

**AMENDMENT TO CONTRACT
ANNUAL REQUIREMENTS FOR
PHARMACY SERVICES ASSIGNMENT**

This Amendment is hereby entered by and between **Wagey Drug Co.**, 800 North 27th Street, Lincoln, NE 68503 (hereinafter "Wagey Drug"), **Kohll's Pharmacy & Homecare, Inc.**, 12727 Q Street, Omaha, NE 68137 (hereinafter "Kohll's"), and the **City of Lincoln, Nebraska** (hereinafter "City") for the purpose of amending a contract dated 04/17/2012 made in connection with Lancaster County Contract No. 12-C-0181, (the "Agreement"), for annual requirements for pharmacy services for the Lincoln-Lancaster County Health Department, a copy of which is attached hereto and made a part hereof by this reference.

WHEREAS, the City, through local intergovernmental cooperative purchasing, has chosen to participate in the contract between Lancaster County and Wagey Drug Co., Contract No. 12-C-0181, dated 4/17/2012, which was prepared in accordance with the County's usual and customary laws, procedures and policies, and has approved and adopted said documents connected with said contract; and

WHEREAS, the City and Wagey Drug entered into the Agreement for annual requirements for pharmacy services for the Lincoln-Lancaster County Health Department under the same pricing structure, terms, and conditions as Lancaster County Contract No. 12-C-0181 dated 4/17/2012; and

WHEREAS, Kohll's and Wagey Drug have entered into an agreement by which Kohll's shall acquire substantially all of the assets of Wagey Drug, including but not limited to Wagey Drug's rights and obligations under the Agreement, effective February 1, 2015; and

WHEREAS, Wagey Drug wishes to assign any and all of its rights and obligations in the Agreement to Kohll's beginning February 1, 2015 through the remaining term of the Agreement; and

WHEREAS, Kohll's accepts the assignment and all the terms and conditions, including the pricing structure, of the Agreement beginning February 1, 2015 through the remaining term of the Agreement.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants stated herein, the parties agree as follows:

1. Wagey Drug hereby assigns any and all rights and obligations attributable to it from the Agreement to Kohll's beginning February 1, 2015 through the remaining term of the Agreement.
2. Kohll's hereby accepts said assignment along with any and all of the terms and conditions as well as the pricing structure of the Agreement beginning February 1, 2015 through

the remaining term of the Agreement. This acceptance shall only be limited as stated in this Amendment.

3. All other terms of the contract not in conflict with this Amendment shall remain in full force and effect throughout the remaining term of the original contract.

The parties do hereby agree to all the terms and conditions of this Amendment. This Amendment shall be binding upon the parties, their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the parties do hereby execute this Amendment this 12 day of January, 2015.

WAGEY DRUG CO.,
A Nebraska corporation

Attest: Pamela K. Rihanek
Secretary (SEAL)
Pamela K. Rihanek

Gary E. Rihanek
Name: Gary E. Rihanek
Title: President
Date: _____

**KOHL'S PHARMACY &
HOMECARE, INC.,**
A Nebraska Corporation

Attest: David Kohl
Secretary (SEAL)

David Kohl
Name: David Kohl
Title: President
Date: _____

CITY OF LINCOLN, NEBRASKA
a municipal corporation,

Attest: _____
City Clerk

Judith A. Halstead
Judith A. Halstead, Director
Lincoln-Lancaster County Health Dept.

DO 12398

14120246

CONTRACT DOCUMENTS

CITY OF LINCOLN

**Annual Requirements for
Pharmacy Services for General Assistance**

**Wagey Drug Company
800 N. 27th St.
Lincoln, NE 68503
402-476-3341**

**CITY OF LINCOLN
CONTRACT AGREEMENT**

THIS CONTRACT, made and entered into by and between Wagey Drug Company, 800 No. 27th St., Lincoln, NE 68503, hereinafter called Contractor, and the City of Lincoln, Nebraska, a municipal corporation, hereinafter called the City.

WHEREAS, Lincoln Municipal Code §2.18.030(c) allows the City of Lincoln to join with other units of government for cooperative purchasing; and

WHEREAS, the City through local inter-governmental cooperative purchasing have chosen to participate in the contract between **Lancaster County and Wagey Drug Company, Contract No 12-C-0181, dated 04/17/12**, which was prepared in accordance with the County's usual and customary laws, procedures and policies, and has approved and adopted said documents connected with said, Work, to-wit:

for all materials and equipment necessary to furnish Pharmacy Services for the City/County Health Department in compliance with the prices as established via the **County Contract No. 12-C-0181, dated 04/17/12; and**

WHEREAS, the Contractor, in response to the City's request to participate in said agreement, has submitted to the City, an offer approving City's participation under the same pricing structure, terms and conditions as the **Lancaster County Contract No. 12-C-0181, dated 04/17/12 for Pharmacy Services** with only those exceptions stated herein; and

WHEREAS, Lancaster County, in the manner usual and customary to their laws, policies and procedures has opened, read, examined, and canvassed the Proposals submitted in response to the proposal request, and as a result of such canvass has determined and declared the Contractor to be the lowest responsible bidder for the said Work for the sum or sums named in **Lancaster County Contract No. 12-C-0181, dated 04/17/12**, a copy thereof being attached to and made a part of this Contract;

NOW, THEREFORE, in consideration of the sums to be paid to the Contractor and the mutual covenants herein contained, the Contractor and the Owners hereby agree as follows:

1. The Contractor agrees to (a) furnish all tools, equipment, supplies, superintendence, transportation, and other accessories, services, and facilities necessary to furnish Pharmacy Services to the City-County Health Department.
2. Term of the Contract. The term of this contract is for January 1, 2015 through December 31, 2015 with the option to renew for the period of January 1, 2016 through April 16, 2016, to correspond with the Lancaster County expiration terms.
3. Pricing. Pricing of items will be pursuant to Lancaster County Contract No. 12-C-0181, dated 04/17/12 and Attachment 1. The estimated cost of products or services for the City shall not exceed \$15,500.00 during the contract term without approval.
4. Independent Contractor. It is the express intent of the parties that this contract shall not create an employer-employee relationship. Employees of the Contractor shall not be deemed to be employees of the Owners and employees of the Owners shall not be deemed to be employees of the Contractor. The Contractor and the Owners shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees nor the Owners' employees shall be entitled to any salary, wages, or benefits from the other party, including but not limited to overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave. Contractor shall also be responsible for maintaining workers' compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local and any other payroll taxes with respect to its employees' compensation.

