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Clackamas County
www.clackamas.us

July 9, 2026

BCC Agenda Item: _____

Board of County Commissioners
Clackamas County

Approval of a Pharmacy Services Agreement with The Kroger Company for use of Fred Meyer prescription drug dispensation locations. Agreement Value is \$200,000 for 5 years. No County General Funds are involved.

Previous Board Action/Review: Agreement, December 11, 2025, Agenda Item IV.C.4

Performance Clackamas: Healthy People

Counsel Review: Yes: Andrew Naylor

Procurement Review: No

Contact Person: Sarah Jacobson

Contact Phone: 503-742-5303

EXECUTIVE SUMMARY: The Health Centers Division of Health, Housing, and Human Services Department requests approval of a Pharmacy Service Agreement with The Kroger Co. The purpose of this agreement is to allow Clackamas Health Centers to continue utilizing four Fred Meyer Pharmacy locations as 340B drug dispensing sites throughout the County. This agreement replaces the current one due to The Kroger Company's change of third-party administrator for its pharmacies. The 340B Program is a federally managed program that allows Federally Qualified Health Centers (FQHCs), such as Clackamas Health Centers, to purchase medications at significantly reduced prices to expand access to uninsured/underinsured patients and clients. It allows Health Centers to generate revenue from insured patients who use our contract pharmacy network to fill their prescriptions by directing the savings from those medications back to Health Centers to provide more services to more patients across the County.

RECOMMENDATION: The staff respectfully requests that the Board of County Commissioners approve agreement (12591) and authorize Chair Roberts or his designee to sign on behalf of Clackamas County.

Respectfully submitted,

Mary Rumbaugh

Mary Rumbaugh
Health, Housing & Human Services

For Filing Use Only

**340B AMENDED AND RESTATED
CONTRACT PHARMACY SERVICES AGREEMENT**

This 340B Contract Pharmacy Service Agreement (“Agreement”), by and between **COUNTY OF CLACKAMAS** (“Covered Entity”) and **The Kroger Co. for itself and its subsidiaries and affiliates** with an address of 1014 Vine Street Cincinnati, Ohio 45202 (“Pharmacy”) (Pharmacy and Covered Entity are each a “Party” and collectively the “Parties”), is made and will take effect 10 days after the last date of signature execution below (the “Effective Date”).

WHEREAS, Covered Entity participates in the 340B Program (defined below);

WHEREAS, Covered Entity currently contracts with Pharmacy (“Original Agreement(s)”) previously executed by and between **COUNTY OF CLACKAMAS**, and **The Kroger Co.** to provide the services of a contract pharmacy to serve patients eligible to receive 340B-discounted drugs (“Covered Entity Patients”), as permitted under 75 Fed. Reg. 10272 (March 5, 2010); and

WHEREAS, pursuant to 75 Fed. Reg. 10272, in addition to contracting with a single pharmacy for each clinical site, Covered Entities may pursue arrangements that include multiple pharmacies, provided that (1) there is a written agreement in place that meets 340B Program requirements, as articulated in 340B multiple contract pharmacy guidance; (2) the written agreement includes and addresses all of the elements outlined in Sections 2 and 3 of this Agreement; (3) the operation of the arrangement continues to meet all 340B Program requirements and does not create diversion of 340B Drugs or duplicate discounts; (4) the arrangements are one of the following models either individually or in combination: (i) the use of multiple contract pharmacy service sites and/or (ii) the utilization of a contract pharmacy/pharmacies to supplement in-house pharmacy services; and (5) the arrangement involves a single identifiable Covered Entity and does not include a network; and

WHEREAS, Pharmacy and Covered Entity wish to state the terms of the Agreement to reflect Covered Entity’s participation in Pharmacy’s 340BProgram as set forth herein.

NOW, THEREFORE, the Parties agree as follows:

1. Definitions.

- a. “340B Drugs” shall be defined in accordance with applicable laws and guidance at 42 U.S.C. § 256b(b), 42 U.S.C. § 1396r-8(k), and 59 Fed. Reg. 25,110 (May 13, 1994).
- b. “340B Pharmacy Administrator” shall mean the third party 340B services provider, if any, engaged by Pharmacy to manage or administer oversight of Pharmacy’s arrangements and agreements with Covered Entities.
- c. “340B Program” shall be defined as part of the 1992 Veteran’s Health Care Act, which created Section 340B of the Public Health Services Act, allowing certain “Covered Entities” to purchase outpatient prescription drugs for their patients at favorable discounts from drug manufacturers who enter into drug purchasing agreements with the United States Department of Health and Human Services (“DHHS”).

- d. “340B Program Administrator” shall mean the third party 340B services provider, if any, engaged by Covered Entity to manage or administer its 340B Program and contract pharmacy arrangements.
- e. “Agreement” shall mean this 340B Contract Pharmacy Services Agreement and accompanying exhibits, if any, as may be amended from time to time in writing by the applicable Parties.
- f. “AWP” means the current average wholesale price of a drug product as established by its manufacturer and reported in First DataBank, Medi-Span or other nationally recognized drug database (“Pricing Source”) approved by Pharmacy. AWP’s will be updated no less frequently than weekly. In the event of: (a) changes to the formula, methodology or manner in which AWP is calculated or reported by the Pricing Source; or (b) the Pricing Source ceases to publish AWP for the services rendered under this Agreement, then the financial terms of this Agreement shall be automatically adjusted at the time of such change to return the parties to their respective economic positions as they existed under the Agreement immediately prior to the effective date of the change. If the event described in item (b) above occurs, the AWP pricing under this Agreement shall immediately and automatically be converted to an alternative pricing benchmark mutually agreeable to the parties. For reference, AWP may also be noted as SWP.
- g. “Brand Drug” means a prescription drug that is categorized as a Brand or Non-Drug item based on Brand Generic code indicators, including, without limitation, drugs approved under a ‘New Drug Application’ or NDA indicator, as published by First Databank or a corresponding indicator from a similar published national compendium of drug information.
- h. “Captured Claim” shall mean a prescription drug claim that has been identified by 340B Pharmacy Administrator and 340B Program Administrator, and verified by 340B Pharmacy Administrator as an Eligible Claim according to the eligibility methods agreed upon by the Parties for which the Pharmacy has received replenishment inventory ordered on behalf of the Covered Entity and delivered to the Pharmacy (this will occur once sufficient quantity of the applicable drug, by NDC11, have been identified as Eligible Claims to reach the full bottle or applicable package size).
- i. “Covered Entity” shall mean the legal entity identified in this Agreement, including all of its 340B eligible site locations, and shall be identified in **Exhibit C** attached hereto and incorporated herein by reference.
- j. “Covered Entity Patients” shall mean those patients of the Covered Entity who satisfy HRSA’s patient definition criteria at 61 Fed. Reg. 55,156-58 (Oct. 24, 1996), as may be amended from time to time.
- k. “Department” shall mean the Department of Health and Human Services.
- l. “Eligible Claim” shall mean a prescription drug claim for a Covered Entity Patient, and which meets the other requirements of the 340B Program.
- m. “Generics” or “Generic Drug” means a prescription drug that is categorized as a generic drug based on Brand Generic code indicators, including, without limitation, drugs approved under an ‘Abbreviated New Drug Application’ or ANDA indicator, as published by First Databank

or a corresponding indicator from a similar published national compendium of drug information.

