
EXPRESS SCRIPTS CANADA
PHARMACY PROVIDER AGREEMENT
(HEALTH CANADA NON-INSURED HEALTH BENEFITS PROGRAM)

BETWEEN:

Express Scripts Canada, a partnership carrying on business in the province of Ontario
("formerly ESI Canada")

AND

ABC Pharmacy of Medicine, Inc. a
(Pharmacy legal name)

corporation/ partnership/ sole proprietorship (circle one) which is a licensed pharmacy with
the following **retail operating name** ABC Pharmacy
and **address:** 123 Any Street, Anytown, ON
A1A 2B2 (the "Provider").

WHEREAS

- (1) Express Scripts Canada, pursuant to a contract with the federal government, performs claims administration, adjudication and payment functions in respect of the NIHB Program (as defined in Section 1(6)) of Health Canada (as defined in Section 1(5)); and
- (2) The Provider is or operates a licensed pharmacy and has made application, by way submission of the information required by Annexes A through C to this Agreement to Express Scripts Canada to act as an NIHB Pharmacy Services (as defined in Section 1(8)) provider, and Express Scripts Canada has accepted this application; and
- (3) The Provider may submit payment claims to Express Scripts Canada in respect of NIHB Pharmacy Services it provides to Clients (as defined in Section 1(3)) in accordance with the terms and conditions of this Agreement (as defined in Section 1(1)) including the terms of the Pharmacy Claims Submission Kit (as defined in Section 1(9)).

THEREFORE the parties agree as follows:

SECTION 1 – DEFINITIONS

In this Agreement:

- (1) “**Agreement**” means this Express Scripts Canada Pharmacy Provider Agreement, the attached Annexes, and any amendments thereto made in writing.
- (2) “**Claim**” means a claim for payment submitted by a Provider in accordance with Section 4.2 of this Agreement.
- (3) “**Client**” means a natural person who is eligible to receive NIHB Pharmacy Services in accordance with the eligibility criteria set forth in the Pharmacy Claims Submission Kit.
- (4) “**Effective Date**” means the later of: (i) the date both parties have signed this Agreement; and (ii) December 1, 2009.
- (5) “**Health Canada**” means the Department of Health (Canada).
- (6) “**NIHB Program**” means the “Non-Insured Health Benefits Program” of Health Canada which provides coverage for a specified range of drugs, dental care, vision care, medical supplies and equipment, short-term crisis intervention, mental health counselling and medical transportation which are provided to eligible First Nations and Inuit persons and not covered by other benefit plans.
- (7) “**NIHB Drug Benefit List**” means the list established by Health Canada which sets out the prescription and over-the-counter drugs for which the Provider may submit Claims to Express Scripts Canada under this Agreement when it dispenses such drugs to Clients.
- (8) “**NIHB Pharmacy Services**” means the provision and dispensing of any drugs listed on the NIHB Drug Benefit List to Clients in accordance with the terms and conditions of this Agreement, applicable laws, professional standards of practice and the dispensing provisions of the Pharmacy Claims Submission Kit.
- (9) “**Pharmacy Claims Submission Kit**” or the “**Kit**” means the document bearing this title, as updated and amended from time to time in accordance with Section 12.1(2), that is provided or made available to the Provider by Express Scripts Canada and which sets out additional terms and conditions for the submission of Claims under this Agreement
- (10) “**Usual and Customary Professional Fee**” means the lowest dispensing fee charged by the Provider to customers of its business who are not Clients and are not covered by any drug insurance plan on the date that it is provided, including any discounts or special promotions offered on such date by the Provider. Express Scripts Canada shall not take into account, for the purposes of calculating the lowest dispensing fee, unusual and exceptional transactions made on a discounted dispensing fee basis by the Provider to or in respect of: (i) health care professionals undertaken as a professional courtesy; (ii) employees of the Provider; (iii) compassionate discounts given on non routine financial need basis that make up less than 1% of the Provider's dispensing activity; and (iv) other exceptional cases agreed to in writing by Express Scripts Canada.

(11) “**applicable laws, rules and regulations regarding the practice of pharmacy**” means applicable laws, rules and regulations regarding the practice of pharmacy including, but not limited to applicable rules of practice established by provincial or territorial pharmacy colleges, regulatory or licensing authorities..

SECTION 2 – PURPOSE AND TERM OF THIS AGREEMENT

(1) The purpose of this Agreement is to set out the terms and conditions under which the Provider may submit Claims and receive payment for the provision of NIHB Pharmacy Services.

(2) This Agreement shall commence on the Effective Date and shall remain in effect until terminated in accordance with the termination provisions of this Agreement or otherwise on the consent of both parties.

SECTION 3 – THE PROVIDER

3.1 Compliance with laws, licences and permits

(1) The Provider shall, and shall cause its personnel and any pharmacists it employs or contracts with to be bound by and comply with the provisions of this Agreement and all applicable laws, rules and regulations regarding the practice of pharmacy including, but not limited to applicable rules of practice established by provincial or territorial pharmaceutical colleges, regulatory or licensing authorities. The Provider shall obtain and maintain in good standing, and shall cause all pharmacists it employs or contracts with to obtain and maintain in good standing, at all times, all required licenses, certificates and permits that are necessary to allow the Provider and its pharmacists (as applicable) to undertake the practice of pharmacy and to lawfully dispense medications. The Provider shall provide evidence of such good standing, certification and licensure without charge to Express Scripts Canada, Health Canada or a designee of Express Scripts Canada or Health Canada, within five (5) calendar days of written request by such party.

