

October 13, 2022

Board of County Commissioners  
Clackamas County

Approval of an agreement with Optum Pharmacy 702, LLC. for 340B pharmacy services. This is a revenue agreement with an estimated value of \$1,980,000 per fiscal year for a total estimated value of \$5,940,000. Funding through 340B Drug Program.  
No County General Funds are involved

<b>Purpose/Outcomes</b>	The purpose of this agreement is to facilitate Clackamas County Health Centers Division (CCHCD) participation in the 340B drug program.
<b>Dollar Amount and Fiscal Impact</b>	This is a revenue agreement with an estimated value of \$1,980,000 per fiscal year for a total estimated value of \$5,940,000.
<b>Funding Source</b>	No County funds. This is a revenue generating agreement through the 340B Drug Program.
<b>Duration</b>	The initial term is three years and is effective upon signature.
<b>Previous Board Action</b>	Issues October 12, 2022
<b>Strategic Plan Alignment</b>	1. Individuals and families in need are healthy and safe. 2. Ensure safe, healthy and secure communities.
<b>Counsel Review</b>	1. June 15, 2022 2. AN
<b>Procurement Review</b>	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. Revenue contract, no procurement needed.
<b>Contact Person</b>	Sarah Jacobson, Health Center Interim Director – 503-201-1890
<b>Contract No.</b>	10603

**BACKGROUND:**

Clackamas County Health Centers Division (CCHCD) of the Health, Housing & Human Services Department requests the approval of contract #10603, a revenue agreement with Optum Pharmacy 702, LLC for 340B pharmacy services.

Optum Pharmacy 702, LLC manages Genoa Pharmacy, which has had locations at the Beaver Creek Clinic since 2015 and Hilltop Clinic since 2005. Additionally, a new pharmacy will be established at the Sandy Clinic. These pharmacies provide low cost medications to Health Center patients and clients under the federal 340B program. Revenue from the program helps fund clinic operations and expansion initiatives.

This agreement will generate revenue for Clackamas County’s Federally Qualified Health Center (FQHC). This will enter CCHCD and Optum Pharmacy 702, LLC into a “ship to/bill to” arrangement wherein Optum will dispense prescription drugs on behalf of CCHCD and then charge and collect fees for such drugs. This agreement has an estimated value of \$1,980,000 per fiscal year for a total estimated value of \$5,940,000.

This agreement is effective upon signature and has a three (3) year initial term.

*Healthy Families. Strong Communities.*

**RECOMMENDATION:**

Staff recommends approval of this contract, and authorizes the Chair to sign on behalf of the County.

Respectfully submitted,

*Rodney A. Cook*

Rodney A. Cook, Director  
Health, Housing & Human Services Department

**#10603**  
**340B PHARMACY SERVICES AGREEMENT**

THIS 340B PHARMACY SERVICES AGREEMENT (hereinafter "Agreement") is made by and between CLACKAMAS, COUNTY OF, eligible under the Section 340B Drug Pricing Program ("340B Program") and not-for-profit corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, (hereinafter "Covered Entity"), on the one part, and Optum Pharmacy 702, LLC, on behalf of itself and its affiliated licensed pharmacies listed in Attachment B (hereinafter "Pharmacy"), on the other part, upon the last signature below (the "Effective Date"), and will become operational effective as of, upon the last signature below or the date on which it has been registered and made effective by the Health Resources and Services Administration ("HRSA") (the "Operational Date").

WHEREAS, Covered Entity is a "Covered Entity" as defined in Section 340B of the Public Health Service Act ("Section 340B") and is eligible to purchase certain outpatient drugs at reduced prices for use by Eligible Patients, as defined in this Agreement, from drug manufacturers who have signed a drug purchasing agreement with the United States Department of Health and Human Services (hereinafter "DHHS") and/or the manufacturers' wholesalers;

WHEREAS, Covered Entity provides health care services to Eligible Patients at Covered Entity eligible sites described on Attachment A (each, the "Covered Entity Site", collectively "Covered Entity Sites");

WHEREAS, Pharmacy is duly licensed as a pharmacy in the states requiring such licensure for Pharmacy to conduct its business operations; and

WHEREAS, Covered Entity desires to engage Pharmacy to provide 340B Pharmacy Services, as defined in this Agreement, to Eligible Patients with respect to outpatient drugs Covered Entity purchases pursuant to Section 340B ("340B Drugs").

NOW, THEREFORE, the parties agree as follows:

1. **Eligible Patients.** Covered Entity represents and warrants that:
  - 1.1. Covered Entity will consider a patient as an "Eligible Patient" under this Agreement only if the individual meets the prescribed patient definition criteria as set forth at 61 Fed. Reg. 55156 (Oct. 24, 1996), as may be amended from time to time by HRSA;
  - 1.2. Covered Entity shall be responsible for determining whether a patient is an Eligible Patient and identifying such Eligible Patients to Pharmacy; and
  - 1.3. Pharmacy shall be entitled to rely on the Covered Entity's determination and identification of Eligible Patients.
2. **Relationship of the Parties.**
  - 2.1. Pharmacy is an independent contractor and shall be solely responsible for its acts and omissions regarding advice and 340B Pharmacy Services it is required to provide to Eligible Patients and Covered Entity. Pharmacy agrees to render all 340B Pharmacy Services provided under this Agreement in accordance with professional standards applicable to 340B Pharmacy Services and in accordance with rules and regulations of the relevant State Board of Pharmacy. Pharmacy shall have the right to refuse to service any Eligible Patient where such service would violate any statute, regulations, or professional standards applicable to 340B Pharmacy Services or such refusal is appropriate in the pharmacist's professional judgment. Pharmacy shall notify the health care professional prescriber of any refusal of requested service

within twenty-four (24) hours of such refusal.