- n. "HRSA" shall mean the Health Resources and Services Administration, which is the agency within the Department that oversees activities of the Office of Pharmacy Affairs.
- o. "Insured Claim" shall mean a claim for a 340B Drug that is adjudicated at the Point of Sale in accordance with contracted rates between the Pharmacy and any applicable third-party payor (e.g., pharmacy benefits manager, health plan or self-funded employer).
- p. "NDC" or "NDC-11" shall mean National Drug Code or the unique 11-digit product identifier assigned by the US Food and Drug Administration to all prescription drugs used in the United States containing 3 segments including the labeler code, the product code, and the package code.
- q. "OPA" shall mean the Office of Pharmacy Affairs, which is within HRSA and which administers the 340B Program.
- r. "Parties" or "Party" shall mean the signatories to this Agreement, which are the Covered Entity and Pharmacy.
- s. "Pharmacy" shall mean the legal entity identified in this Agreement. Each Pharmacy site shall be identified in an **Exhibit D** attached hereto and incorporated herein by reference.
- t. "Pharmacy Dispensing Fee" shall mean those fees due to the Pharmacy for Pharmacy Services pursuant to this Agreement as set forth on **Exhibit A**.
- u. "Point of Sale" or "POS" shall mean the time and place where a Pharmacy retail transaction is completed. It is the point at which a Covered Entity Patient may make a payment to the Pharmacy in exchange for goods or after provision of service.
- v. "Specialty Claim" shall mean a claim for those certain specialty prescription 340B Drugs designated by Pharmacy, in its reasonable discretion, from time to time. Pharmacy will provide a list of Specialty Drug NDCs to Covered Entity and its 340B Program Administrator upon request.
- w. "Tracking System" shall mean the system for identifying and monitoring the use of drugs through all phases of the Parties' involvement with such drugs, including the ordering of 340B Drugs, the receipt of 340B Drugs, Covered Entity's payment for 340B Drugs, internal transfers of 340B Drugs within the Pharmacy, Pharmacy's preparation and dispensing of 340B Drugs to Covered Entity Patient, and Pharmacy's billing of the Covered Entity Patient or third-party payor for the 340B Drugs on behalf of Covered Entity.
- x. "Wholesaler" shall mean Pharmacy's wholesaler, Cardinal Health, or other wholesaler approved by Pharmacy, from which Covered Entity will purchase 340B Drugs directly for the purposes of replenishment under of this Agreement.

2. Essential Covered Entity Compliance Elements.

- a. **Maintaining Title.** Covered Entity shall purchase the 340B Drugs from Wholesaler and shall assume all responsibility for establishing the price of the 340B Drugs subject to applicable Federal, State, and local laws. Under the virtual inventory replenishment model, the Covered Entity shall maintain title to 340B Drugs until they are delivered to and accepted by the Pharmacy. Once Pharmacy accepts delivery of the 340B Drugs used to replenish retail inventory dispensed by the Pharmacy, such drugs will transfer to the Pharmacy. Covered Entity shall ensure that the transaction history, transaction information and transaction statement required by the Drug Supply Chain Security Act (DSCSA) (Title II of the Drug Quality and Security Act) for such drugs is provided to Pharmacy at the time of transfer. Covered Entity warrants that for 340B Drugs shipped and delivered to the Pharmacy directly from the Covered Entity, have been stored and shipped per manufacturer requirements as well any cold chain requirements, and that the transfer process is compliant with applicable Federal, State and local laws and/or regulations. Covered Entity shall be responsible for all cost and fees related to 340B Drugs which do not comply with cold chain requirements or the DSCSA upon delivery to Pharmacy. Covered Entity shall maintain records of inventory transfer for not less than six (6) years after transfer transaction. Covered Entity will comply with all Federal, State, and local laws and regulations, including but not limited to any distribution requirements that may require Covered Entity to register as a distributor or obtain and maintain a wholesale distributor license.
- b. **Product Integrity.** When functioning in the role of drug distributor and/or wholesaler and/or wholesale distributor to Pharmacy, Covered Entity shall not transfer to Pharmacy drug product that has been recalled or otherwise withdrawn from the market by the drug manufacturer or has not been stored or transported per manufacturer requirements or has not been stored or transported in compliance with FDA regulations. In the case of the transfer of refrigerated or frozen product, Covered Entity shall ensure the appropriate cold chain has been maintained.
- c. **Licensure.** Covered Entity warrants that the transfer of drug product from Covered Entity to Pharmacy is in compliance with applicable Federal, State and local laws and/or regulations, that Covered Entity has obtained and maintained any required Federal or States license(s) and that such licenses(s) are in effect.
- d. **Ship To, Bill To, Agreement.** Covered Entity or Pharmacy on Covered Entity's behalf shall order 340B Drugs directly from the Wholesaler. Covered Entity shall arrange for the 340B Drugs to be shipped to Covered Entity and for Covered Entity to be billed directly for purchased 340B Drugs. If Covered Entity has more than one site, it may choose between having each site billed individually or designating a single Covered Entity billing address for all 340B Drug purchases. Covered Entity shall be responsible for all shipping, logistics, compliance and any other costs related to the delivery of 340B Drugs to the Covered Entity and then the shipment or delivery to the Pharmacy. When Covered Entity is functioning in the role of drug distributor and/or wholesaler and/or wholesale distributor to Pharmacy, Pharmacy reserves the right to discontinue alternative distribution with written 30 day notice to the Covered Entity.
- e. **Pharmacy Services.** Pharmacy shall perform the following services (collectively, the "Pharmacy Services"):

- 1) Dispense 340B Drugs to Covered Entity Patients in accordance with all applicable State and Federal statutes and regulations;
- 2) Conduct patient drug utilization review;
- 3) Maintain patient drug profiles in accordance with Pharmacy's usual business practices; and
- 4) Counsel and advise patients consistent with the rules, limitations, and privileges incident to the pharmacy-patient relationship.

