

35140

WORKERS' COMPENSATION PHARMACY BENEFITS ADMINISTRATION AGREEMENT

This Workers' Compensation Pharmacy Benefits Administration Agreement is made and entered into as of the first day of January 2019 ("Effective Date") by and between Pharmaceutical Technologies, Inc., d/b/a CastiaRx, a Nebraska corporation ("CastiaRx"), and City of Long Beach, a municipality of California ("City").

WITNESSETH

City sponsors and/or administers one or more workers' compensation health benefit plans providing coverage for prescription drugs and supplies ("Plan");

CastiaRx is a provider of pharmacy benefits management services, including, mail order and specialty pharmacy, and administrative consultative and clinical pharmacy services ("PBM Services"); and

City hereby engages CastiaRx to provide the PBM Services to the Plan as set forth under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and in consideration of the covenants and agreements set forth herein, the parties agree as follows:

ARTICLE I Definitions

For purposes of this Agreement, the following terms shall have meanings as follows:

1.01 "**Administrative Services**" shall mean all of the services described in Section 2.03 of this Agreement.

1.02 "**Agreement**" shall mean this Workers' Compensation Pharmacy Benefits Administration Agreement.

1.03 "**Average Wholesale Price**" or "**AWP**" shall mean the average wholesale price for a given Prescription Legend Drug or other pharmaceutical product, as published by Facts and Comparisons (MediSpan®), or other generally recognized drug pricing services in the retail prescription drug industry and updated on a weekly basis.

1.04 "**Business Day**" shall mean Monday through Friday, excluding holidays on which CastiaRx is open for regular business.

1.05 "**Claimant**" shall mean any eligible participant of the Plan Sponsor who is participating in and entitled to receive Pharmacy Products and Services under the Plan of the Plan Sponsor.

1.06 "**Claimant Identification Card**" shall mean the identification card provided by CastiaRx that identifies the Claimant covered under a Designated Plan. The Claimant Identification Card shall display the CastiaRx icon necessary for identification by Network Pharmacies.

1.07 "**Covered Pharmacy Products and Services**" shall mean any Pharmacy Products and Services that a Claimant requests and which are considered as covered or compensable under the terms of the Claimant's Plan.

1.08 **"Designated Plans"** shall mean the Plans designated on Exhibit "1" attached to this Agreement.

1.09 **"Drug Utilization Review" or "DUR"** shall mean the drug utilization review program used by CastiaRx as described in Section 2.07 and Exhibit "4".

1.10 **"Formulary"** shall mean the proprietary document to CastiaRx which: (i) lists various Prescription Legend Drugs; (ii) is provided by CastiaRx to Network Pharmacies, healthcare providers and/or Claimants for the purpose of guiding and prescribing, dispensing, and reimbursement of Prescription Legend Drugs; and (iii) restricts what Prescription Legend Drugs are subject to reimbursement by the Plan to Claimants and/or Network Pharmacies. The Formulary shall be in compliance with the California Assembly Bill 1124 required by the Administrative Director to adopt and incorporate an evidence-based drug formulary consistent with the MTUS Treatment Guidelines and MTUS Drug Formulary. The Formulary is subject to periodic review by CastiaRx's Pharmacy and Therapeutics Committee and shall be in compliance with the California Labor Code sections §5307.1, §5307.2, §5307.27, §5307.28, and §5307.29.

1.11 **"Maximum Allowable Cost" or "MAC"** shall mean for drugs obtainable from multiple manufacturers, the reimbursement level for Pharmacy Products and Services for Network Pharmacies as established by CastiaRx. The MAC list is subject to periodic review and modification from CastiaRx to reflect changes in market conditions.

1.12 **"Medical Treatment Schedule" or "MTUS"** shall mean a set of regulations found in title 8, California Code of Regulations, section 9792.20 through 9792.27.23, that contain medical treatment guidelines and rules for determining what is reasonable and necessary medical care.

1.13 **"NCPDP"** shall mean National Council of Prescription Drug Plans.

1.14 **"Network"** shall mean CastiaRx's nationwide network of Network Pharmacies.

1.15 **"Network Pharmacy"** shall mean a pharmacy included in the network as described in Section 2.01 of this Agreement.

1.16 **"Network Pharmacy Reimbursement Schedule"** shall mean the rates for Covered Pharmacy Products and Services for reimbursement of Network Pharmacies as described in Section 2.03d.

1.17 **"Pharmacy Products and Services"** shall mean Prescription Legend Drugs and other products, services and/or supplies normally provided by the Network Pharmacy to the general public in the ordinary course of pharmacy business.

1.18 **"Pharmacy and Therapeutics Committee"** shall mean a committee composed of physicians and pharmacists that evaluate, appraise, and select products for inclusion or exclusion from the Formulary. The Pharmacy and Therapeutics Committee considers published scientific and clinical data, treatment guidelines, efficacy, adverse events, FDA approved indications, plan utilization, and cost in the evaluation process.

1.19 **"Physician"** shall mean a doctor of medicine, osteopathy, dental surgery, dental medicine, or podiatry who is legally licensed to prescribe medications within the scope of that license.

1.20 **"Plan"** shall mean a Plan Sponsor's workers' compensation program that provides a

Pharmacy Products and Services component, among other covered services to Claimants.

1.21 **“Plan Sponsor”** shall mean an employer, health maintenance organization, self-funded plan, competitive medical plan association, insurance carrier, trust fund, or other organization that provides a Plan to Claimants.

1.22 **“Prescription Legend Drug”** shall mean any medicinal substance the label of which is required to bear the legend - “Caution: Federal Law prohibits dispensing without prescription,” as defined under the Federal Food Drug and Cosmetic Act.

1.23 **“Prior Authorization”** shall mean the process as described in Section 2.08 by which a Pharmacy Product and Service that is not covered and the terms of the Claimant’s Plan is determined to be a Covered Pharmacy Product and Service.

1.24 **“Usual and Customary Charge”** shall mean the fees that a Network Pharmacy would have charged a consumer paying cash for the applicable drug. This value is submitted to CastiaRx by the Network Pharmacy in the NCPDP field defined as Usual and Customary.

ARTICLE II CastiaRx Responsibilities

2.01 Establish network of pharmacies. CastiaRx shall contract with and maintain a network of pharmacies to provide Covered Pharmacy Products and Services to Claimants and shall maintain, regularly update, and make available to City via web access (or other electronic means) the names and locations of the Network Pharmacies. City agrees that Network Pharmacies may elect to participate or not participate in the Network on a Plan-by-Plan basis.

2.02 Delivery of Covered Pharmacy Products and Services. CastiaRx shall make arrangements for CastiaRx Network Pharmacies to provide Covered Pharmacy Products and Services to Claimants of a Designated Plan upon a Claimant's presentation of a Claimant Identification Card, which has not been deactivated.

2.03 Administrative services. CastiaRx will provide administrative services as follows:

- a. CastiaRx shall enter Plan specifications and Claimant eligibility information received from Plan Sponsor into the system. The information entered into the system will be considered correct unless Plan Sponsor notifies CastiaRx of any required corrections.
- b. CastiaRx shall verify a Claimant's eligibility to receive Covered Pharmacy Products and Services upon a Claimant's request for Pharmacy Products and Services presented to a Network Pharmacy.
- c. CastiaRx shall verify whether a Pharmacy Product or Service is a Covered Pharmacy Product and Service upon a Claimant's request for Pharmacy Products and Services from a Network Pharmacy.
- d. CastiaRx shall require Network Pharmacies to provide Covered Pharmacy Products and Services to Claimants in accordance with the Network Pharmacy Reimbursement Schedule attached as Exhibit “2,” as amended from time to time.
- e. CastiaRx shall coordinate the delivery to City of claims reimbursement requests

by Network Pharmacies for Covered Pharmacy Products and Services in accordance with the Plan Payment Schedules.

