

36231

CONTRACT PHARMACY SERVICES AGREEMENT

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

RECITALS

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

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

WHEREAS, City has engaged Administrator to assist with City's administration of its program under Section 340B of the Public Health Service Act; and

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

WHEREAS, City has selected Contractor in accordance with City's administrative procedures using a Request for Qualifications ("RFQ") HE21-102, incorporated as if fully set forth herein by this reference, and City has determined that Contractor and its employees are qualified, licensed, if so required, and experienced in performing these specialized services; and

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

1. DEFINITIONS

- 1.1 "340B Cost" means the discounted cost available to City on the date the Claim is processed by Administrator. 340B Cost is obtained from the Wholesaler price file in effect for Contract Pharmacy and City based on the 11-digit National Drug Code ("NDC") for the dispensed product.
- 1.2 "340 Program" means the federal discount drug pricing program established under Section 340B of the Public Health Service Act and codified at 42 USC 256b and administered by the Office of Pharmacy Affairs within HRSA.
- 1.3 "Adjudication" or "Adjudicate" means the process used by a Third-Party Payor or their designated Claims processor to provide Contract Pharmacy with: (i) authorization for payment of the Claim; (ii) the payment amount, if any, to be collected from eligible Patients by Contract Pharmacy; (iii) Contract Pharmacy's reimbursement amount for dispensing the Covered Drug; and (iv) any other informational edits and messages.
- 1.4 "Agreement" means this agreement, the recitals, all exhibits, schedules, addenda, and attachments hereto, taken collectively, as they may be amended from time to time.
- 1.5 "Administrator" means Wellpartner, LLC.

- 1.6 “Brand Drug” shall mean a drug designated as “brand” by Medispan or a similar product catalog as used by Administrator and is available from a single manufacturer and designated as a brand name by a nationally recognized price-reporting service.
- 1.7 “Claim” means a request for payment for a Covered Drug that has been submitted by Contract Pharmacy to Administrator or a Third-Party Payor or their designated claims processor for verification of coverage and reimbursement.
- 1.8 “Community Benefit Program” means a program City provides for uninsured or underinsured Patients wherein City will subsidize dispensing fees for eligible Patients. The Community Benefit Program will be established via the Community Benefit Program Authorization Form.
- 1.9 “Confidential Information” means all confidential or proprietary information of a Party whether in oral, written or electronic form, whether prepared by such Party or its employees, agents, and/or sub-contractors that concerns the business of such Party, the terms of this Agreement, and/or the services provided by such Party pursuant to this Agreement. Confidential Information shall include, but is not limited to, a Party’s proprietary business information, reimbursement rates, pricing information, reports, analyses, compilations, studies, operating margins, merchandising and selling techniques, internal policies and procedures, contracts, and other business or industry information which, if disclosed could be used by another person or entity to disadvantage a Party or any affiliates thereof. Confidential Information shall include all Patient information relating to Claims and other records, which if disclosed, could result in a violation of state and/or federal healthcare privacy and confidentiality laws.
- 1.10 “Contract Pharmacy Locations” means the locations where Contract Pharmacy agrees to provide Pharmacy Services under this Agreement as set forth in Attachment 2. .
- 1.11 “Copayment” means that portion of the total reimbursed amount for each prescription dispensed to a Patient that the Contract Pharmacy is required to collect as indicated by a Third-Party Payor or their designated Claims processor, regardless of whether such is designated as a fixed amount (*e.g.*, \$5.00), a coinsurance amount (*e.g.*, 20%), a deductible, or a credit (*e.g.*, through the issuance of a voucher).
- 1.12 “Covered Drug” means a drug dispensed by Contract Pharmacy under this Agreement, processed according to City’s 340B policies and procedures, and replenished by City..
- 1.13 “Date of Service” means the date Contract Pharmacy dispenses a Covered Drug for a Patient pursuant to the terms of this Agreement.
- 1.14 “Dispensing Fee” means monies City pays to Contract Pharmacy (or retained by Contract Pharmacy, as the case may be) in connection with its provision of Pharmacy Services to Patients according to the terms set forth in Attachment 3 of this Agreement and if applicable, the Community Benefit Program Authorization Form. The Dispensing Fee shall be due only on a per completed eligible transaction basis (i.e. a prescription for a Covered Drug is appropriately dispensed to a Patient pursuant to the terms of this Agreement, the applicable attachment, and Community Benefit Program Authorization Form (if applicable)). Only one Dispensing Fee shall be due and payable per eligible transaction and the Dispensing Fee shall be the Contract Pharmacy’s exclusive reimbursement for Pharmacy Services provided pursuant to this Agreement.

