

**NATIONAL MEDICAID POOLING INITIATIVE (“NMPI”)
SUPPLEMENTAL DRUG REBATE AGREEMENT**

PARTIES/PERIOD

1.1 This NMPI Supplemental Drug Rebate Agreement (“**Agreement**”) is made and entered into _____, by and between the State of Michigan (“**State**”), represented by the Department of Health & Human Services (“**State**”), Prime Therapeutics State Government Solutions, LLC (“**Prime**”), _____ (“**Manufacturer**”), and such other states that subsequently join into this Agreement upon the terms hereafter set forth (“**Participating State(s)**”). The parties, in consideration of the covenants, conditions, agreements, and stipulations expressed in this Agreement, do agree as follows:

PURPOSE

2.1 It is the intent of this Agreement that states that have entered into agreements for Prime to provide pharmacy benefit administration services (“**PBA Services**”) to the state Medicaid and other non-Medicaid programs approved by CMS in the Medicaid state plan(s) (“**Prime Client(s)**”) that do not affect Best Price, including the Participating States, will receive State Supplemental Rebates, in addition to the rebates received under the CMS Rebate Agreement, pursuant to Section 1927 of the Social Security Act (42 U.S.C. § 1396r-8), for the Manufacturer’s Supplemental Covered Product(s) quarterly utilization in the Participating States’ Medicaid Programs in which there is Medicaid federal financial participation. It is also the intent of this Agreement that State Supplemental Rebates will be paid for utilization of the Manufacturer’s Supplemental Covered Product(s) in other state funded programs that have been approved for inclusion by the Secretary of Health and Human Services (“**HHS**”). The parties also intend for this Agreement to meet the requirements of federal law at Section 1927 of the Social Security Act (42 U.S.C. §1396r-8).

2.2 Nothing in this Agreement shall preclude a Participating State from maintaining state supplemental drug rebate agreements or participating in other federal supplemental rebate programs, provided that such participation does not conflict with the terms of this Agreement.

DEFINITIONS

3.1 'Average Manufacturer Price' or 'AMP' shall mean the Average Manufacturer Price as set forth in 42 U.S.C. §1396r-8, and final regulations promulgated by CMS thereto, if any, as such statute or regulations may be amended from time to time.

3.2 'Best Price' shall mean Best Price as set forth in 42 U.S.C. §1396r-8, and final regulations promulgated by CMS thereto, if any, as such statute or regulations may be amended from time to time.

3.3 'CMS Agreement' means the Manufacturer's drug rebate contract with the Centers for Medicare & Medicaid Services (or 'CMS'), formerly known as the Health Care Financing Administration, entered pursuant to Section 1927 of the Social Security Act [42 U.S.C. § 1396r-8].

3.4 'CMS Basic Rebate' means, with respect to the Supplemental Covered Product(s), the quarterly payment by Manufacturer pursuant to Manufacturer's CMS Agreement, made in accordance with Section 1927(c)(1) or Section 1927(c)(3) of the Social Security Act [42 U.S.C. §1396r-8(c)(1) and 42 U.S.C. § 1396r8(c)(3)].

3.5 'CMS Additional Rebate' means, with respect to the Supplemental Covered Product(s), the quarterly additional payment by Manufacturer pursuant to Manufacturer's CMS Agreement, made in accordance with Section 1927(c)(2) of the Social Security Act (pertaining to the additional rebate calculated for single source and innovator multiple source drugs), as may be applicable [42 U.S.C. §1396r-8(c)(2)].

3.6 'CMS Rebate' means, with respect to the Supplemental Covered Product(s), the quarterly payment by Manufacturer pursuant to Section 4.1 of this Agreement.

3.7 'CMS Unit Rebate Amount' means, the unit amount computed by CMS to which the Medicaid utilization information may be applied by States in invoicing the Manufacturer for the rebate payment due.

3.8 'Covered Outpatient Drug' will have the meaning as set forth in 42 U.S.C. § 1396r-8(k)(2),(k)(3) and (k)(4) and regulations promulgated by CMS thereto, if any, as such statute or regulations may be amended from time to time.