3.2 Notification of changes

(1) The Provider shall notify Express Scripts Canada in writing within five (5) calendar days in the event of any suspension, revocation, restriction, limitation or disciplinary action commenced, taken against or placed on any of its licenses, certificates or permits described in Section 3.1, or those of any pharmacist it employs or contracts with for the provision of NIHB Pharmacy Services.

(2) The Provider shall notify Express Scripts Canada in writing within five (5) calendar days in the event of any address change, legal or operating name change, change of ownership or any event described in Section 10(1).

3.3 Advertising and Promotions

(1) The Provider may identify itself as a provider of NIHB Pharmacy Services but shall not use the names, logos, symbols, service marks and trademarks of Express Scripts Canada, or any department or branch of the government of Canada in any advertising or promotional materials or otherwise, without the prior written consent of the affected party.

(2) The Provider shall not offer any rewards or incentives to any Clients directly or indirectly, including, but not limited to, rebates, coupons, points, discounts, credit or goods and services calculated or based on a beneficiary's accessing NIHB Pharmacy Services, unless such rewards or incentives are also available to all non-NIHB customers of its pharmacy. Where any rewards or incentives permitted under this clause have a monetary value, including discounts and rebates, such shall be credited to Express Scripts Canada and deducted by the Provider from Claims submitted under this Agreement.

(3) Express Scripts Canada shall not use the names, logos, symbols, service marks or trademarks of the Provider in any advertising or promotional materials without the prior written consent of the Provider, except that Express Scripts Canada may use the name and location of the provider in any Express Scripts Canada provider directory or similar document or communication.

3.4 Relationship of the Parties

(1) This Agreement is for the submission and payment of Claims for NIHB Pharmacy Services. The Provider is not a contractor or service provider of Express Scripts Canada or the government of Canada or any department thereof and nothing in this Agreement is intended to create a partnership, a joint venture or an agency between it and Express Scripts Canada or the government of Canada. The Provider shall also not represent itself as an agent or representative of Express Scripts Canada or the government of Canada in respect of any NIHB Pharmacy Services or other functions or services it provides to Clients.

(2) No provision of this Agreement or any part of any Health Canada's NIHB Program shall be construed to require the Provider, or any pharmacist acting for it, to provide any NIHB Pharmacy Services or dispense a drug to any Client if, in the pharmacist's reasonable professional judgment, such drug should not be dispensed to such Client. In such event, Provider shall keep a record of the circumstances of the decision not to provide services to the applicable Client.

SECTION 4 – DISPENSING AND CLAIMS SUBMISSION

4.1 Dispensing

(1) The Provider shall, in respect of Clients who present themselves at the Provider's place of business with a prescription or other lawful authority to obtain any medications on the NIHB Drug Benefit List, provide NIHB Pharmacy Services to such Clients without charge, and may apply to Express Scripts Canada for payment for such services in accordance with this Section.

(2) The Provider shall, and shall cause pharmacists it employs or contracts with to, undertake the following in the course of provision of NIHB Pharmacy Services, and as more particularly set out in the Pharmacy Claims Submission Kit:

- (a) verify that the customer is a Client who is eligible for the provision of NIHB Pharmacy Services;
- (b) verify that any drugs sought by Clients without charge are on the NIHB Drug Benefit List. Without limiting the generality of the foregoing, in no event will the

Provider switch a Client's prescription to a drug that is not a formulary drug on the NIHB Drug Benefit List, except for generic substitution opportunities, therapeutic substitution opportunities or where required by medical necessity. Except as otherwise required by applicable laws, rules and regulations regarding the practice of pharmacy, the Provider shall not implement any substitution program for Clients that is inconsistent with the NIHB Drug Benefit List.

- (c) obtain prior approval for "limited use" drugs or other drugs not on the NIHB Drug Benefit List (drug exceptions);
- (d) except where prohibited by applicable laws, rules and regulations regarding the practice of pharmacy, follow Express Scripts Canada's procedures for drug utilization review and generic or therapeutic substitutions prior to dispensing medications and comply with Express Scripts Canada's procedures for contacting prescribers to facilitate generic substitution and formulary compliance.
- (e) confirm for each dispensing function whether other benefit coverage exists for the Client and, by following co-ordination of benefit (COB) procedures, submit a claim to the other payor and deduct the amount covered by the other payor before submitting a Claim to Express Scripts Canada under this Agreement.
- (f) Deleted.
- (g) comply with all other applicable terms and conditions for dispensing as set out in this Agreement and the Pharmacy Claims Submission Kit.

4.2 Claims Submission

(1) The Provider may submit claims to Express Scripts Canada for payment in respect of its provision of NIHB Pharmacy Services for:

- (a) the lesser of: (i) the actual acquisition cost of the products on the NIHB Drug Benefit List which were provided, plus any applicable mark-up, up to the maximum defined in the applicable regional schedule; or (ii) the lowest total price of the product including mark up which the Provider charges customers who are not Clients and are not covered by any drug insurance plan and
- (b) the lesser of: (i) the Usual and Customary Professional Fee of the Provider; or (ii) any maximum for such dispensing fees as may be set out in any applicable regional schedules for professional fees referred to in the Pharmacy Claims Submission Kit.