- 1.15 “Drug Wholesaler” means an entity that is licensed under applicable laws and regulations to distribute legend and non-legend drugs and medical supplies to persons other than the final consumer or patient.
- 1.16 “Eligible Claim” means a prescription for a Covered Drug written by a Health Care Provider, which is dispensed by the Contract Pharmacy to a Patient and meets the 340B Claim qualification criteria as established by City.
- 1.17 “City Site” means an eligible site that has been registered with HRSA for inclusion in its public database. A list of City Sites registered with HRSA as of the date on which this Agreement is executed are included in Attachment 1. The Parties agree that the list of City Sites will be automatically updated on the first day of each quarter to reflect sites that have been added or removed from the HRSA database. Update will be by reference only without the need for either party to revise the existing text of Exhibit A. The Parties agree that the terms and conditions of this Agreement shall apply to the City, its City Sites and all City registered child sites.
- 1.18 “Generic Drug” shall mean a drug designated as “generic” by Medispan or a similar product catalog as used by Administrator and is sourced from multiple manufacturers and is designated as a generic drug by a nationally recognized price-reporting service selected by Contract Pharmacy.
- 1.19 “Health Care Provider” means any person duly licensed to render medical services to Patients; that is recognized under applicable laws and regulations as having authority to prescribe Covered Drugs; who is directly employed by City, has a contractual arrangement or other arrangement with City or provides medical services as a result of a referral from City, and has responsibility for Patient’s care.
- 1.20 “HRSA” means the Health Resources and Services Administration.
- 1.21 “NADAC” means the National Average Drug Acquisition Cost as published on a regular basis by the Centers for Medicaid and Medicare Services.
- 1.22 “Operational Procedures” are the mutually agreed upon operational procedures attached hereto as Attachment 4 of this Agreement.
- 1.23 “Patient” means an individual who meets the patient definition guidelines set forth under the 340B Program as determined by the City.
- 1.24 “Pharmacy Services” means those professional services, including but not limited to the dispensing of Covered Drugs, provided by Contract Pharmacy under this Agreement.
- 1.25 “Third-Party Payor” means a payer of Patient Claims, other than City, including without limitation: (i) an insurance company or pharmacy benefit manager providing a prescription insurance benefit or coverage; (ii) a state Medicaid agency; (iii) the entity or organization that receives payment from the applicable state Medicaid agency for the Pharmacy Services provided to a Patient during the applicable premium payment period; (iv) a duly qualified Medicare Part D plan; and (v) any other authorized Third-Party that pays or contributes a portion of the payment in connection with an Patient’s Claim for a Covered Drug.
- 1.26 “True-Up” refers to an inventory and financial reconciliation process through which Administrator identifies the outstanding balance of Covered Drugs previously dispensed by Contract Pharmacy to Patients under City’s 340B program that have not been

replenished by City within a specified time period and for which City shall remit to Contract Pharmacy (or Administrator shall offset from monies owed City) the NADAC price of such dispensed inventory as set forth in this Agreement.

- 1.27 “WAC” means the current wholesale acquisition cost of the dispensed medication as defined in the latest edition published by Medispan, First Data Bank, Red Book or any other reference source (as Administrator may designate in its sole discretion). The Parties acknowledge that WAC is a list price only and does not reflect discounts, fees or other amounts provided to wholesalers or others which may affect the product’s actual acquisition cost.

2. CONTRACT PHARMACY REQUIREMENTS

- 2.1. Contract Pharmacy shall reasonably cooperate with Administrator’s implementation requirements, which may include, but not limited to: (a) configuration of Claim Adjudication platform; (b) execution of required forms to meet regulatory requirements; (c) coordination with switch processor for access to Contract Pharmacy claims; and (d) training of staff. Administrator, as agent to the Covered City, shall coordinate such activity so as not to adversely impact Contract Pharmacy operations.
- 2.2. Contract Pharmacy represents: (a) it is in good standing with all applicable State Board(s) of Pharmacy and all other applicable government oversight agencies and possesses all valid licenses and registrations as required to provide Pharmacy Services as set forth in this Agreement; (b) neither it nor any of its pharmacists currently have a required license which is suspended or revoked; and (c) it shall ensure that the information provided to Administrator and/or an City in connection with Pharmacy Services is and will continue to be true and complete. Upon request of City, Contract Pharmacy shall supply copies of any and all professional licenses, registrations, certifications, or other documentation required to be maintained by Contract Pharmacy or a Contract Pharmacy pharmacist in the performance of obligations under this Agreement. Contract Pharmacy shall immediately notify Administrator and City in the event a required license of Contract Pharmacy, any of its Contract Pharmacy Locations or any of its pharmacists is lost, revoked, suspended or otherwise not valid and possessed.
- 2.3. Contract Pharmacy shall lawfully render Pharmacy Services and or cause Covered Drugs to be dispensed to Patients in a manner consistent with applicable legal and regulatory requirements the terms of this Agreement and in the same manner and quality as provided in the ordinary course of business absent this Agreement.
- 2.4. Contract Pharmacy shall not discriminate in the provision of Pharmacy Services and shall in all instances dispense Covered Drugs to Patients pursuant to the terms set forth in this Agreement. Notwithstanding the foregoing, it shall not be considered discriminatory or otherwise a violation of its obligations under this Agreement if a Contract Pharmacy pharmacist, based on his/her professional training, knowledge, skill and experience, refuses to dispense a Covered Drug to a Patient for any reason. However, to the extent that a Contract Pharmacy pharmacist refuses to dispense a Covered Drug to an entity patient, Contract Pharmacy shall notify City of such refusal and the reasons therefore. Nothing in this Agreement is intended to create nor shall it be construed to create any rights for any City to intervene in any manner by which Contract Pharmacy provides services to Patients.
- 2.5. Contract Pharmacy agrees to reasonably cooperate with Administrator and/or City in the review and resolution of complaints or appeals by Patients related to the provision of Pharmacy Services.

