

Appendix L – Sample Contract

NEW MEXICO MEDICAL INSURANCE POOL PHARMACY BENEFIT MANAGEMENT AGREEMENT

THIS AGREEMENT is made by and between the New Mexico Medical Insurance Pool (hereinafter referred to as the “Pool”) and <PBM CONTRACTOR NAME> (“Contractor”).

WHEREAS, the State of New Mexico (hereinafter referred to as the “State”) has by law established the New Mexico Medical Insurance Pool to provide health insurance to eligible New Mexico residents applying to the Pool for insurance coverage (hereinafter referred to either as “Pool Policy” or “Policy”); and

WHEREAS, the Pool is established in accordance with the New Mexico Medical Insurance Pool Act, N.M.S.A. § 59A-54-1 et seq. (hereinafter referred to as the “Act”); and

WHEREAS, the Act requires the Pool to exercise its power and authority through a Board of Directors (hereinafter referred to as the “Board”) and authorizes the Board to select a vendor to provide administrative services; and

WHEREAS, the Act provides that the Board of the Pool shall select vendors to provide administrative services through a competitive bidding process; and

WHEREAS, the Board has determined that the selection of <PBM CONTRACTOR NAME> as a vendor of the Pool is in compliance with law and in the best interest of the Pool and its insureds; and

WHEREAS, the <PBM CONTRACTOR NAME> desires to provide such Pool administration services upon the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, as well as other good and valuable consideration moving from each party to the other, it is hereby agreed to by and between the parties as follows:

ARTICLE 1 GENERAL PROVISIONS

1.1 **Term.** The term of this Agreement shall commence at 12:01 a.m. on January 1, 2025 and expire at 12:00 midnight on December 31, 2027, unless sooner terminated pursuant to the terms of this Agreement. This Agreement can be extended for one additional year period at the end of three years, as allowed under the New Mexico Procurement Code, if the parties so desire.

1.2 **Notices.** Any notice required or permitted to be given by either party under this Agreement shall be sufficient if in writing sent by postage prepaid certified mail, as follows:

If to <PBM CONTRACTOR NAME>:

<CONTACT NAME>

<TITLE, CONTRACTOR NAME>

<ADDRESS>

<CITY>, <STATE>, ZIP

If to NMMIP:

Superintendent of Insurance, Alice Kane
Chairman, New Mexico Medical Insurance Pool
PO Box 1689
Santa Fe, NM 87504-1689

1.3 **Independent Contractor.** In the performance of its functions and responsibilities hereunder, the Administrator shall be an independent contractor and may claim all benefits and exert all privileges provided by New Mexico law.

1.4 **Definitions.** The following terms shall have the meaning as given whenever they are used in this Agreement. The definitions of Section 59A-54-3, as amended, of the Act not set out below are incorporated herein by reference.

- A. “<PBM CONTRACTOR NAME>” has the meaning set forth in the preamble to this Agreement.
- B. “Board” means the Board of Directors of the Pool.
- C. “Executive” means the Executive Director engaged by the Board.
- D. “Insurer” means an insurance company authorized to transact health insurance business in New Mexico, a nonprofit health care plan, a health maintenance organization and self-insurers not subject to federal preemption. “Insurer” does not include an insurance company that is licensed under the Prepaid Dental Plan law [59A-1-1 NMSA 1978] or a company that is solely engaged in the sale of dental insurance and is licensed not under that act, but under another provision of the Insurance Code [59A-1-1 NMSA 1978].
- E. “Member” means any insurer who by law or policy of the Board is subject to the Pool assessments and other provisions of the Medical Insurance Pool Act.
- F. “Policyholder” means a person who has applied for a Pool policy, met the Pool eligibility requirements, paid the premium and otherwise satisfied Pool requirements, and who has been issued coverage by the Pool.
- G. “Pool” means the Medical Insurance Pool as established by the New Mexico State Legislature in the Laws of 1987, Chapter 154 and codified in Section 59A-54-1 through Section 59A-54-21 NMSA 1978.
- H. “Superintendent” means the Superintendent of Insurance.

ARTICLE 2 PHARMACY BENEFIT MANAGEMENT

2.1 **Services.** The services provided by Contractor will be those services identified in the 2024 Pharmacy Benefit Request for Proposal and more fully described in Exhibit B hereto and incorporated herein by reference (the “Services”).

2.2 **Compliance with Law.** Contractor will perform its obligations under this Agreement in accordance with applicable law, including any applicable insurance laws, any applicable laws of the United States, and applicable New Mexico law.

2.3 **Licenses and Certifications.** Contractor represents that it has the necessary licenses or certifications to perform services under this Agreement.

2.4 **Authority.** Contractor represents that it has the full corporate authority to enter into this Agreement and to perform its obligations hereunder. The signatories hereto have the full right, power, and authority to execute this Agreement.

2.5 **Performance Standards.** Contractor will provide its services under this Agreement in accordance with the Performance Standards set out in the 2024 Pharmacy Benefits Management Request for Proposal Appendix G and as more fully described in Exhibit E to this Agreement. In addition, Contractor shall adhere to all specifications and representations contained in its response to the Board's request for proposal related to this Agreement. However, in the event of any conflict between the response to the request for proposal and the Performance Standards that are set forth in Exhibit E to this Agreement, the Performance Standards shall apply.

ARTICLE 3 DUTIES OF POOL

3.1 **Fees.** Throughout the term of this Agreement, the Pool will pay Contractor fees (the "Administrative Fees") for the Services as indicated on Exhibit B, which is incorporated herein by reference. The Pool will pay all Administrative Fees within 30 days after receipt of Contractor's invoice.

3.2 **Expenses.** Outside attorney fees, actuarial fees, and auditor's fees and other direct out-of-pocket expenses associated with providing services hereunder will be borne by the Pool. Such expenses may include, but are not limited to any expenses identified on Exhibit B.

3.3 **Modification of Pool Benefits.** Pursuant to the Act, the Pool can modify coverage or plan features from time to time. In the event that the Pool wishes to add, modify or terminate any of the benefits or features offered to individuals insured by the Pool as described in the Pool's insurance policy forms during the Term, it will consult with Contractor regarding the practicality and feasibility of such modification or amendment at least 45 days prior to its proposed effective date.

3.4 **Other Services.** If the Pool requests that Contractor provide a service that is outside the scope of this Agreement, Contractor may request that the Pool sign a "Statement of Work" describing such service or course of action and the Pool's direction with respect to such service or course of action. Upon receipt of the Statement of Work Contractor will promptly provide the Pool with a description of the nature of such reasonable expenses it expects to incur through implementation of the Statement of Work and the pool NMMIP agrees to indemnify and hold harmless Contractor with respect to any service provided pursuant to a Statement of Work, in accordance with the indemnification provisions of this Agreement. Payment will be due within 30 days after receipt of Contractor's invoice or other accounting of the services provided.

3.5 **Cooperation With Contractor.** The Pool will cooperate with Contractor and provide such information as is reasonably necessary for Contractor to perform the Services.

ARTICLE 4 PRIVACY AND SECURITY

4.1 **Privacy and Security.** The parties acknowledge that the services provided by Contractor under this Agreement for the Pool may involve the use and disclosure of protected

health information or “PHI” under regulations promulgated under the federal Health Insurance Portability and Accountability Act (“HIPAA”). The parties agree to enter into a Business Associate Agreement in the form attached hereto as Exhibit A to address the handling of PHI by Contractor in connection with the performance of services under this Agreement.

- A.** Contractor shall promptly report to the Pool, in writing, any security incident, actual breach of security, intrusion or use or disclosure of sensitive data in violation of any applicable federal or state law, or not permitted by this Agreement, by its subcontractors or agents of which it becomes (or through the existence of reasonable diligence should become) aware.
- B.** Contractor shall report any use or disclosure that could constitute a security incident, actual breach of security, intrusion or use or disclosure of sensitive data within 10 days of the date the incident is found and reported. Contractor shall have up to 10 additional days to complete its own internal breach investigation and provide a full report to the Pool.

