

WELLPARTNER SERVICES AGREEMENT

This 340b Services Agreement (“Agreement”) by and between **City of Long Beach through its Department of Health and Human Services**, a non-profit corporation (“Entity”), to include child sites, and **Wellpartner, LLC**, (“Wellpartner” or “Administrator”), is made and entered into as of the date of full execution (the “Effective Date”).

RECITALS

WHEREAS, Section 602 of Public Law 102-585, the Veteran’s Health Care Act of 1992, enacted Section 340b of the Public Health Services Act (“340b” or the “340b Act”), and provides for the limitation of pricing on certain drugs purchased by qualifying entities under the 340b Act;

WHEREAS, the 340b Act classifies certain health care facilities as “Covered Entities” making them eligible to purchase outpatient prescription drugs at preferential prices from certain drug manufacturers and/or Drug Wholesalers (as defined below) that have entered into drug purchasing agreements with the United States Department of Health and Human Services (“DHHS”) and to dispense, either directly or through the use of contracted pharmacies, such prescription drugs for use by certain qualifying patients of the Covered Entity (each a “340b Pharmacy Program”);

WHEREAS, Entity hereby represents to Administrator that it is a Covered Entity within the meaning of Sections 4 and 5 of the 340b Act, 42 U.S.C. § 256b (a) (4), (5) and eligible to purchase Covered Drugs from Drug Wholesalers or manufacturers under the 340b Act;

WHEREAS, Administrator provides Covered Entities certain services to support their 340b Pharmacy Programs, including but not limited to prescription claims processing, pharmacy network management, inventory management, financial reconciliation of accounts and detailed program reporting (as such services are further described in this Agreement, the “Services”);

WHEREAS, Entity desires to engage Wellpartner to provide such Administrative Services and Wellpartner desires to accept such engagement; and

WHEREAS, by entering into this Agreement, Entity and Administrator intend to facilitate Entity’s participation in a 340b Pharmacy Program.

NOW THEREFORE, in consideration of the covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, Entity and Wellpartner hereby 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 by which a Contract Pharmacy interacts with Entity and/or a Third-Party Payer in connection with a Patient’s Claim in order to: (i) determine whether the drug covered by such Claim constitutes a Covered Drug; (ii) verify the Co-payment amount to be collected by Contract Pharmacy; (iii) establish the reimbursement amount received by Contract Pharmacy for dispensing the Covered Drug; and (iv) receive any other informational claim edits and messaging.

- 1.3 “Administrative Fee” means monies received by Administrator from Entity or on behalf of Entity from Contract Pharmacy, Third-Party Payers, and/or Patients, and retained by Administrator in connection with its provision of the Services, as calculated in accordance with Exhibit A to this Agreement.
- 1.4 “Agreement” means this Agreement, including all exhibits, schedules and addenda hereto, as they may be amended from time to time.
- 1.5 “Average Wholesale Price” means the price listed in Medispan or other national drug database selected by Wellpartner for an 11-digit National Drug Code.
- 1.6 “Bill-to/Ship-to Arrangement” means a contractual arrangement between Entity and its Drug Wholesaler(s) whereby (i) Wellpartner 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.
- 1.7 “Brand Name Drug and/or Brand Drug” means a Covered Drug that is available from a single manufacturer and designated as a brand name by a nationally recognized price-reporting service selected by Contract Pharmacy.
- 1.8 “Claim” means a prescription Claim for a Covered Drug that has been submitted by Contract Pharmacy for verification of coverage and reimbursement.
- 1.9 “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.
- 1.10 “Confidential Information” means all information or proprietary information of a Party, whether in oral, written or electronic form and whether prepared by a Party or its employees, agents, and/or other representatives, which shall include, but is not limited to, (i) concerns of the business of a Party, the terms of this Agreement, and/or the services provided by a Party pursuant to this Agreement, (ii) such 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 that if disclosed could be used by another person or entity to disadvantage such Party; and (iii) information held or disclosed by such Party that, if disclosed, would result in a violation of applicable patient privacy or other laws.
- 1.11 “Contract Pharmacy” means those pharmacies that have entered into an agreement either directly with Entity or with Administrator acting on behalf of Entity for the purpose of establishing the services, reimbursement, and operational terms for such Contract Pharmacy to dispense Covered Drugs to Patients in accordance with this Agreement, Entity’s 340b Pharmacy Program and related laws and regulations.
- 1.12 “Co-payment” means that portion of the total charge for each Covered Drug dispensed to a Patient that the Contract Pharmacy is required to collect from such Patient as indicated at the time of Claim Adjudication, regardless of whether such charge 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).
- 1.13 “Covered Drug” means a covered outpatient drug, as such term is defined in Section 1927(k) of the Social Security Act, 42 U.S.C. 1396r-8(k)(2) and (3). Covered Drug also includes drug

products which have discounted prices under the 340b Prime Vendor Program (“PVP”), which was established in accordance with Section 340b of the Public Health Service Act, Public Law 102-585, and which are available to Entity through its participation in the PVP.

- 1.14 “Date of Service” means the date a Covered Drug is dispensed to a Patient pursuant to the terms of this Agreement.
- 1.15 “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.
- 1.16 “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.
- 1.17 “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.
- 1.18 “Entity” means an entity which 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.
- 1.19 “Estimated Acquisition Cost” or “EAC” means the amount paid by Entity to *Contract Pharmacy* for Covered Drugs that cannot be replenished, either due to low volumes, market shortages, discontinuation or changes to the National Drug Code. The EAC will be paid according to the rates listed in Exhibit A to this Agreement.
- 1.20 “Generic Drug” means a Covered Drug that is designated as “generic” by Medispan or sourced from multiple manufacturers and is designated as a generic drug by a nationally recognized price-reporting service selected by Contract Pharmacy.
- 1.21 “Gross Savings” means the difference between the amount paid for a Claim and the 340b Cost. The amount paid includes Third-Party Payor payments and Patient payments.
- 1.22 “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, or has a contractual arrangement with Entity to provide care to Patients or provides medical services as a result of a referral from Entity, and has responsibility for Patient’s care.
- 1.23 “Intellectual Property Rights” means any and all rights, titles and interests, whether foreign or domestic, in and to any and all Copyrights and Trademarks, trade secrets, patents, service marks, know-how, inventions, or similar intellectual property rights, as well as any and all moral rights, rights of privacy, publicity and similar rights of any type under the laws or regulations of any governmental, regulatory, or judicial authority, foreign or domestic.