- 2.6. As permitted by applicable law, regulation and Contract Pharmacy's professional standards, Contract Pharmacy shall reasonably comply with City's drug formulary requirements. If a non-formulary drug is prescribed, Contract Pharmacy will use reasonable best efforts to contact the prescriber and encourage formulary compliance and request authorization to change a prescribed drug to a therapeutically equivalent formulary drug.
- 2.7. Contract Pharmacy shall maintain an adequate inventory of supplies, drugs, equipment, and other items as required for the provision of Pharmacy Services. Supplies used to provide Covered Drugs to Patients shall be sourced from a reputable manufacturer and/or wholesaler subject to applicable state and federal laws. Contract Pharmacy further represents and warrants that it will not use drug samples, returned, recalled, or expired supplies and/or products in the provision of Pharmacy Services, except to the extent permitted by state restocking laws.

3. CLAIM PROCESSING, PAYMENT AND REPORTING

- 3.1. When presented with a valid prescription from a Patient, Contract Pharmacy shall Adjudicate the Claim and dispense Covered Drugs to such Patient per the terms of this Agreement. Claim data reviewed by Administrator as part of its Claim processing will be used to assist in the management of replenishment, and the financial reconciliation of Claims and reporting.
- 3.2. Administrator shall monitor and track Eligible Claims to ensure Contract Pharmacy does not receive shipments to replenish Covered Drugs in excess of quantities dispensed to Patients. Administrator shall arrange for such drugs to be shipped directly to Contract Pharmacy and billed to the City and shall perform tracking, reporting, and auditing of replenishment orders consistent with applicable laws and regulations. City shall be responsible for establishing the price of the Covered Drugs subject to applicable federal, state and local laws.
- 3.3. The Parties shall abide by the payment terms established for Pharmacy Services as specified in Attachment 3. A Claim submitted by Contract Pharmacy shall constitute a representation by Contract Pharmacy that Pharmacy Services were provided in accordance with the terms of this Agreement and the referenced Covered Drug was dispensed to the Patient. On or about the first (1st) and sixteenth (16th) of the month, Administrator will make available to Contract Pharmacy the final detailed activity report and the final summary activity report for the prior Period. On first (1st) and sixteenth (16th) of the month, Administrator will submit an invoice to Contract Pharmacy for payments due to be remitted in connection with dispensed Covered Drugs for that cycle. Payments are due net thirty (30) days.
- 3.4. Neither Contract Pharmacy nor City shall use Covered Drugs to dispense "fee for service" Medicaid prescriptions, unless City, Pharmacy and the State Medicaid program have established an arrangement to prevent duplicate discounts. Any such arrangement shall be reported to HRSA by the City.
- 3.5. The amounts represented in the invoice sent to Contract Pharmacy represent the difference between the payments received by Contract Pharmacy from payers and patients, less Dispensing Fees and credits appropriately applied by Administrator. Administrator offers one method of payment, an Electronic Funds Transfer (EFT) from Contract Pharmacy to Administrator.

- 3.6. Contract Pharmacy is solely responsible for all payments required herein and shall at no time withhold undisputed payment due City and/or Administrator. All sums not disputed within one (1) month of receipt of invoice and owed to City and/or Administrator by Pharmacy will bear interest of one and one-half percent (1.5%) per month from the date payment is due until paid; however, in no event will such interest rate be greater than the rate permitted by law.
- 3.7. For unpaid accounts over ninety (90) days old, Administrator reserves the right to suspend replenishment until accounts are either paid in their entirety or other arrangements have been made and agreed upon with Administrator.
- 3.8. Contract Pharmacy acknowledges that proper Claims Adjudication and Administrator's processing of Claims are dependent upon the accurate transmission and processing of Claim data by the Contract Pharmacy. Contract Pharmacy will not receive a Dispensing Fee or replenishment drugs in connection with ineligible Claims.
- 3.9. Contract Pharmacy shall have full responsibility for the collection of reimbursement amounts due from Third-Party Payers and Patients in connection with Pharmacy Services. Contract Pharmacy will collect Third-Party Payer payments and Patient Copayments in the same manner as it does for non-340B Claims. Consistent with its other Third-Party Payer contract obligations, Contract Pharmacy will not refuse to provide Pharmacy Services to a Patient due to dissatisfaction with the reimbursement rate established with such Third-Party Payers or in an Attachment to this Agreement.
- 3.10. Unless otherwise specifically directed in writing Contract Pharmacy shall not seek or collect from a Patient any amount greater than as indicated on its system at the time of Claim Adjudication. Contract Pharmacy agrees that in no case, including but not limited to the nonpayment by a Third-Party Payer, Administrator, and/or City, or as applicable, the failure to resupply Covered Drugs per the terms of this Agreement, it shall seek payment/reimbursement or have recourse against a Patient for Pharmacy Services rendered.
- 3.11. Contract Pharmacy acknowledges that Administrator operates only as an intermediary between City and Contract Pharmacy and that City is responsible for paying the Dispensing Fee due. Administrator will not be obligated to pay Contract Pharmacy amounts due hereunder out of Administrator's own funds or undertake the resupply of Covered Drugs at its own cost and expense. Contract Pharmacy shall have no claim against Administrator for any amounts not paid to Contract Pharmacy due to lack of reimbursement by Third-Party Payers or breach by an City, including, but not limited to, failure to meet inventory and/or re-supply requirements. Administrator shall provide reasonable efforts to assist in securing payment to Contract Pharmacy consistent with its agreement with the City.
- 3.12. As may be necessary, Contract Pharmacy shall provide reasonable assistance to Administrator in meeting its reporting obligations to City in connection with the Pharmacy Services provided under this Agreement.
- 3.13. Contract Pharmacy acknowledges and agrees that Administrator shall be authorized to credit and/or offset against any amounts due hereunder any overpayments, reversals or other adjustments determined to be necessary or appropriate to properly reflect the terms of this Agreement and meet legal or regulatory requirements. Reversals, other than True-