- f. CastiaRx shall arrange for mail order pharmacy services if mail order prescriptions are part of the Plan. CastiaRx's affiliated pharmacy or one of CastiaRx's regional mail order pharmacies will provide mail order pharmacy services as designated by Plan Sponsor.
- g. CastiaRx shall provide the Plan Sponsor with Claimant Identification Cards so that Plan Sponsor may provide claimants with appropriate identification to be used at Network Pharmacies.
- h. CastiaRx shall require Network Pharmacies to maintain appropriate documentation to support claims for Covered Pharmacy Products and Services.
- i. CastiaRx shall maintain all data and processing information pertaining to claims for Covered Pharmacy Products and Services for a period of no less than six (6) years from the date on which the claim for Covered Pharmacy Products and Services is submitted to CastiaRx by a Network Pharmacy.
- j. CastiaRx shall maintain a toll-free help desk for Claimants and Network Pharmacies to answer inquiries concerning Covered Pharmacy Products and Services.
- k. CastiaRx shall provide on-site support and training at City's location at the City's request to assist City in the implementation and usage of CastiaRx's website, to respond to inquiries related to Covered Pharmacy Products and Services, and to provide industry related training, including but not limited to understanding formularies and the California formulary, HUPAR meetings, understanding morphine equivalent doses (MED), dealing with the opioid crisis, how to wean drugs, drug interactions, and more.
- l. CastiaRx shall conduct an annual stewardship meeting, including but not limited to the program status review, goals, financials, industry updates and changes to the California formulary.
- m. CastiaRx shall provide the reports listed in Exhibit 3, Section F by the 5th day of the month per the frequency produced. Additional ad hoc reporting will be provided upon request of the City, at additional cost to City as set forth in Exhibit 3.

2.04 Subrogation claims. CastiaRx will cooperate and reasonably assist City in processing any lawful subrogation claims that City may have against a Claimant.

2.05 Formulary. CastiaRx shall maintain and implement a Formulary as part of the CastiaRx System. CastiaRx shall incorporate and comply with the California Formulary pursuant to Assembly Bill 1124 as required by the Administrative Director to adopt and incorporate an evidence-based drug formulary consistent with the MTUS Treatment Guidelines and MTUS Drug Formulary and all applicable updates and changes as required by California law.

2.06 Formulary Savings/Rebate program. CastiaRx may implement a Formulary savings/rebate program for Designated Plans that utilize the CastiaRx Formulary. City and/or

Designated Plans shall be eligible for the Formulary savings and/or rebates as described in Exhibit "3", upon meeting the following requirements of the program. The Plan Sponsor's eligibility to receive Formulary savings/rebates is based upon: (i) the provisions of the Plan Sponsor's drug benefit design and the implementation of CastiaRx's Formulary; (ii) conformance to the CastiaRx Formulary; and (iii) the provisions of CastiaRx contracts with pharmaceutical manufacturers. The Plan Sponsor understands that its eligibility to receive payments for Formulary savings/rebates may change over time. The Plan Sponsor also understands that changes in its drug benefit program, changes in CastiaRx contracts with pharmaceutical manufacturers, or the selection of certain services, such as Prior Authorization, or open Formulary management may disqualify the Plan Sponsor from eligibility or limit the Plan Sponsor's eligibility to receive Formulary savings/rebates.

2.07 Drug Utilization Review. CastiaRx shall provide the Drug Utilization Review services described in Exhibit "4" as part of the CastiaRx System. CastiaRx may deny payment for claims to the extent the information received is not sufficient to allow for CastiaRx DUR Services. CastiaRx will transmit DUR messages to Member Pharmacies. CastiaRx's DUR process is not intended to substitute for the professional judgment of the prescriber, the dispensing Network Pharmacy, or any other healthcare professional providing services to a Claimant. Furthermore, the DUR process depends, in part, on clinical drug data and information on dispensing practices provided to CastiaRx by third party vendors, and is limited to certain drugs and certain analytical criteria that are established by CastiaRx from time to time. Accordingly, CastiaRx assumes no liability to Plan Sponsor or any other person in connection with the DUR process, including, without limitation, the failure of the DUR process to identify a prescription that results in injury to a Claimant.

2.08 Prior Authorization. The Plan Sponsor is responsible for the approval and/or denial of requests received by Claimants to cover excluded Pharmacy Products and Services. The Plan is responsible for providing approvals to CastiaRx. CastiaRx will provide the necessary forms or Web tools to the Plan Sponsor's designated review team.

ARTICLE III City Responsibilities

3.01 Plan Formularies. City shall use the California Formulary pursuant to Assembly Bill 1124 as required by the Administrative Director to adopt and incorporate an evidence-based drug formulary consistent with the MTUS Treatment Guidelines and MTUS Drug Formulary for each Designated Plan, which is referred to herein as the Applicable Plan Formulary.

3.02 Claimant eligibility information. City shall provide CastiaRx with a daily electronic listing of eligible Claimants under each Designated Plan, which list shall include information sufficient for CastiaRx to issue Claimant Identification Cards to the eligible Claimants and process claims under this Agreement. Such Claimant listing shall be in an electronic or written format as from time to time designated by CastiaRx; such format shall satisfy 45 CFR Part 162.1502: ASCX 12N 834. City shall notify CastiaRx of any additional Claimants that are eligible to participate in a Designated Plan and of the termination of any Claimant's eligibility to participate in a Designated Plan. Notwithstanding the termination of a Claimant's eligibility to receive benefits under a Designated Plan, City acknowledges that it remains responsible for all claims submitted by Network Pharmacies for Covered Pharmacy Products and Services prior to the updating of CastiaRx's database, but not more than two (2) Business Days following CastiaRx's actual receipt of a proper notice of the termination of a Claimant's eligibility to participate in a Designated Plan.

3.03 Formulary Savings/Rebate program. City agrees and acknowledges that neither City nor the Designated Plans may contract directly or indirectly with any person or entity for Formulary savings/rebates for claims processed by CastiaRx under this Agreement, and that in addition to any

other limitations specified in this Agreement or exhibits hereto, City and/or Designated Plan's right to Formulary savings/rebates is contingent upon compliance with this restriction. In the event City negotiates or arranges Formulary savings/rebate programs without the expressed written consent of CastiaRx, CastiaRx may immediately terminate City's participation in Formulary savings/rebates as described in Exhibit "3," and may exercise its rights following a material default under Section 5.02 of this Agreement. City further acknowledges that pharmaceutical manufacturers may discontinue payment of Formulary savings/rebate Programs at will; that laws governing prescription drug pricing (including Formulary savings/rebates) may change; and that Formulary Savings/Rebates are affected by Physician prescribing and other factors.

3.04 Miscellaneous Plan services. City shall be responsible for providing any and all other Plan services required by the Designated Plan and Plan Sponsor which are not specifically delegated to CastiaRx by this Agreement.

