

35061

CONTRACT PHARMACY SERVICES AGREEMENT

This agreement (the "Agreement"), which shall become effective upon the date of full execution (the "Effective Date") is made by and between **Bella Vida Pharmacy, Inc.** ("Contract Pharmacy") and **City of Long Beach through its Department of Health & Human Services** (the "Entity"), who individually each may be referred to as "Party" or collectively as "Parties".

RECITALS

WHEREAS, Contract Pharmacy is a properly licensed pharmacy operating in accordance with applicable laws and regulations and provides Pharmacy Services to its customers, which may include Patients eligible to receive benefits under an Entity's Pharmacy Program; and

WHEREAS, Entity is a covered entity that is eligible to purchase certain outpatient drugs at reduced prices for use by those Hospital outpatients who, subject to this Agreement, are eligible to purchase and/or receive such drugs, as defined in applicable guidance issued by the U.S. Department of Health and Human Services ("DHHS") and as may be amended from time to time ("Patients"), which outpatient drugs are purchased from drug manufacturers that have signed a drug purchasing agreement with DHHS; and

WHEREAS, Entity desire to engage Contract Pharmacy to provide Pharmacy Services for the benefit of Patients as further specified in this Agreement and Contract Pharmacy desires to accept such engagement.

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 Entity on the date the claim is processed by **Administrator**. 340B Cost is obtained from the Wholesaler price file in effect for Contract Pharmacy and Entity based on the 11-digit National Drug Code ("NDC") for the dispensed product.
- 1.2 "Adjudication" means the process used by a Third-Party Payor or their designated Claims processor to provide Contract Pharmacy with: (i) authorization for payment of the Claim; (ii) the payment amount, if any, to be collected from eligible Patients by Contract Pharmacy; (iii) Contract Pharmacy's reimbursement amount for dispensing the Covered Drug; and (iv) any other informational edits and messages.
- 1.3 "Agreement" means this Agreement, all exhibits, schedules and addenda hereto, taken collectively, as they may be amended from time to time.
- 1.4 "**Administrator**" means Wellpartner, LLC.
- 1.5 "Bill-to/Ship-to Arrangement" means a contractual arrangement between Entity and its Drug Wholesaler(s) whereby (i) **Administrator** will, on behalf of Entity, order Covered Drugs from Drug Wholesalers for delivery directly to Contract Pharmacy to replenish drugs previously dispensed to Patients by Contract Pharmacy on behalf of Entity, and (ii) such Drug Wholesalers will invoice the Entity for the replenished drugs based on preferential prices under the 340b Pharmacy Program.

- 1.6 “Brand Name Drug” shall mean a drug designated as “brand” by Medispan or a similar product catalog as used by **Administrator** and is available from a single manufacturer and designated as a brand name by a nationally recognized price-reporting service.
- 1.7 “Claim” means a request for payment for a Covered Drug that has been submitted by Contract Pharmacy to **Administrator** or a Third-Party Payor or their designated Claims processor for verification of coverage and reimbursement.
- 1.8 “Community Benefit Program” means a program Entity provides for uninsured or underinsured Patients wherein Entity will subsidize dispensing fees for eligible Patients. The Community Benefit Program will be established via the Community Benefit Program Authorization Form.
- 1.9 “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.
- 1.10 “Contract Pharmacy” means the undersigned pharmacy, whether an independent pharmacy, pharmacy chain or Pharmacy Services Administration Organization (PSAO), acting on behalf of itself and its contracted pharmacies, which is properly licensed to provide Pharmacy Services in the state(s) in which such Contract Pharmacy operates. In all cases, the obligations of Contract Pharmacy as set forth in this Agreement shall apply to all Contract Pharmacy locations listed in Exhibit A which provide Pharmacy Services to designated Entity.
- 1.11 “Co-Payment” 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 Third-Party Payor 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 specialty, brand name, generic or over-the-counter drug which is dispensed to a Patient in a manner consistent with this Agreement and covered under a Pharmacy Program. Entity, acting in coordination with **Administrator** shall determine what drugs shall be Covered Drug for the purpose of this Agreement based on Entity’s Pharmacy Program formulary; drug availability; the frequency of which a drug is dispensed or a financial analysis of the value of the drug Claim when processed through the Pharmacy Program. Neither Entity nor **Administrator** make any representation or provide any warranties as to which drugs will be processed through the Pharmacy Program as Covered Drugs.
- 1.13 “Date of Service” means the date a Covered Drug is dispensed for a Patient pursuant to the terms of this Agreement.

- 1.14 “Dispensing Fee” means monies paid to Contract Pharmacy (or retained by Contract Pharmacy, as the case may be) in connection with its provision of Pharmacy Services to Patients on behalf of Entity according to the terms set forth in the applicable Schedule of Exhibit A 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 Schedule, Community Benefit Program Authorization Form and applicable Pharmacy Program requirements). Only one Dispensing Fee shall be due and payable per eligible transaction and the Dispensing Fee 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.
- 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 set forth herein.
- 1.17 “Entity” means an entity that has registered with the Office of Pharmacy Affairs and has been assigned a 340B ID, is eligible to participate in a Pharmacy Program identified in an Exhibit to this Agreement, and which has contracted with **Administrator** for the administration of such Pharmacy Program, including the management of Pharmacy Services provided by Contract Pharmacy under this Agreement.
- 1.18 “Generic Drug” shall mean a drug designated as “generic” by Medispan or a similar product catalog as used by **Administrator** and is sourced from multiple manufacturers and is designated as a generic drug by a nationally recognized price-reporting service selected by Contract Pharmacy.
- 1.19 “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 Entity, has a contractual arrangement or other arrangement with Entity or provides medical services as a result of a referral from Entity, and has responsibility for Patient’s care.
- 1.20 “NADAC” means the National Average Drug Acquisition Cost as published on a regular basis by the Centers for Medicaid and Medicare Services.
- 1.21 “Patient” means an individual who (i) has established a relationship with Entity such that Entity maintains a record of care, (ii) receives health care services from a Health Care Provider, (iii) otherwise satisfies the requirements for status as a “patient” as defined at 61 FR 207, pp. 55156 to 55158, or in any guidelines, rules or regulations hereafter published, issued or promulgated in amendment, supplement or replacement thereof, and (iv) has been prescribed a Covered Drug by a Health Care Provider.
- 1.22 “Pharmacy Program(s)” means a form of pharmacy benefit or pharmacy purchasing mechanism which Entity is eligible to access and has been implemented using the administrative and management services of **Administrator** through which Covered Drugs are provided to Patients under this Agreement in a manner consistent with a designated benefit or plan structure and applicable laws and regulations. The terms specific to the provision of Pharmacy Services and Contract Pharmacy’s Dispensing Fee in connection

