



**TERMS AND CONDITIONS
FOR
PRESCRIPTION BENEFIT ADMINISTRATION AGREEMENT**

These Terms and Conditions are made part of the Prescription Benefit Administration Agreement (the "Agreement") between RESTAT, LLC ("RESTAT") and Sponsor, as hereinafter defined, and are expressly incorporated therein.

1. DEFINITIONS

The following definitions apply to the Agreement including, without limitation, these terms and conditions and any addenda to the Agreement.

- 1.1 "Administrative Fees" shall mean the various fees charged by RESTAT for the services selected by Sponsor, the amounts of which are specified in the Agreement or addenda.
- 1.2 "Benefits" shall mean with respect to a Plan, the prescription drugs and related goods and services covered under such Plan.
- 1.3 "Covered Person(s)" shall mean, with respect to a Plan, the individuals eligible to receive Benefits under such Plan.
- 1.4 "DUR" shall mean drug utilization review.
- 1.5 "Exclusion(s)" shall mean, with respect to a Plan, the prescription drugs and related goods and services that are not Benefits under such Plan.
- 1.6 "Late Payment Fee(s)" shall mean the fee(s) charged Sponsor for late payment.
- 1.7 "Member Pharmacies" shall mean those pharmacies and facilities, including mail order facilities, if elected, that are members of RESTAT's network.
- 1.8 "Plan" shall mean any prescription drug plan, including Benefits, that a Plan Sponsor has committed to provide Covered Persons.
- 1.9 "Sponsor" shall mean the Contract Administrator, if the Contract Administrator is a signatory to the Agreement, or the Plan Sponsor, if the Plan Sponsor is a signatory to the Agreement. If the Plan Sponsor and the Contract Administrator are both signatories to the Agreement, the term "Sponsor" shall mean both of them.
- 1.10 "Term" shall have that meaning set forth in Section 5.1, below.

2. SERVICES TO BE PROVIDED BY RESTAT.

2.1 RESTAT shall provide, according to the terms and conditions set forth herein, those services selected by Sponsor in the Agreement.

2.2 Any service selected by Sponsor in the Agreement may be terminated by Sponsor at any time upon at least one hundred eighty (180) days' prior notice to RESTAT in a form approved by RESTAT. Sponsor may add a service only with the written agreement of RESTAT. Benefits and Exclusions may be changed by Sponsor at any time upon at least ten (10) days' prior written notice to RESTAT in a form approved by RESTAT.

3. RECORDS AND DATA

3.1 RESTAT shall maintain for seven (7) years after the respective record is created, in original form or on electronic media, the claims and claim forms supporting the invoices and other records sufficient to verify claims billed to the Contract Administrator or Plan Sponsor. Each party shall allow the other to audit, review and duplicate all records in the party's possession which relate primarily to such billed claims. The review and duplication of records shall be allowed upon reasonable notice during regular business hours at the place of business of the record holder and shall be subject to all applicable state and federal laws and regulations regarding the confidentiality of such records. Duplication shall be at the cost of the requesting party.

3.2 RESTAT shall retain all rights of ownership over all compilations, analyses, and reports generated by RESTAT, as well as all property, technology, software and other data utilized by RESTAT in performing its obligations under the Agreement. Rights of ownership shall include, but are not limited to, all rights associated with publication, trade secrets, copyrights, trademarks and patents. RESTAT shall be permitted to use all data and information received from Sponsor or Member Pharmacies in any lawful manner.

3.3 All records, reports and other data provided by RESTAT to Sponsor pursuant to the Agreement are provided solely for Sponsor's use in claims administration and Plan management. Sponsor shall defend and hold RESTAT harmless from all liability for injury or harm arising out of Sponsor's use or dissemination of such records, reports and other data. Sponsor shall protect the confidentiality of all such information as required by relevant law.

4. LIABILITY; DISCLAIMERS

4.1 Neither party shall be liable in any manner for any delay or failure to perform its obligations under the Agreement which are beyond such party's reasonable control, including without limitation, any delay or failure due to strikes, labor disputes, riots, earthquakes, storms, floods or other extreme weather, fires, explosions, acts of God, embargoes, war or other outbreak of hostilities, delay of carriers, suppliers or utilities providers, the other party's actions or government acts or regulations, except that nothing shall excuse Sponsor's failure to pay timely any amounts due under the Agreement.