Notwithstanding the foregoing, Pharmacy is an independent contractor and shall be solely responsible for its acts and omissions with respect to Pharmacy Services. Pharmacy agrees to render Pharmacy Services in accordance with professional standards applicable to Pharmacy Services and in accordance with rules and regulations of the applicable State Board of Pharmacy. Pharmacy shall have the right to refuse to serve any Covered Entity Patient where such service would violate any statute, regulation, professional judgment, or professional standard applicable to Pharmacy Services.

f. **Inventory Replenishment.** Covered Entity shall ship to Pharmacy all 340B Drugs which have been determined to be eligible, have reached a full package size, meet the Pharmacy's ordering criteria, and have been approved by the Pharmacy in writing, but have not yet been delivered to Pharmacy. 340B Drugs dispensed to Covered Entity Patients shall be replenished at the NDC-11 level. Such delivery cadence shall be determined by the Pharmacy. Schedule II controlled substances will not be dispensed under this Agreement in connection with Covered Entity's 340B Program unless otherwise agreed to in writing by Covered Entity and Pharmacy. Covered Entity and Pharmacy also agree that Schedule III through V controlled substances shall only be delivered directly to the Pharmacy by the Pharmacy's wholesaler.

1) Claims Expiration

- a. All qualified claims shall remain eligible for replenishment in perpetuity unless agreed upon by both parties to set a specific expiration period

2) Qualified Claims reversed on 340B Purchases received.

- a. For any 340B inventory replenished where claims backing has been reversed before Pharmacy is invoiced, Pharmacy will look for new claims backing to back the purchase in the next 180 days. If no qualified claims backing is received within 180 days, Pharmacy shall pay the CE at WAC based on Medispan unless otherwise agreed upon by both parties.

g. **Freedom of Choice.** The Parties agree that Covered Entity Patients may elect not to use Pharmacy for Pharmacy Services. In the event a Covered Entity Patient elects not to use the services of Pharmacy, Covered Entity patient may obtain the prescription from the prescriber and then obtain the drug(s) from a pharmacy provider of his or her choice.

h. **Tracking System.** As more fully described in Section 3(b) & 3(c), below, Pharmacy's 340B Pharmacy Administrator, will maintain a Tracking System to track Eligible Claims identified in the claim eligibility information provided by the Covered Entity and its 340B Program Administrator and validated by 340B Pharmacy Administrator. The Covered Entity, in connection with its 340B Program Administrator is responsible for ensuring that the Tracking System satisfies 340B Program requirements to prevent the diversion of 340B Drugs to individuals who are not Covered Entity Patients. The Tracking System allows Covered Entity

to make periodic comparisons of Covered Entity prescribing records with Pharmacy dispensing records to detect potential irregularities.

- i. **Patient Verification.** The Covered Entity is solely responsible for identifying and verifying Covered Entity Patient eligibility, as defined by HRSA guidelines, and for providing that same information to Pharmacy. The Covered Entity's system for identifying and verifying Covered Entity Patient eligibility shall be subject to modification in the event of change in such guidelines.
- j. **Prohibition Against Diversion.** Covered Entity and Pharmacy shall not resell or transfer 340B Drugs to any individual or any other entity who is not a Covered Entity Patient. Covered Entity and Pharmacy understand that either Party may be removed from the 340B Program if it intentionally participates in drug diversion.
- k. **Prohibition Against Duplicate Discounts.** Neither Party shall use 340B Drugs to dispense prescriptions paid for by 'fee for service' Medicaid, unless Covered Entity, Pharmacy, and the agency responsible for Medicaid have established an arrangement to prevent duplicate discounts and/or rebates. Any such arrangement shall be reported to HRSA by the Covered Entity. Fee-For-Service Medicaid patients are expressly excluded from the definition of Covered Entity Patient under this Agreement. To the extent, if any, that the Covered Entity wishes to exclude Managed Medicaid patients from this Agreement, the Covered Entity must provide 340B Program Administrator and 340B Pharmacy Administrator with all necessary information to identify the Managed Medicaid patients. Notwithstanding the foregoing, Pharmacy shall have no responsibility for identifying Fee-For-Service Medicaid or Managed Medicaid patients and/or prescriptions and shall be entitled to rely on the Covered Entity to identify such patients as part of its determination of whether a patient is a Covered Entity Patient.
- l. **Maintaining Compliance.** Covered Entity and Pharmacy will cooperate to provide all necessary information for the Covered Entity to meet its ongoing 340B Program compliance obligations. Upon written request of the Covered Entity, Pharmacy, with assistance of 340B Pharmacy Administrator, will make Captured Claims reports, inventory replenishment reports, invoices, and purchase orders, such other reasonably requested data to enable periodic independent audits performed by the Covered Entity.
- m. **Outside Audits.** Covered Entity and Pharmacy understand that each Party is subject to audits by outside parties (the Department and participating manufacturers) of records that directly pertain to the Covered Entity's compliance with the drug resale or transfer prohibition and the prohibition against duplicate discounts.
- n. **Access to Agreement.** Upon written request to the Covered Entity, a copy of this Agreement will be provided to OPA.

3. Other Pharmacy and/or Covered Entity Responsibilities.

- a. **Central Inventory Replenishment, Maintenance, and Ordering.** Pharmacy shall maintain systems and processes to track and report inventory dispensed to Covered Entity Patients on an aggregated basis across all participating Pharmacy sites, as listed in **Exhibit D**. The Pharmacy's processes will track all virtual 340B Drug inventory levels and manage the

ordering of applicable replenishment inventory. For all Captured Claims, the Covered Entity shall purchase and replenish applicable inventory due to Pharmacy in accordance with the reported Captured Claims and the replenishment orders provided to Covered Entity.