with a particular Pharmacy Program shall be established as a Schedule to Exhibit A of this Agreement.

- 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 “Specialty Drugs” means a Covered Drug that has one or more of the following characteristics: complex therapy for complex disease; specialized patient training and coordination of care (services, supplies, or devices) required prior to therapy initiation and/or during therapy; requires unique patient compliance and safety monitoring; includes unique requirements for handling, shipping and storage; and has potential for significant waste due to the high cost of the drug. The current and updated Specialty Drug lists are available via **Administrator**’s Wellpartner Clarity
- 1.25 “Third-Party Payor” means a payer of Patient Claims, other than Entity, including without limitation: (i) an insurance company or pharmacy benefit manager providing a prescription insurance benefit or coverage; (ii) a state Medicaid agency; (iii) the entity or organization that receives payment from the applicable state Medicaid agency for the Pharmacy Services provided to a Patient during the applicable premium payment period; (iv) a duly qualified Medicare Part D plan; and (v) any other authorized Third-Party that pays or contributes a portion of the payment in connection with an Patient’s Claim for a Covered Drug.
- 1.26 “True-Up Process” refers to an inventory and financial reconciliation process through which **Administrator** identifies the outstanding balance of Covered Drugs previously dispensed by Contract Pharmacy to Patients under Entity’s 340B Pharmacy Program that have not been replenished by Entity within a specified time period and for which Entity shall remit to Contract Pharmacy (or **Administrator** shall offset from monies owed Entity) the NADAC price of such dispensed inventory as set forth in this Agreement.
- 1.27 “Wellpartner Clarity” refers to Wellpartner’s web based portal that provides comprehensive data views and reports for 340B oversight. It includes but is not limited to, detailed claims data for auditing prescriptions and supporting documentation for inventory and financial tracking.
- 1.28 “Wholesale Acquisition Cost or “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. CONTRACT PHARMACY REQUIREMENTS

- 2.1. Contract Pharmacy agrees to participate in all Pharmacy Programs and pharmacy networks managed by **Administrator** and referenced in Schedule(s) to Exhibit A of this Agreement. Such participation shall be in a manner consistent with applicable laws and regulations and the terms of this Agreement.
- 2.2. Contract Pharmacy shall reasonably cooperate with **Administrator**’s implementation requirements related to a Pharmacy Program, which may include, but not limited to: (a) configuration of Claim Adjudication platform; (b) execution of required forms to meet regulatory requirements of the Pharmacy Program; (c) coordination with switch processor for access to Contract Pharmacy claims; and (d) training of staff with respect to specific

Pharmacy Program requirements. **Administrator**, as agent to the Covered Entity, shall coordinate such activity so as not to adversely impact Contract Pharmacy operations.

- 2.3. 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 **Administrator** and/or an Entity in connection with Pharmacy Services is and will continue to be true and complete. Upon request of **Entity**, Contract Pharmacy shall supply copies of any and all professional licenses, registrations, certifications, or other documentation required to be maintained by Contract Pharmacy or a Contract Pharmacy pharmacist in the performance of obligations under this Agreement. Contract Pharmacy shall immediately notify **Administrator** and Entity in the event a required license of Contract Pharmacy, any of its Contract Pharmacy locations or any of its pharmacists is lost, revoked, suspended or otherwise not valid and possessed.
- 2.4. 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.
- 2.5. 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. However, to the extent that a Contract Pharmacy pharmacist refuses to dispense a Covered Drug to an entity patient, Contract Pharmacy shall notify Entity of such refusal and the reasons therefore. Nothing in this Agreement is intended to create nor shall it be construed to create any rights for any Entity to intervene in any manner by which Contract Pharmacy provides services to Patients.
- 2.6. Contract Pharmacy agrees to reasonably cooperate with **Administrator** and/or Entity in the review and resolution of complaints or appeals by Patients related to the provision of Pharmacy Services.
- 2.7. As permitted by applicable law, regulation and Contract Pharmacy's professional standards, Contract Pharmacy shall reasonably comply with Entity's drug formulary requirements. If a non-formulary drug is prescribed, Contract Pharmacy will use reasonable best efforts to contact the prescriber and encourage formulary compliance and request authorization to change a prescribed drug to a therapeutically equivalent formulary drug.
- 2.8. Contract Pharmacy shall maintain an adequate inventory of supplies, drugs, equipment, and other items as required for the provision of Pharmacy Services. Supplies used to provide Covered Drugs to Patients shall be sourced from a reputable manufacturer and/or wholesaler subject to applicable state and federal laws. Contract Pharmacy further represents and warrants that it will not use drug samples, returned, recalled, or expired supplies and/or products in the provision of Pharmacy Services, except to the extent permitted by state restocking laws.

