

TRUE RX

Pharmacy Services Agreement City of Noblesville

THIS PHARMACY SERVICES AGREEMENT ("Agreement") is made and entered into this 1st day of July, 2021 (hereinafter referred to as the "Effective Date"), by and between **True Rx Management Services, Inc., d/b/a True Rx Health Strategists**, with primary offices located at 7 Williams Bros. Drive, Washington, Indiana 47501 (hereinafter referred to as "True Rx"), and **City of Noblesville** with primary offices located at 16 South 10th St., Noblesville, IN 46060 (hereinafter referred to as "Client") (each a "Party" and collectively the "Parties").

RECITALS

WHEREAS: True Rx is a corporation duly formed in Indiana, in good standing, engaged in the business of administering prescription drug plans, adjudicating and processing prescription medication plans and all things necessary and flowing therefrom.

WHEREAS: Client provides a group health plan on behalf of its employees, hereinafter "Covered Persons". The health benefits being offered by Client to its Covered Persons include a prescription drug plan.

WHEREAS: Client wishes to contract with and utilize the services of True Rx for the establishment and processing of its prescription drug plan, and True Rx wishes to contract with and provide those services to Client, the Parties enter into this Agreement to set forth their respective duties, responsibilities and expectations.

WHEREAS: The Parties agree that this contract and all terms contained herein replace and supersede, in its entirety, all prior Pharmacy Services Agreements between the Parties, as of the Effective Date shown herein.

COVENANTS

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, Client and True Rx agree as follows:

1. DEFINITIONS.

The following are defined terms used in this Agreement:

"Administration Fee" means the fee paid by Client to True Rx for its general True Rx Services. This fee is billed on a per paid claim basis as shown in Section 1 of the True Rx Services Schedule 1. The per claim fee shall specifically include each paid claim and each reversal and shall specifically exclude rejections and same day back-outs, including the matching original claim of the same day reversal.

"Affordable Care Act" or "ACA" means the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 and the Health Care and Education Reconciliation Act, Pub. L. No. 111-152 and all other related laws, rules and requirements.

"Average Wholesale Price" or "AWP" means the average wholesale price for a given prescription legend drug or other pharmaceutical product indicated on the most current pricing file provided to PBM by Medi-Span for the actual drug dispensed using the 11-digit National Drug Code (NDC) number provided by the dispensing pharmacy. The Medi-Span AWP file will be updated no less than once daily.

"Brand Drug" or "Brand" means a prescription drug with a proprietary name or trademark where the Medi-Span multisource (MONY) code attached to the 11 digit National Drug Code (NDC) for such drug indicates an "N" (a single source brand name drug available from one pharmaceutical manufacturer and is not available as a generic), an "M" (a branded drug product that is co-branded and not considered generic, nor is it available as a generic, and is generally considered a single source drug product despite multiple pharmaceutical manufacturers), or an "O" (an original branded drug product available from one or more pharmaceutical

manufacturers as a generic). A drug is classified at the point-of-sale based on the MONY code assigned by Medi-Span and shall not be reclassified for any purposes.

"Claim" means a claim for benefits under Client's Group Health Plan that involves a claim for coverage of a Prescription Drug Program.

"Confidential Information" means any and all oral or written, graphic, electronic, or electromagnetic information relating to Client's or True Rx's products or services, including techniques, relationships, business methods, policies, procedures, programs, data, strategies and plans, financial information and any intellectual or proprietary processes, whether or not marked by a party as "confidential." Confidential Information shall not include information which: (i) was already known by True Rx or Client on a non-confidential basis or is otherwise in the public domain; (ii) becomes public knowledge through a source other than Client or True Rx through no fault of Client or True Rx; or (iii) becomes lawfully available to Client or True Rx through a source other than Client or True Rx.

"Co-payment" means the amount a Covered Person is required to pay for a Prescription in accordance with the Prescription Drug Program, which may be a percentage of the Prescription price, a fixed amount, or other charge, with the balance (if any) paid by the Prescription Drug Program. The Co-payment is not covered under the medical portion of the Health Care Plan of Client and does not apply to any medical deductibles, co-payment amounts, or out-of-pocket maximums.

"Covered Person" means an individual who is participating in or is eligible to access benefits under the Prescription Drug Program and/or under Client's Group Health Plan, as determined by Client.

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

"Formulary" means a list of covered drugs which represents the prescription therapies believed to be a necessary part of a quality treatment program. The formulary may provide information regarding the price tier in which a medication is classified for Covered Persons under the health plan.

"Generic Drug" or "Generic" means a prescription drug where the Medi-Span multisource (MONY) code attached to the 11 digit National Drug Code (NDC) for such drug indicates a "Y" (a generic drug product available from one or more pharmaceutical manufacturers). A drug is classified at the point-of-sale based on the MONY code assigned by Medi-Span and shall not be reclassified for any purposes.

"Group Health Plan" means the employee welfare benefit plan, or arrangement sponsored by Client, by which Client provides pharmacy benefits to Covered Persons

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §1320d, and the rules and regulations promulgated thereunder and as they are amended from time to time.

"Illness" means sickness, disease, or pregnancy.

"Ingredient Cost" means the cost of the covered drug calculated as final drug cost, a MAC price or Usual & Customary that is calculated by True Rx in accordance with this Agreement. The final drug cost shall be less any product selection penalties applied upon decision of member, pharmacy, Physician, Rebates, or discounts provided by manufacturers.

"Injury" means bodily damage or loss sustained by a Covered Person which requires treatment by a Physician and is incurred by a Covered Person on or after the date of coverage under the Prescription Drug Program.

"Maximum Allowable Cost" List or "MAC" List mean that PBM will maintain a single list of covered drugs that may be reimbursed to participating pharmacies based on MAC. Products subject to MAC pricing may include single-source and multi-source generic products in an effort to control differentials in ingredient cost of these

products. PBM will add or remove products based on wholesaler data, acquisition cost data and industry standards. Generic products represented on the MAC List are established at a class level to establish a consistent price regardless of manufacturer. PBM will exercise reasonable diligence in surveying the market for price changes and product availability, performing timely and regular updates to the MAC pricing program. Customer may request a current listing of MAC prices at any time. Customer shall not disclose PBM MAC List or pricing without written consent.

