

# General Terms and Conditions for Participation in Prime Therapeutics' Pharmacy Networks

## 1. DEFINITIONS

- 1.1. **“Average Wholesale Price” or “AWP”** means the average wholesale price of a Prescription Drug Service at the time a claim is processed as established in Prime’s price file for that date of service and updated no less frequently than once weekly, or as otherwise required by law, by MediSpan or by such other national drug database as Prime may solely designate.
- 1.2. **“Benefit Plan”** means any healthcare plan, program, group or individual plan, policy, agreement or other arrangement sponsored, issued or administered by a Benefit Sponsor which includes outpatient pharmaceutical services or benefits, or access to pricing under this Agreement in accordance with the terms of the Benefit Plan, including but not limited to plans approved by CMS under the Medicare Programs, as defined in Exhibit C.
- 1.3. **“Benefit Sponsor”** means an entity, which sponsors, issues or administers a Benefit Plan, and has agreed with Prime to utilize one or more Prime-administered pharmacy networks and/or to allow Prime or a Designated Claims Processor to process and adjudicate claims for Prescription Drug Services.
- 1.4. **“CMS”** means the Centers for Medicare and Medicaid Services.
- 1.5. **“Copayment”** means the amount a Covered Person is required to pay under the Benefit Plan for the Prescription Drug Service, and will include applicable deductibles, coinsurance, payments made by a Subscriber for covered drugs under the Medicare Programs after exhausting the Medicare Programs initial coverage limit, or other ancillary charges, if applicable.
- 1.6. **“Compound Prescription”** means a prescription where two or more medications are mixed together, and in which, at minimum, one medication must be a Federal Legend Drug. The end product must not be available in an equivalent commercial form. A prescription will not be considered a compound prescription if it is reconstituted or if, to the active ingredient, only water, alcohol or sodium chloride solutions are added.
- 1.7. **“Covered Person”** means a person who is properly enrolled in or covered by a Benefit Plan and entitled to a Prescription Drug Service at the time it is dispensed, and includes a Subscriber under Medicare Programs.
- 1.8. **“Designated Claims Processor”** means a claims processor designated by Prime or a Benefit Sponsor for adjudication of claims for Prescription Drug Services.

- 1.9. **“Drug Formulary”** means a document or documents listing various pharmaceutical products which are provided to Covered Persons, physicians or other health care providers for purposes of guiding the prescribing and communicated through POS to Pharmacy for dispensing of pharmaceutical products. Prime or a Benefit Sponsor may amend the Drug Formulary from time to time.
- 1.10. **“Federal Legend Drug”** means a drug, which is required by law to bear on its packaging, ‘Caution: Federal law prohibits dispensing without a prescription’ or ‘Rx Only.’
- 1.11. **“HHS”** means the United States Department of Health and Human Services.
- 1.12. **“Maximum Allowable Cost”** or **“MAC”** means the list delineating the maximum per unit reimbursement as established and solely determined by Prime for a multiple source prescription drug, medical product or device at the time a claim is processed. The MAC is subject to review and modification by Prime in its sole discretion.
- 1.13. **“Medicare Advantage Program”** means the program created by Congress in the Medicare Modernization Act of 2003 to replace the Medicare+Choice Program established under Part C of Title XVIII of the Social Security Act.
- 1.14. **“Medicare Part D Program”** means the program created by Congress in the Medicare Modernization Act of 2003 that created the Medicare Part D prescription drug benefit program under Part D of Title XVIII of the Social Security Act.
- 1.15. **“Medicare Programs”** means any services provided under this Agreement in connection with the Medicare Advantage Program, the Medicare Part D Program, or other CMS Medicare programs.
- 1.16. **“NCPDP”** means the National Council of Prescription Drug Programs.
- 1.17. **“NPI”** means the National Provider Identifier.
- 1.18. **“Pharmacy”** means a pharmacy, including Pharmacy, or a medical provider legally authorized to provide Prescription Drug Services and which has entered into an agreement with Prime to provide Prescription Drug Services to a Covered Person.
- 1.19. **“Pharmacy Operations Manual”** or **“Provider Manual”** means the manual published by Prime which contains administrative policies and procedures to be used by Pharmacy in connection with this Agreement. The Provider Manual may be updated by Prime from time to time and is available online to Pharmacy. The contents of the Provider Manual are incorporated into this Agreement by reference.
- 1.20. **“Payee”** means the entity to whom Prime is instructed to send or transmit Pharmacy Payment in accordance with Exhibit D(s) hereto.
- 1.21. **“Payor”** means the entity and/or individual that has financial responsibility for payment for a Prescription Drug Service. A Benefit Sponsor, a Covered Person, or both may be the Payor.
- 1.22. **“Pharmacy Payment”** means the amount payable to Pharmacy as described in the applicable Exhibit B, Rates and Terms Exhibit, for the Prescription Drug Services rendered hereunder.
- 1.23. **“Point of Sale”** or **“POS”** means the method of submitting claims on-line through an automated claims adjudication process as described in the Provider Manual, which includes interactive communications between a terminal located at a Pharmacy location and Prime, or a Designated Claims Processor.

1.24. **“Prescribing Provider”** means a Doctor of Medicine or other health care professional who is duly licensed and qualified under the laws of the jurisdiction in which Prescription Drug Services are received, and may in the usual course of his or her practice, legally prescribe Prescription Drug Services for Covered Persons.

