

County Commissioners Office
Auglaize County, Ohio
February 4, 2021

NO. #21-050

IN THE MATTER OF AMENDING THE CRITERIA FOR THE ISSUANCE OF PROCUREMENT CARDS FOR VARIOUS COUNTY OFFICES AND DEPARTMENTS.

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 4th day of February, 2021.

Commissioner Bergman moved the adoption of the following:

RESOLUTION

WHEREAS, in Resolution #05-164, dated March 29, 2005, the Board of County Commissioners determined the criteria for the issuance of procurement cards for various county offices and department establishing the maximum expense line being \$5,000.00; and,

WHEREAS, in Resolution #15-434, dated October 20, 2015, the Board established the maximum expense line \$10,000.00 for the Sheriff's Office; and,

WHEREAS, it has now become necessary to amend the criteria of said Resolution #15-434, and set the maximum expense line at \$11,500.00 for Sheriff's Office.

THEREFORE, BE IT RESOLVED that the Board of County Commissioners of Auglaize County, Ohio does hereby amend the criteria stated in Resolution #15-434, dated October, 2015, and does now set the maximum expenses line for the Auglaize County Procurement Cards for Sheriff's Office at \$11,500.00; and,

WHEREAS, in Resolution #15-434, said Board authorized the securement of Procurement Cards for said County entities to be completed through First National Bank, New Bremen.

THEREFORE, BE IT RESOLVED that said Board of Auglaize County Commissioners does hereby authorize First National Bank, New Bremen to increase the maximum expense line on the Auglaize County procurement cards to \$11,500.00 for Sheriff's Office.

Commissioner Bambauer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this
4th day of
February, 2021

BOARD OF COUNTY COMMISSIONERS
AUGLAIZE COUNTY, OHIO

Robert Spence, Yes
Douglas A. Spence

David Bambauer, yes
David Bambauer

John N. Bergman, yes
John N. Bergman

cc: First National Bank, New Bremen
✓ Sheriff – Mike Vorhees
✓ County Administrator

IN THE MATTER OF RETAINING ELIXIR RX SOLUTIONS, LLC TO PROVIDE FOR A PHARMACY BENEFIT SERVICES AGREEMENT FOR THE AUGLAIZE COUNTY'S HEALTH BENEFIT PLAN(S).

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 4th day of February, 2021.

Commissioner Bergman moved the adoption of the following:

RESOLUTION

WHEREAS, Auglaize County ("Client"), as a member of the Midwest Employees Benefit Consortium (MEBC), offers a prescription drug plan to its employees; and

WHEREAS, the Board of County Commissioners has chosen to retain Elixir RX solutions, LLC ("Elixir") to administer this the Pharmacy Benefit on behalf of Client in accordance with the terms of this agreement; and,

WHEREAS, Elixir RX Solutions, LLC has submitted a Pharmacy Benefit Service Agreement to the Board for its approval and execution.

THEREFORE, BE IT RESOLVED that the Board of County Commissioners, Auglaize County, Ohio does hereby approve the Pharmacy Benefit Service Agreement as presented by Elixir RX Solutions, LLC and does authorize Douglas A. Spencer, President of the Board, to execute said documents.

Commissioner Bambauer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this
4th day of
February, 2021

BOARD OF COUNTY COMMISSIONERS
AUGLAIZE COUNTY, OHIO


Douglas A. Spencer


David Bambauer


John N. Bergman

cc: Elixir RX Solutions, LLC

SERVICE AGREEMENT

THIS SERVICE AGREEMENT is dated and effective as of January 1, 2021 (“Effective Date”), by and between ELIXIR RX SOLUTIONS, LLC, a Missouri limited liability company (“Elixir”), and AUGLAIZE, OHIO, organized under the laws of the State of Ohio (“Client”).