“Medicine” or “Medication” means a substance or preparation that alleviates or treats an illness or injury and may be available by Prescription only or over-the counter (“OTC”). Medicine and Medications include only substances and preparations that qualify as medical care under Section 213 of the Internal Revenue Code. In general, medical care means care for the diagnosis, cure, mitigation, treatment, or prevention of disease or for the purpose of affecting any structure or function of the body.

“MultiSource Brand” means drugs that are available from multiple sources. This includes brands with generics available, co-licensed products, or as defined by First DataBank or Medi-Span.

“Narrow Formulary” means a formulary that is focused on cost containment for the Client and Covered Person. This approach will include maximizing rebates provided by manufacturers and reducing overall cost by excluding some drugs from the formulary. However, excluded drugs may be covered for some individuals based upon medical necessity and failure of a preferred drug(s).

“Non-Prescription Medicine” means an OTC Medication or supply, normally purchased without a Prescription and that is pre-packaged for use by the consumer and labeled in accordance with the requirement, statutes, and regulations of federal and applicable state governmental authorities.

“Open Formulary” means a formulary that does not exclude medications from the formulary for the purposes of increasing rebates from the manufacturers.

“Orphan Disease” means a condition that affects fewer than 200,000 people nationwide. This includes diseases as familiar as cystic fibrosis, Lou Gehrig’s disease, and Tourette’s syndrome, and as unfamiliar as Hamburger disease, Job syndrome, and acromegaly, or “gigantism.”

“Orphan Drug” means a pharmaceutical agent that has been developed specifically to treat a rare medical condition, the condition itself being referred to as an orphan disease.

“Patient Advocacy” means a cost savings program in which True Rx works with individual members to identify and help them apply to alternative patient assistance programs. Patient assistance programs are often funded by drug manufacturers and require the members to provide financial or other personal information in order to qualify for medications at a lower or no cost to the member and Client.

“Physician” means a Doctor of Medicine (M.D.), Doctor of Osteopathy (D.O.), Doctor of Dental Surgery (D.D.S.), Doctor of Podiatry (D.P.M.), Doctor of Chiropractic (D.C.), Physician’s Assistant (P.A.), Acupuncturist, Audiologist, Certified Nurse Anesthetist, Licensed Professional Counselor, Licensed Professional Physical Therapist, Master of Social Work (M.S.W.), Midwife, Occupational Therapist, Optometrist (O.O.), Physiotherapist, Psychiatrist, Psychologist (Ph.D.), Speech Language Pathologist, Nutritionist/Dietician and any other practitioner of the healing arts who is licensed and regulated by a state or federal agency and is acting within the scope of his or her license.

“Plan Design” means True Rx will provide to Client its standard plan design for its use and evaluation. Client has ultimate authority over its plan design, and the determination of that plan design is subject to the Client Responsibilities stated below in this Part. The final plan design as agreed upon between True Rx and Client will be evidenced by a separate agreement, the Pharmacy Benefit Plan Design Form, that is completed with the Client Account set-up, and such Form is incorporated as part of this Agreement.

“Prescription Drug Plan” means the plan or program for the dispensing of Medicine, Non-Prescription Medicine and Prescription Medicine.

“Prescriber” means a Physician or other health care practitioner licensed or authorized by law to issue an order for a Prescription Medicine.

“Prescription” means any order authorized by a Prescriber for a Prescription Medicine or a Non-Prescription Medicine that could be a Medication or supply for the Covered Person for whom prescribed. The Prescription must be compliant with applicable laws and regulations and identify the name of the Prescriber prescribing and the name of the Covered Person for whom prescribed. It must also identify the name, strength, quantity, and directions for use of the Medication or supply prescribed.

“Prescription Drug or Prescription Medicine” means licensed Medicine that is regulated by legislation to require a Prescription before it can be obtained by a Covered Person.

“Prior Authorization” means the requirement that the healthcare provider obtain approval from the Group Health Plan before the Group Health Plan will approve payment for that medication. Without this prior approval, the Group Health Plan may not provide coverage, or pay for, the medication.

“Protected Health Information” or “PHI” means Protected Health Information, as defined in 45 C.F.R. §160.103, and is limited to the Protected Health Information received or created in connection with the performance of the True Rx Services under this Agreement.

“Rebate” or “Manufacturer Derived Revenue” shall mean any and all manufacturer derived revenue including but not limited to formulary rebates (as provided through the rebate aggregator for a particular pharmaceutical product provided by the drug manufacturer for placement of the manufacturer's pharmaceutical product on the covered drug list), market share rebates, discounts, administrative fees, direct-indirect remuneration fees and any other revenue from the manufacturer or other parties for the performance of various programs or services, education services, inflation protection programs, medical benefit management services, cost containment programs, discount programs, and the sale of non-identifiable claim information paid to PBM. Drugs that will not receive Rebates include (i) cosmetic drugs, (ii) appliances, devices, bandages, heat lamps, braces, splints, vaccines and artificial appliances, (iii) health and beauty aids, cosmetics, and dietary supplements, (iv) over the counter products, (v) biosimilar drugs, (vi) member submitted Claims, (vii) Medicaid subrogation Claims, (viii) secondary Claims, (ix) Claims older than 180 days, (x) Claims through Client-owned, university, long term care, or 340b pharmacies, (xi) Medicaid fee-for-service Claims, (xii) Claims that are reversed, (xiii) Claims with invalid identifiers (e.g., pharmacy identifiers), (xiv) Claims pursuant to a 100% member copayment plan, (xv) multi-source brands and generic claims, (xvi) claims for re-packaged NDCs, (xvii) claims for drugs used to treat HIV (xviii) claims where, after meeting deductible, the Member's cost-sharing amount under the applicable Program requires the Member to pay more than 50 percent of the claim, (xiv) claims from entities eligible for federal supply schedule prices (e.g., Department of Veterans Affairs, U.S. Public Health Service, Department of Defense (collectively, the “Exclusion”).