4.2 Nothing in the Agreement shall be construed or be deemed to create any rights or remedies in any third party, including, but not limited to, a Covered Person.

4.3 RESTAT shall use ordinary care and reasonable diligence in the performance of its duties pursuant to the Agreement. Sponsor acknowledges that the Agreement is not a contract for the sale of goods, and that NO EXPRESS OR IMPLIED WARRANTY HAS BEEN OR IS HEREBY MADE WITH RESPECT TO THE SERVICES TO BE PROVIDED BY RESTAT UNDER THE AGREEMENT INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ANY LIABILITY OF RESTAT ARISING OUT OF CONTRACT, TORT, BREACH OR FAILURE OF WARRANTY OR OTHERWISE, SHALL NOT, IN ANY EVENT, EXCEED THE FEES PAID BY SPONSOR FOR THE AFFECTED SERVICES OR PRODUCTS FOR THE ONE YEAR PRECEDING THE DATE ON WHICH THE CLAIM AROSE.

4.4 The parties agree that in no event shall RESTAT have any responsibility for, or liability to Contract Administrator, any Plan Sponsor or any Covered Person in connection with, the acts or omissions of any Member Pharmacy or pharmacist providing services in connection with the Agreement.

4.5 IN NO EVENT SHALL RESTAT (OR ANY OF ITS AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS) BE LIABLE FOR (I) ANY THIRD PARTY CLAIMS AGAINST CONTRACT ADMINISTRATOR OR ANY PLAN SPONSOR (OR ANY OF THEIR RESPECTIVE AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS) FOR LOSSES OR DAMAGES, OF (II) ANY PUNITIVE, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL (INCLUDING LOST PROFITS OR SAVINGS) DAMAGES.

5. TERM AND TERMINATION

5.1 The term ("Term") during which RESTAT is to provide services to Sponsor under the Agreement shall commence on the effective date of service set forth in the Agreement and shall remain in effect until terminated as set forth in Section 5.2.

5.2 The Agreement may be terminated as follows:

a) By RESTAT or Sponsor, if the other party shall have defaulted in the performance of any of its obligations under the Agreement, provided that the terminating party gives the other party not less than sixty (60) days prior notice specifying the nature of the default, and that the defaulting party has failed to cure the default within the sixty-day period to the reasonable satisfaction of the terminating party; or

b) By RESTAT, upon not less than ten (10) days prior notice to Sponsor, if Sponsor shall fail at any time to make or cause to be made any payment required pursuant to the Agreement by the due date or fails at any time to provide or maintain the security required by RESTAT under the Agreement, unless Sponsor shall cure the failure within the ten-day notice period; or

c) By RESTAT or Sponsor immediately upon notice to the other, if the other party shall make an assignment for the benefit of creditors, file a petition in 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 under the Agreement; or

d) By RESTAT immediately upon notice to Sponsor if Sponsor fails to pay when due any obligation owed to any person or entity, or any default otherwise occurs, under any material agreement to which Sponsor or its property is bound, and RESTAT determines that such failure or default could have a material adverse effect on the ability of RESTAT to enforce its rights under the Agreement or of Sponsor to perform on a timely basis thereunder; or

e) By RESTAT immediately upon notice to Sponsor, if Sponsor attempts to assign the Agreement or any of its rights or obligations thereunder without RESTAT's prior written consent; or

f) On or after the first anniversary of the effective date of services under the Agreement, by RESTAT or Sponsor, for any reason, upon not less than one hundred eighty (180) days prior notice to the other; or