1.25. **“Prescription Drug Service”** means an outpatient drug product, item or service which is covered under a Covered Person’s Benefit Plan and which is provided to a Covered Person pursuant to a prescription issued by a Prescribing Provider in accordance with this Agreement.

1.26. **“Pricing Source”** means MediSpan or such other national drug database as Prime may solely designate, which establishes and provides updates to Prime no less frequently than once weekly, or as otherwise required by law, regarding the AWP or other alternative pricing benchmark as determined by Prime for Prescription Drug Services.

1.27. **“Subscriber”** means a person who is eligible for benefits under the Medicare Programs and who is enrolled in a Benefit Plan.

1.28. **“Transaction Fee”** means a fee charged to Pharmacy per paid Prescription Drug Service provided under this Agreement.

1.29. **“Usual and Customary Charge”** or **“U & C”** means the lowest price Pharmacy would charge to a particular customer if such customer were paying cash for the identical Prescription Drug Services on the date dispensed. This includes any applicable discounts including, but not limited to, senior discounts, frequent shopper discounts, and other special discounts offered to attract customers.

1.30. **“Wholesale Acquisition Cost”** or **“WAC”** means the wholesale acquisition cost of a Prescription Drug Service at the time a claim is processed as established in Prime’s price file for that date of service and updated no less frequently than once weekly, or as otherwise required by law, by MediSpan or by such other national drug database as Prime may solely designate.

## 2. **PHARMACY RESPONSIBILITIES**

2.1. **Service Standards.** Pharmacy will provide Prescription Drug Services to all Covered Persons in accordance with the standard of practice of the communities in which Pharmacy provides Prescription Drug Services and in a manner so as to assure the quality of such services in a culturally competent manner. Pharmacy will provide Prescription Drug Services to all Covered Persons, without regard to race, religion, sex, color, national origin, age, sexual preference, source of payment, physical or mental health status, participation in any preferred provider network, or any other criteria specifically prohibited by law.

2.2. **Compliance with Law.** Pharmacy and Prime agree that they will separately be responsible for securing and maintaining all required licenses, permits and certificates applicable to their respective activities, if any, and each will comply with any and all federal, state and local laws, regulations and ordinances and, if applicable CMS instructions. Pharmacy agrees to fully comply with all provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and amendments thereto, from the effective dates of its various provisions forward, and to execute with Prime, if required by law, any documents necessary for the parties to comply with HIPAA. Pharmacy agrees and understands that if Pharmacy intends to provide Prescription Drug Services to a Subscriber, Pharmacy must sign and agree to the terms contained in Exhibit C regarding Medicare Programs.

**2.3. Reporting of Investigations.** Pharmacy will notify Prime immediately in writing if license(s) and/or permit(s) of Pharmacy, or a specific Pharmacy location, or any of its employees or agents, are, or are in jeopardy of, being suspended or revoked. Entities, including Pharmacy or a specific Pharmacy location, sanctioned by the Office of Inspector General (OIG) that are not eligible to participate in Medicare, Medicaid, and other Federal health care programs are not eligible to participate under this Agreement. If Pharmacy, or a specific Pharmacy location, is sanctioned by the OIG and excluded from participation in Federal health care programs, Pharmacy will notify Prime immediately and the applicable entity will be terminated from this Agreement. Pharmacy and Prime represent and warrant to each other that it is not excluded from participation in any federal health care program as defined under 42 U.S.C. section 1320a7b(f).

**2.4. On-line Submission of Claims**

2.4.1. Pharmacy will submit all claims for Prescription Drug Services provided under this Agreement electronically on-line to Prime or Designated Claims Processor, as applicable, no later than ninety (90) days from the date of service for adjudication of such claims, including, without limitation, claims where the Covered Person's payment to Pharmacy is greater than the amount of the claim (whether the Covered Person's payment is a Copayment or other charge such as the full Pharmacy Payment). All claims will be submitted in accordance with the current approved NCPDP Telecommunications Standard as instructed by Prime. Failure to submit a claim within ninety (90) days from the date of service may result in nonpayment of such claim.

2.4.2. Pharmacy will submit the accurate Usual and Customary Charge with respect to all claims for Prescription Drug Services.

2.4.3. When Pharmacy submits a claim for a Prescription Drug Service provided by Pharmacy, it will submit the National Drug Code (NDC) number for the original package size from which the Prescription Drug Service was dispensed. The quantity of the Prescription Drug Service dispensed will comply with the dispensing limitations obtained through POS.

2.4.4. When Pharmacy dispenses a Prescription Drug Service, Pharmacy will comply with the dispensing limitations or requirements communicated to Pharmacy through POS regarding the quantity of a Prescription Drug Service.

2.4.5. Each Prescription Drug Service approved for Pharmacy Payment but not received by Covered Person within fourteen (14) days of submission will be reversed on-line by Pharmacy.

2.4.6. Pharmacy will be solely responsible for expenses relating to transmitting claims or other on-line activities or information to Prime or a Designated Claims Processor. Prime will have no responsibility for any such charges, fees, or expenses.

2.4.7. Pharmacy will be responsible for obtaining and maintaining its own terminal or other equipment and software necessary to submit claims, or other on-line activities or information under this Agreement, including equipment and software necessary to make the connection to the applicable claims processing system and to achieve the claims data format required under this Agreement.