WHEREAS, Client is a Plan Sponsor that desires to provide a pharmacy benefit to its Eligible Members;

WHEREAS, Elixir is engaged in the business of administering pharmacy benefits for Plan Sponsors; and

WHEREAS, Client desires to engage Elixir to administer the Pharmacy Benefit on behalf of Client in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties agree as follows:

1. DEFINITIONS

- 1.1 “Agent” shall mean a third party administrator, consultant, trustee(s), or any other party or entity appointed or authorized by Client to represent Client in its relationship with Elixir.
- 1.2 “Agreement” shall mean this Service Agreement (including all exhibits, addenda, amendments, and other attachments, if any) between Client and Elixir, as may be amended or modified from time to time.
- 1.3 “Cardholder” shall mean an Eligible Member to whom Client (or its Agent) or Elixir has issued an identification card (or form), whose name and identification number appear on the identification card (or form), and whose identification card (or form) is valid.
- 1.4 “Claim” shall mean a request from a Participating Pharmacy or a Cardholder to process and adjudicate a Covered Medication for an Eligible Member.
- 1.5 “Covered Medication” shall mean any Drug Product prescribed by a Physician for an Eligible Member that meets the requirements for coverage as set forth in the Plan.
- 1.6 “Dependent” shall mean an Eligible Member who is related to a Cardholder, as identified by Client (or its Agent).
- 1.7 “Drug Product” shall mean a drug whose active ingredient(s), strength(s), and dosage form are listed in the “Approved Drug Products with Therapeutic Equivalence Evaluations” (commonly known as the “Orange Book”), which is an official publication of the U.S. Food and Drug Administration (“FDA”).
- 1.8 “Eligible Member” shall mean an individual who is enrolled in a Plan and who is entitled to receive reimbursement for, or payment of, Covered Medications under the Pharmacy Benefit for the Plan in which the individual is enrolled.
- 1.9 “Formulary” shall mean a standard preferred list of Covered Medications, as determined by the Elixir Pharmacy & Therapeutics Committee (or such other Pharmacy & Therapeutics Committee as designated by Elixir and agreed to by Client), and provided, as necessary, to Physicians, Participating Pharmacies and/or Eligible Members as a guide to the prescribing, dispensing, and purchasing of Covered Medications.
- 1.10 “Participating Pharmacy” shall mean a duly licensed pharmacy that has signed a Pharmacy Services Agreement (or similarly named agreement) with Elixir to provide Pharmacy Services to Eligible Members in accordance with the requirements in such agreement.
- 1.11 “Pharmacy Benefit” shall mean the inclusions, limitations, and exclusions in coverage of Eligible Members, Participating Pharmacies, Physicians, and Covered Medications as set forth in the Plan and as may be amended from time to time by the Plan Sponsor.

1.12 "Pharmacy Services" shall include the dispensing of a Drug Product by a Participating Pharmacy, in accordance with all applicable state and federal laws governing the practice of pharmacy and in accordance with the standards of practice in the communities in which the Participating Pharmacy operates.

1.13 "Physician" shall mean any Doctor of Medicine or other health care practitioner who is legally authorized to prescribe Drug Products in the state(s) in which he/she is licensed.

1.14 "Plan" shall mean the agreement or other arrangement between an Eligible Member and his/her Plan Sponsor that entitles the Eligible Member to receive reimbursement for, or payment of, medical expenses, including, without limitation, Covered Medications.

1.15 "Plan Sponsor" shall mean an employer, employer coalition, health insurer, managed care organization, association, union health and welfare trust, government agency, third party administrator, or other such organization that is obligated to pay for Covered Medications dispensed to Eligible Members.

1.16 "Point-of-Sale" or "POS" shall mean the on-line, real-time telecommunication system used by Elixir to communicate information regarding eligibility, Claims, drug utilization, and other information to a Participating Pharmacy.

1.17 "System" shall mean the hardware and the software used to process Claims.

2. DUTIES OF ELIXIR

2.1 Elixir agrees to provide, through its Participating Pharmacies, Covered Medications to Eligible Members in accordance with the terms of this Agreement, if such Eligible Members present a prescription order or refill from a Physician and a valid identification card (or form) at Participating Pharmacies signifying their entitlement to such Covered Medications.

2.2 Elixir agrees to provide "Administration Services", as described in Exhibit A, including, but not limited to, the processing and adjudication of Claims for Covered Medications submitted by Participating Pharmacies for Eligible Members.

2.3 Elixir shall allow Client (and its Agent) to use the name of Elixir for purposes of marketing, informing Eligible Members and others of the identity of Participating Pharmacies, and as otherwise necessary to carry out the terms of this Agreement. Notwithstanding the foregoing, Elixir hereby reserves the right, in its sole discretion, to require Client (and/or its Agent) to cease using the name of Elixir for any reason whatsoever.