5. Indemnification. The Contractor shall indemnify and hold harmless the Owners (City of Lincoln and Lancaster County), their agents, principals, officers, and employees from and against all claims, demands, suits, actions, payments, liabilities, judgments and expenses (including court-ordered attorneys' fees), arising out of or resulting from the acts or omissions of the Contractor, its principals, officers, agents, or employees in the performance of this contract. Liability includes any claims, damages, losses, and expenses arising out of or resulting from performance of this contract that results in any claim for damage whatsoever including any bodily injury, civil rights liability, sickness, disease, or damage to or destruction of tangible property, including the loss of use resulting therefrom. Further, Contractor shall maintain a policy or policies of insurance (or a self-insurance program), sufficient in coverage and amount to pay any judgments or related expenses from or in conjunction with any such claims. Nothing in this contract shall require either party to indemnify or hold harmless the other party from liability for the negligent or wrongful acts or omissions of said other party or its principals, officers, or employees.
6. Equal Employment Opportunity. In connection with the carrying out of this project, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, age or marital status. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, ancestry, disability, age or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship.
7. Termination. This Contract may be terminated by the following:
 - 7.1 Termination for Convenience. Either party may terminate this Contract upon fourteen (14) days written notice to the other party for any reason without penalty.
 - 7.2 Termination for Cause. The Owners may terminate the Contract for cause if the Contractor:
 - 7.2.1 Refuses or fails to supply the proper labor, materials and equipment necessary to complete the project as required.
 - 7.2.2 Disregards Federal, State or local laws, ordinances, regulations, resolutions or orders.
 - 7.2.3 Otherwise commits a substantial breach or default of any provision of the Contract Document. In the event of a substantial breach or default the Owners will provide the Contractor written notice of said breach or default and allow the Contractor ten (10) days from the date of the written notice to cure such breach or default. If said breach or default is not cured within ten (10) days from the date of notice, then the contract shall terminate.
8. E-Verify. In accordance with Neb. Rev. Stat. 4-108 through 4-114, the contractor agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324 a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. The Contractor shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A 1324b. The contractor shall require any subcontractor to comply with the provisions of this section.

9. The parties agree that the terms and conditions of this Contract shall prevail and govern in the case of any such inconsistent or additional terms in the Agreement between **Lancaster County Contract No. 12-C-0181, dated 04/17/12 and Wagey Drug Company.**

The Contract Documents comprise the Contract, and consist of the following:

1. Contract Agreement
2. Lancaster County Contract No. 12-C-0181, dated 04/17/12
3. Attachment 1
4. Contract Addendum C-14-0639, dated 12/16/14

This Contract Agreement, together with the other Contract Documents herein above mentioned, form this Contract, and are a part of the Contract as if hereto attached.

The Contractor and the Owners hereby agree that all the terms and conditions of this Contract shall be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Contractor and the Owners do hereby execute this contract.

EXECUTION BY THE CITY OF LINCOLN, NEBRASKA

ATTEST:
Erin L. Duban
City Clerk



CITY OF LINCOLN, NEBRASKA
Judith Attkist
Health Director
Approved by Directorial Order No. 012398
Dated 1-22-15

EXECUTION BY CONTRACTOR

IF A CORPORATION:

ATTEST:
Pamela K. Rihaneck (SEAL) 1/12/15
Secretary Pamela K. Rihaneck

Wagey Drug Co.
Name of Corporation
800 N. 27th St., Lincoln, NE 68503
(Address)

By: *Gary E. Rihaneck* 112115
Duly Authorized Official, Gary E. Rihaneck
President

Legal Title of Official

IF OTHER TYPE OF ORGANIZATION:

Name of Organization

Type of Organization

(Address)

By: _____
Member

By: _____
Member

AMENDMENT TO CONTRACT
ANNUAL REQUIREMENTS FOR
PHARMACY SERVICES FOR GENERAL ASSISTANCE
LANCASTER COUNTY
ASSIGNMENT

This Amendment is hereby entered by and between Wagey Drug Company, 800 N. 27th St., Lincoln, NE 68503, (hereinafter "Wagey Drug") and Lancaster County (hereinafter "County"), for the purpose of amending a Contract dated April 17, 2012, under contract No. C-12-0181, (the "Contract"), for **Annual Requirements for Pharmacy Services for General Assistance**, a copy of which is attached hereto and made a part hereof by this reference.

WHEREAS, Wagey Drug wishes to cancel their rights to the Contract and assign the Contract to Kohl's beginning February 1, 2015 through the remaining term of the original contract; and

WHEREAS, Kohl's accepts the assignment and all of the terms and conditions of the Contract beginning February 1, 2015 through the remaining term of the original contract.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants stated herein the parties agree as follows:

- 1) Wagey Drug wishes to cancel their rights to the Contract and assign the Contract to Kohl's beginning February 1, 2015 through the remaining term of the original contract.
- 2) Kohl's accepts the assignment and all of the terms and conditions of the Contract beginning February 1, 2015 through the remaining term of the original contract.
- 3) All other terms of the Contract, not in conflict with this Amendment, shall remain in full force and effect.

The Parties do hereby agree to all the terms and conditions of this Amendment. This Amendment shall be binding upon the parties, their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Parties do hereby execute this Amendment.

Official County Use Only

Lancaster County Board of Commissioners

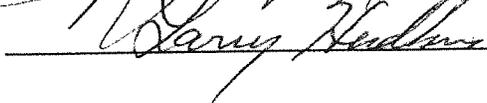
Executed this 16 day of December, 2014

Approved as to form
this 16 day of Dec, 2014


Deputy Lancaster County Attorney

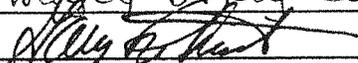






Supplier, please fill in the date and following information and mail back to our office; a faxed copy is not acceptable.