3.9 'Guaranteed Net Unit Price' or 'GNUP means the amount(s) offered by the Manufacturer as outlined in the attached Schedule 2, "Supplemental Rebate Matrix – PDL Matrix Form". Per the attached Schedule 3, "State Supplemental Rebate Calculation", GNUP will be a factor in the equation that is determinative of the Supplemental Rebate Amount.

3.10 'Manufacturer' means, for purposes of this Agreement, the party identified as such in Section 1.1 of this Agreement, which may be a pharmaceutical manufacturer, labeler or other entity not prohibited by law from entering into this Agreement.

3.11 'Medicaid MCO' means a Medicaid managed care organization that is responsible for coverage of Covered Outpatient Drugs for Medicaid Recipients who are enrolled with the managed care entity, as further described in 42 U.S.C. § 1396b(m), as may be amended from time to time.

3.12 'Participating Medicaid MCO' means a Medicaid MCO that a Participating State has determined is eligible for Supplemental Rebates consistent with the applicable Participating State Medicaid Plan and the applicable Participating State's contract with the Medicaid MCO. In order to qualify as a "Participating Medicaid MCO", the Medicaid MCO must have aligned its formulary and/or preferred drug list, as applicable, with the PDL, assuring access to Supplemental Covered Product is no more restrictive than the Participating State PDL requirements applicable to the Supplemental Covered Product.

3.13 'Participating State(s)' means the (i) States named in Section 1.1 hereof, and (ii) other states that, subsequent to the execution of this Agreement by the States, elect to participate under this Agreement and have all necessary authorizations and approvals from CMS to do so. Unless otherwise authorized by CMS on a state -by -state basis, Participating States shall be limited to ones that have a CMS approved Medicaid State Plan or Medicaid State Plan Amendment under which Prime Therapeutics State Government Solutions has been engaged to provide PBA

services to that State. For each new Participating State, a unilateral agreement National Medicaid Pooling Initiative (“NMPI”) Medicaid Program Participation Agreement (“Participation Agreement”) in the form attached hereto as Attachment A, shall be executed by the new Participating State and Prime and sent to the Manufacturer prior to the Participation Commencement Date. A Catalogue of NMPI Participating State Medicaid Programs, which may be amended from time to time without consent of Manufacturer, is attached hereto as Attachment B.

3.14 ‘Participation Commencement Date’ is the latter of the date: (i) a Manufacturer’s Supplemental Covered Product is effective upon public dissemination of a Participating State’s Preferred Drug List via website for providers and prescribers, (ii) the Participation Agreement is fully executed and a copy provided to the Manufacturer, or (iii) the effective date of CMS approval of the Participating State’s applicable state plan amendment. It is the date when the Participating State(s)’ entitlement to the State Supplemental Rebate(s) from the Manufacturer accrues.

3.15 ‘Preferred Drug List’ or ‘PDL’ shall mean the list of drugs adopted by a Participating State Medicaid program in consultation with the respective state’s pharmacy and therapeutics committee pursuant to that Participating State’s relevant enabling legislation, as applicable.

3.16 ‘Prime Client(s)’ means those states (including the State) that have entered or subsequently enter into agreements with Prime for the provision of PBA Services to the states’ Medicaid, Participating Medicaid MCO, or other non-Medicaid programs approved by CMS in the Medicaid state plan(s), subject to the supervision and oversight of such States.

3.17 ‘Rebate Summary’ means the individual Participating States’ reports itemizing the State Utilization data supporting each Participating State’s invoice for Rebates. The Rebate Summary will comply in all respects with requirements for Medicaid Utilization Information in the CMS Agreement.

3.18 ‘State Supplemental Rebate’ means, with respect to the Supplemental Covered Product(s), the quarterly payment by Manufacturer pursuant to Section 4.2 of this Agreement.

