

Plan Sponsor Agreement

THIS AGREEMENT is made and entered into, effective as of **January 1, 2025**, (“Effective Date”) by and between **SERVE YOU CUSTOM PRESCRIPTION MANAGEMENT, INC.**, a Wisconsin corporation, dba Serve You Rx (“Serve You Rx”), and **CITY OF LA CROSSE** (“Plan Sponsor”).

RECITALS

WHEREAS, Plan Sponsor desires to offer a prescription drug benefit plan through the services of Serve You Rx, providing for administration and other services described herein related to dispensing of Covered Services and other services to Eligible Members, and

WHEREAS, Eligible Members may obtain Covered Services principally through Pharmacies at negotiated Prescription Drug rates, and receive other administrative and Prescription Drug provider services related thereto through Serve You Rx, and

WHEREAS, Plan Sponsor desires hereby to engage Serve You Rx to perform services, including, among other things, pharmacy network contracting; Claim processing; mail and specialty drug pharmacy; formulary management; eligibility verification; cost containment, clinical safety, adherence and other like programs; pricing; and reporting (“PBM Services”), and

WHEREAS, Serve You Rx is qualified to perform the PBM Services referred to hereunder and is willing to do so upon and subject to the terms and conditions hereof:

NOW THEREFORE, in consideration of the mutual promises and agreement herein contained, Plan Sponsor and Serve You Rx hereby agree as follows:

ARTICLE 1

Definitions

For the purposes hereof, the following terms shall have the following meanings:

1.1 **340B Claim** shall mean a claim for an outpatient drug that a 340B covered entity purchases pursuant to Section 340B of the Public Health Service Act for an eligible patient. For purposes of this definition, defined terms in this definition will be as defined in Section 340B of the Public Health Service Act for eligible patient.

1.2 **Adherence Monitoring Program** shall mean a program in which Serve You Rx identifies potentially non-adherent patients via review of targeted therapy refill patterns of medications used to treat specific conditions such as, but not limited to, diabetes, high cholesterol or high blood pressure, followed by educational intervention with the patient and/or prescriber.

1.3 **Administrative Override** shall mean the process in which Serve You Rx administers the non-clinical rules and conditions established or adopted by Plan Sponsor to determine whether a drug may be approved for coverage, where such evaluation does not require professional consultation with a physician, physician office staff, nurse, clinical pharmacist, Serve You Rx's clinical review staff, or other persons authorized to prescribe prescription drugs or other health care professionals, such as, but not limited to vacation overrides, lost/stolen/broken overrides, emergency overrides, mandatory mail overrides, and maintenance overrides. This does not include reviews utilizing clinical review guidelines or protocols.

1.4 **Average Wholesale Price or AWP** shall mean the benchmark price published and reported to Serve You Rx by Medi-Span's National Drug Data File, or such other nationally recognized pricing source reasonably determined by Serve You Rx (“Pricing Source”), based on the 11-digit NDC of the prescription drug actually dispensed. Average Wholesale Price does not represent a true Average Wholesale Price,

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but rather is a fluctuating benchmark provided by third party sources. Serve You Rx shall update the AWP pricing at least weekly.

1.5 **Benefit Plan** shall mean the self-funded prescription drug benefit sponsored and/or administered by Plan Sponsor pursuant to which Covered Services are provided to Eligible Members.

1.6 **Benefit Plan Implementation Guide** shall mean the Serve You Rx document completed and approved by Plan Sponsor that details the specific parameters as adopted by Plan Sponsor regarding Covered Services and the implementation and management of Plan Sponsor specific Benefit Plans. Serve You Rx shall utilize the Benefit Plan Implementation Guide in providing the PBM Services under this Agreement.

1.7 **Benefit Plan Information** shall mean the processing parameters and administrative rules concerning the Benefit Plan as documented and adopted by Plan Sponsor in the Benefit Plan Implementation Guide, which Benefit Plan Implementation Guide is required by Serve You Rx to process Claims under this Agreement.

1.8 **Biosimilar** shall mean a type of biological product that is licensed by the Food and Drug Administration (FDA) upon FDA's determination that the product is highly similar to an already FDA-approved biological product, known as the reference product, and has been shown to have no clinically meaningful differences from the reference product. Biosimilar drugs are listed in the FDA's Purple Book.

1.9 **Brand Drug** shall mean a single-source or multi-source FDA approved Prescription Drug where the multi-source code field in the Pricing Source contains an "M," "N," or "O" designation or as reasonably determined by Serve You Rx.

1.10 **Charges** shall have the meanings set forth in Exhibit A.

1.11 **Claim(s)** shall mean claim(s) submitted for payment and processed through Serve You Rx's on-line claims processing system or otherwise sent to and processed by Serve You Rx in accordance with the terms of this Agreement.

1.12 **Clinical Review** shall mean any review performed by the Serve You Rx clinical staff. Clinical Reviews include clinical prior authorizations. Clinical Reviews may also include other hard-halt point of service edits such as standard prior authorization reviews, step therapy reviews, high dollar claim reviews, and other cases that necessitate clinical staff review. Serve You Rx will perform standard prior authorization, clinical prior authorization, and other Clinical Reviews pursuant to criteria adopted by Plan Sponsor as part of the Benefit Plan Implementation Guide. Any criteria for coverage that Plan Sponsor desires to be applied to the Benefit Plan's Claims that is different from Serve You Rx standard criteria must be supplied to Serve You Rx in advance prior to implementation. Additional charges may apply to customized administration. Serve You Rx makes no warranty or representation that Serve You Rx criteria for coverage is consistent with criteria applied by a secondary or subsequent payer.

1.13 **Compound Prescription Drug** shall mean a Prescription Drug that is prepared by a pharmacist who mixes or adjusts one (1) or more Prescription Drugs to customize a medication to meet an Eligible Member's individual medical needs.

1.14 **Copayment/Coinsurance** shall mean the amount, including any deductible, which is required to be collected by a Pharmacy from an Eligible Member at the time the prescription is dispensed pursuant to the Benefit Plan Information.

1.15 **Covered Immunization Services** shall mean those immunizations administered to Eligible Members at a Pharmacy where, subject to the limitations or restrictions imposed by federal and state laws, qualified health care professionals are available and authorized to provide such Covered Immunization Services, in accordance with the indications and contraindications listed in current guidelines from the Advisory Committee on Immunization Practices (ACIP) or the U.S. Centers for Disease Control & Prevention (CDC).

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1.16 **Covered Services** shall mean, with respect to any Benefit Plan and subject to the provisions of such Benefit Plan, a Prescription Drug, prescription device, prescription supply, and non-prescription supply that an Eligible Member is entitled to receive under a given Benefit Plan.

1.17 **Drug Utilization Review (DUR)** shall mean the standard Serve You Rx DUR edits, which are hereby adopted by Plan Sponsor, subject to Plan Sponsor's discretion to implement changes. Any changes that Plan Sponsor desires to be applied to the Benefit Plan Claims that are different from the standard Serve You Rx DUR edits must be defined in the Benefit Plan Implementation Guide.

1.18 **Eligibility File** shall mean the list submitted by Plan Sponsor or a third party to Serve You Rx in a reasonably acceptable electronic format indicating persons eligible for coverage under the Benefit Plan, which shall include the information required by Sections 2.2 and 2.3.

1.19 **Eligible Members** shall mean, with respect to any Benefit Plan, all of the individuals eligible for benefits under such Benefit Plan who are identified in the Eligibility File prepared and maintained by Plan Sponsor and delivered to Serve You Rx.

1.20 **Fees** shall mean all fees payable to Serve You Rx by Plan Sponsor as identified on Exhibit A, hereto.

1.21 **Formulary** shall mean the list of Prescription Drugs or the preferred drug list covered by the Plan Sponsor, including any utilization management programs as developed by the Formulary Management Company or Serve You Rx and approved and adopted by Plan Sponsor. The Formulary will be made available to physicians, pharmacies and other appropriate parties to guide the prescribing, dispensing, sale and coverage of Covered Services.

1.22 **Formulary Management Company** shall mean an independent vendor that is contracted with Serve You Rx to perform certain formulary management services, including, but not limited to, Pharmacy & Therapeutics (P & T) Committee services.

1.23 **Generic Drug** shall mean a single-source or multi-source FDA approved Prescription Drug where the multi-source code field in the Pricing Source contains a "Y" designation, or as reasonably determined by Serve You Rx.

1.24 **Group** shall mean those entities under ownership or control by, or contracted with, Plan Sponsor for which Plan Sponsor manages and/or administers a Pharmacy Benefit Plan for employees of such entities and a Group of Eligible Members entitled to benefits under a given Benefit Plan.

1.25 **House Generic** shall mean a Claim dispensed with a DAW Code of 5. House Generics shall be priced in accordance with the Generic Drug pricing.

1.26 **Identification Card** shall mean a printed Identification Card containing specific information about the Covered Services to which Eligible Members are entitled. All Identification Cards shall contain information necessary to process a Claim in a format acceptable to Serve You Rx.

1.27 **Individual** shall mean a natural person.

1.28 **Limited Distribution Drugs** shall mean Prescription Drugs which are distributed to either one (1) or a very limited number of pharmacies, distributors or wholesalers.

1.29 **Maximum Allowable Cost (MAC)** shall mean the maximum unit ingredient cost payable to the Pharmacy for a drug on the MAC List based on maximum reimbursement payment schedules established and updated by Serve You Rx.

1.30 **MAC List** shall mean a list of multi-source prescription drugs or supplies subject to MAC rates established and updated by Serve You Rx. The criteria and pricing formulas for drugs on the MAC List may change from time to time at Serve You Rx's sole discretion.

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1.31 **Paid Claim** shall mean a Claim that has been processed and approved for payment by Serve You Rx and shall not include reversed or denied Claims.

1.32 **Performance Guarantees** shall be set forth in Exhibit C.

1.33 **Pharmacy** shall mean, at any given time, any licensed pharmacy that is at that point in time a party to a currently effective Serve You Rx Provider Pharmacy Agreement. Except with respect to the Serve You Rx Mail Order Pharmacy, Pharmacies are independent contractors of Serve You Rx.

1.34 **Prescription Drug** shall mean insulin and those drugs and drug compounds (i) that are included in the United States Pharmacopoeia and that are required to be dispensed pursuant to a prescription and that, by law, are required to bear the legend: "Caution – Federal law prohibits dispensing without prescription," or (ii) that are otherwise accepted by Plan Sponsor as a Prescription Drug for purposes of this Agreement (e.g., over-the-counter drugs) as reflected on the Formulary.

1.35 **Processed Claim** shall mean any Claim resulting in a paid or rejected response.

1.36 **Rebate** shall mean the monetary amount that is paid to Serve You Rx by the Formulary Management Company pursuant to Serve You Rx's agreement with the Formulary Management Company, and which is related to amounts received by the Formulary Management Company pursuant to its written agreements with pharmaceutical manufacturers, and which amounts are attributable to Rebate Eligible Utilization of certain Covered Services.

1.37 **Rebate Eligible Utilization** shall mean and refer to prescription Claims of Eligible Members who are enrolled in Benefit Plans that adopt and comply with the Formulary and any required utilization management programs, such as step therapy, prior authorization, dose optimization and quantity limitation programs and all requirements set forth in Article 5 of this agreement.

1.38 **Specialty Drugs** shall mean those drugs on the Specialty Drug List. Specialty Drugs include at least one or more of the following: (a) biotechnology drugs; (b) orphan drugs used to treat rare diseases; (c) typically high-cost drugs; (d) drugs administered by oral or injectable routes, including infusions in any outpatient setting; (e) drugs requiring on-going frequent patient management or monitoring or focused, in-depth Eligible Member education; (f) drugs that require specialized coordination, handling and distribution services for appropriate medication administration; (g) infusion or health care injectable professionally administered by a healthcare professional or in a healthcare setting (but excluding supplies or the cost of administration); or (h) therapy requiring management and/or care coordination by a healthcare provider specializing in the Eligible Member's condition. Specialty Drugs shall not include any Prescription Drugs that: (v) require nuclear pharmacy sourcing; (w) are preventive immunizations; (x) are administered only in the inpatient setting; (y) are HIV medications; or (z) are PCSK9 inhibitors.

1.39 **Specialty Drug List** shall mean the standard list of Specialty Drugs and their reimbursement rates applicable to Plan Sponsor and maintained and updated by Serve You Rx from time to time.

1.40 **Subrogation Claim** shall mean subrogation claims submitted by any state or a person or entity acting on behalf of a state under Medicaid or similar United States or state governmental health care programs, for which Plan Sponsor is deemed to be the primary payor by operation of applicable federal or state law.

1.41 **Usual & Customary (U&C)** shall mean the price the Pharmacy would have charged a patient if that patient were a cash-paying member of the general public (including any applicable discounts, promotions, or other offers to attract customers).