 - i.** Contractor will provide sufficient information to permit the Pool (or its designee) to investigate and comply with its obligations under this Agreement, including but not limited to identification of each Individual whose sensitive data has been or is reasonably believed by Administrator to have been accessed, acquired, used or disclosed during the breach, a description of the breach, date of the breach, date of discovery of the breach, the types of protected health information involved in the breach, the investigation procedure and results, and a plan for mitigation.
 - ii.** Contractor shall work cooperatively with the Pool to mitigate any harmful effect of any use or disclosure not provided for by this Agreement, and the Pool may, at its election, assign notification duties to the Contractor. Contractor agrees to pay all costs for mitigation and notification made by the Pool for breaches caused by Contractor.
- C.** Contractor’s failure to provide notice within the notice period provided above shall constitute a material breach of this Agreement upon which the Pool may choose to immediately terminate this Agreement without consequence. Notwithstanding said breach, and without waiving its right to terminate this Agreement for breach, the Pool may impose a monetary penalty on Contractor in an amount up to One Thousand dollars (\$1,000) per day for every day that Contractor failed to provide notice to the Pool beyond the notice period provided above.
- D.** If Contractor fails to fully cooperate with the Pool in mitigation of any breach, as determined by the Pool in its sole discretion, Pool may impose a monetary penalty on Contractor in an amount up to One Thousand dollars (\$1,000) per day for every day that Contractor continues to fail in its obligations to cooperate with the Pool.
- E.** If, Contractor’s failure to cooperate with the Pool continues for a period of thirty (30) days after the imposition of monetary penalties, Contractor’s failure to cooperate shall constitute a material breach of this Agreement upon which the Pool may choose to immediately terminate this Agreement without consequence. Contractor shall provide to the Pool a comprehensive report of all data security

plans and safeguards implemented by Contractor.

ARTICLE 5 TERMINATION AND TRANSITION

5.1 **Termination for Cause.** Either party may terminate this Agreement upon 60 days' written notice of a material breach by the other party of its obligations hereunder, provided such breach is not cured within such 60-day period.

5.2 **Termination Without Cause.** Either party may terminate this Agreement, without cause, upon the provision of ninety (90) days prior written notice to the other party and will be effective the last day of the month following the ninety (90) days' notification.

5.3 **Termination for Legal Requirements.** If either party reasonably concludes that a provision of this Agreement violates any law or creates an unreasonable risk of such violation, the parties will attempt to negotiate in good faith to amend the problematic provisions so this Agreement can continue. If the parties are unable to renegotiate the relevant portions of this Agreement within 90 days, this Agreement will terminate immediately upon written notice of either party.

5.4 **Transition Provisions.** Upon termination of this Agreement, the parties will cooperate to effect a smooth and timely transition of services to another vendor.

- A. **Post-Termination Services.** Upon termination of this Agreement, Contractor will provide runout services for up to twelve months. In such event, Contractor will be paid the claims runout fee according to Exhibit B.
- B. **Reports.** To assist in the transition to another vendor, Contractor will provide transition reports reasonably requested by the Pool.
- C. **Liability for Claims and Expenses.** The Pool will be liable to Contractor for all claims and expenses paid by the Contractor within the terms of this Agreement during the continuation of this Agreement, and within a reasonable time following the discontinuance of this Agreement.

ARTICLE 6 CONFIDENTIAL INFORMATION

6.1 **Confidential Information Defined.** For purposes of this Agreement, "Confidential Information" means any proprietary or financial information disclosed by the disclosing party (the "Disclosing Party") to the other party (the "Recipient"). Confidential Information will not include information that: (i) is already in the Recipient's possession, if such information is not known by the Recipient to be subject to another confidentiality agreement; (ii) becomes generally available to the public other than as a result of a disclosure by the Recipient or its representative; or (iii) becomes available to the Recipient on a nonconfidential basis from a source other than the Disclosing Party.

6.2 **Restrictions on Use of Confidential Information.** The parties agree that Confidential Information will be used solely in connection with the purposes of this Agreement including as necessary or required for coordination and work with other Pool vendors and will be kept confidential by the Recipient and its representatives. Each party agrees that the Recipient of the Confidential Information will be responsible for any breach of this Agreement by its representatives and the Disclosing party will be entitled to enforce this Agreement against such representatives.

6.3 **Subpoenas or Other Legal Process.** If the Recipient or its representatives receive a

request to disclose any Confidential Information, it agrees immediately to notify the Disclosing Party of the existence, terms, and circumstances surrounding such request, so that the Disclosing Party may seek an appropriate injunction or protective order or waive the Recipient's compliance with the provisions of this section. If the Disclosing Party fails to timely obtain an injunction or protective order, the Recipient may disclose the requested information.

ARTICLE 7 INDEMNIFICATION

7.1 Indemnification by Contractor. Contractor shall indemnify and hold harmless the Pool and its directors, officers, and employees for that portion of any direct loss or third party loss, including, without limitation, any liability, damage, expense, settlement, cost or obligation (including reasonable attorneys' fees but excluding payment of plan benefits), caused solely and directly by Contractor's gross negligence, willful misconduct, criminal conduct, breach of this Agreement, fraud, or infringement of any U.S. patent, copyright, trademark, or other intellectual property right of a third party, related to or arising out of the services provided under this Agreement.

7.2 Indemnification by Pool. Except as provided in 7.1 above, the Pool will indemnify and hold harmless the Contractor, its affiliates, and their respective directors, officers, and employees for that portion of any third party loss, liability, damage, expense, settlement, cost or obligation (including reasonable attorney's fees): (i) which was caused solely and directly by the Pool's gross negligence, willful misconduct, criminal conduct, breach of this Agreement, or fraud related to or arising out of this Agreement; (ii) resulting from or arising out of claims, demands, or lawsuits brought against Contractor in connection with the services provided under this Agreement.

7.3 Defense of Claims. The party seeking indemnification under this Agreement may assume responsibility for the direction of its own defense at any time, including the right to settle or compromise any claim against it without the consent of the indemnifying party, provided that in doing so it shall be deemed to have waived its right to indemnification, except in cases where the indemnifying party has declined to defend against the claim.

7.4 Reliance on Instructions. The indemnification obligations under 7.1 above shall not apply to that portion of any loss, liability, damage, expense, settlement, cost, or obligation caused by (i) any act undertaken by Contractor at the direction of the Pool, or (ii) any failure, refusal, or omission to act, directed by the Pool (other than services described in this Agreement). The indemnification obligations under 7.2 above shall not apply to that portion of any loss, liability, damage, expense, settlement, cost or obligation caused by any act undertaken by the Pool at the direction of Contractor or by any failure, refusal, or omission to act directed by Contractor.

ARTICLE 8 OTHER PROVISIONS

8.1 Audit of Contractor. During the term of this Agreement, the Pool has the right to audit the services provided by Contractor. The Pool shall provide Contractor at least 90 days' advance written notice of the requested audit. The parties will endeavor to mutually agreed upon by Contractor and NMMIP. If either party believes in good faith that it has a conflict of interest with the auditor selected by the other, the objecting party will have the right to require use of another auditor to conduct the audit. The audit will take place during normal business hours at a time mutually agreed upon by Contractor and the Pool. However, no audit will take place in the months of June, November, December, or January. Contractor will provide the necessary facilities and access to all systems and records involving the Pool to facilitate these audits, including making complete documentation available in the format most readily available as requested by the Pool or its auditors and shall fully cooperate with the

Pool's auditors. The results will be reported and discussed with the Contractor and the Pool and appropriate steps taken to implement the auditing findings.

8.2 **Subcontracts.** Upon approval of the Pool, Contractor may subcontract with other persons or entities to perform one or more of its obligations pursuant to this Agreement. If Contractor subcontracts with a person or entity to perform duties or obligations specifically undertaken by Contractor pursuant to this Agreement, Contractor will (i) remain responsible for the proper performance of such duties or obligations in accordance with the terms of this Agreement, and (ii) ensure that, to the extent that protected health information is disclosed to the subcontractor, the subcontractor agrees to be bound by, and comply with, the same restrictions imposed upon Contractor pursuant to its Business Associate Agreement.

8.3 **Insurance.** Contractor shall provide, at Contractor's sole cost and expense, throughout the entire term of this Agreement, a policy of professional liability insurance with a licensed insurance Contractor admitted to do business in the State of New Mexico in a minimum amount of One Million Dollars (\$1,000,000) per claim and Three Million Dollars (\$3,000,000) in the annual aggregate, to cover any loss, liability or damage alleged to have been committed by Contractor, or Contractor's agents, servants, or employees. The provisions of this Section 8.3 shall survive the expiration or earlier termination of this Agreement.

8.4 **Remedies.** Neither party shall be liable to the other for any consequential, incidental or punitive damages whatsoever.

8.5 **Reliance on Communications.** Contractor and the Pool shall be entitled to rely upon any communication believed by them to be genuine and to have been signed or presented by the proper party or parties.

8.6 **Governing Law.** This contract shall be governed by and administered in accordance with the laws of the State of New Mexico.

8.7 **Ownership of Data and Transfer of Records; Record Retention.**

A. The Contractor agrees that all books, records, files, documentation, ledgers, forms, template letters, workflow, and other data and information generated and maintained by the Contractor in performance of the duties required in this Agreement shall remain the property of the Pool. All such records and documentation must be made available to the Pool upon termination of the contract by either party. Contractor shall comply with the direction and instructions given by the Pool concerning the transfer of all materials and files at such time as may be required by the Pool. Contractor may retain a copy of any materials and files upon approval by the Pool, which approval will not be unreasonably withheld.