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

- 3.14. Administrator shall provide Contract Pharmacy regular reports at the individual Claim level for the proper tracking of inventory dispensed and replenished, amounts remitted by Contract Pharmacy and Dispensing Fees paid.
- 3.15. City shall provide, in compliance with Privacy Laws (as defined below), applicable participating Health Care Provider information and other information as required to support operation of the City's 340B program.
- 3.16. City shall provide, where applicable, outpatient encounter data for all City Locations. Such data shall be provided by City in the format and on a schedule agreed to by the Parties.
- 3.17. Both Parties understand a copy of this Agreement shall be provided to HRSA upon written request.
- 3.18. The City and Contract Pharmacy will identify the necessary information for City to meet its ongoing 340B Program compliance obligations. Contract Pharmacy will make such information, as well as additional reports as agreed to by the Parties, available to enable periodic independent audits performed by the City. This information shall include, but is not limited to customary business reports.

4. **TERM AND TERMINATION**

- 4.1. This Agreement will become effective on the date of full execution and shall terminate at 11:59 p.m. on (ENDING DATE – two years), unless sooner terminated as provided in this Agreement.. The City shall have the option to renew this Agreement for three (3) additional one-year periods, at the discretion of the City Manager.
- 4.2. Either Party may terminate this Agreement for convenience at any time without cause or penalty upon the provision of ninety (90) days prior written notice to the other Party.
- 4.3. In the event of a material breach of any of the terms of this Agreement by either Party, the non-breaching Party may terminate this Agreement upon thirty (30) days prior written notice to the breaching Party, which notice shall set forth in sufficient detail the nature of the alleged breach and desired remedy. If the breaching Party cures the breach within said thirty (30) day notice period, then such termination notice will be void and this Agreement will continue in full force.
- 4.4. Notwithstanding any other provision herein, City shall have the right to terminate this Agreement immediately and without notice or penalty in the event Contract Pharmacy and/or any of its Contract Pharmacy locations and/or any of its pharmacists suffer the loss or revocation or suspension of a necessary license.
- 4.5. Notwithstanding any other provision herein, either Party shall have the right to terminate this Agreement immediately and without notice or penalty in the event of any of the following occurrences:
 - 4.5.1 A Party fails to comply with audit requirements contained herein;
 - 4.5.2 A Party attempts to disclose or discloses Confidential Information of the other Party;

- 4.5.3 A Party or a parent company thereof becomes insolvent, goes into receivership, files for bankruptcy, or any other adverse action is taken on behalf of its creditors;
 - 4.5.4 A Party is disqualified or removed from participating in a federally funded healthcare program, such as Medicare or Medicaid; or
 - 4.5.5 A Party engages in the diversion of Covered Drugs to ineligible patients or some other legal or regulatory violation in connection with this Agreement.
- 4.6. In the event of termination of this Agreement the Parties shall remain responsible for obligations which accrued prior to the effective date of termination, including, but not limited to the obligation to remit monies due or pay fees due in connection with Pharmacy Services rendered. Additionally, Contract Pharmacy shall work with Administrator and City to settle any outstanding inventory issues to avoid the diversion of Covered Drugs, and shall also provide reasonable assistance to Administrator to ensure the transition of Pharmacy Services to an alternate contract pharmacy.
- 4.7. The parties agree that any provision contained in this Agreement, which by its nature logically extends beyond termination hereof shall survive such termination, including, without limitation, the provisions related to confidentiality, warranties, and indemnification.