- 1.24 “Launch Date” means the date that any Adjudication first commences with respect to the 340b Pharmacy Program.
- 1.25 “NADAC” means the National Average Drug Acquisition Cost as published on a regular basis by the Centers for Medicaid and Medicare Services (“CMS”).
- 1.26 “Party” or “Parties” means Entity or Wellpartner, either individually or collectively as the case may be.
- 1.27 “Patient” means an individual who (i) has established a relationship with Entity such that Entity maintains a record of and responsibility for 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.
- 1.28 “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.
- 1.29 “Pharmacy Services” means those professional services, including but not limited to the dispensing of Covered Drugs, provided by Contract Pharmacy under this Agreement.
- 1.30 “Services” means those services required to be provided by Administrator to or for Entity under this Agreement.
- 1.31 “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. For the purposes of this Agreement, Specialty Drugs are established as a Schedule to Exhibit E of this Agreement.
- 1.32 “Third-Party Payer” means a payer of a Patient Claim, other than Entity, including without limitation: (i) an insurance company or pharmacy benefit manager providing a prescription insurance benefit or coverage; (ii) the applicable 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/or (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.
- 1.33 “True-Up Process” refers to an inventory and financial reconciliation process through which Wellpartner identifies and qualifies 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 Wellpartner shall offset from monies owed Entity) the NADAC of such dispensed inventory as set forth in this Agreement.

- 1.34 “Wellpartner’s 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.

2. ESTABLISHMENT OF 340B PHARMACY PROGRAM

- 2.1 Within thirty (30) days of the Effective Date, the Parties shall work together in good faith to develop a project plan that will describe the manner in which the 340b Pharmacy Program will be established for Entity and set forth, among other things, the associated implementation tasks, timeline and deadlines. Such project plan, as mutually agreed upon by the Parties and (the “Project Plan”), shall be executed by the Parties and deemed to be part of this Agreement.
- 2.2 For Patients without insurance covering prescription drugs, where Entity is providing a subsidy or other coverage, or who choose to pay for prescriptions outside of any insurance coverage, Wellpartner shall, consistent with this Agreement and the Project Plan and the Community Benefit Program Authorization Form, provide Entity with the following Services:
- 2.2.1 Provide historic claim utilization analytics and recommendations to Entity in connection with its subsidy or other coverage program(s) for uninsured Patients.
- 2.2.2 Coordinate with Entity for the submission of information required by State and Federal oversight agencies, including the Office of Pharmacy Affairs (OPA).
- 2.2.3 Mark prescriptions eligible for preferential pricing under 340b to reflect appropriate share of cost or sliding scale fee (as applicable).
- 2.3 For Patients with insurance that covers outpatient prescription drugs, Entity shall:
- 2.3.1 Ensure Wellpartner has all relevant and pertinent information related to Entity’s eligibility for participation in the 340b Pharmacy Program; and
- 2.3.2 Assist Wellpartner in confirming proper set-up of its processing system to ensure all relevant and pertinent information for the 340b Pharmacy Program is entered correctly.
- 2.3.3 Conduct periodic audits of reports and data extracts to ensure proper processing of Claims eligible for preferential pricing under 340b.
- 2.4 Wellpartner shall, consistent with this Agreement, provide Entity with the following Services:
- 2.4.1 Complete regional pharmacy mapping and relationship building and contracting with appropriate pharmacies that will serve as Entity’s network of Contract Pharmacies, as further described below.
- 2.4.2 Develop and deliver Patient and Health Care Provider educational and outreach programs and marketing collateral designed to promote an understanding of the 340b Act and the benefits of Entity’s 340b Pharmacy Program.
- 2.4.3 In coordination with Entity, train Entity, Contract Pharmacy staff, and Health Care Providers on Wellpartner’s operational processes and the 340b Pharmacy Program requirements.
- 2.4.4 Determine qualification criteria (as defined below) for Covered Drugs to be included in the 340b Pharmacy Program.

- 2.5 In order for the Parties to establish the 340b Pharmacy Program, Wellpartner shall work with Entity for the completion of the forms and files described in this Section 2.5, in each case prior to the Launch Date and as required throughout the term of this Agreement.
- 2.5.1 Coordinate with Administrator in the implementation of any quality assurance programs and process improvement initiatives for Entity's 340b Pharmacy Program and Services provided under this Agreement.
 - 2.5.2 Entity agrees to provide initial and update as needed the BIN and PCN numbers to be included or specifically excluded in the 340b Pharmacy Program.
 - 2.5.3 OPA Registration: This connects Contract Pharmacy to Entity and must be completed for each Entity/Contract Pharmacy pair.
 - 2.5.4 Provide Administrator reasonable access to Entity personnel to ensure Parties can satisfy objectives and timelines for Entity's 340b Pharmacy Program.
 - 2.5.5 As applicable, assist Entity in contracting with third-party vendors that are necessary for the ongoing management and support of the 340b Pharmacy Program (e.g., Drug Wholesalers). The Wholesaler Account and Credit Application form (i) provides Entity with an account at the Wellpartner's or Contract Pharmacy's Drug Wholesaler and authorizes the Drug Wholesaler to conduct credit checks; (ii) enables Wellpartner to manage inventory replenishment orders; and (iii) must be submitted to the Drug Wholesaler by Entity.
 - 2.5.6 Participating Provider Data Files: Entity shall provide, subject to the terms of the Business Associate Agreement ("BAA") between the Parties and attached hereto as Exhibit D hereof, applicable participating Health Care Provider information as required to support operation of the 340b Pharmacy Program.
 - 2.5.7 Encounter Data Files: Entity shall provide, where applicable, subject to the terms of the BAA, outpatient encounter data for all 340b-eligible clinics and departments within Entity. Data shall be provided by Entity in the format and on a schedule agreed to by the Parties.
 - 2.5.8 Implement a 340b Pharmacy Program educational program, such as Wellpartner's current "*It Matters*" program, or other program of its choosing.
- 2.6 In order to establish a network of Contract Pharmacies for the 340b Pharmacy Program:
- 2.6.1 Complete regional pharmacy mapping and relationship building and contracting with appropriate pharmacies that will serve as Entity's network of Contract Pharmacies, as further described below.
 - 2.6.2 Wellpartner will locate and provide Entity with a list of potential Contract Pharmacies in areas as needed and requested by Entity.
 - 2.6.3 Wellpartner will in consultation with Entity, negotiate on behalf of Entity and in Entity's best interests to secure agreements with Contract Pharmacies on terms agreed to by Entity and consistent with the Project Plan.
 - 2.6.4 Entity acknowledges that, subject to applicable state and federal laws and related professional standards, the treatment of any patient and the prescribing of any drug is at the sole discretion of Health Care Provider, and the decision to dispense any Covered

Drug is at the sole discretion of Contract Pharmacy. Entity acknowledges that in the performance of Services, Administrator acts only in an administrative and/or ministerial capacity and makes no representations, either express or implied, with respect to the discretion exercised by the Health Care Provider and/or the Contract Pharmacy. For avoidance of doubt, Administrator shall not be liable or responsible for any injury, including death, suffered by any Patient as a result of the use of a Covered Drug prescribed under this Agreement.