B. All files, data, records, books and information ("Records") accumulated by Contractor must be kept for six years. Except as may be required in connection with any pending or threatened litigation or as may otherwise be provided by Contractor's record-retention policies in effect from time to time, Contractor may destroy any Records after a period of seven years. Records may be created or maintained by Contractor in any form, including, without limitation, in electronic form, so long as any records created or maintained in electronic form are capable of being rendered in a legible written form within a reasonable period of time.

All paper Records received by Contractor in connection with this Agreement will be scanned and saved as an electronic image or otherwise converted to an electronic format. No Records will be retained in paper. Contractor and the Pool will work in good faith to agree upon an appropriate retention and destruction schedule for Records maintained in electronic format and any other digital information created, received, or maintained in connection with this Agreement.

8.8 **Fidelity Bond.** Contractor shall maintain a fidelity bond in the amount of

\$1,000,000 insuring against criminal conduct and fraud by Contractor and any of its employees and evidence of such bond shall be furnished to the Pool.

8.9 **Force Majeure.** Contractor shall not be liable for any failure to meet any of the obligations or provide any of the services or benefits specified or required under this Agreement where such failure to perform is due to any contingency beyond the reasonable control of Contractor or its employees, officers, or directors. Such contingencies include, but are not limited to: acts or omissions of any person or entity not employed or reasonably controlled by Contractor or its employees, officers, or directors; acts of God; terrorism, pandemic, fires; wars; accidents; labor disputes or shortages; governmental laws, ordinances, rules, regulations, or the opinions rendered by any court, whether valid or invalid.

8.10 **Entire Agreement.** This Agreement (including exhibits and attachments) constitutes the complete and exclusive agreement between the parties and supersedes any and all prior or contemporaneous oral or written communications not expressly included herein. Contractor's Response to the Request for Proposal is hereby incorporated into this Agreement and is part of this Agreement; provided, however, where terms and conditions of such Request for Proposal differ from those of this Agreement, the terms and conditions of this Agreement shall control.

8.11 **Exhibits.** The following Exhibits are attached to this Agreement and hereby incorporated by reference:

Exhibit A – Business Associate Agreement

Exhibit B – Administrative Services

Exhibit C – Prescription Benefit Management Financial Terms

Exhibit D – Formulary Program

Exhibit E – Performance Standards Agreement

8.12 **Amendment.** No modification or amendment of this Agreement or Exhibits shall be valid unless memorialized in writing and signed by a duly authorized representative of Contractor and a duly authorized representative of the Pool.

8.13 **Notice of Legal Actions.** Each party will use its best efforts to notify the other party within three business days, and will notify the other in writing within ten business days, of all matters that come to its attention involving potential or commenced legal actions related to this Agreement.

8.14 **No Third Party Beneficiaries.** Nothing contained herein will be construed to confer any benefit on persons who are not parties to this Agreement.

8.15 **No Waiver of Breach.** Failure of any party to insist upon compliance with any term or provision of this Agreement at any time or under any set of circumstances will not operate to waive or modify that provision or render it unenforceable at any other time, whether the circumstances are or are not the same.

8.16 **Counterparts.** This Agreement may be executed in one (1) or more counterparts, all of which together shall constitute only one (1) Agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on the dates below written.

Contractor

By: _____ <DATE>
D

ate:

Name: _____

Title: _____

“Contractor”

New Mexico Medical Insurance Pool

By: _____ D

ate:

Name: _____

Title: _____

“NMMIP”

**Exhibit A
HIPAA
BUSINESS
ASSOCIATE
AGREEMENT**

This HIPAA BUSINESS ASSOCIATE AGREEMENT (the “Agreement”) is entered into this 1st day of January, 2024, by and between Contractor (the “Business Associate”) and New Mexico Medical Insurance Pool (“NMMIP”) on behalf of itself and its group health plan(s) (the “Plan(s”).

The Business Associate has been retained by NMMIP to perform certain administrative services on behalf of the Plan, as set forth in the related services agreement between the Parties (the “Services Agreement”). In connection with the Business Associate’s provision of services, information may be disclosed to the Business Associate that is “Protected Health Information” under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”). NMMIP, Plan and Business Associate intend to protect the privacy and provide for the security of Protected Health Information disclosed to or received by Business Associate in compliance with HIPAA. The parties agree to enter into this Agreement to govern the use and/or disclosure of PHI by the Business Associate.

1. GENERAL PROVISIONS

1.1 Effect. The provisions of this Agreement take effect on the date set forth above. The terms and provisions of this Agreement are incorporated in and supersede any conflicting or inconsistent terms and provisions of any other agreement to which Business Associate, the Plan, and NMMIP are parties.

1.2 Amendment. The parties agree to amend this Agreement to the extent necessary to allow the parties to comply with the Privacy Rules (45 C.F.R. Parts 160 and 164), the Standards for Electronic Transactions (45 C.F.R. Parts 160 and 162), the Security Rules (45 C.F.R. Parts 160 and 164), and the Breach Notification Rules (45 C.F.R. Parts 160 and 164) (collectively, the "Standards") promulgated or to be promulgated by the Secretary and other applicable laws, regulations or statutes. The parties will fully comply with all applicable Standards and will amend this Agreement to incorporate any material required by the Standards.

1.3 Definitions. Capitalized terms used and not defined in this Agreement have the respective meanings assigned to such terms in Part V of this Agreement. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Privacy, Security, and Breach Notification Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Electronic Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

2. OBLIGATIONS OF BUSINESS ASSOCIATE

2.1 Use and Disclosure of Protected Health Information. Business Associate may use and disclose Protected Health Information (“PHI”) only as necessary to perform the services for the Plan as set forth in the Services Agreement and only as otherwise permitted by this

Agreement, or as Required by Law, and cannot otherwise use or disclose any PHI. Business Associate cannot use or disclose, and must ensure that its directors, officers, employees, subcontractors, and agents do not use or disclose, PHI in any manner that would constitute a violation of the HIPAA Rules if done by the

Plan, except that Business Associate may use and disclose PHI (i) for its proper management and administration, or (ii) to carry out the legal responsibilities of Business Associate if Business Associate has received prior to the disclosure written assurances from any third party to which PHI is disclosed that: (i) the information will be held confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the third party, and (ii) the third party agrees to notify Business Associate within five days when it obtains knowledge of any breaches of the confidentiality of the PHI.

2.2 Disclosure of PHI to NMMIP.

NMMIP acknowledges and agrees that the Privacy Rules allow Plan to permit Business Associate to disclose or provide access to PHI to only those employees of NMMIP that are described by name or position by the Plan in writing as the persons given access to PHI solely to carry out the plan administration functions on behalf of the Plan. NMMIP warrants and represents that any requests that it makes for PHI or any disclosures of PHI that it requests will be for no more than the minimum amount necessary for the intended purpose.

2.3 Safeguards Against Misuse of Information. Business Associate agrees that it will implement appropriate technical, physical and administrative safeguards that satisfy the Privacy Rules, and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic Protected Health Information, as necessary to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Agreement or as Required by Law. Business Associate shall indemnify and hold harmless the Plan and NMMIP (and its employees, agents and officers) for any liability the Plan and/or NMMIP (or its employees, directors or agents) may incur to the extent such liability is attributable to a use or disclosure of PHI by Business Associate (or its agents or subcontractors) other than as specifically contemplated by this Agreement. This provision will survive the termination or expiration of this Agreement.

2.4 Reporting of Violations.

- (a)** Business Associate must promptly report to the Plan and NMMIP, in writing, any Security Incident, actual breach of security, intrusion or use or disclosure of the PHI in violation of any applicable federal or state law, or not permitted by this Agreement, by its subcontractors or agents of which it becomes (or through the existence of reasonable diligence should become) aware.
 - i. Business Associate must report any use or disclosure that could constitute a Breach within 10 days of the date the Breach is found and reported. The Business Associate shall have up to 10 additional days to complete its own internal Breach investigation and provide a full report to the Plan or NMMIP.
 - ii. Business Associate will provide sufficient information to permit the Plan or NMMIP (or its designee) to investigate and comply with its obligations under the Breach Notification Rules, including but not limited to

identification of each Individual whose unsecured PHI has been or is reasonably believed by Business Associate to have been accessed, acquired, used or disclosed during the breach, a description of the breach, date of the breach, date of discovery of the breach, the types of protected health information involved in the breach, the investigation procedure and results, and a plan for mitigation.