- b. **Eligibility and Claim Capture.** When presented with a valid prescription from a Covered Entity Patient, Pharmacy shall adjudicate the claim and dispense the drugs to such Covered Entity Patient per the terms of the prescription order. Without limiting the Covered Entity's responsibility for determining 340B eligibility, Covered Entity shall provide to Pharmacy or 340B Pharmacy Administrator, or ensure its 340B Program Administrator provides, accurate "Eligibility Data," as defined below, in order to: (i) corroborate Covered Entity's eligibility determinations as described below; (ii) facilitate ongoing daily inventory replenishment; and (iii) facilitate audits associated with the performance of this Agreement. Pharmacy's 340B Pharmacy Administrator shall maintain the Tracking System to accumulate Eligible Claims at participating locations for Covered Entity Patients. When appropriate, Pharmacy shall capture such Eligible Claims for the benefit of the Covered Entity once sufficient drugs quantities for Eligible Claims have accumulated to fill a full package size and have been ordered (each a "Captured Claim"). In no event, without Pharmacy's approval: (i) shall Pharmacy be required to accept a claim as an Eligible Claim for a Covered Entity after ninety (90) days following the corresponding 'Date of Service'; and (ii) no Captured Claim shall be reversed by Pharmacy as ineligible unless Covered Entity identifies such Captured Claim as ineligible within sixty (60) days from the date that Claim becomes a Captured Claim. In the event that, after the expiration of sixty (60) days from the date a prescription becomes a Captured Claim, Covered Entity determines that such Captured Claim should not have been considered as eligible, Covered Entity shall be responsible for working with HRSA and the applicable manufacturers to cure any issues arising from such ineligible Captured Claim. Pharmacy shall provide Covered Entity with relevant information and commercially reasonable support in connection with Covered Entity's efforts to resolve any such issue with HRSA and any applicable manufacturer.
- c. **Eligibility Data.** In accordance with the requirements of the 340B Pharmacy Administrator, Covered Entity or the 340B Program Administrator, if any, shall provide Pharmacy or its designee, or both with "Eligibility Data" in a manner and frequency acceptable to Pharmacy. All data elements shall be submitted to Pharmacy or its designee, or both via mutually agreed upon formats. Eligibility Data shall include, without limitation, Covered Entity Patient information (full name, address, date of birth, etc.), prescriber and provider information, and such other information and data reasonably requested by Pharmacy. The Parties agree to establish integration of information systems and other data sharing, compliant with HIPAA to support the integrity and flow of data necessary to fulfill all aspects of this Agreement. Each Party and its designees will devote appropriate resources necessary to ensure timely implementation, maintenance, and integrity of electronic transfer of information. The Covered Entity and its 340B Program Administrator, if any, will define eligibility determination methodology that complies with the 340B Program and terms of this Agreement, is acceptable to the Pharmacy, and technologically supportable through the Pharmacy's systems. The Covered Entity may, at its option, elect that its designated 340B Program Administrator conduct the primary eligibility determination, in which case: (i) Pharmacy will perform a secondary claim eligibility determination to corroborate such determination and may eliminate claims based on the eligibility information provided by the 340B Program Administrator and the minimum eligibility requirements of Pharmacy; (ii) Covered Entity will send only such Eligibility Data and prescriber data that relates to claims that the 340B Program Administrator has deemed eligible; and (iii) Pharmacy will not, in any event, qualify claims that were not first

identified as eligible by the 340B Program Administrator. If requested by Covered Entity or its 340B Program Administrator in writing, the Pharmacy will provide the 340B Program Administrator, for the benefit of the Covered Entity: (i) a detailed daily report identifying those verified claims that become Captured Claims and were accepted and captured by Pharmacy; and (ii) a detailed daily report identifying any claims that the 340B Program Administrator deemed eligible but which were rejected by Pharmacy with a reason code for said rejection (i.e. duplicate claim, reversals, etc.). Prior to excluding a claim that the 340B Program Administrator deemed eligible, Pharmacy's 340B Pharmacy Administrator will attempt to determine eligibility of claims identified by Covered Entity over a period of ninety (90) days to attempt to qualify them based on Eligibility Data received from the 340B Program Administrator or Covered Entity.

- d. **Invoices and Payments.** Under the 340B Program, Pharmacy will prepare and electronically deliver an invoice which identifies all monies owed by Pharmacy to Covered Entity ("Invoice"). For each Captured Claim related to Eligible Claims that have reached a full bottle or package size, ordered for replenishment, and received by Pharmacy, Pharmacy shall be entitled to a 340B Dispensing Fee for Pharmacy Services provided hereunder and Pharmacy shall reimburse the Covered Entity as specified in **Exhibit A**. The Pharmacy shall remit applicable payments due to the Covered Entity for Captured Claims for which Pharmacy has been paid as specified in **Exhibit A**. Such remittances shall be in the manner indicated by the Covered Entity as set forth on **Exhibit B**.
- e. **Maintenance of Pharmacy Services Records.** On behalf of Covered Entity, Pharmacy shall maintain all relevant records relating to the Pharmacy Services associated with 340B Drugs and Covered Entity Patients as well as the 340B Program, in accordance with applicable Federal, State, and local laws and regulations, including, but not limited to, HIPAA. Pharmacy shall maintain all auditable records for a period consistent with all applicable Federal and State laws.
- f. **Access to Business Records.** Pharmacy shall provide Covered Entity with access (subject to reasonable downtime for maintenance) to the 340B Program reporting and information portal to enable Covered Entity to receive and access, regular reports, detailed Captured Claim information, virtual inventory levels, and order information reasonably necessary for Covered Entity to confirm that Pharmacy is in compliance with applicable Federal, State, and local laws, regulations, and requirements.
- g. **Maintenance of Account Records.** Pharmacy's 340B Pharmacy Administrator shall maintain all reimbursement accounts and dispensing records (not including prescription images), and any other pertinent records relating to Pharmacy's responsibilities and duties under this Agreement separately from Pharmacy ordinary operations. Upon advanced written notice, Pharmacy's 340B Pharmacy Administrator shall make such records available to Covered Entity, HRSA, and manufacturers in the case of an audit.
- h. **Maintenance of DSCSA Records.** Covered Entity shall retain Drug Supply Chains Security Act ("DSCSA") compliance documentation (Transaction History, Information, and Statement) for 340B product purchased under this Agreement for the retention period required by the DSCSA and make the same available to Pharmacy as necessary to comply with applicable law.

- i. **Inspection of Records.** Upon advanced written request, Covered Entity and Pharmacy shall disclose or permit inspection of reasonably requested records or information relating to this Agreement, when necessary to comply with audits or investigations conducted by the Federal or State governments.
- j. **Drug Manufacturer Audits.** Upon advanced written request, Pharmacy shall provide reasonable access to a drug manufacturer that sells 340B Drugs to Covered Entity to relevant records and materials for purposes of any audits conducted by the drug manufacturer relating to 340B Drugs dispensed by Pharmacy pursuant to this Agreement, as required by and in accordance with manufacturer audit guidelines as set forth at 61 Fed. Reg. 65406-65413 (December 12, 1996).
- k. **Access to Program Information.** Upon advanced written request, Covered Entity shall provide authorization and reasonable access to the Pharmacy or the 340B Pharmacy Administrator, to relevant records and materials necessary for the services under this Agreement including without limitation, Wholesaler pricing, ordering, and inventory information (i.e., 810, 832 and 855 files) and other files and information reasonably necessary to enable Pharmacy to perform its services under this Agreement.