5. INDEMNIFICATION AND LIMITATION OF LIABILITY

- 5.1. Contract Pharmacy shall indemnify, protect and hold harmless City, its Boards, Commissions, and their officials, employees and agents (“Indemnified Parties”), from and against any and all liability, claims, demands, damage, loss, obligations, causes of action, proceedings, awards, fines, judgments, penalties, costs and expenses, including attorneys’ fees, court costs, expert and witness fees, and other costs and fees of litigation, arising or alleged to have arisen, in whole or in part, out of or in connection with (1) Consultant’s breach or failure to comply with any of its obligations contained in this Agreement, including all applicable federal and state labor requirements including, without limitation, the requirements of California Labor Code section 1770 et seq. or (2) negligent or willful acts, errors, omissions or misrepresentations committed by Consultant, its officers, employees, agents, subcontractors, or anyone under Consultant’s control, in the performance of work or services under this Agreement (collectively “Claims” or individually “Claim”).
- 5.2. In addition to Consultant’s duty to indemnify, Contract Pharmacy shall have a separate and wholly independent duty to defend Indemnified Parties at Consultant’s expense by legal counsel approved by City, from and against all Claims, and shall continue this defense until the Claims are resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of Contract Pharmacy shall be required for the duty to defend to arise. City shall notify Contract Pharmacy of any Claim, shall tender the defense of the Claim to Contract Pharmacy, and shall assist Contract Pharmacy, as may be reasonably requested, in the defense.
- 5.3. If a court of competent jurisdiction determines that a Claim was caused by the sole negligence or willful misconduct of Indemnified Parties, Consultant’s costs of defense and indemnity shall be (1) reimbursed in full if the court determines sole negligence by the Indemnified Parties, or (2) reduced by the percentage of willful misconduct attributed by the court to the Indemnified Parties.
- 5.4. The provisions of this Section shall survive the expiration or termination of this Agreement.

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6. CONFIDENTIALITY

- 6.1. The Parties shall prevent the unauthorized use and/or disclosure of Confidential Information received by a Party (the "Receiving Party") from another Party (the "Disclosing Party"). The Receiving Party shall establish and maintain, throughout the term of this Agreement, policies and procedures designed to prevent the unauthorized use and/or disclosure of the Disclosing Party's Confidential Information, which policies and procedures shall establish at least the same level of care as used to protect the Receiving Party's own Confidential Information and no less care than what is considered reasonable. Additionally, the Receiving Party agrees to maintain and transfer all Confidential Information disclosed under this Agreement in a manner consistent with all applicable laws, including, but not limited to the Health Insurance Portability and Accountability Act of 1996, as amended. The Receiving Party shall not release any Confidential Information to any third party, including, without limitation, to any agents or consultants working on behalf of the Receiving Party, without the prior written consent of the Disclosing Party.
- 6.2. Notwithstanding the above, the Receiving Party shall not be prohibited from disclosing any information which: (i) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party, its agents, representatives or employees; (ii) was within the Receiving Party's possession on a non-confidential basis prior to disclosure by the Disclosing Party; or (iii) the Receiving Party is required by law or judicial order to disclose such information, provided that the Receiving Party shall promptly notify the Disclosing Party of such requirement so that the Disclosing Party may seek an appropriate protective order or otherwise seek to protect the confidentiality of such information.
- 6.3. The Receiving Party shall notify the Disclosing Party immediately of any unauthorized possession, use, or knowledge, or attempt thereof, of the Disclosing Party's Confidential Information. The Receiving Party shall promptly provide the Disclosing Party with a full account of any such unauthorized possession, use, knowledge, or attempt thereof, and use reasonable efforts to mitigate the effects thereof and prevent a recurrence of the same.
- 6.4. In the event that a subpoena or other legal process is served upon the Receiving Party and concerns the Confidential Information, the Receiving Party shall notify the Disclosing Party immediately upon receipt of such subpoena or other legal process and shall reasonably cooperate with the Disclosing Party in any lawful effort by the Disclosing Party to contest the validity of such subpoena or other legal process.
- 6.5. The Disclosing Party shall retain full ownership rights of its Confidential Information disclosed hereunder, including derivative works based on or otherwise incorporating such Confidential Information. Ownership rights shall include, but are not limited to, all rights associated with trade secrets, copyrights, trademarks, and patents. Nothing in this Agreement should be interpreted to grant any license rights to the Receiving Party or any third party in the Confidential Information of the Disclosing Party.
- 6.6. Upon termination of this Agreement, or upon the written request of the Disclosing Party, the Receiving Party shall return all written or other physical or electronic embodiments of Confidential Information to the Disclosing party, together with all copies thereof or copies of any part thereof as shall then be in Receiving Party's possession. If return of all written or other physical or electronic embodiments of Confidential Information is not commercially practical, than at the direction of the Disclosing Party, the Receiving Party shall account for all Confidential Information and either: (i) destroy such Confidential Information; or (ii) continue to hold such Confidential Information in a secure manner until return or destruction is possible. Notwithstanding the foregoing, the return or destruction of Confidential Information shall not include information that must be retained by the Receiving Party under law for auditing or other purposes or as otherwise provided in this Agreement. In any event, such Confidential Information shall at all times be maintained

by the Receiving Party in a manner consistent with the terms of this Agreement. Notwithstanding the foregoing, each party may retain a copy of Confidential Information in its confidential legal files solely for archival purposes, and the obligation to destroy or return shall not apply to Confidential Information that is stored on back-up tapes and similar media that are not readily accessible to Receiving Party so long as Receiving Party continues to comply with the confidentiality obligations under this Agreement with respect to all such stored Confidential Information.