- iii. Business Associate shall work cooperatively with the Plan and NMMIP to mitigate any harmful effect of any use or disclosure not provided for by this Agreement, and the Plan or NMMIP may, at its election, assign notification duties to the Business Associate. Business Associate agrees to pay all costs for mitigation and notification made by the Plan or NMMIP for breaches caused by Business Associate to fulfill its obligations under 45 C.F.R. 164.402-414.

2.5 Disclosures to and Agreements by Third Parties.

- (a) Business Associate must ensure that each agent and subcontractor to whom it provides PHI on behalf of the Plan, or who creates or receives PHI on behalf of the Plan agree to substantially the same restrictions and conditions with respect to PHI that apply to Business Associate pursuant to this Agreement.
- (b) Upon the Plan or NMMIP's written request, Business Associate will provide PHI to other business associates who assist in administering the Plan and are authorized by the Plan to receive such information for the purpose of facilitating plan administration to the extent that NMMIP provides acceptable warranty and representation that each such third party has entered into a business associate agreement with NMMIP and Plan in accordance with 45 C.F.R. 164.502 and 504, as amended from time to time.

2.6 Access to Information. When an Individual requests access to PHI contained in a Designated Record Set created or received by Business Associate or its subcontractors, and such request is made directly to the Plan or NMMIP, the Plan or NMMIP (or its designee) shall forward such request to Business Associate. Business Associate shall make such PHI available to the Plan or NMMIP, or at the Plan or NMMIP's request, the Individual, as soon as reasonably possible but no later than ten (10) business days of receiving the request from Plan. If the request for access is made directly to the Business Associate, the Business Associate shall provide the Individual access to such PHI in accordance with 45 C.F.R. 164.524, as amended from time to time.

2.7 Availability of PHI for Amendment.

- (a) When an Individual requests amendment of PHI contained in a Designated Record Set created or received by Business Associate or its subcontractors, and the request is made directly to the Plan, NMMIP will forward the request to Business Associate. Business Associate must promptly respond to the Plan or NMMIP with regard to such requests within ten (10) business days of receipt of such request. If Business Associate or its subcontractors or agents receive a request from an Individual for amendment of PHI contained in a Designated Record Set created or received by Business Associate or its subcontractors, the Business Associate must provide notice of such request to the Plan or NMMIP within ten (10) business days of the receipt of such request from the

Individual.

- (b) Amendments by the Plan. Whenever the Plan or NMMIP notifies Business Associate that the Plan has agreed to make an amendment pursuant to an Individual's request, Business Associate must incorporate any such amendments to PHI in its possession in accordance with Section 164.526, as amended from time to time, within ten (10) business days.

- 2.8 Accounting of Disclosures; Request made to Business Associate.** Business Associate will maintain an accounting of all uses and disclosures as required by 45 C.F.R. 164.528, as amended from time to time. If an Individual directs a request for accounting to Business Associate, Business Associate will provide the accounting directly to the Individual within the time required in 45 CFR § 164.528, as amended from time to time. The Business Associate will respond to requests for accounting from the Plan or NMMIP within ten (10) business days of receiving such request in writing from the Plan or NMMIP.
- 2.9 Other Requests.** Business Associate agrees to accommodate any privacy restrictions requested by Individuals and agreed to by the Plan, including, but not limited to, restrictions on the use or disclosure of PHI as provided for in 45 C.F.R. § 164.522, as amended from time to time. Business Associate also agrees to only use or disclose PHI in accordance with any changes to, or revocation of, permission by an Individual.
- 2.10 Processes and Procedures.** In carrying out its duties set forth herein, Business Associate may establish procedures and processes for requests from Individuals as permitted by the Privacy Rules, including the requirement that requests be made in writing and the creation of a form for use by Individuals in making such requests.
- 2.11 Availability of Books and Records.** Business Associate hereby agrees to make its internal practices, books and records relating to the use and disclosure of PHI available to the Plan or NMMIP and the Secretary for purposes of determining the Plan's and NMMIP's compliance with the Privacy Rules. In the event that such a request is made by the Secretary, Business Associate will promptly notify the Plan or NMMIP of any such request and cooperate with the Plan or NMMIP in responding to the Secretary.
- 2.12 Standards for Electronic Transactions.** In the event that Business Associate transmits or receives any Covered Electronic Transactions on behalf of the Plan it shall comply with all applicable provisions of the Standards for Electronic Transactions Rule and shall ensure that any agents that assist Business Associate in conducting Covered Electronic Transactions on behalf of the Plan agree in writing to comply with the Standards for Electronic Transactions Rule.
- 2.13 Security of Electronic PHI.** Business Associate agrees to implement administrative, physical and technical safeguards, including written policies and procedures that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI. In addition, Business Associate agrees to comply with the Security Rule requirements set forth in 45 C.F.R. 164.308, 310, 312 and 316 (as amended from time to time) and any other Security Rule requirement imposed by 42 U.S.C. 17931 of the HITECH Act, as amended from time to time, as of the applicable compliance date of such requirements.

- 2.14 **Sale of PHI.** Business Associate may not use or disclose PHI from the Plan or NMMIP in exchange for remuneration, including uses or disclosures constituting marketing” under 45 C.F.R. 164.501, or constituting a “sale of protected health information” under 502(a)(5)(ii), without written approval of the Plan or NMMIP.
- 2.15 **De-Identification of PHI.** Business Associate may de-identify PHI obtained from the Plan or NMMIP. Such de-identified data will be the exclusive property of Business Associate and will remain the property of Business Associate upon the termination or expiration of the Services Agreement, and Business Associate may use and disclose such de-identified PHI for any lawful purposes.
- 2.16 **Carrying Out Responsibilities of NMMIP.** To the extent Business Associate is to carry out one or more of the Plan or NMMIP’s obligation(s) under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with the requirements of Subpart E that apply to NMMIP in the performance of such obligation(s).

3. **TERMINATION OF AGREEMENT WITH BUSINESS ASSOCIATE**

- 3.1 **Termination upon Breach of Provisions Applicable to PHI.** This Agreement may be terminated by the parties upon thirty (30) days prior written notice in the event that the other Party materially breaches any obligation of this Agreement and fails to cure the breach within such thirty (30) day period. If the non-breaching party determines that cure is not feasible, the non-breaching party may terminate this agreement with written notice to breaching party.
- 3.2 **Termination for other Purposes.** This Agreement shall terminate as of the date that the Services Agreement is terminated.
- 3.3 **Use of PHI upon Termination.** Upon termination of this Agreement, for any reason, Business Associate must return or destroy all PHI to the Plan or NMMIP in accordance with the written instructions of NMMIP. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate must not retain copies of the PHI unless Business Associate reasonably determines that returning or destroying the PHI is not feasible. If Business Associate determines that returning or destroying PHI is not feasible, Business Associate will provide to NMMIP written notification of the conditions that make return or destruction infeasible. Business Associate will also continue to extend the protections of this Agreement to such PHI and limit further uses and disclosures of PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI. This provision will survive the termination or expiration of this Agreement.

4. **NO THIRD PARTY BENEFICIARIES**

Business Associate and the Plan or NMMIP do not intend to confer, nor does anything express or implied in this Agreement confer, upon any person other than Business Associate, NMMIP and their respective successors or assigns, any rights, remedies or obligations or liabilities whatsoever.

5. **DEFINITIONS**

- 5.1 “Covered Electronic Transactions” has the meaning given to the term “transaction”

under 45 CFR 160.103.

- 5.2 **"Designated Record Set"** has the same meaning given to such term under 45 C.F.R. § 164.501.
- 5.3 **"Breach"** has the meaning given to the term "breach" under 45 CFR 164.402, as amended from time to time.
- 5.4 **"Breach Rules"** means the regulations issued by HHS concerning notice of Privacy Breaches set forth in 45 C.F.R. Part 164, Subpart D, as may be amended thereafter from time to time.
- 5.5 **"HIPAA Rules"** shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.
- 5.6 **"Individual"** has the same meaning given such term under 45 C.F.R. § 160.103, as amended from time to time, and will include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g), as amended from time to time.
- 5.7 **"Individually Identifiable Health Information"** has the same meaning given such term under 45 C.F.R. § 160.103, as amended from time to time.
- 5.8 **"Privacy Rules"** mean the standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. part 160 and part 164, subparts A and E, as amended from time to time.
- 5.9 **"Protected Health Information"** or **"PHI"** will have the same meaning as the term "Protected Health Information" in 45 CFR §160.103, as amended from time to time.
- 5.10 **"PHI"** has the same meaning given such term under 45 C.F.R. § 160.103, as amended from time to time.
- 5.11 **"Required by Law"** has the same meaning given such term under 45 C.F.R. § 164.103, as amended from time to time.
- 5.12 **"Secretary"** means the Secretary of the United States Department of Health and Human Services.
- 5.13 **"Security Incident"** shall have the same meaning as the term "security incident" in 45 C.F.R. 164.304, as amended from time to time.
- 5.14 **"Security Rule"** shall mean the Security Standard Requirements at 45 CFR part 160 and part 164, subparts A and C, as amended from time to time.
- 5.15 **"Unsecured Protected Health Information"** or **"Unsecured PHI"** shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in HIPAA Breach Rules and in ARRA, 42 U.S.C. § 17932(h), as amended from time to time.