3. COVERED DRUG DISPENSING AND PROGRAM REPORTS

- 3.1 Entity, in coordination with Wellpartner, shall determine which Covered Drugs qualify for inclusion in its 340b Pharmacy Program based on the 340b Pharmacy Program formulary, drug availability, the 340b Pharmacy Program pricing availability and eligibility based on the requirements set forth in the 340b Act and applicable laws and regulations, dispensing frequency or a financial analysis of the value of the drug Claim when processed through the 340b Pharmacy Program, and other criteria established by and between Entity and Wellpartner (“qualification criteria”). Wellpartner agrees to assist Entity in making such determination, if requested by Entity. For avoidance of doubt, Wellpartner does not make any representations or provide any warranties as to which drugs will qualify as Covered Drugs.
- 3.2 Entity shall instruct Health Care Providers to provide Patients with prescriptions that meet applicable federal and state laws and regulations and state Board of Pharmacy requirements. Entity acknowledges that Wellpartner may be unable to process or record certain Claims in the event prescription information is incomplete or a prescription does not otherwise meet established prescription standards.
- 3.3 Entity will not take any action to prevent a Patient from choosing any pharmacy of his or her choice to fill the prescription. This Agreement shall not be interpreted, construed, or otherwise used to limit patient access or choice.
- 3.4 Administrator shall use its proprietary Claims tracking system and processes to record and track all Adjudicated Claims. Claim information shall be used by Administrator to qualify Claims for eligibility under the 340b Act, reconcile financial accounts and manage drug inventory and replenishment.
- 3.5 Entity and Wellpartner will identify the necessary information for Entity to meet its ongoing responsibility of ensuring compliance with the 340b Pharmacy Program requirements and to establish mechanisms to ensure availability of that information for periodic independent audits performed by the Entity. 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). Wellpartner 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, Wellpartner will ensure that all pertinent reimbursement accounts and dispensing records, maintained by Wellpartner, will be accessible separately from Wellpartner’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.
- 3.6 Wellpartner shall use the information from Claims that have been Adjudicated in order to create reports referenced in Exhibit C to this Agreement. Entity shall have access to such reports via Wellpartner Clarity at any time. Upon request from Entity Wellpartner may agree to create and

provide to Entity reports NOT referenced in Exhibit C, with such agreement being on mutually agreeable terms to include a fee payable to Wellpartner of \$150 per hour for any related work with a minimum of Four (4) hours. All data generated hereunder and all reports generated with such data, shall be the sole and exclusive property of, and shall be considered proprietary to, Entity.

4. FINANCIAL RECONCILIATION SERVICES

- 4.1 The Parties agree that the terms set forth in Exhibit A hereto represent the financial understanding between the Parties with respect to the Administrative Services provided under the Agreement and are deemed part of this Agreement.
- 4.2 Wellpartner shall, consistent with this Agreement and applicable legal and regulatory requirements, provide the 340b Pharmacy Program account reconciliation services to Entity as follows:
 - 4.2.1 Following proper Claim Adjudication and the dispensing of a Covered Drug, Administrator shall receive the related Claim information which is necessary for the proper reconciliation of 340b Pharmacy Program accounts. Administrator shall use such information to: (a) invoice and undertake the collection and remittance of the amounts due from the appropriate parties in connection with such eligible Claims; and/or (b) coordinate with Entity or its designated Third-Party Payer for the reconciliation of Claims and payments due under this Agreement.
 - 4.2.2 Wellpartner shall invoice and undertake the collection and remittance of the amounts due from the appropriate parties in connection with such Eligible Claims; and/or coordinate with Entity or its designated Third-Party Payer for the reconciliation of Claims and payments due under this Agreement.
 - 4.2.3 Neither Party will submit or cause to be included in the 340b Pharmacy Program under this Agreement any Claim which is known by it to be paid, in whole or in part, by a fee-for-service Medicaid program, unless otherwise directed by the applicable state Medicaid agency and to the extent consistent with the then-current Medicaid Exclusion File on HRSA's website.
 - 4.2.4 Approximately forty-five (45) days after Wellpartner's standard invoicing cycle, Wellpartner shall remit or cause to be remitted to Entity funds due to reconcile accounts under this Agreement. The amount remitted to Entity shall be based on amounts appropriately collected by the Contract Pharmacy for Eligible Claims dispensed during that dispensing period, less: (a) the applicable Dispensing Fee retained by Contract Pharmacy, as applicable; (b) the Administrative Fee retained by Wellpartner; and (c) any offset amounts required for any True-Up Process or reversals.
 - 4.2.5 The amounts represented in Entity remittance vouchers represent the difference between the amount due to Entity for the dispensing period, less any administrative fees or credits appropriately applied by Wellpartner (including True-Up costs). Wellpartner will initiate an Electronic Funds Transfer ("EFT") to the Entity account. The EFT process used under this Agreement will be finalized and instituted by the parties at the time of Wellpartner implementation or Contract Pharmacy implementation, as applicable.
 - 4.2.6 Entity acknowledges and agrees that Wellpartner shall be authorized to credit and/or offset against any amounts due a Party hereunder, any overpayments, reversals or other

adjustments determined to be necessary or appropriate to properly reflect the terms of this Agreement. Wellpartner shall not be responsible for pursuing any unresolved claims for payment that may exist with any Third-Party Payer, Drug Wholesaler, Medicaid agency or other person or entity.

- 4.3 Entity acknowledges that Wellpartner operates only as an intermediary between Entity and Contract Pharmacy. Wellpartner will not be obligated to pay Entity or Contract Pharmacy amounts which may become due hereunder out of Wellpartner's own funds; rather, Wellpartner will pay or reconcile amounts due after designated funds are received by Wellpartner.
- 4.4 Each Party shall be responsible for the payment of their respective taxes, fees and/or similar assessments and any related penalties and interest assigned which is due or may become due in connection with this Agreement; including as a result of income / earnings (whether gross or net), property, employment, payroll, worker's compensation, unemployment or other similar assessment.