ARTICLE 2

Responsibilities of Plan Sponsor

2.1. **Adoption of Formulary.** Plan Sponsor hereby adopts Serve You Rx's recommended drug list, as amended from time to time, as the Formulary for prescription drugs dispensed under the Benefit Plan.

2.2. **Group Information.** At least thirty (30) calendar days before the Effective Date, Plan Sponsor shall provide Serve You Rx with sufficient specifications regarding each of Plan Sponsor's Groups, if any, to enable Serve You Rx to perform its duties hereunder, including, without limitation, names of Groups, anticipated start date, number of Eligible Members and primary location of Eligible Members. Thereafter, Plan Sponsor may communicate changes to Serve You Rx, and any such changes shall be effective on the first day of the first calendar month that begins at least thirty (30) calendar days after the date on which Plan Sponsor communicates such changes to Serve You Rx, or earlier upon mutual agreement. This information must be complete and accurate and in a format and media approved by Serve You Rx. Serve You Rx is entitled to rely on the accuracy and completeness of this information.

2.3. **Eligible Member Information.** At least thirty (30) calendar days before the Effective Date, Plan Sponsor shall provide, or cause to be provided, to Serve You Rx the Eligibility File as well as sufficient other specifications regarding each Eligible Member under each Benefit Plan sponsored or offered by Plan Sponsor to enable Serve You Rx to perform its duties hereunder, including without limitation, the information set forth in Section 2.2 and Section 2.3. If received less than thirty (30) calendar days prior to the Effective Date of each Eligible Member, eligibility will be loaded in a mutually agreed upon time frame and may include an additional cost. Thereafter, Plan Sponsor may communicate changes to the Eligibility File to Serve You Rx in written or electronic form, and any such changes shall be effective on the date specified by Plan Sponsor, but not less than two (2) business days from the time such changes are communicated to Serve You Rx unless agreeable to Serve You Rx. This information must be complete and accurate and Serve You Rx is entitled to rely on the accuracy and completeness of this information.

2.3.1. Plan Sponsor will be responsible for all Covered Services during the period of the Eligible Member's eligibility as indicated on the Eligibility File, including for retroactively termed Eligible Members. If notification that a person is no longer an Eligible Member is not received by Serve You Rx at least two (2) business days prior to the dispensing of any prescription, Plan Sponsor shall be responsible for any Covered Services dispensed to such person until the end of the second business day following Serve You Rx's receipt of such notification.

2.3.2. Plan Sponsor shall communicate the Eligibility File and all other Eligible Member information to Serve You Rx via electronic media, via Serve You Rx's remote access system, or via another mutually agreed manner. If Plan Sponsor communicates any Eligible Member information to Serve You Rx in a manner not acceptable to Serve You Rx, Serve You Rx may impose a reasonable charge as indicated on Exhibit A for the input of such information into Serve You Rx's claim processing system.

2.4. **Benefit Plan Information.**

2.4.1. At least thirty (30) calendar days before the Effective Date, Plan Sponsor shall complete and submit the Benefit Plan Implementation Guide to Serve You Rx with the specifications regarding each Benefit Plan sponsored or offered by Plan Sponsor for each Group, if any, that are necessary to enable Serve You Rx to perform its duties hereunder, including without limitation, Covered Services and Group Information, Eligible Member Copayment/Coinsurance amounts, Administrative Override and Clinical Review requirements and the additional information set forth in the Benefit Plan Implementation Guide. The Plan Sponsor must sign off on the Benefit Plan Implementation Guide before implementation of the benefit design. Thereafter, Plan Sponsor may communicate changes to Serve You Rx, and any such changes, subject to Section 2.4.2 below,

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shall be effective on the first day of the calendar month that begins at least thirty (30) calendar days after the date on which Plan Sponsor communicates such changes to Serve You Rx, or earlier upon mutual agreement. In the event any such changes would require customized services, the Parties shall mutually agree to a time frame for such implementation. All such changes are required to be in a written Benefit Change Form amending the Benefit Plan Implementation Guide, and signed by Plan Sponsor's Authorized Representative as defined in the Benefit Plan Implementation Guide. Serve You Rx will not be responsible or otherwise liable to Plan Sponsor or Eligible Members for costs or other damages in any way resulting from Plan Sponsor's failure to communicate Benefit Plan changes to Serve You Rx as provided for in this Article.

2.4.2. If: (i) there is a material change in the conditions or assumptions stated in this Agreement, or in the size, demographics, or gender distribution of Plan Sponsor's membership compared to data provided by Plan Sponsor; or (ii) Plan Sponsor changes its Benefit Plan design, breadth or other characteristics of the provider network, implements over-the-counter plans, clinical or trend programs or otherwise takes an action that has the effect of lowering the amount of Rebates earned hereunder or impacting any guarantee, then Serve You Rx will have the right, upon notice, to make an equitable adjustment to the Charges, Fees, and/or Rebates, as necessary to return Serve You Rx to its contracted economic position as of the effective date of such event.

2.5. **Communication with Eligible Members.** Serve You Rx will provide to Plan Sponsor communication materials for Eligible Members to access the Benefit Plan. Plan Sponsor shall be responsible for distributing all communication materials to Eligible Members. At the request of Plan Sponsor, Serve You Rx will mail such materials to Eligible Members. Plan Sponsor will be responsible for payment of all postage charges incurred as a result of such mailing to Eligible Members. Serve You Rx may choose to mail other communication materials related to the Benefit Plan to Eligible Members at its own expense. In any case, Plan Sponsor shall ensure that all Eligible Members under a Benefit Plan managed by Plan Sponsor are furnished an Identification Card satisfactory to Serve You Rx for presentation to Pharmacies. Plan Sponsor represents and warrants that it shall obtain and will maintain any and all authorizations or consents as may be required by law from Eligible Members for Plan Sponsor or Serve You Rx to communicate with Eligible Members. Subject to applicable law, Serve You Rx may communicate with Eligible Members and physicians as necessary or appropriate to perform PBM Services, including, without limitation, regarding benefit design, cost savings, availability and use of the Serve You Rx Mail Order Pharmacy.

2.6. **Control of Plan.** Plan Sponsor will not name or represent that Serve You Rx is, and Serve You Rx will not be, a Plan Administrator or a named fiduciary of Plan Sponsor's Prescription Drug Benefit Plan ("Plan") as those terms are used in the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§1001 et seq., and the regulations promulgated under ERISA. Plan Sponsor acknowledges and agrees that neither Serve You Rx nor any of Serve You Rx's subsidiaries or affiliates: (a) have discretionary authority or control with respect to management of the Benefit Plan, or (b) exercise any authority or control with respect to management or disposition of the assets of the Benefit Plan or Plan Sponsor. Plan Sponsor further acknowledges that all such discretionary authority and control with respect to management of the Benefit Plan and plan assets is retained by Plan Sponsor or the Plan. Plan Sponsor will have complete discretionary, binding and final authority to construe the terms of the Plan, to interpret ambiguous Plan language, to make factual determinations regarding the payment of Claims or provisions of benefits, to review denied Claims upon request and to resolve complaints by Eligible Members. Serve You Rx will have no obligation or authority to make any determinations as to interpretation of the terms of the Plan or determination of benefits or coverage under the Plan. Plan Sponsor is solely responsible for any liability arising in connection with the Plan Sponsor's Benefit Plan. Serve You Rx makes no representation or warranty that the Benefit Plan is in compliance with any law that applies to Plan Sponsor, and Serve You Rx has no responsibility to advise Plan Sponsor about Plan Sponsor's compliance with any applicable law. Upon reasonable notice, Serve You Rx will have the right to

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terminate PBM Services to any Benefit Plan (or, if applicable, to Eligible Members) located in a state requiring a pharmacy benefit manager to be a fiduciary to Plan Sponsor, the Benefit Plan, or an Eligible Member in any capacity.

2.7. **Acceptance Agreement.** Plan Sponsor will review all reports, statements, and invoices provided by Serve You Rx to Plan Sponsor or its designee(s), and shall notify Serve You Rx in writing of any errors or objections within thirty (30) calendar days of receipt by Plan Sponsor or its designee(s) of such report, statement or invoice. Unless Plan Sponsor notifies Serve You Rx in writing of any errors or objections within the thirty (30) calendar day period, all the information contained in the report, statement or invoice, will be deemed accurate, complete and acceptable to Plan Sponsor and thereafter Serve You Rx shall have no liability related thereto.

2.8. **Pharmacy Agreements.** Plan Sponsor agrees that during the term of this Agreement, it (including any affiliates or agents) will not contract, directly or indirectly, with any pharmacy related to dispensing of prescription drugs to Eligible Members under this Agreement, unless mutually agreed upon by Serve You Rx in writing.

2.9. **Business Associate Agreement.** Plan Sponsor will, concurrent with the delivery and execution of this Agreement, deliver an executed copy of the Business Associate Agreement as set forth in Exhibit B to this Agreement. Notwithstanding the foregoing, the parties acknowledge that in providing services to Eligible Members, the Serve You Rx Mail Order Pharmacy is acting as a separate health care provider covered entity under HIPAA and not as a business associate to the Benefit Plan covered by the Business Associate Agreement. In providing services, the Serve You Rx Mail Order Pharmacy will abide by all HIPAA requirements applicable to covered entities and shall safeguard, use and disclose Eligible Member Protected Health Information ("PHI") accordingly.

2.10. **Specialty Member Assistance Programs.** If Plan Sponsor utilizes a vendor to help Eligible Members find alternative funding for their Specialty Drugs, including but not limited to drug manufacturer sponsored patient assistance programs, copayment coupons, and other alternative funding sources, Plan Sponsor will notify Serve You Rx of Plan Sponsor's participation, name of vendor, beginning effective date, and the description of the program. Serve You Rx will evaluate the Rebate eligibility of the program, and if the Specialty Claims from such program are deemed ineligible for Rebates and not covered under this Agreement, Serve You Rx will exclude such claims from Rebate payments.

ARTICLE 3

Responsibilities of Serve You Rx

3.1. **Pharmacy Network.** Serve You Rx will provide to Plan Sponsor access to its contracted Pharmacy network to dispense Covered Services consistent with the terms of this Agreement, the Benefit Plan, and applicable law. Serve You Rx will also provide to Plan Sponsor access to a Pharmacy network that will provide Covered Immunization Services. Serve You Rx will maintain a look up function of network Pharmacies in the member portal where Eligible Members may locate a Pharmacy. During the term hereof, Serve You Rx shall make commercially reasonable efforts to not materially reduce the number of Pharmacies in Plan Sponsor's service area.

3.2. **Mail Service.** Serve You Rx Pharmacy ("Serve You Rx Mail Order Pharmacy") is deemed to be a Pharmacy and may dispense Covered Services for Eligible Members and may mail such Covered Services to such Eligible Members subject to the following terms and conditions:

3.2.1. **Distribution of Information.** Serve You Rx shall provide Plan Sponsor with copies of informational materials explaining the mail service and the forms necessary for Eligible Members to utilize the Serve You Rx Mail Order Pharmacy. Plan Sponsor shall distribute the Serve You Rx Mail Order Pharmacy informational materials and forms to all Eligible Members.

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3.2.2. **Delivery and Dispensing.** Serve You Rx Mail Order Pharmacy may dispense new or refill Covered Services orders upon receipt from an Eligible Member of (i) a valid prescription order or a completed refill order form or other acceptable method, and (ii) the applicable Copayment/Coinsurance, if any. Serve You Rx Mail Order Pharmacy shall cause the filled prescriptions to be mailed to each Eligible Member via common carrier at the address set forth in the Eligible Member Information, or on the order form or as provided by an Eligible Member. Serve You Rx Mail Order Pharmacy shall be responsible for shipping and mailing costs, except that additional costs incurred as a result of requests from an Eligible Member for special shipping and handling costs or express delivery shall be the sole responsibility of said Eligible Member. Serve You Rx may suspend Serve You Rx Mail Order Pharmacy services to an Eligible Member who is in default of any Copayment/Coinsurance amount due to Serve You Rx.

3.2.3. **Serve You Rx Mail Order Pharmacy.** Serve You Rx Mail Order Pharmacy shall operate in compliance with applicable state and federal pharmaceutical laws and regulations and shall dispense only those Prescription Drugs that, in its sole discretion, fulfill the requirements of a valid prescription and comply with applicable law. Serve You Rx Mail Order Pharmacy may refuse to fill any prescription it believes in good faith would potentially jeopardize its license or would otherwise result in liability for Serve You Rx Mail Order Pharmacy.

3.3. **Claims Processing.** Serve You Rx, or its subcontractor, shall process on a real-time basis all Claims made by Pharmacies hereunder. In processing each Claim, Serve You Rx, or its subcontractor, shall:

3.3.1. Confirm that the Benefit Plan under which an Individual purports to be covered lists the Individual as an Eligible Member in the Eligibility File; and

3.3.2. Confirm that the Benefit Plan under which the Individual in question purports to be covered provides coverage for the prescription or supply being dispensed as a Covered Services per the Benefit Plan Implementation Guide.