Executed this 11th day of December, 2014

Company Name:	Wagey Drug Co
By: (Please Sign)	
By: (Please Print)	Gary Rihanek
Title:	President
Company Address:	800 N 27th St Lincoln NE 68503
Company Phone & Fax:	402-476-3341 402-476-3586
E-Mail Address:	wageydrug@prodigy.net

DENNIS C. TEGTMEIER
ATTORNEY AT LAW

SUITE 250 -- THE APOTHECARY BUILDING -- 140 NORTH 8TH STREET -- LINCOLN, NEBRASKA 68508
402-476-1829
FAX 402-476-7499
E-MAIL tegtmeierlaw@gmail.com

November 17, 2014

Emailed: gchalupa@lancaster.ne.gov

Gary Chalupa
2202 South 11th Street, Suite 150
Lincoln, Nebraska 68502

Re: Lancaster County, Nebraska, Pharmacy Services for General Assistance Contract
with Wagey Drug Co. Executed April 17, 2012

Dear Gary:

I represent Wagey Drug Co. with whom Lancaster County, Nebraska, has the above-referenced contract, a copy of which is enclosed. It is my understanding you have been speaking with Gary Rihanek, President of Wagey Drug Co., concerning assigning the above contract.

Please consider this letter a request in accordance with paragraph 15.2 of the contract for written permission of the Lancaster County Board of Commissioners for Wagey Drug Co. to assign its rights and delegate its duties under the above contract to Kohll's Pharmacy & Homecare, Inc., 5000 Dodge Street, Omaha, Nebraska, 68132, effective January 31, 2015. Kohll's is purchasing substantially all the assets of Wagey Drug Co. with a closing date of January 31, 2015. Gary Rihanek will be staying on with Kohll's for at least six months after the closing date as the Pharmacist in Charge.

It is my understanding that you will take this request to the County Commissioners to obtain such written permission. If you need anything further or have additional questions, please contact me. Thank you for your attention to this matter.

Sincerely,



Dennis C. Tegtmeier
Attorney at Law

DCTamr
Enclosures

cc Gary & Pam Rihanek, Wagey Drug Co.
John H. Bergmeyer, Attorney for Kohll's

C-12-0181

APR 11 2012

CO.
CLERK

CONTRACT DOCUMENTS

**LANCASTER COUNTY
NEBRASKA**

**ANNUAL REQUIREMENTS
FOR
Pharmacy Services for General Assistance**

**Wagey Drug Company
800 N. 27th St.
Lincoln, NE 68503
402-476-3341**

**LANCASTER COUNTY
CONTRACT AGREEMENT**

THIS CONTRACT, made and entered into this 17 day of April 2012, by and between Wagey Drug Company, 800 N. 27th St., Lincoln, NE 68503, hereinafter called "Contractor", and the County of Lancaster, Nebraska, a political subdivision of the State of Nebraska, hereinafter called the "County".

WHEREAS, the County has caused to be prepared, in accordance with law, Specifications, Plans, and other Contract Documents for the Work herein described, and has approved and adopted said documents and has caused to be published an advertisement for and in connection with said Work, to-wit:

For providing Pharmacy Services for General Assistance and,

WHEREAS, the Contractor, has indicated their interest in contracting for such services according to the Specifications and other documents attached herein; and,

WHEREAS, the County, in the manner prescribed by law has publicly, advertised and opened RFP 12-063, General Assistance Pharmacy Services with no submissions by Vendors to such advertisement, and as a result the County has declared the Contractor to be the Vendor of choice for the said Work for the sum or sums listed in this document;

NOW, THEREFORE, in consideration of the sums to be paid to the Contractor and the mutual covenants herein contained, the Contractor and the County have agreed and hereby agree as follows:

1. The Contractor agrees to (a) furnish all tools, equipment, supplies, superintendence, transportation, and other accessories, services, and facilities; (b) furnish all materials, supplies, and equipment specified to be incorporated into and form a permanent part of the complete work; (c) provide and perform all necessary labor in a substantial and workmanlike manner and in accordance with the provisions of the Contract Documents; and (d) execute and complete all Work included in and covered by the County's award of this Contract to the Contractor, such award being based on the acceptance by the County of the Contractor's Proposal, or part thereof, as follows:

Agreement by negotiation

2. The County agrees to pay to the Contractor for the performance of the Work embraced in this Contract, the Contractor agrees to accept as full compensation therefore, the following sums and prices for all Work covered by and included in the Contract award and designated above, payment thereof to be made in the manner provided by the County:

The County will pay for products/service as follows:

1. Compensation for prescription and non-prescription items shall be in compliance with Nebraska State Medicaid Allowable Cost/Federal Upper Limit (SMAC/FUL) fee schedule.
2. When a County GA client is accepted as eligible and approved for Medicaid, Wagey Drug will aggressively pursue compensation from Medicaid as the primary payment source from the eligibility date rather than the County GA program.
3. Contractor agrees to provide storage and distribution of MediPaks for GA clients qualified to participate in the RX Assistance Program and approved for MediPak distribution.
 - A. Weekly MediPak service for \$10.00 per GA client per week.
 - B. Bi-Weekly MediPak service for \$8.00 per GA client per two weeks
 - C. Monthly repackaging rate of \$8.00 per GA client per month.

4. The Weekly, Bi-Weekly and Monthly MediPak service shall include all service fees.
 5. A Medicaid handling fee will not be applied in addition to the rates listed for Weekly, Bi-Weekly and Monthly MediPak services.
 6. No additional charge will be billed for delivery services.
 7. A \$.30 per prescription rebill fee for any prescriptions which becomes open for Medicaid retroactively.
3. Equal Employment Opportunity. In connection with the carrying out of this project, the contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, age or marital status. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, ancestry, disability, age or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship.
 4. E-Verify. In accordance with Neb. Rev. Stat. 4-108 through 4-114, the contractor agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324 a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. The Contractor shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A 1324b. The contractor shall require any subcontractor to comply with the provisions of this section.
 5. Termination. This Contract may be terminated by the following:
 - 5.1) Termination for Convenience. Either party may terminate this Contract upon thirty (30) days written notice to the other party for any reason without penalty.
 - 5.2) Termination for Cause. The County may terminate the Contract for cause if the Contractor:
 - 5.2.1) Refuses or fails to supply the proper labor, materials and equipment necessary to provide services and/or commodities.
 - 5.2.2) Disregards Federal, State or local laws, ordinances, regulations, resolutions or orders.
 - 5.2.3) Otherwise commits a substantial breach or default of any provision of the Contract Document. In the event of a substantial breach or default the County will provide the Contractor written notice of said breach or default and allow the Contractor ten (10) days from the date of the written notice to cure such breach or default. If said breach or default is not cured within ten (10) days from the date of notice, then the contract shall terminate.