3.19 'State Utilization' means the total number of Units of each dosage form and strength of the Supplemental Covered Product(s) reimbursed during a quarter under a Participating State Medicaid program. This utilization is based on claims paid by the Fee-for-Service Participating State program during a calendar quarter, determined by the claim's paid date.

Where the Participating State has elected to seek the Supplemental Rebate Amount for Medicaid MCO and/or any program(s) listed in Attachment A-1, the term "State Utilization" shall also include the total number of Units of each dosage form and strength of the Manufacturer's Supplemental Covered Product(s) dispensed by the Participating Medicaid MCOs and/or program(s) listed in Attachment A-1 during a quarter. Participating Medicaid MCO utilization is based on the date of service, and state-funded, HHS-approved program(s) listed in Attachment A-1 is/are based on paid date.

However, under no circumstances shall a Participating Medicaid MCO or state-funded, HHS-approved program(s) include drugs dispensed prior to the effective date on which the Participating State elects to include such utilization under Attachment A-1 and/or Attachment A-2, and provides all required documentation supporting such election to Prime.

3.20 'Supplemental Covered Product' means the Covered Outpatient Drug(s) of the Manufacturer, as detailed in the attached Supplemental Rebate Matrix, Schedule 2, upon which a State Supplemental Rebate will be paid pursuant to this Agreement.

3.21 'Supplemental Covered Product Category' or 'Product Category' means a defined group of pharmaceutical products considered to compete with one another in the market and that are also thought to be therapeutic alternatives in many situations. Prime has determined and defined the Product Categories in which manufacturers will bid. The Product Categories, set forth on the "Product Categories, Schedule 1" hereto, may be changed as deemed appropriate by Participating States or Prime.

3.22 'Supplemental Rebate Amount' means, with respect to the Supplemental Covered Product(s), the amount(s) specified in the attached Supplemental Bid Matrix, Schedule 2, and Supplemental Rebate Calculation, Schedule 3, that the Manufacturer has agreed to reimburse

Participating States per unit of drug in accordance with the formula detailed in the above Schedules. Where a Participating State has elected to include Medicaid MCO utilization as permitted under this Agreement and the Participating State Medicaid Plan, the term “Supplemental Rebate Amount” shall include the rebates invoiced hereunder with respect to such Medicaid MCO utilization, in addition to the applicable state fee-for-service Medicaid utilization and utilization under any state-funded, HHS-approved program(s) listed in Attachment A-1.

3.23 ‘Unit’ means drug unit in the lowest identifiable amount (*e.g.*, tablet or capsule for solid dosage forms, milliliter for liquid forms, gram for ointments or creams), and shall be the same unit as specified by the Manufacturer as part of the submission of data under 42 U.S.C. § 1396r-8.

3.24 ‘Wholesale Acquisition Cost’ or ‘WAC’ means the Manufacturer’s U.S. Dollar wholesale acquisition price in effect on the last day of a quarter on a unit basis as published by a third party source, such as First Databank or MediSpan, or its successor publication for each Supplemental Covered Product.

MANUFACTURER’S RESPONSIBILITIES

4.1 Manufacturer will calculate and provide each Participating State a CMS Rebate for the Supplemental Covered Product(s), which includes the CMS Basic Rebate and CMS Additional Rebate, as appropriate, in accordance with the terms of the CMS Agreement. Manufacturer’s obligation for CMS Rebates will continue for the duration of the Manufacturer’s CMS Agreement.

4.2 In addition to the CMS Rebates described in Section 4.1 of this Agreement, Manufacturer will remit to each Participating State a State Supplemental Rebate for the Supplemental Covered Product(s) that are in each Participating States’ Preferred Drug List Program. The State Supplemental Rebates will be calculated on a calendar quarter basis and provided via invoices to the Manufacturer’s CMS financial contact. The State Supplemental Rebates for the quarter will be determined by applying the applicable Supplemental Rebate Amount to the State Utilization data for each Supplemental Covered Product in the preceding quarter. The Manufacturer’s obligation for State Supplemental Rebates will continue for the duration of this Agreement. The Supplemental Rebate Amount calculation is described in “Supplemental Rebate Calculation, Schedule 3”.