2.4.8. Pharmacy will be solely responsible for its own expenses in performance of its duties and responsibilities contained in the Provider Manual and this Agreement.

## 2.5. Collection of Copayments

2.5.1. Pharmacy will accept as payment in full for Prescription Drug Services rendered to Covered Persons such amounts as are payable by Payor(s) under this Agreement. In no event will Pharmacy charge any Covered Person an amount greater than the amount Pharmacy has agreed to accept as full payment under this Agreement, which will be communicated to Pharmacy by POS..

2.5.2. Pharmacy may collect from the Covered Person Payor Copayments, or other charges for services not covered under the Covered Person's Benefit Plan provided Covered Person has agreed up front to pay for such non-covered services.. Pharmacy cannot waive, discount, reduce or increase the Copayment communicated to Pharmacy by POS unless otherwise authorized in writing by Prime or Benefit Sponsor or unless otherwise required by applicable law. In no event, including but not limited to non-payment by a Benefit Sponsor Payor for Prescription Drug Services rendered to Covered Persons by Pharmacy, insolvency of a Benefit Sponsor Payor, or breach by Prime of any term or condition of this Agreement, will Pharmacy bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against any Covered Person or persons acting on behalf of the Covered Person for Prescription Drug Services eligible for reimbursement under this Agreement.

2.5.3. The provisions of this Section will (a) apply to all Prescription Drug Services rendered while this Agreement is in force; (b) survive the termination of this Agreement regardless of the cause of termination; (c) be construed to be for the benefit of Covered Persons; and (d) supersede any oral or written agreement, existing or subsequently entered into, between Pharmacy and a Covered Person or a person acting on a Covered Person's behalf, that requires the Covered Person to pay for Prescription Drug Services.

2.6. **Compliance with the Benefit Plan and Provider Manual.** Pharmacy will comply with the requirements of programs under a Benefit Plan, consistent with and as communicated to Pharmacy via POS, including but not limited to such programs as Drug Formulary, MAC, Medicare and workers' compensation. Pharmacy also agrees, at all times, to comply with the Provider Manual, as made a part of this Agreement. Prime may amend the Provider Manual from time to time upon notice to Pharmacy.

2.7. **Compliance with Drug Formulary.** In providing any Prescription Drug Service to a Covered Person, Pharmacy will comply with the Drug Formulary to the extent the Drug Formulary applies to such Prescription Drug Service, unless Pharmacy is otherwise directed by a Prescribing Provider via a prescription which contains the handwritten words "Dispense as Written" or "Brand Necessary", or such other equivalent indication as may be required by applicable laws or regulations to indicate the same intention. Prior to providing any Prescription Drug Service that is not in compliance with the Drug Formulary, Pharmacy will use its best efforts to contact the Prescribing Provider in order to ask the Prescribing Provider if the prescription can be changed to a Prescription Drug Service that is in compliance with the Drug Formulary. Pharmacy will not implement any substitution program for Covered Persons that is inconsistent with the applicable Drug Formulary.

2.8. **Coordination of Benefits and Subrogation.** Pharmacy agrees to cooperate in the administration of the coordination of benefits and subrogation provisions of a Benefit Plan, using procedures approved by Prime and communicated by Prime or Designated Claims Processor.

- 2.9. **Coverage Verification.** Before providing a Prescription Drug Service, Pharmacy will require a person to produce an eligible identification card, and otherwise satisfy itself through confirmation via the POS system that the person producing the identification card is the correct Covered Person for the presented Prescription Drug Service.
- 2.10. **Signature Logs.** Pharmacy will maintain a signature log at each pharmacy location or other evidence specifically approved by Prime for each Prescription Drug Service dispensed to a Covered Person, which acknowledges receipt of the Prescription Drug Service. Each Covered Person (or his or her authorized agent) who receives a Prescription Drug Service will be required to sign the log, acknowledging the date the Prescription Drug Service was received and the prescription number.
- 2.11. **Grievances, Coverage Determinations and Appeals.** Prime may notify Pharmacy of complaints it receives with respect to customer service, any irregular billing practice or procedure, overpayment, fraud or abuse, non-compliance with Prime's policies and procedures, and Pharmacy will cooperate to resolve the same. Pharmacy will cooperate with Prime, Payor and Benefit Sponsor in the administration of complaints by Covered Persons concerning Pharmacy's performance of the services under this Agreement and otherwise comply with all laws applicable to the regulations governing the Medicare Programs, and, if applicable, all CMS guidance and instructions governing complaints, coverage determinations and appeals. Pharmacy will make every reasonable effort to resolve oral or written complaints in an informal process and keep written records of events and actions surrounding each complaint that is not resolved to the Covered Person's satisfaction.
- 2.12. **Pharmacy Liability Insurance.** Pharmacy will at all times, at Pharmacy's sole expense, hold policies for professional liability and malpractice insurance, as well as comprehensive general liability insurance, with limits of no less than One Million Dollars (\$1,000,000) for each claim and Three Million Dollars (\$3,000,000) aggregate coverage. Pharmacy will also assure that all pharmacists and other health care professionals employed or under contract with Pharmacy to render Prescription Drug Services to Covered Persons procure and maintain such insurance, unless they are covered under Pharmacy's insurance policy. Pharmacy will furnish copies of said policies upon request from Prime. Pharmacy will notify Prime in writing, to the attention of the Network Management Department, immediately upon receiving notice of any denial of, restriction on, or termination of Pharmacy's general or professional liability insurance, except where such insurance is immediately replaced by equivalent insurance not subject to such denial, restriction, or termination.
- 2.13. **Licensing.** Pharmacy agrees to maintain any licensed status required by applicable law for its continued operation. Pharmacy represents and warrants that Pharmacy is duly licensed in the jurisdictions in which it is located. Failure to comply with this provision will be a basis for termination for cause and other damages. If Pharmacy becomes aware that the license is terminated by the appropriate governmental agency, Pharmacy will immediately terminate participation under this Agreement and will notify Prime in accordance with this Agreement.
- 2.14. **Utilization Management.** Pharmacy will cooperate and participate with Prime, and if applicable CMS, in procedures for utilization review and generic substitution and in other programs established by Prime, Benefit Sponsors or CMS that are directed at utilization management, quality assurance credentialing process, audit systems or peer review.