6. Independent Contractor. It is the express intent of the parties that this contract shall not create an employer-employee relationship. Employees of the Contractor shall not be deemed to be employees of the County and employees of the County shall not be deemed to be employees of the Contractor. The Contractor and the County shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees nor the County's employees shall be entitled to any salary, wages, or benefits from the other party, including but not limited to overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave. Contractor shall also be responsible for maintaining workers' compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local and any other payroll taxes with respect to its employees' compensation.
7. Contract Term. This Contract shall be effective upon execution by both parties. The term of the Contract shall be a four (4) year term with the option of an additional four (4) year term.
8. The Contract Documents comprise the Contract, and consist of the following:
 1. Contract Agreement
 2. HIPPA Agreement
 3. Specifications
 4. Insurance Requirements

These Contract Agreements, together with the other Contract Documents herein above mentioned, form this Contract, and they are as fully a part of the Contract as if hereto attached or herein repeated.

The Contractor and the Owners hereby agree that all the terms and conditions of this Contract shall be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Contractor and the Owners do hereby execute this contract.

EXECUTION BY LANCASTER COUNTY, NEBRASKA

Contract Approved as to Form:

Burtan Bohannan
Lancaster County Attorney

The Board of County Commissioners of
Lancaster, Nebraska

Jane [unclear]
Deanne Keiser
John Scherr
David [unclear]
[unclear]
dated 4/17/12

EXECUTION BY CONTRACTOR

IF A CORPORATION:

ATTEST:

Pamela Bohannan (SEAL)
Secretary

Wagay Drug Company, Inc
Name of Corporation

800 N 27th St Lincoln NE 68503
(Address)

By: *[Signature]*
Duly Authorized Official

President
Legal Title of Official

IF OTHER TYPE OF ORGANIZATION:

Name of Organization

Type of Organization

(Address)

By: _____
Member

By: _____
Member

IF AN INDIVIDUAL:

Name

Address

Signature

INSURANCE CLAUSE FOR ALL COUNTY CONTRACTS

The Contractor shall indemnify and hold harmless, to the fullest extent allowed by law, Lancaster County, Nebraska, its agents, employees and representatives from all claims, demands, suits, actions, payments, liability, judgments and expenses (including court-ordered attorney's fees), arising out of or resulting from the performance of the contract that results in bodily injury, sickness, disease, death, civil rights liability, or damage to or destruction of tangible property, including the loss of use resulting therefrom, that are caused in whole or in part by the Contractor, any subcontractor, or any agents or representatives, either directly or indirectly employed by them.

Contractor shall not commence work under this contract until he has obtained all insurance required under this Section and such insurance has been approved by LANCASTER COUNTY, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved.

- A. Workers' Compensation Insurance and Employer's Liability Insurance: The Contractor shall take out and maintain during the life of this contract the applicable statutory Worker's Compensation Insurance, and in the case of any work sublet, the Contractor shall require the subcontractor similarly to provide statutory Worker's Compensation Insurance for the latter's employees. Coverage shall be provided by an insurance company authorized to write such insurance in all states where the Contractor will have employees located in the performance of this contract, and the Contractor shall require each of his subcontractors similarly to maintain Employer's Liability Insurance similarly to the Contractor.

Workers' Compensation - Required limits:

Coverage A - Coverage will include Statutory requirements

Coverage B - Employers Liability

\$100,000 Each Person

\$100,000 Each Person by Disease

\$500,000 Policy Limit - Disease

- B. General Liability Insurance

1. The Contractor shall maintain during the life of this contract, Commercial General Liability Insurance, naming and protecting him and Lancaster County against claims for damages resulting from (a) bodily injury, including wrongful death, and (b) property damage which may arise from operations under this contract whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them. The insurance requirements are:

Commercial General Liability (form CG0001 or equivalent) with limits of:

\$1,000,000 Each Occurrence

\$1,000,000 Personal Injury

\$2,000,000 Products/Completed Operations

\$2,000,000 General Aggregate

and:

2. Coverage shall include Contractual Liability coverage insuring the contractual exposure as addressed in this contract.
3. There shall be no exclusion or limitation for the Explosion (X), Collapse (C) and Underground (U) hazards.
4. Coverage shall also include Products/Completed Operations.
5. Lancaster County shall be named as Additional insured (CG2010 or equivalent).
6. The Commercial General Liability coverage shall be endorsed with the Designated

Construction Project(s) General Aggregate Limit endorsement (CG 25 03 or equivalent).

- C. Automobile Liability Insurance: The Contractor shall take out and maintain during the life of the contract such Automobile Liability Insurance as shall protect him against claims for damages resulting from (a) bodily injury, including wrongful death, and (b) property damage which may arise from the operations of any owned, hired, or now-owned automobiles used by or for him in any capacity in connection with the carrying out of this contract. The minimum acceptable limits of liability to be provided by such Automobile Liability Insurance shall be as follows:

Bodily Injury and Property Damage 1,000,000 Combined Single Limit

- D. Railroad Contractual Liability Insurance: If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing, Railroad Contractual Liability Endorsement (ISO® form CG24170196 or newer).
- E. Railroad Protective Liability: If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing or otherwise required by the Special Provisions or applicable requirements of an affected railroad, the Contractor shall provide Railroad Protective Liability Insurance naming the affected railroad/s as insured with minimum limits for bodily injury and property damage of \$2,000,000 per occurrence, \$6,000,000 aggregate, or such other limits as required in the Special Provisions or by the affected railroad. The original of the policy shall be furnished to the railroad and a certified copy of the same furnished to the Lancaster County Purchasing Department prior to any related construction or entry upon railroad premises by the Contractor or for work related to the Contract.
- F. Builder's Risk Insurance: (***For Building Construction Contracts Only***) Unless otherwise specified where buildings are to be constructed under this contract, the Contractor shall provide coverage for all direct physical loss (also known as "Special Causes of Loss"). Such insurance shall be written on a Replacement Cost basis covering such building in the amount equal to one-hundred percent (100%) of the contract amount (minimum) as specified herein. Losses, if any, shall be made payable to LANCASTER COUNTY and Contractor as their interest may appear. A certificate of insurance evidencing such insurance coverage shall be filed with LANCASTER COUNTY by the time work on the building begins and such insurance shall be subjected to the approval of LANCASTER COUNTY.
- G. Minimum Scope of Insurance: All Liability Insurance policies shall be written on an "Occurrence" basis only. All insurance coverage are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has A.M. Best's Rating of no less than A:VII unless specific approval has been granted by LANCASTER COUNTY.
- H. Certificate of Insurance: All Certificates of Insurance shall be filed with LANCASTER COUNTY on the standard ACCORD CERTIFICATE OF INSURANCE form showing the specific limits of insurance, coverage modifications and endorsements required by the preceding Sections A, B, C, D and showing LANCASTER COUNTY is an additional insured where required. Such certificate shall specifically state that insurance policies are to be endorsed to require the insurer to provide LANCASTER COUNTY thirty days, notice of cancellation non-renewal or any material reduction of insurance coverage.

The original certificate shall be provided to Lancaster County as designated and a copy to: Office of Risk Management, Lancaster County (555 So. 9th Street, Lincoln, NE 68508)

SPECIFICATIONS

PHARMACY SERVICES FOR COUNTY GENERAL ASSISTANCE PROGRAM

1. SCOPE OF SERVICES

- 1.1 Lancaster County, herein after referred to as the County, is interested in obtaining proposals from interested Pharmacy Services Contractors, herein after referred to as Contractors, to implement and administer a pharmaceutical distribution program to adequately meet the needs of the County General Assistance (GA) program.
- 1.2 The GA pharmacy service program provides for the needs of individual residents of Lancaster County who meet the low income General Assistance Guidelines established by the County and do not qualify for other social service benefits.
- 1.3 (See attachment A - "Lancaster County General Assistance Guidelines")
- 1.4 The GA program is administered by the County's General Assistance office located at:

Trabert Hall
2202 S. 11th Street, Suite 150
Lincoln, NE 68502
Attn: Gary Chalupa, GA program supervisor
(402) 441-3095 Fax: (402) 441-3099

- 1.5 **Vendors must submit an electronic response on the City/County Purchasing Ebid System and a written proposal which will be received in the City of Lincoln/Lancaster County Purchasing Office prior to the date and time listed in the RFP.**
 - 1.5.1 Proposals received after the specified day and hour will be considered null and void and will not be accepted.
 - 1.5.2 Six (6) copies of each proposal should be submitted to the attention of Bob Walla, Assistant Purchasing Agent for the City of Lincoln/Lancaster County.
- 1.6 All inquiries regarding these specifications shall be directed via e-mail or faxed written request to Bob Walla, Assistant Purchasing Agent (rwalla@lincoln.ne.gov) Or Fax: (402)441-6513.
 - 1.6.1 All inquiries must be received by the Purchasing Office 5 days prior to closing date and time.
 - 1.6.2 These inquiries and/or responses shall be distributed as an electronic addenda through the City/County Ebid System.

2. CLIENT SCREENING PROCESS

- 2.1 Low income residents apply for General Assistance and via the County GA office staffed by case workers who determine their eligibility status.
 - 2.1.1 If they request Primary Health Care Services which includes Pharmacy, the case worker determines their eligibility for services; if approved, their name is placed on a pharmacy approval list.
 - 2.1.2 The approved client is also required to apply through the Lancaster County Medical Society (LCMS) for all medications that are available through the Prescription Assistance Program.

- 2.1.3 The Contractor will be granted internet access to a list of eligible clients.
 - 2.1.3.1 The information provided will include a complete list of eligible clients and a listing of medications being provided through the Prescription Assistance Program.
 - 2.1.3.2 Prior to filling or refilling any prescription, the Contractor will be required to verify each clients eligibility status and verify that the prescription being filled is not being provided through the Prescription Assistance Program.

5. PHARMACY ACCESS PROCESS

- 5.1 Eligible clients can receive prescriptions, medical supplies and durable medical equipment when prescribed, when authorized by The Lincoln/Lancaster County Health Department (LLCHD) using a Service Request Authorization, or when authorized by the GA Caseworker using a GA voucher.
- 5.2 All maintenance drugs or any drug used for a chronic condition may be prescribed and dispensed in a minimum of a one (1) month supply with physician approval.
- 5.3 Over the counter medications and medical supplies will not be provided unless specifically approved by the LLCHD.
- 5.4 The dispensing fee will be the same as that allowed by the State Medicaid System.
- 5.5 Contractor must indicate in their written response any and all additional charges that would be reimbursed by the County in the execution of this contract.
- 5.6 The parties agree that the rates proposed by the Contractor in response to this section shall include all services fees and the Medicaid handling fee will not be applied in addition to the rates listed in this section to clients approved for MedicPak services.
- 5.7 The LLCHD will provide a quarterly, random review of prescriptions filled to monitor the medical necessity.

6. PHARMACY SERVICES BUDGET

- 6.1 The County has seen a steady growth in the expenditure rate for the medication requirements of the GA program during the past three (3) years:
 - 6.1.1 Fiscal year 2009: \$ 357,267
 - 6.1.2 Fiscal year 2010: \$ 404,641
 - 6.1.3 Fiscal year 2011 \$ 420,837
- 6.2 The County estimates an annual budget of \$480,00 for pharmacy services for the 2012-2013 budget year.
- 6.3 The County will not guarantee any amount of services or products to the awarded Contractor during the term of this contract.

