

PHARMACY BENEFIT MANAGEMENT SERVICES AGREEMENT

This Pharmacy Benefit Management Services Agreement (this “Agreement”) is effective as of [EFFECTIVE DATE] (the “Effective Date”) by and between Leadway Pharmacy Benefit Management, Inc. DBA Leadway Rx (“PBM”), a Mississippi corporation and City of Vicksburg, Mississippi, a municipal corporation, (“Client”). PBM and Client may each be referred to individually as a “Party” and collectively as the “Parties.”

R E C I T A L S

WHEREAS, PBM provides certain services in connection with the operations and management of prescription benefit plans; and

WHEREAS, Client has established a health benefit plan(s) (the “Plan”) for its Members and hereby retains PBM to provide certain prescription benefit management services with respect to Client’s Plan; and

WHEREAS, PBM and Client, the sponsor of the Plan, desire to establish this Agreement for the management of the Plan;

NOW THEREFORE, in consideration of the mutual promises set forth herein, the sufficiency, which is hereby acknowledged, Client and PBM agree as follows:

1.0. DEFINITIONS.

Unless otherwise defined in this Agreement or any addendum or amendment hereto, capitalized terms used in this Agreement (including its exhibits and attachments hereto) shall have the means set forth in this Section 1:

Average Wholesale Price (“AWP”) means the average wholesale price for a given pharmaceutical product as published by Medi-Span Drug Database for the date and time the Covered Benefit is dispensed by the pharmacy. The AWP of a Covered Benefit will be the AWP as reported for the eleven (11) digit NDC, drug specific, quantity appropriate actual package size dispensed by the pharmacy. PBM shall update AWP data no less than on a weekly basis and will provide notification to Customer electronically via assigned email address.

Biosimilar means a biological product that is highly similar to a biological product already approved by the FDA (i.e., reference product) and is licensed and approved by the FDA as a Biosimilar notwithstanding minor differences in clinically inactive components but otherwise no meaningful differences between the biologic product and the reference products in terms of safety, purity, and potency of the product.

Benefit Plan Information means the information required by PBM to process Claims and provide Services under this Agreement, including, but not limited to, processing parameters, coverage rules, and other information for the Plan, provided to PBM in accordance with this Agreement.

Brand Drug means a product marketed by the original holder of a new drug application or biological license application or related licensees for a given drug entity and is characterized by M, O, or N drug code from Medispan.

Business Day means all days except Saturdays, Sundays, and PBM designated holidays. All references to “day” or “days” in this Agreement are to calendar days unless “Business Day” is specified.

Claim means requests for payment for prescription services, drugs, devices, supplies, or other related items that are processed through PBM’s online claims adjudication system or otherwise sent to and/or processed by or through PBM in accordance with this Agreement in connection with the Plan.

Compound means a prescription that meets the following criteria: two or more solid, semi-solid, or liquid ingredients, at least one of which is a Covered Product that are weighed or measured then prepared according to the prescriber’s order and the pharmacist’s art.

Contract Year means the full twelve (12) month period commencing on the Effective Date and each full consecutive twelve (12) month period thereafter that this Agreement remains in effect.

Cost Share means the amount which a Member is required to pay for a prescription in accordance with the PDD, which may take the form of a deductible, a percentage of the prescription price, a fixed amount, and/or other charge.

Covered Product means any prescription drug supply, drug therapy, or other item that is covered under the Formulary adopted by the Plan and which requires a prescription for dispensing and/or coverage as a benefit under the Plan.

Dispensing Fee means the service fee charged to Client for amounts payable to a pharmacy to cover the cost of filling a single prescription and dispensing the Covered Product as set forth in **Exhibit A**.

Drug Utilization Review means a systematic, ongoing review of prescribing and dispensing of prescription data to ensure appropriate, safe, and effective medication usage. These may include, but are not limited to, drug-drug interactions, drug-age appropriateness, therapeutic duplications, drug-disease contraindications, or overuse and underuse.

ERISA means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

Formulary means PBM’s list of FDA approved outpatient prescription drugs, devices, products and supplies adopted by Client pursuant to this Agreement, as amended, maintained and amended by PBM from time to time. The pricing set forth in **Exhibit A** is conditioned upon Client adoption of the Formulary identified in **Exhibit B** as the Plan’s Formulary.

Generic Drug means any drug product marketed by an entity other than the new drug application or biological license application holder or related licensees. A Generic Drug is comparable to a Brand Drug in dosage form, strength, route of administration, quality, performance characteristics, and intended use and is characterized by a Y drug code by Medispan.

HIPAA means the Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations promulgated thereunder.

Law means all applicable federal, state, and local laws, rules, regulations, acts, statutes, local ordinances, codes, constitutions, charters, or orders of a government agency.

Losses means all claims, liabilities, demands, damages, losses, costs or expenses of any kind, including, without limitation, reasonable attorneys' fees and expenses.

MAC List means a PBM proprietary list of Generic, multi-source, and over the counter drugs, supplies, and devices subject to MAC pricing schedules and to be used as the basis for payment of Covered Products on the MAC List. A copy of the MAC List shall be provided to Client prior to execution of this Agreement and thereafter upon Client's reasonable request.

Mail Order Pharmacy means a pharmacy where prescriptions are filled and delivered to Members via the United States Postal Service or other delivery service, and that has entered into an agreement with PBM to dispense Covered Products to Members. Mail Order Pharmacies may include, but are not limited to, PBM-owned or affiliated pharmacies.

Maximum Allowable Cost ("MAC") means the then current unit price established by PBM for a drug with more than two sources included on the MAC List applicable to Client. PBM shall update MAC pricing at least once every seven (7) days and shall, in a timely manner, eliminate Covered Products from the MAC List or modify MAC pricing based on changes in product availability and pricing data utilized by PBM in establishing MAC prices. Client acknowledges that the MAC List applicable to Client is not the same as the MAC list published by the Centers for Medicare and Medicaid Services ("CMS").

Members mean those individuals and their dependents identified by Client who are entitled to Covered Products under the Plan, as set forth in Client's Member List or otherwise communicated by Client in a format acceptable to PBM.

Member List means the list of Members provided to PBM in accordance with this Agreement. The Member List shall be prepared, maintained, and updated by Client, and delivered to PBM in accordance with this Agreement.

Network means the group of Network Providers PBM makes available to the Plan and who have entered into or are governed by separate contractual arrangements pursuant to which they agree to provide services to Members in exchange for negotiated and accepted fees for those services.

Network Provider means those licensed pharmacies that participate in the Network and provide Covered Products to Members. Network Providers include Mail Order and Specialty Pharmacies.

Non-Covered Product means those drugs or other related products or services that are not Covered Products. All designations of products as Non-Covered Products shall be approved by PBM's P&T Committee.