3.4. **Claims History.** Serve You Rx shall maintain a record of each Claim processed by Serve You Rx hereunder for a period of seven (7) years from the date the Claim is made. Each such record shall be accessible on-line to the Benefit Plan to which the Claims processing relates for a period of twelve (12) months from the date the Claim is made. If so requested by Plan Sponsor, and upon payment of Serve You Rx's then current fee thereof, Serve You Rx shall, within ninety (90) calendar days after the termination of this Agreement, furnish the terminating Benefit Plan with a history of all Claims processed by Serve You Rx hereunder with respect to that Benefit Plan for a period of up to seven (7) years prior to the termination of this Agreement, with such history to be in Serve You Rx's standard format. Serve You Rx shall not otherwise be required to maintain a record of Claims processed hereunder after the termination of this Agreement.

3.5. **Standard Management Reports.** Serve You Rx shall provide Plan Sponsor with access to Standard Management Reports, as defined by Serve You Rx.

3.6. **Customer Service Call Center.** During the term of this Agreement, if agreed upon by the parties, Serve You Rx will provide a toll-free Customer Service Call Center available to Plan Sponsor and to Eligible Members under Benefit Plans sponsored or offered by Plan Sponsor, and to Pharmacies providing Pharmacy benefit services to Eligible Members.

3.7. **Subrogation Claims.** If authorized by Plan Sponsor on the Benefit Plan Implementation Guide, or if required by law, Serve You Rx will process Subrogation Claims in accordance with applicable federal and state laws, in which case Plan Sponsor will pay such Subrogation Claims in accordance with the payment terms of this Agreement. If Plan Sponsor does not authorize Serve You Rx to process Subrogation Claims, Serve You Rx will, if permitted by law, reject the claim and refer claimants to Plan Sponsor regarding such claims in accordance with applicable federal and state laws. Serve You Rx is

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not legally responsible to pay Subrogation Claims to the extent Plan Sponsor is not timely paying Serve You Rx with respect to such Subrogation Claims. Plan Sponsor may not retroactively demand the return of any such payments made to Serve You Rx.

3.8. **Other Services.** Serve You Rx may engage in utilization review, quality assurance, and audit procedures with respect to the Pharmacies. During the term hereof, Serve You Rx shall provide to Plan Sponsor such additional services as Serve You Rx may generally provide and Plan Sponsor may request, such as those included in Exhibit A, hereto. In accordance with applicable law, Serve You Rx shall provide a Claims data file to Plan Sponsor or to a designated third party upon request. Charges may apply for additional data file requests. Serve You Rx's current fee schedule for the portfolio of services it generally provides as of the date hereof is attached as Exhibit A, hereto.

3.9. **Changes to Services.** Serve You Rx may, in its sole discretion and without notice to Plan Sponsor, make changes to its programs or services, so long as such changes do not materially alter any of the provisions of this Agreement. Additionally, Serve You Rx may, from time to time, add new programs or services, or make material modifications to existing programs or services, provided Serve You Rx shall give Plan Sponsor written notice of such new programs or services or material modifications at least sixty (60) calendar days prior to their implementation. Such written notice shall provide Plan Sponsor the opportunity to decline to participate or "opt out" of the new or modified program or service. If Plan Sponsor does not decline or opt out of the new or modified program or service pursuant to the instructions in the written notice, Plan Sponsor shall be deemed to have accepted the new or modified program or service and the Agreement will be deemed so modified without further writing or signature.

ARTICLE 4

Payment Due Serve You Rx

4.1. **Charges.** As consideration for the services described herein, Plan Sponsor shall pay Serve You Rx an amount equal to: (i) the Charges as defined herein for such Covered Services minus; (ii) the Copayment/Coinsurance amount, if any, applicable thereto under a given Benefit Plan. Charges will be invoiced twice per month. The first invoice will include all Charges from the 1st through the 15th of the month. The second invoice will include all Charges from the 16th through the last day of the month.

4.1.1. **Administrative Fees.** In addition to the foregoing, the Plan Sponsor shall pay Serve You Rx administrative fees as set forth on Exhibit A, hereto, for each Claim submitted to Serve You Rx by Pharmacies for payment for Eligible Members hereunder.

4.2. **Payment to Serve You Rx.** The Plan Sponsor shall pay Serve You Rx all Charges and Fees due Serve You Rx under this Agreement within five (5) calendar days of invoice date (Net 5 calendar days). All invoices will be paid by wire transfer, electronic ACH debit or ACH credit. Any amount not paid within five (5) calendar days from date of invoice shall bear interest at the rate of one and one-half percent (1.5%) per month or, if lower, the highest interest rate permitted by law from the date due until paid. Plan Sponsor will reimburse Serve You Rx for all costs of collection, including, without limitation, reasonable attorneys' fees, incurred by Serve You Rx in connection therewith. Serve You Rx reserves the right to withhold payment of Rebates, if any, until such time as Plan Sponsor is no longer in arrears. Plan Sponsor may permit a third party to make payment of Charges and Fees due Serve You Rx by Plan Sponsor under this Agreement on its behalf. However, Plan Sponsor retains responsibility and remains liable for payment due under this Agreement until all such funds are received by Serve You Rx. In the event Plan Sponsor objects to any cost in an invoice, Plan Sponsor is still obligated to remit payment of the full payment amount to Serve You Rx within the agreed upon payment terms. Within thirty (30) calendar days of Plan Sponsor's receipt of the invoice, Plan Sponsor shall identify and fully explain the basis for such objections in writing to Serve You Rx. Plan Sponsor and Serve You Rx will then work together to determine the validity of the amounts to which Plan Sponsor has objected. Any overpayments or underpayments will be reconciled through a charge or credit in a subsequent invoice.

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Serve You Rx will be responsible for payment to the Pharmacies for Covered Services solely to the extent it has received funds provided by Plan Sponsor for payment of such services. Serve You Rx shall not be required to render payments to Pharmacies or Eligible Members unless and until Serve You Rx has received payment for the Covered Services from Plan Sponsor. Therefore, Plan Sponsor recognizes that it is essential to make timely payments to Serve You Rx, and that payment that is not timely may adversely affect availability of pharmacy services. Notwithstanding the foregoing, in the event that Serve You Rx elects to pay Pharmacies and Eligible Persons for Covered Services prior to its receipt of payment from Plan Sponsor, such election shall not constitute a waiver of Serve You Rx's right to suspend performance or of Plan Sponsor's obligation to render payment to Serve You Rx either as to that payment or as to any other payment, nor shall such election serve to establish a course of dealing or a course of performance between Serve You Rx and Plan Sponsor. The amount that Plan Sponsor pays to Serve You Rx under this Section is not an asset of any Benefit Plan.

4.3. **Sales and Use Taxes.** If any taxes, assessments, surcharges, and/or similar fees ("Tax(es)") are imposed upon Serve You Rx or a Pharmacy by any governmental authority based upon Serve You Rx or Pharmacy's provision of Covered Services to Eligible Members hereunder, Plan Sponsor shall be responsible for payment of such Tax(es). Pharmacy will transmit the applicable Tax amount imposed upon Pharmacy through electronic media or via Serve You Rx remote access system. Plan Sponsor shall be responsible for determination and payment of any Tax that may apply in any state in which Plan Sponsor does business or in which Plan Sponsor offers Benefit Plans or Covered Services to Eligible Members. In the event any Tax is imposed on Serve You Rx or any one or more of its subsidiaries or affiliates arising from or relating to Serve You Rx's or its subsidiaries' or affiliates' performance of services as a pharmacy benefit manager, third party administrator, or otherwise in any jurisdiction, Serve You Rx will notify Plan Sponsor of the applicable Tax amount and Plan Sponsor shall reimburse Serve You Rx such amount. In no event shall Serve You Rx be liable for any such Taxes or the calculation thereof. Serve You Rx reserves the right to charge a reasonable administrative fee for collection and remittance services provided with respect to Plan Sponsor.

4.4. **Deposit.** If, at any time: (i) Plan Sponsor has two or more invoices past due or outstanding, or (ii) Serve You Rx has reasonable grounds to believe Plan Sponsor may be delinquent in payment based on Plan Sponsor's financial data (e.g. bankruptcy or insolvency), Serve You Rx may require that the Plan Sponsor provide to Serve You Rx a deposit in an amount equal to twice the average invoice amount over the previous six (6) months, or if there are less than six (6) months of billing history, the deposit amount shall be twice the average invoice amount over the actual billing history. Serve You Rx will retain any deposit provided hereunder until the termination of this Agreement at which time such deposit shall be returned to Plan Sponsor, without interest, less any offsets for payment defaults and collection costs pursuant to Section 4.5 below.

4.5. **Offsets.** In the event of any payment default that is not cured by Plan Sponsor, Plan Sponsor authorizes Serve You Rx to offset the amount of such payment default and collection costs against Plan Sponsor's deposit, if any. Where applicable, Plan Sponsor hereby authorizes Serve You Rx to offset the amount of payment defaults and reasonable collection costs against amounts payable to Plan Sponsor (including, without limitation, any Rebates). Serve You Rx shall notify Plan Sponsor in writing of any offset. The notification of offset shall detail the amounts being offset and Serve You Rx's reason for activating its right to offset.

4.6. **Suspension of Covered Services.** Failure by Plan Sponsor to make any payments described in Article 4 will constitute a payment default. If five (5) calendar days have elapsed from the time any amount described in Article 4 was due Serve You Rx, and payment in full (including any accrued interest) has not been received by wire transfer, electronic ACH debit or ACH credit, Serve You Rx may, at its discretion, suspend services to Plan Sponsor. At any time thereafter, Serve You Rx may terminate this Agreement as provided in Article 6.

ARTICLE 5

Rebate Management Program

5.1. **Rebate and Formulary Services.** Serve You Rx will provide Rebate and Formulary services through a national Formulary Management Company contracted by Serve You Rx to collect Rebates from pharmaceutical manufacturers for claims submitted by Serve You Rx and provide other formulary management services (“Formulary Management Contract”). Plan Sponsor gives Serve You Rx authority to: (i) appoint the Formulary Management Company as the exclusive agent for negotiating and arranging for Rebates on the purchase of prescription drugs and related services from pharmaceutical manufacturers under this Agreement; and (ii) authorize the Formulary Management Company to contract with pharmaceutical companies for Rebates as a group purchasing organization for Serve You Rx’s clients, including Plan Sponsor.

5.2. **Rebates.** Claims for certain prescription drugs on the Formulary are eligible for a Rebate pursuant to applicable agreements between Serve You Rx’s Formulary Management Company and pharmaceutical manufacturers. Under such agreements, Rebates are paid based on the utilization of eligible prescription drugs by Eligible Members of the Plan Sponsor. Rebate and Rebate guarantees exclude ineligible Claims, including but not limited to Claims with invalid service provider identification or prescription numbers; Claims where, after meeting the deductible, the Eligible Member’s cost-sharing amount under the applicable benefit plan requires the Eligible Member to pay more than fifty percent (50%) of the Claim when evaluated in aggregate at the therapeutic class level; Claims with House Generics; direct member submitted Claims; Claims for over the counter products or for products that do not require a prescription (except for insulins or diabetic test strips), including Claims for cosmetic drugs, appliances, bandages, cotton balls, heat lamps, braces, splints, health and beauty aids, toothpastes, antiseptics, disinfectants, cosmetics, dietary management, and dietary supplements; devices without a Prescription Drug component; Claims for non-FDA approved products regardless of indication; Claims for re-packaged NDCs; stale dated Claims over one hundred eighty (180) days old; Claims with Compound Prescription Drugs; 340B Claims which typically receive a discount or rebate directly from drug manufacturers under section 340B of the Public Health Service Act; Claims from entities eligible for federal supply schedule prices (e.g., Department of Veterans Affairs, U.S. Public Health Service, Department of Defense, Indian Health Services); vaccines; Claims for Limited Distribution Drugs; institutional Claims specifically excluded by drug manufacturers that may contain unit and/or low dose NDCs; commercial Claims (including, without limitation, Managed Medicaid claims) that are both: (1) dispensed by long term care pharmacies as defined by the primary dispenser type (code 4) and (2) excluded by drug manufacturers; Claims where the Plan is not the primary payer; Claims with zero days’ supply; Claims with zero drug quantity dispensed; Claims with an invalid quantity; Claims with inactive NDCs; Claims with obsolete NDCs; Claims with an invalid submit date; Claims for products not covered by the Client’s benefit design or formulary, such as, an exclusionary formulary; duplicate Claims; Medicaid Managed Care Claims in states where the state law prohibits collecting supplemental Rebates; or for utilization pursuant to a consumer card or discount card program where the plan had no cost liability on the Claim; medical Claims; Medicaid subrogation Claims; Claims Manufacturers deem to be ineligible post billing; or; Claims otherwise not eligible for Rebates under the Rebate Agreement with the applicable drug manufacturer. Serve You Rx retains the ability to recoup any payments made for Claims excluded from Rebate eligibility.