7. RECORD MAINTENANCE AND AUDIT

- 7.1. Contract Pharmacy shall maintain appropriate accounts and dispensing records for all Patient Claims. Contract Pharmacy agrees to maintain Patient profiles, prescription files, and associated records in a manner consistent with industry norms, prudent record-keeping procedures, and the requirements of applicable federal and state laws and regulations to include the of receipt and disposition of the Covered Drugs, the records as to dispensing, loss, theft and return to supplier. All such records shall be retained in the same manner and for the same period of time as Contract Pharmacy retains such records or data in the ordinary course of business or as required by applicable laws, but not fewer than ten (10) years from the Date of Service.
- 7.2. Contract Pharmacy shall permit City and/or its duly authorized agents upon reasonable notice and during normal business hours, and at its sole cost and expense, to examine Contract Pharmacy's signature files, Patient profiles, prescription records, and other records to the extent reasonably necessary to verify that Pharmacy Services, including the provision of Covered Drugs for which Contract Pharmacy submits Claims, were provided in a manner consistent with the terms of this Agreement. In lieu of signature files, City shall accept POS register receipts or patient verification letters as notice of Patients receipt of prescriptions. In addition, Contract Pharmacy shall have the right from time to time during normal business hours, and at its sole cost and expense, to examine City's books and records as necessary to audit and verify the accuracy of any amounts paid or received under this Agreement. Any such examinations shall be subject to the requirements of state and federal laws regarding the confidentiality of medical and prescription drug records. Additionally, all information obtained as a result of any such examinations shall be held in strict confidence and used solely for the purposes of ensuring compliance with this Agreement. Examinations may be made at any time during the term hereof, and for up to twelve (12) months after the expiration or termination of this Agreement. If any examination by of Contract Pharmacy's records reveals that ineligible Claims were submitted for reimbursement, then Administrator shall, upon direction of City, cause the administrative reversal of such Claims and all impacted accounts will be reconciled accordingly. Contract Pharmacy and Administrator shall cooperate with City in order for City to verify or achieve compliance under the 340B program.
- 7.3. Both Parties understand that they are subject to audits by outside parties (including by DHHS and participating manufacturers) of records that directly pertain to the City's compliance with the drug resale or transfer prohibition and the prohibition against duplicate discounts. See 42 U.S.C. § 256b(a)(5)(c). Both Parties shall ensure that appropriate accounts and dispensing records pertaining to City's 340B program are maintained during the term of the Agreement and for three (3) year thereafter, and shall permit City, upon reasonable written notice and during normal business hours, to examine such records. Without limiting the generality of the foregoing, the Parties will ensure that all pertinent reimbursement accounts and dispensing records, maintained by Administrator, will be accessible separately from Administrator's own operations and will be made available to

City, the DHHS Health Resources and Services Administration (“HRSA”), and any manufacturer in the case of an audit.

8. MISCELLANEOUS PROVISIONS

- 8.1. Marks and Names. Each Party reserves all rights in and control of its name and all of its symbols, trademarks, trade names, service marks and other such proprietary symbols and words presently existing or hereafter acquired, and all symbols related thereto or used in connection therewith. Notwithstanding the foregoing, each Party shall have the right to use the other Party’s name and such other Party’s symbols, trademarks, trade names, service marks and other such proprietary symbols and words for the purpose of performing its obligations under this Agreement and enjoying its benefits.
- 8.2. Notices. All formal notices, requests, demands and other communications provided under this Agreement shall be in writing and shall be delivered to a Party by a national overnight delivery service, with next-business day delivery guaranteed and verified at the address set forth on the signature page of this Agreement.
- 8.3. Compliance with Laws. Contract Pharmacy shall comply with all federal and state laws, regulations and rules governing the practice of Contract Pharmacy and the provision of Pharmacy Services under this agreement and applicable Manual provisions, including, but not limited to applicable State pharmacy regulations, and Contract pharmacy guidelines. Specifically, but not by way of limitation, each of the parties represents that its performance under the Agreement shall comply with all applicable federal, state, and local statutes, rules, regulations, accreditation standards and other applicable standards of: Medicare; Medicaid; anti-kickback laws; the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information and Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Parts 160 and 164; the security and privacy provisions of the American Recovery and Reinvestment Act of 2009 and the regulations promulgated thereunder, the Health Information Technology for Economic and Clinical Health Act, (the HITECH Act) and the regulations promulgated thereunder, and updates to incorporate any changes to such statutes, rules, regulations, and applicable standards as further detailed in the Business Associate Agreement appended hereto as Exhibit B, which terms are incorporated into this Agreement.
- 8.4. Patient Choice. This Agreement shall not be interpreted, construed, or otherwise used to limit Patients’ choice of pharmacy.
- 8.5. Entire Agreement. This Agreement represents the entire understanding of the Parties regarding the subject matter thereof. All attachments (e.g. exhibits, schedules, addenda, appendices) are incorporated herein and made a part hereof. There are no other agreements or understandings among the Parties, either oral or written, relating to the subject matter hereof. Any amendments to this Agreement shall be in writing and signed by the Parties. The Parties agree that to the extent there is an inconsistency or conflict between the terms and conditions of any attachment and this Agreement, the terms and condition of the attachment shall prevail.
- 8.6. Third-Party Beneficiaries. The Parties specifically agree that Patients shall not be third-party beneficiaries to this Agreement.
- 8.7. Waiver & Severability. Any failure by a Party to enforce or require the performance by another Party of any of the terms or conditions of this Agreement shall not be constituted

as a waiver of rights with respect to any subsequent breach of any term or condition of this Agreement. Any invalidity, illegality or unenforceability of any provision of this Agreement shall not invalidate or render illegal or unenforceable the remaining provisions hereof.