4.3 The Manufacturer's obligation for State Supplemental Rebates will begin _____ [DATE] and will continue through the Rebate Billing Period that ends _____ [DATE], subject to each Participating States' actual Participation Commencement Date as described in Section 3.15, *supra*. Notwithstanding the above, the Participating States reserve the right to solicit annually more favorable State Supplemental Rebates from Manufacturer by giving written notice thereof no less than ninety (90) days prior to the yearly anniversary of the effective date of this Agreement.

4.4 The quarters to be used for calculating the Rebates in Sections 4.2-4.3 of this Agreement will be those ending on March 31, June 30, September 30, and December 31 of each calendar year during the term of this Agreement.

4.5 The participating Manufacturer will be required to submit each Participating State's State or Participating Medicaid MCO Supplemental Rebate payment within 38 days of the Manufacturer's receipt of the Participating State's Rebate Summary.

4.6 The Manufacturer will pay the State Supplemental Rebates in accordance with Section 1903(d)(5) of the Act. Interest on the State Supplemental Rebates payable under Section 4.2 of this Agreement shall begin to accrue thirty-eight (38) calendar days from the postmark date of the State and each Participating State's invoice sent to the Manufacturer and interest will continue to accrue until the postmark date of the Manufacturer's payment.

The Manufacturer's failure to remit the State Supplemental Rebate Amount in a timely manner may result in one or more of the following at the sole discretion of Prime with the advice and consent of Participating State:

- a. notification to the affected Participating State(s),
- b. removal of the Manufacturer's Supplemental Covered Product(s) from the Participating State's PDL,
- c. exclusion from future solicitation opportunities for Participating States, and/or
- d. referral to the Participating State's Attorney General and/or counsel for the Participating State and/or Collection Agency for collection action.

4.7 Manufacturer agrees to continue to pay State Supplemental Rebates on the Supplemental Covered Product(s) for as long as this Agreement or any of its Addenda are in force, and State Utilization data shows that payment was made for that drug, regardless of whether the Manufacturer continues to market that drug. Manufacturer's obligation to pay State Supplemental Rebates on the Supplemental Covered Product(s) shall terminate twelve (12) months following the last expiration date of the last lot of Supplemental Covered Product sold by the Manufacturer. Notwithstanding the above, in the event Manufacturer's Supplemental Covered Product(s) is/are sold to another manufacturer, the original Manufacturer shall have no liability for rebates on utilization beyond those required by the Medicaid program. Manufacturer shall provide the State and Prime with notice of the sale of said Supplemental Covered Product(s) concurrent with Manufacturer's notice to CMS.

4.8 Unless notified otherwise, Manufacturer will send Rebate payments by certified mail, return receipt requested, to the address provided to Manufacturer in each individual Participation Agreement.

PARTICIPATING STATE(S)' RESPONSIBILITIES

5.1 Each Participating State will consider the Manufacturer's Supplemental Covered Product(s) for inclusion in the Participating State's Preferred Drug List Program. Each individual Participating State reserves the right to select the products that will be in its Preferred Drug List Program and will only receive State Supplemental Rebates for Manufacturer's Supplemental Covered Products that are actually included in its Preferred Drug List Program effective on or after the applicable Participation Commencement Date. Manufacturer shall pay Participating States' State Supplemental Rebates based upon Participating State(s)' utilization of Manufacturer's Supplemental Covered Product(s), as reflected in Participating State Utilization data. Notwithstanding the forgoing, Manufacturer shall not be obligated to pay State Supplemental Rebates to a Participating State for a Supplemental Covered Product for any period during which such Participating State subjected that Supplemental Covered Product to a prior authorization requirement, unless: (i) such Supplemental Covered Product has been assigned to a Product Category and all products in the Product Category are subject to prior authorization requirements; (ii) or Manufacturer has explicitly agreed to the terms of such controls as to such Supplemental

Covered Product in writing as part of its State Supplemental Rebate terms, as set forth in the Supplemental Rebate Matrix, Schedule 2. If a Participating State determines that prior authorization is required for any Supplemental Covered Product, then the Participating State will comply with any provisions of Section 1927(d) of the Social Security Act applicable to prior authorization programs.