P&T Committee means PBM's Pharmacy and Therapeutics Committee, which is an independent body of healthcare professionals and/or experts in their fields of specialty who periodically review new drugs introduced to the market, re-evaluate selected therapeutic drug classes and drugs in pharmaceutical development, and evaluate any current, relevant drug safety issues.

Plan means the health benefit plan sponsored by Client that includes the prescription drug benefit.

Plan Design Document ("PDD") means various documents or forms, including implementation forms, clinical management forms, clinical utilization or other documents that describe Client's Plan

related to pharmacy benefits and limitations thereto, including the framework of policies, interpretations, rules, practices and procedures applicable to such benefits, required and signed by Client and submitted to PBM. Client may modify the PDD in accordance with this Agreement.

Prior Authorization means requiring a member's prescriber to get approval from the PBM or plan before a particular medication will be approved by the plan, to ensure appropriate, medically necessary, and cost-effective prescriptions are dispensed to members and paid for by the plan.

Protected Health Information ("PHI") shall have the meaning given such term by HIPAA but limited to that information created or received by PBM in its capacity as a business associate to the Plan.

Quantity Limits means a restriction on the maximum amount of a prescription drug to be dispensed to a patient during a specified period of time, used to ensure appropriate, safe, and effective medication usage.

Rebates mean any compensation or remuneration of any kind received or recovered by the PBM, or any of its affiliates, from a pharmaceutical manufacturer attributable to the purchase or utilization of covered drugs by eligible persons, including, but not limited to, incentive rebates categorized as mail order purchase discounts; credits; rebates, regardless of how categorized; market share incentives; promotional allowances; commissions; educational grants; market share of utilization; drug pull-through programs; implementation allowances; clinical detailing; rebate submission fees; and administrative or management fees. Rebates also include any fees that PBM, or any of its affiliates, receives from a pharmaceutical manufacturer for administrative costs, formulary placement, and/or access. Rebates include all price concessions paid by manufacturers, including, but not limited to, rebates, discounts, credits, fees, or other payments that are based on actual or estimated utilization of a Covered Product or price concessions based on the effectiveness of a Covered Product. Rebates do not include payments PBM receives from pharmaceutical manufacturers or other third parties, directly or indirectly, as compensation for services or programs, including, but not limited to administrative.

Refill Too Soon Limitations means a systematic, ongoing review of prescribing and dispensing of prescription data to ensure appropriate, safe, and effective medication usage. These may include, but are not limited to, drug-drug interactions, drug-age appropriateness, therapeutic duplications, drug-disease contraindications, or overuse and underuse.

Services mean the prescription drugs and all related products and services as provided by PBM pursuant to this Agreement.

Specialty Drugs mean drugs that treat chronic, complex, or life-threatening conditions, usually manufactured through biologic processes and/or targeting a specific gene. Typically, these medications are costly (costing more than \$800 per month) and require intensive clinical monitoring, complex patient actions, and/or special handling by the dispensing pharmacy. Although most commonly injected or infused, they may also be taken orally or inhaled. This group of drugs and biologicals is not precisely defined, but it includes products based on one or more of the following: (i) how they are made; (ii) how they are approved by the FDA; (iii) conditions they treat; (iv) how they are used or administered; (v) their cost; and (vi) other special features.

Step Therapy Programs means requiring a member to try a preferred, typically less expensive, medication for the treatment of a particular disease state prior to the approval of a non-preferred, typically more expensive, medication to ensure appropriate and cost-effective medication usage.

Specialty Pharmacy means a pharmacy where Specialty Drugs are filled and delivered to Members.

Term shall have the meaning set forth in Section 8 of this Agreement.

Usual and Customary (“U&C”) Price means the price charged by a Network Provider to an individual without any insurance coverage if such customer were paying cash for the identical drug on the date dispensed. The U&C Price must include any applicable dispensing fee and must include any applicable discounts offered to attract customers.

2.0 PBM SERVICES. PBM shall provide the Services in a manner consistent with the PDD and the terms of this Agreement, and Client hereby authorizes PBM to provide the Services in such manner.

2.1. Claims Processing. PBM will process Claims with dates of fill on or after the Effective Date through and including Claims with dates of fill prior to the termination of this Agreement. PBM will process all Claims according to the pricing schedule contained in **Exhibit A**, Client’s PDD, and HIPAA-required transaction code sets.

- a) Standard Claims processing services include Claims submitted online by Network Providers or non-network providers. PBM will perform standard drug utilization services, as described in this Agreement, for each Claim submitted by Network Providers, a Mail Order Pharmacy, and a Specialty Pharmacy.
- b) **Paper Submitted Claims.** To the extent authorized by the PDD, PBM will process Claims submitted by Members directly to PBM consistent with PBM’s standard procedures and for the fees set forth in **Exhibit A**.

2.2. Pharmacy Network. PBM contracts with Network Providers, which are independent contractors, to provide prescription drugs and related products and services with respect to the Plan. PBM shall, in accordance with the Network agreements between PBM and Network Providers:

- a) Require Network Pharmacies to service Members during normal business hours, in all applicable geographic area;
- b) Include in its Network agreements that Network Providers must comply with PBM’s terms and conditions applicable to participation in the Network in effect as may be amended from time to time;
- c) Provide information to Network Providers concerning drug interaction, safety edits, and generic substitution and therapeutic intervention programs;

- d) Direct Network Providers to collect all applicable Cost Shares or the lesser of Cost Share or U&C from Members;
- e) Maintain a database of Network Providers so that Members and Client may locate a Network Provider using PBM's website;
- f) Be solely responsible for payment to Network Providers for prescriptions dispensed (exclusive of Cost Shares), provided that the foregoing shall not release Client from any payment obligations to PBM; and
- g) Conduct Network Provider audits as follows:
 - i. PBM shall maintain a pharmacy audit program, the criteria of which may be amended from time to time. Audits may be conducted by PBM's internal auditors or its outside auditors, and at the Network Provider's location or at PBM offices by a review of electronically submitted Claims.
 - ii. Any overpayments made to a Network Provider attributable to Client's Claims will be offset against future payments to that Network Provider from Client's account to the extent allowed by Law.
 - iii. If offset is not available, then any overpayment recovered from the Network Provider will be promptly remitted to Client. PBM may, but shall not be required to, commence any litigation or collection efforts to recover any such overpayments.

2.3. Mail Order Pharmacies. PBM will provide a mail service program through which a Mail Order Pharmacy will fill prescriptions for Members and shall mail such prescriptions to Members subject to the terms set forth in **Exhibit A**. In the event multiple Mail Order Pharmacies are part of PBM's Network, Client and Members may receive Covered Products from any contracted Mail Order Pharmacy and shall not be limited to a PBM-owned or affiliated Mail Order Pharmacy. Mail Order Pharmacies shall provide the following products and services:

- a) Dispense new or refill prescriptions following receipt from a Member and/or prescriber of (i) a prescription and a completed order or refill order; and (ii) any applicable Cost Share;
- b) Fill prescriptions subject to the professional judgement of the dispensing pharmacist, good pharmacy practices in accordance with local community standards, and product labeling guidelines; and
- c) Ship all drugs to Members via United States postal service or other appropriate carriers consistent with PBM's standard policies to the address provided by Client and/or Member. In the event non-standard shipping is requested by Client and/or Member, additional charges may apply.