### 3. PAYMENT PROVISIONS

#### 3.1. Pharmacy Payment

3.1.1. Prime will seek agreement from Benefit Sponsor Payors to process Pharmacy Payments at least twice monthly. For Benefit Sponsor Payors who do not agree to this processing timeline/claims payment schedule, Pharmacy Payments will be processed at least once a month. For claims that are eligible for payment under the terms of this Agreement, the average time for Pharmacy Payment to Payee will not exceed thirty (30) days from the processing date, or such shorter time frame required by applicable law.

3.1.2. Pharmacy acknowledges and agrees that Benefit Sponsor Payors are solely responsible for making sufficient funds for the Pharmacy Payment available to Prime for payment to Payee, in accordance with the applicable Exhibit B for Prescription Drug Services provided to a Covered Person by Pharmacy pursuant to a Prescribing Provider's authorization. Pharmacy acknowledges and agrees that Prime will accept funds from Benefit Sponsor Payors for payment of claims for Prescription Drug Services provided by Pharmacy and will forward Pharmacy Payment funds to Payee in accordance with the terms of this Agreement, including applicable Exhibit D(s).

3.1.3. Pharmacy acknowledges and agrees that interest, if any, earned from Prime's acceptance of such funds from Payors belongs exclusively to Prime. Obligation for payment under this Agreement for any Prescription Drug Service is solely that of the Payor, and not that of Prime. In no event, will Prime or a Designated Claims Processor be obligated to pay any claims submitted by Pharmacy until sufficient funds have been made available from Benefit Sponsor Payor for the payment of such claims.

3.1.4. Prime will notify Pharmacy within five (5) business days of failure of receipt of payment for billing claims from any Benefit Sponsor.

3.1.5. **Material Change to AWP.** If after the Effective Date the Pricing Source ceases to publish AWP for the Prescription Drug Services covered under this Agreement, the AWP pricing under this Agreement shall immediately and automatically be converted to an alternative pricing benchmark determined by Prime.

3.2. **Provider Taxes.** For purposes of this Agreement, "Provider Tax" means any tax on a Prescription Drug Service required by any governmental authority to be collected or paid by a retail seller for a Prescription Drug Service. If permitted by the terms of its contract with the Benefit Sponsor or as required by law, Prime will bill the Benefit Sponsor for any federal, state, or local Provider Taxes payable with respect to any sales of Prescription Drug Service to a Covered Person, and will remit to Payee any such taxes collected from Benefit Sponsor. As a condition precedent to such remit, Pharmacy will submit a request for tax payment at the time of on-line claim submission via POS. Pharmacy will remit any such Provider Taxes paid by a Benefit Sponsor to the appropriate taxing authority. Pharmacy will be solely responsible for any other taxes or surcharges associated with its performance under this Agreement. Notwithstanding any other provision in the Agreement to the contrary, and only if authorized by law, in the event a Benefit Sponsor does not agree to pay Provider Taxes and Provider Taxes are nonetheless imposed on Pharmacy, Pharmacy may be authorized to charge the amount of such Provider Taxes directly to the Covered Person in addition to any Copayment.

### 3.3. **MAC Pricing**

3.3.1. **MAC Pricing Availability.** Prime reviews and performs any necessary adjustments to MAC pricing and updates its MAC price lists as required by applicable law. To access Prime's most up-to-date MAC prices, please refer to Prime's website at <http://www.primetherapeutics.com/pharmacistsmac.html>.

3.3.2. **Drug Pricing Sources.** The sources used to calculate MAC prices may be found on Prime's website at <http://www.primetherapeutics.com/pharmacistsmac.html>.

3.3.3. **MAC Appeal Process.** The process for a Pharmacy to appeal a dispute related to MAC pricing may be found on Prime's website at <http://www.primetherapeutics.com/pharmacistsmac.html>.

## 4. **RELATIONSHIPS BETWEEN PARTIES**

4.1. **Relationship between Prime and Pharmacy.** Prime and Pharmacy are independent contracting parties and nothing in this Agreement is intended to, nor may anything in this Agreement be construed to, create an employer/employee relationship, a partnership, a joint venture relationship, an agency relationship, or any other legal relationship between Prime and Pharmacy other than or in addition to that of independent contracting parties. No provision of this Agreement or any part of any Benefit Sponsor's Benefit Plan will be construed to require any pharmacist to dispense any medication or specific type of medication to any Covered Person if, in the pharmacist's reasonable professional judgment, such medication should not be dispensed to such person.