5.3. The clinical information contained in the Formulary is intended as a supplement to, and not a substitute for, the knowledge, expertise, skill and judgment of physicians, pharmacists, or other health care professionals in the Eligible Member’s care. The absence of a warning for a given drug or drug combination shall not be construed to indicate that the drug or drug combination is safe, appropriate, or effective for any Eligible Member.

5.4. Serve You Rx’s payment of Rebates as set forth in this Section 5.4 and Exhibit A will constitute payment in full of Serve You Rx’s obligation to Plan Sponsor for Rebates. Serve You Rx will pay

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guaranteed Rebates as outlined in Exhibit A one time quarterly, no later than one hundred thirty (130) calendar days after the end of each calendar quarter in which the Plan Sponsor has participated in the program. Quarterly payments will be based on the minimum guarantees outlined in Section 3 of Exhibit A. Rebates do not include any discount, price concession or other direct or indirect remuneration Serve You Rx receives for direct purchase of a Prescription Drug for Serve You Rx Mail Order Pharmacy, or any amounts the Formulary Management Company pays Serve You Rx for providing any products or services, including fees for managing and administering Serve You Rx's Rebate program. An annual Rebates reconciliation shall be calculated one hundred eighty (180) calendar days after the end of each contract year ("Reconciliation Period"). For each such Reconciliation Period, Serve You Rx shall determine the actual Rebates received by Serve You Rx from the Formulary Management Company that are attributable to Plan Sponsor's Claims processed during such Reconciliation Period. In the event that the actual Rebates received during such Reconciliation Period are greater than the minimum guaranteed Rebates paid by Serve You Rx to Plan Sponsor for such Reconciliation Period, then Serve You Rx shall pay Plan Sponsor the amount of such excess less applicable management fees within forty-five (45) calendar days of such determination. Once the annual reconciliation has been paid such Reconciliation Period shall be considered closed. Serve You Rx shall have no further obligation to pay Rebates to Plan Sponsor for such Reconciliation Period and the reconciliation for that Reconciliation Period shall not be reopened except for repayments as provided in Section 5.5. Furthermore, if Plan Sponsor does not give written notice to Serve You Rx as required in Article 6 of this Agreement, Rebates owed Plan Sponsor under this Agreement, if any, are forfeited.

5.5. If Plan Sponsor has been paid Rebates with respect to Claims, and if for any reason (including without limitation, manufacturer takebacks, manufacturer shortpays, duplicate claims, audit, reconciliation or otherwise) Serve You Rx is required to repay all or a part of any Rebate it has received with respect to such Claims, Plan Sponsor, upon demand of Serve You Rx, will promptly repay to Serve You Rx (i) the Rebate amount Plan Sponsor was paid with respect to such Claims or (ii) in the case of a partial repayment by Serve You Rx, a pro rata portion of such Rebate, as determined by Serve You Rx in its reasonable discretion, based on the portion of the billed Rebates that Serve You Rx is required to repay, whichever is applicable. Serve You Rx may offset any amount owed to it under this paragraph against amounts owed to Plan Sponsor under this Agreement.

5.6. All Rebates referred to in this Article are subject to change, reduction or elimination due to, among other things, the terms of the contract between Serve You Rx and the Formulary Management Company or the terms of the contracts between Serve You Rx's Formulary Management Company and pharmaceutical manufacturers or local, federal, state or other laws or regulations affecting the distribution or the amount of Rebates available or payable under law, or the actions of any pharmaceutical manufacturer, outside of Serve You Rx's Formulary Management Company's control, that affect the availability of Rebates. Notwithstanding the foregoing, if the amount of any Rebate generated by such agreements with pharmaceutical manufacturers is reduced or eliminated as a result of (i) a particular item from Serve You Rx's prescription drug Formulary not being included in the Plan Sponsor's Formulary; (ii) conflicts between the Plan Sponsor's Formulary and the Serve You Rx prescription drug Formulary or any required utilization management programs; (iii) change(s) in contractual requirements from pharmaceutical manufacturers that result in Plan Sponsor being unable or unwilling to meet reasonable drug Formulary compliance requirements, including, but not limited to, drug Formulary inclusion or exclusion or Formulary driven interventions; (iv) an unassumed movement of a Brand Drug to off-patent or if Generic Drugs, low priced Brand Drugs or over-the-counter substitutes becoming available; (v) a modification to the benefit design or program specifications, including, without limitation, changes in Copayment/Coinsurance amounts or tiers; or (vi) substantial change in Plan Sponsor's drug utilization; (vii) unanticipated changes in drug inflation trends materially impacting the level of Rebates collected from drug manufacturers; or (viii) any government imposed change in federal, state or local laws or interpretation thereof or industry-wide change that materially changes Serve You Rx's performance of its duties hereunder including a change resulting from the elimination or material modification of historic

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drug manufacturer rebate pricing models or changes made to the AWP benchmark or methodology, then Serve You Rx will have the right, upon notice, to make an equitable adjustment to the Charges, Fees, and/or guaranteed Rebates, as necessary to return Serve You Rx to its contracted economic position as of the effective date of such event, even if the date is retroactive. In addition, Serve You Rx shall perform an annual review of Plan Sponsor's performance as it relates to Rebates and may adjust the Charges, Fees and/or amounts paid to Plan Sponsor on Exhibit A accordingly.

5.7. No amounts for Rebates will be paid to Plan Sponsor until this Agreement is executed by Plan Sponsor. Serve You Rx will have a right to apply Plan Sponsor's Rebates, including guaranteed Rebates, if any, to unpaid Charges or Fees.

5.8. Plan Sponsor agrees that during the term of this Agreement, it (including any affiliates or agents) will not, directly or indirectly, negotiate or in any way arrange for Rebates or any other financial incentives from any pharmaceutical manufacturer related to the purchase of prescription drugs or supplies by Eligible Members under this Agreement. Plan Sponsor also agrees to cancel any such existing arrangements, agreements, or contracts related to Rebates or any other financial incentives from any pharmaceutical manufacturer as of the Effective Date of this Agreement.

5.9. Serve You Rx may implement Serve You Rx's Formulary management programs and controls, which may include, among other things, cost containment initiatives, and communications with Eligible Members, Pharmacies, and/or physicians. Serve You Rx reserves the right to modify or replace such programs from time to time. Rebates, if any, set forth in Exhibit A, are conditioned on adherence to such programs and controls.

5.10. Plan Sponsor hereby warrants and represents that any Benefit Plan covered by this Agreement is not a "Federal health care program" as that term is defined by 42 U.S.C. § 1320a-7b(f). Serve You Rx hereby notifies Plan Sponsor that to the extent Plan Sponsor contracts with a state or federal healthcare program, Plan Sponsor may be obligated to fully and accurately report the Rebates received by Plan Sponsor under this Agreement in costs or charges made to such governmental programs.

5.11. The rebate credit is a credit towards the achievement of the rebate guaranteed amount. The rebate credit is applied in the event of a change impacting the level of Rebates expected as a result of the availability of clinically comparable lower rebate drugs. The rebate credit is calculated as the difference in rebates between the originator brand product and rebates available on the new product.

ARTICLE 6

Term, Termination, Miscellaneous

6.1. **Term and Termination, Miscellaneous.** Unless otherwise terminated sooner as provided for herein, the Agreement shall commence on the Effective Date and continue thereafter for an initial term of three (3) years ("Initial Term"). Subject to the provisions in this Article 6, after the Initial Term the Agreement shall automatically be renewed for successive three (3)-year renewal terms ("Renewal Term") unless either party gives a written notice of non-renewal to the other party at least ninety (90) calendar days prior to the expiration of the Initial Term or Renewal Term, as applicable.

6.2. **Event of Default.** If either party commits an "Event of Default" at any time during the Initial Term or any Renewal Term, then the other party may terminate the Agreement "for cause" by providing sixty (60) calendar days written notice to the defaulting party. For the purposes hereof, it shall constitute an Event of Default if a party:

6.2.1. Fails to make any payment to the other party hereto when due hereunder;

6.2.2. Breaches any material term or provision of the Agreement if such breach remains uncured thirty (30) calendar days after written notice thereof from the other party hereto;

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6.2.3. Becomes the subject of any voluntary or involuntary bankruptcy, dissolution, liquidation or insolvency proceeding; or

6.2.4. Violates any law or regulation that prevents or otherwise limits the defaulting party from materially carrying out its obligations pursuant to the Agreement.

6.3. **Notice of Non-Renewal.** If Plan Sponsor gives Serve You Rx written notice for non-renewal in the Initial Term or any Renewal Term, but such notice is not furnished to Serve You Rx at least ninety (90) calendar days before the expiration of the then-current term as required under the Agreement, or if Plan Sponsor desires to terminate the Agreement in the absence of an Event of Default, without limiting any other remedy Serve You Rx may have under this Agreement or at law or equity, Plan Sponsor shall completely forfeit any Rebates and Performance Guarantees, if any, owed to it under the Agreement upon termination. In addition, Serve You Rx shall have all legal and equitable remedies available to it in the event Plan Sponsor breaches this Article 6 or any other provision of the Agreement. The parties agree that the provisions of this Article 6 are fair and reasonable. If any provision in the Agreement is or becomes invalid, illegal or unenforceable, such provision shall be deemed amended to conform to applicable laws so as to be valid and enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken and the remainder of the Agreement shall remain in full force and effect.

6.4. **Charges and Fees After Termination.** Plan Sponsor remains responsible for all Charges (and associated Fees described herein) with a date of service prior to the effective date of any termination. Such Charges and associated Fees must be received by Serve You Rx within ninety (90) calendar days after the effective date of the termination. Plan Sponsor shall also be responsible for the following expenses at Serve You Rx's prevailing rates: (i) data files and (ii) special reports requested by Plan Sponsor.

6.5. **Surviving Provisions Following Termination.** In the event of the expiration or termination of this Agreement, the following sections of this Agreement will continue to survive: Article 7, Article 10, and Sections 11.2 and 11.8.

ARTICLE 7

Damages and Indemnification

7.1. **Damages and Indemnification by Serve You Rx.** Serve You Rx shall defend, indemnify and hold Plan Sponsor harmless from and against any loss, cost, damage or expense including reasonable attorneys' fees (collectively, "Damages") that Plan Sponsor may sustain resulting from or arising out of a third party claim and based on: (i) any misrepresentation or breach of warranty made by Serve You Rx herein; or (ii) any negligent acts or omissions of Serve You Rx. The maximum aggregate amount for which Serve You Rx may at any time be obligated to indemnify Plan Sponsor hereunder shall in no case exceed the Charges and Fees paid by Plan Sponsor to Serve You Rx, net of Rebates paid by Serve You Rx to Plan Sponsor, if any, during the twelve (12) months immediately preceding the event giving rise to the Damages for which Plan Sponsor seeks indemnification hereunder.

7.2. **Damages and Indemnification by Plan Sponsor.** Plan Sponsor shall defend, indemnify, and hold Serve You Rx harmless from and against any Damages that Serve You Rx may sustain resulting from or arising out of a third party claim and based on: (i) any misrepresentation or breach of warranty made by Plan Sponsor herein; or (ii) any negligent acts or omissions of Plan Sponsor. The maximum aggregate amount for which Plan Sponsor may at any time be obligated to indemnify Serve You Rx hereunder shall in no case exceed the Charges and Fees paid by Plan Sponsor to Serve You Rx, net of Rebates paid by Serve You Rx to Plan Sponsor, if any, during the twelve (12) months immediately preceding the event giving rise to the Damages for which Serve You Rx seeks indemnification hereunder.

7.3. **Notice of Claims.** Promptly after any party hereto: (i) receives notice of any claim or the commencement of any action or proceeding against it, (ii) has knowledge of any claim, action or

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proceeding against it or, (iii) has knowledge of any matter for which it intends to seek indemnification hereunder, such party shall, if any claim for reimbursement with respect thereto is to be made against any other party hereto obligated to provide indemnification ("Indemnifying Party") hereunder, give the Indemnifying Party written notice of such claim or commencement of such action or proceeding provided, however, that failure to give such notification shall not affect indemnification hereunder except to the extent that the Indemnifying Party; (a) is unable to defend or verify such claim or; (b) is required to pay a greater amount or accrue additional expenses with respect thereto as a result of such failure to provide prompt notice.

7.4. **Defense by Indemnifying Party.** In connection with any claim for indemnification hereunder resulting from or arising out of any claim or legal proceeding by a person who is not a party to this Agreement, the Indemnifying Party, at its sole cost and expense, may (but shall not be required to) upon written notice to the party seeking indemnification ("Indemnified Party"), intervene in the defense of any such claim or legal proceeding, with counsel reasonably satisfactory to the Indemnified Party. If the Indemnifying Party shall undertake to defend any such claim or legal proceeding, the Indemnified Party shall cooperate with the Indemnifying Party in the defense thereof. Such cooperation shall include, but not be limited to, furnishing the Indemnifying Party with any books, records or information reasonably requested by the Indemnifying Party. After the Indemnifying Party has undertaken to defend any such claim or legal proceeding, the Indemnifying Party shall not be liable for any additional legal expenses incurred by the Indemnified Party with respect to such claim. However, the Indemnified Party shall be entitled to participate (but not control) the defense of any such claim or legal proceeding, with its own counsel and at its own expense.