2.4. Specialty Pharmacies. PBM will provide a Specialty Pharmacy program which provides a distribution channel for Specialty Drugs to Members subject to the terms set forth in Exhibit A. In the event multiple Specialty Pharmacies are part of PBM's Network, Client and member may receive Covered Products from any contracted Specialty Pharmacy and shall not be limited to a PBM-owned or affiliated Specialty Pharmacy.

2.5. Implementation.

- a) In consultation with Client, PBM shall develop a mutually agreeable implementation project prior to the Effective Date, or prior to the implementation of any new group or plan during the Term.
- b) Prior to the Effective Date, or prior to the implementation of any new group or plan, Client or Client's designee shall provide PBM with: (i) the initial eligibility test data and the initial full eligibility data; (ii) the governing Plan documents, a summary Plan description, and an executed PDD; and (iii) a refill file (if available) in a mutually acceptable format. Any delays by Client or its designee in providing this information may delay the implementation of Services by PBM.

2.6. Eligibility Data. Client, or Client's designee, at Client's sole expense, shall provide PBM with all information concerning the Plan and Members needed to perform the Services, including any updates thereto ("Eligibility Information"). This Eligibility Information must be complete and accurate, provided timely, and in a mutually agreeable format. Client acknowledges and agrees that Client shall be solely responsible for Eligibility Information and that PBM, Members' prescribers, and/or Network Providers may rely on the Eligibility Information provided by Client.

2.7. Formulary Management.

- a) Election of Formulary. Client hereby adopts, as part of the Plan design and as Client's formulary, the Formulary contained in Exhibit B, as may be amended by PBM from time to time.
- b) Changes to Formulary. PBM changes to the Formulary may be based upon, among other things, the introduction of new products, customer safety, clinical appropriateness, efficacy, cost effectiveness, changes in availability of products, new clinical information and other considerations, changes in the pharmaceutical industry or its practices, introduction of new Generic Drugs, and/or new legislation and regulations. PBM shall provide quarterly notices to Client regarding any negative changes to the Formulary which may include, but are not limited to, movement of a drug from a preferred to a non-preferred tier or the addition or removal of utilization management edits. PBM shall use reasonable efforts to provide such notice at least sixty (60) days prior to such change. The Parties acknowledge that PBM may elect to add to the Formulary new drugs introduced to the market, or line-extensions of certain currently

available drugs, only after PBM's P&T Committee has evaluated such drug and recommends such drug to be added to the Formulary.

- c) Non-Covered Products. With regards to any drug(s) PBM may identify as Non-Covered Product and/or remove from the Formulary, PBM may make such decisions based upon, among other things, new products, customer safety, clinical appropriateness, efficacy, cost effectiveness, changes in availability of products, new clinical information and other considerations, changes in the pharmaceutical industry, introduction of new Generic Drugs, excessive inflation in the cost of certain products, and/or new legislation and regulations. Client acknowledges and agrees that PBM: (i) may remove drugs from the Formulary and/or identify drugs as Non-Covered Products from time to time on a quarterly basis; and (ii) will provide Client at least sixty (60) days' prior notification of any such removals from the Formulary. In the event of a removal of a drug from the Formulary, PBM shall provide targeted communications to Members prior to the date of removal. In the event safety concerns or regulatory action require PBM to remove a Covered Product from the Formulary without prior notice, PBM shall notify Client of the removal within five (5) Business Days.
- d) Prescriber Authority. Client acknowledges that the prescriber shall have final authority over the drug prescribed to Members, regardless of benefit or coverage.

2.8. Generic Substitution Program(s).

- a) Generic substitution may be conducted at Network Providers. Generic substitution involves a Network Provider's substitution of a Brand Drug with a Generic Drug, when available and clinically appropriate, unless: (i) the Prescriber did not allow for generic substitution; or (ii) the Member specifically requests the Brand Drug be dispensed.
- b) PBM shall promote generic substitutions to Network Providers. Client acknowledges that a Network Provider, Prescriber, or Member may override such promotion.

2.9. Member Services.

- a) PBM shall provide a toll-free customer service line(s) during normal business hours for the purpose of responding to inquiries from Members.
- b) PBM will provide access to a website which shall provide Members access to information regarding Covered Product costs, the Formulary, Cost Shares, and Network Providers.

2.10. Reports and Claims Data.

- a) PBM shall provide Client with PBM's standard reporting services. PBM may prepare and provide additional reports within an agreed-upon time and format at no charge to Client.
- b) Upon request, and subject to PBM's agreements with any impacted subcontractors, at Client's expense, PBM will provide Client with an electronic file in PBM standard format of all paid Claims under the Plan. Such Claims file shall not exceed Claims paid in the previous calendar year from the date of Client's request.

2.11. Clinical Programs and Drug Utilization Management. PBM shall provide certain clinical and ancillary services to facilitate Members' appropriate utilization of Covered products. PBM shall provide such clinical and other services for no additional cost to Client. Such clinical and other services includes drug utilization management. Clinical and other services shall include, but are not limited to:

- a) Drug Utilization Review;
- b) Refill too Soon Limitations;
- c) Quantity Limits;
- d) Prior Authorization;
- e) Step Therapy Programs.

3. CLIENT OBLIGATIONS

3.1. Member Authorizations. Client represents and warrants that it has obtained all consents and/or authorizations required, if any, from Members for PBM to perform its Services and for the use and disclosure of information, including PHI, as permitted under this Agreement.

3.2. Control of Plan. Client represents that the Plan is governed by ERISA. Unless otherwise stated in this Agreement, Client and plan administrator retain absolute authority to design, amend, terminate, or modify, in whole or in part, all or any portion of the Plan, including the authority to control and administer the Plan and any assets of the Plan with the written consent of the other party. PBM agrees to be a fiduciary solely for the purpose of initial Claim adjudication and appeals relating to the coverage of prescription drug benefits. PBM and Client acknowledge and agree that, except with respect to its fiduciary obligations as specifically delegated and accepted by PBM pursuant to this Agreement, PBM shall not be (i) the administrator of the Plan for any purpose; (ii) a named fiduciary with respect to the Plan for purposes of ERISA or any applicable state law; (iii) delegated discretionary authority or responsibility, or exercise discretionary authority or control, with respect to the Plan or its administration; or (iv) deemed a fiduciary with respect to the Plan for purposes of ERISA or any applicable state law.