4. **Ongoing Responsibility of Covered Entity.**

- a. **Eligibility Data.** Covered Entity shall be solely responsible for its 340B Program compliance, including ensuring the accuracy of its Eligibility Data, and Pharmacy is entitled to rely on the accuracy and completeness of this information. Covered Entity shall indemnify Pharmacy and its affiliates, employees, officers, and directors, from any costs, losses, or damages arising from Covered Entity's failure to provide accurate and timely data. Covered Entity shall be responsible for maintaining its eligibility and all applicable registration requirements as a 340B Covered Entity and shall immediately notify Pharmacy of any change in status or the status of any registered contract pharmacy relationship with Pharmacy.
- b. **Compliance.** Covered Entity is responsible for ensuring that the process for dispensing of 340B Drugs complies with 340B Program requirements to prevent diversion of 340B Drugs and prevent duplicate discounts. In accordance with 340B Program guidance, Covered Entity may therefore undertake an annual, independent audit as well as quarterly self-audit reviews for the purpose of ensuring that the prohibitions against diversion and duplicate discounts are not breached.
- c. **Audit Right and Notice.** Upon ten (10) business days prior advance written notice to Pharmacy's central office location set forth in Section 28, and subject to all applicable State and Federal laws regarding the confidentiality of records, Covered Entity and its authorized representatives shall have the right during normal business hours at its sole cost and expense, for the term of this Agreement (or such longer period required by law), to review, audit, examine, and receive copies of any of the Pharmacy's Records related to the determination of compliance with HRSA 340B guidance on the avoidance of duplicate discounts and drug diversion. Notice shall include Covered Entity's HRSA identification number, prescription number, date of service, pharmacy store number(s) and physical address(es). Except as otherwise approved by Pharmacy this right shall be limited to one (1) year after the date of dispensing.

- d. **Audited Records.** For purposes of any such audit, the term “Pharmacy’s Records” shall consist of the following records: (i) transaction records related to 340B Captured Claims under this Agreement, (ii) records indicating the applicable copayments or deductible payments were made; and (iii) claims information for the purposes of determining the existence of drug diversion or duplicate discounts. Unless the audit reveals a material issue, Covered Entity audits shall be limited to no more than twenty (20) physical copies of prescriptions per audit per Pharmacy site.
 - e. **Remote Access to Pharmacy Records.** The Parties acknowledge that the primary Pharmacy Records are electronically stored by Pharmacy’s 340B Pharmacy Administrator and can be made available to the Covered Entity remotely. To the fullest extent practicable, audits shall be conducted remotely and, to the extent commercially reasonable, Pharmacy shall provide Covered Entity or its authorized representatives with electronic copies or electronic access to any reasonably required Pharmacy Records requested. To the extent that the parties reasonably determine that an onsite audit is required, Covered Entity shall conduct such audit during regular pharmacy business hours, in a manner and at a time to minimize disruption to such pharmacy’s business operations, and subject to the provisions of this Agreement. In no event shall Covered Entity conduct an onsite audit more than once per calendar year at a given pharmacy location.
 - f. **Audit Results.** A written result of all audits shall be forwarded to Pharmacy within thirty (30) days of said audit. Pharmacy shall have thirty (30) days from the date of receipt of notification of audit results to address any compliance concerns raised by the audit and submit additional documentation for Covered Entity’s consideration. Audit results may not be extrapolated; hence any determination must be specifically related to an actual claim.
 - g. **Auditor and Audit Method.** Covered Entity may maintain sole discretion over the selection of an independent, outside auditor to perform any audits referenced in this Section 4. Such auditor shall have experience auditing pharmacies for 340B Program compliance. Covered Entity shall determine, in consultation with the independent auditor, the methodology to be utilized in performing the audit.
 - h. **Remedial Action.** In the event Covered Entity determines that 340B Drug diversion or duplicate discounts have occurred or that it is otherwise unable to comply with its responsibility to ensure reasonable compliance, it must take immediate remedial action to ensure compliance and when necessary, notify OPA regarding such compliance problems and actions taken to remedy those problems.
5. **Term and Termination.** The Term of this Agreement shall be for five years commencing upon the Effective Date (“Term”), unless sooner terminated as set forth herein. The Covered Entity shall be responsible for ensuring compliance with the maximum term and shall provide no less than sixty (60) days written notice to the Pharmacy in the event the maximum term limitation would require or otherwise result in the termination of this Agreement.
- a. In the event either Party materially breaches the terms of this Agreement, the non-breaching Party may terminate this Agreement upon thirty (30) days’ prior written notice to the other, specifying the nature of such breach, should such breach remain uncured at the end of such thirty (30) day period.

- b. Either Party may terminate this Agreement at any time, with or without cause, by giving the other sixty (60) days' prior written notice.
- c. The Parties may terminate this Agreement at any time by mutual consent.
- d. Upon termination or expiration of this Agreement, the Parties shall remain responsible for obligations which accrued prior to the date of termination or during any transition period, including, but not limited to, Covered Entity's obligations to pay fees due Pharmacy for Pharmacy Services rendered under this Agreement and, if applicable, Pharmacy's obligation to remit required payments to Covered Entity.
- e. In the event of termination, the Parties agree to work in good faith to appropriately wind down the program and address any outstanding inventory and invoices. The Pharmacy, however, shall at no time be expected to destroy inventory it has been over-replenished.

6. Confidentiality.

- a. The Parties shall work in good faith to prevent the unauthorized use or disclosure of Confidential Information received by a Party (the "Receiving Party") from the other Party (the "Disclosing Party"). The term "Confidential Information" includes any information that a Party knows or reasonably should know is intended to be confidential or proprietary by the other Party, regardless of whether the information is marked as such and shall specifically include, but not be limited to all forms, reports, systems and technology, financial information and financial terms and pricing schedules, policies, programs, and operational procedures of a Party used or produced by either Party pursuant to this Agreement, as well as the terms of this Agreement. 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. The Receiving Party agrees to maintain and transfer all Confidential Information disclosed under this Agreement in a manner consistent with all applicable laws.
- b. Notwithstanding the foregoing, Confidential Information may be disclosed to either Party's employees or contractors or to a third party (an "Authorized Representative") but only to the extent reasonably necessary to carry out the purposes of this Agreement or the administration of the receiving Party's business and operations; provided such Authorized Representative is bound by obligations of non-disclosure and non-use regarding the Confidential Information that are at least as comprehensive as the obligations contained herein. Each Party shall be responsible for any breach of this Agreement by any Authorized Representative to which it discloses Confidential Information under this Agreement.
- c. Confidential Information shall not include 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. Confidential Information shall also not include Protected Health Information (“PHI”), as defined by HIPAA and its implementing regulations (“HIPAA”). Both Parties to this Agreement are “covered entities” as defined by HIPAA and each Party’s use and disclosure of PHI shall be governed by the same.

- d. Each 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.
- e. Upon termination of this Agreement, or upon the written request of the Disclosing Party, and to the extent permitted by applicable law, the Receiving Party shall return or destroy 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. Upon request, Receiving Party shall provide proof of destruction. 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 anything to the contrary, Covered Entity’s obligations under this agreement are expressly subject to the Oregon Public Records Law, Oregon Revised Statutes (“ORS”) Chapter 192 et. seq., and any other applicable state or federal law.