7.5. **Compromise of Claims.** If the Indemnifying Party undertakes to defend any such claim or legal proceeding as described in this Article 7 the Indemnifying Party shall have the right to settle or compromise, at its own expense, any such claim or legal proceeding, provided such settlement or compromise provides a full and complete release of the Indemnified Party with respect to the claim or legal proceeding in question. In the event of such settlement, the Indemnified Party shall have the right to review and shall approve any such settlement prior to its execution.

7.6. **Limitation On Liability.** IN NO EVENT SHALL SERVE YOU RX OR ANY AFFILIATE OF SERVE YOU RX BE LIABLE TO PLAN SPONSOR, ANY ELIGIBLE MEMBER, OR ANY AFFILIATE OF SUCH PARTY FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING OUT OF OR RELATED TO SERVE YOU RX'S PERFORMANCE UNDER THIS AGREEMENT OR BREACH THEREOF, EVEN IF SERVE YOU RX HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. SERVE YOU RX'S LIABILITY TO PLAN SPONSOR, ANY ELIGIBLE MEMBER, OR ANY AFFILIATE OF SUCH PARTY UNDER THIS AGREEMENT, IF ANY, SHALL IN NO CASE EXCEED THE CHARGES AND FEES PAID BY PLAN SPONSOR TO SERVE YOU RX, NET OF REBATES PAID BY SERVE YOU RX TO PLAN SPONSOR, IF ANY, DURING THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE DATE THE CLAIM IS ASSERTED. ANY AWARD OF ATTORNEYS' FEES TO BE PAID BY SERVE YOU RX IS INCLUDED WITHIN THIS LIMITATION. THE FOREGOING LIMITATIONS APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

Nothing in this Agreement is intended or shall be construed to be a waiver or estoppel of Plan Sponsor, or its insurer (or otherwise affect or alter their ability) to rely upon the limitations, defenses and immunities contained with Wis. Stat. §§ 345.05 and 893.80, or other applicable law. To the extent that indemnification is available and enforceable against Plan Sponsor, the Plan Sponsor, or its insurer, shall not be liability in indemnity, contribution, or otherwise for an amount greater than the limits of liability of municipal claims established by applicable Wisconsin or federal law. The parties represent that, as of the Effective Date, neither party has any notice or knowledge of any claims, demands, liabilities,

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damages, costs and expenses asserted or threatened by any third party with respect to the matters contemplated in this Agreement. Under no circumstances shall any trustee, officer, officials, commissioner, director, member, partner, or employe of Plan Sponsor have any personal liability arising out of this Agreement, and Serve You Rx shall not seek or claim any such personal liability.

7.7. Neither party nor any affiliate of the parties will be liable for any claim asserted by the other party more than thirty (30) calendar days after the other party is or reasonably should have been aware of such claim. In no event shall either party or any affiliate of the parties be liable for any claim asserted by the other party more than twelve (12) months after the event giving rise to the claim.

7.8. Except with respect to the Serve You Rx Mail Order Pharmacy, Pharmacies are independent contractors and not subcontractors or agents of Serve You Rx and Serve You Rx does not direct or exercise any control over the Pharmacies or the professional judgment exercised by any pharmacist in dispensing prescriptions or otherwise providing pharmaceutical related services at a Pharmacy. Accordingly, Serve You Rx shall have no liability to Plan Sponsor, any Eligible Member or any other person or entity for any act or omission of any Pharmacy or its agents or employees. Plan Sponsor acknowledges that any utilization analysis to be performed by Serve You Rx shall be used only as an informational guide, and is not to be regarded or relied upon as a substitute for the skill, judgment and care of the pharmacists and other health care professionals in dispensing pharmaceutical products. Serve You Rx shall not, under any circumstances, be liable or responsible for injury, including death, suffered by any consumer of any pharmaceutical or any other product dispensed or distributed by any Pharmacy, or for any side effects or other consequential or incidental damages of any kind or description whatsoever from the use of any such product. It is expressly understood that such liability and responsibility rests entirely upon the pharmacists and other health care professionals involved in dispensing the product in question.

7.9. Serve You Rx will use ordinary care and reasonable diligence in the performance of its duties pursuant to this Agreement. With the exception of Covered Services dispensed by Serve You Rx Mail Order Pharmacy, Plan Sponsor acknowledges that this Agreement is not a contract for the sale of goods. EXCEPT AS WARRANTED IN THIS SECTION, SERVE YOU RX DISCLAIMS ALL EXPRESS AND ALL IMPLIED WARRANTIES OF ANY KIND, INCLUDING THE SUITABILITY FOR ANY PARTICULAR PURPOSE OF THE DATA GENERATED THROUGH SERVE YOU RX'S OR ITS SUBCONTRACTORS' SYSTEMS, AND ANY OTHER WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SERVE YOU RX RELIES ON MEDI-SPAN, FIRST DATABANK, OR COMPARABLE DATABASES IN PROVIDING PLAN SPONSOR AND ELIGIBLE MEMBERS WITH DRUG UTILIZATION REVIEW SERVICES. SERVE YOU RX HAS UTILIZED REASONABLE CARE IN COLLECTING AND REPORTING THE INFORMATION CONTAINED IN THE DATABASES AND HAS OBTAINED SUCH INFORMATION FROM SOURCES BELIEVED TO BE RELIABLE. SERVE YOU RX, HOWEVER, DOES NOT WARRANT THE ACCURACY OF REPORTS, ALERTS, CODES, PRICES, OR OTHER DATA CONTAINED IN THE DATABASES. SERVE YOU RX DOES NOT WARRANT THAT ITS SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

7.10. Nothing in this Agreement will be construed or be deemed to create any rights or remedies in any third party, including, but not limited to, an Eligible Member.

ARTICLE 8

Representations and Warranties

8.1. **Representations and Warranties.** Each of the parties represents and warrants to the other as follows:

8.2. **Due Organization.** It is duly organized, validly existing and in good standing under the laws of the state of its incorporation.

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8.3. **Authorization.** It has full corporate authority to execute and deliver this Agreement and the additional Agreements, to which it is to be a party hereunder, and to perform hereunder and thereunder, and the execution, delivery and performance hereof and thereof, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by all necessary corporation action.

8.4. **No Breach of Statute or Contract.** Neither its execution and delivery of this Agreement or the Agreements to which it is to be a party hereunder, nor its compliance with the terms and provisions hereof or thereof will: (i) cause it to violate or be in any conflict with any law, order, injunction, statute, ordinance or regulation of any governmental authority; or (ii) conflict with or result in a breach of any of the terms, conditions, or provisions of any of its organizational documents or of any Agreement or instrument to which it is a party or by which it or its properties may be bound.

8.5. **Enforceability.** This Agreement has been duly executed and delivered by it and constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditor's rights generally.

ARTICLE 9

Representation Regarding Software

9.1. **Serve You Rx Representation Regarding Software.** Serve You Rx represents that software used by it or its subcontractors has been prepared in good faith in consultation with qualified professionals and that, as of the Effective Date, Serve You Rx has no knowledge of any errors in the claims processing or other software, including DUR. However, Serve You Rx makes no further representation or warranty with respect to the software, and Serve You Rx specifically excludes from its representations and warranties hereunder and in Article 8 any representation or warranty as to merchantability, fitness for particular purpose, non-infringement or any other matter.

ARTICLE 10

Non-Disclosure of Proprietary Information and Audit

10.1. **Proprietary Information.** Plan Sponsor acknowledges that Serve You Rx's software, business plans, operating procedures, know-how, ideas, techniques, inventions, methodology, test results, performance criteria, plan lists, pricing information, marketing strategies, and financial information are proprietary information of Serve You Rx. All such information is herein referred to as "Proprietary Information". Notwithstanding the foregoing, Proprietary Information shall not include, and the restrictions of this Article 10 shall not apply to any information that is or becomes publicly known without the fault of Plan Sponsor. In consideration of Serve You Rx's promises set forth herein, Plan Sponsor acknowledges and agrees that:

10.1.1. Plan Sponsor shall not acquire any patent, license or other right or interest in any Proprietary Information;

10.1.2. Plan Sponsor shall treat all Proprietary Information as secret and confidential and shall protect and safeguard such Proprietary Information in the same manner as it protects and safeguards its own Proprietary Information;

10.1.3. Plan Sponsor shall not use any Proprietary Information for any purpose unrelated to the administration of this Agreement and will not disclose any Proprietary Information to anyone other than (i) its employees or representatives that have a need to know such information in the ordinary course of business and who are obligated to maintain the confidentiality of such information; or (ii) to entities whereby Plan Sponsor is legally required to disclose Proprietary Information pursuant to a subpoena or otherwise, provided Plan Sponsor has provided Serve You Rx with a

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reasonable opportunity to take such steps as may be reasonably available to avoid such legal requirement or to protect the proprietary nature of such disclosure.

10.1.4. Notwithstanding the foregoing, the Agreement does not, directly or indirectly, restrict Plan Sponsor from: (i) providing Pharmacy-specific cost or quality of care information or data, through a consumer engagement tool or other means, to various entities including plan sponsors, providers, Eligible Members, and individuals entitled to become Eligible Members; (ii) electronically accessing de-identified Claims and encounter information or data of each Eligible Member in the Benefit Plan upon request subject to the privacy regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Genetic Information Nondiscrimination Act of 2008 (GINA), and the Americans with Disabilities Act of 1990 (ADA), including, on a per Claim basis: (a) financial information, such as the allowed amount, or any other Claim-related financial obligations included in the Agreement; (b) Pharmacy information, including name and clinical designation; (c) service codes; or (d) any other data element included in a Claim or encounter transaction; or (iii) sharing information in sections (i) and (ii), or directing such information to be shared with a business associate and consistent with HIPAA, GINA, and the ADA.

10.1.5. Notwithstanding any other provision of this Agreement, Serve You Rx understands and acknowledges that Plan Sponsor is subject to the Public Records Law, the Open Meetings Law, and other sunshine laws of the State of Wisconsin. Serve You RX acknowledges that the disclosure of any applicable records in compliance with these Wisconsin authorities does not violate this Agreement.

10.2. **Use of Information.** Both during and after the term of this Agreement, Serve You Rx may use and disclose, reproduce, or adapt information obtained in connection with this Agreement, including, without limitation, Claims data information and eligibility information for developing new products and services, including reporting tools, research, provider profiling, benchmarking, drug trend, and cost and other internal analysis and comparisons, clinical, safety and/or trend management programs, for disclosures or reporting required by law, or for other business purposes that may be outside the scope of this Agreement, except that Serve You Rx and its agents, employees, and contractors shall maintain the confidentiality of this information to the extent required by all applicable law, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 and may not use the information in any way prohibited by law or by this Agreement. Any such data shall be blinded and aggregated. Each party shall be solely responsible for its own use of such information, and shall indemnify and hold the other party harmless for, from, and against any and all costs, losses, or damages incurred by such other party as a result of such use.

10.3. **Specific Performance.** Plan Sponsor acknowledges that irrevocable injury may result to Serve You Rx in the event of any use or disclosure by Plan Sponsor of Proprietary Information in violation of this Agreement, and Plan Sponsor agrees that if it or any of its employees or representatives shall make or attempt to make any such use or disclosure in violation of the provisions hereof, Serve You Rx shall be entitled, in addition to such other remedies, damages or relief as may be available under applicable law, to specific performance, including but not limited to an injunction prohibiting such use and/or disclosure and specifically enforcing the provisions of this Article 10.

10.4. **Audit.** Either party may once annually audit the other party in relation to its duties and obligations under this Agreement. No audits may be initiated or conducted during the months of December or January due to the extraordinary demands placed on staff during these annual renewal periods. These rights shall include auditing Claims and other relevant records which shall be made accessible upon thirty (30) calendar days prior written notice and at reasonable intervals during the regular business hours of the audited party. Notwithstanding the foregoing, Plan Sponsor's audit of Serve You Rx records is limited to review of Claims transactions for adherence to and accuracy against the approved plan design and pricing under this Agreement, for the limited purpose of verifying Serve You Rx's compliance with the

Plan Sponsor Agreement

terms of this Agreement. All expenses for such audits shall be at the expense of the requesting party. Plan Sponsor acknowledges that it shall not be entitled to audit: (i) documents, in whole or in part, that Serve You Rx deems proprietary, confidential or trade secret; and (ii) documents, in whole or in part, that Serve You Rx is barred from disclosing by law or pursuant to an obligation of confidentiality to a third party. All information and records reviewed pursuant to this section shall be considered Confidential Information for purposes of this Agreement.