- 2.2. Covered Entity agrees that Covered Entity and/or its 340B administrator will use commercially reasonable efforts to provide Pharmacy data integration, 340B eligibility determination, 340B Drug inventory control, reports related to the 340B Drugs, and related 340B administrative services on behalf of Covered Entity as outlined in Attachment D.
- 2.3. Covered Entity acknowledges that Pharmacy is relying on the Covered Entity and/or its 340B administrator and their systems, policies and procedures, including Covered Entity and/or 340B administrator's tracking system and information system and the Operational Procedures set forth in Attachment D, to support 340B Pharmacy Services.
3. **340B Pharmacy Services and Site(s)**. Pharmacy shall provide services based on Claim Inclusion (as defined below) relating to the receipt, replenishment, and shipment of 340B Drugs purchased by Covered Entity pursuant to Section 340B for patients determined to be Eligible Patients by Covered Entity ("340B Pharmacy Services") and provide related pharmacy services consistent with Pharmacy's standard business practices. Pharmacy agrees it will provide 340B Pharmacy Services through the site(s) listed on Attachment B (or Attachments B-1, B-2, B-3 and/or B-4, as applicable).
  - 3.1. "Claim Inclusion" means those claims determined by Pharmacy, at its discretion and subject to third party contractual obligations and Attachment D, for which Pharmacy will provide 340B Pharmacy Services.
  - 3.2. **"Ship To, Bill To" Arrangement**. The parties shall use a "ship to, bill to" procedure, pursuant to which the Covered Entity (or its designee) shall order 340B Drugs directly from the drug manufacturer, a designated sales representative, or a drug wholesaler, which shall bill Covered Entity for the 340B Drugs but ship the 340B Drugs directly to Pharmacy. Covered Entity is responsible for compliance with the 340B requirement for contract pharmacy arrangement(s) and must maintain ownership of the 340B Drugs as required by law.
4. **Payment for 340B Pharmacy Services**. Pharmacy shall be timely paid for 340B Pharmacy Services in accordance with the terms provided on Attachment C to this Agreement. The parties have freely negotiated the terms of this Agreement and neither has offered or received any inducement or other consideration from the other party for entering into this Agreement. The compensation to be paid to Pharmacy is consistent with fair market value in arms-length transactions for 340B Pharmacy Services and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under a federal or state health care program. Nothing in this Agreement shall be construed to require Covered Entity to make referrals of patients to Pharmacy or Pharmacy to make referrals to Covered Entity.
5. **Pharmacy Dispensing Fee**. The parties agree that Pharmacy shall receive a dispensing fee, as set forth in Attachment C, for each prescription of 340B Drugs filled for Eligible Patients and providing 340B Pharmacy Services, (the "Dispensing Fee") and that such Dispensing Fee covers Pharmacy's costs and constitutes the sole and exclusive payment Pharmacy is entitled to receive from Covered Entity under this Agreement. Pharmacy may revise the Dispensing Fee after the Initial Term upon providing thirty (30) days prior written notice to Covered Entity, and thereafter no more than once annually. The 340B Specialty Pharmacy Dispensing Fee applies to 340B eligible claims dispensed from a specialty pharmacy listed on Attachment B-1; the 340B Home Delivery Pharmacy Dispensing Fee applies to 340B eligible claims dispensed from a home delivery pharmacy listed on Attachment B-2 (where applicable); the 340B Infusion Pharmacy Dispensing Fee applies to 340B eligible infusion claims dispensed from an infusion pharmacy listed on Attachment B-3 (where applicable). For the avoidance of doubt, a 340B Infusion Pharmacy may also dispense non-infusion products, Optum will determine through its standard procedure whether it will be priced at the Infusion rate; and the Genoa Pharmacy Dispensing Fee applies to 340B eligible claims dispensed from a Genoa pharmacy listed on

Attachment B-4 (where applicable).