(2) All Claims submitted by Providers to Express Scripts Canada shall:

- (a) be solely in respect of NIHB Pharmacy Services;
- (b) contain complete, accurate information and contain all of the data elements required by the Pharmacy Claims Submission Kit;

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- (c) be submitted by way of the electronic point of service (POS) technology or by such other means as is specified and permitted in the Pharmacy Claims Submission Kit;
 - (d) be submitted within the time limits set out in the Pharmacy Claims Submission Kit in order to qualify for payment; and
 - (e) be reduced in respect of any amount to be credited or deducted in favour of Express Scripts Canada pursuant to Section 3.3(2) and 4.1(2)(e).

SECTION 5 – CLAIMS PAYMENT

5.1 Claims Adjudication and Payment

(1) Following receipt of a Claim, Express Scripts Canada shall adjudicate the Claim against the requirements of this Agreement and the terms of the Pharmacy Claims Submission Kit.

(2) Express Scripts Canada may accept any Claims or, where it determines that the Claim does not qualify for payment in whole or in part or has not been submitted in accordance with the requirements of this Agreement, may reject the Claim or accept the Claim with adjustments.

(3) Express Scripts Canada will send a claims statement to the Provider reflecting its adjudication and will transfer payments to the Provider in respect of accepted claims by way of the processes set out in the Pharmacy Claims Submission Kit.

(4) Acceptance and payment of any Claim with or without adjustments shall not bar Express Scripts Canada from re-adjudicating, auditing or reversing any Claim, in whole or in part, at any later time.

(5) The Provider shall cooperate with Express Scripts Canada to provide information requested by Express Scripts Canada in order to verify any information submitted with a Claim necessary for Express Scripts Canada to pay the Claim.

(6) Express Scripts Canada shall use commercially reasonable efforts to ensure that it will be able to adjudicate all open benefit (as defined in the Pharmacy Claims Submission Kit) claims in near real time. Additionally, Express Scripts Canada shall use commercially reasonable efforts to ensure that any systems changes that affect POS technology are tested before implementation.

5.2 Rejections, Reversals and Disputed Items

(1) Where Express Scripts Canada rejects or reverses a Claim, or accepts a Claim with adjustments, it will set out, in claim statements sent to the Provider, explanations by way of the adjudication codes set out in the Pharmacy Claims Submission Kit.

(2) Any Claim that is rejected, reversed or accepted for reasons other than lateness, including Claims submitted with errors by the Provider, may be re-submitted once for re-adjudication with such changes or clarifications as may be appropriate within thirty (30) days from the date receipt of Express Scripts Canada's claim statement relating to such Claim. Express Scripts Canada shall re-adjudicate any re-submitted claim in a manner consistent with Section 5.1. Where any

Claim is not re-submitted within this time period, or was rejected for lateness, Express Scripts Canada will have no obligation to reconsider or pay the Claim.

(3) Unless a shorter period is required by law, any Claim submitted for payment in relation to medications which are not picked-up by a Client must be reversed by the Provider within thirty (30) days of submission. Provider compensation in such instances shall depend on whether the medications can be returned to inventory and shall be determined, claimed and paid in accordance with procedures set out in the Pharmacy Claims Submission Kit.

(4) Any overpayment or any payment reversed in whole or in part by Express Scripts Canada for any reason, including re-adjudication, audit or as a result of any disclosure by the Provider may be claimed or offset from the Provider in accordance with the overpayment provisions in Section 9 of this Agreement.

(5) The Provider is responsible for reviewing claims statements received from Express Scripts Canada to verify their accuracy. The Provider shall notify Express Scripts Canada in writing within twelve (12) months of receipt of any claims statement of any disputed information thereon including where it believes Express Scripts Canada has made a mistake in processing or adjudicating a Claim. Adjudications will otherwise be final. Upon giving notice under this provision, the Provider will provide Express Scripts Canada with the reasons why it believes there is an error, together with any other information Express Scripts Canada may subsequently request to verify possible amounts owing. This provision applies to errors a Provider believes Express Scripts Canada has made in processing or adjudicating Claims and does not apply to re-adjudication matters set out in 5.2(2).

5.3 No Claim Against Clients

(1) The Provider shall seek payment solely from Express Scripts Canada for all NIHB Pharmacy Services. In no event, including, but not limited to, rejection or reversal of any Claim in whole or in part by Express Scripts Canada, collection of any amounts by Express Scripts Canada from the Provider, set-off by Express Scripts Canada of monies otherwise payable to the Provider, non-payment of any Claim by Express Scripts Canada for any reason including Express Scripts Canada's insolvency or breach of this Agreement by Express Scripts Canada, shall the Provider bill, charge, collect a deposit from, seek compensation from, condition the provision of services on payment from, or have any recourse against any Client or person acting on behalf of the Client.

(2) In the event Express Scripts Canada determines that the Provider has violated Section 5.3(1) and collected any amounts from a Client or a person acting on behalf of a Client in respect of any NIHB Pharmacy Services, Express Scripts Canada may, in addition to any other remedial rights under this Agreement, demand payment of the amounts so collected from the Provider and/or otherwise offset and deduct such amounts from any amounts owing to the Provider.

5.4 Counterfeit Drugs Detection and Reporting

(1) The Provider shall notify Express Scripts Canada in writing within five (5) business days if it becomes aware that it has provided any counterfeit drugs to Clients. Further, the provider shall cooperate with ESI in actions taken to determine and establish which Clients have received counterfeit drugs. Further, the Provider represents and warrants that it purchases

prescription drugs and supplies only from reputable wholesalers and/or manufacturer in accordance with the then prevailing industry standards.