“Specialty Drug” means certain pharmaceuticals and/or biotech or biological drugs that are used in the management of chronic or genetic disease, including but not limited to injectable, infused, or oral Medications, or that otherwise require special handling.

“True Rx Management Programs” means the cost savings and/or clinical programs developed by True Rx including, but not limited to, Step Therapy, True Rx Assist, Patient Assistance Programs, Clinical Solutions, etc.

2. SCOPE OF RELATIONSHIP. True Rx and Client specifically agree to these important terms regarding the Scope of the Relationship between them, as determined by this Agreement. True Rx is retained by Client only for the purposes and to the extent stated in this Agreement and the relationship of True Rx to Client is that of an independent contractor. True Rx defers to Client with respect to the administration and operation of its plan. True Rx performs only ministerial functions and not discretionary functions with respect to Client's Group Health Plan, and Client is solely responsible for the implementation, administration and interpretation of its Plan and for all final Claim determinations, including all final Claim Appeal determinations. As such, it is understood and agreed that Client is the Named Fiduciary and the Plan Administrator of its Group Health Plan under ERISA and the Internal Revenue Code, and True Rx is not a fiduciary with respect to the Plan and is not a Plan Administrator for purposes of ERISA.

3. **SERVICES.** True Rx shall, on behalf of Client for those Covered Persons under Client's Group Health Plan covered by Client, provide certain pharmacy services, including the adjudication of Prescription Claims, management of Prescription costs, negotiation of payments to pharmacies and other related pharmacy fulfillment services as are more specifically set forth on **Services Schedule 1**, which is attached hereto and incorporated herein by this reference. (Hereinafter the services listed in this Agreement and on Services Schedule 1 are referred to as the "True Rx Services").

4. **CLIENT RESPONSIBILITIES.** Client agrees to cooperate with True Rx to allow True Rx to perform its True Rx Services for Client. Client agrees to review and execute documents prepared by True Rx for Client with respect to the performance of the True Rx Services. Client agrees to timely provide True Rx with a copy of all reports, correspondence, plan documents, service agreements and any information it creates, possesses, controls, or obtains relating to the True Rx Services. Client agrees that it is solely responsible for determining the Covered Persons under the Group Health Plan and that it may add or delete Covered Persons from eligibility files pursuant to the terms and conditions of this Agreement, and that True Rx may rely upon all of the plan documents and instruments and the eligibility files for purposes of its performance under this Agreement. Client further agrees to provide to True Rx necessary Protected Health Information and certain required personal information of Covered Persons in order to permit True Rx to process claims under Client's Group Health Plan. All information shall be delivered to True Rx in a format and with the content consistent with the applicable statutes and regulations. Client also agrees to cooperate in the performance of the True Rx Services and acknowledges and agrees to the Additional Services and Services Limitations stated in Services Schedule 1.

5. **TERM.** This Agreement is for a one (1) year term following the Effective Date. This Agreement will automatically renew every year on the anniversary date for an additional one (1) year term, unless either Party files notice with the other Party at least sixty (60) days prior to the renewal date. Notwithstanding the automatic renewal provision, either Client or True Rx may terminate this Agreement at any time, after the initial (1) year term, by providing thirty (30) days prior written notice of termination to the other Party by certified mail, return receipt requested, to the person identified in the Notice provision in Section 18. In the event that Client fails to provide sufficient notice of termination as required or terminates this Agreement prior to the end of the Agreement term as described herein above, rebates may be withheld from Client at True Rx's discretion. In addition to the holding of rebates, if Client fails to comply with the requirements of this paragraph, True Rx shall be entitled to all fees earned through the cancellation date as well as, at its sole discretion, orders for injunctive relieve, specific performance and any and all other remedies in equity or law. True Rx shall be entitled to all costs associated for any action necessary to enforce this Agreement to include, but not limited to, reasonable attorneys' fees.

6. **TERMINATION.** Without limiting the foregoing, either Party may immediately terminate this Agreement and any related agreements if a particular Party to this Agreement, who believes it is in compliance with the terms of the Agreement (the "Non-Breaching Party") makes the determination that the other Party has materially breached a term of this Agreement, or the Business Associate Agreement referred to in Section 11 of this Agreement (the "Breaching Party"). Non-Breaching Party may, in its sole discretion, choose to provide Breaching Party with written notice of its assertion of a material breach. If so, the Breaching Party has thirty (30) calendar days to cure said breach upon mutually agreeable terms, or otherwise to respond to the Non-Breaching Party. In the event that a mutually agreeable resolution is not reached within this thirty (30) day period, the Non-Breaching Party will provide to the Breaching Party a final demand for cure to occur within an additional fifteen (15) calendar days. Failure by Breaching Party to cure said asserted material breach within this additional fifteen (15) calendar day period, permits the Non-Breaching party to immediately terminate of this Agreement.

6.1 **Transition of Files.** Upon termination of this Agreement, True Rx shall promptly transition Claims files and/or history to Client's new Prescription benefit manager or any other party, as directed by Client, at no additional cost.

6.2 **Destruction or Return of PHI.** Upon termination of this Agreement, True Rx agrees to return to the Client a copy of all protected health information ("PHI") received from Client or created or received by True Rx on behalf of Client, that True RX and/or its subcontractors or agents still maintain in any form. True Rx further agrees not to retain any copies of such information, beyond the required period of time for the statute of limitations regarding any claims related to such information. Following the period of the statute of limitations on any such claims related to the information gathered, True Rx shall destroy all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(J) and in accordance with the approved technologies and methodologies set out by

HHS in its guidance (74 Fed Reg. 42740, 42742-42743 (Aug. 24, 2009)), as amended from time to time. If such return or destruction is not feasible, True Rx will notify Client of such event in writing, and will thereupon extend the protections of this Agreement and its associated Business Associate Agreement to such Client PHI and limit further uses and disclosures, until the destruction can be accomplished. In the event that destruction of PHI is not feasible or permitted, True Rx will notify Client. Such notice to Client will include: (i) a statement that True Rx has determined that it is infeasible to return or destroy the PHI in its possession; and (ii) the specific reasons for such determination. True Rx further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to True Rx's use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures.