10.5. **Auditors.** Notwithstanding the foregoing, only a mutually agreed independent third-party auditor will have the right to assist Plan Sponsor in any audit pursuant to Section 10.4 of this Agreement. No third party may be allowed or designated to conduct an audit without an executed nondisclosure agreement with Serve You Rx no less than sixty (60) calendar days prior to the date of the audit, ensuring the confidentiality of Serve You Rx's Confidential Information, and the prior written consent of the party whose records are being audited. The audit scope will cover a period not to exceed twelve (12) months immediately preceding the date of audit, unless the audit relates to a financial guarantee for a period exceeding twelve (12) months, in such case, shall be limited to the term of the financial guarantee. Requests for older data may be subject to payment of fees for retrieval of data. The audited period may not be re-audited once the audit is complete. Neither party may initiate an audit of the other party pursuant to this Agreement more than once in any twelve (12)-month period, nor more than eighteen (18) months after the date of the termination of this Agreement.

Plan Sponsor's auditor shall not be an individual or entity that is: a competitor of Serve You Rx, a covered manufacturer representative, any retail, mail or specialty drug pharmacy representative or vendor, or any other third-party auditor that is engaged in providing services for Plan Sponsor or otherwise that conflict with the scope or independent nature of the audit.

10.6. **Audit Close.** A final audit report shall be provided by Plan Sponsor (or its auditor) in writing to Serve You Rx within sixty (60) calendar days of the end of the audit. Serve You Rx shall have ninety (90) calendar days to respond. Automatic closure and/or settlement, if applicable, will occur if Plan Sponsor or its auditor fails to communicate within thirty (30) calendar days of Serve You Rx's response.

ARTICLE 11

Miscellaneous

11.1. **Relationship of the Parties.** Plan Sponsor and Serve You Rx are independent entities and nothing in the Agreement shall be construed or be deemed to create a relationship of employer and employee or principal and agent or franchisor and franchisee or any relationship, fiduciary or otherwise, other than that of independent parties contracting with each other solely for the purpose of carrying out the provisions of this Agreement. This Agreement does not create any partnership or any joint venture between Serve You Rx and Plan Sponsor or their respective directors, officers, employees or agents. Nothing in this Agreement shall be construed or deemed to confer upon Serve You Rx any responsibility for or control over the Benefit Plan.

11.2. **Arbitration.** Any and all disputes, controversies or claims (including without limitation tort claims and issues as to arbitrability of any matter) arising out of, in connection with, or relating to this Agreement, or the breach thereof, that cannot be settled through negotiation shall be settled by arbitration administered by Judicial Arbitration and Mediation Services ("JAMS") pursuant to its Comprehensive Arbitration Rules and Procedures and pursuant to the Wisconsin Arbitration Act (such arbitration to be held in Milwaukee, Wisconsin before a single arbitrator and to commence within twenty (20) business days of the appointment of the arbitrator by JAMS). The parties agree that the Expedited Procedures set forth in JAMS Comprehensive Rules 16.1 and 16.2 shall be employed. Any controversy, claim or dispute under \$250,000.00 shall be handled in accordance with the JAMS Streamlined Arbitration Rules and Procedures. The arbitrator may only award remedies provided in the Agreement, subject to limitations of liability set forth in Section 7.6 of this Agreement. The arbitrator shall direct that the expenses of the arbitration, including reasonable attorneys' fees, will be paid for by the party against whom the award of

Plan Sponsor Agreement

the arbitrator is rendered. The negotiation and arbitration provisions of this Section shall be the sole and exclusive method of handling any and all disputes, claims and controversies arising out of or related to this Agreement, and the award of the arbitrator will be final and binding on the parties, and judgment upon such award may be entered in any court having jurisdiction thereof. The arbitration proceeding provided for herein is a private proceeding and neither party shall disclose or publicize the decision of the arbitrator other than as required by law. Notwithstanding anything to the contrary, the parties shall be entitled to seek injunctive relief from a court of competent jurisdiction for claims arising under this Agreement. In the event any party seeks injunctive relief from a court, the court shall have the authority to decide whether a dispute qualifies as a request for injunctive relief. The courts of Wisconsin shall have exclusive jurisdiction in connection with any legal proceeding arising hereunder.

11.3. **Publicity.** Serve You Rx may use Plan Sponsor's logos, trademarks or service marks as needed for press releases or other marketing communications.

11.4. **Notices.** Any notice required or permitted to be given hereunder shall be deemed sufficient and shall be deemed to have been given when delivered in person or three (3) calendar days after being sent by United States Mail, certified, return receipt requested, postage pre-paid or the next business day when delivered to a reputable national overnight courier. All notices shall be addressed to a party at its address or telecommunication number as the same is provided below or such other address or telecommunication number as a party may designate by notice duly given in accordance with this paragraph.

If to Serve You Rx: Serve You Rx, Attn: Compliance Department
10201 West Innovation Drive, Suite 600
Milwaukee, WI 53226

If to Plan Sponsor: City of La Crosse, Attn: Human Resources
400 La Crosse Street
La Crosse, WI 54601

11.5. **Entire Agreement.** This Agreement, including the Exhibits hereto, constitutes the entire Agreement between the parties hereto relating to the subject matter hereof, and all prior Agreements, correspondence, discussions and understandings of the parties are superseded hereby. Except as otherwise set forth in this Agreement, no amendment or modification hereto shall be valid unless expressed in writing and signed by both parties to this Agreement.

11.6. **Waiver.** The failure of any party to exercise or enforce any right conferred upon it hereunder shall not be deemed to be a waiver of any such right nor operate to bar any party the right to exercise or enforce such right at any time thereafter; nor shall waiver of any right hereunder, including rights to payment, be deemed to be a waiver of any future right hereunder.

11.7. **Assignment.** This Agreement shall not be assignable by Plan Sponsor without the prior written consent of Serve You Rx. Serve You Rx may assign this Agreement to third persons without the prior consent of Plan Sponsor and, in the event of such assignment, will provide written notice to Plan Sponsor. Serve You Rx may perform services under this Agreement through one or more Serve You Rx subsidiaries, affiliates, or designees. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

11.8. **Governing Law.** This Agreement shall be governed by and construed and interpreted in accordance with the internal laws of the State of Wisconsin without giving effect to the principles of conflicts-of-law, or any rule that would result in the application of the law of any different jurisdiction. The courts of Wisconsin shall have exclusive jurisdiction in connection with any legal proceeding arising hereunder, and Plan Sponsor hereby submits to the jurisdiction of such courts and waives any objection to the venue of such courts and any claim that such courts may be inconvenient.

Plan Sponsor Agreement

11.9. **Compliance with Law.** Each party is responsible for ensuring its compliance with any laws applicable to its business, including, but not limited to obtaining and maintaining any necessary licenses and permits. Plan Sponsor will comply with all federal, state and local laws applicable to its performance of its obligations under this Agreement and the services it provides to its Benefit Plans and Eligible Members. Serve You Rx will have no responsibility to advise Plan Sponsor about its compliance with any applicable laws, including, without limitation, federal or state kickback laws, HIPAA, ERISA, or the Americans with Disabilities Act (“ADA”). Plan Sponsor will disclose to Benefit Plans and Eligible Members any and all matters that are required by law to be disclosed. No party will make payments or perform services under this Agreement that would be prohibited by law. No part of this Agreement will be construed to induce or encourage the referral of patients, and no payment made pursuant to this Agreement or any other agreement between Serve You Rx and Plan Sponsor will be construed to induce the purchase, lease, order or arrangement for the furnishing of health care products or services. If this Agreement, or any part hereof, is found not to be in compliance with applicable law, then the parties will renegotiate the Agreement for the sole purpose of correcting the non-compliance in an equitable manner, which may include a pricing adjustment. If the parties are unable to agree upon an equitable adjustment within sixty (60) calendar days after either party notifies the other of such non-compliance with applicable law, then the Agreement will automatically terminate.

11.10. **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Agreement shall remain valid and effective.

11.11. **Binding Effect.** This Agreement shall be binding on the parties hereto and their successors and permitted assigns.

11.12. **Force Majeure.** The performance by either party hereunder will be excused only to the extent that performance is rendered unfeasible by flood, tornado, fire, earthquake, or other natural disaster, epidemic, government order or decree, war, acts of terror, or other reasons beyond a party’s reasonable control; provided, however, that this clause may not be invoked to excuse Plan Sponsor’s payment obligations hereunder. In the event of such circumstances, the parties will use their best efforts to resume performance as soon as reasonably possible.

11.13. **Headings.** The headings of Articles and Exhibits contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

11.14. **Retention of Serve You Rx.** Plan Sponsor hereby retains Serve You Rx as its exclusive provider of pharmacy benefit management services to Eligible Members.

11.15. **Electronic Signatures.** The Parties agree that this Agreement may be executed by electronic or digital signature, which shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

SERVE YOU RX

CITY OF LA CROSSE

BY: _____
Cindy Ten Pas

BY: _____

Vice President of Compliance, Contracts, and
Regulatory Affairs

Print Name

Title

DATE: _____

DATE: _____



Plan Sponsor Agreement

Exhibit A – Charges and Administrative Fees

Program Pricing Terms

CITY OF LA CROSSE

Account Number: 3917

Effective Date: January 1, 2025

1. **Serve You Rx Pharmacy Network (Does not Apply to the Serve You Rx Mail Order Pharmacy)**

Plan Sponsor shall pay the actual retail pharmacy rates paid by Serve You Rx for Covered Services electronically processed and dispensed to an Eligible Member through the Serve You Rx Retail Pharmacy Network. The average effective discounts and dispensing fees are listed below.

1.1 In the case of a Covered Service for a Brand Drug dispensed and submitted by a Pharmacy, the term "Charges" shall mean an amount equal to the lesser of: (i) the Pharmacy's Usual and Customary (U&C) price, as submitted, or (ii) Average Wholesale Price (AWP) minus a discount of **20.00%** from January 1, 2025 through December 31, 2025, **20.10%** from January 1, 2026 through December 31, 2026, and **20.20%** from January 1, 2027 through December 31, 2027 and subsequent Renewal Terms; plus the Dispensing Fee set forth below.

In the case of a Covered Service for a Generic Drug dispensed and submitted by a Pharmacy, the term "Charges" shall mean an amount equal to the lesser of (i) the Pharmacy's U&C price, as submitted or (ii) the Maximum Allowable Cost ("MAC"), with an expected aggregate generic effective rate of AWP minus a discount of **87.00%** from January 1, 2025 through December 31, 2025, **87.10%** from January 1, 2026 through December 31, 2026, and **87.20%** from January 1, 2027 through December 31, 2027 and subsequent Renewal Terms; plus the Dispensing Fee set forth below.

In the case of a Covered Service designated by Serve You Rx as a Specialty Drug and dispensed and submitted by a Pharmacy, the term "Charges" shall mean an amount equal to the lesser of: (i) the Pharmacy's U&C price, as submitted; or (ii) AWP minus a discount of **17.00%**, or the MAC, or NDC-specific discount where applicable; plus the Dispensing Fee set forth below.

In the case of a Covered Immunization Service submitted by a Pharmacy, the term "Charges" shall mean an amount equal to the lesser of (i) the Pharmacy's U&C price, as submitted or (ii) the Pharmacy's contracted rate with Serve You Rx.

The Charges payable by Plan Sponsor for Covered Services or Covered Immunization Services administered or dispensed and submitted by a Pharmacy shall not include the applicable Copayment/Coinsurance amount.

1.2 **Dispensing Fee.** The Dispensing Fee per prescription or authorized refill is **\$0.50** for Brand Drugs, **\$0.50** for Generic Drugs and **\$0.50** for Specialty Drugs.

- 1.3 Limited Distribution Drugs. The Charges for Limited Distribution Drugs are subject to the rates set by the Pharmacy and/or the pharmaceutical manufacturer.
- 1.4 Specialty Drugs are subject to addition, deletion or modification from time to time at the sole discretion of Serve You Rx.

1A. **Serve You Rx 90 Day at Retail Pharmacy Network (Does not Apply to Serve You Rx Mail Order Pharmacy)**

In order for the Serve You Rx 90 Day at Retail Pharmacy Network pricing to apply, Plan Sponsor shall adopt Benefit Plan parameters by which an Eligible Member may only have a 90-day prescription supply at a retail Pharmacy that has agreed to Serve You Rx's reimbursement rates for 90-day prescription supplies.

Plan Sponsor shall pay the actual retail pharmacy rates paid by Serve You Rx for Covered Services electronically processed and dispensed to an Eligible Member through the Serve You Rx Retail Pharmacy Network. The average effective discounts and dispensing fees are listed below.