3. CLAIM PROCESSING, PAYMENT and REPORTING

- 3.1. When presented with a valid prescription from a Patient, Contract Pharmacy shall adjudicate the Claim and dispense Covered Drugs to such Patient per the terms of this Agreement. **Administrator** will review all Patient Claim data and shall associate Claims with the appropriate Pharmacy Program based on Patient and Claim eligibility. Claim data reviewed by **Administrator** as part of its Claim processing will be used to assist in the management of Pharmacy Program replenishment, and the financial reconciliation of Claims and reporting.
- 3.2. **Administrator** shall monitor and track Eligible Claims to ensure Contract Pharmacy does not receive shipments to replenish 340b Covered Drugs in excess of quantities dispensed to Patients under the 340b Pharmacy Program. **Administrator** shall arrange for such drugs to be shipped directly to Contract Pharmacy and billed to the Entity (in the form of a Bill-to/Ship-to arrangement) and shall perform tracking, reporting, and auditing of replenishment orders consistent with applicable laws and regulations. Entity shall be responsible for establishing the price of the 340B drugs subject to applicable federal, state and local laws.
- 3.3. The Parties shall abide by the payment terms established for Pharmacy Services as specified in the applicable Schedule of Exhibit A. A Claim submitted by Contract Pharmacy shall constitute a representation by Contract Pharmacy that Pharmacy Services were provided in accordance with the terms of this Agreement and the referenced Covered Drug was dispensed to the Patient. On or about the first (1st) and sixteenth (16th) of the month, **Administrator** will make available to Contract Pharmacy the final detailed activity report and the final summary activity report for the prior Period. On first (1st) and sixteenth (16th) of the month, **Administrator** will submit an invoice to Contract Pharmacy for payments due to be remitted in connection with dispensed 340B Covered Drugs for that Cycle. Payments are due net thirty (30) days.
- 3.4. Neither Contract Pharmacy or Entity shall use 340B Drugs to dispense “fee for service” Medicaid prescriptions, unless Covered Entity, Pharmacy and the State Medicaid program have established an arrangement to prevent duplicate discounts. Any such arrangement shall be reported to HRSA by the Covered Entity.
- 3.5. The amounts represented in the invoice sent to Contract Pharmacy represent the difference between the payments received by Contract Pharmacy from payers and patients, less 340B Contract Pharmacy dispensing fees and credits appropriately applied by **Administrator**. **Administrator** offers one method of payment, an Electronic Funds Transfer (EFT) from Contract Pharmacy to **Administrator**.
- 3.6. Contract Pharmacy is solely responsible for all payments required herein and shall at no time withhold undisputed payment due Entity and/or **Administrator**. All sums not disputed within one (1) month of receipt of invoice and owed to Entity and/or **Administrator** by Pharmacy 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.

- 3.7. For unpaid accounts over ninety (90) days old, **Administrator** reserves the right to suspend replenishment until accounts are either paid in their entirety or other arrangements have been made and agreed upon with **Administrator**.
- 3.8. Contract Pharmacy acknowledges that proper Claims Adjudication and **Administrator**'s processing of Claims with respect to a Pharmacy Program are dependent upon the accurate transmission and processing of Claim data by the Contract Pharmacy. **Administrator** shall not be liable for any damages or actions arising out of any interruption in transmission or processing, except where it is solely at fault. **Administrator** shall use ordinary care and reasonable diligence in the performance of its duties under this Agreement. **Administrator** disclaims all express and implied warranties of any kind, including, but not limited to any warranty as to the quality, accuracy, or suitability for any particular purpose of the data used or generated by **Administrator** under this Agreement, except that **Administrator** shall not intentionally adversely affect the quality, accuracy or suitability of data it receives from others. Entity and Contract Pharmacy acknowledges that **Administrator** is solely responsible for determining Claim eligibility for 340B program prices. Contract Pharmacy will not receive a Dispensing Fee or replenishment drugs in connection with ineligible Claims.
- 3.9. Contract Pharmacy shall have full responsibility for the collection of reimbursement amounts due from Third-Party Payers and Patients in connection with Pharmacy Services. Contract Pharmacy will collect Third-Party payer payments and patient Co-payments in the same manner as it does for non-340B claims. Consistent with its other Third-Party contract obligations, Contract Pharmacy will not refuse to provide Pharmacy Services to a Patient due to dissatisfaction with the reimbursement rate established with such Third-Party Payers or in a Schedule to this Agreement.
- 3.10. 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 Claim Adjudication. Contract Pharmacy agrees that in no case, including but not limited to the nonpayment by a Third-Party Payer, **Administrator**, and/or Entity, 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.
- 3.11. Contract Pharmacy acknowledges that Administrator operates only as an intermediary between Entity and Contract Pharmacy and that Entity is responsible for paying the Dispensing Fee due. Administrator will not be obligated to pay Contract Pharmacy amounts due hereunder out of Administrator's own funds or undertake the resupply of Covered Drugs at its own cost and expense. Contract Pharmacy shall have no claim against Administrator for any amounts not paid to Contract Pharmacy due to lack of reimbursement by Third-Party Payers or breach by an Entity, including, but not limited to, failure to meet inventory and/or re-supply requirements. Administrator shall provide reasonable efforts to assist in securing payment to Contract Pharmacy consistent with its agreement with the Entity.
- 3.12. As may be necessary, Contract Pharmacy shall provide reasonable assistance to **Administrator** in meeting its reporting obligations to Entity in connection with the Pharmacy Services provided under this Agreement.
- 3.13. Contract Pharmacy acknowledges and agrees that **Administrator** shall be authorized to credit and/or offset against any amounts due hereunder any overpayments, reversals or other adjustments determined to be necessary or appropriate to properly reflect the terms of this Agreement and meet legal or regulatory requirements. Reversals, other than True-

Up calculations, will be accompanied by claim level detail indicating offset amount for individual prescriptions.