4.2. **Relationship between Pharmacy and Covered Persons.** The relationship between Pharmacy and Covered Persons is that of pharmaceutical provider and patient. Pharmacy will perform all professional and other services required to be provided under this Agreement and will be free to exercise its own judgment on all questions of professional practice.

4.3. **Non-Exclusive Participation.** Pharmacy reserves the right to participate in other health care or prescription drug programs and nothing contained herein will prohibit Pharmacy's right to provide pharmaceutical services to other third parties.

4.4. **Previously Existing Agreements with Prime.** If Pharmacy had entered into a separate agreement with Prime, with an effective date prior to this Agreement, with respect to some or all of the networks that are covered under this Agreement, the terms of this Agreement will supersede the previously existing agreement with respect to those networks covered under this Agreement. The previously existing agreement will continue to govern those networks included under that agreement that are not covered under this Agreement. Prime will have the right to determine which affiliation or NCPDP relationship (f/k/a affiliation or chain code) is deemed primary if multiple participating relationships exist for Pharmacy.



## 5. INSPECTION OF RECORDS AND AUDIT

5.1. **Maintenance of Records.** Pharmacy will maintain records that comply with state and federal law, rules and regulations relating to Prescription Drug Services provided to Covered Persons under this Agreement for ten (10) years following the date of service, last date of this Agreement, or until the completion of the audit, whichever is later unless the time frame is extended for reasons specified by regulation or applicable law, including but not limited to those laws identified in Exhibit C. Such records will be in a format deemed appropriate by Pharmacy, or as otherwise required by applicable law.

5.2. **Inspection Rights.** For any reason, during the term of this Agreement and for two (2) years following termination of the Agreement, Prime has the right to audit Pharmacy's performance under and compliance with the Agreement, including but not limited to Prescription Drug Services to Covered Persons, U & C submissions, and claims paid to Pharmacy by Prime. Prime has the right to inspect all records of Pharmacy relating to this Agreement. HHS and the OIG or their designees shall have the right to access and evaluate through audit, inspection, or other means, any pertinent books, contracts, medical records and documentation, computers or electronic systems, and/or any other documents related to the Benefit Sponsor's obligations under federal laws and regulations. Such right to access and evaluate shall extend for the full period for which Pharmacy is required by this Agreement to maintain such records.

5.3. **Compliance Investigations.** Prime will conduct audits related to Pharmacy's performance of this Agreement, including but not limited to, concurrent DUR audits and retrospective audits in the form of telephone inquiry, investigational desk audits, or on-site field audits. Pharmacy will cooperate in all audit programs and processes, including telephonic, facsimile, mail, internet, on-line claims system, and in person, conducted by Prime in performance of this Agreement.

5.4. **Access to Pharmacy Records by Prime.** Pharmacy agrees that Prime or an auditor designated by Prime may, upon request, during normal business hours and at Prime's expense, examine and reproduce Pharmacy's records, including but not limited to, original prescriptions, signature logs, daily prescription logs, purchasing invoices, refill information, Prescribing Provider information, patient profiles and prescription inventory, related to Prescription Drug Services provided by Pharmacy under this Agreement. Prime's right to examine Pharmacy's actual purchase of Prescription Drug Services will be limited to the extent required to validate appropriate reimbursement. All such audits will be conducted in compliance with federal and state laws governing the right of privacy and the confidentiality of Protected Health Information ("PHI"). If Pharmacy fails to comply with this Section, Prime will have the right to withhold Pharmacy Payments attributable to Pharmacy for Prescription Drug Services provided by Pharmacy until Pharmacy corrects such failure by fully complying with this Section and Prime has finalized its review of the requested information and records or copies of records.

5.5. **Audit Resolution.** Any payments made to Payee that are in excess of the amount of the Pharmacy Payment due, and any amount recoverable as a chargeback(s), under this Agreement because of error, inaccurate claims, discrepancies with the Provider Manual or Benefit Plans, or any other reason may be recovered from Pharmacy by Prime. Prime will notify Pharmacy in writing of such excess payments and/or chargebacks and will have the right either to offset such amounts against any Pharmacy Payments that may be due to Payee or to separately invoice Pharmacy for such amounts. If Prime requires reimbursement from Pharmacy via separate invoice, Pharmacy will have thirty (30) days from the date of invoice to reimburse Prime the amounts. When Prime collects from Pharmacy amounts due as a result of audit compliance discrepancies, Pharmacy cannot collect, seek compensation or reimbursement from, or have any recourse against a Covered Person or Benefit Sponsor in relation to any such collection.

5.6. **Privacy of Covered Person Information.** Prime and each Pharmacy will maintain the confidentiality of any information relating to Covered Persons in accordance with all applicable laws and regulations, including but not limited to HIPAA. It is contemplated by this Agreement that confidential information, including PHI, about Covered Persons will be obtained by Prime and Pharmacy in providing services under this Agreement and that such confidential information will be obtained from and/or distributed to Benefit Sponsors, Prime, Pharmacy and Covered Persons' physicians for drug utilization evaluation, claims processing and other purposes relating to the Benefit Plan. Such exchange of confidential information will be made in accordance with all applicable laws and regulations. The terms of this Section will survive the termination of this Agreement.