ARTICLE IV CastiaRx Compensation and Payment Terms

4.01 Payments to CastiaRx. City shall pay CastiaRx administration fees based upon the Schedule of Fees attached hereto as Exhibit "3".

4.02 Timing of Pharmacy Billing Invoice Payments. CastiaRx shall bill on a weekly basis and City shall accept the authorized claims for Covered Pharmacy Products and Services submitted by CastiaRx and shall issue payment for such authorized claims to CastiaRx. CastiaRx's fees payable under Section 4.01 will be included in the pharmacy billing invoices as a separate line item or billed independently. If City disputes any item on an invoice, City shall pay the amount invoiced in full and shall notify CastiaRx in writing of the disputed amount within thirty (30) working days of the date of invoice. Disputes are subject to California Law and jurisdiction. Any amount not disputed or contested within thirty (30) working days or not paid within sixty (60) working days, shall be increased fifteen percent (15%), and shall carry interest at the same rate as judgments in civil actions retroactive to the date of receipt of the bill. Any amount or claim which has been previously contested which is resolved in favor of the City shall be refunded within ten (10) Business Days of such resolution.

4.03 Form of payment. All payments to CastiaRx by City shall be made by check or electronic funds transfer to such bank account or accounts as may from time to time be designated by CastiaRx.

4.04 Collections of Fees. In the event that a Plan or City should fail to provide timely reimbursement or payment of claims or administrative fees under this Agreement, City acknowledges the right of CastiaRx and the Network or mail order Pharmacies to suspend Plans or City for the failure to pay claims if such failure continues for seven (7) Business Days following prior written notice.

4.05 Network Fees. City acknowledges there may be arrangements with Network Pharmacies or with other providers or suppliers of Pharmacy Products and Services, including drug manufacturers or suppliers, under which CastiaRx or its affiliates may receive payment from those providers or suppliers in return for services. City further acknowledges that CastiaRx may be entitled to or may retain a portion of the amounts that are paid by such providers or suppliers as a fee for CastiaRx's services in establishing, maintaining and operating the Network and for CastiaRx's services provided under this Agreement. In no event shall CastiaRx have any obligation to disclose such fees or fee schedules to City.

4.06 Network Access Fees. City acknowledges that CastiaRx has instituted, or may institute, a network access fee or similar fee in addition to other payment obligations of City under this Agreement. Such network access fee shall be used to provide CastiaRx capability, in its discretion, to pay disputed,

contingent, unliquidated or other claims of Network Pharmacies or to make other payments as deemed necessary by CastiaRx in its sole discretion. Such fee shall be accumulated by CastiaRx and may be aggregated with other funds of CastiaRx. To the extent that any funds related to collected network access fees are not paid by CastiaRx to Network Pharmacies during the terms of this Agreement, CastiaRx shall be entitled to retain any such funds upon termination of this Agreement. In no event shall network access fees exceed the net savings provided under this Agreement

ARTICLE V Term of Agreement

5.01 Term and renewal. The term of this Agreement shall commence on January 1, 2019, and shall end on December 31, 2020 (both days inclusive), unless terminated earlier in accordance with Section 5.02, Section 5.03, Section 5.04, Section 5.05, or Section 5.06. By mutual agreement and amendment of this Agreement, the parties may extend the initial term for three (3) separate, consecutive periods of one (1) year each.

5.02 Termination. This Agreement may be terminated by City or CastiaRx as follows:

- a. Upon one-hundred twenty (120) day prior notice for any reason.
- b. Immediately upon notice in the event of fraud, abandonment, gross or willful misconduct, or lack of legal capacity to act by the other party.
- c. City shall have the right, in the event of a termination of this Agreement to immediate possession of all electronic records not previously provided and to which the City has a right, and this right may be exercised any time up to seven years after termination.

5.03 Termination for default. In the event of any failure of CastiaRx or City to perform any of the material terms, conditions or covenants of this Agreement for more than thirty (30) days after written notice delivered to the party in default, then in such event, the non-defaulting party, in addition to other rights or remedies it may have, shall have the right to immediately terminate the term of this Agreement, provided, however, that the termination of the term of this Agreement shall not relieve the parties of their duties and obligations which have accrued up to the date of termination.

5.04 Termination upon insolvency. Either party may terminate the term of this Agreement upon the filing by or against the other party of a petition in bankruptcy under the Federal Bankruptcy Act if such filing is not dismissed within thirty (30) days, or if the other party affirmatively seeks relief under any other law or act regarding insolvency, reorganization, or arrangement or extension for the relief of debtors, including an assignment of assets for the benefit of creditors, or if there is an appointment of a receiver or trustee for transfer or sale of a material portion of the other party's assets.

5.05 Termination Resulting from Change in Laws. In the event CastiaRx' performance of its duties under this Agreement is made materially more burdensome or expensive, or its duties required under this Agreement are materially changed due to amendments, modifications or changes in federal, state or local laws, regulations or rules during the term of this Agreement, in such event, CastiaRx shall deliver notice to City of such circumstances. If CastiaRx and City cannot agree on adjustments to the fees to be paid to CastiaRx hereunder within thirty (30) days following CastiaRx' delivery of notice to City, then CastiaRx may terminate this Agreement upon thirty (30) days' notice to City and having obtained the City's written consent to such early termination which shall not be unreasonably withheld by the City.

5.06 Effect of termination. In the event of termination of this Agreement, such termination shall not relieve either party from the performance of its duties and obligations that accrued prior to the effective date of termination, including, without limitation, the responsibility of City for the reimbursement of claims and the payment of fees to CastiaRx.

ARTICLE VI Indemnification

6.01 Indemnification. Subject to the limitations of Section 7.07, City and CastiaRx each agree to indemnify and hold harmless the other party and their respective officers, directors, employees, and agents, from and against any and all claims, liabilities, damages, or expenses, including reasonable attorney fees, to the extent permitted by law, arising from any of its or its employees or agents negligent or intentional wrongful acts or omissions to act.

ARTICLE VII Miscellaneous

7.01 No joint venture. This Agreement shall not be deemed to create a partnership, association, joint venture or other similar arrangement between CastiaRx and City; the intent of this Agreement being that both CastiaRx and City shall be and shall remain independent contractors for purposes of the performance of their respective obligations under this Agreement.

7.02 Notices. Any notice, designation, consent or approval required or permitted hereunder shall be made in writing and delivered personally or mailed by reputable overnight carrier or by certified mail, return receipt requested, addressed to the parties as hereinafter specified. Any notice forwarded by overnight courier shall be deemed to have been received, delivered or given to the other party the next Business Day following deposit with such overnight courier, or if forwarded by certified mail in accordance with the terms of this Section, shall be deemed to have been received, delivered, or given to the other party three (3) Business Days following the date of mailing. Addresses, for purposes of this Agreement, unless otherwise designated in a subsequent written notice, are as follows:

CastiaRx: Pharmaceutical Technologies, Inc.
 Attn.: Chief Financial Officer
 Post Office Box 407
 Boys Town, NE 68010

City: City of Long Beach
 Attn: Office of the Long Beach City Attorney
 333 W. Ocean Blvd., 8th Floor
 Long Beach, CA 90802

7.03 Proprietary Rights. City acknowledges that CastiaRx is the owner of the exclusive rights to the names "Pharmaceutical Technologies, Inc.," "CastiaRx" and/or any other name or names used or developed by CastiaRx in conjunction with the CastiaRx System, together with any distinctive trademark and/or any service mark that may hereafter be adopted, and to any trade secrets and other information of any kind with respect to the CastiaRx System including, but not limited to, operating procedures, manuals, forms, Plan data sheets, computer software (herein the "CastiaRx System names, marks, and information"). City agrees that the CastiaRx System names, marks and information, are proprietary to CastiaRx and shall not be used by City or its owners or employees, or otherwise disclosed in any way to third parties, without the prior written consent of CastiaRx first having been obtained. Any new product developments, forms or improvements of the CastiaRx System during the

term of this Agreement shall be the property of CastiaRx and shall be deemed part of the CastiaRx System, names, marks and information. Upon termination of this Agreement, City will immediately return to CastiaRx: all copies of manuals, forms, Plan data sheets, Plan Payment Schedules, Plan Formularies and other documentation which is the property of CastiaRx. This provision shall survive the termination of the term of this Agreement.

