

35066

**340B ADMINISTRATIVE SERVICES AGREEMENT**

This 340B Administrative Services Agreement ("Agreement") is by and between the City of **LONG BEACH THROUGH ITS DEPARTMENT OF HEALTH AND HUMAN SERVICES**, a municipal Corporation, ("Covered Entity") and **WELLPARTNER, LLC** ("Wellpartner") and shall commence on the Effective Date.

WHEREAS, Covered Entity qualifies for and participates in the 340B Program;

WHEREAS, Covered Entity has entered or plans to enter into an arrangement with a Pharmacy or Pharmacies to provide 340B Program Pharmacy Services to Eligible Patients; and

WHEREAS, Covered Entity desires to engage Wellpartner to provide Administrative Services to support Covered Entity's 340B program for the Pharmacy Locations, and Wellpartner desires to accept such engagement.

NOW, THEREFORE, Covered Entity and Wellpartner agree as follows:

**1. DEFINITIONS**

- 1.1 "340B Claims Qualification Criteria" means the written standards solely established by Covered Entity that determine which drugs qualify as 340B Processed Drugs hereunder.
- 1.2 "340B Price" means the 340B price available to Covered Entity on the date the Claim is qualified by Wellpartner as a 340B Processed Drug. 340B Price is obtained from the wholesaler price file in effect and the Covered Entity based on the 11-digit National Drug Code for the dispensed drug product.
- 1.3 "340B Processed Drug" means a drug dispensed, processed according to all 340B policies and procedures established by Covered Entity, and able to be replenished by Covered Entity.
- 1.4 "340B Program" means the federal drug discount program established under Section 340B of the Public Health Services Act which requires pharmaceutical manufacturers to extend discounted prices to entities that qualify for the program including Covered Entity.
- 1.5 "Additional Fee" means monies earned by Wellpartner and owed by Covered Entity in connection with Wellpartner's provision of an Additional Service, as calculated in accordance with Attachment 4 of this Agreement.
- 1.6 "Additional Service" is a service that is in addition to and separate from the Administrative Services that, if elected by Covered Entity, Wellpartner agrees to provide and Covered Entity agrees to pay for pursuant to the terms of Section 7 and Attachment 4 of this Agreement.
- 1.7 "Administrative Fee" means monies earned by Wellpartner and owed by Covered Entity in connection with Wellpartner's provision of the Administrative Services, as calculated in accordance with Attachment 1 to this Agreement.
- 1.8 "Administrative Services" are the services provided by Wellpartner to Covered Entity under Section 2, Section 3, Section 4, Section 5, and Section 6 (as applicable) of this Agreement.

- 1.9 “BAA” means the Business Associate Agreement between Covered Entity and Wellpartner and attached hereto as Attachment 5.
- 1.10 “Claim” means a prescription drug claim for a covered outpatient prescription drug dispensed by a Pharmacy that has been submitted by the Pharmacy to Wellpartner for verification and qualification of 340B eligibility based on Covered Entity’s 340B Claims Qualification Criteria.
- 1.11 “Contract Year” means each twelve (12) consecutive months, with the first Contract Year commencing on the Effective Date, and with each subsequent Contract Year commencing on the anniversary of the Effective Date.
- 1.12 “Discount Cash Plan” means a financial assistance program established by Covered Entity for certain uninsured or underinsured Eligible Patients wherein Covered Entity subsidizes drug costs and Dispensing Fees for Eligible Patients.
- 1.13 “Dispensing Fee” means the fee owed by Covered Entity to Pharmacy pursuant to the Pharmacy Services Agreement.
- 1.14 “Effective Date” means the date on which the Parties have fully executed this Agreement.
- 1.15 “Eligible Patient List” means a list of Covered Entity’s Eligible Patients.
- 1.16 “Eligible Patient” means a patient who Covered Entity determines is eligible to receive 340B-discounted drugs according to the Health Resources and Services Administration’s (“HRSA’s”) patient definition criteria set forth at 61 Fed. Reg. 55156 (Oct. 24, 1996), as may be amended from time to time by HRSA. All Covered Entity patients who are Medicaid beneficiaries and for whom claims for pharmaceuticals are reimbursable by a state fee-for-service Medicaid program are expressly excluded from this definition, unless Covered Entity, Pharmacy, and the State have established an arrangement to prevent duplicate discounts and Covered Entity notifies HRSA of the arrangement.
- 1.17 “Encounter Data Files” means outpatient encounter data for Covered Entity and all 340B-eligible clinics and departments within Covered Entity (i.e., “child sites”).
- 1.18 “Party” or “Parties” means Covered Entity or Wellpartner, either individually or collectively as the case may be.
- 1.19 “Pharmacy” means an in-house pharmacy (i.e. a Covered Entity owned pharmacy) or a contract pharmacy (i.e. a pharmacy not owned by Covered Entity) that provides 340 Program Pharmacy Services to the Covered Entity.
- 1.20 “Pharmacy Locations” means the Pharmacy locations either at a contract pharmacy (i.e. a pharmacy not owned by Covered Entity) or an in-house pharmacy (i.e. a pharmacy owned by Covered Entity) for which a Pharmacy has agreed to serve Covered Entity’s Eligible Patients and for which Wellpartner has agreed to provide services to Covered Entity under this Agreement. A single Pharmacy Services Agreement may include multiple Pharmacy Locations. The Pharmacy Locations are identified in Attachment 3 and may be modified from time to time by mutual written agreement of the Parties.

- 1.21 "Pharmacy Services" means the services provided by each Pharmacy, including but not limited to the dispensing of 340B Processed Drugs to patients determined to be Eligible Patients by Covered Entity.
- 1.22 "Pharmacy Services Agreement" means the agreement between a contract Pharmacy and Covered Entity for Pharmacy Services.
- 1.23 "Prescriber" means the health care professional that prescribes 340B Processed Drugs for Eligible Patients.
- 1.24 "Prescriber List" means a list of Covered Entity's Prescribers.
- 1.25 "Third-Party Payer" means a commercial or governmental third-party payer or insurer providing health care benefits to an Eligible Patient under a health care benefit plan.
- 1.26 "Total Covered Entity Net Amount" means (i) total amount paid for all Eligible Patient Claims (regardless of who paid, e.g., Third-Party Payer, Eligible Patient, or Covered Entity) minus (ii) the amount paid by Covered Entity to the wholesaler for the 340B Processed Drug minus (iii) the total Dispensing Fees paid to Pharmacy, minus (iv) the total Administrative Fees paid to Wellpartner.
- 1.27 "Wellpartner Clarity" refers to Wellpartner's web-based portal that provides Wellpartner specified data reports to assist Covered Entity's oversight of its participation in the 340B Program.