5.2 To the extent permitted by CMS and applicable law, any Participating State added hereunder may elect, but shall not be required, to include Participating State Utilization data from Participating Medicaid MCOs in their Supplemental Rebate invoices, provided that the Participating State provide to Prime an executed and complete copy of Attachment A-2 indicating such election, as well as a copy of the applicable Participating State Medicaid Plan (and/or amendment thereto) permitting such election.

5.3 The State and/or Prime shall notify the Manufacturer monthly of adoption and publication of a new or revised Preferred Drug List, whenever a Participating State adds one of Manufacturer's Supplemental Covered Products to its Preferred Drug List.

5.4 Each Participating State will provide aggregate State Utilization data to the Manufacturer on a quarterly basis. These data will be consistent with any applicable Federal or State guidelines, regulations and standards for such data, and will be the basis for the Participating State's calculation of the State Supplemental Rebate.

5.5 Each Participating State will maintain those data systems used to calculate the State Supplemental Rebates. In the event material discrepancies are discovered, the Participating State will promptly justify its data or make an appropriate adjustment, which may include a credit as to the amount of the State Supplemental Rebates, or a refund to Manufacturer as the parties may agree.

5.6 Each Participating State shall maintain electronic claims records for the most recent four quarters that will permit Manufacturer to verify through an audit process the Rebate Summaries provided by the Participating State with respect to its fee-for-service Medicaid utilizations, subject to applicable law and state audit guidelines.

5.7 Prime, as the pharmacy benefit administrator, may assist the Participating States in fulfilling its responsibilities hereunder and is a party to this Agreement solely in its capacity as agent for, and subject to the supervision and oversight of, the Participating State(s).

5.8 The State and each Participating State shall obtain CMS approval of its state Medicaid plan of which this Agreement forms a part. Manufacturer shall not be obligated to remit any Supplemental Rebates that have accrued and are due under this Agreement until after the affected State or Participating State has obtained CMS approval of its Supplemental Rebate Program of which this Agreement forms a part.

DISPUTE RESOLUTION

6.1 In the event that in any quarter a discrepancy in a Participating State's State Utilization data is questioned by the Manufacturer, which the Manufacturer and the Participating State in good faith are unable to resolve, the affected parties shall attempt to reconcile all differences through discussion and negotiation; if that attempt fails, the parties will resolve their dispute in accordance with generally applicable procedures followed by the affected Participating State or CMS in disputes concerning CMS Rebates. Notwithstanding anything to the contrary herein, any dispute relating to eligibility of Participating MCO utilization for State Supplemental Rebates hereunder shall be resolved exclusively between the Manufacturer and the Participating State.

6.2 If the Manufacturer, in good faith, believes the Participating State's State Utilization data is erroneous, the Manufacturer shall pay the Participating State that portion of the rebate claimed, that is not in dispute by the required date. The balance in dispute, including applicable interest, if any, will be paid by the Manufacturer to the Participating State by the due date of the next quarterly payment after resolution of the dispute.

6.3 The Participating State and the Manufacturer will use their best efforts to resolve the discrepancy within 60 days of receipt of written notification. Should additional information be required to resolve disputes, the Participating State and Prime will cooperate with the Manufacturer in obtaining the additional information.

6.4 In the event that the Participating State and the Manufacturer are not able to resolve a discrepancy regarding State Utilization data, as provided for in Sections 6.1 through 6.3, the Manufacturer may request a reconsideration of the Participating State's determination within 30

days after the end of the 60 day period identified in Section 6.3. The Manufacturer shall submit with its written request its argument in writing, along with any other materials, supporting its position to the Participating State and Prime. The Participating State shall review the written argument and materials and issue a decision in the matter.

