

36635

340B CONTRACT PHARMACY SERVICES AGREEMENT

This 340B Contract Pharmacy Services Agreement ("Agreement") is made by and between Walgreen Co. ("Contract Pharmacy") and the City of Long Beach, a municipal corporation, (the "City"), who individually each may be referred to as "Party" or collectively as "Parties." This Agreement shall become effective on the date of full execution ("Effective Date").

RECITALS

WHEREAS, Contract Pharmacy has appropriate licensure in place in order to provide the Pharmacy Services described in this Agreement;

WHEREAS, City provides healthcare services to Patients at City eligible sites that have been registered with HRSA for inclusion in its public database (each a "Covered City Site");

WHEREAS, City desires to engage Contract Pharmacy to provide Pharmacy Services as further specified in this Agreement and Contract Pharmacy desires to accept such engagement; and

WHEREAS, Contract Pharmacy agrees to manage and dispense Covered Drugs pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

- 1.1. "340B Cost" means the discounted cost available to City from the Drug Wholesaler as set forth in the Price File .
- 1.2. "340 Program" means the federal discount drug pricing program established under Section 340B of the Public Health Service Act and codified at 42 USC 256b and administered by the Office of Pharmacy Affairs within HRSA.
- 1.3. "Aged Drug" means a Covered Drug dispensed by Contract Pharmacy in an amount less than full package size that has not subsequently been dispensed within ninety (90) days of the date that such Covered Drug was last dispensed by a Contract Pharmacy Location.
- 1.4. "Agreement" means this agreement, the recitals, all exhibits, schedules, addenda, and attachments hereto, taken collectively, as they may be amended from time to time.
- 1.5. "Brand Drug" shall mean a drug designated as "brand" by Medispan or a similar product catalog and is available from a single manufacturer and designated as a brand name by a nationally recognized price-reporting service.
- 1.6. "City Site" means an eligible site that has been registered with HRSA for inclusion in its public database. A list of City Sites registered with HRSA as of the date on which this Agreement is executed are included in Attachment 1. The Parties agree that the list of City Sites will be automatically updated on the first day of each quarter to reflect sites that have been added or removed from the HRSA database. Update will be by reference only without the need for either Party to revise the existing text of Exhibit A. The Parties agree that the terms and conditions of this Agreement shall apply to the City, its City Sites and all City registered child sites.

- 1.7. "Community Benefit Program" means a program City provides for uninsured or underinsured Patients wherein City will subsidize dispensing fees for eligible Patients. The Community Benefit Program will be established via the Community Benefit Program Authorization Form.
- 1.8. "Confidential Information" means all confidential or proprietary information of a Party whether in oral, written or electronic form, whether prepared by such Party or its employees, agents, and/or sub-contractors that concerns the business of such Party, the terms of this Agreement, and/or the services provided by such Party pursuant to this Agreement. Confidential Information shall include, but is not limited to, a Party's proprietary business information, reimbursement rates, pricing information, reports, analyses, compilations, studies, operating margins, merchandising and selling techniques, internal policies and procedures, contracts, and other business or industry information which, if disclosed could be used by another person or entity to disadvantage a Party or any affiliates thereof. Confidential Information shall include all Patient information relating to Claims and other records, which if disclosed, could result in a violation of state and/or federal healthcare privacy and confidentiality laws.
- 1.9. "Contract Pharmacy Locations" means the locations where Contract Pharmacy agrees to provide Pharmacy Services under this Agreement as set forth in Attachment 2. Contract Pharmacy shall provide the City with written notice of any change in the specific pharmacy locations through which Contract Pharmacy manages and dispenses medications pursuant to the City's 340B Program. The notice shall be accompanied by an updated Exhibit B reflecting such change(s), and shall identify the effective date of the change(s), which shall not be less than thirty (30) days following the issuance of the notice. Any changes to Exhibit B will be incorporated into this Agreement by a written amendment, signed by the parties. For purposes of clarity, the Parties acknowledge and agree that the pharmacy locations listed in Exhibit B are contract pharmacies for purposes of HRSA's contract pharmacy guidelines (75 Federal Register 10272 (2010)), and as such they may be utilized to manage and dispense medications pursuant to the City's 340B Program. The Pharmacy Locations shall only be available to provide Pharmacy Services for so long as such locations are registered and identified as active in the HRSA 340B database.
- 1.10. "Contracted Rate" means the contracted and/or agreed upon reimbursement rate between Contract Pharmacy and the applicable Private Insurer and includes any Taxes, Patient Copayment, or other amounts that may be due from a Patient or Private Insurer or arise out of the coordination of benefits, as applicable. The Contracted Rate is Walgreen's proprietary and confidential information; therefore, the City acknowledges and agrees that it will not request, and Contract Pharmacy will not provide, the Contracted Rate or any information which may disclose or enable the City to determine the Contracted Rate.
- 1.11. "Copayment" means that portion of the total reimbursed amount for each prescription dispensed to a Patient that the Contract Pharmacy is required to collect as indicated by a Private Insurer or their designated Claims processor, regardless of whether such is designated as a fixed amount (e.g., \$5.00), a coinsurance amount (e.g., 20%), a deductible, or a credit (e.g., through the issuance of a voucher).
- 1.12. "Covered Drug" means a drug dispensed by Contract Pharmacy under this Agreement, processed according to this Agreement, and replenished by City.

- 1.13. "Date of Service" means the date Contract Pharmacy dispenses a Covered Drug for a Patient pursuant to the terms of this Agreement.
- 1.14. "Dispensing Fee" means monies City pays to Contract Pharmacy (or retained by Contract Pharmacy, as the case may be) in connection with its provision of Pharmacy Services to Patients according to the terms set forth in Attachment 3 of this Agreement and if applicable, the Community Benefit Program Authorization Form. The Dispensing Fee shall be due only on a per completed eligible transaction basis (i.e. a prescription for a Covered Drug is appropriately dispensed to a Patient pursuant to the terms of this Agreement, the applicable attachment, and Community Benefit Program Authorization Form (if applicable)). Only one Dispensing Fee shall be due and payable per eligible transaction and the Dispensing Fee, together with the replenishment of the Covered Drug, shall be the Contract Pharmacy's exclusive reimbursement for Pharmacy Services provided pursuant to this Agreement.
- 1.15. "Drug Wholesaler" means an entity that is licensed under applicable laws and regulations to distribute legend and non-legend drugs and medical supplies to persons other than the final consumer or patient that has entered into a written agreement with City to provide Covered Drugs to Contract Pharmacy via a ship-to, bill-to arrangement.
- 1.16. "Eligible Claim" means a prescription for a Covered Drug written by a Health Care Provider, which is dispensed by the Contract Pharmacy to a Patient and meets the 340B Claim qualification criteria as established by City.
- 1.17. "Generic Drug" shall mean a drug designated as "generic" by Medispan or a similar product catalog and is sourced from multiple manufacturers and is designated as a generic drug by a nationally recognized price-reporting service selected by Contract Pharmacy.
- 1.18. "Health Care Provider" means any person duly licensed to render medical services to Patients; that is recognized under applicable laws and regulations as having authority to prescribe Covered Drugs; who is directly employed by City, has a contractual arrangement or other arrangement with City or provides medical services as a result of a referral from City, and has responsibility for Patient's care.
- 1.19. "HRSA" means the Health Resources and Services Administration.
- 1.20. "Inventory Replenishment Rate" means the amount due Contract Pharmacy for each Covered Drug dispensed by Contract Pharmacy but for which Contract Pharmacy does not receive replenishment from the Drug Wholesaler. The Inventory Replenishment Rate will be determined in accordance with Attachment A.
- 1.21. "Non-Eligible Covered Drugs" means drugs (based upon the NDC-11) that are not a Covered Drug, on the Price File, and/or eligible for the City's 340B Program.
- 1.22. "Patient" means an individual who meets the patient definition guidelines set forth under the 340B Program as determined by the City. All City patients who are Medicaid beneficiaries and for whom claims for pharmaceuticals are reimbursable by a state fee-for-service Medicaid program are expressly excluded from this definition.
- 1.23. "Pharmacy Services" means those professional services, including but not limited to the dispensing of Covered Drugs, provided by Contract Pharmacy under this Agreement.