## **2. IMPLEMENTATION OF COVERED ENTITY'S 340B PROGRAM WITH WELLPARTNER**

### **2.1 Covered Entity shall:**

- 2.1.1 Ensure Wellpartner has all relevant and pertinent information related to Covered Entity's eligibility for participation in the 340B Program.
- 2.1.2 Assist Wellpartner in confirming proper set-up of Wellpartner's system to ensure all relevant and pertinent information for Covered Entity's 340B program is entered correctly.
- 2.1.3 Conduct periodic audits of reports and data extracts to ensure proper qualification of Claims eligible for 340B and provide that information to Wellpartner.
- 2.1.4 Coordinate with Wellpartner in the implementation of any quality assurance programs and process improvement initiatives reasonably requested by Covered Entity for Covered Entity's 340B program and Administrative Services provided under this Agreement.
- 2.1.5 Provide Wellpartner with initial BIN and PCN numbers to be included in or specifically excluded from its 340B Program, and update those numbers on a regular basis.

- 2.1.6 Provide Wellpartner reasonable access to appropriate Covered Entity personnel to ensure Parties can satisfy objectives and timelines for Covered Entity's 340B program.
- 2.1.7 Provide, where applicable, subject to the terms of the BAA, Encounter Data Files, electronic prescriptions, and Prescriber List in a format and on a schedule agreed to by the Parties.
- 2.2 Wellpartner upon Covered Entity's request and in coordination with Covered entity, shall:
  - 2.2.1 Provide appropriate regional pharmacy mapping and engage in pharmacy outreach, and recommend to Covered Entity appropriate pharmacies that may serve in Covered Entity's network of contract pharmacies.
  - 2.2.2 Use reasonable efforts to train Covered Entity and Pharmacy staff on Wellpartner's rules, policies and processes and 340B Program requirements.
  - 2.2.3 As applicable, assist Covered Entity in its contracting for third-party vendor services as necessary for the ongoing management and support of Covered Entity's 340B program (e.g., drug wholesalers). If a wholesaler used by Wellpartner or Pharmacy needs to contract with Covered Entity, then Covered Entity agrees to provide any required information and authorize Wellpartner to act on Covered Entity's behalf with wholesaler as needed in order for Wellpartner to provide the Administrative Services.
  - 2.2.4 Assist Covered Entity as needed during its contracting process with pharmacies. Covered 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 the Prescriber, and the decision to dispense any drugs is at the sole discretion of Pharmacy. Covered Entity acknowledges that in the performance of Administrative Services, Wellpartner makes no representations, either express or implied, with respect to the discretion exercised by the Prescriber or Pharmacy.
  - 2.2.5 As applicable, assist Covered Entity with the administration of its Discount Cash Plan. In order for Wellpartner to properly administer Covered Entity's Discount Cash Plan, Covered Entity must assign a group code to patients who are eligible for the Discount Cash Plan and such group code must be presented at the time of adjudication.
  - 2.2.6 Provide Administrative Services for all Pharmacy Locations identified in Attachment 3, as may be amended from time to time.

### **3. 340B PROCESSED DRUG DISPENSING AND PROGRAM REPORTS**

- 3.1 Covered Entity shall provide its 340B Claims Qualification Criteria to Wellpartner for each Pharmacy Location. For avoidance of doubt, Wellpartner does not make any representations or warranties with respect to the qualification criteria for drugs as 340B eligible or as to which drugs will qualify as 340B Processed Drugs.
- 3.2 Wellpartner agrees to receive certain information regarding Claims as follows: (a) directly from Pharmacy in a format agreed to by Wellpartner or (b) from Pharmacy's Claim switching

service, in a format agreed to by Wellpartner and provided that Wellpartner has agreed to utilize the identified switching service.

- 3.3 Wellpartner shall review Claims based on the 340B Claims Qualification Criteria.
- 3.4 Covered Entity acknowledges and agrees that Wellpartner may be unable to qualify and verify certain Claims in the event prescription information is incomplete or a prescription does not otherwise meet applicable federal and state laws and regulations including state Board of Pharmacy requirements.
- 3.5 Covered Entity will not take any action to prevent an Eligible 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.
- 3.6 Wellpartner shall use the information from Claims that have been qualified as 340B eligible in order to create reports referenced in Attachment 2 to this Agreement. Covered Entity shall have reasonable access to such reports via Wellpartner Clarity at any time via a username and password.

#### **4. FINANCIAL RECONCILIATION SERVICES**

- 4.1 Wellpartner shall provide the following 340B account reconciliation services to Covered Entity for the Pharmacy Locations:
  - 4.1.1 Following the dispensing of a 340B Processed Drug by a Pharmacy, Wellpartner shall review the Claim information received from Pharmacy, the 340B Claims Qualification Criteria, the Prescriber List, and the Encounter Data Files, and any other information which Wellpartner deems necessary for determining whether the Claim is 340B eligible, managing replenishment, ensuring the proper reconciliation of 340B Program accounts, and reporting under the 340B Program.
  - 4.1.2 Subject to the terms of this Section 4.1.2, Wellpartner shall act as an intermediary to invoice, collect, and remit amounts due from the appropriate parties in connection with such Eligible Patient Claims; and/or coordinate with Covered Entity for the reconciliation of Claims and payments due under the applicable Pharmacy Services Agreement. Wellpartner shall attempt to collect invoices due up to thirty (30) days in arrears ("Wellpartner Collection Period") in accordance with Wellpartner's standard operating procedures. After the Wellpartner Collection Period, Covered Entity agrees and understands that Wellpartner is not required to take any further collection measures and any further collection measures shall be the sole responsibility of Covered Entity.
  - 4.1.3 Neither Party will submit or cause to be included any Claim which is known by it to be paid, in whole or in part, by a fee-for-service Medicaid program, unless the Covered Entity, Pharmacy, and the State have established an arrangement to prevent duplicate discounts and Covered Entity notifies HRSA of the arrangement. Covered Entity shall provide Wellpartner with reasonable notice of any such arrangement permitting submission of Claims to fee-for-service Medicaid. Covered Entity agrees it is solely responsible for ensuring that any Claims submitted to fee-for-service

Medicaid or Medicaid managed care comply with the 340B claims identification requirements imposed by HRSA, the State, or the applicable Medicaid managed care plan, including compliance with HRSA's Medicaid Exclusion File, if applicable.