5.7. **Confidential Business Information.**

5.7.1. All information obtained by Prime as a result of an audit will be held in confidence and used solely for the purpose of ensuring compliance with this Agreement.

5.7.2. In all aspects of this Agreement, Prime and Pharmacy will take all commercially reasonable steps to provide maximum protection to the other parties' trade secrets and other confidential business information. Such information will not be disclosed to third parties without the express written consent of the party to whom the information belongs, unless such disclosure is required to comply with any law or is expressly permitted by this Agreement. Notwithstanding the foregoing, Prime may share the terms and conditions of this Agreement with its contracted clients and their employer groups.

5.7.3. Pharmacy specifically acknowledges and agrees that the pricing terms of this Agreement set forth in Exhibit B(s) are proprietary and confidential and may be disclosed by Pharmacy only as required by law. Pharmacy's failure to abide by this subsection shall constitute a material breach of this Agreement.

5.8. **Compliance with Laws and Regulations.** The federal, state and local governments and any of their authorized representatives will have access to, and Prime, Payor and Benefit Sponsor are authorized to release, in accordance with applicable laws and regulations, and if applicable CMS instructions, all information and records, or copies of such, within the possession of Prime, Payor, Benefit Sponsor, or Pharmacy, which are pertinent to and involve transactions related to this Agreement and access to which is necessary to comply with laws and regulations applicable to Prime, Payor, or Pharmacy.

## 6. TERM AND TERMINATION

6.1. **Initial Term.** This Agreement will be effective as of the Effective Date and will continue in effect until terminated by either party as set forth herein.

6.2. **Application by Pharmacy.** It is the understanding of the parties that this Agreement will be executed first by Pharmacy and upon such execution will be an application by Pharmacy to become a party to this Agreement. As part of such application, Pharmacy will provide the information requested in and execute the attached Exhibits. The signing of this Agreement by Pharmacy will constitute an offer only unless and until this Agreement has been accepted by Prime. This Agreement will not be binding on Prime unless and until it is executed by Prime.

6.3. **Termination of the Agreement.** This Agreement may be terminated as follows, and with respect to a Benefit Plan under the Medicare Programs as provided in Exhibit C.

6.3.1. By Pharmacy, with or without cause, upon ninety (90) days' prior written notice to Prime;

6.3.2. By Prime, with or without cause, upon ninety (90) days' prior written notice to Pharmacy;

6.3.3. By either Prime or Pharmacy if the other party breaches or otherwise defaults in its performance of this Agreement. The terminating party will provide the other party ten (10) days prior written notice, specifying the nature of the default. The termination will become effective at the end of the ten (10) days notice period, unless the breaching party cures the default during this period;

6.3.4. By either Prime or Pharmacy immediately on notice to the other, if the other party will make an assignment for the benefit of creditors, file a petition of bankruptcy, is adjudicated insolvent or bankrupt, a receiver or trustee is appointed with respect to a substantial part of its property or a proceeding is commenced against it which will substantially impair its ability to perform hereunder; or if any court, governmental or regulatory agency will issue to either party an order or finding of impairment or insolvency or an order to cease and desist from conducting business, notice thereof will be given to the other party within two (2) business days thereafter and upon receipt of such notice the notifying party will have the option to terminate this Agreement immediately;

6.3.5. By Prime immediately if Pharmacy fails to be or remain appropriately licensed and certified to provide Prescription Drug Services as required by laws and regulations or fails to maintain insurance coverage as required by this Agreement;

6.3.6. Prime may immediately terminate Pharmacy's participation under the Agreement upon written notice to Pharmacy in the event Pharmacy becomes an ineligible party as described in Section 2.3 above;

6.3.7. Prime may immediately terminate Pharmacy's participation under the Agreement upon written notice to Pharmacy in the event Prime makes a reasonable determination that Pharmacy has knowingly endangered the life, health, or well-being of a Covered Person;

6.3.8. In the event Pharmacy makes a written objection to Prime under Section 9.4.2, Prime may terminate, in its sole discretion, Pharmacy's participation in the applicable Prime pharmacy networks upon thirty (30) days written notice to Pharmacy.

6.3.9. By Prime with respect to Pharmacy's participation in any individual Pharmacy Network, according to the termination provisions set forth herein or according to the termination provisions set forth in the applicable Exhibit B(s) in the event such Exhibit B(s) contain termination provisions that conflict with those set forth herein.

6.3.10. By Prime, at the direction of Benefit Sponsor or HHS, if it is determined that Pharmacy has not performed satisfactorily, upon ninety (90) days written notice to Pharmacy unless directed otherwise by Benefit Sponsor or HHS.

6.4. **Effect of Termination.** Each party will be liable to the other party for obligations incurred prior to the effective date of the termination.

6.5. **Benefit Sponsor Determination.** Pharmacy acknowledges and agrees that at any time during the term of the Agreement, each Benefit Sponsor may elect to include or exclude Pharmacy from any or all of its Benefit Plan(s) with respect to any or all of the Pharmacy Networks in which Pharmacy participates. In such a situation, Prime will make commercially reasonable efforts to provide Pharmacy with at least thirty (30) days prior written notice of a Benefit Sponsor's election.