3.3. Plan Design Documents.

- a) Client represents and warrants that the PDD accurately reflects the applicable terms of the Plan for purposes of this Agreement. Client shall be solely responsible for ensuring the accuracy and completeness of the information provided to PBM, including implementation information, Plan and member information, and eligibility files, and shall be obligated to pay for Claims approved by PBM based on that information. Client agrees and acknowledges that PBM and Network Providers shall have the right to rely on the information and instructions provided by Client in connection with this Agreement and the Services provided hereunder. This does not give Client the right to impose requirements beyond those specified in this Agreement.
- b) Client shall provide PBM with sixty (60) days prior written notice of any proposed changes to the PDD, or other material Plan amendments that may impact prescription drug coverage under the Plan, which changes shall be consistent with the scope and nature of the Services to be performed by PBM under this Agreement. Client agrees that it is responsible for Losses resulting from (i) any failure to implement Plan design changes which are not communicated in a written format acceptable to PBM; or (ii) PBM's implementation of Client's verbal or written direction regarding exception or overrides to the PDD. Client shall notify Members of any Plan design changes prior to the effective date of any such changes as required by PPACA

4. **PAYMENT.**

- 4.1. **Fees.** In consideration of the Services provided by PBM, Client will pay the undisputed Claim amounts, Administrative Fees, taxes, and any other applicable charge or fee pursuant to the terms set forth in this Agreement and I **Exhibit A** (collectively, "Fees").
- 4.2. **Payment to PBM.** PBM shall provide Client with a statement(s) ("Statement") for fees due no more frequently than on a bi-weekly basis. Upon receipt of each Statement from PBM, Client shall wire the full amount of Fees included in the Statement within forty-five (45) Business Days to the bank account(s) designated by PBM unless otherwise stated by state law. The Parties shall work together in good faith to resolve any outstanding issues and settle any disputed Claim amounts and fees. The payment of an invoice by the Client shall not prejudice the Client's right to object or question any invoice or matter in relation thereto. Such payment by the Client shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any costs invoiced therein. The PBM's invoice or payment may be subject to further reduction for amounts included in any invoice or payment theretofore made which are determined by the Client, on the basis of audits, not to constitute allowable costs.
- 4.3. **Prompt Pay and Other Deposits.** In the event any Law requires payment of Claims (whether paper or electronic) to Network Providers and/or Members in less than forty-five(45) days, then PBM may, in its sole discretion, require a deposit reasonably sufficient to cover such payments. Client will provide PBM with the deposit(s) required hereunder within forty-five (45) days of receipt of the request, which such deposit(s) PBM may

retain until termination and/or use to make payment due pursuant to this Agreement or Law.

4.4. Failure to Pay Timely. In the event Client fails to pay an amount due under this Agreement as set forth herein, in addition to all other rights and remedies under this Agreement and at Law and equity, PBM shall have the following rights and remedies:

- a) Interest and Other Charges. Should Client fail to pay any amount due under this Agreement within the time frame set forth herein, Client shall be subject to interest charged on all amounts due at an amount equal to the lower of one and one-half percent (1.5%) per month or the amount required by applicable Law, to accrue on a daily basis on any unpaid balances. In addition, Client shall be responsible for all costs of collection and agrees to reimburse PBM for such costs and expenses, including reasonable attorneys' fees.
- b) Suspension of Services. If fifteen (15) days have elapsed from the time any amount described in this Section 2 was due to PBM, and payment in full (including accrued interest) has not been received at the PBM designated bank account, then PBM may suspend its services and system operations for Client upon written notice to Client provided all past due amounts (including interest) have not been cured in full within two (2) business days after receiving such a notice.
- c) Offsets. In the event of any uncured payment default, Client authorizes PBM to offset the amounts of such payment, defaults, and collection costs against any Client retained amounts otherwise payable to Client (including, without limitation, any Rebates due to Client, if any).
- d) Status of Payments to Network Providers and Members. PBM is not required to render payments to network Providers or Members for Claims unless and until PBM has received payment for the Claims from Client. In the event PBM renders Claims payments to Network Providers and/or Members prior to receipt of Claims payment from Client, such payments shall not constitute a waiver of any of PBM's remedies with respect to non-payment and shall not establish a course of dealing between PBM and Client. If fifteen (15) days have elapsed from the time any amount described in this Section 3 was due to PBM, and payment in full (including accrued interest and any other charges) has not been received at the PBM designated bank account, then PBM may suspend its services and system operations for Client upon written notice to Client provided all past due amounts (including interest and any other charges) have not been cured in full within two (2) Business Days after receiving such a notice.

4.5. Sales and Use Taxes. Any applicable sales, use, excise, or other similarly assessed and/or administered tax, surcharge, and/or familiar fee ("Taxes") (i) imposed on PBM, a Network Provider, Member, or service by a Government Agency based upon the provision of Covered Products or other Services hereunder and/or (ii) which PBM or one of its affiliates or subcontractors may incur or be required to pay arising from or relating to

PBM's performance of Services as a pharmacy benefit manager, in any jurisdiction, will be the sole responsibility of Client. Applicable Tax amounts shall be included on Statements provided to Client, which Client shall pay in accordance with this Section 3. If, for any reason, Taxes are not included on a Statement, Client shall pay Taxes within fifteen (15) calendar days of receipt of notice from PBM of Tax amounts due.

5. REBATES.

- 5.1. Cooperation and Communication.** Client agrees to approve the Formulary and allow PBM to communicate with, and make available Formulary related literature to, Network Providers and Members. Client agrees to cooperate with PBM in the maintenance of the Formulary and to facilitate Members' utilization of the Formulary.
- 5.2. Payment of Rebates to Client.** In accordance with the terms of this Section 7 and **Exhibit A**, PBM will pay to Client, on a quarterly basis, Rebates received by PBM during the prior calendar quarter. Client acknowledges and agrees that neither Client nor any Plan shall have any interest or ownership in any Rebates until payment is due to Client. PBM may delay remittance of Rebates to allow for final adjustments upon termination.
- 5.3. Rebate Contracting.** PBM will pursue Rebates, directly or indirectly, from pharmaceutical companies on applicable Covered Products dispensed to Members. PBM shall have the exclusive right to contract for Rebates on Covered Products dispensed to Members. Client agrees that neither it nor any Plan will: (i) directly or indirectly negotiate, contract, or agree with any pharmaceutical manufacturer or other third party for the purpose of obtaining Rebates or discounts related to Members' drug utilization, including the use of over the counter products; or (ii) message or engage a third party to message Members or prescribers in a manner that conflicts with the Formulary. As of the Effective Date, neither Client nor any Plan may have any direct or indirect agreement or arrangement with any pharmaceutical company or other third party related to Rebates or discounts.
- 5.4. Collection Efforts; Non-Compliance.** PBM will use commercially reasonable efforts to collect Rebates. PBM may, but shall not be required to, initiate formal action to collect Rebates, in which event PBM may offset collection costs, including reasonable attorneys' fees and expenses, against the Rebates actually collected. PBM does not guarantee pharmaceutical company performance. In no event shall PBM be liable to Client or any Plan for Losses arising from a pharmaceutical company's failure to pay Rebates.