SECTION 6 – CLAIMS AUDIT

(1) Express Scripts Canada may conduct a review or audit the books and records of the Provider relating to any Claims submitted by the Provider under this Agreement in order to ensure compliance with the terms and conditions of this Agreement.

(2) Any audit or review will be conducted in accordance with the following and at the times and in accordance with the other procedures set out in the Pharmacy Claims Submission Kit:

- (a) Express Scripts Canada will provide the Provider with advance written notice of any audit or review and conduct the audit within the time frames set out in the Pharmacy Claims Submission Kit.
- (b) The scope and coverage of any audit or review shall be determined by Express Scripts Canada and may take the form of any of the review or audit processes set out in the Pharmacy Claims Submission Kit.
- (c) The Provider shall cooperate with any audit or review and shall provide such information as may be required by Express Scripts Canada, including copies of any Client profiles, prescriptions, shipping invoices, internal invoices, manufacturers' invoices, wholesalers' invoices, documentation of item receipt by the Client, and evidence of other or additional drug benefit coverage.
- (d) Where access to its premises is requested by Express Scripts Canada, the Provider shall provide such access during regular business hours and shall provide reasonable assistance to Express Scripts Canada or its agents to allow them to inspect, review and take copies of any and all pharmacy records pertaining to the provision of NIHB Pharmacy Services to any Clients. Express Scripts Canada shall not, unless authorized by law or by the Provider, remove or cause to be removed any original books, records or supporting documentation from the Provider's premises.

(3) Deleted

(4) In the event Provider fails to comply with the requirements of this Section 6, Express Scripts Canada shall have the right to reverse all applicable paid Claims (e.g., those subject to the audit) and may, pursuant to Section 10 (2), immediately terminate this Agreement, in Express Scripts Canada's sole discretion.

SECTION 7 – INSURANCE, LIABILITY AND INDEMNITY

7.1 Provider Insurance

(1) The Provider has and shall maintain in full force and effect and throughout the term of this Agreement such policies of general liability, professional liability and other insurance of the types and amounts as are reasonably and customarily carried by pharmacies with respect to their operations, including the following:

- (a) pharmacist's professional liability insurance, including protection from claims for bodily and personal injury to members of the public including Clients from the Provider's pharmacy operations; and
- (b) comprehensive general liability insurance coverage in the amount of at least \$2,000,000 per occurrence.

(2) Upon Express Scripts Canada's request, the Provider shall provide Express Scripts Canada with evidence of such insurance coverage satisfactory to Express Scripts Canada. If the insurance purchased to satisfy the requirements of this Section is of the "claims made" variety, the Provider shall purchase an extended period of indemnity so that Express Scripts Canada is protected from any and all claims brought against Express Scripts Canada for a period of not less than three (3) years subsequent to the date of termination of this Agreement.

(3) The Provider shall furnish or cause to be furnished not less than thirty (30) days' prior written notice to Express Scripts Canada in the event of termination or material modification of any such policies of insurance.

7.2 Liability and Indemnification

(1) Express Scripts Canada shall not be liable or suffer loss for any claim, injury, demand or judgment of any kind whatsoever arising out of the sale, compounding, preparation, dispensing, manufacturing, labelling, consultation, communication of information on the prescribed or recognized use of medication, use of any medication or any service provided, records made or pharmacological study of such records preferred, by the Provider pursuant to this Agreement. Regardless of the insurance coverage required herein above, the Provider shall indemnify, defend and hold harmless Express Scripts Canada, its officers, directors and employees against the full amount of any and all loss, expense, claim, or damage arising out of or attributable to any of the foregoing.

(2) The Provider shall indemnify and hold harmless Express Scripts Canada from and against any claims or demands brought by its Clients and their eligible dependants or other parties in respect of: (i) any payment made by Express Scripts Canada to the Provider pursuant to this Agreement; (ii) the delivery of NIHB Pharmacy Services; and (iii) any liability or expense arising from any claim or proceeding resulting from any acts or omissions, or any breach of this Agreement, by the Provider or by its employees, or agents.

SECTION 8 – RECORDS AND PRIVACY

(1) The Provider shall maintain pharmacy records relating to Clients and their prescriptions in accordance with all applicable laws, but not less than five (5) years.

(2) The parties shall comply with all applicable laws regarding the confidentiality of Client and patient information, including, but not limited to, any provincial privacy laws and applicable federal laws including the *Personal Information Protection and Electronic Documents Act* (PIPEDA), and, with respect to the Provider, any privacy rules or procedures required by the Provider's pharmacy regulatory authority.

SECTION 9 – OVERPAYMENTS

(1) Where Express Scripts Canada determines by way of Claims review, adjudication, adjustment, reversal, audit or Provider disclosure that it has paid the Provider more than is owed under this Agreement, Express Scripts Canada may, without restricting any remedies otherwise available under this Agreement or at law, and to the extent permitted by law, immediately take either or both of the following steps:

- (a) require the Provider to repay any amounts determined to be owed to Express Scripts Canada; or
- (b) set-off such amounts from other amounts payable by Express Scripts Canada to the Provider.