6. **Patient Choice.** Pharmacy understands and agrees that Eligible Patients of Covered Entity may elect not to use Pharmacy for 340B Pharmacy Services. In the event that an Eligible Patient elects not to use Pharmacy for such services, the patient may obtain the prescription from the health care professional prescriber and then obtain the drugs from the pharmacy provider of his or her choice.
7. **Final Reconciliation Reports.** A final reconciliation report shall occur no later than thirty (30) days from the date of termination of this Agreement. The provisions of this Section 7 shall survive the expiration or termination of this Agreement for any reason. Covered Entity acknowledges that all information and reports related to the 340B Drugs will be provided by the Covered Entity or its 340B administrator, and not Pharmacy. Pharmacy will submit claims for drugs dispensed by Pharmacy to Covered Entity or its 340B administrator to support the Covered Entity or its 340B administrator's reporting and tracking requirements for the Covered Entity.
8. **Prohibition on Resale or Transfer of 340B Drugs.** The parties agree that they will not knowingly resell or transfer a 340B Drug to an individual who is not an Eligible Patient of Covered Entity. Covered Entity acknowledges and agrees that it is solely responsible for verifying the eligibility of a patient to Pharmacy, and that so long as Pharmacy sells a 340B Drug only to Eligible Patients of Covered Entity as so verified by Covered Entity, Pharmacy shall not be in violation of this Section 8.
9. **Audits/Contract Pharmacy Compliance.**
  - 9.1. Pharmacy understands and agrees that both Pharmacy and Covered Entity are subject to audit by DHHS and by drug manufacturers who have signed a drug purchasing agreement with DHHS, which audits may pertain to the Covered Entity's compliance with the prohibition on drug resale or transfer and the prohibition on duplicate Medicaid rebates and discounts. Pharmacy agrees to reasonably cooperate with such audits and to comply with applicable provisions of the audit guidelines and amendments thereto that may be published from time to time.
  - 9.2. Pharmacy grants Covered Entity, and its duly authorized representatives, the right, on behalf of Covered Entity, to audit its applicable books and records, including all applicable electronic records, to verify and ensure compliance with the duties, obligations and transactions outlined hereunder. Any such audit shall be conducted during reasonable business hours, upon reasonable prior written notice and approval, once per calendar year, and in a manner so as not to interfere with the conduct of Pharmacy's business. Pharmacy agrees to use commercially reasonable efforts to cooperate with such audits in good faith.
  - 9.3. Pharmacy agrees to cooperate with Covered Entity to identify necessary information for Covered Entity to meet its ongoing responsibility of ensuring that the contract pharmacy services guidelines as promulgated by HRSA's Office of Pharmacy Affairs ("OPA") are being complied with and establish mechanisms to ensure the availability of that information for periodic independent audits (no less frequently than annually) that shall be performed by Covered Entity's independent auditors. In complying with these requirements, Covered Entity will register Pharmacy with HRSA using the online Contract Pharmacy Registration as required by OPA.
  - 9.4. Provisions of this Section 9 shall survive the expiration or termination of this Agreement for any reason.
10. **Inspection by DHHS.** Pharmacy and Covered Entity understand and agree that a copy of this Agreement will be provided, upon written request, to DHHS. The provisions of this Section 10 shall survive the expiration or termination of this Agreement for any reason.
11. **Insurance.** Pharmacy shall maintain during the term of this Agreement a policy of liability insurance with a

responsible insurance carrier in an amount not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate and which includes in its coverage loss of, or damage to, the 340B Drugs during the period they are in the possession of Pharmacy. Covered Entity shall maintain during the term of this Agreement a policy of liability insurance with a responsible insurance carrier with at least the minimum limits that are customary in its industry. Covered Entity may satisfy such insurance requirements through a self-insurance program maintained in accordance with the requirements of state law and the Medicare program.

12. **Assignment.** A party may not assign or transfer this Agreement without the prior written consent of the other party, except that Pharmacy may assign this Agreement to any affiliate upon 30-day notice to Covered Entity. This Agreement will bind the parties and their respective successors and assigns and will inure to the benefit of the parties and their respective permitted successors and assigns.

13. **Term and Termination.**

13.1. This Agreement shall commence on the Effective Date and shall continue for a term of three (3) years ("Initial Term"), unless terminated earlier as stated below. Thereafter, this Agreement shall automatically renew for successive one (1) year terms ("Renewal Term"), unless either party provides written notice of non-renewal not less than ninety (90) days prior to the end of the Initial Term or any subsequent and current Renewal Term.

13.1.1. **For Cause.** Either party may terminate this Agreement following a material breach by the other party which is not timely cured. The non-breaching party shall notify the breaching party of the breach and the breaching party shall have thirty (30) days (the "Cure Period") to cure the breach. If the breaching party fails to cure the breach within the Cure Period, then the non-breaching party may terminate the Agreement upon written notice to the breaching party. Either party's waiver or failure to take action with respect to the other party's failure to comply with any term or provision of this Agreement shall not be deemed to be a waiver of the right to insist on future compliance with such term or provision.

13.1.2. **Adverse Legal Determination.** Either party may immediately terminate this Agreement upon written notice to the other party (a) following a judgment, writ, order, or injunction for equitable relief, award or decree of or by any governmental authority or change in any laws that would make performance of this Agreement, in any material respects, unlawful or illegal for the terminating party, or (b) if a governmental authority requires either party to terminate this Agreement.

13.1.3. **Termination Due to Loss of Covered Entity Status.** Either party may immediately terminate this Agreement, upon written notice to the other party, if Covered Entity ceases to qualify as a "covered entity" under the 340B Program.

13.1.4. **Termination With or Without Cause.** Notwithstanding the foregoing, either party may terminate this Agreement with or without cause, upon thirty (30) days written notice to the other party after the Initial Term of the Agreement.

13.2. Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing and shall be sent by certified or registered mail, return receipt requested or by overnight delivery by a nationally recognized courier, to the parties at the addresses set forth on the signature pages hereto (or such other address as the parties may specify in writing). Notice shall be effective on the day it is received.

13.3. Except when termination is pursuant to Section 13.1.3, upon the request of Covered Entity, Pharmacy agrees to continue to provide 340B Pharmacy Services on the payment and other terms of this Agreement for a period of up to sixty (60) days after the date this Agreement expires or is terminated in order to ensure an effective transition of services and continuation of quality care for Eligible Patients.