7.04 Force Majeure. The duties and obligation of each party to this Agreement are limited in the event of circumstances beyond their control, such as a major disaster, epidemic, war, complete or partial destruction of facilities, disability of a significant number of personnel, significant labor dispute and acts of God. In such an event, the parties hereto agree to use their best efforts under the circumstances to fulfill their duties and obligations under this Agreement by whatever reasonable means are available.

7.05 Confidentiality. Except as otherwise specifically provided in this Agreement, parties to this Agreement each covenant that they shall keep the information and data generated during the course of this Agreement, and the terms and conditions of this Agreement, strictly confidential and shall not distribute copies of this Agreement or disclose the terms and conditions of this Agreement to any person or entity. As an exception to the foregoing, and to the extent not prohibited by applicable federal and state laws, rules or regulations, including without limitation the regulations regarding the privacy of individually identifiable health information adopted under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), CastiaRx shall be entitled to use or disclose (1) all aggregate data and other de-identified protected health information generated during the term of this Agreement for purposes of Drug Utilization Review, Formulary development, or to otherwise develop and enhance its services hereunder, and as may be necessary or appropriate to secure rebates or reimbursements from drug manufacturers, and (2) all PHI received from City for the purposes described in, and pursuant to the terms of, any authorization or consent, if necessary, that City may obtain from a Claimant under section 7.06 of this Agreement. As a further limited exception to the foregoing, either party may distribute copies of this Agreement or disclose the terms and conditions of this Agreement under the conditions as follows:

- a. This Agreement and the terms and conditions of this Agreement may be disclosed to the parties' legal and tax advisors;
- b. This Agreement and the terms and conditions of this Agreement may be disclosed as may be necessary or appropriate to enforce the terms of this Agreement or as may be directed by binding court order or subpoena; and
- c. This Agreement and the terms and conditions of this Agreement may be disclosed as may be required to prevent the parties from violating any applicable laws including but not limited to the California Public Records Act, but only to the minimum extent necessary under such law, and only following consultation between both parties to redact or oppose disclosure to the extent permitted by law.

The confidentiality and nondisclosure obligations of the parties shall survive the termination of this Agreement.

7.06 HIPAA Compliance. Concurrent with the execution of this agreement, the parties shall execute a Business Associate Agreement in compliance with HIPAA and privacy rules.

7.07 **LIMITATION OF WARRANTIES AND DAMAGES. EXCEPT FOR WARRANTIES AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, CASTIARX MAKES NO WARRANTY,**

EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AS TO THE SERVICES AND PRODUCTS TO BE PROVIDED BY CASTIARX TO CITY PURSUANT TO THIS AGREEMENT. IN NO EVENT SHALL EITHER CASTIARX OR CITY BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT, BY REASON OF ANY HIPAA VIOLATION, TORT, BREACH OF CONTRACT OR WARRANTY, INDEMNIFICATION OR OTHER LEGAL LIABILITY THEORY, FOR PROSPECTIVE, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, INDIRECT OR SPECIAL DAMAGES, ECONOMIC LOSS, LOSS OF PROFITS OR SIMILAR DAMAGES SUFFERED BY THE NONDEFAULTING PARTY ARISING OUT OF A BREACH OR DEFAULT IN THE PERFORMANCE OF THE PARTIES' RESPECTIVE OBLIGATIONS UNDER THIS AGREEMENT.

7.08 Assignment. This Agreement is personal to the parties and may not be assigned by either party except by written agreement signed by the parties. Any attempt to assign, transfer, pledge, or hypothecate, or make any other disposition of this Agreement, or any of the rights, obligations, or benefits contrary to the foregoing shall be null and void and without effect. Subject to the restrictions against unauthorized assignment or transfer set forth herein, the provisions of this Agreement shall inure to the benefit of and be binding upon each of the parties and their respective successors and assigns. Notwithstanding the foregoing, CastiaRx shall have the right to assign this Agreement to any parent or subsidiary corporation of CastiaRx, or to any entity which, by way of merger, acquisition, or other similar transaction, succeeds to the rights of CastiaRx.

7.09 Amendment. This Agreement contains the entire agreement between the parties, and may only be amended or modified by written instrument signed by the parties. The partial invalidity of any provision of this Agreement shall not invalidate or affect the validity of the remaining provisions of this Agreement. If any provision of this Agreement is deemed invalid or unenforceable, this Agreement shall remain in full force and effect as if such invalid or unenforceable provision were omitted.

7.10 Waiver. No failure by either party to require the performance by the other party of any of the terms of this Agreement shall in any way affect such party's rights to enforce such terms, nor shall any waiver on any one occasion be deemed a waiver of any other term hereof, or subsequent breach thereof. No right under this Agreement may be waived and no modification or amendment to this Agreement may be made except by written agreement executed by the parties.

7.11 Applicable law. This Agreement shall be construed, interpreted, and governed by the laws of the State of California.

7.12 No third-party beneficiary. Nothing expressed or implied in this Agreement is intended to confer, upon any person other than City, CastiaRx, and their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever.

7.13 AWP Price Adjustment. CastiaRx and City acknowledge the use of AWP as a primary pricing source in determining pricing for Covered Pharmacy Products and Services. As a result of legal and regulatory actions, the sources of AWP information, such as MediSpan and First DataBank, Inc., may significantly revise the manner in which AWP information is computed and reported. In the event that there is a material revision in the manner in which AWP is computed and reported (material meaning upward or downward AWP pricing computation and reporting in excess of two percent (2%)), CastiaRx may provide written notice to City of CastiaRx's intent to revise or amend the pricing for Covered Pharmacy Products and Services under this Agreement (the "Price Amendment Notice"). The Price Amendment Notice shall set forth all provisions of the Agreement to be amended or modified, including the pricing of Covered Pharmacy Products and Services set forth on Exhibit "2" of this Agreement. If AWP methodology is replaced, the Price Amendment Notice shall also identify and define any published pricing information to be used in the calculation of the pricing of Covered Pharmacy

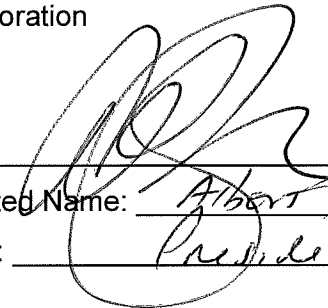
Products and Services. Within fourteen (14) days of City's receipt of the Price Amendment Notice, City may provide written notice to CastiaRx that City rejects and opposes the amendment to the Agreement identified in the Price Amendment Notice (the "Rejection Notice"). If no timely Rejection Notice is received by CastiaRx, the provisions of the Price Amendment Notice shall become an amendment to the Agreement and shall be binding upon the parties hereto. In the event that a Rejection Notice is timely provided to CastiaRx, CastiaRx may, by written notice to City, terminate the Agreement pursuant to section 5.02a.