7. FEES. The Service Schedule 1, states the Fees that apply under this Agreement. True Rx shall bill the Client's Third Party Administrator (hereinafter "TPA") for Client's weekly invoice for: (i) the amount of the reimbursement for pharmaceuticals dispensed by the pharmacies to the persons covered by Client's Prescription Drug Plan (less applicable co-payments made by Covered Persons); and (ii) for all other applicable administrative fees, services and expenses pursuant to the attached Services Schedule 1. As a condition for the continued services provided by True Rx hereunder, Client shall pay TPA for the True Rx Services it performs for Client, and Client shall direct and instruct TPA, and it shall pay all invoices of fees and expenses for True Rx services within four (4) calendar days of TPA's receipt of each True Rx invoice. The entire invoice billed according to the terms of this agreement will be reimbursed to True Rx at one time via EFT payment with True Rx pulling the funds from the TPA on the due date. The payment of True Rx invoices for Prescription Drugs and the True Rx Service Schedule 1 fees is an express condition to True Rx's performance of its obligations under this Agreement. True Rx does not, and has no obligation to, fund Client's Group Health Plan benefits, and as such, Client agrees to pay all True Rx invoices. True Rx also agrees that the amount of the reimbursement for Prescription Drugs paid to the recipient pharmacies will be the same amount billed to Client, plus applicable Service Schedule 1 Fees. Upon termination of this Agreement for any reason, Client shall pay all invoices, including all Service Schedule 1 fees, to and through the date of termination of this Agreement.

7.1 Penalties. Client agrees to ensure timely payment to True Rx. Should the Fees described within this Agreement not be paid to True Rx as stated within the payment terms of this agreement and any addendums thereto, Client shall be subject to an additional fee equal to the interest on the amount remaining unpaid at a rate of one percent (1%) compounded monthly. Additionally, True Rx shall retain all Rebates received on behalf of Client. Client shall still be responsible for any and all remaining outstanding fees and cost along with all future fees and costs incurred by True Rx pursuant to this Agreement.

8. CONFIDENTIAL/ PROPRIETARY INFORMATION In addition to the restrictions on uses and disclosures of Protected Health Information under HIPAA, Client and True Rx, and each of them, shall not use or disclose to others, except as permitted by this Agreement or required by law, any Confidential Information that True Rx provides to Client or that Client provides to True Rx, without the prior written consent of the non-disclosing Party. All information or data relating to the business or operations of any Party to this Agreement (the "Disclosing Party") acquired by any other Party in connection with this Agreement (the "Acquiring Party") shall be treated as confidential by the Acquiring Party, and shall not, unless otherwise required by law or the requirements of any accrediting agency, be disclosed by the Acquiring Party without the prior written permission of the Disclosing Party to whom the information in question relates. For the purposes of this Agreement, "Confidential Information" means, without limitation, all information proprietary to the Disclosing Party, whether or not marked "confidential," that constitutes trade secrets and/or confidential information as construed by Applicable Law or information that is not already available to the public, all of which the parties hereto agree constitutes trade secrets under the Uniform Trade Secrets Act, including, but not limited to, all information relating directly or indirectly to the business of the Disclosing Party, prospect lists, referral sources, customer lists and customer information, physician names, contact information and information regarding said physicians, patient/end user names, contact information and information regarding said patients/end users, information concerning services and supplies, marketing programs, computer program and systems, business and supplier contracts, techniques, processes, methods, technologies, business information, financial data, financial plans, products, equipment, sales information, costs data, personnel, product tests, pricing policies, distributorship arrangements, business plans or business strategies, information regarding pricing, rebates and the like. This provision shall survive termination of this Agreement. This does not prohibit True Rx from utilizing deidentified aggregate data generated by True Rx for the purposes of analysis or reporting.

Notwithstanding any other provision in this Agreement, True Rx understands and acknowledges that Client is a public governmental body subject to the Indiana Access to Public Records Act, Ind. Code 5-14-3 (the "Act"), and may be

required, pursuant to the Act, to provide documents in its possession. If Client receives a public records request for information related to True Rx or this Agreement, Client will promptly notify True Rx of the request. If True Rx determines that the response to the request would contain Confidential Information, True Rx shall be responsible for proving to the City, Public Access Counselor and/or court that the information should not be disclosed.

9. INDEMNIFICATION. Client hereby agrees to indemnify, defend, and hold harmless True Rx, its agents, employees, officers, and directors from and against any and all liability, expense (including court costs and attorney's fees) and any claims for damages of any nature whatsoever, whether direct or indirect, which True Rx may incur, suffer or become liable for or which may be asserted or claimed against True Rx including without limitation: a) any breach of this Agreement or the Business Associate Agreement by Client, including without limitation any improper use or disclosure of PHI by Client, or any Client employee, officer, agent, successor or assign; and b) any Claim under or funding of Client's Group Health Plan which Client hereby agrees is the sole obligation of Client; and c) any error or omission of Client, including but not limited to, negligent acts or statutory violations by Client, or its officers, directors, employees, or agents. In addition, Client specifically agrees to pay actual costs for any associated mitigation incurred by True Rx as a result of a Breach of Unsecured PHI by Client. Notwithstanding the foregoing or anything to the contrary contained herein, True Rx acknowledges and agrees that Client's liability is limited by the Indiana Tort Claims Act, and Client's obligation to indemnify and save True Rx, its agents and employees harmless from and against any and all claims, damages, demands, penalties, costs, liabilities, losses, and expenses (including reasonable attorneys' fees and expenses) arising out of or related to claims that would be subject to the Indiana Tort Claims Act if brought directly against the Client by True Rx or a third party shall be limited to the amount of damages available under Indiana Code 34-13-3-4, as amended.