14. **Compliance with Laws.** The parties hereto shall comply with all applicable federal, state and local laws, rules, regulations, and requirements. Each party is aware of the potential for civil or criminal penalties if the party violates federal, state, or local laws.
15. **Dispute Resolution.** If a dispute occurs between the parties, the complaining party may request a meeting by executive officers of each party who will attempt to resolve the dispute in good faith before beginning a legal action, except for matters subject to injunctive relief. If the parties' executive officers do not resolve the dispute within 30 days after the notice, then arbitration may be commenced. All disputes under this Agreement will be settled by arbitration administered by the Arbitration Services of Portland under its Commercial Rules conducted before a single arbitrator. Arbitration disputes will be resolved on an individual basis and no arbitration may proceed as a class action arbitration. Judgment on the arbitrator's award may be entered in any court with jurisdiction. The arbitration requirements will not affect a party's right to seek appropriate equitable relief to enforce its rights under this Agreement.
16. **Governing Law.** This Agreement and each party's rights and obligations under it will be governed by and construed in accordance with the laws of Oregon without giving effect to conflicts of law principles.
17. **Public Contracting Requirements.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Pharmacy shall:
  - 17.1. Make payments promptly, as due, to all persons supplying to Pharmacy labor or materials for the prosecution of the work provided for in the Agreement.
  - 17.2. Pay all contributions or amounts due the Industrial Accident Fund from such Pharmacy or subcontractor incurred in the performance of the Agreement.
  - 17.3. Not permit any lien or claim to be filed or prosecuted against Covered Entity on account of any labor or material furnished.  
  
Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

As applicable, Pharmacy shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. Pharmacy shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Agreement, and failure to comply is a breach entitling Covered Entity to terminate this Agreement for cause.

18. **Representations of Pharmacy.** Pharmacy represents to and agrees with Covered Entity that:
  - 18.1. it employs, and will continue to employ throughout the term of this Agreement, sufficient qualified and credentialed personnel needed to manage and operate the Pharmacy and provide the 340B Pharmacy Services anticipated hereunder in a timely, professional, competent and ethical manner;
  - 18.2. it owns, possesses and employs, and will continue to employ throughout the term of this Agreement, sufficient technology and equipment as needed to manage and operate the Pharmacy and provide the 340B Pharmacy Services in the manner anticipated hereunder;
  - 18.3. it will render the 340B Pharmacy Services hereunder in accordance with prevailing pharmaceutical and medical standards that are applied in the same fashion to all of its patients;
  - 18.4. it will render all 340B Pharmacy Services to Eligible Patients without regard to race, creed, color, age, sex, sexual orientation, citizenship, marital status, veteran status, national origin, disability, religion,

arrest record or other protected status;

18.5. it will not use 340B Drugs to dispense Medicaid prescriptions, except as provided in an arrangement with the State Medicaid agency as approved by Covered Entity, to prevent duplicate discounting, and as required by law.

18.6. Pharmacy represents and warrants that it has complied and will continue to comply throughout the duration of this Agreement and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Agreement and shall entitle Covered Entity to terminate this Agreement, to pursue and recover any and all damages that arise from the breach and the termination of this Agreement, and to pursue any or all of the remedies available under this Agreement or applicable law.

19. **Representations of Covered Entity and Pharmacy.** Covered Entity and Pharmacy each represent to and agree with the other that:

19.1. neither it, nor any of its members, directors, officers, agents, employees or members of its workforce (a) have been convicted of a criminal offense that would trigger exclusion pursuant to 42 USC 1320a-7(a) or (b) unless such entity or individual has been reinstated, is not listed by a federal or state agency as currently suspended, debarred, excluded or otherwise ineligible for state or federal program participation. Covered Entity and Pharmacy further agree to immediately notify the other party after it becomes aware that any of the foregoing representations may be inaccurate or may become incorrect. In the event any of the foregoing representations become inaccurate or incorrect, it shall be a material breach and the other party may immediately terminate this Agreement without penalty to the non-breaching party. Each party hereby agrees that, in the event an employee is suspended, debarred, excluded or otherwise ineligible from a federal or state healthcare program, immediate corrective action will be taken to ensure that such employee will not thereafter be directly or indirectly involved in the 340B Pharmacy Services related to this Agreement.

19.2. all of its employees, agents, representatives and members of its workforce, whose services may be used to fulfill obligations under this Agreement are or shall be appropriately informed of the terms of this Agreement and are under legal obligation, by contract or otherwise, sufficient to enable each of Covered Entity and Pharmacy to fully comply with all provisions of this Agreement;

19.3. the parties will reasonably cooperate with each other in the performance of the mutual obligations under this Agreement; and

19.4. the execution and delivery of this Agreement and the performance of the duties obligations and transactions contemplated do not and will not contravene, conflict with or violate any agreement, commitment, plan or instrument binding on Covered Entity or Pharmacy, including, without limitation, any participating provider agreement and any third-party payor or pharmacy benefit management agreement.

20. **Representations of Covered Entity.** Covered Entity represents to and agrees with Pharmacy that:

20.1. it is a Covered Entity as defined in Section 340B and will notify Pharmacy immediately if its covered entity status ends during the term of this Agreement;

20.2. it has the authority to enter into this Agreement and will perform its responsibilities hereunder, and will ensure that its 340B administrator performs its responsibilities outlined hereunder and in Attachment D, in a professional and diligent manner consistent with industry standards reasonably



applicable to the performance thereof;

20.3. it will be solely responsible for ensuring its compliance with 340B Program guidelines, including the actions and inactions of its 340B administrator; and

20.4. it will be solely responsible for compliance with all federal and state laws, regulations and guidance prohibiting duplicate discounting by: (1) carving out from its definition and determination of Eligible Patient any patient that is a beneficiary of Medicaid, Medicaid managed care, AIDS Drug Assistance Program ("ADAP") coverage or other coverage if the use of 340B Drugs for such patients results in prohibited duplicate discounts, and/or (2) making other arrangements to prevent duplicate discounting, when required, including arrangements to comply with requirements applicable to covered entities or contract pharmacies to identify 340B claims and/or to submit 340B claims at legally or contractually specified pricing, with Medicaid agencies, Medicaid managed care organizations, ADAPs or other payers.