SECTION 10 – DEFAULT

(1) The Provider will be in default of this Agreement in the event that:

- (a) it is in breach of any term or condition of this Agreement;
- (b) it, or any of the pharmacists it employs or contracts with to provide NIHB Pharmacy Services, has provided materially false or misleading information to Express Scripts Canada in support of its application to become an NIHB provider or in the submission of Claims or the provision of information for any audit purposes;
- (c) it, or any of the pharmacists it is employs or contracts with to provide NIHB Pharmacy Services, ceases to be licensed or permitted to provide pharmacy services under applicable provincial laws or pharmacy regulatory authorities; or
- (d) it ceases to operate, becomes bankrupt or insolvent, goes into receivership or takes the benefit of any statute from time to time being in force relating to bankrupt or insolvent debtors; or
- (e) an order is made or resolution passed for the winding up of the Provider, or the Provider is dissolved.

(2) In the event of a default, Express Scripts Canada will notify the Provider in writing and may, without restricting any remedies otherwise available at law, and to the extent permitted by law, take any, or any combination, of the following steps:

- (a) require the Provider to cure the default within a time specified by notice;
- (b) withhold any funds otherwise payable by it under this Agreement;
- (c) suspend the Provider's right to act as an NIHB pharmacy provider including its ability to submit any Claims to Express Scripts Canada following the date of suspension; and/or
- (d) terminate this Agreement.

(3) Express Scripts Canada will not take any steps under subsections 10(2)(b), (c) or (d) without first providing notice to the Provider and, if deemed appropriate in the sole discretion of Express Scripts Canada, a period of time to cure any default identified by Express Scripts Canada.

SECTION 11 – TERMINATION

(1) In addition to any other rights under this Agreement, either party may terminate this Agreement at any time without cause upon providing the other party with forty-five (45) days written notice to terminate.

(2) All obligations of Express Scripts Canada to process further Claims from the Provider shall cease on the date specified in any termination notice under this Section or Section 10 (Default). However, the Provider may, within three (3) months following a termination, submit any Claims for NIHB Pharmacy Services it provided prior to the termination date. The parties will follow the normal Claims submission and adjudication processes in respect of such Claims and any other Claims filed prior to but outstanding as at the date of termination.

(3) All rights and obligations of the parties which expressly, or by their nature, survive termination of this Agreement shall survive unless and until they are fulfilled, or by their nature expire. Without limiting the generality of the foregoing, the sections of this Agreement which contain, in whole or in part, rights and obligations of the parties which shall or may have effect following expiration or termination of this Agreement include: Sections 5.3 (No Claims Against Clients); 6 (Claims Audit); 7.1(2) (Provider Insurance); 7.2 (Liability and Indemnification); 8 (Records and Privacy); 9 (Overpayments); 10(2) (Default); 11(2) (Termination); 12.3 (Subcontracting or Assignment); 12.4 (Confidential Business Information); and 12.5 (Proprietary Rights).

SECTION 12 - MISCELLANEOUS

12.1 The Agreement / Amendment

(1) This Agreement, including its Annexes and the Pharmacy Claims Submission Kit, constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and, upon execution by the parties, supersedes all prior oral or written agreements between the parties with respect to the subject matter hereof. Subject to subsection 12.1(2), no modification, alteration or waiver of any term, covenant or condition of this Agreement shall be valid unless agreed to in writing by both parties. The parties agree that they may, with the approval of Health Canada, amend this Agreement to comply with any changes required by the appropriate regulatory authorities in the course of discharging their responsibilities under applicable laws and regulations.

(2) Express Scripts Canada may unilaterally amend the Pharmacy Claims Submission Kit and its policies and procedures at any time, in its sole discretion, and Health Canada may unilaterally amend the NIHB Drug Benefit List and its policies and procedures at any time, in its sole discretion, and such amendments shall not require the consent of the Provider or any Pharmacy. Changes and amendments to the Pharmacy Claims Submission Kit and the NIHB Drug Benefit List will be communicated by Express Scripts Canada to Providers through one or more of the following mediums: regular NIHB Pharmacy Newsletters, Drug Bulletins or posting on Express Scripts Canada's website.

12.2 Interpretation

(1) This Agreement shall be governed by and interpreted in accordance with the laws of the province in which the Provider's place or places of business are located and all applicable laws of Canada. This Agreement shall also be interpreted in accordance with the explanations and clarifications set out in Annex D of this Agreement - Explanatory Notes and Clarifications.

(2) All obligations for a Provider as set out herein shall be deemed to include an obligation for the Provider to ensure that the pharmacists it employs or contracts with abide by the same terms and conditions when acting for the Provider, unless the context requires otherwise.

(3) No waiver of a breach of any covenant or condition shall be construed to be a waiver of any subsequent breach. No act, delay or omission done, suffered, or permitted by the parties shall be deemed to exhaust or impair any right, remedy or power of the parties hereunder.

(4) Should any provision of this Agreement be held or ruled unenforceable or ineffective under the law, such a ruling will in no way affect the validity or enforceability of any other clause or provision contained herein.

(5) Each party intends that this Agreement will not benefit or create any right or cause of action on behalf of any person other than the parties to this Agreement, Health Canada and their lawful administrators, successors and assigns, and that no other person will be entitled to rely on its provisions.

(6) In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of an Annex or the Pharmacy Claims Submission Kit, the terms and conditions of this Agreement shall prevail.