- 3.14. **Administrator** shall provide Contract Pharmacy regular reports at the individual Claim level for each Pharmacy Program for the proper tracking of inventory dispensed and replenished, amounts remitted by Contract Pharmacy and Dispensing Fees paid.
- 3.15. Entity 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 Pharmacy Program.
- 3.16. Entity shall provide, where applicable, outpatient encounter data for all 340B-eligible clinics and departments within Entity. Such data shall be provided by Entity in the format and on a schedule agreed to by the Parties.
- 3.17. Both Parties understand a copy of this Agreement shall be provided to HRSA upon written request.
- 3.18. The Entity and Contract Pharmacy will identify the necessary information for Entity to meet its ongoing 340B Program compliance obligations. Contract Pharmacy will make such information, as well as additional reports as agreed to by the Parties, available to enable periodic independent audits performed by the Entity. This information shall include, but is not limited to customary business reports.

4. **TERM and TERMINATION**

- 4.1. This Agreement will become effective on the date of full execution and will continue until terminated as set forth herein.
- 4.2. Either Party may terminate this Agreement for convenience at any time without cause or penalty upon the provision of ninety (90) days prior written notice to the other Party.
- 4.3. 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.
- 4.4. Notwithstanding any other provision herein, Entity shall have the right to terminate this Agreement immediately and without notice or penalty in the event Contract Pharmacy and/or any of its Contract Pharmacy locations and/or any of its pharmacists suffer the loss or revocation or suspension of a necessary license.
- 4.5. 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:
 - 4.5.1 A Party fails to comply with audit requirements contained herein;
 - 4.5.2 A Party attempts to disclose or discloses Confidential Information of the other Party;

- 4.5.3 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;
- 4.5.4 A Party is disqualified or removed from participating in a federally funded healthcare program, such as Medicare or Medicaid; or
- 4.5.5 A Party engages in the diversion of Covered Drugs to ineligible patients or some other legal or regulatory violation in connection with a Pharmacy Program.
- 4.6. 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 **Administrator** and Entity to settle any outstanding inventory issues to avoid the diversion of Covered Drugs, and shall also provide reasonable assistance to **Administrator** to ensure the transition of Pharmacy Services to an alternate contracted pharmacy.
- 4.7. 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.

5. INDEMNIFICATION and LIMITATION OF LIABILITY

- 5.1. Contract Pharmacy shall indemnify, Entity, its employees, agents, directors, and sub-contractors harmless from and against any and all liability, losses, claims, lawsuits, costs, damages and/or expenses whatsoever, including reasonable attorneys' fees and court costs (collectively "Actions") in favor of any Third-Party and arising out of or attributable to: (a) the material breach by Contract Pharmacy of any Contract Pharmacy representation, warranty, covenant or obligation as set forth in this Agreement; or (b) the willful misconduct or negligent performance or nonperformance by Contract Pharmacy or by any of its employees, agents of any duty or responsibility of Contract Pharmacy under this Agreement.
- 5.2. Entity shall indemnify, defend and hold Contract Pharmacy, its employees, agents, directors, and sub-contractors harmless from and against any Actions in favor of any Third-Party and arising out of or attributable to: (a) the material breach by Entity of any Entity representation, warranty, covenant or obligation as set forth in this Agreement; or (b) the willful misconduct or negligent performance or nonperformance by Entity or by any of its employees, agents of any duty or responsibility of Entity under this Agreement.
- 5.3. A Party seeking indemnification pursuant to this Section (the "Indemnified Party"), shall notify the other Party (the "Indemnifying Party") promptly upon becoming aware of any Action to which such indemnification obligation may apply. The Indemnifying Party shall have the right to assume and control the defense of the Action at its own expense. If the right to assume and control the defense of any such Action is exercised, the Indemnified Party shall have the right to participate in such defense. If the Indemnifying Party does not reasonably assume the defense of the Action, the Indemnified Party may defend the Action and shall also be indemnified for reasonable costs of such defense.
- 5.4. EXCEPT TO THE EXTENT THAT LIABILITY ARISES FROM A PARTY'S INDEMNITY OBLIGATIONS SPECIFIED HEREIN, IN NO EVENT SHALL A PARTY BE LIABLE UNDER THIS AGREEMENT (WHETHER IN AN ACTION IN NEGLIGENCE, CONTRACT OR TORT OR BASED ON A WARRANTY OR

OTHERWISE) FOR LOSS OF PROFITS, REVENUE, OR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES INCURRED BY THE OTHER PARTY OR ANY THIRD-PARTY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- 5.5. Contract Pharmacy acknowledges that, subject to applicable state and federal laws and related professional standards, the treatment of any patient and the dispensing of any drug is at the sole discretion of Contract Pharmacy.

6. CONFIDENTIALITY

- 6.1. 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, including, without limitation, to any agents or consultants working on behalf of the Receiving Party, without the prior written consent of the Disclosing Party.
- 6.2. 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.
- 6.3. 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.
- 6.4. 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.
- 6.5. 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.

- 6.6. 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, than 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.

7. RECORD MAINTENANCE AND AUDIT

- 7.1. Contract Pharmacy shall maintain appropriate accounts and dispensing records for all Patient Claims, irrespective of the Pharmacy Program. 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.
- 7.2. Contract Pharmacy shall permit Entity and/or its duly authorized agents upon reasonable notice and during normal business hours, and at its 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 Pharmacy Services, including the provision of Covered Drugs for which Contract Pharmacy submits Claims, were provided in a manner consistent with the terms of this Agreement. In lieu of signature files, **Entity** shall accept POS register receipts or patient verification letters as notice of Patients receipt of prescriptions. 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 Entity'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 at any time during the term hereof, and for up to twelve (12) months after the expiration or termination of this Agreement. If any examination by of Contract Pharmacy's records reveals that ineligible Claims were submitted for reimbursement, then **Administrator** shall, upon direction of Entity, cause the administrative reversal of such Claims and all impacted accounts will be reconciled accordingly. Contract Pharmacy and **Administrator** shall cooperate with Entity in order for Entity to verify or achieve compliance under the 340B program.