- 4.1.4 The amount remitted to Covered Entity shall be the appropriate amount collected from the Pharmacy for Eligible Patient Claims dispensed during that dispensing period, less: (a) the applicable Dispensing Fee retained by Pharmacy, as applicable; (b) the Administrative Fee retained by Wellpartner; and (c) any offset amounts required for any inventory and financial reconciliations or reversals ("True-Up"). Wellpartner shall remit the aforementioned amount to Covered Entity approximately forty-five (45) days after Wellpartner's standard invoicing cycle. For Eligible Patient Claims where Covered Entity elects to contribute a share of the Eligible Patient's cost, the related portion shall be deducted from the amounts due to Covered Entity. The Parties shall otherwise abide by the payment terms agreed upon by Covered Entity and Wellpartner.
- 4.1.5 Wellpartner will initiate an Electronic Funds Transfer ("EFT") to the Covered Entity account. The EFT process used under this Agreement will be finalized and instituted by the Parties at the time of Wellpartner implementation or Pharmacy implementation, as applicable.
- 4.1.6 Covered 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 the applicable Pharmacy Services Agreement and this Agreement. Wellpartner shall not be responsible for pursuing any unresolved claims for payment that may exist with any Third-Party Payer, wholesaler, Medicaid agency or any other person or entity.
- 4.1.7 If as a result of any audit conducted pursuant to Records and Audits Section 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, then, as necessary, the Claim will be reprocessed and the Party owing such monies shall be obligated to make the necessary payment to the other Party within thirty (30) days receipt of such information supporting said obligation.
- 4.2 Covered Entity acknowledges that Wellpartner operates only as an intermediary between Covered Entity and Pharmacy. Wellpartner will not be obligated to pay Covered Entity or Pharmacy amounts which may become due hereunder or under the applicable Pharmacy Services Agreement out of Wellpartner's own funds; rather, Wellpartner will pay or reconcile amounts from Pharmacy or Covered Entity funds after those funds are received by Wellpartner from a Pharmacy or Covered Entity, as applicable.
- 4.3 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 the 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 Covered Entity shall contract with one or more wholesalers to enable the replenishment of dispensed 340B Processed Drugs to Pharmacy. Covered Entity may request assistance from Wellpartner in contracting with one or more wholesalers for this purpose. On behalf of Covered Entity and under Covered Entity's applicable wholesaler contracts, Wellpartner agrees to initiate the processing of orders for 340B Processed Drugs directly from wholesaler to replenish 340B Processed Drugs dispensed to Eligible Patients by Pharmacy, based on Wellpartner records.
- 5.2 Wellpartner shall monitor and track 340B Processed Drugs dispensed by Pharmacy Locations to Eligible Patients to accurately assess proper replenishment of 340B Processed Drugs. Wellpartner shall arrange for such drugs to be shipped directly to Pharmacy and billed to Covered 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 Wellpartner shall notify Covered Entity of any known discrepancies with respect to replenishment shipments received by a Pharmacy from a wholesaler and undertake commercially reasonable action to make Covered Entity and Pharmacy aware of the discrepancy; provided that Wellpartner shall not be liable for refunding amounts to the Covered Entity or wholesaler or assuring return of the 340B drug to the wholesaler or Covered Entity.
- 5.4 Covered Entity may utilize Wellpartner Clarity to conduct Claim audits to verify Wellpartner's compliance with obligations related to provision of Administrative Services. If as a result of any such audit, it is determined that an ineligible Claim was submitted or an Eligible Patient Claim was incorrectly adjudicated, Wellpartner shall take commercially reasonable steps in accordance with its rules, procedures and processes to reverse or recalculate the Claim.
- 5.5 Covered Entity shall immediately notify Wellpartner in the event of any suspected fraud or abuse related to the 340B Program by Covered Entity staff, or an Eligible Patient or person claiming to be an Eligible Patient of Covered Entity. Covered Entity shall work with Wellpartner and regulatory enforcement authorities to investigate and resolve any suspected fraud or abuse issue.

## **6. BACKBONE INTERFACE SERVICES**

- 6.1 In the event Covered Entity is contracted with a Pharmacy that utilizes a Backbone Provider, this Section 6 shall apply. For purposes of this Section 6, "Backbone Provider" shall mean a Pharmacy's vendor that allows the Pharmacy to establish a single data interchange so that covered entities can utilize a third-party administrator of their choice.
- 6.2 Covered Entity hereby authorizes and consents to Wellpartner interfacing and exchanging Claims data with the Backbone Provider for the purpose of providing the Administrative Services hereunder.
- 6.3 Covered Entity agrees to provide Wellpartner timely written notice of Pharmacy's utilization of a Backbone Provider.

- 6.4 Covered Entity agrees and understands that when a Backbone Provider is utilized, Wellpartner is not responsible for providing the inventory management services described in Section 5 above.
- 6.5 Covered Entity further agrees and understands that it will assume sole responsibility for any fees charged by the Pharmacy and/or Backbone Provider.

## 7. ADDITIONAL SERVICES

- 7.1 At Covered Entity's election, Wellpartner shall provide the Additional Service(s) in Attachment 4, each for an Additional Fee.

## 8. RECORDS AND AUDITS

- 8.1 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 statute and all other applicable law, regulation, and guidance.
- 8.2 Each Party grants to the other Party, and its duly authorized representatives, the right to audit its books and records, including all electronic records, to verify and ensure compliance with the duties, obligations, and transactions outlined under this Agreement. Any such audit shall be conducted at the auditing Party's sole cost and expense, during reasonable business hours, upon reasonable prior written notice, and in a manner so as not to interfere with the conduct of audited Party's business. Each Party agrees to use commercially reasonable efforts to cooperate with such audits in good faith. Any such examinations shall be subject to the requirements of state and federal laws regarding the confidentiality of medical and prescription drug records. Additionally, all information obtained as a result of any such examinations shall be held in strict confidence and used solely for the purposes of ensuring compliance with the Agreement. Audits may be made at any time during the term hereof, and for up to twelve (12) months after the expiration or termination of this Agreement.
- 8.3 The Parties agree that the 340B Administrative Services described in this Agreement are not Pharmacy Services and, therefore, this Agreement is not a written contract for contract pharmacy services covered by 75 Fed. Reg. 10272 (March 5, 2010).