12.3 Subcontracting or Assignment

(1) This Agreement or any rights or obligations of Express Scripts Canada hereunder may be subcontracted or assigned, in whole or in part, by Express Scripts Canada to any other party including Health Canada without the prior written consent of the Provider. This Agreement may not be subcontracted or assigned in whole or in part by the Provider.

(2) This Agreement is binding upon the parties and their respective administrators and successors and assigns. Any reference to the parties in this Agreement shall include, apply to, bind and benefit the permitted assigns and successors of the parties and any corporation, partnership, individual, or person acting in a fiduciary capacity on their behalf.

12.4 Confidential Business Information

(1) The Provider acknowledges that in the performance of the services to be rendered hereunder, the Provider may have access to certain confidential business information regarding Express Scripts Canada, including but not limited to the following: manuals, marketing strategies, customer lists, information technology and quality assurance procedures, and all copies thereof (collectively, the "Confidential Information"). The Provider shall not disclose or use or enable anyone else to disclose or use, in whole or in part, any such Confidential Information other than for the purpose of providing the services to be provided hereunder unless required by law and shall promptly return all Confidential Information to Express Scripts Canada upon termination of this Agreement.

(2) Express Scripts Canada acknowledges that in the performance of the services to be rendered hereunder, Express Scripts Canada may have access to certain confidential business information regarding the Provider. Express Scripts Canada shall not disclose or use or enable anyone else to disclose or use, in whole or in part, any such confidential business information other than for the purpose of providing the services to be provided hereunder unless required by law and shall promptly return all confidential business information to the Provider upon termination of this Agreement.

12.5 Proprietary Rights

(1) The Provider has no right to use, reproduce or adapt any information, data, work, compilation, computer program, manual, process or invention obtained from, provided by, or owned by Express Scripts Canada and/or Health Canada including, but not limited to, programs, services, business practices, procedures, and manuals without Express Scripts Canada's prior written consent.

12.6 Disaster Planning and Force Majeure

(1) Disaster Planning: The Provider agrees that it shall take reasonable steps to cooperate and coordinate with Express Scripts Canada to facilitate disaster planning efforts for continued

provision of NIHB Pharmacy Services in cases of a disaster, emergency or an event described in subsection (2), below.

(2) **Force Majeure:** Any party's delay in, or failure of, performance under this Agreement shall be excused where such delay or failure is the result of causes that are beyond the reasonable control of the affected party, including acts of God (e.g., nature, fire, flood, etc.), terrorism, war, civil disturbance, court order, governmental intervention, epidemic, pandemic, failures or fluctuations in electrical power, heat, light, air conditioning, computer, software, communications, transmission or mechanical failure, work stoppage, delays or failure to act, or other catastrophe beyond a party's reasonable control. In such an event, the parties will use commercially reasonable efforts to resume performance as soon as possible under the circumstances giving rise to the party's failure to perform.

SECTION 13 – NOTICES

(1) Subject to any other provisions of this Agreement and the Pharmacy Claims Submission Kit, which may require or permit communication between the parties by electronic or other means, any notice required to be given pursuant to the terms hereof shall be in writing and sent by registered mail or facsimile to the other party at the address or facsimile number listed below or to the last reported address or facsimile number of such party.

Express Scripts Canada:

Express Scripts Canada
Attn: NIHB Provider Relations
5770 Hurontario Street, 10th Floor
Mississauga, Ontario L5R 3G5
Facsimile number: 905-712-0669

Provider:

To the address or facsimile number set forth
on Annex A hereto.

(2) Any such notice, which is sent by registered mail, shall be deemed to have been received by the respective party on the third day following the date of mailing. Any notice, which is sent by facsimile, shall be deemed to have been received on the next business day following transmission.

SECTION 14 EXECUTION

The undersigned have executed this Agreement by their duly authorized representatives.

EXPRESS SCRIPTS CANADA:

Michael Biskey, President


_____, 20____
Date

PROVIDER:

ABC Pharmacy of Medicine, Inc.
Name of Provider

John Doe
Printed Name

Owner/Pharmacist
Title (Owner or director of business)


Signature

June 1, 2010
Date

**ADDITIONAL PROVIDER
SIGNATORY (WHERE REQUIRED)**

Printed Name

Title (Owner or director of business)

Signature

_____, 20____
Date

******NOTE: All pages of the Pharmacy Provider Agreement, including the Annex's, need to be returned to Express Scripts Canada.**

Annex "A"

REQUIRED PHARMACY PROVIDER INFORMATION

Express Scripts Canada's Pharmacy Provider Number

010101010156789

Operating (Pharmacy) Name

ABC Pharmacy

Street Address:

123 Any Street

1. Language Preferred English Français

2. Most communications will be made by e-mail, unless otherwise requested

City: Anytown Province: ON

E-mail Address:

abc@pharmacy.com

Postal Code: A 1 A 2 B 2

3. For communications that cannot be sent via e-mail (or for an alternate communication mode), please check the appropriate box Fax Mail

Store Tel. Number: 123 555 4444

Store Facsimile Number: 123 555 4445

Contact Name: Joanna Doe

Title: Pharmacist Assistant

Contact Tel. Number: 123 555 - 4222

Contact Facsimile Number: 123555-4223

Usual & Customary Professional Fee: \$11.99

Note: *It is the responsibility of the Provider to notify Express Scripts Canada in writing of any changes to their required pharmacy information, including any updates to the Usual and Customary Professional Fee.*

Hours of Service (i.e., 09:00 to 21:00): 8 to midnight

Days of Operation: (i.e., M-F, S-S): M-Sat

Annex "B"

Express Scripts Canada requires certain information about each participating Pharmacy to properly identify and pay the Pharmacy Provider for claims adjudicated by Express Scripts Canada. Please complete this form and return it with the signed Pharmacy Provider Agreement. CHEQUE PAYMENT will be mailed to the Operating Store address unless Section 2 or 3 of this form is completed.

