor shall act as a fiduciary and shall have the sole and absolute discretion to interpret the Plan Document and to make factual findings. The decision of the independent vendor shall be final, subject to judicial review only for abuse of discretion.
6. As consideration for the services provided hereunder, Participating Group shall pay Caremark the fees set forth in Exhibit 1 of the Agreement.

Exhibit 5
Affidavit of No Prohibited Interest

I, the undersigned declare that I am authorized to make this statement on behalf of CaremarkPCS Health, L.L.C. and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of CaremarkPCS Health, L.L.C. is employed by the City of Plano or is an elected or appointed official of the City of Plano within the restrictions of the Plano City Charter.

I am aware that Section 11.02 of the City Charter states:

“No officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, nor shall be financially interested, directly or indirectly, in the sale to the city of any land, or rights or interest in any land, materials, supplies or service. The above provision shall not apply where the interest is represented by ownership of stock in a corporation involved, provided such stock ownership amounts to less than one (1) per cent of the corporation stock. Any violation of this section shall constitute malfeasance in office, and any officer or employee of the city found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the persons or corporation contracting with the city shall render the contract voidable by the city manager or the city council.”

I further understand and acknowledge that a violation of Section 11.02 of the City Charter at anytime during the term of this contract will render the contract voidable by the City.

CAREMARKPCS HEALTH, L.L.C.

By: _____
Signature

Print Name

Title

Date

STATE OF ILLINOIS §
 §
COUNTY OF COOK §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20_____.

Notary Public, State of _____

Exhibit 6
City of Plano Contractor Insurance Requirements and Agreement

Contractors providing professional services to the City or performing work on City property for the City of Plano shall provide the City a certificate of insurance evidencing the coverages and coverage provisions identified herein. Contractors shall, upon request, provide the City evidence that all subcontractors providing services directly to the City have the same types and amounts of coverages as required herein or that the subcontractors are included under the contractor’s policy.

All insurance companies and coverages must be authorized by the Texas Department of Insurance to transact business in the State of Texas and must be acceptable to the City of Plano.

Listed below are the types and amounts of insurance required. By requiring such coverage, the City shall not be deemed or construed to have assessed the risk that may be applicable to Contractors under this agreement. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Contractor is not relieved of any liability or other obligations assumed or pursuant to this agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The City reserves the right to amend or require additional types and amounts of coverages or provisions depending on the nature of the work.

<i>Type of Insurance</i>	Amount of Insurance	Provisions
1. Commercial General (Public) Liability to include coverage for: a) Premises/Operations b) Products/Completed Operations c) Independent Contractors d) Personal Injury/Advertising Injury e) Liability assumed under an insured contract (including tort liability of another in a business contract)	\$500,000 each occurrence, \$1,000,000 general aggregate; \$1,000,000 products/completed operations aggregate	City and City’s Consultant to be listed as additional insured and provided 30-day notice of cancellation or material change in coverage. A copy of the endorsement to policy must be submitted with the required certificate of insurance. City prefers that insurer be rated B+VI or higher by A.M. Best or A or higher by Standard & Poors
1. Business Auto Liability	As required by State of Texas	
Workers’ Compensation & Employers’ Liability	<i>Statutory Limits</i> <i>\$100,000 each accident, \$500,000 policy limit by disease, \$100,000 each employee by disease</i>	City and City’s Consultant to be provided a waiver of subrogation. A copy of the endorsement to policy must be submitted with the required certificate of insurance.

Additional Requirements:

- **All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by the City of Plano.**
- **All insurance coverage required by this section must be evidenced by a certificate of insurance submitted by the contractor’s insurer or broker. Certificates of insurance received from any other source will be rejected.**

Questions regarding this insurance should be directed to the City of Plano Purchasing Department at (972) 941-7557

A PURCHASE ORDER WILL NOT BE ISSUED WITHOUT EVIDENCE OF INSURANCE.