- 8.8. Survival. Any term of this Agreement which by its nature extends beyond the termination hereof shall survive, including but not limited to obligations to pay amounts due hereunder, indemnities, confidentiality obligations, audit provisions, limitations of liability, and disclaimers.
- 8.9. Assignment; Successors and Assigns. Neither this Agreement nor any of the obligations to be performed hereunder may be assigned, directly or indirectly, by any Party without the prior written consent of the other Parties; provided, however, that the preceding restriction shall not apply to the assignment to an affiliated company or any successor through a sale, merger or other similar transaction. Any assignment or attempted assignment in violation of this restriction shall be void. In the event of any such permitted assignment, the obligations set forth herein shall be binding upon the successor.
- 8.10. Governing Law. The validity, interpretation, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California without respect to its conflict of laws principles.
- 8.11. Force Majeure. Except for the duty to pay, no Party shall be liable in any manner for any delay or failure to perform its obligations hereunder which are beyond such Party's reasonable control including, without limitation, delay or failure due to strikes, labor disputes, riots, earthquakes, extreme weather, fires, explosions, embargoes, war or other outbreak of hostilities, acts of terrorism, plague or disease, delay of carriers, suppliers or telecommunications providers, or government acts or regulations. If the period of non-performance exceeds sixty (60) days, the unaffected Party or Parties shall have the right to terminate this Agreement by thirty (30) days written notice to the affected Party, without liability except to pay for services rendered.
- 8.12. Insurance Requirements.
- 8.12.1.1. As a condition precedent to the effectiveness of this Agreement, Contract Pharmacy shall procure and maintain, at Contract Pharmacy's expense for the duration of this Agreement, from insurance companies that are admitted to write insurance in California and have ratings of or equivalent to A:V by A.M. Best Company or from authorized non-admitted insurance companies subject to Section 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII by A.M. Best Company, the following insurance:
- 8.12.1.2. Commercial general liability insurance (equivalent in scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This coverage shall include but not be limited to broad form contractual liability, cross liability, independent contractors liability, and products and completed operations liability. City, its boards and commissions, and their officials, employees and agents shall be named as additional insureds by endorsement (on City's endorsement form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and this insurance shall contain no special limitations on the scope of protection given to City, its boards and commissions, and their officials, employees and agents. This policy shall be endorsed to state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.
- 8.12.1.3. Workers' Compensation insurance as required by the California Labor Code and employer's liability insurance in an amount not less than \$1,000,000. This policy shall

be endorsed to state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.

- 8.12.1.4. Professional liability or errors and omissions insurance in an amount not less than \$1,000,000 per claim.
- 8.12.1.5. Commercial automobile liability insurance (equivalent in scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an amount not less than \$500,000 combined single limit per accident.

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

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

If this coverage is written on a "claims made" basis, it must provide for an extended reporting period of not less than one hundred eighty (180) days, commencing on the date this Agreement expires or is terminated, unless Contract Pharmacy guarantees that Contract Pharmacy will provide to City evidence of uninterrupted, continuing coverage for a period of not less than three (3) years, commencing on the date this Agreement expires or is terminated.

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

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

Any modification or waiver of these insurance requirements shall only be made with the approval of City's Risk Manager or designee. Not more frequently than once a year, City's Risk Manager or designee may require that Contract Pharmacy, Contract Pharmacy's sub-contractor and contractors change the amount, scope or types of

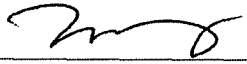


coverages required in this Section if, in his or her sole opinion, the amount, scope or types of coverages are not adequate.

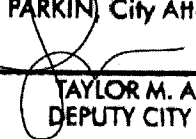
The procuring or existence of insurance shall not be construed or deemed as a limitation on liability relating to Contract Pharmacy's performance or as full performance of or compliance with the indemnification provisions of this Agreement.

- 8.13. Construction. This Agreement has been negotiated in good faith and shall be construed in its entirety, according to its fair meaning, and not in favor of or against any Party. Accordingly, the Parties agree that this Agreement shall not be interpreted against the drafting Party merely by virtue of such Party having drafted this Agreement.
- 8.14. Taxes. Each Party shall be responsible for its own state, federal and local tax obligations resulting from revenue earned or otherwise related to services performed under this Agreement.
- 8.15. Independent Contract Pharmacy. This Agreement shall not be construed nor deemed to create an employer/employee, principal/agent, or any relationship among the parties other than that of independent entities contracting with each other solely for the purpose of carrying out the terms and conditions of this Agreement.
- 8.16. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original as against any Party whose signature and or initials appears thereon, and all of which shall together constitute one and the same agreement. This Agreement shall become binding when one or more counterparts hereof, individual or taken together, shall bear the signatures of all of the parties.
- 8.17. Headings. The headings of sections contained in this Agreement are for reference only and should not affect the meaning or interpretation of this Agreement.
- 8.18. Remedies. The remedies specifically provided for herein are intended to be cumulative and shall not be deemed to exclude any other right or remedy that either party may have at law or in equity.