5. INVENTORY MANAGEMENT SERVICES

- 5.1 Entity shall contract with, either directly or with the assistance of Wellpartner, one or more Drug Wholesalers to enable the replenishment of dispensed Covered Drugs to Contract Pharmacy. Wellpartner shall, on behalf of Entity and under Entity's applicable Drug Wholesaler contracts, initiate the processing of orders for 340b Covered Drugs directly from the Drug Wholesaler to replenish stocks of 340b Covered Drugs dispensed in connection with Eligible Claims by Contract Pharmacy, based on Wellpartner records.
- 5.2 Wellpartner shall monitor and track Eligible Claims so that Wellpartner or Contract Pharmacy does not receive shipments to replenish 340b Covered Drugs in excess of quantities dispensed to Patients under the 340b Pharmacy Program. Wellpartner 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.
- 5.3 Title to Covered Drugs shall pass to Wellpartner or Contract Pharmacy, as applicable under the Bill-to/Ship-to Arrangement upon receipt by Wellpartner or Contract Pharmacy.
- 5.4 In the event Contract Pharmacy inventory (i) is not replenished within the period designated in the applicable Contract Pharmacy Services Agreement (not to be less than ninety (90) days) or (ii) is permanently discontinued, Entity will reimburse Contract Pharmacy the Estimated Acquisition Cost for such dispensed drugs. The EAC shall be based on the National Drug Code of the Covered Drug that is trued up. Trued-up drugs shall be identified and regularly reported to Entity for audit and reconciliation purposes.
- 5.5 Wellpartner shall notify Entity (and shall ensure that Contract Pharmacy notifies Wellpartner) of any discrepancies with respect to replenishment shipments received from a Drug Wholesaler and undertake commercially reasonable action to remedy any such issue.
- 5.6 The Parties shall take all commercially reasonable steps necessary to prevent the diversion of Covered Drugs (including, but not limited to, causing the shipment of Covered Drugs in connection with Ineligible Claims). In the event it is determined that an Ineligible Claim was submitted for processing, Wellpartner shall remove such Claim from the 340b Pharmacy Program and cause an inventory correction. Entity shall be required to True-Up Contract Pharmacy, in accordance with the True-Up Process described in this Agreement, for Claims that are reported in error.

- 5.7 Wellpartner represents that the practices used at each Contract Pharmacy relating to replenishment of virtual inventory will comply with the 340b Act and all other applicable law, regulation, and guidance, including without limitation the prohibition on drug resale or transfer (i.e. diversion) or the prohibition against duplicate discounts.
- 5.8 During the term of this Agreement, Entity may conduct periodic automated Claim audits to verify its compliance with obligations related to provision of Services utilizing Wellpartner Clarity. If as a result of any such audit, if it is determined that an Ineligible Claim was submitted or an Eligible Claim was incorrectly adjudicated, Wellpartner shall take steps to ensure that the Claim is reversed or properly re-calculated as appropriate.
- 5.9 Entity shall immediately notify Wellpartner in the event of any suspected fraud or abuse related to the 340b Pharmacy Program by Entity staff, a Patient or person claiming to be a Patient of Entity. Entity shall work with Wellpartner and regulatory enforcement authorities to investigate and resolve any suspected fraud or abuse issue.

6. RECORDS AND AUDITS

- 6.1 Each Party shall maintain all records and other information relating to the performance of its obligations under this Agreement in a manner and for a period as required by the 340b Act and all other applicable law, regulation, and guidance, and otherwise consistent with the terms of this Agreement, during the term of this Agreement and for the three (3) years thereafter.
- 6.2 Entity acknowledges and agrees that it is subject to audit by DHHS and by the drug manufacturers that supply Covered Drugs to Entity's Contract Pharmacy. Entity agrees to fully comply and cooperate with any such audit. To assist Entity in complying with such audit, Administrator agrees to make its appropriate personnel reasonably available to Entity during business hours to answer questions regarding such audit. In the event that Entity requests Administrator to provide any reports *NOT* referenced on Exhibit C or to make its personnel available to Entity for support "on-site", Administrator shall endeavor to provide Entity such non-standard reports and on-site support and in exchange for such work, Entity shall pay to Administrator an additional fee of \$150 per person per hour of work and reimburse Administrator any of its out-of-pocket travel and other costs and expenses in performing such work.
- 6.3 Each Party or its duly authorized agents shall have the right, at its sole cost and expense and upon reasonable notice and during normal business hours, to examine the other Party's records to the extent reasonably necessary to verify that such Party is in compliance with its obligations under this Agreement. Any such examinations shall be subject to the requirements of state and federal law regarding the confidentiality of medical and prescription drug records. Such audits conducted by Entity shall be limited to ensuring Administrator's Services were provided in a manner consistent with the terms of this Agreement. Additionally, all information obtained by a Party as a result of such audits 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 12 months after the expiration or termination of the term, or such longer periods as required by law or regulation.
- 6.4 Administrator shall, during the term of this Agreement and for longer periods as required by law, take commercially reasonable steps to ensure that Contract Pharmacy maintains accurate dispensing records of Covered Drugs as necessary for Entity to meet regulatory reporting and audit requirements.
- 6.5 Wellpartner shall, during the term of this Agreement and for longer periods as required by law, maintain accurate records of Claims processed through the 340b Pharmacy Program.

7. COMPLIANCE

- 7.1 Subject to Entity's cooperation, direction, and supervision, Wellpartner shall perform its Administrative Services and Pharmacy Services under this Agreement in accordance with the requirements of the 340b Act and all other applicable laws, regulations, and guidance. Further Wellpartner shall make reasonable efforts to ensure each Contract Pharmacy to perform its obligations under the applicable Contract Pharmacy Services Agreement in accordance with the requirements of the 340b Act and all other applicable laws, regulations, and guidance.
- 7.2 Wellpartner shall provide information and guidance to the Entity to assist it to design its 340b Pharmacy Program and its related systems, policies, and processes in order to maintain compliance with the 340b Act and all other applicable laws, regulations, and guidance.
- 7.3 Entity, with the assistance of Wellpartner, shall be responsible for overseeing all aspects of the Entity's 340b Pharmacy Program and for ensuring that such 340b Pharmacy Program remains in compliance with the 340b Act and all other applicable laws, regulations, and guidance. Wellpartner shall be responsible for Eligible Claim determinations (including determinations regarding Patient status) made hereunder using accurate Participating Provider Data Files and accurate Patient Encounter Files.

8. INSPECTION OF AGREEMENT BY DRUG MANUFACTURER

- 8.1 A copy of this Agreement will be provided by Entity, upon request, to a participating drug manufacturer that supplies Covered Drugs to Contract Pharmacy, as the licensed pharmacy providing Pharmacy Services hereunder under a Bill-to/Ship-to Arrangement; provided, however, that should a Party receive such request, such Party shall provide notice thereof to the other Party, which other Party shall then have fifteen (15) days following receipt of such notice to redact from this Agreement any information such Party believes is confidential or proprietary (to the extent permitted by law), and the Party responding to such request shall delete such information from the copy of the Agreement that is provided to the requesting drug manufacturer.