6. **MISCELLANEOUS PROVISIONS**

- 6.1 Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- 6.2 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
- 6.3 Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

7. CONTACT PERSON

7.1 The Plan and NMMIP designates the following individual as the contact person:
 Superintendent of Insurance, Alice Kane
 Chairman, New Mexico Medical Insurance Pool
 PO Box 1689
 Santa Fe, NM 87504-1689

7.2 Business Associate designates the following individual as the contact person:
 (name/title/email and phone):
 <CONTRACTOR CONTACT
 NAME>
 <CONTACT TITLE> <CONTACT
 <EMAIL>
 <CONTACT TELEPHONE
 NUMBER>

IN WITNESS WHEREOF, the parties execute this Agreement by their duly authorized representatives as of the date set forth above.

CONTRACTOR (BUSINESS ASSOCIATE)

**NEW MEXICO MEDICAL INSURANCE POOL
 (NMMIP)**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit B
Administrative
Services

1. Covered Plans. The plans or benefit arrangements covered by the services described on this exhibit are as follows, each of which is referred to in this exhibit as a “Plan”:
 - (a) Prescription Benefit Administration
2. Scope of Services. Contractor will provide NMMIP with the following administrative services with respect to each Plan covered by this exhibit:
 - 2.1 Prescription Claims Administration. Subject to the terms and conditions between << and <PBM NAME>, the pharmacy benefit manager (“PBM”) may charge the Plan certain administrative fees to provide prescription claims administration. Contractor will bill NMMIP for the applicable PBM administrative fee and remit such fee to the PBM.
 - 2.2 Provide access to a prescription drug network, including a retail pharmacy network and mail order pharmacy options.
 - 2.3 Coordinate with state pharmacy networks and document discounts for state funded programs such as HIV/AIDS and hemophilia
 - 2.4 Ensure that network quality monitoring is performed
 - 2.5 Perform network development in rural or other inadequately covered areas as determined by the Pool
 - 2.6 Notify the Pool at least 90 calendar days prior to any significant network changes and identify affected enrollees
 - 2.7 Track pharmacy rebates attributable to the Pool and return them to the Pool
 - 2.8 Provide periodic reports to the Pool related to pharmacy utilization and cost trends
 - 2.9 Ensure compliance with all requirements of SB51(enacted in 2023), including providing manufacturer rebates at point-of-sale (POS)
 - 2.10 Administration of the NMMIP State Pharmaceutical Assistance Program (SPAPs) for Medicare Carve Out members purchasing Medicare Part D drug plans.
3. Modification of Duties. Modification of the duties or scope of services described in this exhibit will be by mutual agreement of NMMIP and Contractor. Any such modification (and the revised charge, if any, applicable thereto) will be evidenced by a letter agreement or Statement of Work between the parties which, upon execution, will become a part of this exhibit and the Agreement.
4. Administrative Fees.
 - 4.1 General. The administrative fees that are set forth in this exhibit are calculated by reference to the number of Participants in each tier coverage under the Plan during each particular month.

- (a) Advance Billing. Contractor generally advance-bills for its services, meaning NMMIP generally will receive a bill for administrative charges during the month prior to the month for which the administrative charges are to apply.
 - (b) Participant. For purposes of calculating administrative fees, a “Participant” means an individual (i) who is either insured by NMMIP or falls within a class of individuals eligible for coverage under the Plan by virtue of the terms of the Plan; (ii) who has become enrolled and covered under the Plan pursuant to the Plan’s eligibility provisions; and (iii) whose participation in the Plan has not been terminated pursuant to the coverage termination provisions in the Plan.
- 4.2 Prescription Claims Administration. Subject to the terms and conditions between < and <PBM NAME>, the pharmacy benefit manager (“PBM”). The fee(s) will be billed by Contractor. These fees are subject to change, as dictated by the provider network contracts.
- (a) \$X.XX per Rx script
- 4.3 Late Fees. Any charges for administrative fees and expenses not received by Contractor by the due date shall be subject to a late payment charge as provided in the Agreement. For purposes of calculating late payment charges, payments received will be applied first to the longest outstanding amount due.
5. Reporting. Contractor will make a reasonable attempt to supply NMMIP with reasonable report requests for administrative purposes at no additional charge.
- 5.1 Retroactive Terminations. NMMIP will remain responsible for all administrative charges and claims incurred or charged by covered individuals through the date of Contractor’s receipt of NMMIP’s notice that the individual’s coverage has been terminated. Contractor will allow up to 60 days credit of Administrative Fees and Contractor will not correct claims accounts retroactively.
- 5.2 Revision of Fee Structure. Notwithstanding the general provisions of the Agreement related to amendment or termination of the Agreement, Contractor reserves the right to revise, change, or modify any fee structure as set forth in this exhibit at any of the following times:
- (a) Upon any modification or amendment of Plan benefits, third party service providers, or administrative duties.
 - (b) Upon any change in law or regulation which materially impacts Contractor’s liabilities or responsibilities under this Agreement.
- If NMMIP pays such revised fees or fails to object to such revision in writing within 15 days from the date of the monthly invoice, the Agreement will be deemed modified to reflect the fees as communicated by Contractor.
6. Capitalized Terms. Capitalized terms not specifically defined in this exhibit will have the meanings set forth in the Agreement.

Initials of NMMIP Representative:

Date: _____

Initials of NMMIP Representative:

Date: _____

Exhibit C
Contractor Prescription Benefit Management Financial Terms

1. Definitions

- (a) “Average Wholesale Price” or “AWP” means the current wholesale price of a “Drug Product” as established by its manufacturer and as reported in a nationally recognized drug database.
- (b) “Brand Drug Product” means a “Drug Product” that is not classified as a “Generic Drug Product”.
- (c) “Compound Drug” means a formulation containing one or more “Drug Products”, which is extemporaneously prepared by a Participating Pharmacy in accordance with a Physician’s prescription order.
- (d) “Copayment” or “Deductible” means the amount an Eligible Member is required to pay a Participating Pharmacy, in accordance with the terms of the Plan, for a Covered Medication dispensed by the Participating Pharmacy.
- (e) “Generic Drug Product” means a Drug Product with an FDA-approved “Abbreviated New Drug Application” (or “ANDA”), provided such Drug Product (i) is available from more than two (2) Drug Product manufacturers and/or (ii) has a “Maximum Allowable Cost”.
- (f) “Limited Distribution Drug” or “LDD” means a Drug that is only available through a limited number of specialty pharmacies.
- (g) “Maximum Allowable Cost” or “MAC” means the maximum cost allowed for a Generic Drug Product, as set by Contractor from time to time.
- (h) “Orphan Drug” means a drug intended for use in a rare disease or condition as defined by the Orphan Drug Act.
- (i) “PMPM” means per member per month.
- (j) “Specialty Drug” means a high-cost, complex pharmaceutical that may have unique clinical, administration, distribution, or handling requirements and may not be commonly available through traditional retail or mail pharmacies; excluding, however, all Limited Distribution Drugs and Orphan Drugs.
- (k) “Specialty Drug List” means a list of Specialty Drugs, Limited Distribution Drugs, and Orphan Drugs maintained by Contractor and updated from time to time in the sole discretion of Contractor.
- (l) “Usual and Customary Charge” or “U&C” means the Pharmacy Services price Pharmacy submits to Contractor as its usual and customary charge.

2. Retail Pharmacy Paid Claim Charge

For each Covered Medication dispensed by a retail Participating Pharmacy to an Eligible Member, NMMIP agrees to pay Contractor the “Retail Pharmacy Paid Claim Charge”, which is the “Retail Pharmacy Service Fee”, plus any applicable sales or excise tax or other handling or governmental charge (as determined by law), less any applicable Copayment or Deductible, as described in the Plan. The Retail Pharmacy Service Fee is:

For Contract Year 01/01/2025 – 12/31/2025:

- (a) For Brand Drug Products, 30-Day’s Supply, the lesser of: (i) AWP – XX.XX % plus a \$ X.XX dispensing fee, or (ii) the U&C.
- (b) For Generic Drug Products, 30-Day’s Supply, the lesser of: (i) MAC plus a \$0.XX dispensing fee, (ii) AWP – XX.XX % plus a \$0.XX dispensing fee; or (iii) the U&C.
- (c) For Brand Drug Products, 90-Day’s Supply, the lesser of: (i) AWP – XX.XX % plus a \$0.00 dispensing fee, or (ii) the U&C.
- (d) For Generic Drug Products, 90-Day’s Supply, the lesser of: (i) MAC plus a \$0.00 dispensing fee, (ii) AWP – XX.XX % plus a \$0.00 dispensing fee, or (iii) the U&C.
- (e) For Compound Drugs, the U&C, not to exceed one-hundred and fifty percent (150%) of the AWP of the submitted Drug Product.