6.6. **Rights Upon Termination.** In the event of a termination or expiration of this Agreement, the termination or expiration will be deemed to end only the term of this Agreement, and the respective parties will continue to be obligated by this Agreement to conclude and terminate their affairs in an orderly fashion, to make and perform any accounting required hereunder, or undertake within two (2) years after such termination or expiration (at Prime's option) any audits permitted hereunder, to settle their mutual accounts, to resolve any disputes between themselves or with Covered Persons, to commence, continue and complete any surveys and inspections permitted hereunder relating to the monitoring and reporting of the quality, utilization and accessibility of Prescription Drug Services, to maintain the confidentiality of information in accordance with this Agreement, and to honor provisions herein regarding indemnification for acts and omissions occurring prior to the effective date of such expiration or termination.

## 7. **INDEMNIFICATION AND LIABILITY**

7.1. **Indemnification by Pharmacy.** Pharmacy agrees to defend, indemnify and hold Prime harmless from and against all claims or suits asserted by a third party(ies) and related losses, damages and expenses, including but not limited to reasonable attorneys' fees, costs and expenses, arising out of the services performed or neglected to be performed by Pharmacy relating to this Agreement.

7.2. **Indemnification by Prime.** Prime agrees to defend, indemnify and hold Pharmacy harmless from and against all claims or suits asserted by a third party(ies) and related losses, damages and expenses, including but not limited to reasonable attorneys' fees, costs and expenses, resulting solely from the negligence or willful misconduct of Prime relating to this Agreement.

### 7.3. **Liability and Indemnification Relating to Utilization of Reconciliation Companies.**

7.3.1. In the event Pharmacy utilizes a Reconciliation Company in any manner, Pharmacy agrees that under no circumstances shall Prime be liable for any losses suffered by Pharmacy as a result of any acts or omissions, including but not limited to, negligent and otherwise wrongful acts or omissions by any Reconciliation Company that receives remittance advices and/or Pharmacy Payments from Prime as directed by Pharmacy. A "Reconciliation Company" shall mean any third party that provides reconciliation services and/or payment recovery services to Pharmacy based upon an agreement between Pharmacy and that third party.

7.3.2. In the event Pharmacy utilizes a Reconciliation Company in any manner, and in addition to the indemnification provisions in the Agreement, Pharmacy agrees to defend, indemnify, and hold Prime harmless from and against all claims or suits asserted by a third-party(ies) and related losses, damages and expenses, including but not limited to attorneys' fees, arising out of services performed or neglected to be performed by any reconciliation company or any other party over whom Prime has no control.

7.4. **Limitation of Liability.** In no event will Prime be liable to Pharmacy under this Agreement for any special, incidental, indirect, exemplary, punitive, or consequential damages, whether based on breach of contract, warranty, tort (including negligence), lost profits or savings, injury to reputation, loss of customers or business, product liability, or otherwise, and whether or not Prime has been advised of the possibility of such damage. The parties acknowledge and agree that the foregoing limitations of liability are a condition and material consideration for their entry into this Agreement.

8. [Intentionally left blank]

9. **MISCELLANEOUS**

9.1. **Advertising and Trademark.** Pharmacy agrees to allow Prime and Benefit Sponsor Payors to use Pharmacy's name and demographic information in directories and databases, including but not limited to paper and electronic, for use by Benefit Sponsors, Covered Persons, or if applicable, CMS. Pharmacy and Prime agree that any and all trademark, service marks, symbols, or other intellectual property will remain the sole and exclusive property of the said party and will not be used by Prime or Pharmacy, unless specifically authorized by this Agreement, without the prior written consent of said owner.

9.2. **Claims Data Ownership.** As between Pharmacy and Prime, Prime will be the sole owner of the information it obtains through the administration and processing of Prescription Drug Services pursuant to this Agreement.

9.3. **Drug Manufacturer Discount Programs.** Prime will have the right to submit all claims relating to Prescription Drug Services provided under this Agreement to pharmaceutical drug manufacturers. Pharmacy may not submit any claims relating to Prescription Drug Services provided under this Agreement to any drug manufacturer's discount or purchasing program, except as authorized by Prime in writing.

9.4. **Amendment.** This Agreement may be amended only in writing with signatures by Pharmacy and Prime. Notwithstanding the foregoing, Prime may unilaterally amend this Agreement:

9.4.1. to comply with applicable laws or regulations, or

9.4.2. by giving thirty (30) days written notice of a proposed amendment(s) to Pharmacy. If Pharmacy does not make a written objection to Prime within fifteen (15) days after Prime mails the notification of the proposed amendment(s), such failure to object will constitute acceptance of the amendment(s) by Pharmacy. Notices and objections provided pursuant to this subsection will be given in compliance with the section titled "Notices" of this Agreement.

9.5. **Electronic Storage Media.** The parties agree that a microfilm copy, optically scanned or such other electronically produced copies of this Agreement are acceptable to either party.

9.6. **Severability, Non-Waiver, and Entire Agreement.** The invalidity or unenforceability of any term in this Agreement will in no way affect the validity or enforceability of any other term or condition. The failure by one party to require performance of any provision will not affect that party's right to require performance at any time thereafter, nor will a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself. This Agreement and the Exhibits to the Agreement constitute the entire agreement between Prime and Pharmacy with respect to the subject matter of this Agreement, and supersede all prior negotiations, agreements and understandings with respect thereto.