- 1.24. "Price File" means the list of Covered Drugs and associated pricing available from the Drug Wholesaler.
- 1.25. "Private Insurer" means the third-party payor responsible: (i) for a Patient's prescription coverage; and (ii) to reimburse Contract Pharmacy the Contracted Rate for Pharmacy Services. The City acknowledges and agrees that absent a request from City to remove a Private Insurer from the City's 340B Program, all Private Insurers with whom Contract Pharmacy is in-network may be included in the City's 340B Program. Private Insurer does not include a state fee-for-service Medicaid program, or any third-party payor that requires identification of claims for 340B Drugs in a manner that is not operationally feasible as determined by Walgreens. Contract Pharmacy shall not be obligated to identify the Private Insurer to the City for any 340B transaction.
- 1.26. "Report" means the report(s) available to the City via Contract Pharmacy's online reporting and tracking system that describes activity pertaining to Contract Pharmacy's provision of Pharmacy Services and Inventory Maintenance Services. The City acknowledges availability of the Report is conditioned upon Drug Wholesaler maintaining an Electronic Data Interchange with Contract Pharmacy during the applicable Report period.
- 1.27. "Slow Moving Drug" means a Covered Drug dispensed by Contract Pharmacy that has not reached a full package size within one hundred eighty (180) days from the date that the Covered Drug was initially dispensed by any Contract Pharmacy Location.
- 1.28. "Usual and Customary Charge" means the amount charged by the Contract Pharmacy Location at the time of dispensing of a pharmaceutical product or service to a customer with no coverage by a third party payor, exclusive of: (i) Tax; (ii) discounts claimed; or (iii) discounts provided for prescription drug savings card or other similar discounts.
- 1.29. "WAC" means the current wholesale acquisition cost of the dispensed medication as defined in the latest edition published by Medispan, First Data Bank, Red Book or any other reference source (as Administrator may designate in its sole discretion). The Parties acknowledge that WAC is a list price only and does not reflect discounts, fees or other amounts provided to wholesalers or others which may affect the product's actual acquisition cost.

2. **CITY RESPONSIBILITIES**

- 2.1. **Patient Eligibility Verification.** Health Care Providers will provide all Patients with a valid prescription as required by law which will contain, but not necessarily be limited to, the applicable City Site name, address and identification number, the Health Care Provider's name, and the Patient's full name. The prescription must be written or sent to Contract Pharmacy by a Health Care Provider. City may also provide each Patient whose prescriptions are not reimbursable by a Private Insurer with a voucher or similar document that sets forth the amount that Contract Pharmacy shall collect from the Patient at the time of dispensing. In addition, City will provide Contract Pharmacy (or an entity designated by Contract Pharmacy) with: (i) a list of Health Care Providers on a mutually agreed upon frequency; (ii) either (a) a mutually agreed upon unique identifier affixed to prescriptions, or (b) an electronic file of City's patients that contains the data elements agreed to by the Parties, updated a minimum of one time each day via electronic interface and subject to the terms of the Business Associate Addendum, attached hereto as Attachment 4; and (iii) any other patient eligibility information agreed to by the Parties. The information described herein, as mutually agreed by the Parties, and that City provides to Contract Pharmacy or its delegate, will establish patient eligibility and serve as

evidence of City's authorization for Patients to receive Covered Drugs ("Authorization"). In the event that at any time during the term of this Agreement Contract Pharmacy does not receive the information necessary to establish Authorization, Contract Pharmacy shall not be obligated to perform under this Agreement, including its obligations to provide Pharmacy Services or Inventory Maintenance Services (except with respect to any Covered Drugs already dispensed by Contract Pharmacy), until such time as Contract Pharmacy receives the necessary Authorization information.

- 2.2. Drug Wholesaler. City acknowledges and agrees that establishing a successful replenishment process with a Drug Wholesaler is essential to this Agreement and Contract Pharmacy's provision of Pharmacy Services and Inventory Maintenance Services. City will use best efforts to establish and maintain a Drug Wholesaler arrangement agreeable to Contract Pharmacy. Concurrent with the Effective Date or as soon as reasonably practicable thereafter, City shall provide Contract Pharmacy with written notice of the identity of the Drug Wholesaler. City shall not utilize any Drug Wholesaler to which Contract Pharmacy reasonably objects. In the event that at any time during the term of this Agreement Contract Pharmacy is unable to successfully place an order with Drug Wholesaler for replacement Covered Drugs or reasonably believes such orders shall not be replenished by Drug Wholesaler, Contract Pharmacy shall not be obligated to perform its obligations under this Agreement, including its obligations to provide Pharmacy Services or Inventory Maintenance Services (except with respect to any Covered Drugs already dispensed by Contract Pharmacy), until such time as Contract Pharmacy is able to place a successful order for replenishment.
- 2.3. Orders and Payment to Drug Wholesaler. City shall purchase Covered Drugs through a written contract with Drug Wholesaler and will ensure that Drug Wholesaler: (i) bills City for such Covered Drugs; and (ii) ships such Covered Drugs to the applicable Pharmacy Location. City will notify Contract Pharmacy at least one hundred twenty (120) calendar days prior to any change in the Drug Wholesaler used to provide Covered Drugs hereunder. In the event City fails to notify Contract Pharmacy of a change in Drug Wholesaler as required herein: (i) City will reimburse Contract Pharmacy in accordance with the Usual and Customary Charge for any pharmaceuticals dispensed by Contract Pharmacy after the effective date of such change; and (ii) Contract Pharmacy will not reverse any claim or make adjustments to its Invoices due to changes in the Drug Wholesaler. The Parties further agree that:
 - 2.3.1. For each Covered Drug dispensed that reaches depletion at a full package size, Contract Pharmacy will order from Drug Wholesaler (on behalf of City) replacement Covered Drugs with the same NDC-11 as the Covered Drug dispensed. City, through Drug Wholesaler, will ensure that such replacement Covered Drugs are delivered by Drug Wholesaler to the applicable Pharmacy Location.
 - 2.3.2. City shall promptly review the Report and notify Contract Pharmacy of any discrepancies between the information contained on the Report and the amount billed to City by the Drug Wholesaler. Upon request from Contract Pharmacy, City will promptly provide Contract Pharmacy with copies of Drug Wholesaler invoices pertaining to Covered Drugs received by Contract Pharmacy.
 - 2.3.3. City will establish account numbers with Drug Wholesaler for each Pharmacy Location and otherwise ensure that each such location may order and receive deliveries of replenishment Covered Drugs from Drug Wholesaler.
 - 2.3.4. City will make timely payments to Drug Wholesaler in accordance with the terms of City's written agreement with Drug Wholesaler.

- 2.3.5. City will hold title to replacement Covered Drugs from the time Drug Wholesaler fills an order from Contract Pharmacy made on behalf of City until the time that Contract Pharmacy takes delivery of such drugs at the applicable Pharmacy Location, at which time title shall pass to Contract Pharmacy.
- 2.4. Price File. Contract Pharmacy will endeavor to obtain the Price File from Drug Wholesaler. City acknowledges and agrees that: (i) if for any reason Contract Pharmacy is unable to obtain the Price File from Drug Wholesaler, City will provide the Price File to Contract Pharmacy upon request from Contract Pharmacy; and (ii) Contract Pharmacy may rely on all information set forth on any Price File that Contract Pharmacy receives. In the event that City fails to comply with the requirements of this Section 2.4, Contract Pharmacy will not retroactively adjust claims.
- 2.5. Changes with Benefit Design. City will notify Contract Pharmacy at least sixty (60) calendar days prior to any changes to the amount that Contract Pharmacy shall collect at the time of dispensing from each Patient whose prescription is not reimbursable by a Private Insurer.
- 2.6. Compliance with Laws. City's compliance with laws shall include establishing appropriate control procedures to ensure that only Patients receive Covered Drugs from City's authorized Contract Pharmacy Locations. In addition, City represents and warrants that it has received all necessary approvals of its 340B Program and this Agreement as required by applicable laws and regulations. City agrees to execute any documents Contract Pharmacy deems reasonably necessary to effectuate the terms of this Agreement, including the provision of Pharmacy Services and Inventory Maintenance Services, consistent with applicable law.
- 2.7. Product Warranty. Upon request from Contract Pharmacy and to the extent it is reasonably able to do so, City shall pass through to Contract Pharmacy all applicable benefits under any and all manufacturer warranties and indemnification obligations with respect to any merchandise which Contract Pharmacy receives to replenish its inventory of Covered Drugs dispensed to Patients. Upon request from Contract Pharmacy, City will obtain from the Drug Wholesaler a certificate of insurance for product liability, continuing guarantee and indemnification for Covered Drugs. City will use commercially reasonable efforts to ensure that the Drug Wholesaler obtains from all merchandise manufacturers an assumption of responsibility and the defense and indemnification of City and Contract Pharmacy in connection with Covered Drugs, the packaging thereof, and any related materials for third party claims made against City and Contract Pharmacy. In addition, City will use commercially reasonable efforts to ensure the Drug Wholesaler complies with the applicable rules and regulations as promulgated by the U.S. Food and Drug Administration, and any other applicable federal, state and local laws and regulations in effect as of the Effective Date of this Agreement or as enacted or adopted during the term hereof, with respect to title and transfers thereof to the merchandise.