6. Records and Audits.

- 6.1. Maintenance of Records.** PBM shall maintain records with respect to the processing, payment, and denial of Claims by PBM and shall retain such records for a period of up to ten (10) years after the transaction occurred or as otherwise required by applicable law.
- 6.2. Claims Audits.** During the Term of this Agreement and for one (1) year thereafter, Client or a mutually agreed upon third-party, may conduct an annual Claims audit and such audit shall be limited to the prior Contract Year of PBM data that directly relates to Claims

billings. Any mutually agreed upon third-party auditor engaged by Client shall execute PBM's standard non-disclosure/confidentiality agreement prior to conducting a Claims audit ensuring that all information reviewed during such audit and all details will be treated as confidential and will not be revealed in any manner or form by or to any third-party. Client acknowledges that it shall not be entitled to audit agreements with vendors, pharmaceutical companies, Network Providers, or other providers of products or services to PBM as part of any Claims audit.

- 6.3. Market Check.** Client, at its option, may retain an independent consultant to conduct a market check of the agreed upon Fees, Price Guarantees, and Rebates to ensure that Client is receiving competitive pricing terms, taking into account the volume, population mix, and plan design. The market check may be conducted annually and may start as soon as the first quarter of the second contract year. In the event the annual market check reveals pricing terms that would reduce Client's total drug spend by greater than five percent (5%), the Parties shall renegotiate in good faith to modify the pricing terms of this Agreement.

7. CONFIDENTIALITY.

- 7.1. Use of Information.** PBM and Client may use, reproduce, or adapt information obtained in connection with this Agreement, including, without limitation, Claims data information and eligibility information, in any manner they deem appropriate, except that each Party and its agents, employees, and contractors shall maintain the confidentiality of this information to the extent required by applicable law, including, without limitation, the applicable provisions of HIPAA and the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and may not use the information as prohibited by Law.
- 7.2. Ownership of Information.** Without limiting the generality of Section 6.2, and subject to the restrictions set forth therein, Client agrees that the aggregate compilations of information contained in any and all databases developed by PBM or its designees, and prior or future versions thereof, are the property of PBM and protected by copyright which shall be owned by PBM. PBM, its agents, employees, and contractors, with written consent from Client, shall have the right to use, reproduce, and adapt all information obtained in connection with this Agreement, and any prior agreement with Client, to render services to its customers and to develop new products and services which may be outside the scope of this Agreement. Any work, compilation, process, inventions, or other information or techniques developed by PBM or its agents, employees, or contractors, shall be owned by PBM and deemed its confidential information.
- 7.3. Third Party Data Access.** Client acknowledges and agrees that PBM may provide Client's third-party vendors with access to Client's Claims and other information upon Client's request or direction, subject to PBM's sole discretion. PBM may require such third-party vendors execute a non-disclosure/confidentiality and/or license agreement prior to providing such information. Client represents and warrants that it shall have and maintain a business associate agreement, as applicable, with all third-party vendors.

- 7.4. Confidential Information.** The Parties agree not to disclose the other's proprietary and confidential information ("Confidential Information") to any third-party, during the term or after the termination of this Agreement except (i) as specifically contemplated by this Agreement; (ii) with the other Party's written consent; (iii) as required by Law, including any judicial or administrative interpretation thereof; or (iv) to the extent such Confidential Information becomes generally available to the public, through no action or fault of the receiving party. Such Confidential Information shall include, but is not limited to, (a) with respect to PBM: its software, reporting packages, user documentation and related information, its Formulary and clinical services, and data and information owned by PBM, including data and information derived from PBM's provision of Services under this Agreement; and (b) with respect to Client: its operations and strategies. The Parties shall cease using the other's Confidential Information upon termination of this Agreement and shall return or destroy any Confidential Information at the disclosing party's written direction.
- 7.5. Disclosure.** PBM will disclose to Client: (i) the existence of organizational arrangements that could potentially create a conflict of interest that affects clinical or financial decisions; (ii) all sources of revenue as it relates to this Agreement; and (iii) pricing structure for pharmacy benefit management services, including Rebate structure and administrative fees received by PBM.
- 7.6. No Transfer of Right or Title.** All Confidential Information disclosed pursuant to this Agreement shall remain the property of the Disclosing Party. The Receiving Party acknowledges that it shall not acquire any rights or title to any Confidential Information merely by virtue of its use or access to such Confidential Information hereunder. Neither the execution of this Agreement nor the furnishing of any Confidential Information hereunder shall be construed as granting the Receiving Party, either expressly, by implication, or otherwise, any licenses or rights whatsoever in the Disclosing Party's Confidential Information.

8. TERM AND TERMINATION.

- 8.1. Term.** The Services under this Agreement will be implemented as of the Effective Date and will continue for one year from the Effective Date (the "Initial Term") and may be terminated earlier or extended in accordance with the terms of this Section 9. The PBM shall notify the Client that the Initial Term is scheduled to conclude in ninety (90) days. The Client, at its discretion, may submit a written request to extend the Agreement for one additional year. The Initial Term and any Renewal Terms will be referred to as the "Term."
- 8.2. Termination by Mutual Agreement.** This Agreement may be terminated at any time by mutual written consent of the Parties.
- 8.3. Termination for Cause.** This Agreement may be terminated at any time by either Party based on a material breach of any provision of this Agreement, provided that the Non-Breaching Party must provide thirty (30) days' advanced written notice of such

termination which details the material breach. The Breaching Party shall have thirty (30) days to cure the alleged material breach. If the material breach is not cured by the end of the thirty (30) day period, the Non-Breaching Party may immediately terminate this Agreement.

8.4. Termination for Change of Law.

- a) Subject to Section 8.4(b), either Party may terminate this Agreement upon thirty (30) days prior written notice to the other Party if, as a result of any Change of Law, as defined herein, the rights or obligations of the terminating Party under this Agreement would be materially adversely affected. For purposes of this Section 8.4, the term “Change of Law” means any (i) applicable federal or state law or regulation enacted after the Effective Date, or any change in any existing applicable federal or state law or regulation; (ii) change in judicial or administrative interpretation of any applicable federal or state law or regulation; or (iii) change in the enforcement of any applicable federal or state law or regulation, in each case occurring after the date PBM begins providing Services or the Effective Date, whichever is earlier.
- b) Prior to any termination pursuant to Section 8.4(a), the Parties agree to use prompt, good faith efforts to renegotiate the terms of this Agreement. If the Parties successfully conclude such negotiations prior to the termination date, this Agreement shall not terminate and shall be amended to reflect the negotiated terms. In the event the Parties are unable to successfully conclude such negotiations, this Agreement shall terminate as provided immediately above.
- c) State Fiduciary Laws. PBM shall not be obligated, at any time, to provide Services to Client or Members if Client or Members are located in a state requiring a pharmacy benefit manager to be a fiduciary to Client or Members in any capacity contrary to the terms and conditions specifically identified in this Agreement. In the event any state law or regulation requires PBM to be a fiduciary to Client or Members contrary to the terms and conditions identified in this Agreement, PBM may elect not to provide Services to the impacted Members upon thirty (30) days prior written notice to Client.