CONFIDENTIALITY PROVISIONS

7.1 The parties agree that confidential information will not be released to any person or entity not a party to this contract. Confidential information, including but not limited to trade secrets, rebate pricing data, and terms of manufacturer agreements, will not be disclosed or used except in order to implement this Agreement or as may be required by law or judicial order. In the event Participating State terminates its PBA Services agreement with Prime, Prime shall not be obligated to transition confidential information to a third party competitor of Prime, except as may be required by law, for a period of not less than three (3) years following such termination.

7.2 Subject to Section 7.3 hereof, the Manufacturer will hold Participating States' State Utilization data confidential. If the Manufacturer audits this information or receives further information on such data from Prime or a Participating State, that information shall also be held confidential. The Manufacturer shall have the right to disclose Participating State(s)'s State Utilization data to auditors who agree to keep such information confidential; provided, however, that the Manufacturer shall provide prior written notice to Prime and the applicable Participating State(s) of any such disclosure, including the identity of the auditor and the purpose of the audit.

7.3 Pursuant to 42 USC 1396r-8(b)(3)(D), and other applicable state or federal laws, the parties agree that this Agreement and all information provided pursuant to this Agreement will not be disclosed and that the parties will not duplicate or use the information, except in connection with this Agreement or as may be required by law or judicial order. The parties further agree that any information provided by Manufacturer to the State, Prime, or the Participating State(s) pursuant to this Agreement and this Agreement itself constitute trade secrets and/or confidential or proprietary commercial and financial information not subject to public disclosure. Furthermore, the parties agree that any Manufacturer information received by Prime pursuant to this Agreement and distributed by Prime to the State and/or Participating States shall constitute trade secrets and/or confidential or proprietary commercial and financial information of the Manufacturer not subject to public disclosure, except as otherwise provided for herein. If the services of a third party are used to administer any portion of this Agreement, Sections 7.1

through 7.4 of this Agreement shall apply to the third party. In the event a Participating State cannot give satisfactory assurance that rebate pricing data provided under this Agreement will be exempt from public disclosure under applicable state law, then Prime, without assuming responsibility for any wrongful disclosure by a Participating State, shall limit the amount of such data made available to the Participating State by not disclosing to the Participating State any NDC-level pricing information. For purposes hereof “satisfactory assurance” shall be deemed given when the Participating State enters the statutory cite of the applicable exemption on its Participation Agreement. In the event that either party is required by law to disclose any provision of this Agreement or pricing information to any person, such party shall provide advance written notice to the other party sufficiently in advance of the proposed disclosure to allow the other party to seek a protective order or other relief.

7.4 Notwithstanding the non-renewal or termination of this Supplemental Rebate Agreement for any reason by any party, these confidentiality provisions will remain in full force and effect to all parties.

NON-RENEWAL or TERMINATION

8.1 This Agreement shall be effective as of _____ [DATE] and shall have the term indicated in Section 4.3, *supra*.

8.2 In the event of nonrenewal or termination with respect to the State or one or more Participating States, this Agreement shall remain in effect with respect to the remaining parties.

8.3 State or any Participating State may terminate its participation in this Agreement by giving Manufacturer and Prime written notice at least (90) days prior to the anniversary date of this Agreement, in which case termination shall become effective as to the terminating State or Participating State on the anniversary date of the date of execution of this Agreement. The termination of this Agreement by State or Participating States shall not affect the Manufacturer’s, Prime’s or State’s or Participating States’ obligations under this Agreement. Manufacturer may terminate this Agreement and all Addenda by giving all Participating States and Prime written notice at least ninety (90) days prior to the anniversary date of this Agreement, in which case termination shall become effective on the anniversary date of the date of execution of this

Agreement. Manufacturer's right of termination is limited to the right to terminate the entire Agreement. Manufacturer may not terminate specific Addendum/Addenda of less than all Participating State(s). In addition, this Agreement shall be co-terminous with the CMS Rebate agreement, in the event that such agreement is terminated for any reason.