9. INDEMNIFICATION; LIMITATION OF LIABILITY; DISCLAIMER OF WARRANTIES

- 9.1 Unless limited by Entity's deemed status under the Federal Tort Claims Act, Entity shall indemnify, defend and hold Wellpartner harmless from and against any and all liability, losses, claims, lawsuits, costs, damages and/or expenses whatsoever, including reasonable attorneys' fees and court costs in favor of any Third-Party and arising out of or attributable to a material breach by Entity of its obligations under this Agreement.
- 9.2 Administrator shall indemnify, defend and hold Entity 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 "Action") in favor of any Third-Party arising out of or attributable to: (a) the material breach by Administrator of its obligations under this Agreement; or (b) the willful misconduct or negligent performance or nonperformance by Administrator or by any of its employees, agents, contractors or subcontractors of any duty or responsibility of Administrator under this Agreement.
- 9.3 At the request of the indemnified Party based on any such action, the indemnifying Party shall at its sole cost and expense, defend such action with counsel reasonably acceptable to the indemnified Party which arises out of the foregoing indemnification obligation. The indemnified Party shall promptly notify the indemnifying Party of any such action, and if requested to defend said action, given full and complete authority, information and assistance for the defense of

same, provided, however, the indemnifying Party shall have no authority to enter into any settlement or compromise on behalf of the indemnified Party without the prior written consent of the indemnified Party, which consent shall not be unreasonably withheld or delayed.

- 9.4 **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN ANY OTHER SECTION OF THIS AGREEMENT, ABSENT GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD, IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT (WHETHER IN AN ACTION IN NEGLIGENCE, CONTRACT OR TORT OR BASED ON A WARRANTY OR OTHERWISE) FOR (I) FAILURE TO REALIZE SAVINGS OR LOSS OF PROFITS, REVENUE, OR ANY OTHER INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, OR (II) DIRECT AND OTHER DAMAGES IN EXCESS OF THE AMOUNT OF FEES EARNED BY WELLPARTNER UNDER THIS AGREEMENT DURING THE THREE (3) MONTHS PRIOR TO THE DATE OF THE APPLICABLE CLAIM FOR DAMAGES, IN EACH CASE EVEN IF EITHER PARTY HAS BEEN ADVISED OF POSSIBILITY OF DAMAGES. THE LIMITATION OF LIABILITY CONTAINED IN THIS SECTION 11.4 SHALL APPLY TO ANY INDEMNIFICATION OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT, BUT SHALL NOT APPLY TO BREACHES BY A PARTY OF ITS CONFIDENTIALITY OR INTELLECTUAL PROPERTY OBLIGATIONS UNDER THIS AGREEMENT.**

10. TERM AND TERMINATION

- 10.1 This Agreement shall commence on the Effective Date and shall continue for a period of three (3) years from the Launch Date (the "Initial Term"). After this Initial Term, this Agreement shall automatically renew for two (2) successive one (1) year terms (each, a "Renewal Term," and together with the Initial Term, the "term") with a total of five (5) year term unless written notice is given by either Party to the other Party at least ninety (90) days prior to the end of the then current term. Following any non-renewal of this Agreement, Wellpartner agrees to provide reasonable assistance to Entity to assist it in transitioning services provided hereunder, as reasonably requested by Entity and under terms mutually agreed to by the Parties, for a period of ninety (90) days after the date of the expiration of the term.
- 10.1.1 Notwithstanding the above paragraph, Either Party may terminate this Agreement for convenience at any time without cause or penalty prior to OPA Effective Date with thirty (30) days written notice.
- 10.2 Early Termination. Prior to the end of the Initial Term or any Renewal Term hereunder, the Agreement may be terminated as follows:
- 10.2.1 Material Breach. In the event of a material breach of any of the terms of this Agreement by a Party, the non-breaching Party may terminate this Agreement upon thirty (30) days prior written notice to the breaching Party unless the breaching Party cures such breach within such thirty (30) days; provided, however, that in the event Wellpartner fails to comply with applicable laws, regulations, or guidance in its provision of Pharmacy Services or Administrative Services under this Agreement, or as otherwise expressly provided herein, Entity may terminate this Agreement with immediate effect.
- 10.2.2 Termination Due to Changes in Law or Guidance. The Parties acknowledge that existing laws, regulations, or guidance may change and that the courts or state or federal agencies with appropriate jurisdiction may change their interpretation of existing law. In the event any such change: (i) renders this Agreement illegal, (ii)

materially changes the obligations of a Party, (iii) results in a material decrease in 340b program utilization, or (iv) jeopardizes the tax-exempt status of a Party or creates a significant risk of civil penalties, the Parties shall use their best efforts during the ninety (90) day period thereafter to mutually agree to such amendments to the Agreement as to permit its valid and legal continuation. If, after such ninety (90) day period, the Parties are unable to agree to amend the Agreement, either Party may terminate its participation in this Agreement effective immediately by giving written notice of such termination to the other Parties.

- 10.2.3 Any term or provision set forth in this Agreement which by its nature extends beyond the termination hereof shall survive, including but not limited to obligations to pay amounts due hereunder, indemnification obligations, confidentiality obligations, liability limitations and audit provisions.

11. CONFIDENTIALITY

- 11.1 Each Party (the "Receiving Party") that receives Confidential Information from or on behalf of the other Party (the "Disclosing Party") agrees (i) to keep and maintain as confidential such Confidential Information, and (ii) not to publish, disclose, divulge or use such Confidential Information, in each case except as necessary or appropriate to perform the Receiving Party's obligations under this Agreement. For the purposes of this Section 11.1, "keep and maintain as confidential" means that the Receiving Party will protect such information in the same manner in which it protects its own confidential information of similar nature and, at a minimum, in accordance with applicable laws and regulations. Each Receiving Party acknowledges that any use or disclosure of Confidential Information, except in accordance with the provisions of this Agreement, would cause irreparable injury to the Disclosing Party and therefore, in the event of any such disclosure, whether actual or threatened, in addition to any other remedies available to it, the Disclosing Party may seek injunctive or other equitable relief.
- 11.2 The Parties acknowledge that as used in this Agreement, the term Confidential Information does not include any information that: (i) was already known by the Receiving Party prior to the execution of this Agreement; (ii) is furnished to such Receiving Party by a Third-Party who is lawfully in possession of such information without limitation as to confidentiality and who lawfully conveys such information to such party; (iii) becomes generally known to the public other than through a breach of this Agreement; or (iv) was independently developed or discovered by the Receiving Party not in connection with the Confidential Information of the Disclosing Party.
- 11.3 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 of the Receiving Party to the Disclosing Party, together with all copies thereof or copies of any part thereof, as shall then be in the Receiving Party's possession. If return of all written or other physical or electronic embodiments of Confidential Information is not commercially practical, then at the direction of the Disclosing Party, the Receiving Party shall account for all Confidential Information and either (i) destroy such Confidential Information, or (ii) continue to hold such Confidential Information in a secure manner until return or destruction is possible. Notwithstanding the foregoing, the return or destruction of Confidential Information shall not include information that must be retained by the Receiving Party as required by law or regulation for reporting or other purposes, or as otherwise contemplated 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.