8.5. Effect of Termination; Obligations.

- a) Financial Responsibility. Termination of this Agreement shall not affect Client’s financial responsibility for Covered Products, Claims, and any other Fees due to PBM based on services performed prior to the effective date of termination.
- b) Upon termination of this Agreement, PBM may, at Client’s request provide mutually agreed upon post-termination services and vendor transition files for additional, mutually agreed costs.

- c) Upon termination of this Agreement, PBM will, at Client's request, transition Claims files and/or history to Client's new prescription benefit manager or any other third-party that is scrubbed of PBM's Confidential Information.

9. INDEMNIFICATION.

- 9.1. **Indemnification by PBM.** Subject to any limitations on liability under this Agreement, PBM shall defend, indemnify, and hold harmless Client, its subsidiaries, and affiliates and each of their respective officers, directors, and employees (the "Client Indemnitees") from and against any and all Losses incurred by any Client Indemnitees arising out of or relating to PBM's negligent acts, omissions, or breach of its obligations or warranties set forth in this Agreement, except to the extent such Losses are caused by the negligent acts or omissions or willful misconduct of any Client Indemnitees or breach of this Agreement by Client.
- 9.2. **Indemnification by Client.** To the fullest extent permitted by law, subject to any limitations on liability under this Agreement, Client shall defend, indemnify, and hold harmless PBM, its subsidiaries and affiliates, and each of their respective officers, directors, and employees (the "PBM Indemnitees") from and against any and all Losses incurred by any PBM Indemnitees arising out of or relating to (i) Client's negligent acts or omissions or breach of its obligations or warranties set forth in this Agreement, except to the extent such Losses are caused by the negligent acts or omissions or willful misconduct of any PBM Indemnitees or breach of this Agreement by PBM; (ii) any legal defects in the design of the Plan; or (iii) any deficiencies in the PDD approved by Client.
- 9.3. **Notice of Claim.** To the fullest extent permitted by law, the Party seeking indemnification shall notify the other Party in writing within thirty (30) days of the assertion of any claim or the commencement of any action or proceeding for which indemnity may be sought under this Agreement. Failure to notify the other Party shall not result in the waiver of indemnity rights with respect to such claim, suit, action, or proceeding unless such failure materially prejudices the ability of the indemnifying Party to defend such claim, suit, action, or proceeding. The Parties shall cooperate with each other in the defense and settlement of any such claim, action, or proceeding.

10. MISCELLANEOUS.

- 10.1. **Subcontractors.** PBM may use its affiliates or subcontractors to perform any of PBM's Services or obligations under this Agreement with written consent of the Client. PBM shall be responsible for those services to the same extent that PBM would have been had it performed those Services without the use of an affiliate or subcontractor.
- 10.2. **Assignment.** Neither Party may assign this Agreement without the prior written consent of the other Party, provided that such consent shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign this Agreement as part of the sale of all, or substantially all, of the assets to which this Agreement pertains with the written consent of the other Party. Further, PBM may assign this Agreement or delegate the duties

to be performed under this Agreement with written the consent of Client to any of its subsidiaries or affiliates at any time.

- 10.3. Entire Agreement.** This Agreement, including all Exhibits, attachments, and addendums hereto, constitutes the entire agreement between the Parties governing the subject matter of this Agreement. This Agreement replaces any prior written or oral communications or agreements between the Parties relating to the subject matter of this Agreement.
- 10.4. Amendments.** Except as otherwise provided in this Agreement, this Agreement may only be amended by mutual written consent of duly authorized representatives of the Parties.
- 10.5. Business Associate Relationship.** To the extent PBM acts as a Business Associate of the Plan, and in accordance with HIPAA, PBM shall adhere to the applicable requirements established for Business Associates set forth in Exhibit C.
- 10.6. Exclusivity.** PBM shall be the exclusive provider to Client and the Plan of each of the Services described in this Agreement. Notwithstanding the foregoing, this Section shall not be construed to prohibit Client from including pharmacy coverage under a managed care, HMO, or similar comprehensive medical/prescription benefit plan. Client acknowledges and agrees that it will not provide, directly or indirectly, or engage any prescription benefit manager or other third-party, to provide to Client or Plan any service that is similar to one of the Services provided by PBM, including, without limitation, retail pharmacy network contracting, pharmacy claims processing, mail and specialty pharmacy services, utilization management, and formulary and rebate administration services. Client acknowledges and agrees that a breach of this Section 10.6 shall be deemed a material breach of this Agreement.
- 10.7. Compliance with Law.** Each Party agrees to comply with all applicable Laws with respect to their obligations under this Agreement. Each Party is responsible for obtaining its own legal advice concerning its compliance with applicable Law.
- 10.8. Governing Law/Venue.** This Agreement shall be governed by ERISA and, if applicable, the laws of the State of Mississippi, without regard to its conflict of laws rules. Subject to Section 10.9 below, any suit brought hereunder, including any action to compel arbitration or to enforce any award or judgement reentered thereby, shall be brought in the state or federal courts sitting in Warren County Mississippi. To the fullest extent permitted by law, the Parties hereby waive any claim or defense that such forum is not convenient or is improper. Each Party agrees that any such court shall have *in personam* jurisdiction over it and consents to service of process in any manner authorized by Mississippi law.
- 10.9. Dispute Resolution.** In the event of a dispute between the Parties, and prior to commencing any litigation or other legal proceeding, each Party shall, by giving written notice to the other Party, request a meeting of authorized representatives of the Parties for purposes of resolving the dispute (“Dispute Notice”). The Parties agree that within ninety (90) days after the issuance of a Dispute Notice, each Party shall designate a representative to participate in dispute resolution discussions, which shall be held at a

mutually acceptable time and place (or by telephone) for the purpose of resolving the dispute. Each Party agrees to negotiate in good faith to resolve the dispute in a mutually acceptable manner. .