## 21. **Confidentiality and Non-disclosure.**

21.1. **Patient Privacy and HIPAA Compliance.** The parties recognize that each is a covered entity within the meaning of the federal Health Insurance Portability and Accountability Act ("HIPAA") and agree to protect and respect the patient rights to privacy and confidentiality concerning their medical and pharmaceutical records. Each party agrees to comply with HIPAA and other applicable state and federal laws. Failure by either party to abide by these requirements shall be a basis for immediate termination of this Agreement. In furtherance of the foregoing and during the term of this Agreement, Covered Entity shall enter into a HIPAA-compliant Business Associate Agreement with its 340B administrator, whereby its 340B administrator is Covered Entity's business associate.

**Non-disclosure.** In the course of performing under this Agreement, either of the parties may receive, be exposed to or acquire Confidential Information including but not limited to, all information, data, reports, records, summaries, tables and studies, whether written or oral, fixed in hard copy or contained in any computer data base or computer readable form, as well as any information identified as confidential of the other party ("Confidential Information"). Without limiting the foregoing, the parties acknowledge and agree that the pricing terms of this Agreement, constitutes Confidential Information. For purposes of this Agreement, Confidential Information shall not include Protected Health Information, the security of which is the subject of this Agreement and is provided for elsewhere. The parties, including their respective employees, agents or representatives (i) shall only use the other party's Confidential Information as necessary and appropriate for the performance of this Agreement, (ii) shall not disclose to any third party the other party's Confidential Information except as otherwise permitted by this Agreement or as required by Oregon Public Records laws, (iii) only permit use of such Confidential Information by employees, agents and representatives having a need to know in connection with performance under this Agreement, and (iv) advise each of their employees, agents, and representatives of their obligations to keep such Confidential Information confidential. This provision shall not apply to Confidential Information: (1) after it becomes publicly available through no fault of either party hereto; (2) which is later publicly released in writing by the party hereto owning such Confidential Information; (3) which is lawfully obtained from third parties without restriction; or (4) which can be shown to be previously known or developed by either party hereto independently of the other party. Notwithstanding anything to the contrary, Covered Entity's obligations under this Agreement are expressly subject to the Oregon Public Records Law, Oregon Revised Statutes ("ORS") Chapter 192 et. seq., and any other applicable state or federal law. While Covered Entity will make good faith efforts to perform under this Agreement, Covered Entity's disclosure of Confidential Information, in whole or in part, will not be a breach of the agreement if such disclosure was pursuant to a request under the Oregon Public Records Law, or any other state or federal law, or if such disclosure was compelled by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar processes.

If Covered Entity is subject to such a disclosure order or receives from a third party any public records request for the disclosure of Confidential Information, Covered Entity will notify Pharmacy within a reasonable period of time of the request. Pharmacy is exclusively responsible for defending Pharmacy's position concerning the confidentiality of the requested information. Covered Entity is not required to assist Pharmacy in opposing disclosure of Confidential Information, nor is Covered Entity required to provide a legal opinion as to whether the Confidential Information is protected under ORS Chapter 192, et. seq., or other applicable state or federal law.

21.2. **Enforcement.** Each of the parties acknowledges and agrees that any breach by it of any of the provisions of Section 20.2 ("Restrictive Covenants") would result in irreparable injury and damage for which money damages would not provide an adequate remedy. Therefore, if either party hereto breaches, or threatens to commit a breach of, any of the Restrictive Covenants, the other party shall have the right and remedy (upon compliance with any necessary prerequisites imposed by law upon the availability of such remedy), which shall be independent and severally enforceable, and which shall be in addition to, and not in lieu of, any other rights and remedies available to it under law or in equity (including, without limitation, the recovery of damages), to seek to have the Restrictive Covenants specifically enforced (without posting bond and without the need to prove damages) by any court having equity jurisdiction, including, without limitation, the right to seek an entry against breaching party of restraining orders and injunctions (preliminary, mandatory, temporary and permanent), without posting bond and without the need to prove damages, against violations, threatened or actual, and whether or not then continuing, of the Restrictive Covenants. The existence of any claim or cause of action by the breaching party, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement of the Restrictive Covenants. In addition, any breach of the Restrictive Covenants shall constitute a material breach of this Agreement.

21.3. **Survival of Obligations.** The rights and obligations set forth in this Section 20 shall survive the termination of this Agreement.

22. **Force Majeure.** If any party is unable to perform any of its obligations under this Agreement because of any cause beyond the reasonable control of and not the fault of the party invoking this section, including any act of God, fire, casualty, flood, earthquake, war, strike, lockout, epidemic, destruction of production facilities, riot, insurrection or material unavailability, and if the non-performing party has been unable to avoid or overcome its effects through the exercise of commercially reasonable efforts, this party will give prompt notice to the other party, its performance will be excused, and the time for its performance will be extended for the period of delay or inability to perform due to such occurrences, except that if performance is extended under this section for more than 60 days, then at any time before reinstatement of the performance, the other party may terminate this Agreement upon notice to the non-performing party. Pharmacy will maintain commercially reasonable business continuity and disaster recovery plans.