For Contract Year 01/01/2026 – 12/31/2026:

- (a) For Brand Drug Products, 30-Day’s Supply, the lesser of: (i) AWP – XX.XX % plus a \$ X.XX dispensing fee, or (ii) the U&C.
- (b) For Generic Drug Products, 30-Day’s Supply, the lesser of: (i) MAC plus a \$0.XX dispensing fee, (ii) AWP – XX.XX % plus a \$0.XX dispensing fee; or (iii) the U&C.
- (c) For Brand Drug Products, 90-Day’s Supply, the lesser of: (i) AWP – XX.XX % plus a \$0.00 dispensing fee, or (ii) the U&C.
- (d) For Generic Drug Products, 90-Day’s Supply, the lesser of: (i) MAC plus a \$0.00 dispensing fee, (ii) AWP – XX.XX % plus a \$0.00 dispensing fee, or (iii) the U&C.
- (e) For Compound Drugs, the U&C, not to exceed one-hundred and fifty percent (150%) of the AWP of the submitted Drug Product.

For Contract Year 01/01/2027 – 12/31/2027:

- (f) For Brand Drug Products, 30-Day’s Supply, the lesser of: (i) AWP – XX.XX % plus a \$ X.XX dispensing fee, or (ii) the U&C.
- (g) For Generic Drug Products, 30-Day’s Supply, the lesser of: (i) MAC plus a \$0.XX dispensing fee, (ii) AWP – XX.XX % plus a \$0.XX dispensing fee; or (iii) the U&C.
- (h) For Brand Drug Products, 90-Day’s Supply, the lesser of: (i) AWP – XX.XX % plus a \$0.00 dispensing fee, or (ii) the U&C.
- (i) For Generic Drug Products, 90-Day’s Supply, the lesser of: (i) MAC plus a \$0.00 dispensing fee, (ii) AWP – XX.XX % plus a \$0.00 dispensing fee, or (iii) the U&C.
- (j) For Compound Drugs, the U&C, not to exceed one-hundred and fifty percent

(150%) of the AWP of the submitted Drug Product.

For purposes of the foregoing provisions in this Exhibit C, any reference to “Retail 30” or “30-Days’ Supply” or “30-day supplies” shall mean any Covered Medication dispensed in a 1- to 83-day supply; and, provided further, any reference to “Retail 90” or “90-Days’ Supply” or “90-day supplies” shall mean any Covered Medication dispensed in a days’ supply of 84 or more. Subject to the terms and conditions herein, Contractor shall provide NMMIP with the following dollar- for-dollar minimum financial guarantees with respect to Retail Pharmacy Paid Claim Charges:

Post-AWP Settlement Minimum Discount Guarantees & Maximum Dispensing Fees		
Type	Brand	Generic
Retail 30 Drug Products	Contract Year 01/01/2025 – 12/31/2024: AWP – 19.20% Discount Contract Year 01/01/2026 – 12/31/2025: AWP – 19.30% Discount Contract Year 01/01/2027 – 12/31/2026: AWP – 19.40% Discount \$0.50 Dispensing Fee	Contract Year 01/01/2025 – 12/31/2024: AWP – 88.50% Discount Contract Year 01/01/2026 – 12/31/2025: AWP – 88.75% Discount Contract Year 01/01/2027 – 12/31/2026: AWP – 89.00% Discount \$0.50 Dispensing Fee
Retail 90 Drug Products	Contract Year 01/01/2025 – 12/31/2024: AWP – 24.20% Discount Contract Year 01/01/2026 – 12/31/2025: AWP – 24.20% Discount Contract Year 01/01/2027 – 12/31/2026: AWP – 24.20% Discount \$0.00 Dispensing Fee	Contract Year 01/01/2025 – 12/31/2024: AWP – 88.50% Discount Contract Year 01/01/2026 – 12/31/2025: AWP – 88.75% Discount Contract Year 01/01/2027 – 12/31/2026: AWP – 89.00% Discount \$0.00 Dispensing Fee

With respect to the foregoing Generic Drug Product guarantees, the effective generic discount and the generic discount guarantee calculation includes Claims for the following: MAC generics, non- MAC generics, multi-source generics, generics in their FDA-granted exclusivity period, patent litigated generics, generics with limited supply, and generic medications prescribed and/or dispensed in conjunction with a specialty medication. The above generics will NOT be included in the brand discount guarantees.

The following types of Claims shall be excluded from the foregoing guarantees: Single-source generic Drug Products, Compound Drug Claims, reversed Claims, OTC Drug Products, U&C Claims, Claims dispensed by non-participating pharmacies, vaccines, and direct-member reimbursement (DMR) claims.

100% member paid claims (zero balance due claims) will be included in the foregoing guarantees, with discounts for these claims calculated based on the ingredient cost prior to the application of member paid amount.

Additionally, if NMMIP requires Contractor to include any currently non-contracted pharmacies as Participating Pharmacies, and Contractor is unable to obtain rates from such

pharmacies as favorable as those guaranteed by Contractor hereunder, then Claims from such pharmacies shall also be excluded from the financial guarantees hereunder. If at any time applicable laws, regulations or administrative or judicial interpretations or rulings increase the amounts Contractor must pay to Participating Pharmacies, the foregoing financial guarantees will be amended by mutual agreement of the parties to reflect such increase.

3. Mail Pharmacy Paid Claim Charge

The mail Participating Pharmacy designated by Contractor and approved by NMMIP is the exclusive provider of mail Pharmacy Services. For each Covered Medication dispensed by the mail Participating Pharmacy to an Eligible Member, NMMIP agrees to pay Contractor the mail pharmacy Paid Claim Charge, which is the “Mail Pharmacy Service Fee”, plus any applicable sales or excise tax or other handling or governmental charge (as determined by law), less any applicable Copayment or Deductible, as described in the Plan. The Mail Pharmacy Service Fee is:

Contract Years 01/01/2025 – 12/31/2027:

- (a) For Brand Drug Products, the greater of: (i) \$10.00; or (ii) AWP – XX.X% in 2025, AWP- XX.X % in 2026, and AWP- XX.X % in 2027 plus a \$0.00 dispensing fee.
- (b) For Generic Drug Products, the greater of: (i) \$10.00; or (ii) AWP – XX.X % plus a \$0.00 dispensing fee.
- (c) For Compound Drugs, the amount the Participating Pharmacy has agreed to accept from Contractor (net of any co-payments, coinsurances, or deductible amounts), plus any applicable sales or excise tax or other handling or governmental charge (as determined by law).

Post-AWP Settlement Minimum Discount Guarantees & Maximum Dispensing Fees		
Type	Brand	Generic
Mail 90 Drug Products	<p>Contract Year 01/01/2025 – 12/31/2026: AWP – 24.20% Discount</p> <p>\$0.00 Dispensing Fee</p>	<p>Contract Year 01/01/2025 – 12/31/2024: AWP – 88.50% Discount Contract Year 01/01/2026 – 12/31/2025: AWP – 88.75% Discount Contract Year 01/01/2027 – 12/31/2026: AWP – 89.00% Discount</p> <p>\$0.00 Dispensing Fee</p>

4. Best-In-Class Specialty Pharmacy Paid Claim Charge

The “Best-In-Class Specialty” Participating Pharmacies designated by Contractor and approved by NMMIP are the exclusive providers of specialty Pharmacy Services. If and when NMMIP elects to participate in Contractor’s Best-In-Class Specialty Pharmacy program, for each Covered Medication that is a Specialty Drug, and dispensed by a Best-In-Class Specialty Participating Pharmacy, NMMIP agrees to pay Contractor the “Best-In-Class Specialty Pharmacy Paid Claim Charge”, which is the “Best-In-Class Specialty Pharmacy Service Fee”, expressed as an AWP discount, plus any applicable sales or excise tax or other handling or governmental charge (as determined by law), less any applicable Copayment or Deductible, as

described in the Plan. The Best-In-Class Specialty Pharmacy Service Fee is maintained by Contractor with the Specialty Drug List, which may be updated from time to time in Contractor’s discretion and provided to NMMIP upon request. The Best-In-Class Specialty Pharmacy Service Fee includes the cost of certain “Ancillary Supplies”, including syringes, needles, and alcohol swabs. The Best-In-Class Specialty Pharmacy Service Fee does not include the cost of home infusion supplies, devices and in-home nursing services. Contractor reserves the right to modify the Specialty Drug List from time to time.