2.4 Elixir shall use reasonable efforts to provide Client with assistance in coordinating and responding to formal complaints or appeals from Eligible Members under the Plan; however, Elixir will not be responsible or liable in any manner for Client's compliance or non-compliance with the terms and conditions of the Plan or applicable laws or regulations regarding responding to Eligible Members' complaints or appeals. Client is solely responsible for the review and final resolution of complaints from Eligible Members. Elixir shall review the appeal of eligible denied claims pursuant to the process set forth on Exhibit C.

2.5 Elixir acknowledges that in administering Client's Pharmacy Benefit, Elixir will receive health information from Client such that Elixir will be considered to be Client's "Business Associate," as that term is defined by the Health Insurance Portability and Accountability Act of 1996, and the implementation regulations governing privacy and security of certain information thereunder ("HIPAA"). Specifically, with respect to protected health information ("PHI") as that term is defined by HIPAA, Elixir agrees to comply with the provisions in the Business Associate Addendum set forth on Exhibit B, attached hereto and incorporated by this reference.

2.6 Elixir may, at its sole discretion, audit Participating Pharmacies to ensure the Participating Pharmacies' compliance with their contracts with Elixir. Selection of Participating Pharmacies and the method of audit shall be determined solely by Elixir. Elixir, in its discretion, may perform the audit or select an outside firm to perform the audit. To compensate Elixir for the cost of conducting such audits, Elixir shall be entitled to retain twenty percent (20%) of any overpayment to any Participating Pharmacy that is detected and recovered as a result of any such audit, and which is attributable to a Plan or its Eligible Members; provided that Elixir shall pay the balance of any such recovered overpayment to Client, prorated to the amount attributable to Client's Plan or Eligible Members.

3. DUTIES OF CLIENT

3.1 Client agrees and expressly acknowledges that—in the event Client appoints an Agent—Elixir shall be authorized to deal with Agent in all respects as if it were the Client for purposes of this Agreement, and Client waives any right to the contrary. Client further expressly acknowledges any act or omission by such Agent shall be within the scope and authority of such Agent and binding upon Client and that any agreement Client shall have with Agent shall have no bearing or effect on this Agreement.

3.2 Client (or its Agent) has provided Elixir, thirty (30) days prior to the Effective Date (and will provide as necessary thereafter), Eligible Member information, including, but not limited to, Cardholder name, Cardholder identification number, Cardholder address, Cardholder birth date, Cardholder eligibility begin date, Cardholder eligibility end date, Dependent name(s), Dependent birth date(s), Dependent eligibility begin date, and Dependent eligibility end date. Client (or its Agent) shall provide such information in a format agreeable to Elixir. Client agrees that Elixir may act in reliance upon the accuracy of all Eligible Member information received from Client (or its Agent).

3.3 Client (or its Agent) agrees to distribute, or pay Elixir to distribute in accordance with Exhibit D, the “Cardholder Information” described in Exhibit A to Cardholders upon receipt from Elixir or Agent.

3.4 Client (and its Agent) agrees to grant Participating Pharmacies the status of “Client Participating Pharmacies” and to identify such Participating Pharmacies as “Preferred Pharmacies”, or other language of like import, on informational materials distributed to Eligible Members and others.

3.5 Client (and its Agent) understands and agrees that Elixir shall have the right to collect and use aggregate data on Covered Medications and that Elixir shall have ownership rights to all such data and statistics. Client (and its Agent) further understands and agrees that, in order to provide services hereunder, Elixir may be required to submit data on Covered Medications to pharmaceutical manufacturers pursuant to the terms of agreements with those pharmaceutical manufacturers; provided, however, that such information furnished to pharmaceutical manufacturers shall not identify Eligible Members by name or otherwise, except in connection with any audit required by such pharmaceutical manufacturers.

3.6 Client (and its Agent) shall not constrain Elixir from communicating with Eligible Members and/or their Physicians, when necessary, to carry out its obligations as set forth in this Agreement.

3.7 With respect to all services and programs provided under this Agreement, Elixir shall not be liable in the event any such services or programs do not provide the intended savings to Client, unless such savings amounts are explicitly stated in this Agreement.