- 11.4 In the event that a subpoena or other legal process in any way concerning the Confidential Information is served upon the Receiving Party and related to the Disclosing Party's Confidential Information, the Receiving Party shall notify the Disclosing Party promptly following its 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 legal validity of such subpoena or other legal process.
- 11.5 The Parties acknowledge and agree that all Protected Health Information, as that term is defined by the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act and any regulations and official guidance promulgated thereunder (collectively, "HIPAA"), used by or disclosed to Wellpartner hereunder shall be subject to additional protections as provided in the BAA between the Parties attached hereto as Exhibit D.

12. REPRESENTATIONS AND WARRANTIES

- 12.1 Each of the Parties hereby represents and warrants to the other Party that it (i) is duly organized and validly existing in its state of formation/incorporation; (ii) has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder; and (iii) is not a party to any other agreement that would prevent or restrict its performance hereunder.
- 12.2 Entity hereby represents to Administrator that it is a Covered Entity within the meaning of Sections 4 and 5 of the 340b Act, 42 U.S.C. § 256b (a) (4), (5) and eligible to purchase Covered Drugs from Drug Wholesalers or manufacturers under the 340b Act
- 12.3 **EXCEPT FOR THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, WELLPARTNER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE.**

13. MISCELLANEOUS

- 13.1 Each Party will at all times comply with all federal, state and local laws, rules, regulations and requirements applicable to its obligations and responsibilities under this Agreement. Without limiting the foregoing, such Party shall not take any action that would violate (i) state or federal anti-kickback laws, including, without limitation, those provided for in Section 1128B of the Social Security Act (42 U.S.C. 1320a-7b), and (ii) the Health Insurance Portability and Accountability Act of 1996 ("HIPAA" and/or the "Act") and its implementing regulations (45 CFR Parts 160 and 164) and standards related to Individually Identifiable Health Information (the "Privacy Rule") and Title XIII of the American Recovery and Reinvestment Act of 2009 and its implementing regulations ("ARRA"). In this regard, concurrent with their entering into this Agreement, the Parties shall enter into the Business Associate Agreement, in the form attached hereto as Exhibit D (the "BAA").
- 13.2 Each Party reserves its right 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. Each Party agrees not to use the service marks, trademarks, trade names and other such proprietary symbols and words of the other Party except as reasonably necessary to its obligations hereunder without the prior written consent of the other Party.

- 13.3 Except for the duty to pay, neither 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, which for this purpose shall include any government acts and changes to applicable law and regulation.
- 13.4 The Agreement shall be governed and construed in accordance with the laws of the State of California, excluding its conflicts of law rules. Any dispute arising out of or relating to the Agreement will be subject to the exclusive jurisdiction of the state and federal courts located within the State of California, and each Party hereby submits to the personal jurisdiction of such courts.
- 13.5 The provisions of this Agreement may not be amended, supplemented, waived or changed, except by a writing signed by both Parties. No email, text message or similar communication shall be deemed to modify the terms of this Agreement. The failure of a Party to at any time enforce any of the provisions of this Agreement shall not be deemed or construed to be a waiver of any such provision, nor in any way affect the validity of this Agreement or any provision hereof or the right of such Party to thereafter enforce each and every provision of this Agreement. No waiver of any such breach, non-compliance or non-fulfillment shall be construed or deemed to be a waiver of any other or subsequent breach, non-compliance or non-fulfillment. The date of the execution of amendment, modification or waiver, if any, shall be deemed to be the date of the signed amendment, modification or waiver, and such amendment, modification or waiver will not be effective until its execution by all Parties thereto.
- 13.6 Neither Party shall assign its rights and/or obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld, delayed or conditioned, except in connection with the sale of all or substantially all of such Party's assets or business.
- 13.7 This Agreement shall not be construed to create any relationship of joint venture, agency, partnership or co-employer between the Parties. Neither Party shall have any authority to bind the other Party into any agreement, nor shall either Party be considered to be an agent of the other Party in any respect.
- 13.8 All of the terms and provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective legal representatives, successors and permitted assigns, whether so expressed or not.
- 13.9 The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Unless the context of this Agreement otherwise requires, (i) words of any gender are deemed to include each other gender, (ii) words using singular or plural number also include the plural or singular, respectively, (iii) the terms "hereof", "herein", "hereby", "hereto" and derivative or singular words refer to this entire Agreement, (iv) all references to dollars or "\$" shall be in U.S. dollars, and (v) the words "include", "including" or "includes" shall be deemed to be followed by "without limitation".
- 13.10 The Parties hereby agree from time to time to execute and deliver such further and other transfers, assignments and documents and do all matters and things which may be convenient or necessary to more effectively and completely carry out the intentions of this Agreement.
- 13.11 All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the person giving such notice) e-mailed, hand delivered by messenger or courier service, or mailed by registered or certified mail (postage prepaid), return receipt requested, addressed to a Party's legal department at such Party's address set forth in the signature blocks to this Agreement.

- 13.12 If any provision of this Agreement or any other agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible. If any provision of this Agreement may be construed in two or more ways, one of which would render the provision invalid or otherwise voidable or unenforceable and another of which would render the provision valid and enforceable, such provision shall have the meaning which renders it valid and enforceable.
- 13.13 Unless expressly stated herein to the contrary, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any Party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any Party to this Agreement.
- 13.14 Insurance. With respect to the performance of its obligations under this Agreement, each Party shall maintain general and professional 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.
- 13.15 Non-Solicitation of Employees. During the term of this Agreement and for a period of one (1) year thereafter, in order to protect the proprietary information and rights of Administrator, without the prior written consent of Administrator, Entity agrees not to (i) solicit for employment or to provide services for Entity, or attempt to hire or engage, any employee or independent contractor of Administrator, or (ii) in any other way interfere with Administrator's employment or contractual relations with any of its employees or independent contractors.
- 13.16 This Agreement represents the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes all other negotiations, understandings and representations (if any) made by and between such Parties. All attachments, schedules and exhibits to this Agreement, as well as any appendices, schedules, attachments or addenda thereto, and any amendments to the foregoing, shall be considered a part of this Agreement and are expressly incorporated herein by this reference.
- 13.17 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Facsimile and electronic signatures shall be taken to be originals.