SECTION 1 - PHARMACY PROVIDER INFORMATION				
Express Scripts Canada's Pharmacy Provider Number 101010101516171819			Operating (Pharmacy) Name ABC Pharmacy	
Street Address 123 Any Street				
City Anytown	Province ON	Postal Code 1A11A121B12	Language Preferred <input checked="" type="checkbox"/> English <input type="checkbox"/> Français	
Area Code Telephone Number 11235554444	Area Code Facsimile Number 11235554445	Contact Name John Doe / Pharmacist	Title	
SECTION 2 - PHARMACY PROVIDER MAILING ADDRESS (if different from above)				
Street Address				
City	Province	Postal Code	Language Preferred <input type="checkbox"/> English <input type="checkbox"/> Français	
Area Code Telephone Number	Area Code Facsimile Number	Contact Name	Title	
SECTION 3 - ELECTRONIC FUNDS TRANSFER (EFT) PAYMENT INFORMATION				
Complete this Section to identify the account to which Express Scripts Canada will direct EFT PAYMENTS and attach a sample/VOID cheque. (This form authorizes deposits to the account and does not authorize withdrawals or any other transactions with respect to the account. All information will be treated as private and confidential).				
<input checked="" type="checkbox"/> NEW BANKING INFORMATION		<input type="checkbox"/> REPLACE BANKING INFORMATION		
Bank Name First Bank	Branch Name City Centre			
Branch Address 456 Bank St.	City Anytown	Province ON	Postal Code 1B21B11A11	
ACCOUNT NUMBER	Bank 1011A1123145	Branch 999101111	Account Number	
SECTION 4 - PHARMACY PROVIDER MANAGEMENT SYSTEM and POINT OF SALE (POS) CLAIMS SUBMISSION				
Express Scripts Canada offers a real-time adjudication system, which is compatible with Pharmacy Practice Management Systems, (PPMS) and specially equipped Point of Sale (POS) Devices. In order to submit claims real-time (POS), you must contact your Pharmacy Provider software vendor. Please provide the following information if you are currently using a PPMS or POS device:				
Vendor (Company) Name Pharma Soft		Area Code	Telephone Number 11235554545	
Contact Address 123 Soft Street	City Anytown, ON	Province	Postal Code 1A11A2B11	

Annex "C"

Pharmacy Provider Agreement - Declaration upon Registration

Note: All information must be completed prior to consideration of your application for registration. Failure to disclose required information and falsified statements will result in immediate termination of provider number and billing privileges as per the termination provisions of the Pharmacy Agreement.

A. Provider Information
 Corporation Legal Name: ABC Pharmacy of Medicine, Inc.
 Sole Proprietorship Operating Business Name: ABC Pharmacy
 Partnership

B. Name(s), Addresses, Occupation of all Owners, Officers and Directors of Provider's company:

Name	Occupation	Address (Full)
<u>John Doe</u>	<u>Owner and Pharmacist</u>	<u>123 Any Street Anytown, ON M1A 2B2</u>
_____	_____	_____
_____	_____	_____

Have any of the above listed Owners, Officers or Directors ever applied and been denied a provider number? NO If YES, provide details: _____

Have any of the above listed Owners, Officers or Directors had a provider number and lost billing privileges? NO If YES, provide details: _____

For any changes to provider info, please indicate existing provider # _____
Existing operating name: _____
Existing address: _____

C. Type of Provider
 Pharmacy only
 Pharmacy and Medical Supplies/Equipment - By checking this box, you will automatically be registered to dispense the benefit within the categories listed in the Qualified Assessments indicated below

Full Mailing Address	<u>123 Any Street Anytown, ON M1A 2B2</u>	Telephone <u>123-555-4444</u>
		Facsimile <u>123-555-4445</u>
Full Operating Address	<u>same as above</u>	Telephone <u>//</u>
		Facsimile <u>//</u>

D. Pharmacy Manager
Full Name John Doe
Regulatory License # 045540

E. Qualified Assessments - Medical Supplies/Equipment

The Provider warrants it and the persons it employs or contracts have all required licenses, certificates and permits that are necessary to allow the Provider and its personnel (as applicable) to lawfully provide the following medical supplies and equipment (MS&E)

N/A

Mark applicable box(es):

ORTHOTICS	PROSTHETICS	PRESSURE GARMENTS AND ORTHOTICS
<input type="checkbox"/> Orthotics Rigid (Class 2) and Custom (Class 3) (ORT1) <input type="checkbox"/> Custom-made Foot Orthotics and Custom-made Footwear (ORT2) <input type="checkbox"/> AUDIOLOGIST OR HEARING AID DISPENSER (AUD)	<input type="checkbox"/> Breast Prostheses (PRO1) <input type="checkbox"/> Eye Prostheses (PRO2) <input type="checkbox"/> Limb Prostheses (PRO3) <input type="checkbox"/> OXYGEN THERAPY (OXY) <input type="checkbox"/> RESPIRATORY THERAPY (RES)	<input type="checkbox"/> Pressure Garments (PGO1) <input type="checkbox"/> Burned Garments (PGO2) GENERAL MS&E (GEN) <input type="checkbox"/> Specify: _____

F. Purchasing any product or administrative service from another retail store (rather than a wholesaler) may be considered a sub-contracting relationship.