7. BILLING FOR GA CLIENT PHARMACY SERVICES

- 7.1 Each month, the contract pharmacy provides the GA office with an itemized billing statement which is reviewed by the GA caseworker, the County Health Department and the GA billing clerk.
- 7.2 Once reviewed, the billing clerk will process the necessary paperwork and vouchers and send them to the County Clerk for processing a payment.
 - 7.2.1 Any item on the billing statement containing a discrepancy will be returned to the contract pharmacy for clarification.

- 7.3 All billing for this program shall be submitted to the Veteran's Affairs and General Assistance office indicated in 2.1 of these specifications, and include at the minimum the following information:

Patient/Client Name
Drug Name, Strength, NDC Code
Prescribed by
Date
Metric Quantity
Charge

- 7.4 All approved pharmacy bills are paid on a monthly basis.
- 7.4.1 Clients who are later approved for SSI or SSDI are usually approved for Medicaid with a retroactive date.
- 7.4.2 Once identified, the Billing Clerk will notify the contract pharmacy that the client is now approved for Medicaid.
- 7.4.3 When notified the pharmacy is then required to reimburse the county for all payments rendered within the Medicaid eligibility dates and submit the appropriate bills to Medicaid for payment.
- 7.5 Billing MUST be for ONLY ACTUAL services rendered (i.e., if a prescription is ordered but not provided to the client customer for any reason), the GA program shall not be charged for the medication or service.

8. GENERAL ASSISTANCE CLIENT SERVICES

- 8.1 General Assistance Clients services shall be billed at the medicaid rates established by the Federal Government, using the Medicaid formulary whenever feasible.
- 8.2 Bioequivalent generic medications will be used at all times allowable.
- 8.2.1 If the Health Department or authorized representative specifically requests a brand-name product, such request shall be honored.
- 8.2.2 Charges shall not exceed the pharmacies usual and customary charges to the general public or the Medicaid allowable charge.
- 8.2.3 Pharmacies shall dispense drugs listed on Medicaid's latest State Maximum Allowable Cost/Federal Upper Limit (SMAC/FUL) Listing, unless exempted under 8.2.1 above.
- 8.3 The preparation and packaging of all medications shall be supervised by a registered pharmacist and shall be performed in accordance with all applicable Federal and State laws and the County's appurtenant policies and procedures.

9. PRESCRIPTION ASSISTANCE PROGRAM

- 9.1 The Prescription Assistance Program is a offered by National Drug Manufacturers who offer select drugs at no cost to qualified low income individuals who meet their criteria.
- 9.1.1 All GA clients approved for pharmacy services are required to also apply for this Prescription Assistance Program, through the Lancaster County Medical Society (LCMS).

- 9.2 Most medications received through the Prescription Assistance Program come in 90 day quantities.
 - 9.2.1 Currently the County GA program is unable to take full advantage of this program at certain GA service and treatment locations due to storage and/or distribution concerns associated with the quantity and/or frequency of the medications, as the medications are distributed in bulk.
 - 9.2.2 Contractor must be willing to accept these bulk prescriptions and store, repackage and redistribute the bulk medication for the GA clients qualified to receive medications via the Drug Assistance program.
 - 9.2.2.1 This service will include picking up the bulk medications from the GA service Contractors, repackaging it and delivering it via one of the following:
 1. Weekly Medication Packs (MediPak)
 2. Bi-Weekly MediPak; or
 3. Monthly MediPaks
 - 9.2.2.2 You are requested to provide your proposed fee for these services on the bidding schedule.

NOTE: The fee you propose for the services described herein, will be in lieu of the Medicaid handling/dispensing fee NOT in addition to the fee.
 - 9.2.2.3 We estimate that approximately 35 to 40 GA clients will be utilizing this MediPak system.

10. CRITERIA FOR PHARMACEUTICAL SERVICES

- 10.1 Must be an established pharmacy in business at least for two (2) years with experience in drug distribution and consulting for similar programs.
 - 10.1.1 All services provided to GA clients and to County Personnel shall be delivered in a professional manner with respect and dignity to all persons involved.
- 10.2 Display competence in handling a high volume pharmaceutical service program with little or no error in medications provided.
- 10.3 Successful Contractor shall be able to provide less than 2 hr. turn-around on most standard prescriptions requested.
 - 10.3.1 If any anticipated or actual delays arise, Contractor shall immediately notify County.
 - 10.3.2 Regardless of notice if deliveries are not made at the time agreed upon, County may, at its sole discretion, terminate this Agreement and proceed pursuant to "termination" as stated herein.
- 10.4 The proposer must describe staffing capacity to adequately and accurately carry out service requirements as described in the specification and contract

11. DELIVERY AND PICKUP SERVICES

- 11.1 Occasionally, GA clients are housed in, or receiving medical services from group homes or treatment facilities which may include, but are not limited to the Lincoln/Lancaster County Health Department, Community Mental Health Clinic, County Health Center, CenterPointe and O.U.R. Homes.
- 11.2 Pharmacy Contractor must offer pick-up and delivery services for the medications received on this program.
- 11.3 Provide with your response a summary of your delivery and pickup services, including any associated charges.

12. **TERM OF THE CONTRACT**

12.1 The contract shall be for a four (4) year term from the date of execution by all parties with the option to renew for one (1) additional four (4) year term.

12.1.2 Any renewal of the contract will be under the same terms and conditions as the original agreement.

13. **HIPAA BUSINESS ASSOCIATE AGREEMENT**

13.1 If and to the extent, and so long as, required by the provisions enacted by the Health Insurance Portability and Accountability Act (HIPAA)1996 and regulations promulgated thereunder, but not otherwise, Contractor does hereby assure the County that Contractor will appropriately safeguard protected health information made available to or obtained by Contractor.

13.2 In implementation of such assurance and without limiting the obligations of Contractor otherwise set forth in this Agreement or imposed by applicable law, Contractor hereby agrees to comply with applicable requirements of law relating to protect health information and with respect to any task or other activity Contractor performs on behalf of the County.