1A.1 In the case of a Covered Service for a Brand Drug dispensed and submitted by a Pharmacy, the term "Charges" shall mean an amount equal to the lesser of: (i) the Pharmacy's Usual and Customary (U&C) price, as submitted, or (ii) Average Wholesale Price (AWP) minus a discount of **22.50%** from January 1, 2025 through December 31, 2025, **22.60%** from January 1, 2026 through December 31, 2026, and **22.70%** from January 1, 2027 through December 31, 2027 and subsequent Renewal Terms; plus the Dispensing Fee set forth below.

In the case of a Covered Service for a Generic Drug dispensed and submitted by a Pharmacy, the term "Charges" shall mean an amount equal to the lesser of (i) the Pharmacy's U&C price, as submitted or (ii) the Maximum Allowable Cost ("MAC"), with an expected aggregate generic effective rate of AWP minus a discount of **87.00%** from January 1, 2025 through December 31, 2025, **87.10%** from January 1, 2026 through December 31, 2026, and **87.20%** from January 1, 2027 through December 31, 2027 and subsequent Renewal Terms; plus the Dispensing Fee set forth below.

In the case of a Covered Service designated by Serve You Rx as a Specialty Drug and dispensed and submitted by a Pharmacy, the term "Charges" shall mean an amount equal to the lesser of: (i) the Pharmacy's U&C price, as submitted; or (ii) AWP minus a discount of **17.00%**, or the MAC, or NDC-specific discount where applicable; plus the Dispensing Fee set forth below.

In the case of a Covered Immunization Service submitted by a Pharmacy, the term "Charges" shall mean an amount equal to the lesser of (i) the Pharmacy's U&C price, as submitted or (ii) the Pharmacy's contracted rate with Serve You Rx.

The Charges payable by Plan Sponsor for Covered Services or Covered Immunization Services administered or dispensed and submitted by a Pharmacy shall not include the applicable Copayment/Coinsurance amount.

- 1A.2 Dispensing Fee. The Dispensing Fee per prescription or authorized refill is **\$0.00** for Brand Drugs, **\$0.00** for Generic Drugs and **\$0.50** for Specialty Drugs.
- 1A.3 Limited Distribution Drugs. The Charges for Limited Distribution Drugs are subject to the rates set by the Pharmacy and/or the pharmaceutical manufacturer.
- 1A.4 Specialty Drugs are subject to addition, deletion or modification from time to time at the sole discretion of Serve You Rx.

2. **Serve You Rx Mail Order Pharmacy**

In the case of a Covered Service for a Brand Drug dispensed by Serve You Rx Mail Order Pharmacy with a days supply of 84 days or greater, the term "Charges" shall mean an amount equal to AWP minus a discount of **24.50%**; plus the Dispensing Fee set forth below. In the case of a Covered Service for a Brand Drug dispensed by Serve You Rx Mail Order Pharmacy with a days supply of fewer than 84 days, the term "Charges" shall mean an amount equal to AWP minus a discount of **24.50%**; plus the Dispensing Fee set forth below.

In the case of a Covered Service for a Generic Drug dispensed by Serve You Rx Mail Order Pharmacy, the term "Charges" shall mean an amount equal to the MAC, with an expected aggregate generic effective rate of AWP minus a discount of **90.00%** from January 1, 2025 through December 31, 2025, **90.10%** from January 1, 2026 through December 31, 2026, and **90.20%** from January 1, 2027 through December 31, 2027 and subsequent Renewal Terms; plus the Dispensing Fee set forth below.

In the case of a Covered Service designated by Serve You Rx as a Specialty Drug and dispensed by Serve You Rx Mail Order Pharmacy, the term "Charges" shall mean an amount equal to: (i) the MAC, or (ii) AWP minus a discount of **18.75%**, or (iii) NDC-specific discount, where applicable; plus the Dispensing Fee set forth below. Specialty Drug Charges are contingent upon the specialty network being limited to Serve You Rx Mail Order Pharmacy and limited to a thirty (30) day supply maximum per fill. If the specialty network is not limited to Serve You Rx Mail Order Pharmacy, the term "Charges" shall mean an amount equal to: (i) the MAC, or (ii) AWP minus a discount of **17.00%**, or (iii) NDC-specific discount, where applicable; plus the Dispensing Fee set forth below.

The Charges payable by Plan Sponsor for Covered Services dispensed by Serve You Rx Mail Order Pharmacy shall not include the applicable Copayment/Coinsurance.

- 2.1 **Dispensing Fee.** The Dispensing Fee per prescription or authorized refill is **\$0.00** for Brand Drugs, **\$0.00** for Generic Drugs and **\$0.00** for Specialty Drugs limited to Serve You Rx Mail Order Pharmacy and **\$0.50** for Specialty Drugs not being limited to Serve You Rx Mail Order Pharmacy.
- 2.2 **Shipping and Handling.** Covered Services that require special handling may incur additional fees.
- 2.3 **Minimum Charge at Mail Service.** In no event shall Charges payable for Covered Services dispensed and submitted by Serve You Rx Mail Order Pharmacy be an amount less than eight dollars (**\$8.00**).
- 2.4 **Specialty Drugs** are subject to addition, deletion or modification from time to time at the sole discretion of Serve You Rx.
- 2.5 **Limited Availability Drugs** may be subject to limited availability from the pharmaceutical manufacturer or, because they are in short supply, subject to recall or allocation. As a result of any such limited availability, Serve You Rx reserves the right, at its sole discretion, to modify the pricing until the short supply situation is corrected.

3. **Rebates** are set forth below as minimum guarantees. Payment of Rebates is subject to Plan Sponsor's implementation, without change or deviation, of the Formulary and any required utilization management programs, including any changes (additions or exclusions) that Serve You Rx and the Formulary Management Company make to the Formulary.

| | | | |
|--------------------------|------|------|------|
| Select Formulary Rebates | 2025 | 2026 | 2027 |
|--------------------------|------|------|------|

| | | | |
|---|-------------------|-------------------|-------------------|
| Per net paid retail Brand Claim | \$320.00 | \$330.00 | \$340.00 |
| Per net paid 90 day at retail Brand Claim | \$840.00 | \$870.00 | \$900.00 |
| Per net paid mail service Brand Claim | \$840.00 | \$870.00 | \$900.00 |
| Per net paid Specialty Drug Brand Claim | \$4,000.00 | \$4,100.00 | \$4,200.00 |

4. **Right to Adjust Rates**

The rates set forth in this Exhibit A are subject to modification by Serve You Rx in accordance with Sections 2.4.2 and 5.6 of the Plan Sponsor Agreement.

5. **Administrative Fees**

Plan Sponsor will pay Serve You Rx an administrative fee in the amount of **\$3.75** per member per month from January 1, 2025 through December 31, 2025, **\$3.90** per member per month from January 1, 2026 through December 31, 2026, and **\$4.05** per member per month from January 1, 2027 through December 31, 2027 and all subsequent Renewal Terms.

6. **Services Available at Additional Cost**

| | |
|---|---|
| Eligibility: Manual Submission | \$1.25 per entry |
| Claim Processing: | |
| • Coordination of Benefits & Member-Submitted Paper Claim (secondary COB) | \$3.50 per Claim |
| • Processing of Government Reimbursement/Subrogation Claims | \$3.50 per Claim |
| Direct Reimbursement: Processing Paper Claims | \$2.50 per entry |
| Clinical Review | \$55.00 each |
| Additional Prior Authorization Review | Pass through of cost charged to Serve You Rx |
| External Review | Pass through of cost charged to Serve You Rx |
| Covered Immunization Service | \$2.00 per immunization |
| Adherence Monitoring Program | \$0.36 PEPM |
| Diabetes Care Plus Program | \$0.36 PMPM |
| Pharmacy Audit Procedures | 20% of audit recoveries, or other percentage as required by law |
| Member Materials: | |
| • Targeted Communications or Replacement, Re-issuance, or Customization of any Materials | Quoted per request |
| • Reprinting of Entire Group's ID Cards | \$0.30 per card |
| • Member Mailings | Actual postage charges |
| Report Programming | Prevailing rate |
| CAAP Rx | 15% of computed savings |
| Serve You Rx Specialty Assist Program (unionized employees are not included in this program) | \$11.00 per employee per month |
| Other Services and Products: Quoted upon request | Negotiated rates |



Plan Sponsor Agreement

Exhibit B – Business Associate Agreement

This HIPAA Business Associate Agreement (“Agreement”) is made by and between City of La Crosse (“Covered Entity”), and Serve You Custom Prescription Management, Inc., a Wisconsin corporation, dba Serve You Rx (“Business Associate”) (each a “Party” and collectively the “Parties”).

1. BACKGROUND

Business Associate and Plan Sponsor are Parties to a Plan Sponsor Agreement (“PBM Agreement”) pursuant to which Business Associate performs PBM Services (as defined in the PBM Agreement). In connection therewith, Business Associate performs functions, activities or services for Covered Entity and Business Associate creates, receives, maintains, or transmits Protected Health Information (“PHI”), including Electronic Protected Health Information (“EPHI”), in order to perform such functions, activities or services. Covered Entity and Business Associate are subject to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its implementing privacy, security, breach notification and enforcement rules at 45 C.F.R. Parts 160 and 164 (“HIPAA Rules”), the applicable provisions of the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), and any future implementing regulations and guidance issued by the Secretary. The HIPAA Rules require Covered Entity and Business Associate to enter into an agreement to provide for the protection of the privacy and security of PHI, including EPHI, before Business Associate is permitted to create, receive, maintain, or transmit PHI on behalf of Covered Entity.

2. DEFINITIONS

Capitalized terms not otherwise defined herein shall have the same meaning as those terms in the HIPAA Rules. Following are some of the key terms of this Agreement.

2.1 *Individual.* “Individual” shall have the same meaning as the term “individual” in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

2.2 *Limited Data Set.* “Limited Data Set” shall have the same meaning as a “limited data set” described in 45 C.F.R. § 164.514(e)(2).

2.3 *Minimum Necessary.* “Minimum Necessary” shall have the same meaning as “minimum necessary” described in 45 C.F.R. § 164.502(b).

2.4 *Privacy Rule.* “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and Part 164, subparts A and E.

2.5 *Security Rule.* “Security Rule” shall mean the Security Standards for the Protection of EPHI at 45 C.F.R. Parts 160 and 164, subparts A and C.

2.6 *Protected Health Information.* “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, but shall be limited to the

information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.

2.7 *Electronic Protected Health Information.* “Electronic Protected Health Information” or “EPHI” shall have the same meaning as the term “electronic protected health information” in 45 C.F.R. § 160.103, but shall be limited to the EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity.

2.8 *Required By Law.* “Required By Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.

2.9 *Secretary.* “Secretary” shall mean the Secretary of the United States Department of Health and Human Services or his designee.

2.10 *Security Incident.* “Security Incident” shall have the same meaning as “security incident” in 45 C.F.R. § 164.304.

2.11 *Subcontractor.* “Subcontractor” shall have the same meaning as the term “subcontractor” in 45 C.F.R. § 160.103.

3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

3.1 *Use and Disclosure.* Business Associate agrees to not use or further disclose PHI other than as permitted or required by the Agreement or as Required By Law.

3.2 *Safeguards.* Business Associate agrees to use appropriate safeguards and comply, where applicable, with 45 C.F.R. Part 164 Subpart C with respect to EPHI, to prevent use or disclosure of the EPHI other than as provided for by this Agreement.

3.3 *Mitigation.* Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

3.4 *Reports of Non-Permitted Use or Disclosure.* Business Associate agrees to promptly report to Covered Entity any use or disclosure of PHI not provided for by this Agreement or permitted by the HIPAA Rules.

3.5 *Reports of Security Incidents.* Business Associate agrees to promptly notify Covered Entity of any Security Incident involving EPHI of which it becomes aware. Business Associate and Covered Entity agree that this provision constitutes notice of attempted but unsuccessful Security Incidents that do not result in any unauthorized access, use, disclosure, modification or destruction of EPHI, or interference with an information system. For purposes of this Agreement, “Unsuccessful Security Incidents” include activity such as pings and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.

3.6 *Subcontractors.* Business Associate agrees to ensure that any Subcontractor that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information, including but not limited to, compliance with the applicable requirements of 45 C.F.R. Parts 160 and 164.

3.7 *Designated Record Set.*

- (a) If Business Associate has PHI in a Designated Record Set, Business Associate agrees to provide access, at the request of Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524 within fifteen (15) calendar days of receipt of a request. If Covered Entity requests an electronic copy of PHI that is maintained electronically in a Designated Record Set in the Business Associate's custody or control, Business Associate will provide an electronic copy in the form and format specified by the Individual if it is readily producible in such format. If it is not readily producible in such format, Business Associate will work with Covered Entity and the Individual to determine an alternative form and format that enables Covered Entity to meet its electronic access obligations under 45 C.F.R. § 164.524.
- (b) If Business Associate has PHI in a Designated Record Set, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Covered Entity or an Individual.

3.8 *Internal Practices.* Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created, received, maintained, or transmitted by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Rules.