3. CONTRACT PHARMACY REQUIREMENTS

- 3.1. Contract Pharmacy represents: (a) it is in good standing with all applicable State Board(s) of Pharmacy and all other applicable government oversight agencies and possesses all valid licenses and registrations as required to provide Pharmacy Services as set forth in this Agreement; (b) neither it nor any of its pharmacists currently have a required license which is suspended or revoked; and (c) it shall ensure that the information provided to City in connection with Pharmacy Services is and will continue to be true and complete.

- 3.2. Upon receipt of an Authorization, Contract Pharmacy shall lawfully render Pharmacy Services and or cause Covered Drugs to be dispensed to Patients in a manner consistent with applicable legal and regulatory requirements the terms of this Agreement and in the same manner and quality as provided in the ordinary course of business absent this Agreement.
- 3.3. Contract Pharmacy shall not discriminate in the provision of Pharmacy Services and shall in all instances dispense Covered Drugs to Patients pursuant to the terms set forth in this Agreement. Notwithstanding the foregoing, it shall not be considered discriminatory or otherwise a violation of its obligations under this Agreement if a Contract Pharmacy pharmacist, based on his/her professional training, knowledge, skill and experience, refuses to dispense a Covered Drug to a Patient for any reason. Nothing in this Agreement is intended to create nor shall it be construed to create any rights for City to intervene in any manner by which Contract Pharmacy provides services to Patients.
- 3.4. Contract Pharmacy agrees to reasonably cooperate with City in the review and resolution of complaints or appeals by Patients related to the provision of Pharmacy Services.
- 3.5. Contract Pharmacy shall maintain an adequate inventory of supplies, drugs, equipment, and other items as required for the provision of Pharmacy Services.
- 3.6. Inventory Maintenance Services. Contract Pharmacy shall provide the Covered Drug inventory maintenance services set forth herein with respect to City ("Inventory Maintenance Services"). Each Covered Drug shall be dispensed from a Contract Pharmacy Location's customarily maintained non-340B-priced inventory at the 340B Cost and shall be replenished with 340B Cost-priced inventory with the same NDC-11 as the drug dispensed. The Inventory Maintenance Services provided by Contract Pharmacy hereunder will include the following:
 - 3.6.1. In accordance with Section 2.3 of this Agreement, including sub-parts, for each Covered Drug that reaches depletion at a full package size, Contract Pharmacy will order Covered Drugs from the Drug Wholesaler on behalf of the applicable City Site in order to replenish the Covered Drugs dispensed to Patients by Contract Pharmacy.
 - 3.6.2. City will reimburse Contract Pharmacy the Inventory Replenishment Rate for any Covered Drugs which Contract Pharmacy cannot or does not receive at the NDC-11 level replenishment from the Drug Wholesaler for a period greater than forty-five (45) calendar days from the original date of an order fulfillment attempt by the Drug Wholesaler ("Overdue Drug").
 - 3.6.3. Contract Pharmacy may block the dispensing of any Covered Drugs on the Price File that Contract Pharmacy determines it is unable to manage and dispense due to logistical and/or operational constraints ("Blocked Drug"). In addition, Contract Pharmacy may require City to remove Blocked Drugs from the Price File or discontinue prescribing such drugs for their 340B Program. City acknowledges that any Covered Drugs dispensed prior to becoming a Blocked Drug shall be subject to the Aged Drug or Slow Moving Drug replenishment process, as applicable. In the event a Health Care Provider writes a prescription for a Blocked Drug, City acknowledges and agrees such prescription shall be considered a Non-Eligible Covered Drug and Contract Pharmacy may collect the Usual and Customary Charge from the patient.
 - 3.6.4. City will reimburse Contract Pharmacy the Inventory Replenishment Rate for Aged Drugs and Slow Moving Drugs.
- 3.7. Tracking System. Contract Pharmacy maintains proprietary electronic tracking software that is capable of tracking Covered Drugs received from the Drug Wholesaler, creating Reports,

helping City prevent the diversion of Covered Drugs to individuals who are not Patients, and verifying that such diversion has not occurred (“340B Complete®”). 340B Complete® shall be able to provide comparisons of Patient prescriptions and dispensing records and a comparison of Covered Drug purchasing and dispensing records. Contract Pharmacy will reasonably cooperate with City to address any potential irregularities detected in 340B Complete® and will make adjustments to 340B Complete® that are reasonably necessary to prevent diversion of Covered Drugs to individuals who are not Patients. Notwithstanding the foregoing, however, City acknowledges and agrees it is the sole responsibility of the City to review the Reports and information available in 340B Complete® to confirm that no diversion has occurred and that the Reports and 340B Complete® are tools provided by Contract Pharmacy to assist City in that review. City agrees to report any suspected instance of diversion to Contract Pharmacy within forty-five (45) days from the end of the month in which the prescription was dispensed and upon the mutual agreement of the Parties, Contract Pharmacy shall make adjustments to the claim (e.g., reclassify the product as a Non-Eligible Covered Drug).

3.8. **Inventory Reconciliation.** On a monthly basis, Contract Pharmacy will reconcile Covered Drug inventory using the information available in the Reports and 340B Complete®, and make any necessary financial or accumulator adjustments as described below (“**Reconciliation**”). Reconciliation shall be conducted at the NDC-11 level and only apply with respect to pharmaceuticals that have reached full package size, or are an Aged Drug or Slow Moving Drug, and for which Contract Pharmacy has or should have received replenishment from the Drug Wholesaler.

3.8.1. ***Non-Eligible Patients and Excess Replenishment.*** In the event Contract Pharmacy determines that Covered Drugs have been dispensed to non-eligible Patients or that the quantity of Covered Drugs provided to Contract Pharmacy exceeds the quantity of Covered Drugs dispensed to Patients hereunder, Contract Pharmacy will adjust the virtual inventory so that such excess is applied against existing or future Covered Drug prescriptions dispensed hereunder. If such inventory credits are not depleted by subsequent Covered Drug dispenses from Contract Pharmacy Locations, Contract Pharmacy will reimburse City for such remaining drugs in accordance with WAC. City shall be responsible for assessing if the adjustment is the result of any noncompliance and if so determine whether it is required to self-disclose the noncompliance per HRSA guidelines. The Parties acknowledge and agree that City shall remain ultimately responsible for the compliance of its 340B Program and any corresponding self-reporting as necessary. With respect to adjustments made for dispenses of Covered Drugs to non-Eligible Patients, the following additional financial adjustments will apply:

3.8.1.1. ***Non-Eligible Patients With a Private Insurer.*** The drugs associated with the adjusted claim(s) shall be considered Non-Eligible Covered Drugs and City shall not receive any amounts arising out of the Contracted Rate. To the extent City previously received, or was credited for, any amounts arising out of the Contracted Rate, City shall immediately remit such amounts to Contract Pharmacy or forfeit such credits.

3.8.1.2. ***Non-Eligible Patients Without a Private Insurer.*** The drugs associated with the adjusted claim(s) shall be considered Non-Eligible Covered Drugs and City shall reimburse Contract Pharmacy the difference between the Usual and Customary Charge and any amounts Contract Pharmacy has already received with respect to such Non-Eligible Covered Drugs.

3.8.2. *Deficient Replenishment*: In the event Contract Pharmacy determines that the quantity of Covered Drugs provided to Contract Pharmacy is less than the quantity of Covered Drugs dispensed to Patients hereunder, Contract Pharmacy will notify City and City will instruct the Drug Wholesaler to provide Covered Drugs to Contract Pharmacy. If, for whatever reason, the Drug Wholesaler is unable to provide Covered Drugs as the Covered Drug ordered hereunder, City will reimburse Contract Pharmacy for said drugs at the Inventory Replenishment Rate.