Notwithstanding the foregoing, and subject to the terms and conditions herein, with respect to Specialty Drugs dispensed by authorized BIC Specialty Pharmacies only, Contractor shall provide NMMIP with the following minimum financial guarantee with respect to Best-In-Class Specialty Pharmacy Service Fees:

Post-AWP Settlement Minimum Discount Guarantees & Maximum Dispensing Fees	
Type	Best-in-Class (BIC) Network
Specialty	Contract Year 01/01/2025 – 12/31/2025: AWP – 22.70% Discount
Drugs	Contract Year 01/01/2026 – 12/31/2026: AWP – 22.80% Discount
	Contract Year 01/01/2027 – 12/31/2027: AWP – 22.90% Discount
	\$0.00 Dispensing Fee

The following types of Claims shall be excluded from the foregoing BIC Specialty guarantees: Single-source generic Drug Products, Compound Drug Claims, reversed Claims, OTC Drug Products, U&C Claims, Claims dispensed by non-participating pharmacies, vaccines, and direct- member reimbursement (DMR) claims.

* Note that with respect to Specialty Drug Products dispensed by a pharmacy that is not a BIC Specialty Pharmacy awarded that particular Specialty Drug Product, Contractor will bill to NMMIP, and NMMIP shall pay Contractor, the Non Best-In-Class Specialty Pharmacy Paid Claim Charge specified further below in this Exhibit C.

This rate includes the cost of certain “Ancillary Supplies”, including syringes, needles, and alcohol swabs. The rate does not include the cost of home infusion supplies, devices and in-home nursing services. This rate also does not apply to Limited Distribution Drugs, which are negotiated separately.

5. Non-Best-In-Class Specialty Pharmacy Paid Claim Charge

In the event that a Specialty Drug, Limited Distribution Drug, or Orphan Drug is dispensed from a pharmacy other than the Best-In-Class Specialty Participating Pharmacy listed on the Specialty Drug List, NMMIP agrees to pay Contractor the “Non-Best-In-Class Specialty Pharmacy Paid Claim Charge”, which is the “Non-Best-In-Class Specialty Pharmacy Service Fee”, plus any applicable sales or excise tax or other handling or governmental charges (as determined by law), less any applicable Copayment and/or Deductible, as described in the Plan. The Non- Best-In-Class Specialty Pharmacy Service Fee is:

- (a) For Brand Drug Products, AWP – XX.XX% plus a \$0.XX dispensing fee.
- (b) For Generic Drug Products, AWP – XX.XX% plus a \$0.XX dispensing fee.

The Non-Best-In-Class Specialty Pharmacy Service Fee includes the cost of certain “Ancillary Supplies”, including syringes, needles, and alcohol swabs. The Non-Best-In-Class Specialty Pharmacy Service Fee does not include the cost of home infusion supplies, devices and in-home nursing services.

6. The Non-Best-In-Class Specialty Pharmacy Paid Claim Charge does not apply to Limited Distribution Drugs. Contractor will submit all Claims for Limited Distribution Drugs by Non-Best- In-Class Specialty Pharmacies to NMMIP for authorization. Discount Guarantee Methodology

The parties hereby acknowledge and agree that with respect to all guaranteed discounts off of AWP set forth in this Exhibit C, such discount guarantees shall not be deemed to be part of an overall aggregate discount guarantee package offered by Contractor under this Agreement; *provided, further*, that (i) Contractor’s performance with respect to all such discount guarantees in this Exhibit C will be measured and reconciled independently, and annually by Contractor within 180 days after each contract year during the Term of the Agreement; and (ii) to the extent Contractor outperforms any one or more of these discount guarantees, Contractor may use the cost savings associated with such outperformance and apply those savings to offset any underperformance by Contractor with respect to any other discount guarantee in this Exhibit C. Contractor will pay 100% of each individual guarantee’s shortfall value on a dollar-for-dollar basis within 180 days after each contract year.

7. Administration Charge

- (a) For each Paid Claim, NMMIP agrees to pay Contractor: \$0.00.
- (b) For each Non-Paid Claim, NMMIP agrees to pay Contractor \$0.00
- (c) For each U&C Claim, NMMIP agrees to pay Contractor \$0.00
- (d) Direct member reimbursement Claims: \$2.50 per such Claim.
- (e) Prior Authorizations:
 - i. Simple Review (prescriber outreach & BIC member advocacy referral): \$XX.XX per review.
 - ii. Complex Criteria Review (pharmacist review of coverage criteria involving physician): \$ XX.XX per review.
 - iii. Pharmacist Clinical Review (review of experimental/investigational Drug Product): \$XX>XX per review.
- (f) External Appeal of Coverage Denial – Pursuant to the Appeals Process set forth on Exhibit C, Contractor may request an external appeal review from an accredited independent review organization (“IRO”) in the event of a coverage denial. Contractor will pass through all costs of the IRO to NMMIP as a billed charge pursuant to the payment terms of this Agreement, as well as a \$XX.00 fee paid to Contractor for the administration of such review.
- (g) For each Vaccine Claim covered by NMMIP and processed through a Participating Pharmacy contracted with Contractor to administer Vaccines, NMMIP agrees to pay an additional Vaccine Administration Charge of up to, but not more than, \$25.00 per Claim.

8. Program Charges

If NMMIP elects to implement any of the below listed Contractor Programs, NMMIP shall pay the corresponding Program Charges to Contractor listed below:

(a) TBD

9. Formulary Program Discounts

Under certain conditions, Contractor will pay Formulary Program (as defined below in Exhibit E to this Agreement) discounts, in the form of Rebates, to NMMIP subject to NMMIP's participation in the Formulary Program and overall compliance with Exhibit E to this Agreement. NMMIP agrees that Rebate payments are based upon Plan design over which Contractor has no discretionary control or authority, and such Rebate payments are subject to change due to various factors, as described in this Agreement. Rebate payments are made within thirty days after six months from the end of the quarter in which Paid Claims were incurred. Rebates will be paid to NMMIP as follows:

For 3-Tier qualified Plans on the Select EX Formulary:

(a) For each eligible Brand Drug Product, as described in Exhibit D, that is a Covered Medication dispensed through a retail pharmacy for a 30-day supply, Contractor shall pay NMMIP:

- Contract Year 01/01/2024 – 12/31/2024: \$249.38
- Contract Year 01/01/2025 – 12/31/2025: \$261.84
- Contract Year 01/01/2026 – 12/31/2026: \$274.88

(b) For each eligible Brand Drug Product, as described in Exhibit D, that is a Covered Medication dispensed through a retail pharmacy, for a 90-day supply, Contractor shall pay NMMIP:

- Contract Year 01/01/2025 – 12/31/2025: \$673.32
- Contract Year 01/01/2026 – 12/31/2026: \$706.98
- Contract Year 01/01/2027 – 12/31/2027: \$742.23

(c) For each eligible Brand Drug Product, as described in Exhibit D, that is a Covered Medication dispensed through a mail pharmacy, for a 90-day supply, Contractor shall pay NMMIP:

- Contract Year 01/01/2025 – 12/31/2025: \$673.32
- Contract Year 01/01/2026 – 12/31/2026: \$706.98
- Contract Year 01/01/2027 – 12/31/2027: \$742.23

(d) For each eligible Specialty Drug Product, as described in Exhibit D, that is a Covered Medication dispensed through a contracted pharmacy, Contractor shall pay NMMIP:

- Contract Year 01/01/2025 – 12/31/2025: \$2,319.18
- Contract Year 01/01/2026 – 12/31/2026: \$2,435.14
- Contract Year 01/01/2027 – 12/31/2027; \$2558.63

10. NMMIP's Obligation of Confidentiality

NMMIP acknowledges and agrees that (i) the rates at which Contractor pays pharmacies for Pharmacy Services, (ii) the rebate amounts received by Contractor from manufacturers or intermediaries, and (iii) all other information contained in this Exhibit C constitute highly proprietary and confidential information. As a result, NMMIP agrees that such information shall be disclosed only to NMMIP's essential personnel and used by such essential personnel solely to perform accounting and payment functions relating to this Agreement. NMMIP shall advise such personnel of the proprietary and confidential nature of this information and shall be responsible for its personnel's compliance with the requirement for confidentiality. If information regarding the rates at which Contractor pays pharmacies for Pharmacy Services and/or the rebate amounts received by Contractor from manufacturers or intermediaries are requested by the government or subpoena or otherwise from NMMIP, NMMIP shall notify Contractor immediately upon receipt of such request so that Contractor may pursue an injunction, protective order, or another prohibition on disclosure.