13.3 The Successful Pharmacy Provider will agree to the provisions in the County's HIPAA Business Associate Addendum (a sample of which is included in the Bid Attachments).

14. **INSURANCE**

14.1 Contractor shall maintain professional liability and malpractice insurance throughout the term (and any subsequent renewal term) of this agreement.

14.2 The amounts of such insurance will be those minimums (if any) prescribed by law and/or recommended by the American Pharmaceutical Association.

14.3 Contractor shall provide proof of insurance via standard accord certificate as per "Insurance Requirements for all County Contracts". (See attached sample contract documents)

15. **NON-ASSIGNABLE**

15.1 This contract cannot be assignable by Contractor without written permission from the Lancaster County Board of Commissioners.

15.2 Contractor shall not assign its rights, delegate its duties or subcontract any performance of our Agreement without the express prior written consent of County.

15.2.1 Any assignment, delegation or subcontract without such express prior written consent shall be null and void and shall constitute a material breach of this Agreement, upon which County may immediately terminate the Agreement in accordance with the provisions stated in "termination", herein.

16. **MODIFICATION OF PHARMACY SERVICES**

16.1 The pharmacy services as specified in the contract and this proposal for pharmaceutical services cannot be modified by either party without the written consent of both parties.

17. **CONTRACT PROCEDURES AND PROVISIONS**

17.1 The contract, proposal and addenda provided to the County by the contractor shall comprise the entire contract of the parties.

17.1.1 No change in, addition to, or waiver of any provision of this contract shall be binding unless it is in writing, signed by both parties, and added to this contract as an amendment.

17.2 All other expenses incurred in the implementation and operation of pharmacy services not mentioned herein will be borne by the contractor.

18. **AWARD OF THE RFP REQUIREMENTS**

Responses to this request will be reviewed and ranked by a County appointed committee.

18.1 Top ranked Proposers may be requested to give an oral presentation of the program offered and to further clarify their offers on individual program mechanics and procedures.

19. **RESPONSE REQUIREMENTS**

19.1 A brief background summary of your firm (including; company structure, location(s) of dispensing pharmacy(s) and/or branches, key personnel, experience and qualifications, etc.

19.2 Describe your current quality management program and procedures that are in place to ensure accurate and reliable dispensing of prescription items.

19.3 Describe your customer/client service philosophy.

19.4 Describe your proposed delivery and billing service include any fees

19.5 Indicate your fee for repackaging Prescription Assistance Program orders

19.6 Provide at least three references for similar services being provided to other entities.

Attachment "A"

Business Associate Addendum

Covered Entity, Lancaster County, and Business Associate, Waco Drug Co., Inc are parties to the Agreement to which this Addendum is attached (the "Agreement"), whereby Business Associate agrees to perform certain services or business associate functions for or on behalf of Covered Entity.

- I. **Definitions.** Terms used but not otherwise defined in this Addendum shall have the meanings set forth in the HIPAA Privacy Rule, unless otherwise defined herein:
- a. *Business Associate Agreement or Addendum* means all agreements or addendum, whether now in effect or hereafter entered into, between Covered Entity and Business Associate for the performance of Business Associate Functions by Business Associate.
 - b. *Business Associate Functions* means functions performed by Business Associate on behalf of Covered Entity which involve the creation of, access to, use or disclosure of, Protected Health Information by Business Associate, its agents or contractors.
 - c. *Electronic Protected Health Information (EPHI)* means electronic protected health information, as defined in 45 C.F.R. §160.103, which is transmitted by electronic media or maintained in electronic media by Business Associate in the performance of one or more Business Associate Functions for or on behalf of Covered Entity.
 - d. *Electronic Media* means electronic media as defined in §160.103.
 - e. *HIPAA* means the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d to 1320d-7.
 - f. *Individual* means the same 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 §164.502(g).
 - g. *Protected Health Information (PHI)* means protected health information, as defined in 45 C.F.R. §160.103, which is created, obtained or used by Business Associate in the performance of one or more Business Associate Functions for or on behalf of Covered Entity.
 - h. *Regulations* means the final Regulations implementing the privacy provisions of HIPAA, as amended from time to time. The Regulations are presently codified at 45 C.F.R. Parts 160 and 164.

- I. *Required by Law* means the same as the term “required by law” in 45 C.F.R. §164.103.
- j. *Secretary* means the Secretary of the Department of Health and Human Services or his designee.
- k. “*HITECH*” means the Title XII of the American Recovery and Reinvestment Act of 2009 (“ARRA”), called the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, which codifies and expands on many of the requirements promulgated by the Department of Health and Human Services (“DHHS”) pursuant to the HIPAA to protect the privacy and security of PHI.
- l. “*Breach*” means the same as the term “breach” in 45 C.F.R. §164.402

II. Purpose. Lancaster County is a Covered Entity under HIPAA and _____ is its Business Associate with respect to the Agreement. Business Associate will have access to PHI in order to perform its functions on behalf of Covered Entity. HIPAA requires Covered Entity to obtain satisfactory written contractual assurances from its business associates. The purpose of this Business Associate Addendum is to obtain satisfactory written contractual assurances from Business Associate that Business Associate will appropriately safeguard such PHI in accordance with 45 C.F.R. §164.314(a)(2), §164.502(e)(1) and §164.504(e)(1) of the Regulations and provide the notification in accordance with 45 C.F.R. §164.410.

III. Permitted Uses and Disclosures by Business Associate. Business Associate shall only use and disclose PHI for the following purposes:

- a. To perform Business Associate Functions.
- b. As needed for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate.
- c. To provide data aggregation services relating to the health care operations of the Covered Entity.

IV. Special Conditions on Disclosure for Business Associate’s Purposes. Before Business Associate may disclose PHI to another party for a reason described in subparagraph III(b), one of the following two conditions must be met either:

- a. The disclosure must be required by law; or
- b. Business Associate must obtain reasonable assurances from the person to whom the PHI is disclosed that such person will safeguard the PHI and further use and disclose it only as required by law or for the purpose for which Business Associate disclosed it such person; and such person must agree in writing to notify Business Associate of any instances of which it is aware in which the

confidentiality of PHI has been breached.