## 9. COMPLIANCE

- 9.1 Subject to Covered Entity's cooperation, direction, and supervision, Wellpartner shall perform its Administrative Services under this Agreement consistent with the applicable requirements of the 340B statute and all other applicable laws, regulations, and guidance.
- 9.2 Wellpartner shall provide information and guidance to the Covered Entity to reasonably assist Covered Entity's compliance with the 340B Program and all other applicable laws, regulations, and guidance.
- 9.3 Covered Entity shall be responsible for all aspects of Covered Entity's participation in the 340B Program and for ensuring that such participation is in compliance with the 340B Program. Wellpartner shall rely on the information and data contained in the Prescriber List and Encounter Data Files when making Eligible Patient determinations hereunder.



## 10. INDEMNIFICATION; LIMITATION OF LIABILITY

- 10.1 Each Party ("Indemnifying Party") shall defend, indemnify and hold harmless the other party, its subsidiaries and affiliates and each of their respective officers, directors, agents, representatives, successors, assigns, and employees (collectively "Indemnified Party") from and against any and all third party claims, actions, suits, demands, damages, obligations, losses, settlements, judgments, costs, and expenses (including reasonable attorneys' fees) (collectively, "Indemnification Claims") incurred by any Indemnified Party to the extent arising out of or relating to Indemnifying Party's negligence, willful misconduct, or breach of its obligations, representations or warranties set forth in this Agreement, except to the extent such Indemnification Claims are caused by or result from the negligence or willful misconduct of the Indemnified Party.
- 10.2 The Indemnified Party shall promptly notify the Indemnifying Party of any Indemnification Claim for which indemnification is sought, upon actual knowledge of such Indemnification Claim; provided, however, that failure to give such notice shall not relieve the Indemnifying Party of its obligations under the Indemnification Section of this Agreement except to the extent that the Indemnifying Party is materially prejudiced by such failure. The Indemnifying Party shall have the right and option to undertake and control such defense of such action with counsel of its choice. The Indemnifying Party shall select qualified counsel with demonstrable experience defending claims of the type to be defended and approved by the Indemnified Party, which approval shall not be unreasonably withheld. The Indemnifying Party shall not concede or settle or compromise any Indemnification Claim without the prior written approval of the Indemnified Party, which shall not be unreasonably withheld.
- 10.3 **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN ANY OTHER SECTION OF THIS AGREEMENT, IN NO EVENT SHALL WELLPARTNER BE LIABLE UNDER THIS AGREEMENT (WHETHER IN AN ACTION IN NEGLIGENCE, CONTRACT OR TORT OR BASED ON A WARRANTY OR OTHERWISE) FOR FAILURE TO REALIZE SAVINGS OR LOSS OF PROFITS, REVENUE, OR ANY OTHER INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES. WELLPARTNER'S TOTAL LIABILITY ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO DAMAGES IN AN AMOUNT EQUAL TO THE AMOUNT OWED BY COVERED ENTITY TO WELLPARTNER DURING THE THREE (3) MONTHS PRIOR TO THE DATE THE CLAIM IS MADE BY COVERED ENTITY.**

## 11. TERM AND TERMINATION

- 11.1 This Agreement shall commence on the Effective Date and shall continue for three (3) Contract Years ("Initial Term"). After the Initial Term, this Agreement shall automatically renew for successive periods of one (1) Contract Year (each a "Renewal Term," and together with the Initial Term, the "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 Covered Entity in transitioning services provided hereunder, as reasonably requested by Covered Entity under terms mutually agreed to by the Parties, for a period of ninety (90) days after the date of the expiration of the Term.

- 11.2 Prior to the end of the Initial Term or any Renewal Term hereunder, the Agreement may be terminated early as follows:
- 11.2.1 Either Party may terminate this Agreement for convenience without cause or penalty upon thirty (30) days prior written notice to the other Party;
  - 11.2.2 By mutual written agreement of Covered Entity and Wellpartner;
  - 11.2.3 Upon prior written notice of a material breach of this Agreement by the non-breaching Party to the breaching Party, which is not cured to the reasonable satisfaction of the non-breaching Party within thirty (30) days. The Party's waiver or failure to take action with respect to the other Party's failure to comply with any term or provision of this Agreement shall not be deemed to be a waiver of the right to insist on future compliance with such term or provision; or
  - 11.2.4 Upon termination of Covered Entity's eligibility as a Covered Entity under the 340B Program. Covered Entity agrees to provide immediate written notice to Wellpartner of loss or termination of its 340B eligibility. Termination shall be effective whether or not notice is provided by the Covered Entity.

## 12. NON-DISCLOSURE

- 12.1 Non-Disclosure. In the course of performing under this Agreement, a Party may receive, be exposed to or acquire Confidential Information including but not limited to, all information, data, reports, records, summaries, tables and studies, whether written or oral, fixed in hard copy or contained in any computer data base or computer readable form, as well as any information identified as confidential of the other Party ("Confidential Information"). Without limiting the foregoing, the Parties acknowledge and agree that this Agreement, including the pricing terms of this Agreement, constitutes Confidential Information. For purposes of this Agreement, Confidential Information shall not include Protected Health Information, the security of which is provided for elsewhere. The Parties, including their respective employees, agents or representatives (i) shall not disclose to any third party the Confidential Information except as otherwise permitted by this Agreement, (ii) only permit use of such Confidential Information by employees, agents and representatives having a need to know in connection with performance under this Agreement, and (iii) advise each of their employees, agents, and representatives of their obligations to keep such Confidential Information confidential. Notwithstanding anything to the contrary herein, each Party shall be free to use, for its own business purposes, any ideas, suggestions, concepts, know-how or techniques contained in information received from each other that directly relates to the performance under this Agreement. This provision shall not apply to Confidential Information: (1) after it becomes publicly available through no fault of a Party hereto; (2) which is later publicly released by a Party hereto in writing; (3) which is lawfully obtained from third parties without restriction; or (4) which can be shown to be previously known or developed by a Party hereto independently of another Party or (5) that is legally required by court order, law, or other governmental regulation or authority to be disclosed; provided, that unless prohibited by law, such disclosure may be made only after giving written notice to the Party whose Confidential Information is to be disclosed so that it may object to such disclosure and seek a protective order and; provided, further that the disclosure shall be limited to only that portion of the Confidential Information which is legally required to be disclosed.