9.7. **Assignment and Severability.** Pharmacy agrees that this Agreement is severable and that Prime may assign all or any of its rights or responsibilities under this Agreement (an "Assignment") to any entity controlling, controlled by, or under common control with Prime (a "Related Entity"), or to any entity which owns or controls more than 25% of Prime ("Assignee"). Upon such Assignment, Pharmacy agrees that this Agreement will automatically be amended to create a separate and severable contract between Pharmacy and Assignee, leaving in place a separate and severable Agreement between Prime and Pharmacy. The separate contracts resulting from the Assignment(s) will be independent and enforceable as if they were originally separate contracts. Pharmacy may not assign any of its rights or responsibilities under this Agreement to any person or entity without the prior written consent of Prime, which consent will not be unreasonably withheld. Except in the case of an Assignment that creates a separate contract, any permitted assignee will assume all rights and obligations of its assignor under this Agreement.

9.8. **Force Majeure.** The performance by Prime and Pharmacy hereunder will be excused to the extent of circumstances beyond such party's reasonable control such as flood, tornado, earthquake, or other severe weather or natural disaster, epidemic, war, material destruction of facilities, fire, acts of God, etc. In such event, the parties will use their best efforts to resume performance as soon as reasonably possible under the circumstances giving rise to the party's failure to perform.

9.9. **Governing Law.** This Agreement will be construed in accordance with the laws of the State of Minnesota, except when federal law applies.

9.10. **Arbitration.**

9.10.1. In the event a dispute between Prime and Pharmacy arises out of or is related to this Agreement, the parties to the dispute will meet and negotiate in good faith to attempt to resolve the dispute.

9.10.2. In the event the dispute is not resolved within thirty (30) days of the date one party sent written notice of the dispute to the other party and if any party wishes to pursue the dispute it will be submitted to binding arbitration in accordance with the rules and procedures of the American Arbitration Association. This arbitration clause will apply to all disputes between the parties that arise out of this Agreement, including those based upon federal and state law. In no event will this arbitration clause be interpreted to allow a class action in arbitration. Unless the parties hereafter mutually agree otherwise, the award of the arbitrators will be final and binding on the parties hereto and judgment upon such award may be entered into a court having jurisdiction thereof. Arbitration under this provision will be conducted in Dakota County, Minnesota. The parties will mutually agree upon an arbitrator. If the parties are unable to agree upon an arbitrator, each party will choose one arbitrator and those two arbitrators will together appoint a third arbitrator. The third arbitrator will then conduct the arbitration process. The arbitrator will have no authority to award any punitive or exemplary damages, or to vary or ignore the terms of this Agreement, and will be bound by controlling law.

9.10.3. The parties agree that any action, including arbitration, in relation to an alleged breach of this Agreement will be commenced within one (1) year of the date of the breach, without regard to the date the breach is discovered. Any action or arbitration not brought within that one year time period will be barred, without regard to any other limitations period set forth by law or statute.

**9.11. Prime’s Authorized Reliance Upon NCPDP Interfaces.**

9.11.1. Pharmacy acknowledges, understands and agrees that Prime is fully authorized to rely upon information contained in regularly received interfaces from NCPDP to update all applicable information regarding Pharmacy including, but not limited to, pharmacy demographics, Pharmacy relationship codes with other entities, applicable address(es) for Pharmacy Payment and/or remittance advices and/or the transmission of payments, Pharmacy’s use of reconciliation companies, and the required method of transmission for remittance advices and/or payments. Pharmacy is solely responsible for reporting accurate information to NCPDP. Pharmacy agrees that under no circumstances will Prime be liable for any losses suffered by Pharmacy as a result of inaccurate, incomplete, or other misinformation conveyed to Prime via the regularly received NCPDP interfaces.

**9.12. Notices.**

9.12.1. Notices, reports and records sent to Prime, unless otherwise requested by Prime, will be given in writing and will be delivered in person or by United States mail, proper postage prepaid and properly addressed to:

**Mailing Address:**

Prime Therapeutics LLC  
Attn: Pharmacy Network Management  
P.O. Box 64812  
St. Paul, Minnesota 55164-0812

**Physical Address:**

Prime Therapeutics LLC  
Attn: Pharmacy Network Management  
2900 Ames Crossing Road  
Eagan, Minnesota 55121

9.12.2. Any notices or other communication required or permitted under this Agreement will be in writing and will be delivered (a) in person, (b) by United States or certified mail, proper postage prepaid and properly addressed, (c) by overnight mail courier, or (d) by facsimile. The notice or communication will be deemed to have been given when delivered in person; when transmitted via facsimile, or, if delivered by United States or certified mail or by overnight mail courier, on the date mailed, proper postage prepaid and properly addressed.

9.12.3. For purposes of providing notices, reports, and records, Prime will use the address of Pharmacy as set forth on the Exhibit A(s) or another more recent address of which Prime has received notice via either Pharmacy or through regularly received NCPDP interfaces.

**9.13. Subcontractors, Agents, Vendors.** To the extent Pharmacy utilizes, as allowed by this Agreement, any subcontractors, agents or vendors in connection with Pharmacy’s obligations under this Agreement, the terms of this Agreement, including but not limited to all terms and conditions regarding confidentiality, shall apply to said subcontractors, agents and vendors.