V. **Obligations and Assurances of Business Associate.** As an express condition of performing Business Associate functions, Business Associate agrees to:

- a. Use and/or disclose PHI only as permitted or required by this Agreement or as required by law.
- b. Use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for in this Agreement.
- c. Report to Covered Entity, within a reasonable time after discovery, any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware, together with any remedial or mitigating action taken or proposed to be taken with respect thereto. Business Associate shall cooperate with Covered Entity as requested by Covered Entity in mitigating any harmful effects of such unauthorized disclosure.
- d. Require that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- e. Provide access, at the request of Covered Entity, within a reasonable time after request, to PHI to Covered Entity or, as directed by Covered Entity, to an individual in order to meet the requirements of 45 C.F.R. §164.524 of the Regulations.
- f. Notify Covered Entity within three (3) business days of a request by an individual to amend PHI maintained by Business Associate on behalf of Covered Entity, direct the requesting individual to the Covered Entity in the handling of such request, and incorporate any amendment accepted by the Covered Entity in accordance with §164.526 of the Regulations. Business Associate is not authorized to independently agree to an amendment of PHI.
- g. Document disclosures of PHI and information related to such disclosures as would be required for the 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 of the Regulations.
- h. Notify Covered Entity within three (3) business days of any request by an individual for an accounting of disclosures, direct the requesting individual to the Covered Entity in the handling of such request, and provide Covered Entity within ten (10) days thereafter with all information in its possession or in the possession of its agents, and contractors, which is needed to permit Covered Entity to respond to the request for accounting in accordance with 45 C.F.R.

§164.528 of the Regulations. Business Associate agrees to retain necessary records from which to respond to the requests for an accounting.

- I. Make internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to the Secretary, within a reasonable time after request, or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- j. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that Business Associate creates, receives, maintains, or transmits on behalf of the Covered Entity as required by Subpart C of the Regulations.
- k. Ensure that any agent, including a subcontractor, to whom the Business Associate provides such EPHI agrees to implement reasonable and appropriate safeguards to protect EPHI.
- l. Report to Covered Entity, within a reasonable time after discovery, any security incident or breach regarding EPHI not provided for by this Agreement of which it becomes aware, together with any remedial or mitigating action taken or proposed to be taken with respect thereto. Business Associate shall cooperate with Covered Entity as requested by Covered Entity in mitigating any harmful effects of such security incident or breach.
- m. To comply with the security rules as required by HITECH, in a manner consistent with rules and regulations that may be adopted by relevant federal agencies, to keep all electronic protected health information in a secure manner, as required under federal law.
- n. To comply with the confidentiality, disclosure, breach notification, compliance and re-disclosure requirements of HITECH and HIPAA.
- o. To comply with any and all regulatory requirements which may arise in future to comply fully with HIPAA and HITECH, including but not limited to, restrictions on disclosures to health plans, clarified minimum necessary standards, expanded accounting requirements applicable to electronic health records, revised prohibitions on the sales of PHI, and updated marketing and fund raising restrictions.

VI. Notification by Business Associate following the Discovery of a Breach of PHI

- a. Business Associate shall notify the Covered Entity in writing following the discovery of a breach of PHI or EPHI. A breach shall be treated as discovered by

a Business Associate as of the first day on which such breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to the Business Associate. A Business Associate shall be deemed to have knowledge of a breach if the breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the breach, who is an employee, officer, or other agent of the Business Associate.

- b. Except as provided in 45 C.F.R. §164.412, the Business Associate shall provide the notification of breach without unreasonable delay and in no case later than 60 calendar days after discovery of a breach.
- c. The written notification of a breach shall include and provide the identification of each individual whose PHI or EPHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used, or disclosed during the breach.
- d. The Business Associate shall provide the Covered Entity with any other available information that the Covered Entity is required to include in notification to the individual affected by the breach under 45 C.F.R. 164.404(c) at the time the notification is required or promptly thereafter as the information becomes available.

VII. Responsibilities of the Covered Entity. Covered Entity agrees to:

- a. Notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b. Notify Business Associate of any changes in, or revocation of, permission by individual to use or disclose PHI to the extent that such changes may affect Business Associate's use or disclosure of PHI
- c. Notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI

VIII. Term and Termination.

- a. *Term.* This Business Associate Addendum shall be effective on the Effective Date of the Agreement and shall continue in effect until all obligations of the parties have been met, including return or destruction of all PHI in Business Associate's possession (or in the possession of Business Associate's agents and/or contractors), unless sooner terminated as provided herein. It is expressly agreed that the terms and conditions of this Business Associate Addendum designed to safeguard PHI shall survive expiration or other termination of the Agreement, and

shall continue in full force and effect until Business Associate has performed all obligations under this Business Associate Addendum.

- b. *Termination by Covered Entity.* Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity may immediately terminate the Agreement. Alternatively, Covered Entity may chose to provide Business Associate with written notice of the existence of an alleged material breach, and afford Business Associate an opportunity to cure the alleged material breach upon mutually agreeable terms.
- c. *Effect of Termination.*
 - (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
 - (2) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible. Upon written notice to Covered Entity that return or destruction of PHI is not feasible, Business Associate shall extend the protections of this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such PHI.

IX. Miscellaneous

- a. *Amendment.* The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as it necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996.
- b. *Survival.* The respective rights and obligations of Business Associate under Section V (c), (l) and (o), Section VI, and Section IX(d) of this Business Associate Addendum shall survive the termination of this Business Associate Addendum and the underlying Agreement.
- c. *Interpretation.* Any ambiguity in this Business Associate Addendum shall be resolved to permit Covered Entity to comply with the HIPAA Regulations.
- d. *Indemnification.* Each party agrees to indemnify and hold harmless, to the fullest extent allowed by law, the other party and their respective officers and

employees, from and against all liability, judgments, losses, claims, damages, notification expenses and other expenses (including court-ordered attorneys' fees) resulting from a breach of PHI or EPHI, arising out of the acts or omissions of its officers or employees in performance of this Business Associate Addendum. Liability includes any claims, damages, losses, notification expenses, and expenses arising out of or resulting from performance of this Business Associate Addendum that results in any claim for damage whatsoever