4. **REIMBURSEMENT AND BILLING**

- 4.1. **Invoice for Services**. Contract Pharmacy will invoice City on a monthly basis for all amounts arising under this Agreement during the previous calendar month ("Invoice"). The Invoice will identify: (i) the number of prescriptions dispensed hereunder; (ii) any amounts due Contract Pharmacy including any and all fees, costs, charges, or reimbursement amounts, including but not necessarily limited to any amount arising out of the Tax, changes in the Drug Wholesaler, Overdue Drugs, Aged Drugs, Slow Moving Drugs, Pharmacy Services, Inventory Maintenance Services and a Reconciliation ("Contract Pharmacy Balance"); and (iii) any amounts due City arising out of a Reconciliation or Attachment 3, if applicable ("City Balance").
- 4.2. **Monthly Payments**. If the Contract Pharmacy Balance is less than the City Balance, Contract Pharmacy shall pay City the difference between such amounts within thirty (30) calendar days from the Invoice date. Contract Pharmacy's payment to City shall be made via electronic funds transfer or to address set forth on the signature page of this Agreement. If the City Balance is less than the Contract Pharmacy Balance, City shall pay Contract Pharmacy the difference between such amounts within thirty (30) calendar days from the Invoice date.
- 4.3. **Late Payment Charge**. City is solely responsible for all its payments required herein and shall at no time withhold payment due Contract Pharmacy, nor pay an amount less than that billed by Contract Pharmacy on the Invoice. All sums owed to Contract Pharmacy by City will bear interest of one and one-half percent (1.5%) per month from the date payment is due until paid; however, in no event will such interest rate be greater than the rate permitted by law. City is solely responsible for any and all costs associated with Contract Pharmacy's collection of any delinquent amounts.
- 4.4. **Over/Underpayments**. In the event City believes that it has made an overpayment, City shall immediately notify Contract Pharmacy and provide a complete explanation thereof with specific details and documentation to support any claim of overpayment. Upon review and acceptance by Contract Pharmacy of such overpayment, Contract Pharmacy will pay City an amount equal to the overpaid amount within thirty (30) calendar days of Contract Pharmacy's written acceptance of such overpayment. If Contract Pharmacy believes that City made any underpayments to Contract Pharmacy, Contract Pharmacy shall immediately notify City and provide a complete explanation thereof with specific details and documentation to support any claim of underpayment. Upon review and acceptance by City of such underpayment, City will pay Contract Pharmacy an amount equal to the underpaid amount within thirty (30) calendar days of City's written acceptance of such underpayment. Except for verified amounts arising out of any audit or Reconciliation permitted by this Agreement, or as otherwise required by law, all claims of overpayment or underpayment must be made within one hundred eighty (180) calendar days after payment is due.
- 4.5. Neither Contract Pharmacy nor City shall use Covered Drugs to dispense "fee for service" Medicaid prescriptions, unless City, Pharmacy and the State Medicaid program have

established an arrangement to prevent duplicate discounts. Any such arrangement shall be reported to HRSA by the City.

- 4.6. Contract Pharmacy shall have full responsibility for the collection of reimbursement amounts due from Private Insurers and Patients in connection with Pharmacy Services. Contract Pharmacy will collect Private Insurer payments and Patient Copayments in the same manner as it does for non-Covered Drug. Consistent with its other Private Insurer contract obligations, Contract Pharmacy will not refuse to provide Pharmacy Services to a Patient due to dissatisfaction with the reimbursement rate established with such Private Insurer.
- 4.7. Unless otherwise specifically directed in writing Contract Pharmacy shall not seek or collect from a Patient any amount greater than as indicated on its system at the time of dispensing of a Covered Drug. Contract Pharmacy agrees that in no case, including but not limited to the nonpayment by a Private Insurer, Administrator, and/or City, or as applicable, the failure to resupply Covered Drugs per the terms of this Agreement, it shall seek payment/reimbursement or have recourse against a Patient for Pharmacy Services rendered.
- 4.8. City shall provide, in compliance with Privacy Laws (as defined below), applicable participating Health Care Provider information and other information as required to support operation of the City's 340B Program.
- 4.9. City shall provide, where applicable, outpatient encounter data for all City Sites. Such data shall be provided by City in the format and on a schedule agreed to by the Parties.
- 4.10. Both Parties understand a copy of this Agreement shall be provided to HRSA upon written request.
- 4.11. Contract Pharmacy agrees to reasonably assist City in identifying the necessary information for City to meet its ongoing 340B Program compliance obligations. The Parties agree that such information, as well as additional reports as agreed to by the Parties, are made available through 340B Complete.

5. TERM AND TERMINATION

- 5.1. This Agreement will become effective on the date of full execution and shall continue in effect for a period of two years thereafter, unless sooner terminated as provided in this Agreement. Upon expiration of the initial term, this Agreement shall be renewed automatically for successive one-year terms.
- 5.2. Either Party may terminate this Agreement for convenience at any time without cause or penalty upon the provision of thirty (30) days prior written notice to the other Party.
- 5.3. In the event of a material breach of any of the terms of this Agreement by either Party, the non-breaching Party may terminate this Agreement upon thirty (30) days prior written notice to the breaching Party, which notice shall set forth in sufficient detail the nature of the alleged breach and desired remedy. If the breaching Party cures the breach within said thirty (30) day notice period, then such termination notice will be void and this Agreement will continue in full force.
- 5.4. Notwithstanding any other provision herein, either Party shall have the right to terminate this Agreement immediately and without notice or penalty in the event that any federal, state, or

local license, permit, or approval required of the other Party to deliver the services contemplated by this Agreement is lost, revoked or suspended.

- 5.5. Notwithstanding any other provision herein, either Party shall have the right to terminate this Agreement immediately and without notice or penalty in the event of any of the following occurrences:
 - 5.5.1. A Party fails to comply with audit requirements contained herein;
 - 5.5.2. A Party attempts to disclose or discloses Confidential Information of the other Party;
 - 5.5.3. A Party or a parent company thereof becomes insolvent, goes into receivership, files for bankruptcy, or any other adverse action is taken on behalf of its creditors;
 - 5.5.4. A Party is disqualified or removed from participating in a federally funded healthcare program, such as Medicare or Medicaid; or
 - 5.5.5. A Party engages in the diversion of Covered Drugs to ineligible patients or some other legal or regulatory violation in connection with this Agreement.
- 5.6. In the event of termination of this Agreement the Parties shall remain responsible for obligations which accrued prior to the effective date of termination, including, but not limited to the obligation to remit monies due or pay fees due in connection with Pharmacy Services rendered. Additionally, Contract Pharmacy shall work with the City to settle any outstanding inventory issues to avoid the diversion of Covered Drugs, and shall also provide reasonable assistance to the City to ensure the transition of Pharmacy Services to an alternate contract pharmacy.
- 5.7. The Parties agree that any provision contained in this Agreement, which by its nature logically extends beyond termination hereof shall survive such termination, including, without limitation, the provisions related to confidentiality, warranties, and indemnification.

6. INDEMNIFICATION AND LIMITATION OF LIABILITY

- 6.1. Each Party (an "Indemnifying Party") shall indemnify, protect and hold harmless the other Party, its officers, boards, commissions, and their officials, employees and agents ("Indemnified Parties"), from and against any and all liability, claims, demands, damage, loss, obligations, causes of action, proceedings, awards, fines, judgments, penalties, costs and expenses, including attorneys' fees, court costs, expert and witness fees, and other costs and fees of litigation, awarded to or settled with third parties or connected with third party claims or actions, and the costs of the Indemnified Party in enforcing this indemnification obligation, arising, in whole or in part, out of or in connection with (1) the Indemnifying Party's breach or failure to comply with any of its obligations contained in this Agreement, including all applicable federal and state labor requirements including, without limitation, the requirements of California Labor Code section 1770 et seq. or (2) negligent or willful acts, errors, omissions or misrepresentations committed by the Indemnifying Party, its officers, employees, agents, subcontractors, or anyone under the Indemnifying Party's control, in the performance of work or services under this Agreement.
- 6.2. If an Indemnified Party makes a claim for indemnification, the Indemnified Party shall give written notice to the Indemnifying Party promptly and in no event later than thirty (30) days

after learning of a third party claim that is subject to indemnification (“Indemnified Claim”); provided that failure by the Indemnified Party to give notice of an Indemnified Claim within thirty (30) days of learning of such Indemnified Claim shall not relieve the Indemnifying Party of its indemnification obligations hereunder except, and solely to the extent, that the Indemnifying Party is actually prejudiced as a result of such failure to give such notice on a timely basis. The Indemnifying Party shall have the right to assume the conduct and defense of the Indemnified Claim with counsel of its choice. The Indemnified Party shall provide the Indemnifying Party with reasonable assistance in connection with the defense of the Indemnified Claim, at the Indemnifying Party’s cost. If the Indemnifying Party assumes the conduct and defense of the Indemnified Claim, the Indemnified Party may monitor such defense with counsel of its own choosing at its sole expense. The Indemnifying Party shall not settle any claim or consent to any judgment without the Indemnified Party’s prior written consent, such consent not to be unreasonably withheld or delayed, except that no such consent shall be required if such settlement or judgment expressly and unconditionally releases the Indemnified Party from all liabilities and obligations with respect to such Indemnified Claim, without prejudice. If the Indemnifying Party does not assume and conduct the defense of the Indemnified Claim as provided above: (i) the Indemnified Party may assume and conduct the defense of the Indemnified Claim at the Indemnifying Party’s expense; (ii) the Indemnified Party may consent to the entry of any judgment or enter into any settlement with respect to the Indemnified Claim in any manner the Indemnified Party may deem reasonably appropriate (and the Indemnified Party need not consult with, or obtain any consent from, the Indemnifying Party in connection therewith); and (iii) the Indemnifying Party will remain responsible to indemnify the Indemnified Party for Damages as provided in this Section 7.