23. **Indemnification.** The covered Entity's indemnification obligation to indemnify or otherwise pay damages is subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute. Each party shall indemnify, defend, and hold harmless the other party from and against all third-party claims, damages, causes of action, costs or expense, which may arise as a result of the indemnifying party's breach of applicable law or of any material term or condition of this Agreement. The obligation to indemnify shall survive termination of this Agreement regardless of the reason for termination.

24. This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

25. **Limitation of Liability.** The parties agree that neither party, and neither party's officers, directors, employees

or agents shall be liable to the other party for any claims, liabilities, or expenses relating to this Agreement for an aggregate amount in excess of the aggregate Dispensing Fees paid to Pharmacy pursuant to this Agreement, except (1) for amounts owed under Section 22 of this Agreement or (2) to the extent finally judicially determined to have resulted primarily from the breach of law by, or bad faith or intentional misconduct of, the party. In no event shall any party or any party's officers, directors, employees, or agents be liable for consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense relating to this Agreement.

26. **Relationship of the Parties; Third Party Beneficiaries.** The sole relationship between the parties is that of independent contractors. This Agreement will not create a joint venture, partnership, agency, employment or other relationship between the parties. Nothing in this Agreement will be construed to create any rights or obligations except among the parties; no person or entity will be regarded as a third-party beneficiary of this Agreement.
27. **Survival.** Any term of this Agreement that contemplates performance after termination of this Agreement will survive expiration or termination and continue until fully satisfied, including Section 20.2, which will survive so long as the information is Confidential Information or the data is proprietary to either party or its successors, successors-in-interest or assigns, and Sections 23 and 24, which will survive indefinitely.
28. **Waiver; Severability.** The failure of any party to insist in any one or more instances upon performance of any term of this Agreement will not be construed as a waiver of future performance of the term, and the party's obligations for the term will continue in full force and effect. The provisions of this Agreement are severable. The invalidity or unenforceability of any term or provision in any jurisdiction will be construed and enforced as if it has been narrowly drawn so as not to be invalid, illegal or unenforceable to the extent possible and will in no way affect the validity or enforceability of any other terms or provisions in that jurisdiction or of this entire Agreement in that jurisdiction.
29. **Entire Agreement; Amendment.** This Agreement and Attachments A, B, C and D represent the entire understanding of the parties in the subject matter hereof. Such attachments are incorporated herein and made a part hereof. There are no other agreements or understandings among the parties, either oral or written, relating to the subject matter hereof. On the Effective Date, this Agreement supersedes and terminates the 340B Pharmacy Services Agreement between Agreement between Covered Entity and Genoa Healthcare, LLC, dated March 23, 2016. Any amendments to this Agreement shall be in writing and signed by all parties hereto. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and all of which taken together shall be deemed one and the same instrument. A copy of this Agreement executed by electronic signatures and transmitted by email, shall be binding upon the parties as an original, executed and delivered in person.

[SIGNATURE PAGE TO FOLLOW]

The parties' duly authorized representatives are signing this 340B Pharmacy Services Agreement as of the Effective Date.

CLACKAMAS, COUNTY OF

OPTUM PHARMACY 702, LLC.

By: \_\_\_\_\_

By: Andy Voss  
Andy Voss (Aug 31, 2022 18:00 PDT)

Name: \_\_\_\_\_

Name: **Andy Voss**

Title: \_\_\_\_\_

Title: **CFO**

Date: \_\_\_\_\_

Date: **08/31/2022**

Address: 2051 Kaen Road STE 367  
Oregon City, OR 97045-4035

Address: 1600 McConnor Parkway  
Schaumburg, IL 60173-6801

**ATTACHMENT A**

**ELIGIBLE COVERED ENTITY SITES**

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

ELIGIBLE COVERED ENTITY SITES SHALL INCLUDE THE PARENT ENTITY AND ALL ACTIVE CHILD SITES LISTED IN 340B OPAS UNDER COVERED ENTITY'S 340B ID NUMBER, AND ITS ASSOCIATES, CURRENTLY REGISTERED AND/OR REGISTERED IN THE FUTURE.

\*IN THE EVENT THERE IS A NONMATERIAL DISCREPANCY BETWEEN THE INFORMATION IN THE ABOVE CHART AND THE 340B OPAS LISTING, E.Q. A TYPOGRAPHICAL ERROR, PUNCTUATION, ABBREVIATION, ADDITIONAL DESCRIPTIVE ETC., THE 340B OPAS LISTING SHALL CONTROL AND THE PARTIES AGREE AN AMENDMENT TO THIS AGREEMENT SHALL NOT BE REQUIRED.

**ATTACHMENT B-1**

**CONTRACTED PHARMACY LOCATIONS – SPECIALTY PHARMACIES**

INTENTIONALLY OMITTED

When registering the pharmacies on the HRSA website, please use the information below as the pharmacy contact:

Nancy McCutcheon  
Sr. VP of Strategic Sales  
651-983-0677  
Nancy.mccutcheon1@optum.com

Pharmacies registered may be utilized by all sites under the covered entity. In the event there is a nonmaterial discrepancy between the information in the above chart and the 340B OPAIS listing, e.g. a typographical error, punctuation, abbreviation, additional descriptive such as store number, etc., the 340B OPAIS listing shall control and the parties agree an amendment to this agreement shall not be required.