7.14 Exhibits. The following exhibits are made a part of and incorporated in this Agreement as if fully set forth herein:


- Exhibit "1" Designated Plans
- Exhibit "2" Network Pharmacy Reimbursement
- Exhibit "3" Administrative Fees and Rebates
- Exhibit "4" Drug Utilization Review

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date and year first above written.

PHARMACEUTICAL TECHNOLOGIES, INC., a Nebraska corporation

By: 
Printed Name: Albert Thigpen
Title: President

CITY OF LONG BEACH, a California municipality

By: 
Printed Name: Tom Modica
Title: Assistant City Manager

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER

APPROVED AS TO FORM

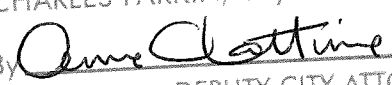
December 20, 2018
CHARLES PARKIN, City Attorney
By 
DEPUTY CITY ATTORNEY

EXHIBIT "1"
DESIGNATED PLANS

Plan Name: City of Long Beach

Plan Sponsor: City of Long Beach

Plan Administrator: City of Long Beach

EXHIBIT "2"

NETWORK PHARMACY REIMBURSEMENT

The pricing for the Network Pharmacies is as follows:

Retail Pharmacy

Brand – A minimum net effective rate that equals the lesser of the California State schedule rate or an average of AWP – 12%

Generic – A minimum net effective rate that equals the lesser of the California State schedule rate (or State Medical MAC) or an average of AWP – 70%

Mail Order Pharmacy

Brand – A net effective rate that equals the lesser of the California State schedule rate or an average of AWP – 20%

Generic – A net effective rate that equals the lesser of the State schedule rate (or State Medical MAC) or an average of AWP – 78%

Dispensing Fee

Brand – A net effective rate that equals the lesser of the California State schedule rate or an average of \$2.00

Generic – A net effective rate that equals the lesser of the California State schedule rate or an average of \$3.00

CastiaRx shall charge City for Covered Drugs and Services on a "pass-through" basis, meaning that the City shall pay the same amount that CastiaRx reimburses the Network Pharmacy for the particular Claim. The Network Pharmacy shall be reimbursed on the basis of the lowest of (a) the Network Pharmacy's contracted AWP discount plus dispensing fee; (b) MAC, (c) Usual & Customary Price or (d) the applicable California State schedule (or State Medical MAC) rate.

EXHIBIT "3"
ADMINISTRATIVE FEES AND REBATES

A. BASE ADMINISTRATION FEES

\$7.50 per paid claim processed electronically and \$10.00 per paper claim submitted.

B. CUSTOM FORMULARY MANAGEMENT

For Plans that elect not to utilize the CastiaRx Formulary or the California State Mandated Formulary, applicable programming time for the development of a customized Formulary shall apply at a rate of \$125 per hour. It is then the Plan's responsibility to provide timely updates to CastiaRx for Formulary updates. Applicable billing time may also apply to Formulary updates whether received electronically or via paper. Plans that do not utilize the CastiaRx Formulary or the California State Mandated Formulary are not eligible for the CastiaRx Formulary Savings Program.

C. ADDITIONAL/REPLACEMENT MEMBER IDENTIFICATION CARDS (SETS OF TWO)

\$ 1.00 per standard hard plastic card set (CastiaRx Standard Card Stock)

D. PRIOR AUTHORIZATIONS

City directed Prior Authorizations are included in base administration fees.

E. REBATES PROGRAM

CastiaRx shall pay quarterly Rebates to the City (or the Plans) in the amount of seventy-five percent (75%) of the rebates received by CastiaRx attributable to Claimants' utilization, with the balance retained by CastiaRx. In addition, CastiaRx may use the services of affiliated and non-affiliated Rebate aggregators to process Rebates, and such Rebate aggregators retain a portion of the Rebates. City acknowledges that the ability of CastiaRx to secure Formulary savings or rebates from pharmaceutical manufacturers may be modified or eliminated from time to time for reasons, including, but not limited to, the following: (i) failure to utilize the CastiaRx or California Formulary; (ii) changes in applicable laws; (iii) modification of CastiaRx agreements with pharmaceutical manufacturers; (iv) discontinuance of programs by drug manufacturers; and (v) the election of City or a Designated Plan not to utilize programs offered by CastiaRx, and CastiaRx shall have a right to adjust the Rebates and/or other financial terms of this Agreement upon notice to City if any of the foregoing materially affects the amount of rebates received by CastiaRx.

F. REPORTING

Standard Reporting

A standard package of reports that CastiaRx produces and makes available includes the reports described below, which are cumulatively known as the "Snapshot." The Snapshot will be made available to City in an electronic format. The Snapshot report includes the following:

Report Name	Frequency Produced	Brief Description
1. Program Savings and Utilization Summary (GS114)	Monthly; Quarterly; Annually	This report outlines the total plan savings vs. State Allowable and net effective discount for the plan as well as average utilization numbers and costs.
2. Maintenance therapy and Mail-Order Utilization Summary Statistics	Quarterly	Summarized Maintenance versus non-maintenance therapy utilization in the Plan's population as well as present summary statistics for mail-order services.
3. High Utilization Pattern Alert Report (HUPAR – CL401)	Monthly	Outlines high utilization patterns, such as multiple prescribers, multiple pharmacies, high controlled substance usage, drug interactions prescribed, and more.
4. Top Ten Therapeutic Drug Classes	Quarterly	Presents total dollars and PMPM contributions of the Top ten therapeutic classifications of medications utilized within the Plan.
5. Top Twenty Prescription Drugs Dispensed	Quarterly	Displays the top twenty prescriptions dispensed by volume as well as average costs and percentages of utilization.
6. Top 100 Claimants by Total Cost (MB221)	Monthly	Portrays the top one-hundred Claimants by total spend.
7. Top 100 Drugs by Count (DG111)	Monthly	Portrays the top one-hundred drugs by total spend.

Other Reporting

Customized Programming Per Hour \$ 125.00

Run-Time Fee per non-standard report run \$ 25.00

G. HIGH UTILIZATION PATTERN ALERT PROGRAM

The High Utilization Pattern Alert Program provides a reporting alert module that can identify therapeutic or utilization concerns through claims analysis. City shall receive notification of the alert that triggered the concern as well as the patient drug profile to assist in case identification. CastiaRx's High Utilization Pattern Alert Program is intended to:

1. Screen prescription drug records for obvious therapy and potential abuse problems.
2. Identify Claimants who may be potentially misusing a prescription medication or class of medications.
3. Identify patterns of usage that may warrant further medical case review.

A ten-point red flag alert system is utilized to identify claimants that may represent the potential for concern. Claimants will be reviewed based upon the following ten-point high utilization pattern alert identification criteria.

- a. Claimants who received medications from three (3) or more prescribers in a one month timeframe.
- b. Claimants who filled five (5) or more controlled substance in a one month timeframe.