- 7.3. Both Parties understand that they are subject to audits by outside parties (including by DHHS and participating manufacturers) of records that directly pertain to the Entity'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 the 340b Pharmacy Program are maintained during the term of the Agreement and for three (3) year thereafter, and shall permit Entity, upon reasonable written notice and during normal business hours, to examine such records. Without limiting the generality of the foregoing, all Parties will ensure that all pertinent reimbursement accounts and dispensing records, maintained by **Administrator**, will be accessible separately from **Administrator**'s own operations and will be made available to Entity, the DHHS Health Resources and Services Administration ("HRSA"), and any manufacturer in the case of an audit.

8. MISCELLANEOUS PROVISIONS

- 8.1. Advertisement. **Administrator** reserves its rights in and control of the words "Wellpartner", 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. Contract Pharmacy will not use such words, symbols, trademarks, trade names or service marks without the prior written consent of other Party. Contract Pharmacy reserves its rights in and control of its service marks, trademarks, trade names and other such proprietary symbols and words presently existing or hereafter acquired, and all symbols related thereto or used in connection therewith. **Administrator** shall not use such marks, names, symbols or words without Contract Pharmacy's prior written consent, which consent is hereby granted, for the limited purpose of **Administrator** communicating Contract Pharmacy's participation under this Agreement to applicable Entities, Patients, and potential clients.
- 8.2. Marks and Names. Each of the Parties 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. Notwithstanding the foregoing, each of the Parties 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.
- 8.3. Notices. All formal notices, requests, demands and other communications provided under this Agreement shall be in writing and shall be delivered to the appropriate 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.
- 8.4. 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 and applicable Manual provisions, 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, (the HITECH Act) and the regulations promulgated thereunder, and updates to incorporate any changes to such statutes, rules, regulations, and applicable standards as further detailed in the Business Associate Agreement appended hereto as Exhibit B, which terms are incorporated into this Agreement.

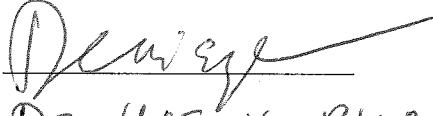

- 8.5. Patient Choice. This Agreement shall not be interpreted, construed, or otherwise used to limit Patients' choice of pharmacy.
- 8.6. Entire Agreement. This Agreement including all Exhibits and Schedules hereto constitute the entire understanding between the Parties as to their obligations and, unless otherwise specified herein, may not be amended except by a writing signed by both Parties. The terms of the Agreement shall apply to all Contract Pharmacy locations, including affiliated entities of Contract Pharmacy. Contract Pharmacy acknowledges that, to the extent not prohibited by law and/or regulation, Entity may utilize all Contract Pharmacy locations in support of a Pharmacy Program and that **Administrator** may, upon direction of Entity, restrict Contract Pharmacy's participation in any such Pharmacy Program. Contract Pharmacy acknowledges that the exclusion of a Contract Pharmacy from providing Pharmacy Services for Entity shall not otherwise jeopardize or prejudice Contract Pharmacy's participation for the benefit of another Entity location.
- 8.7. Third-Party Beneficiaries. The Parties specifically agree that Patients shall not be Third-Party beneficiaries to this Agreement.
- 8.8. 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.
- 8.9. 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.
- 8.10. 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.
- 8.11. Governing Law. The validity, interpretation, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without respect to its conflict of laws principles.
- 8.12. Force Majeure. Except for the duty to pay, 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, plague or disease, delay of carriers, suppliers or telecommunications providers, or government acts or regulations. If the period of non-

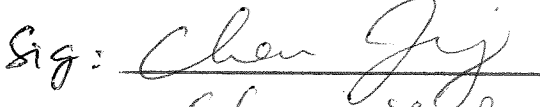
performance exceeds sixty (60) days, the unaffected Party or Parties shall have the right to terminate this Agreement by thirty (30) days written notice to the affected Party, without liability except to pay for services rendered.

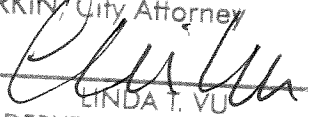
- 8.13. Insurance Requirements. With respect to the performance of their respective obligations under this Agreement, Contract Pharmacy shall maintain general liability insurance with limits of not less than one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate per policy year. Upon request by a Entity, the Contract Pharmacy shall provide evidence of such insurance.
- 8.14. 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.
- 8.15. 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.
- 8.16. Independent Contractor. 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. In managing its Contract Pharmacy Network, **Administrator** shall be free to exercise its own judgment, consistent with the terms and conditions outlined in this Agreement.
- 8.17. 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.
- 8.18. Headings. The headings of sections contained in this Agreement are for reference only and should not affect the meaning or interpretation of this Agreement.
- 8.19. 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.

~signature page to follow~

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

Bella Vida Pharmacy, Inc. The undersigned certifies that they have legal authority to bind Contract Pharmacy. Signature: <u></u> Name: <u>DENISE V. PHAM</u> Title: <u>Manager / Owner</u> Date: <u>9/18/18</u> Contract Pharmacy Name & Notices Address: Bella Vida Pharmacy, Inc. 1037 W CARSON ST, TORRANCE, CA 90502	City of Long Beach through its Department of Health & Human Services The undersigned certifies that they have legal authority to bind Entity. Signature: <u></u> Name: <u>Tom Modica</u> Assistant City Manager Title: EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER Date: <u>9/28/18</u> Notices Address: City of Long Beach through its Department of Health & Human Services 2525 GRAND AVENUE Room 106, LONG BEACH, CA 90815 340B ID: RW15
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Sig: 
Name: Chen Jij
Title: Pharmacist/owner
Date: 9/18/18

APPROVED AS TO FORM
9/26, 2018
CHARLES PARKIN, City Attorney
By: 
LINDA T. VU
DEPUTY CITY ATTORNEY

Bella Vida Pharmacy
1037 W. Carson Street
Torrance, CA 90502-2005
(310) 320-3333

EXHIBIT A - Schedule 1
340B Pharmacy Program

Bella Vida Pharmacy, Inc., the Contract Pharmacy, shall provide Pharmacy Services to the named 340B Entity below to include child sites:

City of Long Beach through its Department of Health & Human Services

Section 602 of Public Law 102-585, the Veteran's Health Care Act of 1992, enacted Section 340B of the Public Health Services Act (the "340B Act"), which provides for the limitation of prices on drugs purchased by certain qualifying covered entities, including the undersigned Entity. Under the 340B Act, Entity is eligible to purchase outpatient prescription drugs for the benefit of its Patients at preferential prices from certain drug manufacturers that have entered into drug purchasing agreements with the United States Department of Health and Human Services (the "340B Program"). **Administrator** serves as the Pharmacy Program **Administrator** for Entity's 340B Pharmacy Program and enters into the Agreement and this Schedule in furtherance thereof.