- 12.2 Public Records Acts. The parties acknowledge that Covered Entity is a public entity and subject to state laws governing disclosure of public records. Covered Entity agrees that the confidential and proprietary information of Wellpartner which is in writing and marked as confidential and proprietary, shall be afforded protection under applicable law. Prior to disclosing such confidential and proprietary information of Wellpartner, Covered Entity shall immediately notify Wellpartner of any requests for information made by a third party pursuant to applicable state statute or local ordinance and shall further provide Wellpartner sufficient time to claim applicable exemptions and/or designate those portions of this information that constitute proprietary information exempt from disclosure under applicable state statute or local ordinance. Covered Entity further acknowledges that it will not release any information identified by Wellpartner as exempt from disclosure without first providing notice to Wellpartner of such intent and allowing Wellpartner to seek judicial relief to prevent such disclosure. Covered Entity agrees not to oppose any action of Wellpartner to obtain a declaratory judgment or other appropriate remedy. If a court thereafter determines that Covered Entity is legally required to disclose such proprietary information, Covered Entity shall disclose the minimum required pursuant to the court order.
- 12.3 Enforcement. Each of the Parties acknowledges and agrees that any breach by it of any of the provisions of the Non-Disclosure Section of this Agreement would result in irreparable injury and damage for which money damages would not provide an adequate remedy. Therefore, if a Party hereto breaches, or threatens to commit a breach of, Non-Disclosure, the other shall have the right and remedy (upon compliance with any necessary prerequisites imposed by law upon the availability of such remedy), which shall be independent and severally enforceable, and which shall be in addition to, and not in lieu of, any other rights and remedies available to it under law or in equity (including, without limitation, the recovery of damages), to have the Non-Disclosure specifically enforced (without posting bond and without the need to prove damages) by any court having equity jurisdiction, including, without limitation, the right to an entry against breaching Party of restraining orders and injunctions (preliminary, mandatory, temporary and permanent), without posting bond and without the need to prove damages, against violations, threatened or actual, and whether or not then continuing, of such covenants. The existence of any claim or cause of action by the breaching Party, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement of the Non-Disclosure. In addition, any breach of the Non-Disclosure shall constitute a material breach of this Agreement.

### 13. REPRESENTATIONS AND WARRANTIES

- 13.1 Each Party represents and warrants that it is (i) 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.
- 13.2 Covered Entity represents and warrants that it is a covered entity as defined in Section 340B and will remain such throughout the term of this Agreement.
- 13.3 Covered Entity represents and warrants that it is not aware of any third-party claims or potential claims against it, Wellpartner, or Pharmacy related to the Administrative Services provided by Wellpartner hereunder nor is it aware of a basis for such a claim.

- 13.4 Covered Entity represents and warrants that it will be solely responsible for compliance with all federal and state laws, regulations and guidance prohibiting duplicate discounting by: (1) carving out from its definition and determination of Eligible Patient any patient that is a beneficiary of Medicaid, Medicaid managed care, ADAP coverage or other coverage if the use of 340B Processed Drugs for such patients results in prohibited duplicate discounting, and/or (2) making arrangements to prevent duplicate discounting, when required, including arrangements to comply with requirements applicable to covered entities or contract pharmacies to identify 340B claims and/or to submit 340B claims at legally or contractually specified pricing, with Medicaid agencies, Medicaid managed care organizations, ADAPs or other payers.
- 13.5 EXCEPT FOR THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, WELLPARTNER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES.

#### 14. MISCELLANEOUS

- 14.1 Non-Assignment. This Agreement may not be assigned by any Party without the prior written agreement of the other Parties, which agreement shall not be unreasonably delayed or withheld; provided, however, that the preceding restriction shall not apply to the assignment by a Party to an affiliated company or any successor entity through a sale, merger, or other similar transaction.
- 14.2 Compliance With Laws. The Parties hereto shall comply with all applicable federal, state and local laws, rules, regulations and requirements, including but not limited to federal and state anti-kickback laws, self-referral laws, and false claims laws. Each Party is aware of the potential for civil or criminal penalties if the Party violates federal, state, or local laws.
- 14.3 Choice of Law. This Agreement shall be interpreted according to the substantive laws of the State of California.
- 14.4 Patient Privacy and HIPAA Compliance. The Parties shall at all times comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA" and/or the "Act") and its implementing regulations (45 CFR Parts 160 and 164). Covered Entity agrees that Wellpartner is a Business Associate of the Covered Entity. In this regard, concurrent with their entering into of this Agreement, Covered Entity and Wellpartner will enter into the BAA attached at Attachment 5 requiring Wellpartner to comply with the HIPAA Rules concerning the confidentiality, privacy, and security of Protected Health Information. Covered Entity agrees that Pharmacy may transmit claims containing Protected Health Information to Wellpartner acting as the Business Associate and agent of the Covered Entity under this Agreement. Covered Entity agrees that it shall obtain Protected Health Information from Wellpartner only relating to patients who are Eligible Patients under this Agreement. The Covered Entity shall not request or receive Protected Health Information from Wellpartner relating to patients who are not Eligible Patients of the Covered Entity. Failure by either Party to abide by these requirements shall be a basis for immediate termination of this Agreement.
- 14.5 Insurance. With respect to the performance of its obligations under this Agreement, Wellpartner 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.

- 14.6 Intellectual Property. During the term of this Agreement, Covered Entity may access and use Wellpartner's Administrative Services or Additional Services (collectively, "Services) on a limited, non-sublicensable, non-transferable, and non-exclusive basis. Wellpartner retains all right, title, and interest in and to the Services and all logos and trademarks reproduced through the Services. This Agreement does not grant Covered Entity any intellectual property rights in the Services or any of its components.
- 14.7 Force Majeure. 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.
- 14.8 Entire Agreement. This Agreement, including the recitals and all Exhibits and Attachments, represent the entire understanding of the Parties in the subject matter hereof. Such attachments are incorporated herein and made a part hereof. There are no other agreements or understandings among the Parties, either oral or written, relating to the subject matter hereof. Any amendments to this Agreement shall be in writing and signed by the Parties hereto. The Parties agree that to the extent that there is an inconsistency or conflict between the terms and conditions of any Exhibit and Attachment and this Agreement, the terms and conditions of the Exhibit or Attachment shall prevail.
- 14.9 Independent Contractors. The Parties to this Agreement are independent contractors, and have no other legal relationship under or in connection with this Agreement. The provisions of this Agreement do not, and are not intended to, create a partnership, joint venture, agency or employment relationship among or between the Parties.
- 14.10 Third Party Beneficiaries. This Agreement is intended for the sole benefit of the Parties and does not create any third party beneficiary rights.
- 14.11 Survival. The provisions of this Agreement that by their nature are intended to continue in their effect following expiration or termination of this Agreement, including all payment obligations, shall survive any such expiration or termination of this Agreement.
- 14.12 Waiver. The failure of Covered Entity or Wellpartner to enforce at any time or for any period of time any one or more of the provisions hereof shall not be construed to be a waiver of the other's responsibilities or obligations under such provision(s) or of the right of a Party thereafter to enforce each such provision.
- 14.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be considered an original, and all of which taken together will constitute one and the same instrument. Signature execution by facsimile or other electronic means shall be considered binding.
- 14.14 Notice. Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing and shall be sent by certified or registered mail, return receipt requested or by overnight delivery by a nationally recognized courier, to the Parties at the

addresses set forth on the signature pages hereto. Notice shall be effective on the day it is received.