6.3. The provisions of this Section shall survive the expiration or termination of this Agreement.

7. CONFIDENTIALITY

7.1. The Parties shall prevent the unauthorized use and/or disclosure of Confidential Information received by a Party (the “Receiving Party”) from another Party (the “Disclosing Party”). The Receiving Party shall establish and maintain, throughout the term of this Agreement, policies and procedures designed to prevent the unauthorized use and/or disclosure of the Disclosing Party’s Confidential Information, which policies and procedures shall establish at least the same level of care as used to protect the Receiving Party’s own Confidential Information and no less care than what is considered reasonable. Additionally, the Receiving Party agrees to maintain and transfer all Confidential Information disclosed under this Agreement in a manner consistent with all applicable laws, including, but not limited to the Health Insurance Portability and Accountability Act of 1996, as amended. The Receiving Party shall not release any Confidential Information to any third party, except as required under the California Public Records Act, including, without limitation, to any agents or consultants working on behalf of the Receiving Party, without the prior written consent of the Disclosing Party.

7.2. Notwithstanding the above, the Receiving Party shall not be prohibited from disclosing any information which: (i) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party, its agents, representatives or employees; (ii) was within the Receiving Party’s possession on a non-confidential basis prior to disclosure by the Disclosing Party; or (iii) the Receiving Party is required by law or judicial order to disclose such information, provided that the Receiving Party shall promptly notify the Disclosing Party of such requirement so that the Disclosing Party may seek an appropriate protective order or otherwise seek to protect the confidentiality of such information.

- 7.3. The Receiving Party shall notify the Disclosing Party immediately of any unauthorized possession, use, or knowledge, or attempt thereof, of the Disclosing Party's Confidential Information. The Receiving Party shall promptly provide the Disclosing Party with a full account of any such unauthorized possession, use, knowledge, or attempt thereof, and use reasonable efforts to mitigate the effects thereof and prevent a recurrence of the same.
- 7.4. In the event that a subpoena or other legal process is served upon the Receiving Party and concerns the Confidential Information, the Receiving Party shall notify the Disclosing Party immediately upon receipt of such subpoena or other legal process and shall reasonably cooperate with the Disclosing Party in any lawful effort by the Disclosing Party to contest the validity of such subpoena or other legal process.
- 7.5. The Disclosing Party shall retain full ownership rights of its Confidential Information disclosed hereunder, including derivative works based on or otherwise incorporating such Confidential Information. Ownership rights shall include, but are not limited to, all rights associated with trade secrets, copyrights, trademarks, and patents. Nothing in this Agreement should be interpreted to grant any license rights to the Receiving Party or any third party in the Confidential Information of the Disclosing Party.
- 7.6. Upon termination of this Agreement, or upon the written request of the Disclosing Party, the Receiving Party shall return all written or other physical or electronic embodiments of Confidential Information to the Disclosing Party, together with all copies thereof or copies of any part thereof as shall then be in Receiving Party's possession. If return of all written or other physical or electronic embodiments of Confidential Information is not commercially practical, then at the direction of the Disclosing Party, the Receiving Party shall account for all Confidential Information and either: (i) destroy such Confidential Information; or (ii) continue to hold such Confidential Information in a secure manner until return or destruction is possible. Notwithstanding the foregoing, the return or destruction of Confidential Information shall not include information that must be retained by the Receiving Party under law for auditing or other purposes or as otherwise provided in this Agreement. In any event, such Confidential Information shall at all times be maintained by the Receiving Party in a manner consistent with the terms of this Agreement. Notwithstanding the foregoing, each Party may retain a copy of Confidential Information in its confidential legal files solely for archival purposes, and the obligation to destroy or return shall not apply to Confidential Information that is stored on back-up tapes and similar media that are not readily accessible to Receiving Party so long as Receiving Party continues to comply with the confidentiality obligations under this Agreement with respect to all such stored Confidential Information.

8. RECORD MAINTENANCE AND AUDIT

- 8.1. Contract Pharmacy shall maintain appropriate accounts and dispensing records for all Patient claims. Contract Pharmacy agrees to maintain Patient profiles, prescription files, and associated records in a manner consistent with industry norms, prudent record-keeping procedures, and the requirements of applicable federal and state laws and regulations to include the of receipt and disposition of the Covered Drugs, the records as to dispensing, loss, theft and return to supplier. All such records shall be retained in the same manner and for the same period of time as Contract Pharmacy retains such records or data in the ordinary course of business or as required by applicable laws, but not fewer than ten (10) years from the Date of Service.
- 8.2. Contract Pharmacy shall permit City and/or its duly authorized agents upon reasonable notice and during normal business hours, and at the City's sole cost and expense, to examine Contract

Pharmacy's signature files, Patient profiles, prescription records, and other records to the extent reasonably necessary to verify that in order to confirm that no diversion of Covered Drugs to non-eligible Patients and no duplicate discounts have occurred. In addition, Contract Pharmacy shall have the right from time to time during normal business hours, and at its sole cost and expense, to examine City's books and records as necessary to audit and verify the accuracy of any amounts paid or received under this Agreement. Any such examinations shall be subject to the requirements of state and federal laws regarding the confidentiality of medical and prescription drug records. Additionally, all information obtained as a result of any such examinations shall be held in strict confidence and used solely for the purposes of ensuring compliance with this Agreement. Examinations may be made no more than once per calendar year and in no event shall findings or conclusions be based upon either statistical sampling or extrapolation. Nothing in this paragraph shall be construed to prevent or limit: (i) an audit originated by manufacturer, DHHS, HRSA, or as otherwise required by law; or (ii) review of the Report by City or an audit of the information contained therein.

- 8.3. Both Parties understand that they are subject to audits by DHHS and participating manufacturers of records that directly pertain to the City's compliance with the drug resale or transfer prohibition and the prohibition against duplicate discounts. See 42 U.S.C. § 256b(a)(5)(c). Both Parties shall ensure that appropriate accounts and dispensing records pertaining to City's 340B program are maintained during the term of the Agreement and for three (3) years thereafter, and agree to cooperate with such audits and to comply with applicable provisions of the audit guidelines and amendments thereto that may be published from time to time.

9. MISCELLANEOUS PROVISIONS

- 9.1. Marks and Names. Each Party reserves all rights in and control of its name and all of its symbols, trademarks, trade names, service marks and other such proprietary symbols and words presently existing or hereafter acquired, and all symbols related thereto or used in connection therewith and neither Party may use such symbols without first receiving the written consent of the Party owning such symbols. Notwithstanding the foregoing, each Party shall have the right to use the other Party's name and such other Party's symbols, trademarks, trade names service marks and other such proprietary symbols and words for the purpose of performing its obligations under this Agreement and enjoying its benefits.
- 9.2. Notices. All formal notices, requests, demands and other communications provided under this Agreement shall be in writing and shall be delivered to a Party by a national overnight delivery service, with next-business day delivery guaranteed and verified at the address set forth on the signature page of this Agreement.
- 9.3. Compliance with Laws. Contract Pharmacy shall comply with all federal and state laws, regulations and rules governing the practice of Contract Pharmacy and the provision of Pharmacy Services under this Agreement, including, but not limited to applicable State pharmacy regulations, and Contract pharmacy guidelines. Specifically, but not by way of limitation, each of the Parties represents that its performance under the Agreement shall comply with all applicable federal, state, and local statutes, rules, regulations, accreditation standards and other applicable standards of: Medicare; Medicaid; anti-kickback laws; the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information and Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Parts 160 and 164; the security and privacy

provisions of the American Recovery and Reinvestment Act of 2009 and the regulations promulgated thereunder, the Health Information Technology for Economic and Clinical Health Act, (theHITECH Act) and the regulations promulgated thereunder, and updates to incorporate anychanges to such statutes, rules, regulations, and applicable standards as further detailed in the Business Associate Addendum appended hereto as Attachment 4, which terms are incorporated into this Agreement.