7. Indemnification.

- a. Pharmacy shall indemnify, defend, and hold Covered Entity harmless from any and all liability, loss, claim, lawsuit, cost, damage or expense whatsoever (including reasonable attorney’s fees) caused by the negligence, willful misconduct, or breach of any of obligation, representation or warranty under this Agreement by Pharmacy or any of its employees, agents, contractors, or subcontractors; except that Pharmacy shall have no duty to indemnify, defend, or hold Covered Entity harmless for any liability, loss, claim, lawsuit, cost, damage or expense whatsoever (including reasonable attorney’s fees) caused by inappropriate diversion of 340B Drugs by Covered Entity.
- b. To the extent permitted by Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS Chapter 30.260-30.300), Covered Entity shall indemnify, defend, and hold Pharmacy harmless from any and all liability, loss, claim, lawsuit, cost, damage or expense whatsoever (including reasonable attorney’s fees) caused by the negligence, willful misconduct, or breach of any of obligation, representation, or warranty under this Agreement by Covered Entity or any of its employees, agents, contractors, or subcontractors.
- c. A Party seeking indemnification pursuant to this Section (the “Indemnified Party”), shall notify the other Party (the “Indemnifying Party”) promptly upon becoming aware of any action to which such indemnification may apply. The Indemnifying Party shall have the right to assume and control the defense of the action at its own expense; provided that the Indemnifying Party may not make any settlement that requires any payment by the Indemnified Party or admission of wrongdoing from the Indemnified Party without the Indemnified Party’s prior written consent. If the right to assume and control the defense of any such action is exercised, the

Indemnified Party shall have the right to participate in such defense. If the Indemnifying Party does not reasonably assume the defense of the action, the Indemnified Party may defend the action and shall be indemnified for reasonable costs of such defense.

d. EXCEPT TO THE EXTENT THAT LIABILITY ARISES FROM A PARTY'S INDEMNITY OBLIGATIONS SPECIFIED HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT (WHETHER IN AN ACTION IN NEGLIGENCE, CONTRACT OR TORT OR BASED ON A WARRANTY OR OTHERWISE) FOR LOSS OF PROFITS, REVENUE, OR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES INCURRED BY THE OTHER PARTY OR ANY THIRD PARTY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. Insurance. With respect to the performance of their respective obligations under this Agreement, Covered Entity and Pharmacy shall each maintain, through policies of insurance or a program of self-insurance, general liability insurance with limits of not less than one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate per policy year. Upon request by a Party, the other Party shall provide evidence of such insurance.

9. Dispute Resolution. The Parties will work in good faith to resolve any and all issues and/or disputes between them (hereinafter referred to as a "Dispute") with respect to this Agreement. In the event a Dispute arises, the Party asserting the Dispute shall provide written notice to the other Party identifying the nature and scope of the Dispute to the other Party, sufficient for a reasonable person to be apprised thereof. If the Parties are unable to resolve the Dispute within thirty (30) days after such notice is provided, then either Party may, by notice to the other, have such dispute referred to an executive of each Party. Such executives shall attempt to resolve the dispute by good faith negotiation within thirty (30) calendar days after receipt of such notice. If the Parties are unable to resolve such dispute within thirty (30) days after the second notice, any Party wishing to pursue the dispute may seek relief from the appropriate court of law.

10. Compliance with Applicable Law. The Parties shall comply with all Federal and State laws, regulations, and rules governing the practice of such Party under this Agreement. The Parties shall not take any action that would violate State or Federal anti-kickback laws, including, without limitation, those provided for in Section 1128B of the Social Security Act (42 U.S.C. 1320a-7b). The Parties acknowledge that during the course of fulfilling their respective obligations under this Agreement each shall comply with the Health Insurance Portability and Accountability Act of 1996, the HITECH Act and their implementing regulations as may be amended from time to time ("HIPAA"), and applicable provisions of Title XIII of the American Recovery and Reinvestment Act of 2009 and its implementing regulations ("ARRA").

11. Entire Agreement. This Agreement, including all Exhibits, amends, supersedes, and replaces the Original Agreement(s) in its entirety and constitutes the entire understanding between the Parties as to their respective obligations with respect to the subject matter hereof and, unless otherwise specified herein, may not be amended except by a writing signed by both Parties.

12. Third Party Beneficiaries. The Parties specifically agree that no other persons or entities and no Covered Entity Patients shall be third party beneficiaries to this Agreement.

13. **Waiver.** Any failure by either Party to enforce or require the performance by the other 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.
14. **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.
15. **Assignment.** Neither this Agreement nor any of the obligations to be performed hereunder may be assigned, directly or indirectly, by either Party without the prior written consent of the other Party; provided, however, that the preceding restriction shall not apply to the assignment by Pharmacy to an affiliated company or any successor entity 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 succeeding entity.
16. **Force Majeure.** Neither Party shall be liable in any manner for any delay or failure to perform its obligations hereunder if such delay or failure is the result of circumstances 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 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.
17. **Change in Law or Market Conditions.** If any law, regulation, or market condition (e.g., an applicable industry standard reference on which pricing hereunder is based, changes the methodology for determining drug price in a way that materially changes the pricing or economics of the Agreement), either now existing or subsequently occurring, affects the ability of either Party hereto to carry out any obligation hereunder or changes the anticipated economics of the arrangement contemplated herein in a material manner (a "Material Change"), Pharmacy and Covered Entity shall renegotiate the affected terms of this Agreement, in good faith, to preserve, to the extent possible, the relative positions of the Parties that existed prior to such Material Change. Either Party may notify the other Party of a Material Change. If a successful renegotiation is not achieved within thirty (30) days after notification of a Material Change, any failure of the affected Party to meet its obligations hereunder due to the effect of such Material Change shall not be deemed to be a breach of this Agreement; however, if continuation of the Agreement without modification is in violation of any law or regulation, or makes it impracticable for the affected Party to meet its obligations hereunder, either Party may terminate this Agreement with sixty (60) days prior written notice.
18. **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.
19. **Independent Contractor.** This Agreement shall not be construed nor deemed to create an employer/employee, principal/agent, or any relationship between Covered Entity and Pharmacy other than that of independent entities contracting with each other solely for the purpose of carrying out the terms and conditions of this Agreement.