**ATTACHMENT B-2**

**CONTRACTED PHARMACY LOCATIONS – HOME DELIVERY PHARMACIES**

INTENTIONALLY OMITTED

When registering the pharmacies on the HRSA website, please use the information below as the pharmacy contact:

Nancy McCutcheon  
Sr. VP of Strategic Sales  
651-583-0677

Nancy.mccutcheon1@optum.com

Pharmacies registered may be utilized by all sites under the covered entity. In the event there is a nonmaterial discrepancy between the information in the above chart and the 340B OPAIS listing, e.g. a typographical error, punctuation, abbreviation, additional descriptive such as store number, etc., the 340B OPAIS listing shall control and the parties agree an amendment to this agreement shall not be required.

**ATTACHMENT B-3**

**CONTRACTED PHARMACY LOCATIONS- INFUSION PHARMACIES**

INTENTIONALLY OMITTED

When registering the pharmacies on the HRSA website, please use the information below as the pharmacy contact:

Nancy McCutcheon  
Sr. VP of Strategic Sales  
651-983-0677

Nancy.mccutcheon1@optum.com

Pharmacies registered may be utilized by all sites under the covered entity. In the event there is a nonmaterial discrepancy between the information in the above chart and the 340B OPAIS listing, e.g. a typographical error, punctuation, abbreviation, additional descriptive such as store number, etc., the 340B OPAIS listing shall control and the parties agree an amendment to this agreement shall not be required.



**ATTACHMENT B-4**

**CONTRACTED PHARMACY LOCATIONS- GENOA PHARMACIES**

<b><u>Pharmacy Name</u></b>	<b><u>Address</u></b>	<b><u>NPI#</u></b>	<b><u>NCPDP#</u></b>	<b><u>DEA#</u></b>
GENOA HEALTHCARE, LLC	998 LIBRARY CT. ROOM 4 OREGON CITY, OR 97045-4041	1962460113	3814705	FG5182287
GENOA HEALTHCARE, LLC	110 BEAVERCREEK RD, STE 102 OREGON CITY, OR 97045	1700242179	3845748	FG5837894
GENOA HEALTHCARE, LLC.	39740 PLEASANT STREET SANDY, OR 97055	1417530361	3847110	FG1451082

When registering the pharmacies on the HRSA website, please use the information below as the pharmacy contact:

Nancy McCutcheon  
Sr. VP of Strategic Sales  
651-583-0677

Nancy.mccutcheon1@optum.com

Pharmacies registered may be utilized by all sites under the covered entity. In the event there is a nonmaterial discrepancy between the information in the above chart and the 340B OPAIS listing, e.g. a typographical error, punctuation, abbreviation, additional descriptive such as store number, etc., the 340B OPAIS listing shall control and the parties agree an amendment to this Agreement shall not be required.

## ATTACHMENT C

### COMPENSATION FOR SERVICES – PHARMACY’S DISPENSING FEE

#### **Dispensing Fee.**

1. 340B Specialty Pharmacy Dispensing Fee: INTENTIONALLY OMITTED
2. 340B Home Delivery Pharmacy Dispensing Fee: INTENTIONALLY OMITTED
3. 340B Infusion Pharmacy Dispensing Fee: INTENTIONALLY OMITTED
4. 340B Genoa Pharmacy Dispensing Fee:
  - a. For each 340B eligible claim dispensed from a Pharmacy listed on Attachment B-4, that is covered by the Eligible Patient’s third-party prescription drug coverage (including scripts on which no benefit is payable due to a deductible): five percent (5.0%), based on the Reference Price of the drug dispensed, plus five dollars (\$5.00) per claim.
  - b. For each 340B eligible claim dispensed from a Pharmacy listed on Attachment B-4, that is not covered by the Eligible Patient’s third-party prescription drug coverage (i.e., purchased by Eligible Patient pursuant to a 340B Cash Discount Plan): twelve dollars (\$12) per claim.

“**Reference Price**” means the basis used to pay Covered Entity before the applicable Dispensing Fee is applied. The Reference Price is based on the Acquisition Cost and is dictated by Pharmacy. The Reference Price equation is different for specialty pharmacies, home delivery pharmacies, and infusion pharmacies.

“**Acquisition Cost**” means the Pharmacy's acquisition cost for the drug dispensed to an Eligible Patient, net of prompt pay or other discounts, for the most recent month for which the information is available, as reported by Pharmacy.

**Remittance to Covered Entity’s 340B administrator.** For each eligible claim dispensed to an Eligible Patient (as determined by its 340B administrator), Pharmacy shall remit to Covered Entity’s 340B administrator the amount of the applicable Reference Price, less the applicable Dispensing Fee, which amount shall be set forth in an invoice provided to Pharmacy by Covered Entity and/or its 340B administrator. For the avoidance of the doubt, the NPI of the dispensing Pharmacy will determine which Dispensing Fee applies.

**Winners Only Model.** The parties agree that any claim that creates negative revenue for either the Covered Entity or Pharmacy will be excluded from the program and not considered for 340B eligibility.