True Rx hereby agrees to indemnify, defend and hold harmless Client, its agents, employees, officers, and directors from and against any and all liability, expense (including court costs and attorney's fees) and any claims for damages of any nature whatsoever, whether direct or indirect, which Client may incur, suffer or become liable for or which may be asserted against Client, including without limitation: a) any breach of this Agreement or the Business Associate Agreement by True Rx, including without limitation any improper use or disclosure of PHI by True Rx, or any True Rx employee, officer, agent, successor or assign; and b) any error or omission of True Rx, including but not limited to, negligent acts or statutory violations by True Rx, or its officers, directors, employees, or agents.

10. COMPLIANCE AND CHANGES IN LAW. True Rx and Client and each of them, agree to comply with all applicable federal, state and local laws, ordinances, regulations, rules and codes, including, without limitation, HIPAA, and ERISA (if applicable), as well as any other laws, ordinances, regulations, rules and codes relating to the handling and/or processing of pharmaceutical Claims and the information contained in such Claims as necessary with respect to their respective obligations under this Agreement, including the terms of Service Schedule 1, and including all amendments and changes to any applicable law. At any time, upon either Party's request, the other Party shall agree to promptly enter into good faith negotiations concerning the terms of an amendment to this Agreement embodying written assurances that may be required to comply with any amendment or change in any applicable law. Either Party may terminate this Agreement upon sixty (60) days written notice in the event the other Party does not promptly enter into negotiations to amend this Agreement when requested by the other Party pursuant to this Section 8.

11. BUSINESS ASSOCIATE AGREEMENT. The Parties specifically agree to take such action as necessary to implement the standards and requirements of the HIPAA Regulations, the HITECH Act, and other applicable laws and regulations relating to the privacy and security of PHI. At any time, upon either Party's request, the other Party shall agree to promptly enter into good faith negotiations concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of the HIPAA Regulations, the HITECH Act, and other applicable state laws and regulations relating to the privacy and security of PHI. Consistent with the foregoing, True Rx and Client acknowledge that True Rx is a Business Associate of Client's Group Health Plan, which is a Covered Entity, each as defined under HIPAA and the accompanying regulations promulgated thereunder at 45 C.F.R. Parts 160 and 164 (referred to as the "Privacy Rule") and 45 C.F.R. Parts 160, 162, 164 (referred to as the "Security Rule") (collectively referred to as the "HIPAA Regulations"), as amended and the Health Information Technology for Economic and Clinical Health Act (referred to as the "HITECH Act"), enacted as part of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. True Rx and Client agree to undertake and execute the Business Associate Agreement that is provided as part of this Agreement to fulfill these regulations.

12. RECORDS RETENTION. Consistent with the terms of Section 6.2, True Rx shall retain copies of its records and appropriate documents generated, retained, and/or acquired in its performance of True Rx Services in accordance with all applicable state and federal regulations, generally for the duration of the statute of limitations on any Claim processed by True Rx during the Term of this Agreement. Duplicates of such records, for use in disaster recovery situations, shall also be maintained by True Rx in accordance with all applicable state and federal regulations, the manner and form determined by True Rx at a secure, off-site location.

13. BINDING AGREEMENT SURVIVAL AND AMENDMENT. This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the Parties hereto. All representations, covenants and agreements within Sections 4, 5, 6, 7, 8 and 9, and in the Service Schedule 1, made by Client and/or True Rx and each of them, under this Agreement and all attachments and schedules, shall survive the expiration or earlier termination of this Agreement. This Agreement and its attached Services Schedule 1, and the Business Associate Agreement, as well as the Pharmacy Benefit Plan Design Form, as each may be amended from time to time, constitute the complete agreement between the parties hereto and shall supersede all prior contracts, agreements, arrangements, correspondence and understandings between True Rx and Client. This Agreement may not be amended, modified, or supplemented, except in writing signed by both True Rx and Client, and any oral modifications hereto shall be null and void.

14. GOVERNING LAW AND JURISDICTION. This Agreement shall be governed by the laws of the State of Indiana, to the extent not determined or interpreted under federal law. Client and True Rx agree to submit to the jurisdiction of the state courts located in Hamilton County, Indiana, or the United States District Courts of the Southern District of Indiana.

15. INTERPRETATION AND WAIVER. The terms of this Agreement shall be interpreted so that they are effective under applicable law, to the extent possible. This Agreement is negotiated and as such, is not to be construed against True Rx, but rather to be interpreted as if both Parties were involved in its drafting. This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. The failure of either Party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or the right of either Party thereafter to enforce each and every such provision.

16. IMPOSSIBILITY OF PERFORMANCE. In the event of any act or explosion, action of the elements of deity, strike or labor relations problem, restriction or restraint imposed by law, rule or regulation of any public authority, whether federal, state or local, and any civil or military action, interruption of transportation or availability or accessibility to the internet, criminal activity of electronic espionage or security breach, or any similar event that is beyond the reasonable control of a Party to this Agreement, such Party or Parties shall not be liable for any delay or non-performance of any terms, covenant or agreed term hereunder.

17. NO THIRD-PARTY BENEFICIARIES. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

18. NOTICES. Any notice required or permitted under this Agreement shall be given in writing and delivered by hand, via a nationally recognized overnight delivery service (e.g., Federal Express), or via registered mail or certified mail, postage pre-paid and return receipt requested, to the following:

True RX:	True Rx Management Services
	7 Williams Bros Dr.
	Washington, IN 47501
	ATTN: Chief Operating Officer
Client:	City of Noblesville
	16 South 10th St
	Noblesville, IN 46060
	ATTN: Holly Ramon

Notice of a change in address of one of the Parties shall be given in writing to the other Party as provided above.

19. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies and electronically made and delivered copies shall be deemed to be originals.

20. **DISPUTES.** If any controversy, dispute or claim arises between Client and True Rx (except for disputes regarding a Claim of a Covered Person) with respect to this Agreement, or any of the schedules, attachments or agreements between them, Client and True Rx, and each of them, will first make good faith efforts to resolve such matters informally. In the event such a dispute cannot be resolved through good faith efforts, the aggrieved party may proceed in accordance with the applicable law and jurisdiction as stated in Section 14 to file a claim in the appropriate court. In the event of a breach of this Agreement or any schedules or attachments hereto by Client, True Rx will be entitled to injunctive relief or an order for specific performance as well as any and all other legal remedies available under equity or law. True Rx will be entitled to recover all costs of such action to include, but not limited to, reasonable attorney fees.

21. **THIRD PARTY DISPUTES.** With respect to any threatened or actual litigation commenced by any third party, including without limitation, any Covered Person that relates to any Claim (the "Third-Party Claim"), Client and True Rx agree to provide prompt written notice of such matter within ten (10) calendar days. Client acknowledges its obligation to fund its Group Health Plan and as such, Client and True Rx agree that True Rx will tender the defense of the Third-Party Claim to Client and Client will accept such tender and will be responsible for handling all matters related to the Third-Party Claim, including all attorney's fees, and any attorney's fees of True Rx. Client will control all aspects of the Third-Party Claim. If any dispute arises between Client and True Rx regarding such Third-Party Claim, it will be dealt with separately from the Third-Party Claim under the terms of this Section 20. Client and True Rx, and each of them, agree that if a dispute arises between Client and True Rx with respect to any such Third-Party Claim, Client and True Rx agree that their dispute will be handled separately from the dispute regarding the Third-Party Claim. In such an instance, any fact or law determination in the instance of a Third-Party Claim is not binding on and is not to be used in regard to the resolution of the matter between Client and True Rx. With respect to any Third-Party Claim, Client and True Rx shall cooperate and work together in that defense consistent with this Agreement and a joint defense, regardless of any dispute that may also arise between Client and True Rx.

22. **LIMITATION OF LIABILITY.** Notwithstanding any other term of this Agreement, in no event will True Rx be liable in contract, tort, or otherwise arising from the relationship of the Parties or the conduct of business under this Agreement, or any addendum attached hereto and incorporated herein, for an amount exceeding, in the aggregate, the amount received by True Rx for one (1) year of Administration Fees received from Client, as determined by the Administration fees for the year preceding the alleged cause of action.

23. **CORPORATE AUTHORITY.** This Pharmacy Services/Business Associates Agreement has been executed by the respective duly authorized and empowered officer, director, shareholder, owner, partner or agent of True Rx Management Services and City of Noblesville, effective on the day and year first above written.

"Client"

"True Rx"

City of Noblesville

True Rx Management Services, Inc.
d/b/a True Rx Health Strategists

By: 

Printed: Jack Martin

Title: President, Board of Public
Works and Safety

By: 

Jesse McDonald, PharmD
Chief Operating Officer

TRUE RX SERVICES SCHEDULE 1

City of Noblesville

1. True Rx Services Listing and Corresponding Fees

True Rx Services	Fee
1) Electronic Claims processing 2) Toll-free call center support 3) Access to True Rx's national network of pharmacies 4) Generate reports as requested by Client 5) Open enrollment participation and support 6) Implementation support 7) Plan setup and design changes 8) Electronic & Manual eligibility submissions 9) Medical data integration 10) Secure data transfer via FTP or VPN connection 11) Network management and communication 12) Formulary communication on-line 13) Concurrent Drug Utilization Reviews ("DUR") 14) Fraud, Waste and Abuse online edits 15) 1 on-site Lunch & Learn per year 16) Any other mutually agreed upon services	\$3.25 per paid prescription
True Rx Assist Program	15% of Client savings incurred through program.
Prior Authorizations	Clinical Prior Authorization - \$50

For purposes of these True Rx Services, the following terms apply:

"True Rx Assist" True Rx maximizes the co-pay structure for Specialty Drugs. True Rx will set the co-pay tier at the maximum level for that assistance program. True Rx keeps 15% of the savings that Client would have paid. Client agrees that they have inserted language into the Group Health Plan's Summary Plan Description to allow True Rx to administer this program on behalf of the Client.

2. Optional True Rx Services and Fees

True Rx Services may, at the option of Client, include the following Optional Services.

Service	Fee
Patient Advocacy	15% of the saving with a \$2000 per Claim per month maximum fee
J-Code Review	15% of the savings recognized by Client with a \$2000 per claim maximum fee
Step Therapy Program	\$0.00
Identification Card	\$0.75/2 paper cards \$1.50/plastic card No charge for the initial card print for the Client.
Mailings	\$1.75 per Client requested mailing
Welcome Packet	\$2.00 per mailing for Welcome Packets sent directly to members
Narrow Formulary	\$0.75 per paid Prescription

Creditable Coverage Determination	\$500 per determination
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For purposes of the Optional Services, the following terms apply:

“Step Therapy” means a process whereby True Rx encourages members to use medications that are generally recognized as safe and effective but are also lower-cost. Under this program, in order to receive coverage, member may need to first try a proven, cost effective medication before progressing to a more costly treatment.

“Patient Advocacy” means a process whereby True Rx actively helps Covered persons, under the Client’s Group Health Plans, in finding financial assistance for medications. This often occurs when the Client’s Group Health Plans excludes certain medications. True Rx will charge 15% of the plan savings up to a maximum of \$2,000 per month per claim. Client agrees that they have inserted language into the Group Health Plan’s Summary Plan Description to allow True Rx to administer this program on behalf of the Client.

“J-Code Review” means a process whereby True Rx actively helps certain identified Covered Persons, under the Client’s Group Health Plan, maximize savings for treatments identified through the J-Code Review, that are being received by Covered Persons via the Client’s Group Health Plan’s medical plan, when the same treatment can be provided via the pharmaceutical plan and a reduced cost. True Rx will charge fifteen percent (15%) of the monthly savings recognized by Client capped at \$2,000.00 per claim.