- Yes, we will be entering into a sub-contracting relationship for products.
- Yes, we will be entering into a sub-contracting relationship for administrative services.

Name of company providing sub-contracted services/products _____

Products/Services to be purchased: _____

G. Sub-contractor Information (complete for each retail store providing services/products to you)

- Corporation Legal Name _____
- Sole Proprietorship Operating Business Name _____
- Partnership

H. Name(s), Addresses, Occupation of all Owners, Officers and Directors of sub-contractor's company:

Name	Occupation	Address (Full)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Have any of the above listed Owners, Officers or Directors ever applied and been denied a provider number?

_____ If YES, provide details: _____

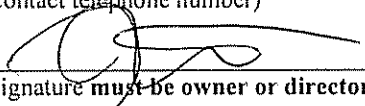
Have any of the above listed Owners, Officers or Directors had a provider number and lost billing privileges?

_____ If YES, provide details: _____

If purchasing an existing business, please indicate existing provider # _____
 Existing operating name: _____
 Existing address: _____

I. Type of Provider	
<input type="checkbox"/> Pharmacy only	
<input type="checkbox"/> Pharmacy and Medical Supplies/Equipment	
Full Mailing Address _____	Telephone _____
_____	Facsimile _____

Full Operating Address _____	Telephone _____
_____	Facsimile _____

Completed by: John Doe
 (Full Name **must be owner or director of business**)
Owner/Pharmacist
 (Position/Title **must be owner or director of business**)
123-555-4444
 (Contact telephone number)

 (Signature **must be owner or director of business**) **

Date: June 1, 2010

****NOTE:** By signing this declaration, I am aware that the information provided will be validated and audited by Express Scripts Canada at any time, and that any change in the original declaration requires a re-application by the provider. Further, I agree to assume any unsettled damages, indebtedness or reclaim for present or future years if applicable which may have been incurred or assumed by the immediate preceding owners and will abide by the Terms and Conditions set forth in the Express Scripts Canada Pharmacy Provider Agreement and the Pharmacy Claims Submission Kit.

Annex “D”

EXPLANATORY NOTES AND CLARIFICATIONS

D.1 Relationship between the Pharmacy Provider Agreement and the Pharmacy Claims Submission Kit

(1) The purpose of the Pharmacy Provider Agreement (the Agreement) is to set out the terms and conditions under which the Provider may submit claims and receive payment for the provision of NIHB Pharmacy Services. The Pharmacy Claims Submission Kit sets out additional terms and conditions for the Agreement. These two documents work together to ensure Providers have all of the information they need to submit claims and receive payment from Express Scripts Canada for the provision of NIHB Pharmacy Services. While the Agreement forms the basis for the relationship between Express Scripts Canada and Providers, many of the terms and conditions that Pharmacy Providers will be held accountable to are described in greater detail in the Pharmacy Claims Submission Kit. An example includes, but is not limited to the following:

- Section 6 of the Agreement lays out the basic principles of the Audit Program while Section 8 of the Pharmacy Claims Submission Kit details the purpose of audit activities, the different types of audits undertaken by Express Scripts Canada as well as the procedures followed in conducting a Provider Audit.

(2) Providers are bound by and accountable for following the terms and conditions outlined in both the Agreement and the Pharmacy Claims Submission Kit.

D.2 Changes to the Pharmacy Claims Submission Kit

(1) Notification regarding changes to the Kit will take place no less than 30 days prior such a change.

D.3 Definition of “regional schedules”, as referenced in Section 4.2 (b)

(1) Regional schedules are referred to in the Pharmacy Claims Submission Kit. Subject to and in accordance with the provisions of the Kit, such schedules are normally prepared by Health Canada in negotiation and consultation with representative pharmacy associations.

D.4 Administrative Audit of Pharmacy Claims

(1) In the majority of cases an audit conducted by Express Scripts Canada will focus solely on the two years prior to the audit date and all claims submitted during that time for the NIHB Program under this or previous agreements. In exceptional cases, including cases where serious problems have been detected, cases concerning systemic claim filing errors or complaints from beneficiaries, the scope of the audit can be extended to include additional years of claim submission for the NIHB Program. This process is described in greater detail in the Pharmacy Claims Submission Kit.

(2) It is Health Canada’s intention of continue working with the Provincial and National Pharmacy Associations to refine and clarify the Audit processes, moving towards processes that

are suitable to all parties and which are responsive to the needs of a publicly funded system and the need for that system to demonstrate accountability.

D. 5 Claim Payment Cycle

(1) Claims adjudicated by Express Scripts Canada for the Health Canada's Non-Insured Health Benefits Program under this agreement will be paid to providers twice a month. The first period covers the first 15 days of each month and the second period starts on the remaining days of each month.

E. 6 Usual and Customary Professional Fee

(2) Certain NIHB policies (NIHB Short-term Dispensing and Methadone Payment) allow for pro-rated fees for specific days supplies on a limited number of drugs. The prorated fee charged under the Short-Term Dispensing policy is derived from the Usual and Customary Professional Fee. For the purposes of such payments the Usual and Customary Professional Fee established by regional schedules remains unchanged.