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**ATTACHMENT D**

**OPERATIONAL PROCEDURES**

Item	Decision Point	Defined
Optum Replenishment Frequency	On the mutually agreed upon schedule, and if applicable contingent upon Covered Entity payment confirmation, 340B administrator shall order, for delivery to Pharmacy, all 340B Drugs which have been determined to be eligible and have reached a full package size but have not yet been delivered to Pharmacy.	1x per week
Genoa Replenishment Frequency	On the mutually agreed upon schedule, and if applicable contingent upon Covered Entity payment confirmation, 340B administrator shall order, for delivery to Pharmacy, all 340B Drugs which have been determined to be eligible and have reached a full package size but have not yet been delivered to Pharmacy.	3-4x per week
Wholesaler	Cardinal is the ONLY wholesaler to be used for replenishment by Covered Entity	Cardinal
Model	What type of 340B program model is this: 'all claims', 'brand only', 'winners only'? A winners only model means that any claim that creates negative revenue for either the Covered Entity or Pharmacy will be excluded from the program and not considered for 340B eligibility.	Winners Only
Specialty Central Replenishment Model	<p>A central fill replenishment model directs all replenishment to a certain location. How accumulators are handled will vary by TPA. Please contact your TPA for direction on wholesaler account set up variations.</p> <p>Optum Pharmacy 702, LLC in Jeffersonville, IN will be the Central Replenishment site for all Specialty claims except for the two pharmacies listed below:</p> <ul style="list-style-type: none"> <li>• Optum Pharmacy 801, LLC, 24416 N 19TH AVE, STE. 100, PHOENIX, AZ 85085</li> <li>• Optum Pharmacy 701, LLC, 4100 S SAGINAW ST, STE D, FLINT, MI 48507-2683</li> </ul>	Optum Pharmacy 702, LLC in Jeffersonville, IN
Central Replenishment Model	<p>The following Specialty dispensing location shall be the replenishment site for its own replenishments.</p> <ul style="list-style-type: none"> <li>• Optum Pharmacy 801, LLC, 24416 N 19TH AVE, STE. 100, PHOENIX, AZ 85085</li> </ul>	
Central Replenishment Model	<p>The following Specialty dispensing location shall be the replenishment site for its own replenishments.</p> <ul style="list-style-type: none"> <li>• Optum Pharmacy 701, LLC, 4100 S SAGINAW ST, STE D, FLINT, MI 48507-2683</li> </ul>	
HDF Central Replenishment Model	<p>A central fill replenishment model directs all replenishment to a single location. How accumulators are handled will vary by TPA. Please contact your TPA for direction on wholesaler account set up variations. The HDP pharmacy in Overland Park, KS will be the single replenishment site for all HDP replenishments.</p> <p>*Required for registered Home Delivery pharmacies</p>	Overland Park, KS
Infusion Central Replenishment Model	<p>A central fill replenishment model directs all replenishment to a single location. How accumulators are handled will vary by TPA. Please contact your TPA for direction on wholesaler account set up variations. The Infusion pharmacy in Lenexa, KS will be the single replenishment site for all Infusion replenishments.</p> <p>*Required for registered Infusion pharmacies</p>	Lenexa, KS

Genoa Replenishment Model	The Genoa dispensing location shall be the replenishment site for Genoa replenishments.	
Invoicing on Replenishment	Invoicing Model: Allow Pharmacy to reimburse Covered Entity for claims that have been replenished. Once replenishment is sent to the Pharmacy, the 340B administrator will allocate the replenishment to a claim and include that claim on the following Pharmacy invoice.	ON
Reprocessing Window	If new or additional information causes the 340B administrator to re-designate a claim as 340B eligible that was originally deemed ineligible, any reprocessing of such claims must be completed within the number of calendar days specified. If additional eligibility information has become available to make a previous ineligible claim now 340B eligible, 340B administrator will add the additional 340B eligible claims to the Batch Claims Response File communicated to the 340B administrator.	365 Days
Invoicing on Replenishment Pharmacy Fee	Invoice full Pharmacy fee for each claim or invoice percent of Pharmacy fee based on percent of claim invoiced.	FULL
Reverse Un-invoiced Claims After X days	Any drug that has been dispensed and not replenished within 180 calendar days will be reconciled on the following invoice. Full claims will be reversed, for partial claim dispensations, a partial claim inventory adjustment will be made for the quantity of the drug that was not replenished. For a 340B Discount Cash Claim, Covered Entity will remit payment to the Pharmacy for the amounts of the drugs in question at the Wholesale Acquisition Price (WAC) for the NDC for that particular drug, prorated according to the amount of the drug that cannot be replenished.	180 DAYS
True-Up Replacement Price	Pharmacy shall pay Covered Entity the Replacement Price if Covered Entity or its 340B administrator (1) over replenishes Pharmacy, or (2) reverses a claim after Pharmacy has already received replenishment. Covered Entity will use this replacement price to reconcile the matter with the drug manufacturer only after the following solutions have been exhausted - Product return, Manufacturer payback. [Cardinal clients only: Credit rebill].	AWP-20%
340B Discount Cash Plan	A 340B discount cash plan selected from the 340B administrator cash plans options, intended for the purpose of passing through the 340B discount to the patient.	By request
CIIIs---Vs	Include or exclude these drugs	Included
CIIIs	In contract pharmacy - CIIIs require the use of 222 forms; In-house pharmacy order as usual	Excluded
Invoicing	Frequency with which Pharmacy is invoiced on behalf of the Covered Entity.	1st and the 15th day of the month
Payment Terms	Within _ number of days from Invoice date, Pharmacy shall remit payment thereof by electronic funds transfer to Covered Entity and/or its 340B administrator.	30 Days

COVER SHEET

- New Agreement/Contract
- Amendment/Change/Extension to \_\_\_\_\_
- Other \_\_\_\_\_

Originating County Department: \_\_\_\_\_

Other party to contract/agreement: \_\_\_\_\_

Description:

After recording please return to: \_\_\_\_\_

- County Admin
- Procurement

If applicable, complete the following: \_\_\_\_\_

Board Agenda Date/Item Number: \_\_\_\_\_