- 9.4. Patient Choice. This Agreement shall not be interpreted, construed, or otherwise used to limit Patients' choice of pharmacy.
- 9.5. Entire Agreement. This Agreement represents the entire understanding of the Parties regarding the subject matter thereof. All attachments (e.g. exhibits, schedules, addenda, appendices) are incorporated herein and made a part hereof. There are no other agreements or understandings among the Parties, either oral or written, relating to the subject matter hereof. Any amendments to this Agreement shall be in writing and signed by the Parties. The Parties agree that to the extent there is an inconsistency or conflict between the terms and conditions of any attachment and this Agreement, the terms and condition of the attachment shall prevail.
- 9.6. Third-Party Beneficiaries. The Parties specifically agree that Patients shall not be third-party beneficiaries to this Agreement.
- 9.7. Waiver & Severability. Any failure by a Party to enforce or require the performance by another Party of any of the terms or conditions of this Agreement shall not be constituted as a waiver of rights with respect to any subsequent breach of any term or condition of this Agreement. Any invalidity, illegality or unenforceability of any provision of this Agreement shall not invalidate or render illegal or unenforceable the remaining provisions hereof.
- 9.8. Survival. Any term of this Agreement which by its nature extends beyond the termination hereof shall survive, including but not limited to obligations to pay amounts due hereunder, indemnities, confidentiality obligations, audit provisions, limitations of liability, and disclaimers.
- 9.9. Assignment; Successors and Assigns. Neither this Agreement nor any of the obligations to be performed hereunder may be assigned, directly or indirectly, by any Party without the prior written consent of the other Parties; provided, however, that the preceding restriction shall not apply to the assignment to an affiliated company or any successor through a sale, merger or other similar transaction. Any assignment or attempted assignment in violation of this restriction shall be void. In the event of any such permitted assignment, the obligations set forth herein shall be binding upon the successor.
- 8.1. Force Majeure. No Party shall be liable in any manner for any delay or failure to perform its obligations hereunder which are beyond such Party's reasonable control including, without limitation, delay or failure due to strikes, labor disputes, riots, earthquakes, extreme weather, fires, explosions, embargoes, war or other outbreak of hostilities, acts of terrorism, pandemics, plague or disease, delay of carriers, suppliers or telecommunications providers, or government acts or regulations. If the period of non- performance exceeds sixty (60) days, the unaffected Party or Parties shall have the right to terminate this Agreement by thirty (30) days written notice to the affected Party, without liability except to pay for services rendered.

9.10. Insurance Requirements.

- 9.10.1. As a condition precedent to the effectiveness of this Agreement, Contract Pharmacy shall procure and maintain, at Contract Pharmacy's expense for the duration of this Agreement, from insurance companies that are admitted to write insurance in California and have ratings of or equivalent to A:V by A.M. Best Company or from authorized non-admitted insurance companies subject to Section 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII by A.M. Best Company, the following insurance:
- 9.10.2. Commercial general liability insurance (equivalent in scope to ISO form CG 00 0111 85 or CG 00 01 10 93) in an amount not less than \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This coverage shall include but not be limited to broad form contractual liability, cross liability, independent contractors liability, and products and completed operations liability. City, its boards and commissions, and their officials, employees and agents shall be named as additional insureds by endorsement (on City's endorsement form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and this insurance shall contain no special limitations on the scope of protection given to City, its boards and commissions, and their officials, employees and agents. This policy shall be endorsed to state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.
- 9.10.3. Workers' Compensation insurance as required by the California Labor Code and employer's liability insurance in an amount not less than \$1,000,000. This policy shall be endorsed to state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.
- 9.10.4. Professional liability or errors and omissions insurance in an amount not less than \$1,000,000 per claim.
- 9.10.5. Commercial automobile liability insurance (equivalent in scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an amount not less than \$500,000 combined single limit per accident.

Any self-insurance program, self-insured retention, or deductible must be separately approved in writing by City's Risk Manager or designee and shall protect City, its officials, employees and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention or deductible provisions.

Each insurance policy shall be endorsed to state that coverage shall not be reduced, non-renewed or canceled except after thirty (30) days prior written notice to City, shall be primary and not contributing to any other insurance or self-insurance maintained by City, and shall be endorsed to state that coverage maintained by City shall be excess to and shall not contribute to insurance or self-insurance maintained by Contract Pharmacy. Contract Pharmacy shall notify City in writing within five (5) days after any insurance has been voided by the insurer or cancelled by the insured.

If this coverage is written on a "claims made" basis, it must provide for an extended reporting period of not less than one hundred eighty (180) days, commencing on the

date this Agreement expires or is terminated, unless Contract Pharmacy guarantees that Contract Pharmacy will provide to City evidence of uninterrupted, continuing coverage for a period of not less than three (3) years, commencing on the date this Agreement expires or is terminated.

Contract Pharmacy shall require that all sub-contractors or contractors that Contract Pharmacy uses in the performance of these services maintain insurance in compliance with this Section unless otherwise agreed in writing by City's Risk Manager or designee.

Prior to the start of performance, Contract Pharmacy shall deliver to City certificates of insurance and the endorsements for approval as to sufficiency and form. In addition, Contract Pharmacy shall, within thirty (30) days prior to expiration of the insurance, furnish to City certificates of insurance and endorsements evidencing renewal of the insurance. City reserves the right to require complete certified copies of all policies of Contract Pharmacy and Contract Pharmacy's sub-contractor and contractors, at any time. Contract Pharmacy shall make available to City's Risk Manager or designee all books, records and other information relating to this insurance, during normal business hours.

Any modification or waiver of these insurance requirements shall only be made with the approval of City's Risk Manager or designee. Not more frequently than once a year, City's Risk Manager or designee may require that Contract Pharmacy, Contract Pharmacy's sub-contractor and contractors change the amount, scope or types of coverages required in this Section if, in his or her sole opinion, the amount, scope or types of coverages are not adequate.



The procuring or existence of insurance shall not be construed or deemed as a limitation on liability relating to Contract Pharmacy's performance or as full performance of or compliance with the indemnification provisions of this Agreement.

- 9.11. Construction. This Agreement has been negotiated in good faith and shall be construed in its entirety, according to its fair meaning, and not in favor of or against any Party. Accordingly, the Parties agree that this Agreement shall not be interpreted against the drafting Party merely by virtue of such Party having drafted this Agreement.
- 9.12. Taxes. Each Party shall be responsible for its own state, federal and local tax obligations resulting from revenue earned or otherwise related to services performed under this Agreement.
- 9.13. Independent Contract Pharmacy. This Agreement shall not be construed nor deemed to create an employer/employee, principal/agent, or any relationship among the Parties other than that of independent entities contracting with each other solely for the purpose of carrying out the terms and conditions of this Agreement.
- 9.14. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original as against any Party whose signature and or initials appears thereon, and all of which shall together constitute one and the same agreement. This Agreement shall become binding when one or more counterparts hereof, individual or taken together, shall bear the signatures of all of the Parties.

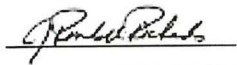
- 9.15. Headings. The headings of sections contained in this Agreement are for reference only and should not affect the meaning or interpretation of this Agreement.
- 9.16. Remedies. The remedies specifically provided for herein are intended to be cumulative and shall not be deemed to exclude any other right or remedy that either Party may have at law or in equity.
- 9.17. Dispute Resolution. The Parties shall attempt to resolve any dispute or claim arising out of the interpretation of or performance under this Agreement through informal discussions. When a dispute arises, either Party may submit a written complaint to the other Party describing and proposing the manner of resolving that dispute. The Party receiving that complaint shall respond by accepting, rejecting, or modifying that proposal, in writing, within thirty (30) calendar days upon receipt of such complaint. If the claim or dispute cannot be resolved through informal discussions, the claimant may bring a legal action in a court of competent jurisdiction to adjudicate its claim or to enforce or interpret any part of this Agreement. The prevailing Party in a legal action will be entitled to recover reasonable attorneys' fees to be determined by the judicial body. The attorneys' fees will be in addition to the amount of judgment or any other relief obtained by the prevailing Party.
- 9.18. Patient Privacy and HIPAA Compliance. The Parties recognize that each may be a healthcare provider and a covered entity within the meaning of the federal Health Insurance Portability and Accountability Act ("HIPAA"). The Parties agree to protect and respect the patient's right to privacy and confidentiality concerning their medical and pharmaceutical records, and to protect all individually identifiable health information as protected health information from misuse or disclosure, in compliance with all applicable state and federal law. Without limiting the generality of the foregoing, the Parties agree to use patient-specific information: (i) only for permitted treatment, billing and related record-keeping purposes; or (ii) as otherwise permitted by law. In the event that any patient information created, maintained or transmitted in connection with this Agreement is to be transmitted electronically, the Parties agree that they shall comply in all respects with the requirements of HIPAA governing electronic transmission of individually identifiable patient information. Failure by either Party to abide by these requirements shall be a basis for immediate termination of this Agreement.