~Signatures on following page~

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

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

WELLPARTNER

Signature: [Signature]

Signature: [Signature]

Name: Tom Modica

Name: Wen Jagodzinski

Title: Assist. City Manager

Title: SR Director

Date: 10/11/18

Date: 9-27-18

Entity Name & Notices Address:
City of Long Beach through its Department of Health and Human Services
2525 Grand Ave #106
Long Beach, California 90815
Entity 340b ID: RWII90815

Wellpartner Notices Address:
Wellpartner, LLC
Attn: Legal Department
20800 SW 115th Avenue, Suite 100
Tualatin, OR 97062

Tom Modica
Assistant City Manager
EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER

[Signature]
KARISA C. PEREZ
Notary Public-State of Rhode Island
My Commission Expires
April 30, 2019

APPROVED AS TO FORM
10/9, 2018
CHARLES PARKIN, City Attorney
By [Signature]
LINDA T. VU
DEPUTY CITY ATTORNEY

EXHIBIT A

The reimbursement and other terms set forth in this Exhibit A represent the entire financial understanding between the Parties with respect to the Services provided under the Agreement. Wellpartner and Entity have freely negotiated the reimbursement terms set forth herein and agree that such terms are consistent with and otherwise represent a fair market value for Services rendered.

1. PATIENT SHARE OF COST

- 1.1 Patients without prescription drug coverage may receive Covered Drugs through the 340b Pharmacy Program. Patients will either pay full medication costs (discounted drug cost plus fees) or will receive full or partial coverage by Entity or through a grant program. Wellpartner will administer these uninsured programs on behalf of Entity. Entity can establish a fee scale for 340b-eligible Patients. Entity will assign all Patients to a group with a corresponding group code, based on a uniform method (such as ability to pay or poverty level). 340b eligible Patient's fee scale will be linked to the group code and used at the time of Claim Adjudication to determine the appropriate share of cost or copayment to be paid by Patient and collected by Wellpartner or Contract Pharmacy. The proper group code must be indicated on all 340b prescriptions, vouchers or electronic prescribing templates for all 340b prescriptions.

2. 340B CLAIM QUALIFICATION

- 2.1 Wellpartner shall receive information regarding Claims as follows: (a) directly from Contract Pharmacy through the Adjudication process; (b) from Contract Pharmacy's Claim switching service; and/or (c) from Covered Entity and/or through its designated pharmaceutical benefit manager (PBM).
- 2.2 Wellpartner shall review Claims based on the 340b Claim qualification criteria selected by Wellpartner and agreed to by Entity, which may include, among other things: (a) the 340b Pharmacy Program pricing availability and eligibility based on the requirements set forth in the 340b Act and applicable laws and regulations; (b) a financial analysis of Claims to minimize the net loss to the Entity on an aggregate basis for a dispensing and reporting period (including 340b cost of the Covered Drugs and Administrative Fees); and (c) other criteria established by and between Entity and Wellpartner.
- 2.3 Upon completion of Claim qualification, Eligible Claims shall be included in the 340b Pharmacy Program under this Agreement and Ineligible Claims shall be excluded from the 340b Pharmacy Program.

3. 340B CLAIM REMITTANCE COORDINATION

- 3.1 For Claims paid for by a Third-Party Payer, Wellpartner shall work with Contract Pharmacy to remit to Entity all amounts collected in connection with each Eligible Claim, including Patient's Copayment and Third-Party Payer reimbursement (as applicable), less the Dispensing Fee and Administrative Fee (if applicable).
- 3.2 For Eligible Claims where Entity elects to contribute a share of the Patient's cost, the related portion collected by Wellpartner from Entity shall take the form of a credit calculated by Wellpartner and issued by Entity, less the Patient's payment (including but not limited to Copayments).
- 3.3 Vouchers are documents that accompany and identify prescriptions as: (a) eligible for 340b discounts; and/or (b) as prescriptions for which Entity will provide a direct subsidy (each a Voucher). Entity shall work with Wellpartner or Contract Pharmacy to manage the application

of these Vouchers. Entity shall distribute Vouchers to 340b eligible Patients and these Vouchers must be retained by Wellpartner or Contract Pharmacy for audit purposes. Entity agrees that Vouchers are not to be returned to or retained by 340b eligible Patients after adjudication and dispensing. In no instance are Vouchers to be duplicated, sold, reused, or given away as this may result in Covered Drug diversion. Entity agrees that any failure to comply with this Voucher requirement may result in regulatory enforcement action and be grounds for termination of the Agreement by Wellpartner.

- 3.4 From all Patients on the date of service, Contract Pharmacy shall collect the applicable Co-payment due based on messaging received at the time of Adjudication of the Claim or in subsequent payment reconciliation statements from a Third-Party Payer or its designated Claims processor.
- 3.5 From Third-Party Payers, Contract Pharmacy shall, through its standard billing and remittance process, collect all contracted reimbursement amounts due in connection with the Claim irrespective of whether amounts are due from a primary or subsequent Third-Party Payer.

4. **FEES**

- 4.1 The following fees are paid to or retained by Administrator or Contract Pharmacy, as applicable, on a per eligible transaction basis (i.e., a prescription for a Covered Drug written by a Health Care Provider, which is then dispensed by the Contract Pharmacy to a Patient and meets the 340b Claim qualification criteria set forth herein).
- 4.2 For eligible Claims, Entity shall reimburse Contract Pharmacy on a per-Claim basis, the contracted Dispensing Fee established by Entity and Contract Pharmacy. Administrator may offset the Dispensing Fee due from monies collected from the Contract Pharmacy on behalf of Entity. Entity shall promptly remit any Dispensing Fee shortfalls to Administrator for payment to Contract Pharmacy.
- 4.3 Administrative Fees. Entity shall reimburse Wellpartner on a per-Eligible Claim basis, an Administrative Fee equal to the greater of:
 - 4.3.1 \$ 4.00; or
 - 4.3.2 14% of the amount represented by the following formula: (i) total amount paid for a Claim (regardless of who paid, e.g., Third-Party Payer, Patient or Entity) minus (ii) the preferential price payable by the Entity under 340b
 - 4.3.3 For all Eligible Claims that have been excluded from the 340b Pharmacy Program at Entity's request, Entity shall reimburse Wellpartner a pharmacy system processing fee of \$ 0.35 per Claim.
- 4.4 Notwithstanding any provision of this Agreement, Entity understands and agrees that Wellpartner shall be entitled to receive an Administrative Fee and Contract Pharmacy shall be entitled to receive a Dispensing Fee for Claims that are reversed or required to be reversed because of inaccurate or incomplete data or information provided by Entity.
- 4.5 If Entity does not diligently pursue the implementation of the 340b Pharmacy Program with Wellpartner within one hundred eighty (180) days of the Effective Date, Entity shall promptly pay to Wellpartner an implementation fee of \$15,000.