**[SIGNATURE PAGE FOLLOWS ON NEXT PAGE]**

IN WITNESS WHEREOF, Wellpartner and Covered Entity, by their duly authorized representatives, have executed this Agreement.

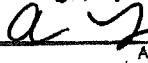
**WELLPARTNER, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_  
Address: 20800 SW 115<sup>th</sup> Avenue, Suite 100  
Tualatin, OR 97062

**LONG BEACH THROUGH ITS DEPARTMENT  
OF HEALTH AND HUMAN SERVICES**

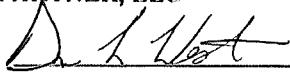
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_  
Address: \_\_\_\_\_

**340B ID: RW15**

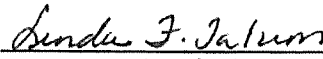
APPROVED AS TO FORM  
Aug. 13<sup>th</sup>, 2023  
DAWN MCINTOSH, City Attorney  
By   
ANITA LAKHANI  
DEPUTY CITY ATTORNEY

IN WITNESS WHEREOF, Wellpartner and Covered Entity, by their duly authorized representatives, have executed this Agreement.


WELLPARTNER, LLC

By:   
Name: Darren West  
Its: VP & GM 340B Services  
Date: August 31, 2023  
Address: 20800 SW 115<sup>th</sup> Avenue, Suite 100  
Tualatin, OR 97062

LONG BEACH THROUGH ITS DEPARTMENT  
OF HEALTH AND HUMAN SERVICES

By:   
Name: LINDA F. TATUM  
Its: ASST. CITY MANAGER  
Date: 8-02-2023  
Address: 411 W OCEAN BLVD, 10<sup>th</sup> FLOOR  
LONG BEACH, CA  
90802  
340B ID: RWI5

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

APPROVED AS TO FORM  
Aug. 1<sup>st</sup>, 20 23  
DAWN MCINTOSH, City Attorney  
By:   
ANITA LAKHANI  
DEPUTY CITY ATTORNEY



**ATTACHMENT 1**  
**FINANCIAL TERMS**

The reimbursement and other terms set forth in this **Attachment 1** contain the entire financial understanding between Wellpartner and Covered Entity with respect to the Administrative Services provided under the Agreement. Wellpartner and Covered Entity have freely negotiated the fees set forth herein and agree that such fees are consistent with fair market value for Administrative Services rendered.

1.1 Contract Pharmacy Locations

1.1.1 For each 340B Processed Drug, Covered Entity shall reimburse Wellpartner an Administrative Fee equal to the greater of:

1.1.1.1 \$4.00; or

1.1.1.2 14.00% of the amount represented by the following formula: (i) total amount paid for a Claim (regardless of who paid, e.g. Third-Party Payer, Eligible Patient, or Covered Entity) minus (ii) the 340B Price.

1.1.2 Covered Entity shall reimburse Wellpartner a carve-out fee of \$0.35 for each Carved-Out Claim. For purposes of this provision, a "Carved-Out Claim" means a Claim that is 340B Program eligible but that Covered Entity has chosen to exclude from its 340B Claims Qualification Criteria.

1.2 In-House Pharmacy Locations

1.2.1 [INTENTIONALLY OMITTED]

1.3 Notwithstanding any provision of this Agreement including this **Attachment 1**, Covered Entity understands and agrees that Wellpartner shall be entitled to receive the Administrative Fee calculated above for Claims that are reversed or required to be reversed because of inaccurate or incomplete data or information provided by Covered Entity.

1.4 The Parties acknowledge that the 340B Price in effect on the date the Claim is qualified by Wellpartner may differ from the price of the 340B drug that Covered Entity purchases to replenish the dispensed drug including when completing reconciliation of inventory. Covered Entity shall in all cases be responsible to pay for the 340B drugs using the amounts contained on wholesaler invoices or Wellpartner invoices or statements which may differ from the 340B Price used to calculate the amount owed to Wellpartner hereunder.

1.5 In the event of any change in industry standards or legal or regulatory requirements imposed on the Covered Entity, Wellpartner or Pharmacy related to Administrative Services or the reimbursement and/or payment terms set forth in the Agreement including this **Attachment 1**, the Parties agree to work in good faith to modify the terms of this Agreement including this **Attachment 1** so that the level of compensation received by Wellpartner prior to such change is maintained.

**ATTACHMENT 2**  
**WELLPARTNER CLARITY REPORTS**

1. **Carved in Claims by Covered Entity/Carved in Claims by Pharmacy:** Details dispensing events at the Claim level, including payment collection and reimbursement activity, Eligible Patient name, Prescriber name, prescription number, drug NDC and quantity, and amounts charged and amounts collected.
2. **Carved Out Claims Report:** Shows details of claims that carved out of the program.
3. **Medicaid Claims Sent to State:** Shows details 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:** Replicates the Dashboard on the Portal.
7. **Carved in Claim Financials by Covered Entity/Carved in Claim Financials by Pharmacy:** Claim's detail showing financials (Administrative Fee, Dispensing Fee, Total Covered Entity Net Amount, True-Ups, etc.)
8. **Covered Entity Voucher:** Entity can download their vouchers from the Portal.
9. **Financial Performance Report:** Shows the monthly financial performance, including Total Covered Entity Net Amount, Entity Revenue, Administrative Fees, True-up costs, Estimated 340B Price, 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 Covered Entity/Inventory Control by Pharmacy:** Details starting and ending balances in the 340B product accumulator, with dispensed and replenished amounts.
13. **Positive Inventory by Covered Entity/Positive Inventory by Pharmacy:** Shows a list of positive inventory that has accrued during Covered Entity's participation in the 340B Program.
14. **Purchase Order Details by Covered Entity/ Purchase Order Details by Pharmacy:** Shows when purchase orders were placed, for what products, and the estimate cost.
15. **True-Ups by Covered Entity/True-Ups by Pharmacy:** Shows when True-Ups were processed, for what products, and at what cost.
16. **Encounter Data Files:** Covered Entity encounter data (patient, prescriber, encounter date, clinic code).
17. **Covered Entity Eligible Patient List:** Covered Entity's Eligible Patient list.
18. **Covered Entity Prescriber List:** Covered 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 are carved in per patient and the carve-in percentage rate.