3.8 Client shall comply with the HIPAA provisions included in the Business Associate Addendum set forth on Exhibit B, attached hereto and incorporated by this reference.

4. ELIXIR COMPENSATION

4.1 Client agrees to pay Elixir by ACH or other form of electronic funds transfer the “Paid Claim Charges”, “Miscellaneous Charges”, “Program Charges”, and all other applicable charges as set forth in Exhibit D. Client shall make all such payments twice a month within ten (10) days of the invoice statement date. Client agrees to pay interest at a rate of one and one-half percent (1.5%) per month on any balance due at the time of the next billing; however, in no event shall such interest rate be greater than the highest rate permitted by applicable law. Client acknowledges that, in the event Client fails to pay any Paid Claim Charges, Miscellaneous Charges, Program Charges, other applicable charges, or interest due within thirty (30) days of the invoice statement date, Elixir reserves the right to immediately suspend all POS system activity until Client makes payment to Elixir in full and/or to offset any amounts owed by Elixir to Client pursuant to this Agreement. The financial terms set forth in Exhibit D shall be effective upon the latter of (i) the Effective Date (or any Amendment Effective Date, as applicable) and (ii) the execution date of this Agreement by Client.

4.2 Client acknowledges that, in the event Client requests Elixir to provide services that are not defined in this Agreement, Client shall pay additional charges, which shall be mutually agreed upon by both parties in writing.

4.3 Elixir uses Average Wholesale Price (often referred to as AWP, and as defined on Exhibit D) as its Drug Product pricing statistic to calculate “Paid Claim Charges,” as defined and described in Exhibit D. If, for any reason, Elixir decides to change its Drug Product pricing statistic (“Change Event”), then Elixir shall notify Client sixty (60) days prior to

the implementation date of such change ("Change Date"). If the methodology for calculating Paid Claim Charges using the new Drug Product pricing source would result in a material increase or decrease in Paid Claim Charges to Client, the parties shall mutually agree on an adjustment factor to be applied to the Paid Claim Charges incurred on and after the Change Date that is equivalent to the Paid Claim Charges increase or decrease experienced by Client due to the Change Event. If the parties cannot mutually agree to an adjustment factor by the Change Date, then either party hereto may terminate this Agreement upon thirty (30) days' prior written notice.

5. TERM

5.1 The term of this Agreement shall commence on the Effective Date and continue for a period of three (3) years (the "Initial Term"). At the end of the Initial Term, this Agreement shall automatically renew for successive one (1) year periods (each, a "Renewal Term"), unless either party hereto provides written notice to the other party at least ninety (90) days prior to the expiration of the then-current term of its intent to either terminate or renegotiate this Agreement.

5.2 Either party hereto may terminate this Agreement if the other party materially breaches its obligations. The termination must be by written notice specifically identifying the breach, and such termination shall become effective thirty (30) days after the notice, unless the breach is corrected during the thirty (30)-day period (the "Cure Period"). Elixir shall provide Pharmacy Benefit Administration Services on all Covered Medications submitted prior to the termination date, but shall have no other obligations to Client following the date of termination.

5.3 Elixir is the exclusive provider to Client of the Pharmacy Benefit Administration Services as described in this Agreement. During the term of this Agreement, Client shall not directly or indirectly engage any individual, proprietorship, partnership, or corporation operating the same or similar business as Elixir, including, without limitation, Pharmacy Services provided through the mail or other similar delivery system. In the event Client breaches this section of the Agreement, Elixir shall have no further obligations to Client under this Agreement as of the date of such breach.