Parties acknowledge that they have freely negotiated the reimbursement terms in this Schedule 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.

1. 340B CLAIM QUALIFICATION

- 1.1. **Administrator** shall receive Patient Claim information as follows: (a) directly from Contract Pharmacy through the Claim adjudication process; (b) from the Contract Pharmacy's designated Claims switch provider; and/or (c) from Covered Entity or through its designated PBM.
- 1.2. **Administrator** shall review every Claim for 340B Pharmacy Program qualification based on the following: (a) 340B Pharmacy Program pricing eligibility based on the requirements set forth in the 340B Act and applicable laws and regulations; (b) eligibility for processing based on a financial analysis of the Claim using **Administrator**'s criteria for no net loss to the Entity on an average Claim basis for a dispensing and reporting period (including 340B cost of the Covered Drugs and all applicable fees); (c) eligibility based on the commonality of Claims so as to reduce the instances of inventory True-Up; and (d) any other criteria established by and between Entity and **Administrator**.
- 1.3. Drugs classified as C-2s will be specifically excluded unless Entity and Contract Pharmacy request, in writing for them to be included.
- 1.4. Upon completion of Claim qualification; eligible Claims identified by **Administrator** shall be processed in coordination with Contract Pharmacy. Contract Pharmacy shall manage ineligible claims in the same manner as such claim would traditionally be managed absent Entity's 340B Pharmacy Program and outside of this Agreement.

2. CONTRACT PHARMACY REMITTANCE

- 2.1. From all Patients on the Date of Service, Contract Pharmacy shall collect the applicable Co-payment due based on system messaging received at the time of Claim Adjudication or

in subsequent payment reconciliation statements from a Third-Party Payor or their designated Claims processor. Contract Pharmacy is prohibited from: (a) waiving or discounting Co-payments; and (b) collecting amounts from Patients in excess of what is indicated at the time of Claim Adjudication or in subsequent payment reconciliation statements.

- 2.2. From Third-Party Payors, Contract Pharmacy shall, through its standard billing and remittance process, collect all contracted reimbursement amounts due in connection with such Claim irrespective of whether amounts are due from a primary or subsequent payer.

3. CONTRACT PHARMACY DISPENSING FEE

- 3.1. Contract Pharmacy shall receive a Dispensing Fee for each eligible prescription filled, and the Dispensing Fee shall be the Contract Pharmacy's exclusive and sole reimbursement for pharmacy services provided pursuant to this Agreement.
- 3.2. As invoiced, Contract Pharmacy shall remit to **Administrator** the total amounts collected for each Covered Drug dispensed as outlined in Section 2 of this Schedule, less its Dispensing Fee calculated by **Administrator** as follows:
 - 3.2.1. Brand Drugs – \$28.00
 - 3.2.2. Generic Drugs – \$28.00
 - 3.2.3. Specialty Drugs – \$150.00
- 3.3. The Community Benefit Program for uninsured and/or underinsured program will be established through the Community Benefit Program Authorization Form.
- 3.4. 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 Entity per the replenishment and reconciliation process.
- 3.5. In the event **Administrator** and Entity coordinate the payment of the Dispensing Fee due with any Third-Party Payors, then Contract Pharmacy's Dispensing Fee shall be remitted by the applicable Third-Party Payor, in place of its Third-Party Payor contracted reimbursement.

4. OTHER TERMS

- 4.1. With respect to Covered Drugs dispensed by Contract Pharmacy to Patients that are not replenished because they do not constitute a full "package" size (based on the 11-digit National Drug Code [NDC] of the product dispensed), or that cannot be replenished, **Administrator** shall complete a True-Up Process for of said covered drugs at the ninety (90) day point.
- 4.2. When a True-Up is required for Covered Drugs, the Parties agree that the True-Up shall be based on the remaining dispensed units at the 11-digit NDC level, provided, however, that any trued-up amount shall not be adjusted by the Dispensing Fee or Administrative Fee. All True-Ups shall be at the NADAC price as follows:

- 4.2.1. The NADAC price effect on the Date of Service, or
- 4.2.2. When the NADAC price in effect on the Date of Service is not available:
 - 4.2.2.1. Brand Drugs: Average Wholesale Price minus 18%
 - 4.2.2.2. Generic Drugs: Average Wholesale Price minus 65%
- 4.3. The Parties recognize that in certain cases the 340B cost of goods used at the time of Claim qualification and calculation of fees (the Service Fees and Dispensing Fee) may differ from the time when Entity replenishes or completes a True-Up of inventory. Entity shall in all cases be responsible for any such shortfalls and shall at all times undertake replenishment and/or True-Up reconciliation of dispensed Covered Drugs according to the terms of this Agreement.
- 4.4. In the event of any change in industry standards related to the reimbursement and/or payment terms set forth in this Schedule, then the Parties agree as necessary to adopt any such change as necessary to ensure the intended economics of this Agreement are maintained. If the Parties cannot agree on what changes are appropriate, then either Party may terminate this Agreement upon the provision of ninety (90) days prior written notice to the other Party.