3.9 *Documentation of Disclosures.*

- (a) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. In accordance with HITECH and any future implementing regulations and guidance issued by the Secretary, if Business Associate uses or maintains an electronic health record with respect to PHI, Business Associate agrees to document disclosures made through an electronic health record for treatment, payment, or health care operations, and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures in accordance with 45 C.F.R. § 164.528.
- (b) Business Associate agrees to provide to Covered Entity information collected in accordance with Section 3.9(a) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

3.10 *Business Associate's Obligations Related to Breach of Unsecured PHI.*

- (a) For purposes of this Section 3.10, "Breach" and "Unsecured PHI" shall have the same meaning as "breach" and "unsecured protected health information," respectively, as such terms are defined by 45 C.F.R. § 164.402.
- (b) Following the discovery of a Breach of Unsecured PHI, Business Associate shall notify Covered Entity of the Breach. Such notification shall be made without unreasonable delay after discovering the Breach, but no later than sixty (60) calendar days after its discovery.

- (c) Business Associate's notice shall include, to the extent possible, the information set forth at 45 C.F.R. § 164.410(c).

3.11 *Carrying Out Obligations of Covered Entity.* To the extent the Business Associate is to carry out Covered Entity's obligation(s) under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligation.

3.12 *Prohibition on the Sale of PHI or Electronic Health Records.* Business Associate shall comply with 45 C.F.R. § 164.502(a)(5), which relates to the prohibition on the sale of electronic health records and PHI.

3.13 *Conditions on Certain Marketing and Fundraising Contacts.* Business Associate shall not use or disclose PHI for marketing or fundraising without consent of Covered Entity and only to the extent permitted by 45 C.F.R. §§ 164.508(a)(3) and 164.514(f).

4. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

4.1 *General Use and Disclosure.* Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform PBM Services as such services are specified in the PBM Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

4.2 *Specific Use and Disclosure.*

- (a) Business Associate may use or disclose PHI for the proper management and administration of Business Associate and to carry out its legal obligations, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been breached.
- (b) Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
- (c) Business Associate may use PHI to create de-identified information in accordance with the requirements outlined in the Privacy Rule. Data that has been de-identified will no longer be subject to the terms of this Agreement.
- (d) Business Associate may use PHI to report violations of law to appropriate state and federal authorities, to the extent permitted or required by 45 C.F.R. § 164.502(j)(1) and state law.

4.3 *Minimum Necessary.* All uses and disclosures of PHI must comply with the minimum necessary requirements under the Privacy Rule. The Party disclosing PHI shall determine what constitutes the minimum necessary to accomplish the intended purpose of the disclosure. Until the effective date of further guidance or regulations issued on the meaning of minimum necessary, Business Associate shall use a Limited Data Set when using, disclosing, and requesting PHI, to the extent practicable. If using a Limited Data Set is not practicable, any use, disclosure, or request of PHI must be limited to the Minimum Necessary to accomplish the intended purpose of the use, disclosure, or request.

After the effective date of subsequent implementing guidance and/or regulations on the meaning of Minimum Necessary, Business Associate shall comply with such guidance or regulations.

5. OBLIGATIONS OF COVERED ENTITY

5.1 *Privacy Practices.* Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. § 164.520, and shall promptly provide Business Associate with any changes to such notice.

5.2 *Notice of Changes and Restrictions.* Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent such changes affect Business Associate's permitted or required uses and disclosures. Such notification shall include any restriction that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522. If Business Associate receives a request to restrict the disclosure of PHI directly from an Individual, Business Associate shall notify Covered Entity of such request and Covered Entity shall be responsible for making the determination, in accordance with the Privacy Rule, as to whether Business Associate shall comply with the Individual's request.

5.3 *Permissible Requests by Covered Entity.* Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by Covered Entity, except that Business Associate may use or disclose PHI as set forth in Section 4.2.

5.4 *Other Business Associates.* Covered Entity shall require that all of its business associates agree in writing to similar terms and conditions as are contained in this Agreement in accordance with the HIPAA Rules. Covered Entity may request Business Associate to Disclose Health Information to other business associates of Covered Entity. Such requests must be made in writing, specify the authorized recipient (i.e., name of other business associate), and the nature and duration of the Disclosure. Covered Entity represents and warrants that any requests made pursuant to this Section 5.4 are permissible under the HIPAA Rules by virtue of a business associate relationship having been established between the Covered Entity and other business associate.

6. TERM AND TERMINATION

6.1 *Term.* This Agreement shall be effective upon execution by the Parties and shall remain in effect for the duration of the relationship, functions or services giving rise to the necessity of a Business Associate Agreement, and until all of the PHI provided by Covered Entity to Business Associate, or created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section 6.

6.2 *Termination.*

- (a) Termination Resulting from the End of Relationship, Functions or Services. This Agreement shall terminate in the event that the underlying relationship, functions, or services that give rise to the necessity of a Business Associate Agreement terminate for any reason.
- (b) Termination for Cause. Upon either Party's knowledge of a material breach of this Agreement by the other Party, the non-breaching Party must provide an opportunity for the breaching Party to cure the breach or end the violation, and if the breaching

Party does not cure the breach or end the violation within thirty (30) calendar days of the breach, the non-breaching Party shall terminate this Agreement and any underlying agreement(s).

6.3 *Return or Destruction of PHI.*

(a) Except as provided in paragraph (b) of this Section 6.3, upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.

(b) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

MISCELLANEOUS

7.1 *Regulatory References.* A reference in this Agreement to a section in the HIPAA Rules or HITECH, or any other reference to a law or regulation, means the section or law as in effect as of the date of this Agreement or as subsequently amended.

7.2 *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time to comply with the requirements of the HIPAA Rules or HITECH.

7.3 *Survival.* The respective rights and obligations of Business Associate under Sections 6.3, 7.8 and 7.10 of this Agreement shall survive the termination of this Agreement.

7.4 *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits compliance with the HIPAA Rules and HITECH.

7.5 *Relationship to Other Agreement Provisions.* In the event that a provision of this Agreement is contrary to a provision of an underlying agreement or agreements under which Covered Entity discloses PHI to Business Associate, the provision of this Agreement shall control. Otherwise, this Agreement shall be construed under, and in accordance with, the terms of such underlying agreement or agreements between the Parties.

7.6 *Prior Business Associate Agreements.* Consistent with Section 7.5, this Agreement shall supersede any and all prior business associate agreement(s), addenda, exhibits or similar provisions thereof.

7.7 *Modification of Agreement.* No alteration, amendment or modification of the terms of this Agreement shall be valid or effective unless in writing and signed by Business Associate and Covered Entity.

7.8 *Relationship of Parties.* Business Associate, in furnishing services to Covered Entity, is acting as an independent contractor, and Business Associate has the sole right and obligation to supervise, manage, contract, direct, procure, perform or cause to be performed, all work to be performed by Business Associate under this Agreement. Business Associate is not an agent of Covered Entity, and has no authority to represent Covered Entity as to any matters, except as expressly authorized in this Agreement.

7.9 *Notices.* Any notices required or permitted to be given under this Agreement by either Party shall be given in writing: (a) by personal delivery; (b) by electronic facsimile with confirmation sent by United States first class mail; (c) by bonded courier or nationally recognized overnight delivery service; or (d) by United States first class registered or certified mail, postage prepaid, return receipt requested, addressed to the Parties at the addresses set forth in Section 11.4 of the Plan Sponsor Agreement or to such other addresses as the Parties may request in writing by notice pursuant to this Section 7.9. Notices shall be deemed received on the earliest of personal delivery, upon the next business day after delivery by electronic facsimile with confirmation that the transmission was completed or upon receipt by any other method of delivery.

7.10 *Applicable Law.* This Agreement shall be governed by and construed in accordance with the internal laws of the State of Wisconsin.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

SERVE YOU RX

CITY OF LA CROSSE

BY: _____
Cindy Ten Pas

Vice President of Compliance, Contracts, and
Regulatory Affairs

DATE: _____

BY: _____

Print Name

Title

DATE: _____



Plan Sponsor Agreement Exhibit C – Performance Guarantees

Serve You Rx agrees to provide performance guarantees to Plan Sponsor according to the standards and measurements listed below.

Performance standards will be measured and reconciled on an annual basis after the end of each contract year. Within ninety (90) days after the end of each contract year, Serve You Rx shall send a performance report to Plan Sponsor. Any amounts due resulting from a Serve You Rx failure to meet any performance standard(s), if any, shall be calculated and paid to Plan Sponsor within thirty (30) days following Plan Sponsor's receipt of the performance report. No performance penalties, if any, will be paid until this Agreement is executed by Plan Sponsor. In no event will the sum of the payments to Plan Sponsor, as a result of Serve You Rx's failure to meet the performance standards, exceed \$10.00 per average annual Eligible Member per contract year.

The performance standards are based on 1,500 average annual Eligible Members. Average annual Eligible Members shall be calculated at the end of each contract year as the sum of the aggregate number of Eligible Members for each month of the contract year period divided by twelve (12). Any material change below such number may result in a renegotiation of the standards and penalties set forth below. Following notice by Serve You Rx, both parties agree to negotiate in good faith to reach agreement on revised standards and penalties within sixty (60) days. Performance standards for Serve You Rx Mail Order Pharmacy are only payable with a minimum of 1,000 Paid Claims submitted annually during each contract year.

In the event that Serve You Rx fails to meet any performance standard due to a force majeure as defined in Section 11.12 of the Agreement, failure of Plan Sponsor to perform its obligations under the Agreement, or any action of Plan Sponsor or Plan Sponsor's vendor, designee, or third party administrator that adversely impacts Serve You Rx's ability to meet such standard, Serve You Rx will be exempt from compliance with such performance standards until such conditions and any residual or other related effects have been resolved. No payment will be due to Plan Sponsor for any period of time during which Serve You Rx's failure to meet any performance standard was a result of such events.

| SERVICE | STANDARD | PENALTY |
|----------------|---|---|
| Implementation | Implementation will be completed in accordance with mutually agreed upon timelines provided Serve You Rx receives all necessary information on the dates mutually agreed upon with responsible parties. | \$1.00 per Eligible Member for each day past the agreed upon timeline. |
| Eligibility | Eligibility information submitted to Serve You Rx will be loaded within an average of one (1) business day from receipt. | \$1.00 per Eligible Member based on eligibility at the time of the plan Effective Date. |

| | | |
|--|---|--|
| Adjudication System Availability | Serve You Rx guarantees an annual average of 99% point-of-sale adjudication system availability based on Serve You Rx's book-of-business measurement. This guarantee does not include downtime attributed to regularly scheduled systems maintenance. | \$1.00 per Eligible Member for each full percentage point which the yearly average of the online computer systems availability is below 99%. |
| Manual Claims Processing Turnaround Time | Claims submitted by the Eligible Member or subject to manual processing will be processed within seven (7) calendar days of receipt. Guarantee is measured based on Serve You Rx's book-of-business. | \$1.00 per Eligible Member for each day a Claim requiring manual processing is processed later than seven (7) calendar days after receipt. |
| Call Center: Average Speed of Answer | Calls will be answered within an average of thirty (30) seconds or less based upon total calls received. This guarantee is measured based on Serve You Rx's book of business and excludes January performance. | \$1.00 per Eligible Member for each full second above the standard thirty (30) seconds. |
| Call Center: Call Abandonment Rate | The call abandonment rate will not exceed 5% of all calls received during each contract year. This guarantee is measured based on Serve You Rx's book of business and excludes January performance. | \$1.00 per Eligible Member for each full percentage point above 5%. Measurement will be based on the average percentage of calls abandoned. |
| Call Center: First Call Resolution | Serve You Rx guarantees that 95% or greater of calls will be resolved at first point of contact. This guarantee is measured based on Serve You Rx's book of business and excludes January performance. | \$1.00 per Eligible Member for each full percentage point below 95%. |
| Call Center: Blockage Rate | Serve You Rx guarantees a blockage rate that does not exceed 2%. Guarantee is measured based on Serve You Rx's book of business and excludes January performance. | \$1.00 per Eligible Member for each full percentage point above the standard 2%. |
| Mail Service: Turnaround Time for Clean Prescriptions | Clean prescriptions will be mailed in an average of two (2) business days from receipt of required information. Guarantee is measured based on Serve You Rx's book of business. | \$1.00 per Eligible Member for each full day above the standard two (2) business days on an annual basis. |
| Mail Service: Turnaround Time for Prescriptions Requiring Intervention | Prescriptions subject to intervention will be mailed in an average of five (5) business days from receipt of order. Guarantee is measured based on Serve You Rx's book of business. | \$1.00 per Eligible Member for each full day above the standard five (5) business days on an annual basis. |
| Mail Service: Dispensing Accuracy | An average of 99.95% of prescriptions will be dispensed accurately. Guarantee is measured based on Serve You Rx's book of business. | \$1.00 per Eligible Member for each full percentage point below 99.95%. |