5.4 In the event this Agreement is terminated due to (i) Client's breach pursuant to Section 5.2 of the Agreement, (ii) Client's early termination of this Agreement, or (iii) Client's ceasing to use Elixir's Pharmacy Benefit Administration Services prior to the expiration of the Initial Term or any Renewal Term hereof (each, a "Client Wrongful Termination"), Elixir and Client acknowledge and agree that Elixir will suffer damages (including without limitation lost profits), which will be difficult to determine during any subsequent litigation. In order to compensate Elixir for such difficult-to-determine damages, Elixir shall be entitled to recover liquidated damages from Client as calculated in this Section 5.4, and which liquidated damages are intended as a measure of compensation to Elixir rather than as a penalty or punishment to Client. The amount of liquidated damages to which Elixir shall be entitled hereunder shall be the estimated amount of net revenue ("Net Revenue") Elixir would have received under this Agreement, if not for the Client Wrongful Termination. This amount shall be calculated by multiplying the Average Monthly Net Revenue (as defined below) by the number of months remaining under the Initial Term or Renewal Term, as applicable. The "Average Monthly Net Revenue" shall equal the amount of Net Revenue received by Elixir from Client during the twelve-month period immediately preceding the Client Wrongful Termination, divided by twelve (12); provided, however, in the event the Client Wrongful Termination occurs less than twelve (12) months after the Effective Date, the Average Monthly Net Revenue shall equal the amount of Net Revenue received by Elixir from Client since the Effective Date, divided by the number of full calendar months since the Effective Date. The parties acknowledge and agree that nothing contained in this Section 5.4 shall be deemed to restrict Client's rights to recover damages from Elixir in the event of Elixir's breach of this Agreement.

5.5 A breach by Elixir of any material provision of this Agreement shall constitute a material breach of the Agreement and shall provide grounds for termination of the Agreement by the Client; provided Elixir is unable to cure such breach within the applicable cure period provided in the Agreement. Notwithstanding the foregoing, Client may terminate the Agreement, without penalty, effective immediately, if (i) Elixir is named as a defendant in a criminal proceeding for a material violation under HIPAA; or (ii) a finding or stipulation that Elixir violated any standard or requirement of HIPAA or any other applicable laws relating to the security or privacy of PHI, or which is entered against Elixir in any administrative or civil proceeding in which Elixir has joined.

6. CONFIDENTIALITY

6.1 Elixir retains the exclusive rights to the names Elixir Rx Solutions, LLC, Elixir Solutions, Elixir Rx, Elixir Rx Solutions, and Elixir, together with any distinctive trademark and/or service mark that may hereinafter be adopted.

6.2 All confidential and proprietary information of Elixir (“Elixir Confidential Information”) includes, but is not limited to, Elixir’s System information, reporting packages, proprietary software and user documentation, manuals, Formulary documents, Participating Pharmacy agreements, any information about Elixir’s rates, fees or charges, this Agreement and its terms and conditions, and any additional information typically considered confidential and proprietary. Client (and its Agent) shall not use any Elixir Confidential Information or disclose it to any third party, at any time during or after termination of this Agreement, except as specifically contemplated in this Agreement or upon Elixir’s prior written consent. Upon termination of this Agreement, Client (and its Agent) shall cease using all Elixir Confidential Information provided to Client (or its Agent) by Elixir and shall return the same to Elixir immediately upon Elixir’s request.

6.3 The parties shall maintain the confidentiality of any information relating to Eligible Members in accordance with any applicable laws and regulations. However, the parties acknowledge that—in providing services under this Agreement—Elixir shall obtain confidential information about Eligible Members and may distribute such confidential information to Client (and its Agent), Participating Pharmacies, and Physicians. Client shall ensure that there is adequate release from Eligible Members, or that release of confidential information relating to Eligible Members is otherwise proper, in regard to any information about Eligible Members provided to Elixir or by Elixir to Client (or its Agent), Participating Pharmacies, or Physicians. Client (and its Agent) shall also ensure that its use of Eligible Member information is in compliance with applicable laws and regulations.

6.4 The parties hereto shall maintain appropriate records relating to their responsibilities under this Agreement. Annually during the term of this Agreement and once during the year immediately following termination of this Agreement upon reasonable prior notice and during normal business hours, each party hereto may have reasonable access to the records of the other party directly relating to such other party’s responsibilities and performance under this Agreement. The scope of such audit will be limited to Eligible Member Claims adjudicated in the Agreement year immediately preceding the year in which the audit is conducted. Each party hereto shall pay the reasonable cost of copying records requested from the other party during an audit hereunder, and any other reasonable reproduction costs incurred by the other party in complying with the audit request. A third party may be allowed or designated by the auditing party hereunder to conduct an audit with the prior written consent of the party hereto whose records are to be audited, which consent shall not be unreasonably withheld; provided, however, that the audited party shall have the right to refuse the auditing party’s auditor if the proposed auditor reasonably may acquire a competitive advantage by gaining access to the audited party’s confidential information as described in this Section 6. In addition, the third party auditor shall enter into a reasonable confidentiality agreement with the audited party prior to conducting any audit hereunder.