**ATTACHMENT 3**  
**PHARMACY LOCATIONS**

**CONTRACT PHARMACY LOCATIONS**

The Agreement shall apply to the Covered Entity's contract Pharmacies (i.e. pharmacies not owned by Covered Entity) which are listed in the following Pharmacy Services Agreement(s), including any amendments thereto:

- The Pharmacy Services Agreement by and between the City of Long Beach and Good Life Pharmacy, Inc dated March 30, 2022.
- The Pharmacy Services Agreement by and between City of Long Beach, and Bella Vida Pharmacy, Inc dated September 28, 2018.

**ATTACHMENT 4**  
**ADDITIONAL SERVICES AND ADDITIONAL FEES**

**[INTENTIONALLY OMITTED]**

**ATTACHMENT 5**

**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“BAA”) is effective as of the Effective Date specified below by and between Wellpartner, LLC on behalf of itself and its subsidiaries and affiliates with an office at 20800 SW 115<sup>th</sup> Avenue, Suite 100, Tualatin, OR 97062 (“Business Associate”) and Long Beach through its Department of Health and Human Services with an office at 2525 Grand Avenue, Long Beach, CA, 90815 (“Covered Entity”) for which Business Associate provides services pursuant to one or more service agreements or other arrangements entered into between the parties (collectively “Service Agreement”).

Covered Entity and Business Associate mutually agree to the terms of this BAA in order to comply with the HIPAA Rules”) and other applicable HIPAA Rules, as defined below.

Covered Entity and Business Associate have entered into one or more Service Agreements wherein the Business Associate may create, receive, maintain or transmit Protected Health Information for or on behalf of the Covered Entity.

Covered Entity and Business Associate intend that this BAA shall apply to all such Service Agreements.

This BAA is effective as the Effective Date of the Service Agreement (the “Effective Date”).

1. **Definitions**

- (a) “Breach” shall have the same meaning as the term “Breach” in 45 CFR 164.402.
- (b) “HIPAA Rules” shall mean the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR parts 160 and 164.
- (c) “Individual” shall have the same meaning as the term “Individual” in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g) or other applicable federal or state law.
- (d) “Protected Health Information” or “PHI” shall have the same meaning as such term as defined in 45 CFR 160.103, but limited to information created, accessed or received on behalf of Covered Entity.
- (e) “Secure” shall mean to render unusable, unreadable or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of the HITECH Act.
- (f) “Successful Security Incident” shall mean any Security Incident (as defined in 45 CFR 164.304) that results in the unauthorized use, access, disclosure, modification or destruction of electronic PHI.

All capitalized terms used in this BAA and not defined elsewhere herein or in the Services Agreement shall have the same meaning as those terms as used or defined in the HIPAA Rules.

2. **Obligations of Business Associate**

- (a) Business Associate agrees to comply with the HIPAA Rules that apply to Business Associates concerning the confidentiality, privacy, and security of PHI. To the extent Business Associate carries out any obligations under the Privacy Rule (45 CFR Subpart E

of Part 164) for Covered Entity, Business Associate shall comply with the requirements of the Privacy Rule that apply to the performance of such obligations.

- (b) Business Associate shall enter into a written agreement meeting the requirements of 45 C.F.R. 164.504(e) and 164.314(a)(2) with any Subcontractor that may have access to PHI prior to the Subcontractor obtaining such access. Any such agreement shall contain restrictions, conditions and requirements that are at least as restrictive as those that apply to Business Associate in this BAA.
- (c) Business Associate agrees that it shall request, use and disclose only the minimum necessary PHI to perform or fulfill a specific function required or permitted under this BAA, in accordance with, and subject to the exceptions in, 45 CFR 164.502(b). Business Associate agrees to comply with any guidance issued by the Secretary regarding minimum necessary.
- (d) If Business Associate conducts, in whole or in part, any Transactions electronically on behalf of Covered Entity, Business Associate shall comply with the applicable requirements of 45 CFR 162 and shall require that any agents or Subcontractors that perform, in whole or in part, such Transactions on its behalf, agree in writing to comply with such requirements.
- (e) Business Associate shall report to Covered Entity any Breach and any Successful Security Incident to Covered Entity promptly, but in no event later than within thirty (30) calendar days, after it is discovered (within the meaning of 45 CFR 164.410(a)(2)). Business Associate shall provide the information concerning the Breach as required by 45 CFR 164.410(c). If such information is not available to Business Associate at the time the Breach is required to be reported to Covered Entity, Business Associate shall provide such information to Covered Entity promptly as it becomes available. Business Associate shall maintain complete records regarding the Breach for the period required by 45 CFR 164.530(j) or such longer period required by state law, and shall make such records available to Covered Entity promptly upon request, and to the extent required by applicable law. The foregoing notwithstanding, for purposes of the Security Incident reporting obligation under this Paragraph 2(f), Business Associate hereby reports and Covered Entity acknowledges that (i) Business Associate experiences inconsequential incidents from time to time such as scans or "pings" that are not permitted past Business Associate's firewall ("Inconsequential Attempted Incidents"), and (ii) this report satisfies the requirements of the HIPAA Rules with respect to Inconsequential Attempted Incidents until such time as further guidance from the Secretary indicates otherwise. Notice is hereby deemed given for unsuccessful Security Incidents.
- (f) Within ten (10) business days of receipt of a request from Covered Entity, Business Associate shall provide to an Individual, PHI relating to that Individual held by Business Associate or its agents or Subcontractors in a Designated Record Set in accordance with 45 CFR 164.524. In the event any Individual requests access to his or her PHI directly from Business Associate, Business Associate shall, within ten (10) business days of receipt of such request by Business Associate's Privacy Office, respond directly to the Individual.
- (g) Within ten (10) business days of receipt of a request from Covered Entity, Business Associate agrees to make any requested amendment(s) to PHI held by it or any agent or Subcontractor in a Designated Record Set in accordance with 45 CFR 164.526. In the event any Individual requests an amendment to his or her PHI directly from Business

Associate, Business Associate shall, within ten (10) business days of receipt thereof by Business Associate's Privacy Office shall respond directly to the Individual.