g) If Sponsor desires to terminate the Agreement for any reason on or after the first anniversary of the effective date of services under the Agreement and upon less than 180 days prior notice, by Sponsor (i) giving RESTAT a notice (the "Early Termination Notice"), which specifies the date of termination (which must be the last day of a calendar month and at least 30 days after the Early Termination Notice is deemed received by RESTAT pursuant to Section 7 below) and (ii) paying RESTAT, at the time of the giving of the Early Termination Notice, the Termination Fee. "Termination Fee" means an amount equal to (i) the Monthly Claims Average, multiplied by (ii) the Early Termination Period Number, multiplied by (iii) \$2.50. "Monthly Claims Average" means the quotient of (i) the number of pharmacy claims paid under the Agreement during the 12 month period ending on the last day of the calendar month immediately preceding the calendar month in which the Early Termination Notice is deemed received by RESTAT pursuant to Section 7 below, divided by (ii) 12. "Early Termination Period Number" means the quotient of (i) the remainder of 180 days less the number of days from the date the Early Termination Notice is deemed received by RESTAT pursuant to Section 7 below to the date of termination specified in the Early Termination Notice, divided by (ii) 30 days.

5.3 In any case where RESTAT may have the right to terminate the Term, RESTAT may suspend its performance under the Agreement, in whole or in part, until it is satisfied, in its sole discretion that Sponsor will pay for the services provided thereunder, in immediately available funds.

In the event of a termination of the Term, the following shall apply:

- a) If RESTAT is providing claims adjudication and processing services, RESTAT shall have the right to notify the Member Pharmacies that the identification cards issued for the Plan are or will become invalid as of the termination date; and
- b) Sponsor shall continue to be liable for obligations incurred prior to the effective date of termination (or the date which is three (3) days following notice to RESTAT of the effective date of termination, whichever is later), including all costs of collection thereof, (including reasonable attorneys' fees).

6. REMUNERATION AND PAYMENT

6.1 The method of payment for the Administrative Fees will be that identified in the main body of the Agreement. If a method is specified for a particular service in an addendum or other document to the Agreement, the method specified therein will apply to that service.

6.2 For the various services, supplies and reports provided by RESTAT, Sponsor shall pay, or cause to be paid, to RESTAT the Administrative Fees. In the case of Administrative Fees charged for claims adjudication and processing, the Administrative Fees shall apply to all processed claims, including all claims paid or denied by RESTAT. (In the event that a claim is denied more than once in a calendar day, RESTAT shall charge an Administrative Fee for the first denial only.) If both the Plan Sponsor and Contract Administrator have executed the Agreement, then each is jointly and severally liable for amounts due thereunder to RESTAT. RESTAT will invoice Administrative Fees once each month; generally 2 weeks following the end of the month for which they apply. Sponsor shall remit, or cause to be remitted, to RESTAT the amount of the invoice for the Administrative Fees within 30 calendar days from the date of the invoice.

6.3 RESTAT will assess and Sponsor will pay a Late Payment Fee of two percent (2.0%) per month or the highest lawful rate allowed, whichever is less, on any past due Administrative Fee until such amount is paid. On pharmacy claims invoices, RESTAT will assess and Sponsor will pay a Late Payment Fee of one and one-half percent (1.5%) per month or the highest lawful rate allowed, whichever is less, on any past due amount until such amount is paid. Pharmacy claim payments are due within five (5) calendar days of date of invoice.

6.4 If claims adjudication and processing services have been selected and if Sponsor fails to pay, or cause to be paid, when due, any amount owing to RESTAT under the Agreement, RESTAT shall have the right, in addition to the imposition of the Late Payment Fee and any other remedies available to RESTAT, upon forty-eight (48) hours prior notice to Sponsor, to do any one or more of the following in whole or part: (i) decline to issue or reissue identification cards to Covered Persons; (ii) suspend eligibility of Covered Persons immediately until such time as Sponsor's account with RESTAT has been brought current; (iii) advise Member Pharmacies that Covered Persons identification cards are no longer valid; and (iv) apply all or any portion of Sponsor's security deposit to Sponsor's delinquent account.

6.5 If Sponsor fails to pay or cause to be paid any amount due RESTAT under the Agreement, Sponsor shall reimburse RESTAT for all costs of collection, including, without limitation, reasonable attorneys' fees, incurred by RESTAT in connection therewith.