~signature page to follow~

IN WITNESS WHEREOF, the Parties hereby agree that this Agreement shall be considered executed.

WALGREEN CO.	CITY OF LONG BEACH
The undersigned certifies that it has legal authority to bind Contract Pharmacy.	The undersigned certifies that it has legal authority to bind City.
Signature: <u></u>	Signature: <u></u>
Name: <u>Karl Meehan</u>	Name: <u>LINDA F. TATUM</u>
Title: <u>VP Health System Programs</u>	Title: <u>ASST. CITY MANAGER</u>
Date: <u>07/06/2023</u>	Date: <u>8-4-2023</u>
Notices Address: Walgreen Co. 104 Wilmot Road, MS-1446 Deerfield, IL 60015 Attn: 340B Legal And send via email to: HealthLawLegalNotices@Walgreens.com	Notices Address: City of Long Beach/Dept Health & Human Services 2525 Grand Avenue Long Beach, CA 90815340B ID: RWI5

**EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.**

Legal Approval:


APPROVED AS TO FORM
8-2, 2023
DAWN MCINTOSH, City Attorney
By 
**ANITA LAKHANJ
DEPUTY CITY ATTORNEY**

ATTACHMENT 1
ENTITY SITES

<u>340B ID</u>	<u>ENTITY NAME</u>	<u>ENTITY ADDRESS</u>	<u>CITY</u>	<u>STATE</u>	<u>ZIP</u>
RW15	CITY OF LONG BEACH/DEPT HEALTH & HUMAN SERVICES	2525 GRAND AVENUE	LONG BEACH	CA	90815

ATTACHMENT 2
CONTRACT PHARMACY LOCATIONS

<u>STORE NUMBER</u>	<u>STORE ADDRESS</u>	<u>STORE CITY</u>	<u>STORE STATE</u>	<u>STORE ZIP</u>	<u>DEA NUMBER</u>
5650	2627 PACIFIC AVE.	LONG BEACH	CA	90506	BW7484481
7832	3339 E. ANAHEIM ST	LONG BEACH	CA	90804	BW8853310
7870	600 LONG BEACH BLVD	LONG BEACH	CA	90802	BW9373565
21154	730-740 LONG BEACH BLVD #A & #C	LONG BEACH	CA	90813	FW7674422

ATTACHMENT 3
DISPENSING FEE

1. The Parties acknowledge that they have freely negotiated the reimbursement terms in this Attachment 3 and except for the mutual promises and covenants set forth herein, neither Party has offered or received any inducement or consideration in exchange for entering into this Agreement. Additionally, the Parties agree that the compensation to be paid to Contract Pharmacy is consistent with and otherwise represents a negotiated fair market value.
2. Contract Pharmacy shall be entitled to the respective Dispensing Fee calculated as follows:
 - A. **Community Benefit Program Patients.** For those Patients whose prescriptions are not reimbursable by a Private Insurer ("**Self-Pay Patients**"), Contract Pharmacy shall be reimbursed the following amounts:
 - i. \$12.00 dispensing fee for the Pharmacy Services ("**Self-Pay Dispensing Fee**").

At the time of dispensing, Contract Pharmacy shall collect from the Patient the patient responsibility amount in accordance with the City's 340B Program benefit design or as may be communicated to Contract Pharmacy via the Authorization, and which such amount may include the price for the Covered Drug as set forth in the Price File ("**Self-Pay Co-Pay**"). The Self-Pay Administrative Fee and the Self-Pay Dispensing Fee shall collectively be referred to as the "**Self-Pay Fees**." If the Self-Pay Fees exceed the Self-Pay Co-Pay, Contract Pharmacy shall invoice the City in accordance with Article 4 for any remaining amounts due Contract Pharmacy. If the Self-Pay Fees are less than the Self-Pay Co-Pay, upon determination by Contract Pharmacy that the City is otherwise current in its payment obligations to Contract Pharmacy, Contract Pharmacy shall, in accordance with Article 4, remit to the City the difference between the Self-Pay Co-Pay and the Self-Pay Fees.

If at the time of dispensing Contract Pharmacy determines the Usual and Customary Charge is equal to or less than the total of the Self-Pay Administrative Fee, Self-Pay Dispensing Fee, and the price for the Covered Drug as set forth in the Price File, such drug shall be considered a Non-Eligible Covered Drug and Contract Pharmacy shall collect the lesser of either the Usual and Customary Charge or the Self-Pay Co-Pay from the Patient. If the Self-Pay Co-Pay is less than the Usual and Customary Charge, Contract Pharmacy shall invoice the City in accordance with Article 4 for any remaining amounts due Contract Pharmacy for the Non-Eligible Covered Drug (i.e., the difference between the Usual and Customary Charge and the Self-Pay Co-Pay collected from the Patient).

B. **Private Insurer Patients.** For those Patients whose prescriptions are reimbursable by a Private Insurer, Contract Pharmacy will process and bill the Patient's Private Insurer for the Contracted Rate provided to the Pharmacy Location at the time of dispensing. Subject to the provisions that follow, Contract Pharmacy shall be entitled to retain 20% of the Contracted Rate for the Inventory Maintenance Services and such billing services ("**Private Insurer Administrative Fee**") and a \$12 dispensing fee for the Pharmacy Services ("**Private Insurer Dispensing Fee**"). Upon determination by Contract Pharmacy that it has received the Contracted Rate for the Patient's prescription and provided that: (i) the City is current in its payment obligations to Contract Pharmacy; and (ii) the Contracted Rate exceeds the sum of Private Insurer Dispensing Fee, the Private Insurer Administrative Fee, and the Covered Drug price as set forth on the Price File; Contract Pharmacy will retain an amount equal to the sum of the Private Insurer Dispensing

Fee and the Private Insurer Administrative Fee (such sum the "Private Insurer Fee") and, in accordance with Article 4, remit to the City the difference between the Private Insurer Fee and the Contracted Rate. If the difference between the Contracted Rate and the Private Insurer Fee is less than or equal to the Covered Drug price as set forth on the Price File, Contract Pharmacy agrees to accept and retain the Contracted Rate as payment in full and there will be no further adjustment between the Parties.

3. The Community Benefit Program for uninsured and/or underinsured program will be established through the Community Benefit Program Authorization Form.
4. The Dispensing Fee shall be exclusive of the actual cost of goods for the Covered Drug dispensed as Covered Drugs will be resupplied to Contract Pharmacy by City per the replenishment and reconciliation process.
5. Inventory Replenishment Rate. The Inventory Replenishment Rate shall be the following:
 - i. Brand Name Drugs: the Average Wholesale Price of the dispensed pharmaceutical product minus 18%.
 - ii. Generic Drugs: the Average Wholesale Price of the dispensed pharmaceutical product minus not less than 65%.
6. Annual Price Adjustment. On the one year anniversary date of the Effective Date and annually thereafter, the Parties agree the administrative fees and dispensing fees described in this Exhibit A shall each be increased in an amount equal to the then current Consumer Price Index-All Urban Consumers, All Items, for the Region where the City is located, as reported by the U.S. Department of Labor, Bureau of Statistics.

ATTACHMENT 4
BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (“**Addendum**”) is entered into by and between the City and Walgreen Co. (“**BA**”) and is effective as of the Effective Date of Underlying Agreement (as defined below) (“**Addendum Effective Date**”). This Addendum shall be incorporated into and made a part of the Underlying Agreement.