20. **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.
21. **Headings.** The headings of sections contained in this Agreement are for reference only and should not affect the meaning or interpretation of this Agreement.
22. **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.
23. **Severability.** If any provision of this Agreement is found to be unenforceable, illegal, or void, then the remainder of the Agreement shall remain in full force and effect.
24. **Trademarks and Advertising.** Notwithstanding the foregoing, neither Party shall use the other's name or any of its trademarks, service marks and/or symbols without such Party's written consent. Covered Entity may reference the name, address, and phone numbers of Pharmacy sites providing Pharmacy Services hereunder in informational brochures or other publications to inform payors or the general public that Pharmacy is a participating pharmacy.
25. **Federal Healthcare Programs.** Pharmacy and Covered Entity each represents and warrants that it and/or any of its employees, agents and subcontractors performing services related to this Agreements are not currently excluded from participation under Federal health care programs pursuant to 42 U.S.C. 1320a-7, are not currently the subject of any pending exclusion proceeding under that section, and have not been adjudicated or determined to have committed any action that would subject it to mandatory or permissive exclusion under that section for which such an exclusion has not been implemented.
26. **Federal Contractor Status.** The parties hereto understand and acknowledge that Pharmacy is not a Federal contractor or subcontractor and does not wish to become such. Covered Entity represents and warrants that it is not a Federal contractor or subcontractor and is not under the jurisdiction of the Office of Federal Contract Compliance Programs ("OFCCP"). Covered Entity further represents and warrants that this Agreement is not a Federal contract or subcontract and that there is no underlying or prime agreement that could bring this Agreement, the arrangement hereunder, or the Parties hereto within the jurisdiction of OFCCP. Subject to the limits of applicable law, including the Oregon Constitution and the Oregon Tort Claims Act, Covered Entity shall indemnify, defend and hold Pharmacy harmless from any and all liability, loss, claim, lawsuit, cost, damage or expense whatsoever (including reasonable attorney's fees) arising out of, incident to or in any manner occasioned by Covered Entity's breach of this representation and warranty. Pharmacy may terminate this Agreement immediately, if it reasonably determines in its sole discretion that this Agreement is, or is likely to be, a government contract or subcontract.
27. **Patient Privacy, Data Use and HIPAA Compliance.**
 - a. The Parties recognize that they are each healthcare providers within the meaning of HIPAA, HITECH Act and their implementing regulations (collectively "HIPAA"). The Parties acknowledge that as covered entities under HIPAA, each must comply with HIPAA and applicable state law concerning the confidentiality, privacy, and security of Protected Health

Information (“PHI”) as defined in 45 CFR 160.103. Covered Entity represents and warrants: (a) the 340B Program Administrator is a Business Associate of the Covered Entity; (b) the Covered Entity has entered into a Business Associate Agreement with the 340B Program Administrator requiring the 340B Program Administrator to comply with HIPAA concerning the confidentiality, privacy, and security of PHI; (c) the volume and scope of PHI sought from Pharmacy under this Agreement, whether by Covered Entity, its 340B Program Administrator or otherwise, is the minimum necessary for the purposes contemplated herein; and (d) the Covered Entity and the 340B Program Administrator shall only use or disclose any PHI received in connection with this Agreement for the purposes contemplated herein. Pharmacy represents and warrants the volume and scope of the PHI disclosed by Pharmacy to the 340B Program Administrator shall not exceed the volume and scope sought by the Covered Entity and/or 340B Program Administrator in connection with this Agreement. Failure of either Party to abide by these requirements shall be a basis for immediate termination of this Agreement.

- b. Pharmacy has authorized 340B Pharmacy Administrator to disclose to 340B Program Administrator certain electronic prescription claims transaction information (including PHI that 340B Pharmacy Administrator receives from, or creates, maintains or transmits on behalf of Pharmacy for the purposes of carrying out this Agreement. Except as otherwise provided in this Agreement, Covered Entity shall not, and Covered Entity shall not permit its 340B Program Administrator, to disclose any information containing PHI received from Pharmacy (or provided on behalf of Pharmacy), to any third party (“Data Recipient”) unless such disclosure is limited to Captured Claims and such disclosure is otherwise permitted by and carried out in accordance with applicable law. Covered Entity shall require any such Data Recipient to agree that the only Data Recipient employees, agents and contractors who will receive such information will be those who have (i) a need to know, and (ii) been instructed to safeguard the information from disclosure and treat such information as confidential.
- c. Any and all PHI disclosed by Pharmacy, or on behalf of Pharmacy, pursuant to this Agreement, including any copies made by a Data Recipient or its employees, agents, and contractors, shall be returned or securely destroyed upon the termination or expiration of this Agreement, or upon the request of Pharmacy, if commercially feasible. Covered Entity shall certify the return or destruction of any such information within thirty (30) days of such expiration, termination, or request of Pharmacy. If return or destruction is not commercially feasible, the protections of this Agreement will continue to apply to such information.

28. Notice. Any notice required or given under this Agreement shall be provided in writing by one of the following methods: hand delivery, placing in the U.S. Postal Service, first class postage prepaid, to the addresses and to the attention of the person specified below, email transmission, or as modified at any time by either Party by written notice hereunder. The effective date of the notice shall be three (3) days after mailing as set forth above or upon confirmation delivery in the event of hand delivery, facsimile, or email transmission.

Notice shall be sent to the following:

Covered Entity

COUNTY OF CLACKAMAS
2051 Kaen Road STE 367
Oregon City, OR 97045-4035

Attention: _____

Phone: _____

Email: _____

Pharmacy

The Kroger Co.

Attn. Kroger Health

1014 Vine Street

Cincinnati, Ohio 45202

Email: KH340BTeam@kroger.com

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as the latest date of execution, as set forth below.

AUTHORIZED SIGNATURE

COUNTY OF CLACKAMAS

The Kroger Co.

Name

Amber Kayse

Name

Title

SR Payor Relations Director

Title

Signature

Signature

Date

Date

Exhibit A
Covered Entity and Pharmacy Reimbursement
Profit Only Model

1. Pharmacy shall bill third-party payors, Pharmacy Benefit Mangers (PBM), plan or self-funded employer, and collect for Covered Entity Patient prescription, co-payments and payments for Captured Claims as specified by this Agreement. Pharmacy's total claim reimbursement amount (total paid + patient copay)
2. Connection Fee. Covered Entity will be charged a \$200 monthly connection fee per each wholesaler Bill To Ship To account for each pharmacy location contracted in the Agreement, excluding Central Fills and Distributions Centers ("Connection Fee"), to be charged on the first monthly invoice of each month and shall be due for each month beginning upon the OPA effective date for the applicable pharmacy location. The Connection Fees shall be offset against CE Reimbursement as defined below. Connection Fees shall be pro-rated for any partial month.
3. Payment Terms. Pharmacy will not be required to pay the CE Reimbursement applicable to any Eligible Claim until such Eligible Claim has been replenished by Covered Entity. Pharmacy shall remit all CE Reimbursement (subject to any offset for Connection Fees) for all Captured Claims (or the applicable portion thereof) resulting in replenishment of inventory during the applicable payment period, on a semi-monthly basis. All invoices are payable within thirty (30) days of the invoice date.
4. Program Model. Subject to the terms of this Agreement and the eligibility rules determined by the Parties, Pharmacy will capture Insured and Specialty Eligible Claims as per the following model: Profit Only Model. Profit Only Model shall mean the Covered Entity's Reimbursement minus Pharmacy Dispense fees shall be greater than the reported 340B cost of the drug.
5. Covered Entity Reimbursement.