* *

Initials of NMMIP
Representative:

Date: _____

Initials of Contractor
Representative:

Date: _____

Exhibit D
Contractor Formulary Program

1. Definitions

- a. “Formulary Program” shall mean a program established by Contractor under which pharmaceutical manufacturers provide Contractor with discounts, which are (i) due and payable to Contractor pursuant to the terms of contracts with pharmaceutical manufacturers; and (ii) directly attributable to the dispensing of Covered Medications on the Formulary to Eligible Members.
- b. “Formulary Program Claim Exclusions” shall mean: Claims through any NMMIP owned, university, long term care or 340b pharmacies, vaccines, Compounds, Direct Member Reimbursement (DMR) Claims, Claims fully funded by Members, authorized generics, Claims for Brand Drugs that are also available as Generic Drugs, appliances, devices, bandages, heat lamps, braces, splints, and artificial appliances, subrogation claims, health and beauty aids, cosmetics, and dietary supplements, Over-The-Counter (OTC) products (with the exception of diabetic testing strips, meters and medications), biosimilar drugs, Claims pursuant to 100% Member Copayment plan, secondary Claims, except if such Claims are eligible for Medicaid Supplemental rebates, Claims older than 180 days, Claims with invalid identifiers (e.g. pharmacy identifiers), Medicaid fee-for-services Claims, Claims that are reversed or rejected, and Claims from any NMMIP owned or affiliated pharmacy, shall be excluded from the calculation of guarantees above.
- c. “Rebates” shall mean retrospective rebates paid to Contractor that are directly attributable to the utilization of certain pharmaceuticals by Eligible Members. Rebates do not include administrative fees paid by pharmaceutical manufacturers to Contractor in connection with Contractor’s administration of Formulary Program discounts.

2. Terms of Formulary Program

- a. Contractor agrees to allow NMMIP to participate in the Formulary Program in NMMIP’s sole discretion, and Contractor agrees to pay certain Formulary Program discounts to NMMIP to the extent such Formulary Program discounts are attributable to NMMIP’s participation in the Formulary Program and Eligible Members’ use of the Formulary, and as are described in Exhibit C, but if and only if NMMIP meets its obligations under Exhibit C and this Exhibit D of this Agreement, and if and only if NMMIP meets such other reasonable and generally applicable requirements for participation in the Formulary Program and associated parameters as may be communicated by Contractor to NMMIP from time to time.
- b. NMMIP shall have sole discretion regarding participation in Contractor’s Formulary Program, which may include, but is not limited to, the distribution of Formularies to Cardholders prior to the Effective Date and as necessary thereafter, and which participation shall require NMMIP’s conformance to the Formulary. By choosing to participate in the Formulary Program, NMMIP further warrants that NMMIP is not participating in any other formulary program.

- c. NMMIP understands that its eligibility to receive any payments from Contractor under this Exhibit D may change from time to time due to changes in NMMIP's Plan; changes in Contractor's agreements with pharmaceutical manufacturers or Rebate intermediaries; changes in laws, including but not limited to such laws affecting prescription drug benefits, benefits structure, or pricing (including Rebates); the selection of certain services, such as prior authorization or open formulary management; or any change in the Formulary Program. NMMIP acknowledges and agrees that only Claims for Brand Drug Products (as defined on Exhibit C) with an FDA-approved "New Drug Application" ("NDA") are eligible for such payments. NMMIP further acknowledges and agrees that Formulary Program Claim Exclusions (as defined on Exhibit C) are not eligible for such payments, including (i) Claims for Brand Drug Products that are also available as Generic Drug Products, (ii) 100% Copayment Claims, (iii) Claims submitted by Eligible Members, (iv) Claims where Contractor is the secondary payer, (v) Claims for Compound Drugs, Specialty Drugs, and over-the-counter Drug Products, and (vi) Claims for Covered Medications filled at Participating Pharmacies that qualify for 340B pricing under Section 340B of the Public Health Services Act.
- d. Subject to NMMIP's participation in the Formulary Program and compliance with Sections 2.b. and 2.c., above, Contractor shall pay to NMMIP certain amounts received by Contractor as discounts or Rebates, pursuant to the Formulary Program, from drug manufacturers or intermediaries, which amounts are denominated as discounts or Rebates by such manufacturers or intermediaries and which are attributable to Pharmacy Services utilized by Eligible Members, and consistent with the amounts provided for in accordance with Exhibit C hereto. NMMIP acknowledges and agrees that it shall not have a right to interest on, or the time value of, any discount, Rebate or other payments received by Contractor during the collection period for monies payable to NMMIP under this Exhibit D. NMMIP acknowledges that Rebate payments from manufacturers or intermediaries are received on a periodic basis by Contractor and relate to earlier months' claims. Contractor reserves the right to delay payment to NMMIP of any amounts hereunder, and to offset any Rebate payments otherwise due hereunder.
- e. NMMIP acknowledges that it may be eligible for Rebate payments under this Agreement only so long as NMMIP (or its Agent) does not (i) contract directly or indirectly with anyone else for discounts, utilization limits, rebates or other financial incentives on pharmaceutical products or formulary programs without Contractor's prior written consent, (ii) change the Plan to add a new Drug Product exclusion after the Effective Date, or (iii) realize a material change in the utilization of rebate eligible Drug Products. In the event that NMMIP negotiates or arranges with a pharmaceutical manufacturer or intermediary for rebates or similar discounts, without limiting Contractor's right to other remedies, Contractor may immediately terminate NMMIP's participation in the Formulary Program, terminate this Agreement according to the terms of Section 5.2 hereof, and/or recover all amounts paid by Contractor to NMMIP for Rebates on claims submitted by NMMIP (or on behalf of NMMIP) for Rebates other than through Contractor.
- f. NMMIP hereby represents and warrants, and shall recertify on a periodic basis in a form acceptable to Contractor, with respect to any Plan which receives funding from Medicare/Medicaid, Title V, Children's Medical Services, or another government healthcare program as defined in Section 1128(h) of the Social Security Act (or any successor thereto) ("Government Programs") and for which NMMIP receives amounts hereunder that are attributable to such Plan, each such Plan is

operating under a risk contract with the Centers for Medicare and Medicaid Services (“CMS”) or a state Medicaid program, and operates in accordance with §§ 1876(g) or 1903(m) of the Social Security Act, under a federal statutory demonstration authority or successor statute or authority. NMMIP agrees to notify Contractor in writing of any such Plan that does not meet any of the criteria set forth herein, and Contractor, in compliance with applicable law, shall not submit prescription drug claims for any Eligible Members in such Plan for prescriptions filled by a Participating Pharmacy. Nothing herein prohibits a NMMIP that receives the retiree drug subsidy (“RDS”) from CMS for eligible Plan Participants under the Medicare Part D Rules (42 C.F.R. Part 423, Subpart R) from receiving Rebates relating to such eligible Plan Participants’ prescription drug claims under this Agreement. The parties hereto acknowledge and agree that any Rebate reimbursement provided to NMMIP pursuant to this Agreement is a “discount” under 42 U.S.C. § 1320a-7b(b)(3) and 42 C.F.R. § 1001.952(h) (the “Discount Safe Harbor”). For the purpose of complying with the Discount Safe Harbor, Contractor shall clearly denote in invoices and other statements amounts that constitute Rebate reimbursement hereunder. NMMIP shall properly disclose and appropriately reflect all Rebate reimbursement in the costs claimed or the charges made to any Government Program. Without limiting the foregoing, if NMMIP claims a subsidy from CMS for eligible Plan Participants under the Medicare Part D Rules (42 C.F.R. Part 423, Subpart R), NMMIP shall properly disclose and appropriately reflect any Rebate reimbursement paid by Contractor to NMMIP in the Allowable Retiree Costs (as defined at 42 C.F.R. § 423.882) and other information submitted to CMS for payment of such subsidy in accordance with the Medicare Part D Rules, all applicable sub-regulatory guidance and CMS policies.

* * *

Initials of NMMIP
Representative:

Date:

Initials of Contractor
Representative:

Date:

Exhibit E
Performance Standards Agreement

Satisfaction of the performance standards set out in Appendix G of the 2024 Pharmacy Benefits Request for Proposal shall be reported by Contractor to the Pool in a monthly report delivered on the 15th of each month detailing Contractor's performance for the prior month. Contractor shall also provide a quarterly and yearly report of its overall performance for the prior period to be delivered on the first day of each quarter and the first day of each calendar year.

Initials of NMMIP
Representative:

* *

Date:

Initials of Contractor
Representative:

*

Date:

Signed by