5. **OTHER**

- 5.1 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 they cannot be replenished, Administrator shall complete a True-Up of said covered drugs at the ninety (90) day point with the True-Up based on the remaining NDC units.
- 5.2 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-Up amounts shall be at the NADAC price as follows:
 - 5.2.1 The NADAC price in effect on the date a Covered Drug is dispensed to a Patient pursuant to the terms of this Agreement, or
 - 5.2.2 When the NADAC price in effect on the date a Covered Drug is not available:
 - 5.2.2.1 Brand Drugs: Average Wholesale Price minus 18%
 - 5.2.2.2 Generic Drugs: Average Wholesale Price minus 65%
- 5.3 The Parties recognize that in certain cases the 340b cost of goods in effect at the time of Claim qualification and calculation of the Dispensing Fee and Administrative Fee may differ from the time when Entity replenishes or completes a True-Up of inventory. Entity shall in all cases be responsible to pay the amounts contained on Drug Wholesaler invoices or Wellpartner invoices or statements.
- 5.4 Subject to Section 4 above, if as a result of any audit conducted pursuant to the terms of this Agreement it is determined (and otherwise supported by the dispensing, payment, and reconciliation records and reports) that a Party was either overpaid or underpaid, or if an Ineligible Claim was processed under this Agreement, then, as necessary, the Claim will be re-adjudicated and the Party owing such monies shall be obligated to make the necessary payments within thirty (30) days receipt of such information supporting said payment.
- 5.5 In the event of any change in industry standards related to the reimbursement and/or payment terms set forth in this Agreement including this Exhibit, the Parties agree to work in good faith to modify the terms of this Agreement including this Exhibit so that the level of compensation received by Wellpartner prior to such change is maintained.

EXHIBIT B

CONSENT AND JOINDER AGREEMENT

The undersigned Facility hereby certifies that it has reviewed and hereby consents and agrees to the terms set forth in the Services Agreement (the "Agreement") by and between the undersigned Covered Entity and Wellpartner, LLC ("Wellpartner"), a copy of which such Covered Entity has provided to such Facility. The undersigned Facility, to include child sites, hereby joins and consents to participate as an eligible Entity to receive services from Wellpartner under the Agreement and such Covered Entity's Pharmacy Program for the benefit of Patients of such Facility, and accordingly such Facility agrees to be bound by the provisions and to perform the applicable Covered Entity's obligations thereunder.

Name of Covered Entity: **City of Long Beach through its Department of Health and Human Services**
Address of Covered Entity: 2525 Grand Ave #106, Long Beach, California 90815

Signature: _____

Name: _____

Title: _____

Date: _____

The undersigned certifies that they have legal authority to bind Entity.

Joining Facility Name: _____

Joining Facility Address: _____

Joining Facility 340b ID: _____

Signature: _____

Name: _____

Title: _____

Date: _____

EXHIBIT C

STANDARD REPORTS

Wellpartner will provide its *340b Wellpartner Clarity* ("Portal") to Client. Client may use the Wellpartner Clarity to access 340b Pharmacy Program data, reports and summaries through the term of this Agreement. In addition, standard production reports will be provided via the Portal as listed below:

- 1) **Carved in Claims by Entity/Carved in Claims by Pharmacy:** Details dispensing events at the Claim level, including payment collection and reimbursement activity, Patient name, Health Care Provider's name, prescription number, drug NDC and quantity, and amounts charged and amounts collected.
- 2) **Carved Out Claims Report:** Shows claim's detail of claims that carved out of the program.
- 3) **Medicaid Claims Sent to State:** Shows claim's detail of claims that were carved in for Medicaid and sent to the State.
- 4) **Medicaid Payers Claims:** Shows claim's detail of Medicaid payer claims.
- 5) **Brand vs. Generic Summary:** Shows the number and percentage of claims that carved in for brand or generic drugs.
- 6) **340b Dashboard Report:** This replicates the Dashboard on the Portal
- 7) **Carved in Claim Financials by Entity/Carved in Claim Financials by Pharmacy:** Claim's detail showing financials (admin fee, dispensing fee, entity net, True-Ups, etc.
- 8) **Entity Voucher:** Entity can download their vouchers from the Portal.
- 9) **Financial Performance Report:** shows the monthly financial performance of the 340b program, including Net Captured Claims, Entity Revenue, Admin fees, True-up Costs, Estimated 340b Cost, and Carve out Fees.
- 10) **Financial Summary:** Provides an executive summary of the 340b Program by reporting period.
- 11) **Back Ordered Items:** An inventory report that shows how many times Wellpartner has attempted to order specific Drug/NDC and if the drug is just out of stock, or discontinued.
- 12) **Inventory Control by Entity/Inventory Control by Pharmacy:** Details starting and ending balances in the 340b product accumulator, with dispensed and replenished amounts.
- 13) **Positive Inventory by Entity/Positive Inventory by Pharmacy:** Shows a list of positive inventory that has accrued during the 340b program.
- 14) **Purchase Order Details by Entity/ Purchase Order Details by Pharmacy:** Shows when purchase orders were placed, for what products, and the estimate cost.
- 15) **True-ups by Entity/True-ups by Pharmacy:** Shows when True-Ups were processed, for what products, and at what cost.
- 16) **Encounter Summary:** Entity encounter data (patient, prescriber, encounter date, clinic code).
- 17) **Entity Patient List:** Entity patient list.
- 18) **Entity Prescriber List:** Entity prescriber list.
- 19) **Global Specialty List:** List of specialty drugs/NDC's.
- 20) **Payer Summary:** Shows percentage of claims that carved in that insured or uninsured.
- 21) **Patient Carve-In Fluctuation:** Shows the number of claims that carve in per patient and carve in percentage rate.

EXHIBIT D

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 HIPAA Business Associate Agreement ("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.

1. **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").
2. **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).
3. **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.
4. **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.

5. **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.
6. **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.
7. **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.
8. **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.
9. **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.
10. **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.
11. **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.
12. **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.

13. **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.
14. **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.
15. **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.
16. **Security.** To the extent that Business Associate creates, receives, maintains or transmits electronic PHI on behalf of Covered Entity, Business Associate shall:
 - a. 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;
 - b. 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
 - c. 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.
17. **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.
18. **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.
19. **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.

20. **Effect of Termination of Agreement.** Upon the termination of the Agreement or this BAA for any reason, Business Associate shall return all PHI created by Business Associate or received from Covered Entity to Covered Entity or, at Covered Entity's direction, destroy all PHI received from Covered Entity that Business Associate maintains in any form, recorded on any medium, or stored in any storage system. This provision shall apply to PHI that is in the possession of Business Associate, its agents and subcontractors. Business Associate shall retain no copies of the PHI. Business Associate shall remain bound by the provisions of this BAA, even after termination of the Agreement or BAA, until such time as all PHI has been returned or otherwise destroyed as provided in this Section.
21. **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.
22. **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.
23. **Owner of PHI.** Under no circumstances shall Business Associate be deemed in any respect to be the owner of any PHI of Covered Entity.
24. **Third-Party Rights.** The terms of this BAA do not grant any rights to any third parties.
25. **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.
26. **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.
27. **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.