- c. Claimants who received medications from three (3) or more pharmacies in a one month timeframe.
- d. Claimants who filled prescriptions for two (2) or more opioid prescriptions for the same ingredient that overlapped by at least seven days.
- e. Claimants who filled controlled substance prescriptions when 25% or more of a prescription should have been available. (refill too soon attempts)
- f. Claimants who received high doses of controlled substances (high dosage alerts).
- g. Claimants who filled three or more NSAID/COX-2 prescriptions of any ingredient in a one month timeframe.
- h. Claimants who filled two or more muscle relaxants within any sixty-day period.
- i. Claimants who filled prescriptions for controlled substances that had drug-drug interactions of at least moderate severity.
- j. Claimants who filled prescriptions for controlled substances that were therapeutically duplicated by other controlled substances for a timeframe of two months or more.

City may then choose to utilize the High Utilization Pattern Alert Program as a referral for a more detailed clinical review of the claimant's case on a claimant specific case review. Alerts are generated on a weekly basis to the carrier.

_____ If City elects for CastiaRx to provide the High Utilization Pattern Alert Program for the Plans, there will be an additional charge of \$1.75 per claim.

H. CLINICAL PHARMACY PATIENT MEDICATION REVIEW PROGRAM

City may refer specific cases to CastiaRx for CastiaRx's Clinical Pharmacy Patient Medication Review Program. The Clinical Pharmacy Patient Medication Review Program is a comprehensive case review will include a report on our clinical pharmacists' professional assessment of the claimant's entire medication history. This comprehensive review provides a formal, written report which focuses on drug therapy problems, possible interventions, and resolutions for providing the most appropriate and cost-effective drug therapy to the injured worker. Reports provided for cases referred to CastiaRx's Clinical Pharmacy Patient Medication Review Program will include recommendations supported by practice guidelines, therapy assessments, copies of suggested mailings to physicians and/or Claimants, and a summary of savings analysis based upon the clinical therapy recommendations. City shall be invoiced for each Clinical Pharmacy Patient Medication Review Program referral at a cost of \$175 per hour with a 2 hour minimum.

I. OTHER

Network access fees may apply for maintaining the Network, maintaining the Maximum Allowable Cost (MAC) program, and database management/storage. In the event the City requests that CastiaRx provide non-standard or customized services, including special research projects, reports, system changes to accommodate changes in a Plan or other tasks to be specifically performed for and on behalf of the City, CastiaRx may require the City to pay CastiaRx additional charges as mutually agreed upon by the parties in writing before such services are provided.

EXHIBIT "4"
DRUG UTILIZATION REVIEW

A. DESCRIPTION OF SERVICES

CastiaRx shall provide the following concurrent Drug Utilization Review services. The following provides a list of the standard on-line edits performed concurrently with the CastiaRx's claims processing system at the point of sale. All utilization edits are performed with the integrated network of retail and/or mail service pharmacy providers.

- **Refill too Soon** – This checks for improper refilling of a prescription. The alert occurs when a pharmacy tries to refill a prescription before a predetermined (by the Plan) percentage of the days' supply has been used. This check identifies early refills for Claimants who are utilizing multiple Network Pharmacies. The alert identifies refills too soon regardless of whether the brand or generic of a medication is submitted as a claim.
- **Exact Duplicate Claim** – The system prohibits reimbursement for the exact drug name, RX Number, strength and/or date of service.
- **Duplicate Drug or Duplicate Class Therapy** – This duplicate edit checks for two or more medications from the same therapeutic category. If a previous prescription in the same class was dispensed in a given time period, an alert would be triggered to the pharmacy. This edit checks for Claimants that are receiving the same drug in different strengths or formulations and also checks for products with duplicate ingredients.
- **Drug Gender Edit** – The pharmacist is notified when a prescription claim is inappropriate or contraindicated for the Claimant's gender.
- **Geriatric and Pediatric Minimum/Maximum Dosing** – Informational edits alert the pharmacist when a prescribed dose is over or under the recommended dosage for individuals over age 65 or under age 12. This is based upon internal calculations of quantity, strength, days' supply, and age. The edit then checks for doses that are too high or low based upon pediatric, adult, or geriatric levels.
- **Drug/Drug Interaction** – An alert occurs when a prescription is filled that may interact with a previously filled drug in a specific time period. Levels of severity are assigned to interactions and only those interactions that are identified as being severe are reported back to the Network Pharmacy.
- **Drug-to-Disease or Implied Disease Contraindication** – Checks are performed based on Claimant submitted disease states and allergy patterns, or a disease state can also be inferred from medications that the patient is taking (i.e. insulin would infer Diabetes as a disease state). This is an important DUR edit, especially if the Plan does not have medical ICD-10 or diagnosis codes available. If the diagnosis is available, CastiaRx can incorporate the ICD-10 code into the on-line DUR program.
- **Over/Under Utilization of Therapy** – This is a duration of therapy check that is based on the days' supply entered for the prescription. Checks are performed to indicate over and under utilizations of therapy based on days' supply and refill patterns.
- **Drug Allergy** – Checks are performed based on Claimant submitted disease states and allergy patterns. This can be especially useful if a Claimant visits multiple pharmacies and does not always report their allergies to the Network Pharmacy.
- **Dollar Limits Per Claim** – This edit would require a telephone call to the help desk to override if desired by the Plan. A Plan can specifically determine dollar limits of claims that could be dispensed without prior authorization by the Plan.
- **Dollar Limits per compound claim** – This edit would automatically audit compounded claims that exceed a certain dollar value as set by the Plan. This value is scalable and

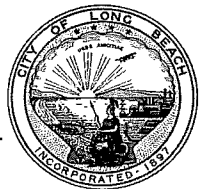
designed to help gain greater control on compounded claims that are difficult to audit due to the compounded nature of the claim.

- **Quantity Limits Per Claim** – This edit would require a telephone call to the help desk. Plans can specifically determine quantity limits for particular claims, or they can use the Global CastiaRx Dispensing Limitations List. An override to a quantity limit would require Prior Authorization.
- **Days Supply Limits Per Claim** – This edit would be determined by Plan design and is usually not override able unless the Plan chooses to accept a vacation supply as an override denial code that is accepted.

B. LIMITATIONS OF DRUG UTILIZATION REVIEW SERVICES

The information generated in connection with the CastiaRx DUR services is intended as an information guide to, and not a substitute for, the knowledge, expertise, skill, and judgment of Physicians, pharmacists, and other healthcare professionals. CastiaRx on behalf of the Plan Sponsor, shall message Network Pharmacies when DUR is noted, however the CastiaRx DUR system should not be relied upon as a substitute for their professional judgment. The Plan Sponsor acknowledges and agrees that the CastiaRx DUR system will provide informational messaging and warning to Network Pharmacies, but the CastiaRx DUR system cannot prevent Network Pharmacy provider from dispensing Covered Products and Services to Claimants that may be inconsistent with the information they receive through the CastiaRx DUR system. The Plan Sponsor acknowledges that Network Pharmacies are individually responsible for acting or not acting upon information generated and transmitted through the CastiaRx DUR system, and for performing services in each jurisdiction consistent with the scope of their licenses.