- (h) Business Associate agrees to document such disclosures of PHI made by it, and information related to such disclosure as would be required for Covered Entity to respond to a request by an Individual for an accounting in accordance with 45 CFR 164.528. Upon written request by Covered Entity, and within twenty (20) business days, Business Associate agrees to provide to Covered Entity information collected in accordance with this Paragraph (i) of this Section for Covered Entity to provide an accounting under 45 CFR 164.528. If any Individual requests an accounting of disclosures under 45 CFR 164.528(a) directly from Business Associate, Business Associate shall, within ten (10) business days of receipt of such request by Business Associate's Privacy Office, shall respond directly to the Individual.
- (i) Within ten (10) business days of receipt of a request from Covered Entity, Business Associate agrees to comply with any request for confidential communication of, or restriction on the use or disclosure of, PHI held by it or any agent or Subcontractor as requested by Covered Entity and in accordance with 45 CFR 164.522.
- (j) Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of Health and Human Services or her/his designees or other government authorities in a time and manner designated by Covered Entity or such governmental authorities, for purposes of determining compliance with the HIPAA Rules.
- (k) Business Associate shall maintain documentation of its obligations hereunder to the extent and for the period required by the HIPAA Rules, including 45 CFR 164.530(j).

3. Security of Protected Health Information

- (a) Business Associate agrees to implement appropriate administrative, physical, and technical safeguards to prevent the unauthorized use and disclosure of PHI, and to protect the confidentiality, integrity, and availability of Electronic PHI, as required by the HIPAA Rules.

4. Permitted Uses and Disclosures of Protected Health Information

- (a) Business Associate agrees not to use or disclose Protected Health Information other than as permitted or required by this BAA or as Required by Law.
- (b) Business Associate may use and disclose Protected Health Information as necessary in order to provide its services as described in the Services Agreement.
- (c) Business Associate may use Protected Health Information if necessary for its proper management and administration or to carry out its legal responsibilities. In addition, Business Associate may disclose Protected Health Information as necessary for its proper management and administration or to carry out its legal responsibilities provided that any such disclosure is Required by Law or is made in compliance with the HIPAA Rules.
- (d) Except as otherwise limited in this BAA, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
- (e) Business Associate may de-identify PHI received from Covered Entity, consistent with the HIPAA Rules' standards for de-identification at 45 CFR 164.514.



5. Obligations of Covered Entity

- (a) Covered Entity shall provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to such Notice of Privacy Practices.
- (b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522.
- (d) Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by Covered Entity.

6. Term and Termination

- (a) The term of this BAA shall be effective as of the Effective Date and shall terminate when all of the PHI maintained by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity, or, if Business Associate determines that it is infeasible to return or destroy the PHI, protections are extended to such PHI in accordance with the termination provisions in this section.
- (b) Upon a material breach of this BAA, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation and if Business Associate does not cure the breach or if a cure is not possible, end the violation, within thirty (30) days or receipt of written notice by Covered Entity then Covered Entity may terminate this BAA.
- (c) Except as provided in paragraph (b) of this subsection, upon termination of the Services Agreement for any reason, Business Associate shall return to Covered Entity or destroy all Protected Health Information in its possession or that of its Subcontractors or agents. Business Associate and its agents and Subcontractors shall retain no copies of the Protected Health Information. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall extend the protections of this BAA to the Protected Health Information, and limit further uses and disclosures of it to those purposes that make the return or destruction infeasible, for so long as Business Associate or its agents or Subcontractors hold such Protected Health Information.

7. Mitigation of Breach

If there is a Breach of PHI under the control of Business Associate or its agents or Subcontractors, Business Associate agrees mitigate, to the extent practicable, any harmful effect that is known to the Business Associate.

8. Miscellaneous

- (a) No Private Cause of Action. This BAA is not intended to and does not create a private cause of action by any individual, other than the parties to this BAA, as a result of any claim arising out of the breach of this BAA, the HIPAA rules or other state or federal law or regulation relating to privacy or security.
- (b) Assumption of Obligations. Except as expressly provided in the Service Agreements or this BAA, Business Associate will not assume any obligations of Covered Entity under the HIPAA Rules. To the extent that Business Associate is to carry out any of Covered

Entity's obligations under the HIPAA rules as expressly provided in the Services Agreements or this BAA, Business Associate will comply with the requirements of the HIPAA Rules that apply to Covered Entity in the performance of such obligations.

- (c) Amendment. Business Associate agrees to take such action as the parties deem mutually necessary to amend this BAA from time to time to comply with the requirements of any HIPAA Rules.
- (d) Severability. If any provision of this BAA shall be declared invalid or illegal for any reason whatsoever, then notwithstanding such invalidity or illegality, the remaining terms and provisions of this BAA shall remain in full force and effect.
- (e) Governing Law. This BAA shall be interpreted, construed, and governed according to the laws of the State in which the Covered Entity maintains its principal place of business. The parties agree that venue shall lie in Federal and State courts in the State in which the Covered Entity maintains its principal place of business, without regard to its conflicts of law principles, regarding any and all disputes arising from this BAA.
- (f) References. A reference in this BAA to a section in the HIPAA Rules means the section as in effect or as amended, and as of its effective date.
- (g) Ambiguity. Any ambiguity in this BAA shall be resolved to permit compliance with the HIPAA Rules.
- (h) Conflicts. The terms and conditions of this BAA shall override and control any conflicting term or condition of the Services Agreement. All non-conflicting terms and conditions of the Services Agreement remain in full force and effect.

~ Signature Page Follows ~

IN WITNESS WHEREOF, the parties hereto have executed this Business Associate Agreement as of the Effective Date.

**WELLPARTNER, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_  
Address: 20800 SW 115<sup>th</sup> Avenue, Suite 100  
Tualatin, OR 97062

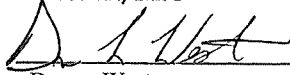
**CITY OF LONG BEACH, A MUNICIPAL CORPORATION, THROUGH ITS DEPARTMENT OF HEALTH AND HUMAN SERVICES**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_  
Address: \_\_\_\_\_

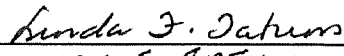
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DAWN MCINTOSH, City Attorney  
By [Signature]  
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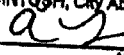
**WELLPARTNER, LLC**

By:   
Name: Darren West  
Its: VP & GM 340B Services  
Date: August 31, 2023  
Address: 20800 SW 115<sup>th</sup> Avenue, Suite 100  
Tualatin, OR 97062

**CITY OF LONG BEACH, A MUNICIPAL CORPORATION, THROUGH ITS DEPARTMENT OF HEALTH AND HUMAN SERVICES**

By:   
Name: LINDA F. TATUM  
Its: ASST. CITY MANAGER  
Date: 8-2-2023  
Address: 411 W OCEAN BLVD, 10<sup>th</sup> FLOOR  
LONG BEACH, CA 90802

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

APPROVED AS TO FORM  
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