The City and BA have entered into an agreement whereby BA provides administrative services related to patient eligibility determinations in addition to dispensing pharmaceutical products pursuant to that certain 340B Contract Pharmacy Services Agreement (“**Underlying Agreement**”);

The Parties acknowledge that the provision of administrative services related to patient eligibility determinations are services provided by BA outside the scope of BA’s normal covered pharmacy operations function and this Addendum is limited to the provision of such services (“**Services**”);

Pursuant to the terms of the Underlying Agreement, the City wishes to disclose certain information to BA, some of which may constitute Protected Health Information (as defined below), and the Parties wish to establish satisfactory assurances that BA will appropriately safeguard this PHI; and

The purpose of this Addendum is to satisfy certain standards and requirements of the HIPAA Rules (as defined herein), including, but not limited to, those at 45 C.F.R. §§ 164.314(a), 164.502(e), and 164.504(e), as the same may be amended from time to time, to be in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“**HIPAA**”), the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (“**HITECH Act**”), and the regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E (“**Privacy Rule**”), the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and C (“**Security Rule**”), and the Notification of Breach of Unsecured Protected Health Information requirements at 45 C.F.R. Part 164, Subpart D (“**Breach Notification Rule**”).

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. **Definitions.** For the purposes of this Addendum, terms used, but not otherwise defined, shall have the meaning as those in 45 C.F.R. §§ 160.103, 164.304, 164.402, 164.501, and 164.504, and the following terms have the definitions set forth below:

1.1. “**Breach**” shall have the same meaning as the term “breach” at 45 C.F.R. § 164.402.

1.2. “**HIPAA Rules**” shall mean the Privacy Rule, the Security Rule, and the Breach Notification Rule collectively.

1.3. “**Individual**” shall mean the person who is the subject of the PHI and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

1.4. “**Protected Health Information**” or “**PHI**” shall have the same meaning as the term “protected health information” at 45 C.F.R. § 160.103, limited to the information created or received by BA from or on behalf of the City. PHI shall include Electronic Protected Health Information. Notwithstanding anything to the contrary in this Addendum, the term “PHI” as used in this Addendum

shall not include any information that BA would otherwise be able to receive as a HIPAA covered entity in the patient's continuum of care.

1.5. "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.

1.6. "Security Incident" shall have the same meaning as the term "security incident" at 45 C.F.R. § 164.304.

1.7. "Unsecured PHI" shall have the same meaning as the term "unsecured protected health information" at 45 C.F.R. § 164.402.

2. BA Obligations. The Parties agree that BA shall:

2.1. Not use or disclose PHI other than as permitted by this Addendum, the Underlying Agreement, the Privacy Rule, or as Required By Law;

2.2. Use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Addendum. BA shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI that it creates, receives, maintains, or transmits on behalf of the City. BA shall comply with the applicable requirements of Subpart C of Part 164 of the Security Rule;

2.3. Limit any uses, disclosures, and requests for PHI to the minimum amount necessary to perform or fulfill a specific function required or permitted by this Addendum in accordance with the HIPAA Rules;

2.4. Mitigate to the extent practicable, any harmful effect that is known to BA from a use or disclosure of PHI by BA in violation of this Addendum;

2.5. Timely report to the City any use or disclosure of PHI of which BA becomes aware that is not provided for or allowed by this Addendum or the HIPAA Rules, including Breaches of Unsecured PHI that BA discovers as required by, and in the manner set forth at, 45 C.F.R. § 164.410, and any Security Incident of which BA becomes aware. The Parties acknowledge and agree that this section constitutes notice by BA to the City of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice to the City shall be required. "Unsuccessful Security Incidents" shall include, but are not limited to, pings and other broadcast attacks on BA's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized acquisition, access, use, or disclosure of PHI;

2.6. In accordance with 45 C.F.R. §§ 164.308(b)(2) and 164.502(e)(1)(ii), require any of its agents or subcontractors that maintain, create, receive, and/or transmit PHI on behalf of BA to agree, in writing, to the same restrictions, conditions and obligations with respect to the use and disclosure of PHI that apply to BA under this Addendum;

2.7. Make available to the City such information in such form as the City may require to fulfill the City's obligations to provide an Individual with access to, amendment of, and an accounting of disclosures of PHI pursuant to 45 C.F.R. §§ 164.524, 164.526, and 164.528, respectively;

2.8. Make available to the Secretary its internal practices, books and records relating to the use and disclosure of PHI received from, or created by, BA on behalf of the City, for purposes of determining the City's compliance with the HIPAA Rules; and

2.9. To the extent BA is delegated to carry out any of the City's obligations under the Privacy Rule, comply with the requirements of the Privacy Rule that apply to the City in the performance of such delegated obligations.

3. Permitted Uses and Disclosures. The Parties agree that BA may:

3.1. Use and disclose PHI to perform the Services provided that such use or disclosure would not violate the Privacy Rule if done by the City;

3.2. Use PHI in its possession for its proper management and administration and to fulfill any of its present or future legal responsibilities;

3.3. Use PHI in its possession to provide Data Aggregation services relating to the Health Care Operations of the City;

3.4. Disclose PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any of its present or future legal responsibilities provided that: (i) the disclosures are Required By Law; or (ii) BA has received from the third party receiving the PHI reasonable assurances that the PHI will be held confidentially, that the PHI will only be used or further disclosed as Required By Law or for the purpose for which it was disclosed to the third party, and that the third party will notify BA of any instances of which it is aware in which the confidentiality of the information has been breached; or

3.5. De-identify PHI and use and disclose the de-identified information, provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514(b) and use the de-identified information for any purpose.

4. Obligations of the City. With respect to the use and/or disclosure of PHI by BA, the City shall:

4.1. Notify BA, in writing and in a timely manner, of any limitations in its notice of privacy practices, to the extent that such limitations may affect BA's use or disclosure of PHI;

4.2. Notify BA, in writing and in a timely manner, of any change in, or revocation of, consent or authorization by an Individual to use or disclose PHI, to the extent that such change may affect BA's permitted or required use or disclosure of the PHI;

4.3. Notify BA, in writing and in a timely manner, of any restriction to the use and/or disclosure of PHI to which the City is required, or has agreed in accordance with 45 C.F.R. § 164.522 to the extent such restriction may affect BA's use or disclosure of PHI;

4.4. Have entered into a "Business Associate Agreement", as required by 45 C.F.R. § 164.502(e) with any third parties to which the City directs and authorizes BA to disclose PHI; and

4.5. Only disclose to BA the minimum necessary PHI for BA to provide the Services to the City.

5. Term. This Addendum shall become effective on the effective date of the Underlying Agreement and shall expire when all of the PHI provided by the City to BA is destroyed or returned to the City pursuant to Section 7.

6. Termination. Notwithstanding any other provision under the Underlying Agreement, the Parties agree that this Addendum may be terminated without penalty at any time by either Party if the other Party violates a material obligation under this Addendum, provided, however, the other Party is afforded thirty (30) days opportunity to cure the breach and the other Party does not cure the breach or end the violation within said thirty (30) days. If the Parties mutually agree that cure is not possible, this Addendum shall terminate immediately.

7. Return or Destruction of PHI. Upon termination or expiration of this Addendum, BA shall return to the City any and all PHI received from, or created by BA on behalf of, the City that is maintained by BA in any form whatsoever, including any copies or replicas. If returning the PHI to the City is not feasible, BA shall destroy any and all PHI maintained by BA in any form whatsoever, including any copies or replicas. Should the return or destruction of the PHI be determined by BA to be not feasible, the Parties agree that the terms of this Addendum shall extend to the PHI, and any further use or disclosure of the PHI by BA shall be limited to that purpose which renders the return or destruction of the PHI infeasible.

8. Amendment to Comply with Law. The Parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The Parties agree to take such action as is necessary to comply with the standards and requirements of the HIPAA Rules and other applicable laws relating to the security or confidentiality of PHI. Upon either Party's request due to a change in the law, the other Party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum.

9. Independent Contractors. In the performance of the Services and the obligations under this Addendum, the Parties acknowledge and agree that each Party is at all times acting and performing as an independent contractor and at no time shall the relationship between the Parties be construed as a partnership, joint venture, employment, principal/agent, or master/servant relationship.

10. Interpretation. Any ambiguity in this Addendum shall be resolved in favor of a meaning that permits the City and BA to comply with the HIPAA Rules. The provisions of this Addendum shall prevail over any provisions in the Underlying Agreement between the Parties that may conflict or appear inconsistent with any provision of this Addendum.

11. No Third Party Beneficiaries. Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than the City, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

12. Notice. Any notice required under this Addendum shall be delivered in writing to BA or the City, as appropriate, and submitted to the address indicated below:

For BA: Walgreens Privacy Office
200 Wilmot Road, MS 9000
Deerfield, Illinois 60015
Phone: (847) 236-6518
Fax: (847) 236-0862
Email: privacy.office@walgreens.com
Attn: Privacy Officer

For the City: The address set forth in the Underlying Agreement

13. Regulatory References. A reference in this Addendum to a section in the HIPAA Rules means the section in effect or as amended and for which compliance is required at the time.