~signature page to follow~

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

Contract Pharmacy The undersigned certifies that it has legal authority to bind Contract Pharmacy. Signature: <u></u> Name: <u>Tu (Amy) Nguyen</u> Title: <u>CEO</u> Date: <u>3/25/22</u> Signature: <u></u> Name: <u>Cathy Nguyen</u> Title: <u>CFO</u> Date: <u>3/25/2022</u> Notices Address: Good Life Pharmacy Inc DBA Aviva Pharmacy 2633 Atlantic Avenue Long Beach, CA 90806	City of Long Beach, a municipal corporation The undersigned certifies that it has legal authority to bind City. Signature: <u></u> Name: <u>LINDA F. TATUM</u> Title: <u>ASST CITY MANAGER</u> Date: <u>March 30, 2022</u> EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER. Notices Address: City of Long Beach Attn: City Manager 411 W Ocean Blvd, 10 th Fl Long Beach, CA 90802 340B ID: RW15
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APPROVED AS TO FORM
March 28, 2022
CHARLES PARKIN, City Attorney
By 
TAYLOR M. ANDERSON
DEPUTY CITY ATTORNEY

ATTACHMENT 1
ENTITY SITES

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

ATTACHMENT 2
CONTRACT PHARMACY LOCATIONS

<u>STORE NUMBER</u>	<u>STORE ADDRESS</u>	<u>STORE CITY</u>	<u>STORE STATE</u>	<u>STORE ZIP</u>	<u>DEA NUMBER</u>
1	2633 ATLANTIC AVE.	LONG BEACH	CA	90806	FG6736233

ATTACHMENT 3
DISPENSING FEE

1. The Parties acknowledge that they have freely negotiated the reimbursement terms in this Attachment and except for the mutual promises and covenants set forth herein, neither Party has offered or received any inducement or consideration in exchange for entering into this Agreement. Additionally, the Parties agree that the compensation to be paid to Contract Pharmacy is consistent with and otherwise represents a negotiated fair market value.
2. Contract Pharmacy shall receive a Dispensing Fee for each eligible prescription filled, and the Dispensing Fee shall be the Contract Pharmacy's exclusive and sole reimbursement for pharmacy services provided pursuant to this Agreement.
3. As invoiced, Contract Pharmacy shall remit to Administrator the total amounts collected for each Covered Drug dispensed as outlined in Section 2 of Attachment, less its Dispensing Fee calculated by Administrator as follows:
 - 3.1. Brand Drugs – \$12 flat rate plus 20% of total claim revenue
 - 3.2. Generic Drugs – \$12 flat rate plus 20% of total claim revenue
 - 3.3. Uninsured Patients - \$15 flat rate for both Brand and Generic
4. The Community Benefit Program for uninsured and/or underinsured program will be established through the Community Benefit Program Authorization Form.
5. The Dispensing Fee shall be exclusive of the actual cost of goods for the Covered Drug dispensed as Covered Drugs will be resupplied to Contract Pharmacy by City per the replenishment and reconciliation process.
6. In the event Administrator and City coordinate the payment of the Dispensing Fee due with any Third-Party Payors, then Contract Pharmacy's Dispensing Fee shall be remitted by the applicable Third-Party Payor, in place of its Third-Party Payor contracted reimbursement.

ATTACHMENT 4
OPERATIONAL PROCEDURES

1. 340B CLAIM QUALIFICATION

- 1.1. Administrator shall receive Patient Claim information as follows: (a) directly from Contract Pharmacy through the Claim Adjudication process; (b) from the Contract Pharmacy's designated Claims switch provider; and/or (c) from Covered City or through its designated PBM.
- 1.2. Administrator shall review every Claim for 340B Program qualification based on the criteria established by City and provided to Administrator.
- 1.3. Drugs classified as C-2s will be specifically excluded unless City and Contract Pharmacy request, in writing for them to be included.
- 1.4. Upon completion of Claim qualification; eligible Claims identified by Administrator shall be processed in coordination with Contract Pharmacy. Contract Pharmacy shall manage ineligible claims in the same manner as such claim would traditionally be managed absent City's 340B program and outside of this Agreement.

2. CONTRACT PHARMACY REMITTANCE

- 2.1. From all Patients on the Date of Service, Contract Pharmacy shall collect the applicable Copayment due based on system messaging received at the time of Claim Adjudication or in subsequent payment reconciliation statements from a Third-Party Payor or their designated Claims processor. Contract Pharmacy is prohibited from: (a) waiving or discounting Copayments; and (b) collecting amounts from Patients in excess of what is indicated at the time of Claim Adjudication or in subsequent payment reconciliation statements.
- 2.2. From Third-Party Payors, Contract Pharmacy shall, through its standard billing and remittance process, collect all contracted reimbursement amounts due in connection with such Claim irrespective of whether amounts are due from a primary or subsequent payer.

3. OTHER TERMS

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

3.2.2. When the NADAC price in effect on the Date of Service is not available:

3.2.2.1. Brand Drugs: Average Wholesale Price minus 18%

3.2.2.2. Generic Drugs: Average Wholesale Price minus 65%

3.3. The Parties recognize that in certain cases the 340B Cost used at the time of Claim qualification and calculation of fees may differ from the time when City replenishes or completes a True-Up of inventory. City shall in all cases be responsible for any such shortfalls and shall at all times undertake replenishment and/or True-Up reconciliation of dispensed Covered Drugs according to the terms of this Agreement.