5. CONTRACT PHARMACY NETWORK

The terms set forth in this Schedule 1 to Exhibit A, shall apply only to the provision of Pharmacy Services on behalf of the Covered Entity by all Contract Pharmacy locations below.

Contract Pharmacy Name:	Bella Vida Pharmacy, Inc.
Contract Pharmacy D/B/A Name:	n/a
Corporate Address:	1037 W CARSON ST, TORRANCE, CA 90502
Remittance Address:	n/a

Name of Pharmacy	Address	DEA, NPI, NCPDP
BELLA VIDA PHARMACY	1037 W CARSON ST, TORRANCE, CA 90502	FB2512259, 1467650713, 5627510

6. COVERED ENTITY LOCATIONS

Contract Pharmacy, shall provide Pharmacy Services to the named 340B Covered Entity below to include all OPA registered child sites:

340B ID	Covered Entity Name	Street Address City/State/Zip
RW15	City of Long Beach through its Department of Health & Human Services	2525 GRAND AVENUE Room 106, LONG BEACH, CA 90815

340B ADMINISTRATIVE SERVICES ADDENDUM
ATTACHMENT 3

HIPAA BUSINESS ASSOCIATE AGREEMENT

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT (the “BAA”) is entered into by and between Wellpartner Inc. (the “Business Associate”) and Entity (the “Covered Entity”) and effective as of the Effective Date of the Agreement.

Business Associate may perform functions or activities on behalf of Covered Entity involving the use and/or disclosure of protected health information received from Covered Entity, or created by Business Associate on behalf of Covered Entity. Therefore, Business Associate agrees to the following terms and conditions set forth in this BAA.

This BAA is not intended to represent the Parties exclusive obligations with respect to the use and/or disclosure of Protected Health Information (“PHI”) and/or Confidential Information and the absence of a specific requirement in this BAA shall not relieve a Party of its responsibility to be aware of and comply with any other applicable laws, rules and/or regulations.

Definitions. For purposes of this BAA, any terms used herein, unless otherwise defined, shall have the same meanings as used in the Privacy and Security Standards of HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009) and its implementing regulations (“HITECH”).

Scope and Interpretation. The terms and conditions of this BAA shall supplement and amend the Agreement and relationships between the parties (“Base Agreement” or collectively “Base Agreements”) which provide for Business Associate’s receipt, transmission, maintenance, creation, Use and Disclosure of PHI, in any form or medium, including electronic PHI, in Business Associate’s capacity as a “Business Associate” to the Covered Entity. Any ambiguity in this BAA shall be resolved to permit Covered Entity to comply with HIPAA. In case of any inconsistency or conflict between the Base Agreement(s) and the terms and conditions of this BAA, the terms and conditions of this BAA shall control. Except as supplemented and/or amended, the terms of the Base Agreement(s) shall continue to apply and effect to govern the matters addressed in the Base Agreement(s).

Compliance with Applicable Law. Beginning with the relevant effective dates, to the extent Business Associate meets the definition of a “Business Associate” of Covered Entity as such term is defined under HIPAA, Business Associate shall comply with its obligations under this BAA and with all obligations of a business associate under HIPAA, HITECH and other related laws, for so long as Business Associate uses, possesses, accesses or maintains PHI.

Permissible Use and Disclosure of Protected Health Information. In addition to the uses and disclosures permitted by the Base Agreement, Business Associate may use and disclose PHI: (i) for its own proper management and administration and (ii) to carry out its legal responsibilities. If Business Associate discloses PHI to a Third-Party for either reason above, prior to making any such disclosure, Business Associate shall obtain: (a) reasonable assurances from the receiving party that such PHI will be held confidential and be disclosed only as Required By Law in accordance with HIPAA or for the purposes for which it was disclosed to such receiving party; and (b) an agreement from such receiving party to immediately notify Business Associate of any known breaches of the confidentiality of the PHI.

Limitations on Uses and Disclosures of PHI. Business Associate shall not, and shall ensure that its directors, officers, employees, and agents do not, use or disclose PHI in any manner that is not permitted or required by the Base Agreement or this BAA, or as Required By Law. All uses and disclosures of, and requests by Business Associate for, PHI are subject to the Minimum Necessary rule of the Privacy Standards and shall be limited to the information contained in a Limited Data Set, to the extent practical, unless additional information is needed to accomplish the intended purpose, or as otherwise permitted in accordance with Section 13405(b) of HITECH, and any other subsequently adopted guidance.

Required Safeguards To Protect PHI. Business Associate agrees that it will implement appropriate safeguards in accordance with the Privacy Standards to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this BAA.

Reporting of Improper Use and Disclosures of PHI. Business Associate shall report to Covered Entity, within five (5) business days of discovery, a use or disclosure of PHI not provided for in this BAA by Business Associate, its officers, directors, employees, or agents, or by a Third-Party to whom Business Associate disclosed PHI.

Reporting of Breaches of Unsecured PHI. Business Associate shall report to Covered Entity, within five (5) business days of discovery, a breach of unsecured PHI in accordance with the requirements set forth in 45 C.F.R. § 164.410. Business Associate shall fully cooperate with Covered Entity's breach notification and mitigation activities, and shall be responsible for reasonable and necessary expenditures by Covered Entity for third-party services.

Mitigation of Harmful Effects. Business Associate agrees to mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate in violation of the requirements of this BAA, including, but not limited to, compliance with any state law or contractual data breach requirements.

Agreements by Third Parties. Business Associate shall enter into an agreement with any agent or subcontractor of Business Associate that will have access to PHI hereunder. Pursuant to such agreement, the agent or subcontractor shall agree to be bound by the same restrictions, terms, and conditions that apply to Business Associate under this BAA with respect to such PHI.