8.4 Termination by Prime Client of its PBA Services agreement with Prime shall, as of the same termination effective date, terminate this Agreement as to that Participating State. In the event of such termination by Participating State, Prime will provide Manufacturer with an updated Catalogue of NMPI Participating State Medicaid Programs (Attachment B) to this Agreement. Accordingly, in the event of such termination, Prime shall have no additional obligation to administer the terms of this Agreement as to such Participating State as of the effective date of such termination; unless Prime and the terminating Participating State agree in writing upon mutually acceptable terms for run-out invoicing and processing State Supplemental Rebates accrued prior to termination. In addition, State Supplemental Rebates shall cease to accrue with respect to a Participating State as of the effective date that a Participating State terminates its PBA Services Agreement with Prime.

8.5 Notwithstanding any non-renewal or termination of this Agreement, State Supplemental Rebates will still be due and payable from the Manufacturer under Section 4.2 for any Supplemental Covered Products for which Participating State(s)' obligation to reimburse arose prior to the effective date of termination of this Agreement.

8.6 On at least an annual basis, or at the sole discretion of Prime, Manufacturer shall have the opportunity to enhance the GNUP of its Supplemental Covered Products to increase the likelihood of product(s) utilization and/or inclusion in the Participating States Preferred Drug List Programs.

GENERAL PROVISIONS

9.1 This Agreement will be governed and construed in accordance with 42 U.S.C. § 1396r-8 and all other applicable federal and state law and regulations.

9.2 All written notices, requests and communications, unless specifically required to be given by a specific method, may be: (i) delivered in person, obtaining a signature indicating successful delivery; (ii) sent by a recognized overnight delivery service, obtaining a signature indicating successful delivery; or (iii) sent by certified mail, obtaining a signature indicating successful delivery, to the address set forth below. Notwithstanding the forgoing, notices other than those pertaining to contract termination, amendment, assignment, and breach, which may include, but not be limited to State Supplemental Rebate invoices, shall not be subject to the formal “notice” requirements, and may be transmitted by Prime and/or the applicable Participating State to the Manufacturer via US Mail or electronic means, which may include, without limitation, facsimile or electronic mail, and any electronic communication shall be considered received as of the date/time of such electronic transmission by the sender. Notice dates for web invoices, if any, shall be determined in accordance with CMS Rebate invoicing guidance (Medicaid Drug Rebate Program Release No. 80 (Jan. 5, 2010)). Notice to individual Participating States will be sent to the addressees specified in each individual Participating State’s Participation Agreement.

Notices shall be sent to the following addresses:

To the State: State of Michigan
Department: Department of Health & Human Services, Health Services
Attn: Chief Deputy Director
Address: 400 S. Pine Street, Lansing, MI 48933

To Prime: Prime Therapeutics State Government Solutions, LLC.
Attn1: Supplemental Rebate Contracting
Attn2: Legal Counsel – State Public Sector
Address: 2900 Ames Crossing Road, Suite 200, Eagan, MN 55121
Email: RebateContracting@primetherapeutics.com

To Manufacturer: [Company Name]
Attn1: [Attention]
Address: [Street Number, City, State, Zip]
Phone: [Phone Number]
Email: [Email Address]

9.3 The Manufacturer agrees to be bound by the laws of the United States of America and with respect to each Participating State, the law of that Participating State. Proper venue in any legal action shall be the venue of the Participating State that is party to the proceeding. Any action

brought by Manufacturer must be brought separately against individual Participating States or Prime, unless all affected Participating States and Prime consent to joinder of the actions.

9.4 Nothing herein shall be construed or interpreted as limiting or otherwise affecting Prime or Participating State(s) ability to pursue its rights arising out of the terms and conditions of the Agreement in the event that a dispute between the parties is not otherwise resolved.

9.5 Manufacturer and the agents and employees of Manufacturer in the performance of this Agreement, will act in an independent capacity and not as officers, employees or agents of Prime or any Participating State.