6.6 After the expiration of the first twelve months of the Term, RESTAT may elect to increase any or all of the Administrative Fees applicable to the Plan and on an annual basis thereafter. RESTAT may exercise such right only by giving Sponsor not less than sixty (60) days prior notice. Administrative Fees will change on the first day of the month following the sixty-day period.

7. NOTICES

7.1 All notices required or permitted pursuant to the Agreement shall be delivered in writing and either delivered in person or sent by certified mail, air courier or facsimile (and confirmed in writing) to Sponsor at the address or facsimile number shown on the Agreement and to RESTAT at the address or facsimile number shown below, or such other address or facsimile number as a party may notify the other party from time to time. Notices delivered in person, and notices dispatched by facsimile prior to 4:00 p.m., recipient's time, Monday through Friday (legal holidays excepted), shall be deemed received on the day sent. All other facsimiles and notices shall be deemed to have been received on the business day following receipt; provided, however, if such day falls on a weekend or legal holiday, receipt shall be deemed to occur on the next business day. Notices may also be transmitted electronically between the parties provided that proper arrangements are made in advance to facilitate such communications and provide for their security and verification.

7.2 Notices to RESTAT shall be addressed to:

RESTAT
724 Elm Street
West Bend, WI 53095
Attn.: President
1-800-926-5858
Fax No.: (262) 338-5767

8. GENERAL

8.1 Neither the Agreement nor any of the obligations to be performed thereunder may be assigned, directly or indirectly, by either party without the prior written consent of the other party; provided, however, that the preceding restriction shall not apply upon a sale or transfer by RESTAT of all, or substantially all, of RESTAT's claims processing or DUR services business in any region or to any transfer made by RESTAT to an affiliate of RESTAT. Any assignment or attempted assignment in violation of this restriction shall be void. The Agreement shall bind and insure to the benefit of the parties thereto and their permitted successors and assignees.

8.2 The invalidity, illegality or unenforceability of any provision of the Agreement in any jurisdiction shall not invalidate or render illegal or unenforceable the remaining provisions thereof in such jurisdiction and shall not invalidate or render illegal or unenforceable such provision in any other jurisdiction.

8.3 The Agreement will be governed by and construed in accordance with the internal laws of the State of Wisconsin (regardless of such State's conflict of laws principles), and without reference to any rules of construction regarding the party responsible for the drafting thereof.

8.4 The Agreement, including these terms and conditions and all addenda, constitutes the entire understanding between the parties thereto with respect to the subject matter thereof. No modification, waiver or amendment of the Agreement shall be binding unless executed in writing by the parties thereto.

8.5 RESTAT and Sponsor agree that any legal action or proceeding by or against either party arising out of the Agreement shall be brought in the courts of the State of Wisconsin in the County of Washington or in the United States of America in the Southeastern District of Wisconsin. By execution and delivery of the Agreement, the parties accept, for themselves and in respect of their property, generally and unconditionally, the jurisdiction of the aforesaid courts. Each party irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified airmail, postage prepaid, to such party, at its address for notices as specified herein and that such service shall be effective upon receipt. Nothing herein shall affect the right to serve process in any other manner permitted by law. The parties hereby waive any right to stay or dismiss any action or proceeding under or in connection with the Agreement brought before the foregoing courts on the basis of forum non-convenience.

8.6 RESTAT's failure to enforce promptly or otherwise exercise any of its rights under the Agreement shall not be construed as a waiver thereof. Any alleged waiver by RESTAT shall not be binding on RESTAT unless agreed to by RESTAT in writing. The rights and remedies granted to RESTAT under the Agreement are cumulative, and the exercise of such rights shall be without prejudice to the enforcement of any other right or remedy authorized by applicable law or under the Agreement.

8.7 The headings of the sections of this document are for reference purposes only and shall not be used to vary the meaning of the Agreement or this document.

8.8 Sponsor shall pay all taxes and duties resulting from the delivery or use of any of the services provided under the Agreement by RESTAT. Sponsor shall pay any personal property taxes on any property delivered under the Agreement and accruing thereafter. Sponsor shall pay such tax if, as and when the taxes become due.

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