- 10.10. Force Majeure.** If either Party is prevented in the performance of its obligations pursuant to this Agreement by reason of any circumstance beyond its reasonable control, including, but not limited to, fire, flood, earthquake, extraordinary weather conditions not reasonably foreseeable by a Party, acts of war or terrorism, riots, pandemic, civil disorders, rebellions, or revolutions (collectively, “Force Majeure”), then the Party will be excused from any further performance of its affected obligations for as long as such circumstances prevail and as long as the Party continues to use all commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. The Party whose performance is affected by the Force Majeure event will advise the other Party in reasonable detail of the event (including the estimated duration of the event), as promptly as practicable and keep the other Party reasonably apprised of the progress in resolving the Force Majeure event. In the event either Party cannot resume performance within thirty (30) days of the Force Majeure event, the other Party may, by providing written notice, immediately terminate this Agreement. This Section shall not be considered a waiver of any continuing obligations under this Agreement, and as soon as conditions cease, the Party affected thereby shall fulfill its obligations set forth under this Agreement.
- 10.11. Independent Contractors; Third Party Beneficiaries.** The Parties’ relationship is one of independent contractors, and nothing in this Agreement shall be construed as creating a partnership, principle-agent relationship, or joint venture between the Parties. Other than the Plan and its Members, no term or provision of this Agreement is for the benefit of any third-party, and no third-party shall have any right or cause of action under this Agreement.
- 10.12. Use of Name.** Each Party shall use the other Party’s name, logo, and trademark only in the manner specified by the other Party in writing, or as expressly permitted by this Agreement.
- 10.13. Survival.** The following Sections shall survive termination of this Agreement:
- 10.14. Notices.** Any notice given under this Agreement shall be given in writing, and sent by hand delivery, facsimile transmission, overnight courier that provides confirmation of delivery, certified mail, or electronic mail to the applicable Party at its address and/or electronic mail address set forth below:

If to PBM:

219 Sunnybrook Rd. Ste A

Ridgeland, MS 39157

Attn: Jay Gulley, President

Fax: 601-939-2380

Email: JGulley@LeadwayRx.com

If to Client:

City of Vicksburg

1401 Walnut Street

Vicksburg, Mississippi 39181

Attn: **Willis Thompson, Mayor**

Fax: **601-631-3764**

Email: **mayorwillisthompson@vicksburg.org**

- 10.15. Authority; Counterparts.** Each Party presents and warrants that it has the necessary power and authority to enter into this Agreement and to consummate the transactions contemplated hereunder. The Parties may execute this Agreement in one or more counterpart copies, all of which, taken together, shall be deemed to be one Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their duly authorized officer or representative as of the date first set forth in above.

PBM

Leadway Pharmacy Benefit Management, Inc.

By: 

Name: Jay Gulley

Title: President

Client

City of Vicksburg, MS

By: _____

Name: Willis Thompson

Title: Mayor

EXHIBIT A – FEES

I. Claims Administration.

*Guaranteed Pricing Terms – 30-Day Retail Pharmacy Claims		
	2025	2026
Base Admin. Fee	\$6.00 Per Paid Claim	\$6.00 Per Paid Claim
Pricing Framework	100% Pass-Through	100% Pass-Through
*Guaranteed Pricing Terms – 90-Day Retail¹ Pharmacy Claims		
	2025	2026
Base Admin. Fee	\$6.00 Per Paid Claim	\$6.00 Per Paid Claim
Pricing Framework	100% Pass-Through	100% Pass-Through
*Guaranteed Pricing Terms – Mail Order Pharmacy Claims		
	2025	2026
Base Admin. Fee	\$6.00 Per Paid Claim	\$6.00 Per Paid Claim
Pricing Framework	100% Pass-Through	100% Pass-Through
*Guaranteed Pricing Terms – Specialty Pharmacy Claims		
	2025	2026
Base Admin. Fee	\$6.00 Per Paid Claim	\$6.00 Per Paid Claim
Pricing Framework	100% Pass-Through	100% Pass-Through

II. Guaranteed Pricing Terms Conditions.

- a. Fees proposed assume Client's adoption of the Formulary.
- b. Under the Pass-Through Pricing Model, Client shall pay the actual rates paid by PBM for Covered Products electronically processed and dispensed to a Member. PBM's compensation for its services shall be the Base Administration Fee set forth above; provided, however, an addition \$1.75 fee shall be added to the Base Administration Fee for all paper Claims and/or Member submitted Claims.

*Pricing varies some from pharmacy to pharmacy, but PBM will use AWP discount plus dispensing fee for brand name pricing and 100% of NADAC plus dispensing fee, whenever possible.

¹ 90-Day Retail pricing shall apply to all Claims where Covered Products are dispensed for a eighty-four (84) day supply or greater. All Covered Products dispensed for eighty-three (83) days or less shall be priced under 30-Day Retail terms.

- c. For purposes of this Agreement, the following Claims are excluded from and shall not be used in Guaranteed Pricing calculations:
 - i. Over the Counter Claims;
 - ii. Zero-Balance Claims;
 - iii. Compound Claims;
 - iv. Non-Coded Compounds (i.e., a Claim whose primary NDC is not considered a standard/stand-alone dispensed medication, such as a bulk chemical);
 - v. Non-Point-of-Sale Claims;
 - vi. Repackage Indicated NDCs;
 - vii. NDCs from Non-Pharma Sources;
 - viii. Vaccines;
 - ix. 340B Claims;
 - x. Coordination of Benefit Claims;
 - xi. Claims without a Valid NDC per Med-Span; and
 - xii. Quantity Error Claims.
- d. PBM, with written consent of the Client, reserves the right to modify or amend the financial provisions of this Agreement in the event of an external event or industry change impacting PBM's performance under the Agreement, including, but not limited to:
 - i. Any government imposed change in federal, state, or local Laws or interpretation thereof or industry wide change that makes PBM's performance of its duties hereunder materially more burdensome or expensive, including changes to the AWP benchmark or methodology;
 - ii. The unexpected movement of a Brand Drug to off-patent or if Generic Drugs, Authorized Brand Alternative Drugs, low priced Brand Drugs, or Over-the-Counter substitutes become available; or
 - iii. If there is a change impacting the availability or amount of Rebates offered by manufacturers, including changes related to the elimination or material modification of a manufacturer's historic models or practices related to the provision of Rebates.
- e. PBM, with written consent of the Client, further reserves the right to modify or amend the financial provisions of this Agreement if any of the following occur:
 - i. A change in the scope of services to be performed under this Agreement upon which the financial provision included in this Agreement are based, including a

change in the PDD or the exclusion of a service line (e.g., Retail, Mail-Order) from Client's service collection;

- ii. A change of greater than twenty percent (20%) in the total number of Members from the number provided to PBM during pricing negotiations upon which the Pricing Guarantees set forth above are based;
 - iii. Any substantive change to the Formulary, Member Cost-Share, PDD, exclusions, utilization management programs, or administrative edits, which may impact Rebates from manufacturers; or (iv) PBM is no longer the exclusive provider of the Services set forth in this Agreement.
- f. For any amendments or modifications made to the Pricing Guarantees contemplated under this **Exhibit A**, PBM agrees to implement such modifications in an equitable manner. In addition, when practicable, PBM shall provide at least thirty (30) days' written notice of any such changes or modifications.

III. Rebate Guarantees. Subject to the conditions set forth below, Client shall receive: 100% of Rebates obtained by PBM .