9.6 Manufacturer may not assign this Agreement, either in whole or in part, without written notice to Prime, as agent for Participating States, at the address shown in Section 9.2. However, in the event of a transfer in ownership of the Manufacturer, the Agreement is automatically assigned to the new owner subject to the conditions in this Agreement. If the Agreement is assigned pursuant to this Section, Manufacturer shall provide Prime, as agent for Participating States, with an update of the information contained in Section 9.2, and any assignee shall be fully responsible for compliance with all terms and conditions of this Agreement applicable to Manufacturer.

9.7 Nothing in this Agreement will be construed so as to require the commission of any act contrary to law. If any provision of this Agreement is found to be invalid or illegal by a court of law, or inconsistent with federal requirements, this Agreement will be construed in all respects as if any invalid, unenforceable, or inconsistent provision were eliminated, and without any effect on any other provision.

9.8 Prime, Participating State(s) and Manufacturer declare that this Agreement, including attachments, schedules and addenda, contains a total integration of all rights and obligations of the parties. There are no extrinsic conditions, collateral agreements or undertakings of any kind. In regarding this Agreement as the full and final expression of their contract, it is the express intention of the parties that any and all prior or contemporaneous agreements, promises, negotiations or representations, either oral or written, relating to the subject matter and period

of time governed by this Agreement which are not expressly set forth herein are to have no force, effect, or legal consequences of any kind.

9.9 This Agreement may not be altered except a written amendment signed by all Parties, other than in the case of the addition or removal of a Participating State(s), by its execution or termination of the Participation Agreement. Prime may add or remove a Participating State through the execution of a Participation Agreement and may update the list of the NMPI Participating States (Attachment B hereto) by providing notice to the Manufacturer, without requiring the Manufacturer's consent. Manufacturer agrees that any Participating State may be a participant to this Agreement by signing a Participation Agreement and that said Participating State's covered Medicaid (and other non-Medicaid programs approved by CMS in the Medicaid state plan(s)) lives shall apply to the provisions of Schedules 2 and 3. The Participation Agreement shall be executed by Prime and the new Participating State with a copy provided to Manufacturer for its records, along with an updated Catalogue of NMPI Participating States (Attachment B) to this Agreement.

No individual is authorized to modify or vary the terms of this Agreement, or to make any representation or inducement relative to it, unless such modification is set forth in a written amendment, signed by duly appointed representatives of Prime, the Participating State and the Manufacturer, in accordance with the Participating State's Medicaid Plan approved by CMS.

Upon request by a Participating State through Prime, and upon receipt of a proposed amendment, the Manufacturer shall negotiate in good faith with Prime to amend this Agreement if, in the opinion of one or more affected Participating States and Prime, such amendment is necessary to comply with applicable federal or state laws or regulations. If the Parties are unable to reach agreement on the proposed amendment within sixty (60) days of its submission, or within a shorter period if required by law, Prime may terminate this Agreement with the advice and consent of all affected Participating States.

Notwithstanding the foregoing, the Parties acknowledge that, during the Term of this Agreement, any modifications to the Schedules or Attachments shall only require the signatures specified in the respective Schedule or Attachment being modified.

9.10 The parties do not contemplate any circumstances under which indemnification of the other parties would arise. Nevertheless, should such circumstances arise, Manufacturer agrees to indemnify, defend and hold harmless the Participating States and Prime, their officers, agents and employees from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Manufacturer in the performance of this Agreement.

9.11 Participating States respectively represent that it is the intent and expectation that State Supplemental Rebates hereunder shall be excluded from Manufacturer's calculation of Best Price or AMP.

9.12 If Prime or a Participating State makes changes to a Product Category that are considered to be a material change in the structure of the supplemental rebates program, Manufacturer may be allowed to re-submit bids for the Product Category/Categories affected.

9.13 As evidence of their Agreement to the foregoing terms and conditions, the parties have signed below.

[Manufacturer Name]:

Name: _____ Signed: _____

Title: _____ Date: _____

Prime Therapeutics, State Government Solutions, LLC.:

Name: _____ Signed: _____

Title: _____ Date: _____

State of Michigan, Department of Health & Human Services:

Name: _____ Signed: _____

Title: _____ Date: _____