CASTIARX SHALL ENDEAVOR TO UPDATE THE CASTIARX DUR DATABASE ON A REASONABLE BASIS TO REFLECT CHANGES IN STANDARDS OF PRESCRIBING PRACTICES; HOWEVER, CITY ACKNOWLEDGES THAT NO SYSTEM WILL CONTAIN ALL CURRENTLY AVAILABLE INFORMATION ON ACCEPTED MEDICAL PRACTICES OR PRESCRIBING PRACTICES, AND CASTIARX DISCLAIMS ANY AND ALL WARRANTIES TO THE CONTRARY, EXPRESS OR IMPLIED. CITY FURTHER ACKNOWLEDGES AND AGREES THAT CASTIARX SHALL NOT BE LIABLE FOR ANY INJURIES, COSTS, LIABILITIES, DAMAGES, EXPENSES, CLAIMS, SUITS, OR PROCEEDINGS OF ANY TYPE ARISING IN CONNECTION WITH (I) MEDICAL OR SCIENTIFIC JUDGMENTS MADE IN CREATING THE CASTIARX DUR DATABASE OR ANY OTHER DATABASES AND REPORTS UPON WHICH THE CASTIARX DUR SERVICES ARE BASED OR (II) ANY FAILURE TO INCLUDE INFORMATION IN THE CASTIARX DUR DATABASE.



CITY OF LONG BEACH

DEPARTMENT OF HEALTH AND HUMAN SERVICES

2525 GRAND AVENUE • LONG BEACH, CALIFORNIA 90815 • (562) 570-4000 • FAX: (562) 570-4049

Health Information In Compliance With the Health Insurance Portability And Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH Act)

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") is made and entered as of January 1, 2019 by and between PHARMACEUTICAL TECHNOLOGIES, INC. DBA CASTIARX, a Nebraska corporation, whose business address is 13660 California Street, Omaha, Nebraska 68154 (hereinafter referred to as "Business Associate"), and the CITY OF LONG BEACH, a municipal corporation (hereinafter referred to as "City" or "Covered Entity").

WHEREAS, the City, a municipal corporation under the laws of the State of California, is a single legal entity which has a Worker's Compensation division and various departments, including a Department of Health and Human Services that provides a multitude of health care and related services, and other departments that may have access to and use individually identifiable health information, such as human resources, a parks, recreation and marine department, a technology department, a fire department with ambulance services, and a police department; and

WHEREAS, in the course of providing health care, related and other services, the City obtains and may share amongst the various City departments protected health information; and

WHEREAS, Business Associate performs particular duties, functions, activities, or services for, or on behalf of the City; and

WHEREAS, Business Associate receives, has access to or creates protected health information in order to perform such duties, functions, activities or services; and

WHEREAS, the City and Business Associate intend to protect the privacy and provide for the security of protected health information 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, Public Law 111-005 (the "HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

NOW, THEREFORE, in consideration of the mutual terms covenants, and conditions in this Agreement, the parties agree as follows:

1. DEFINITIONS. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Regulations, including the Privacy Rule and the Security Rule codified in Title 45, Sections 160-164 of the Code of Federal Regulations, and under the HITECH Act.
2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.
 - A. Non-disclosure. Business Associate agrees to not use or disclose protected health information other than as permitted or required by the Agreement or as required by law.
 - B. Safeguards. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the protected health information. Business Associate shall comply with the policies and procedures and documentation requirements of the HIPAA Regulations.
 - C. Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of protected health information by Business Associate in violation of the requirements of this Agreement.
 - D. Notice of Use or Disclosure, Security Incident or Breach. Business Associate agrees to notify the designated privacy official of the Covered Entity of any use or disclosure of protected health information by Business Associate not permitted by this Agreement, any security incident involving electronic protected health information, and any breach of unsecured protected health information without unreasonable delay, but in no case more than thirty (30) days following discovery of breach.
 1. Business Associate shall provide the following information in such notice to Covered Entity:
 - (a) The identification of each individual whose unsecured protected health information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such breach;
 - (b) A description of the nature of the breach including the types of unsecured protected health information that were involved, the date of the breach and the date of discovery;
 - (c) A description of the type of unsecured protected health information acquired, accessed, used or disclosed in the breach (e.g., full name, social security number, date of birth, etc.);
 - (d) The identity of the person who made and who received

- (if known) the unauthorized acquisition, access, use or disclosure;
- (e) A description of what the Business Associate is doing to mitigate the damages and protect against future breaches; and
 - (f) Any other details necessary for Covered Entity to assess risk of harm to individual(s), including identification of each individual whose unsecured protected health information has been breached and steps such individuals should take to protect themselves.
- 2. Covered Entity shall be responsible for providing notification to individuals whose unsecured protected health information has been disclosed, as well as the Secretary and the media, as required by the HITECH Act.
 - 3. Business Associate agrees to establish procedures to investigate the breach, mitigate losses, and protect against any future breaches, and to provide a description of these procedures and the specific findings of the investigation to Covered Entity in the time and manner reasonably requested by Covered Entity.
 - 4. The parties agree that this section satisfies any notice requirements of Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but unsuccessful security incidents for which no additional notice to Covered Entity shall be required. For purposes of this Agreement, unsuccessful security incidents include activity such as pings and other broadcast attacks on Business Associate'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 access, use or disclosure of electronic public health information.
- E. Reporting of disclosures. Business Associate agrees to report to Covered Entity any use or disclosure of the protected health information not provided for by this Agreement of which it becomes aware.
 - F. Business Associate's Agents. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides protected health information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

- G. Availability of Information to City. Business Associate agrees to provide prompt access to protected health information in a designated record set to Covered Entity or, as directed by Covered Entity, to an individual upon Covered Entity's request in order to meet the requirements under 45 CFR § 164.524. If Business Associate maintains an electronic health record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act.
- H. Amendment of Protected Health Information. Business Associate agrees to promptly make any amendment(s) to protected health information in a designated record set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an individual.
- I. Internal Practices. Business Associate agrees to make internal practices, books, and records, including policies and procedures and protected health information, relating to the use and disclosure of protected health information received from, or created or received by Business Associate on behalf of, covered entity available to the Secretary of the U.S. Department of Health and Human Services for purposes of the Secretary determining the Business Associate's compliance with the Privacy Rule.
- J. Reporting of Disclosures. Business Associate agrees to document such disclosures of protected health information and information related to such disclosures as would be required for the City to respond to a request by an individual for an accounting of disclosures of protected health information in accordance with the Privacy Rule, including but not limited to 45 CFR § 164.528, and the HITECH Act.
- K. Availability of Information to Covered Entity. Business Associate agrees to promptly provide to Covered Entity or an individual information collected in accordance with Section 2(j) of this Agreement, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of protected health information in accordance with the Privacy Rule, including but not limited to 45 CFR § 164.528, and the HITECH Act.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

Except as otherwise limited in this Agreement, Business Associate may use or disclose protected health information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule or the HITECH Act if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. The specific use and disclosure provisions are as follows:

- A. Except as otherwise limited in this Agreement, Business Associate

may use protected health information for the proper management and administration of the Business Associate.

- B. Except as otherwise limited in this Agreement, Business Associate may disclose protected health information for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the business associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- C. Except as otherwise limited in this Agreement, Business Associate may use protected health information to provide data aggregation services to covered entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).
- D. Business Associate may use protected health information to report violations of law to appropriate federal and state authorities, consistent with § 164.502(j)(1).