“Creditable Coverage Determination” means a process whereby True Rx aids the client in providing appropriate notification regarding the plans creditable coverage notifications as required by the Medicare Modernization Act. Creditable coverage means the coverage is expected to pay on average as much as the standard Medicare prescription drug coverage. True Rx will provide this determination upon request. True Rx must be notified by Client or Client’s representative that they wish the determination of creditable coverage to be made at least 3 weeks prior to requested date. By requesting this determination, Client agrees that True Rx may utilize a vendor chosen by True Rx to complete the determination for high deductible health plans. Client also agrees that the simplified determination may be used for PPO (non-deductible) plans. The sample letter of creditable coverage and appropriate accompanying information will be provided to Client or Client’s representative for final approval and distribution to its covered persons.

3. **Additional Services and Service Limitations**

True Rx provides a number of different services and takes on certain additional responsibilities under the Agreement as stated in this Part 3. Also, and importantly, there are certain limits to the True Rx Services, agreements and responsibilities as also stated in this Part.

Pharmacy Help Desk. True Rx offers Client its Pharmacy Help Desk. Administered by a True Rx-approved vendor and available 24 hours per day, 7 days per week, the Pharmacy Help Desk provides assistance to network pharmacies with Prescription Claim inquiries. This, in turn, helps Client’s Covered Persons with their Claims processing.

True Rx Customer Service. Customer service representative available 8:00AM-6:00PM EST, Monday-Friday, closed on Holidays (New Year’s, Easter, Memorial Day, 4th of July, Labor Day, Thanksgiving, Christmas). CSR available to provide assistance for any questions Client’s Covered Persons may have regarding the Prescription drug plan during normal business hours.

Rebates. All rebates received by True Rx for claims dispensed to Client’s Covered Persons, less processing fees, will be passed on to the Client during the life of this agreement. Should Client at any time fail to ensure payment to True Rx as described in Sections 7 and 7.1 “Fees” of this Agreement or fail to provide sufficient notice of termination or terminate the Agreement prior to the end of the Agreement term as described in Section 5, rebates may be withheld from Client at True Rx’s discretion.

Right to Audit. At its sole expense, Customer or its designated third party may audit PBM's claims data, network pharmacy contracts, rebate contracts, pharmacy remittances (form 835 data), pharmaceutical manufacturer explanation of payments, and mail order and specialty pharmacy invoices. Customer or its designated third party may audit all supporting documents associated with clinical decisions pertaining to overrides or similar edits. Audits may be for the past 12 months. No third-party representative of Customer will be allowed to conduct an audit without an executed non-disclosure agreement prior to the start of the audit. Customer agrees to not use as its auditors, any person or entity which, in the discretion of PBM, is a competitor of the PBM, a pharmaceutical manufacturer representative, or any other person or entity which has a conflict of interest with the PBM. Audits shall only be made during normal business hours following one (1) day written notice and in accordance with reasonable audit practices.

Market Checks. Customer reserves the right to submit data to other pharmacy benefit managers to perform competitive price checks. If the market check shows a competitor's pricing to be more competitive than the pricing achieved through PBM by a reasonably significant difference as determined by Customer, PBM agrees to negotiate in good faith with the client. If PBM is unable to offer new terms, the client may terminate the agreement upon 90 days written notice to PBM.

Pass-Through Methodology. Client will receive 100% of the participating pharmacies' negotiated discount for the drug dispensed - including the dispensing fee - without any reclassification, mark-up or spread by PBM and net of any direct-indirect remuneration (DIR) fees. The amount charged to Client shall be the exact drug ingredient cost and applicable dispensing fee which is paid to the dispensing pharmacy. Additionally, 100% of all Rebates or other Manufacturer Derived Revenue received by PBM based on Client claims shall be paid to Client within 30 days of remittance to PBM by the manufacturer or other third party.

Eligibility Files, Data and Updates. True Rx will maintain, administer and update Client's employee eligibility upon request by email, profile update or Client download, with names and information of those employees of Client and their spouses and dependents who are eligible for True Rx Services, including COBRA-eligible members, which updates shall be filed electronically by email or other means agreed to by Client and True Rx based on information provided by Client.

Plan Design. True Rx will provide to Client its standard plan design for its use and evaluation. Client has ultimate authority over its plan design, and the determination of that plan design is subject to the Client Responsibilities stated below in this Part. The final plan design as agreed upon between True Rx and Client will be evidenced by a separate agreement, the Pharmacy Benefit Plan Design Form, that is completed with the Client Account set-up, and such Form is incorporated as part of this Agreement.

Assistance and Guidance Samples. Consistent with the terms of the Scope of Relationship and Client Responsibilities stated in this Part, to which Client expressly acknowledges and agrees, True Rx may provide sample language, sample formularies, plan document and summary plan description sample language and sample forms for Client to use as it establishes and maintains its Group Health Plan and the delivery of Pharmacy benefits under that Plan. Client acknowledges and agrees that True Rx is not engaged in the business of plan design consulting services and that it defers to any insurance broker and/or consultant involved. Congruently, Client agrees that it is solely responsible for the establishment and development of its Group Health Plan, and Client is the final decision-maker as to the establishment of the terms of its Plan.

Client Responsibilities. Client is responsible for its Group Health Plan Assets. Once a fee is paid to True Rx, such amounts are no longer assets of Client's Group Health Plan. Similarly, Client agrees that once payment has been arranged for and/or made for a Prescription Drug under Client's Plan, such amounts are also no longer assets of Client's Group Health Plan. Client also acknowledges and agrees that True Rx is not engaged in the practice of delivering legal, accounting or actuarial advice, and Client agrees to consult with such professionals regarding its Group Health Plan, and in particular with legal counsel regarding any documentation, forms or other legal compliance matters related to its Group Health Plan, including the scope of covered services, the requirements of ACA, including without limitation the delivery of a plan that provides minimum value, and all related compliance with laws.