a. **Insured Claims:**

For each Insured Captured Claim, Pharmacy shall reimburse Covered Entity an amount equal to the Total Reimbursement minus the Insured Claim Pharmacy Dispensing Fee as calculated below (the "Insured Claim CE Reimbursement"):

Dispensing Fee retained by Pharmacy:

Brand Drug Insured Claims: \$19.00 + 19% of total reimbursement (total paid + patient copay)

Generic Drug Insured Claims: \$10.00 + 15% of total reimbursement (total paid + patient copay)

b. **Drug Exclusions:**

Drugs offered for administration by a pharmacist or pharmacy intern, under applicable state law. Examples include, but are not limited to Flu, Pneumonia, Hepatitis, Tetanus, Zostavax, Meningococcal, Diphtheria, Pertussis (Td, Tdap) MMR, HPV

6. **Modification.** Pharmacy, from time to time, by no less than thirty (30) days prior written notice to the Covered Entity, shall have the right to modify the terms and this **Exhibit A** to ensure that the economic terms are commercially reasonable in light of actual program performance. At any time during the thirty (30) day period following notice of a change in the CE Reimbursement, the Covered Entity shall have the right to terminate the Agreement by written notice to Pharmacy.

7. **Program Commencement.** The actual commencement of the 340B Contract Pharmacy Services under this Agreement shall occur only upon mutual written agreement by both Parties. Either Party may, by written notice to the other, terminate this Agreement at any time prior to program commencement. The Parties agree and acknowledge that upon actual program commencement, the Pharmacy may process and capture 340B eligible claims for a period prior to the actual program commencement date as agreed to by both parties and shall occur only upon mutual written agreement by both Parties.

Exhibit B (Option 1)
Funds Transfer Authorization

Initial to elect remittance to 340B Administrator: _____

Covered Entity hereby authorizes Pharmacy, or an agent designated by Pharmacy (“Designated Agent”), to remit funds directly to Covered Entity’s 340B Program Administrator. Pharmacy/Designated Agent will remit funds only through ACH transfer to supported 340B Program Administrators at agreed upon payment schedules. Pharmacy/Designated Agent shall have the right to offset against the remitted funds any amount owed to Pharmacy by Covered Entity including, but not limited to fees, charges or other monetary obligations arising out of this Agreement. Covered Entity is responsible for notifying Pharmacy thirty (30) days in advance of changes to 340B Program Administrator and/or transfer requirements, including having funds remitted directly to Covered Entity’s bank account.

Covered Entity shall hold Pharmacy/Designated Agent harmless with respect to any funds transferred to the 340B Program Administrator under this Agreement and warrants that the signer of this Funds Transfer Authorization is an authorized representative of Covered Entity with authority to determine where funds are transferred.

340B Program Administrator Name: **Pharmaforce**

COUNTY OF CLACKAMAS
CH101310

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____

Exhibit B (Option 2)
Funds Transfer Authorization

Initial to elect remittance to directly to Covered Entity (do not complete Exhibit B (Option 2) unless otherwise directed):

Covered Entity hereby authorizes Pharmacy, or an agent designated by Pharmacy (“Designated Agent”), to remit and/or debit funds directly to/from Covered Entity’s bank account identified below. Pharmacy/Designated Agent will remit funds only through Automated Clearing House (ACH) transfer at agreed upon payment schedules. Pharmacy/Designated Agent shall have the right to offset against the remitted funds any amount owed to Pharmacy owed by Covered Entity including, but not limited to fees, charges or other monetary obligation arising out of this Agreement. Covered Entity is responsible for notifying Pharmacy thirty (30) days in advance of changes to 340B Program Administrator and/or transfer requirements. Covered Entity and Pharmacy agree to be bound by ACH association rules.

Covered Entity warrants the account is owned by Covered Entity and that the signer of this Funds Transfer Authorization is an authorized representative of Covered Entity with authority to determine where funds are transferred.

340B Program Administrator Name: **PharmaForce**

BANKING INFORMATION

Bank Name: _____
Bank Street: _____
Bank City: _____ Zip: _____
Bank Contact Name: _____
Bank Contact Phone: _____
Bank Contact Email: _____
Bank Routing #: _____
Bank Account #: _____
Tax ID #: _____

APPROVAL

COUNTY OF CLACKAMAS
CH101310

Authorized Signature: _____
Printed Name: _____
Title: _____
Date: _____
Phone: _____ Email: _____

Exhibit C
***Covered Entity Locations**

CH101310
COUNTY OF CLACKAMAS.
2051 Kaen Road STE 367
Oregon City, OR 97045-4035

* **Covered Entity Locations** means those individual Covered Entity locations related to Covered Entity, including all associated eligible child sites and/or grantees, that are listed on the HRSA.gov website pursuant to an executed enrollment or registration form which authorizes Covered Entity to contract with a licensed pharmacy to dispense 340B Drugs. Covered Entity locations shall only be eligible under this Agreement for so long as such locations are registered in the HRSA database and for which Covered Entity is the designated billing entity.

Exhibit D
List of Contracted Pharmacy Sites

Pharmacy Name	Division - Store	Central Fill Name	OPA Effective Date	DEA	NCPDP	Address
KROGER PHARMACY	060-00249	KROGER PORTLAND CENTRAL FILL	7/1/2018	BH6472310	3812674	3500 SE 26TH AVE, PORTLAND, OR 97202
FRED MEYER PHARMACY	701-00153		4/1/2013	BF2672156	3810478	16301 S E 82ND DRIVE, CLACKAMAS, OR 97015
FRED MEYER PHARMACY	701-00242		4/1/2013	AF1062455	3807952	1839 MOLALLA AVE, OREGON CITY, OR 97045
FRED MEYER PHARMACY	701-00663		10/1/2014	BF8680060	3815226	16625 362ND AVE, SANDY, OR 97055
FRED MEYER PHARMACY	701-00153		1/1/2014	BF2672156	3810478	8955 S.E. 82ND AVENUE, HAPPY VALLEY, OR 97086

Note:

- 1) Covered Entity or its agent will register or cause to be registered such unregistered contract pharmacies during the next available Office of Pharmacy (OPA) registration period.
- 2) The Parties may terminate contracted Pharmacy sites under this Agreement only by mutual written agreement.