Access to Information. To the extent applicable, within ten (10) business days of a request by Covered Entity for access to PHI about an individual contained in a Designated Record Set, Business Associate shall make available to Covered Entity such PHI for so long as such information is maintained by Business Associate in the Designated Record Set, as required by 45 C.F.R. § 164.524. In the event any individual delivers a request for access to PHI directly to Business Associate, Business Associate shall, within five (5) business days, forward such request to Covered Entity.

Availability of PHI for Amendment. Within ten (10) business days of receipt of a request from Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), Business Associate shall provide such information to Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. § 164.526. In the event any individual delivers directly to Business Associate a request for amendment to PHI, Business Associate shall, within five (5) business days, forward such request to Covered Entity.

Documentation of Disclosures. Business Associate agrees to document uses and disclosures of PHI and information related to such uses and disclosures as required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

Accounting of Disclosures. Within ten (10) business days of notice by Covered Entity to Business Associate that Covered Entity has received a request for an accounting of disclosures of PHI regarding an individual during the six (6) year period prior to the date on which the accounting was requested, Business Associate shall make available to Covered Entity information to permit Covered Entity to respond to the request for an accounting of disclosures of PHI, as required by 45 C.F.R. § 164.528. In the case of an electronic health record maintained or hosted by Business Associate on behalf of Covered Entity, the accounting period shall be three (3) years and the accounting shall include disclosures for treatment, payment and health care operations, in accordance with the applicable effective date of Section 13402(a) of HITECH. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall forward such request to Covered Entity within five (5) business days of receipt.

Restrictions. Business Associate shall comply with any restrictions on disclosure of PHI requested by an individual and agreed to by Covered Entity in accordance with 45 C.F.R. §164.522.

Security. To the extent that Business Associate creates, receives, maintains or transmits electronic PHI on behalf of Covered Entity, Business Associate shall:

Comply with the security provisions found at 45 C.F.R. §§164.308, 310, 312, and 316 in the same manner as such provisions apply to Covered Entity, pursuant to Section 13401(a) of HITECH, and otherwise implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI;

Ensure that any agent to whom Business Associate provides electronic PHI agrees to implement reasonable and appropriate safeguards in writing to protect such PHI; and

Report to Covered Entity within five (5) business days any Security Incident of which Business Associate becomes aware and which results in a use or disclosure of electronic PHI in violation of the Base Agreement or this BAA. For those Security Incidents that do not result in a use or disclosure of electronic PHI in violation of the Base Agreement or this BAA, reports may be made in the aggregate on at least quarterly basis. In this context, the term "Security Incident" shall have the same meaning as such term as defined in 45 CFR 164.304.

Judicial and Administrative Proceedings. In the event Business Associate receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, Business Associate shall notify Covered Entity in writing prior to responding to such request to enable Covered Entity to object. Business Associate shall notify Covered Entity of the request as soon as reasonably practicable, but in any event within two (2) business days of receipt of such request.

Availability of Books and Records. Business Associate hereby agrees to make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services for purposes of determining Covered Entity's compliance with the Privacy Standards.

Breach of Contract by Business Associate. In addition to any other rights Covered Entity may have in the Agreement, this BAA or by operation of law or in equity, Covered Entity may, upon a breach or violation of this BAA, provide a reasonable opportunity for Business Associate to cure or end any

such violation within the time specified by Covered Entity. If cure is not possible or if the Business Associate does not cure such breach or violation, Covered Entity may immediately terminate the Agreement. Covered Entity's option to have a breach cured shall not be construed as a waiver of any other rights Covered Entity has in the Agreement, this BAA or by operation of law or in equity.

Effect of Termination of Agreement. The parties acknowledge that the nature of Business Associate's data storage infrastructure makes return or destruction of PHI generally infeasible. Accordingly, upon the termination of the Base Agreement(s) or this BAA for any reason, Business Associate shall continue to apply the protections of this BAA to all PHI maintained on behalf of Covered Entity as of and after the effective date of termination until such PHI has been destroyed as provided in this Section 20. Business Associate shall destroy any PHI retained under this Section 20 prior to decommissioning or recycling any electronic media used in maintaining such PHI. This provision shall apply to PHI that is in the possession of Business Associate, its agents and subcontractors.

Injunctive Relief. Business Associate stipulates that its unauthorized use or disclosure of PHI while performing services pursuant to this BAA would cause irreparable harm to Covered Entity, and in such event, Covered Entity shall be entitled to institute proceedings in any court of competent jurisdiction to obtain damages and injunctive relief.

Indemnification. Business Associate shall indemnify and hold harmless Covered Entity and its officers, trustees, employees, and agents from any and all claims, penalties, fines, costs, liabilities or damages, including but not limited to reasonable attorney fees, incurred by Covered Entity arising from a violation by Business Associate of its obligations under this BAA.

Owner of PHI. Under no circumstances shall Business Associate be deemed in any respect to be the owner of any PHI of Covered Entity.

Third-Party Rights. The terms of this BAA do not grant any rights to any third parties.

Obligations of the Covered Entity. Covered Entity shall: (i) notify Business Associate of any limitation(s) in Covered Entity's Notice of Privacy Practices in accordance with 45 C.F.R. § 164.520, to the extent such limitations affect Business Associate's Use or Disclosure of PHI; (ii) notify Business Associate of any changes in, or revocation of, permission by an Individual to Use or Disclose PHI, if and to the extent such changes affect Business Associate's Use and Disclosure of PHI; and (iii) consult with Business Associate regarding any restriction request on the Use or Disclosure of PHI in accordance with 45 C.F.R. § 164.522, to the extent such restriction may affect Business Associate's Use or Disclosure of PHI, and decline any requests that conflict with Base Agreement.

Independent Contractor Status. For the purposes of this BAA, Business Associate is an independent contractor of Covered Entity, and shall not be considered an employee or agent of the Covered Entity.

Changes in the Law. The parties shall amend this BAA to conform to any new or revised legislation, rules and regulations to which Covered Entity is subject now or in the future including, without limitation, HIPAA, HITECH, the Privacy Standards, Security Standards or Transactions Standards.