Government Matters. In the event that Client is audited by any agency or department of the state or local government in connection with its Group Health Plan, True Rx agrees to cooperate with Client in connection with such investigation if True Rx is requested to provide assistance. If Client is audited or investigated or receives correspondence from Medicare relative to a Claim processed by True Rx, of any kind or type, Client agrees to immediately send a copy of such matter to True Rx under the Notice provisions in the Agreement. True Rx agrees to provide assistance and to respond to the Medicare inquiry, or demand. Client is responsible for paying applicable interest charges from Medicare and for reimbursing Medicare for benefits amounts if it is determined that the Plan should have paid the Claim primary to Medicare. True Rx will be entitled to obtain service fees and reimbursement for its out-of-pocket costs and attorneys' fees in rendering the assistance stated in this Part.

4. Pharmacy Pricing Matrix:

	<i>AWP Discount</i>
Retail 30 Ingredient Cost	
Brands	17%
Generics	80%
Retail 90 Ingredient Cost	
Brands	21%
Generics	84%
Mail Ingredient Cost	
Brands	24%
Generics	84%
Specialty Drug Ingredient Cost	
Brands	20%
Generics	40%
Open Formulary per Brand Rebate	
Retail – 1-83 day supply	\$116
Retail– 84+ day supply	\$228
Mail 84 + day supply	\$300
Specialty	\$820
Narrow Formulary per Brand Rebate	
Retail – 1-83-day supply	\$206
Retail– 84+ day supply	\$461
Mail Order	\$540
Specialty	\$1258

Network Guarantee. True Rx Management Services guarantees the price matrix above which applies overall to a group of Pharmacy benefit purchases on the contract year period. Any additional savings will be passed on to Client. Any dollar savings generated in excess of a stated pricing component may be applied toward offsetting any dollar shortfall on any other pricing component. All guarantees will be reconciled on an annual basis. A greater than 10% change in

membership totals, pharmacy chain mix, or the number of specialty or brand claims for Client may result in the need to adjust the pricing guarantees contained in this proposal. True Rx will have no obligation under any financial guarantees under the contract for the contract year (i.e., each 12-month period following the effective date) in which the Client terminates, if the portion of the contract year before the effective date of Customer's termination is less than 12 full months. Due to limited distribution agreements conducted by manufacturers, a small number of specialty products are not available at the exclusive pricing schedule. True Rx specialty discount utilizes net cost after deduction of plan savings based on manufacturer assistance programs.

The following claims are excluded from Network Guarantees: compound drugs; member submitted claims; subrogation claims; COB claims; claims filled at military treatment facility pharmacies (including Veterans Administration); vaccine claims; claims from MFN states; claims from AK, HI, PR, Guam and the Virgin Islands; claims filled at Client owned or operated pharmacies. Client owned or operated pharmacy reimbursement will be determined per client request.

Rebate Guarantee. True Rx guarantees the minimum rebate guarantees listed in the matrix above. Any dollar savings in excess of one rebate component may be applied to offset any dollar shortfall on any other rebate component. All claims processed at Client owned pharmacies are not included in the minimum rebate guarantee. Rebate guarantees are based on Formulary chosen and number of brands filled in each defined rebate class. Rebate guarantees may be adjusted in proportion to the impact of unexpected releases of Generic Drugs to market or the withdrawal or recall of existing Brand Drugs. Rebate guarantees may be adjusted in proportion to the length and impact of Grandfathering. A greater than 10% change in membership totals, pharmacy chain mix, or the number of specialty or brand claims for Client may result in the need to adjust the pricing guarantees contained in this proposal. True Rx will have no obligation under any financial guarantees under the contract for the contract year (i.e., each 12-month period following the effective date) in which the Client terminates, if the portion of the contract year before the effective date of Customer's termination is less than 12 full months. The rebate guarantees are subject to the following terms: i) customer's adoption, without deviation, to the True Rx, as well as any changes to its formulary; ii) a minimum of a \$10 difference in copayment or 10% difference in coinsurance between preferred and non-preferred Brand Drugs; iii) the implementation of any necessary utilization management programs.

Adjustment to quoted rates. Upon prior written notice to and subject to Client's agreement, True Rx may change network and/or rebate guarantees (a) any time Client makes changes to the Benefit Plan, Formulary, or a utilization management program (b) when there are changes in Laws and Regulations after the effective date that affect or are related to the services outlined herein. Any modifications to rebate guarantees required by the changes as stated above will be effective as of the dates the changes occur, even if the date is retroactive.

Limited Liability. True Rx will reconcile all network and rebate guarantees above on an annual basis. Client will be refunded the difference between the expected and actual pricing or expected and actual rebates up to 100% of the annual administration fees paid to True Rx by Client. Should Client at any time fail to ensure payment to True Rx as described in within the Agreement or any and all Addendum thereto or fail to provide sufficient notice of termination or terminate the Agreement prior to the end of the Agreement term as described in Section 5 of the Agreement, True Rx shall have zero liability for network or rebate guarantees.

ALL OF WHICH IS APPROVED by the Board of Public Works and Safety of the City of Noblesville this 24th day of August 2021.

BOARD OF PUBLIC WORKS & SAFETY
CITY OF NOBLESVILLE
HAMILTON COUNTY, INDIANA



JACK MARTIN, PRESIDENT

JOHN DITSLEAR, MEMBER

LAURIE DYER, MEMBER

ROBERT J. ELMER, MEMBER

RICK L. TAYLOR, MEMBER

ATTEST:



EVELYN L. LEES, CLERK
CITY OF NOBLESVILLE, INDIANA

This instrument prepared by: Lindsey M. Bennett, City Attorney, City of Noblesville, Hamilton County, Indiana,
16 S. 10th Street, Noblesville IN 46060

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law." /s/ Lindsey M. Bennett