- a. Rebate Guarantees are dependent upon Client's adoption, without deviation, of the Formulary and utilization management programs, including any changes PBM may make to the Formulary and/or utilization management programs.
- b. The following Claims shall be excluded from Rebate Guarantee calculations:
 - i. Claims where the Plan is not the Primary Payer;
 - ii. Vaccines;
 - iii. Claims Approved by Formulary Exception;
 - iv. Devices (except for insulin pumps or diabetic test strips);
 - v. Claims for Authorized Brand Alternatives;
 - vi. 340B Claims;
 - vii. Long Term Care Claims;
 - viii. Federal government pharmacy claims; and
 - ix. Consumer Card or Prescription Discount Card Claims.
- c. PBM may adjust Rebates and the Guaranteed Rebate Amounts (effective as of the date of the change and in proportion to the impact) if any of the following occur:
 - i. If Client makes any change to its formulary, not initiated by PBM, changes the Plan, or adopts any formulary or utilization management program other than one of the options offered by PBM under its Formulary or utilization management programs;

- ii. Due to the impact of unexpected releases of Generic Drugs to market or the withdrawal or recall of existing Brand Drugs; or
- iii. If future Formulary changes reduce Rebates.

EXHIBIT B – FORMULARY

[Insert Formulary]

EXHIBIT C – BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement, dated as of the later date of signature of the Parties (“Agreement”) supplements and is made a part of the Pharmacy Benefit Management Services Agreement (the “Service Agreement”) by and between Leadway Pharmacy Benefit Manager, Inc. DBA Leadway Rx (“Business Associate”) and **[CLIENT]** (“Covered Entity”). Covered Entity and Business Associate may be referred to herein collectively as the “Parties” or individually as a “Party.”

WHEREAS, Covered Entity and Business Associate are entering into or are Parties to the Service Agreement pursuant to which Business Associate provides certain services to Covered Entity. In connection with such services, Business Associate creates, receives, maintains, or transmits Protected Health Information from or on behalf of Covered Entity, which information is subject to protection under the Federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act (“HITECH”), and related regulations promulgated by the Secretary.

WHEREAS, Covered Entity qualifies as a “covered entity” (as defined by the HIPAA Regulations), which means that Covered Entity has certain responsibilities with respect to Protected Health Information; and

WHEREAS, in light of the foregoing and the HIPAA Rules, Business Associate and Covered Entity agree to be bound by the following terms and conditions.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. Definitions.

- a. General Definitions. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured protected Health Information, and Use.
- b. Specific Definitions.
 - i. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the Party to this Agreement, shall mean Trust Plus Pharmacy Benefit Consultants, LLC.
 - ii. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the Party to this Agreement, shall mean **[CLIENT]**.
 - iii. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

II. Business Associate Agreements.

Business Associate agrees to:

- a. Not Use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required by Law;
- b. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent use or Disclosure of Protected Health Information other than as provided for by this Agreement;
- c. Report to Covered Entity any Use or Disclosure of Protected Health Information not provided for by this Agreement of which it becomes aware, included Breaches of Unsecured Protected Health Information as required at 45 CFR 164.410, and any Security Incident of which it becomes aware;
- d. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information;
- e. Make available Protected Health Information in a Designated Record Set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR Part 164.524 including forwarding to Covered Entity a request to make available Protected Health Information in a designated record that Business Associate receives directly from the Individual within thirty (30) days of Business Associate's receipt of the request;
- f. Make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526 including forwarding to Covered Entity a request for amendment that Business Associate receives directly from the Individual within thirty (30) days of Business Associate's receipt of the request;
- g. Maintain and make available the information required to provide an accounting of Disclosures to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528 including forwarding to Covered Entity a request for accounting of Disclosures that Business Associate receives directly from the Individual within thirty (30) days of Business Associate's receipt of the request;
- h. To the extent that Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164 under this Agreement, comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s); and
- i. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

III. Permitted Uses and Disclosures by Business Associate.

- a. Business Associate may only Use or disclose Protected Health Information as necessary to perform the services set forth in this Agreement or the Service Agreement and is authorized to Use Protected Health Information to de-identify information in accordance with 45 CFR 164.514(a)-(c) and Use the de-identified information as permitted by this Agreement, the Service Agreement, or Law.
- b. Business Associate may Use or disclose Protected Health Information as Required by Law.
- c. Business Associate agrees to make Uses and Disclosures and requests for Protected Health Information only as Minimally Necessary for the purpose of the Use, Disclosure, or request, as the case may be.
- d. Business Associate may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity except for the specific Uses and Disclosures set forth below.
- e. Business Associate may Use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- f. Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided the Disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and Used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- g. Business Associate may provide Data Aggregation services relating to the Health Care Operations of Covered Entity.

IV. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions.

- a. Covered Entity shall notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of Protected Health Information.
- b. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an Individual to Use or disclose his or her Protected Health Information, to the extent that such changes may affect Business Associate's Use or Disclosure of Protected Health Information.
- c. Covered Entity shall notify Business Associate of any restriction on the Use or Disclosure of Protected Health Information that Covered Entity has agreed to or is

required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of Protected Health Information.

V. Permissible Requests by Covered Entity.

Covered Entity shall not request Business Associate to Use or disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity, except Business Associate may Use or disclose Protected Health Information for Data Aggregation or management and administration and legal responsibilities of Business Associate in accordance with this Agreement and the Service Agreement.

VI. Term and Termination.

- a. Term. The term of this Agreement shall continue through the period that Business Associate provides services to Covered Entity.
- b. Termination for Cause. A Party may terminate this Agreement by giving notice to the other upon the commission by the other Party of a Breach under the HIPAA Rules.
- c. Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:
 - i. Retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - ii. Return to Covered Entity, or if agreed to by Covered Entity, destroy, the remaining Protected Health Information that Business Associate still maintains in any form;
 - iii. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent Use or Disclosure of Protected Health Information, other than as provided for in this Section, for as long as Business Associate retains the Protected Health Information;
 - iv. Not Use or disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out at Sections III(e) and (f) above which applied prior to termination;
 - v. Return to Covered Entity, or if agreed to by Covered Entity, destroy, the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities; and

- vi. Obtain or ensure the destruction of Protected Health Information created, received, or maintained by Subcontractors.
- d. Survival. The obligations of Business Associate under this Section VI shall survive the termination of this Agreement.

VII. Miscellaneous.

- a. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable Law.
- c. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.
- d. Limitation of Liability. To the fullest extent permitted by law, BUSINESS ASSOCIATE'S AGGREGATE LIABILITY FOR ANY DAMAGES ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT PAID BY COVERED ENTITY TO BUSINESS ASSOCIATE (EXCLUDING POSTAGE, IF ANY) DURING THE 12 MONTH PERIOD BEFORE THE CLAIM AROSE, REGARDLESS OF THE FORM OF ACTION.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their duly authorized officer or representative as of the date first set forth in above.

PBM

Leadway Pharmacy Benefit Management, Inc.

By: 

Name: Jay Gulley

Title: President

Client

[CLIENT]

By: _____

Name: Willis Thompson

Title: Mayor