4. PROHIBITED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

- A. Business Associate shall not use or disclose protected health information for fundraising or marketing purposes.
- B. Business Associate shall not disclose protected health information to a health plan for payment or health care operations purposes if the individual has requested this special restriction and has paid out of pocket in full for the health care item or service to which the protected health information solely relates.
- C. Business Associate shall not directly or indirectly receive payment or remuneration in exchange for protected health information, except with the prior written consent of Covered Entity and as permitted by law, including HIPAA and the HITECH Act. This prohibition shall not effect payment by Covered Entity to Business Associate.

5. OBLIGATIONS OF COVERED ENTITY.

- A. Notification of Limitations in Notice of Privacy Practices. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of covered entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of protected health information.
- B. Notification of Change or Revocation of Permission. Covered entity shall notify Business Associate of any changes in, or revocation of,

permission by individual to use or disclose protected health information, to the extent that such changes may affect Business Associate's use or disclosure of protected health information.

- C. Notification of Restrictions. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of protected health information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may effect Business Associate's use or disclosure of protected health information.

6. PERMISSIBLE REQUESTS BY COVERED ENTITY. Covered Entity shall not request Business Associate to use or disclose protected health information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that this restriction is not intended and shall not be construed to limit Business Associate's capacity to use or disclose protected health information for the proper management and administration of the Business Associate or to provide data aggregation services to Covered Entity as provided for and expressly permitted under Section 3 (a), (b), and (c) of this Agreement.

7. TERM AND TERMINATION.

- A. *Term.* The term of this Agreement shall be effective upon execution, and shall terminate when all of the protected health information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy protected health information, protections are extended to such information, in accordance with the termination provisions in this Section.
- B. *Termination for Cause.* Upon either party's knowledge of a material breach by the other party, the party with knowledge of the other party's breach shall either:
1. Provide an opportunity for the breaching party to cure the breach or end the violation and terminate this Agreement if the breaching party does not cure the breach or end the violation within the time specified by the non-breaching party;
 2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 3. If neither termination nor cure is feasible, the violation shall be reported to the Secretary.
- C. *Effect of Termination.*
1. Except as provided in paragraph (2) of this Section, upon termination of this Agreement for any reason, Business

Associate shall return or destroy all protected health information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to protected health information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the protected health information.

2. In the event that Business Associate determines that returning or destroying the protected health information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible and shall extend the protections of this Agreement to such protected health information and limit further uses and disclosures of such protected health information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such protected health information.

8. ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS.

Business Associate shall make itself and any subcontractors, employees, or agents assisting Business Associate in the performance of its obligations under this Agreement with the Covered Entity, reasonably available to Covered Entity, at no cost to Covered Entity to testify as witnesses or otherwise, in the event of litigation or administrative proceedings commenced against Covered Entity, its directors, officers, or employees based on a claimed violation of HIPAA, the HIPAA Regulations, the HITECH Act, or other laws relating to security or privacy, except where Business Associate or its subcontractors, employees or agents are named as an adverse party.

9. MISCELLANEOUS.

- A. *References.* A reference in this Agreement to a section in the HIPAA Regulations or the HITECH Act means the section as in effect or as amended.
- B. *Amendment.* The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for covered entity to comply with the requirements of the Privacy Rule, the Security Rule, HIPAA, the HITECH Act and other privacy laws governing protected health information. Amendments must be in writing and signed by the parties to the Agreement.
- C. *Survival.* The respective rights and obligations of Business Associate under Section 6(c) of this Agreement shall survive the termination of this Agreement.
- D. *Interpretation.* Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Regulations and the HITECH Act.

10. LAW. This Agreement shall be governed by and construed pursuant to

federal law and the laws of the State of California (except those provisions of California law pertaining to conflicts of laws). Business Associate shall comply with all laws, ordinances, rules and regulations of all federal, state and local governmental authorities.

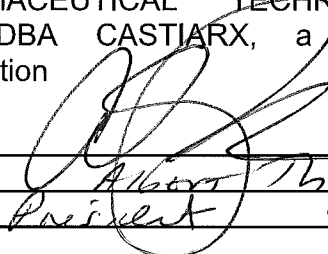
11. ENTIRE AGREEMENT. This Agreement, including Exhibits, constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, with respect to the subject matter herein.
12. INDEMNITY. Business Associate shall indemnify, protect and hold harmless City, its Boards, 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, arising or alleged to have arisen, in whole or in part, out of or in connection with (1) Business Associate's breach or failure to comply with any of its obligations contained in this Agreement, or (2) negligent or willful acts, errors, omissions or misrepresentations committed by Business Associate, its officers, employees, agents, subcontractors, or anyone under Business Associate's control, in the performance of work or services under this Agreement (collectively "Claims" or individually "Claim"). In addition to Business Associate's duty to indemnify, Business Associate shall have a separate and wholly independent duty to defend Indemnified Parties at Business Associate's expense by legal counsel approved by City, from and against all Claims, and shall continue this defense until the Claims are resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of Business Associate shall be required for the duty to defend to arise. City shall notify Business Associate of any Claim, shall tender the defense of the Claim to Business Associate, and shall assist Business Associate, as may be reasonably requested, in the defense. .
13. AMBIGUITY. In the event of any conflict or ambiguity in this Agreement, such ambiguity shall be resolved in favor of a meaning that complies and is consistent with HIPAA, HIPAA Regulations, the HITECH Act and California law.
14. COSTS. If there is any legal proceeding between the parties to enforce or interpret this Agreement or to protect or establish any rights or remedies hereunder, the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees and court costs, including appeals.
15. NOTICES. Any notice or approval required hereunder by either party shall be in writing and personally delivered or deposited in the U.S. Postal Service, first class, postage prepaid, addressed to Business Associate at the address first stated herein, and to the City at 333 West Ocean Boulevard, Long Beach, California 90802 Attention: Director, Health Department. Notice of change of address shall be given in the same manner as stated herein for other notices. Notice shall be deemed given on the date deposited in the mail or on the date personal delivery is made, whichever first occurs.

16. WAIVER. The acceptance of any services or the payment of any money by City shall not operate as a waiver of any provision of this Agreement, or of any right to damages or indemnity stated in this Agreement. The waiver of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach of this Agreement.
17. CONTINUATION. Termination or expiration of this Agreement shall not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 12 and 14 prior to termination or expiration of this Agreement, and shall not extinguish any warranties hereunder.
18. ADVERTISING. Business Associate shall not use the name of City, its officials or employees in any advertising or solicitation for business, nor as a reference, without the prior approval of the City Manager or designee.
19. THIRD PARTY BENEFICIARY. This Agreement is intended by the parties to benefit themselves only and is not in any way intended or designed to or entered for the purpose of creating any benefit or right for any person or entity of any kind that is not a party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed with all of the formalities required by law as of the date first stated herein.

PHARMACEUTICAL TECHNOLOGIES,
INC. DBA CASTIARX, a Nebraska
corporation

1, 2019

By 
Name Albert Thigpen
Title President

_____, 2019

By _____
Name _____
Title _____


Tom Modica
Assistant City Manager

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

“Business Associate”

CITY OF LONG BEACH, a municipal
corporation

12/21, 2019

By 
City Manager or designee

“City”

2019 This Agreement is approved as to form on December 20,

CHARLES PARKIN, City Attorney

By 
Principal Deputy