7. RELATIONSHIP OF THE PARTIES

7.1 Client specifically acknowledges that Elixir shall have no fiduciary duties whatsoever to Client or any Eligible Member either arising under this Agreement or under any Plan. Client and Elixir acknowledge and agree that Elixir has no discretionary authority or discretionary control to negotiate on behalf of Client (or its Agent, any Plan, or Plan Sponsor) any prices, rates, rebates, discounts or other terms for Pharmacy Services. Client acknowledges that it, or its Agent or Plan Sponsor, will retain at all times sole authority to control and administer its Plan and its Pharmacy Benefit, including without limitation any Eligible Member complaints or appeals under such Plan.

7.2 Client and Elixir are separate and independent entities. They recognize that they are neither partners nor joint venturers and that they are not liable for, assuming, or guaranteeing the debts and obligations of each other. No provision of this Agreement is intended to create, nor shall be deemed or construed to create, any relationship between Client and Elixir other than that of independent entities contracting with each other solely for the purpose of fulfilling the provisions of this Agreement. Neither of the parties hereto, nor any of their respective representatives, shall be construed to be the agent, the employer, or the representative of the other except for the limited purpose stated in Section 7.3 below.

7.3 Nothing expressed or implied in this Agreement is intended to confer—nor shall anything herein confer—any rights, remedies, obligation, or liabilities whatsoever upon any person other than the Client, Elixir, and their respective successors and assigns.

7.4 Client acknowledges and agrees that Elixir is acting solely in the capacity as Client’s paying agent in processing claims and making payments from funds provided by Client as part of its Administrative Services as described in Exhibit A. The Client shall be responsible for filing all state and federal reporting forms, if any, with respect to such claim payments.

7.5 Elixir shall indemnify and hold Client harmless from and against any liabilities, claims, damages, injuries, costs, expenses and fees, including reasonable attorneys' fees, whether relating to persons or property (collectively, "Losses") related to any claim, order, suit, investigation, or action by a third party (a "Claim") to the extent caused by (i) the willful misconduct or negligent acts or omissions of Elixir, or (ii) any breach of this Agreement by Elixir.

7.6 Client shall indemnify and hold Elixir harmless from and against any Losses related to any Claim to the extent caused by (i) the willful misconduct or negligent acts or omissions of Client, (ii) any breach of this Agreement by Client, or (iii) the benefit design or coverage decisions under the Plan.

7.7 In the event either party intends to seek indemnification under Section 7.5 or 7.6, such party shall promptly notify the other party in writing upon learning of a Claim for which indemnification will be sought. However, a failure to provide such notice will only limit the indemnifying party's obligation to indemnify to the extent the ability to defend was jeopardized due to the failure to provide prompt notice.

7.8 Except as provided in Section 5.4 hereof, neither party (nor their respective employees, directors, affiliates, or agents) shall be liable to the other for any special, consequential, incidental, indirect, punitive, or exemplary damages. Except as set forth in Sections 7.5 and 7.6, neither party's liability to the other shall exceed the direct, actual Losses related to a breach of this Agreement.

8. MISCELLANEOUS

8.1 The terms of this Agreement shall be governed by the laws of the state of Missouri.

8.2 This Agreement may not be amended, supplemented or changed in any manner except by a written instrument executed by both parties.

8.3 This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, personal representatives, executors, administrators, successors and assigns. Either party hereto may assign its respective rights hereunder to any successor or assign as long as such successor or assign also assumes all of the obligations of the party making such assignment. Client acknowledges that persons and entities under contract with Elixir may perform certain administrative services pursuant to this Agreement, provided that Elixir (or its assignee) shall remain responsible for the proper performance of its obligations in accordance with the terms of this Agreement. The obligations of Client hereunder may not be assigned nor any portions of Client's duties subcontracted without the prior written consent of Elixir, which shall not be unreasonably withheld.

8.4 This Agreement and any schedules, exhibits, and/or addenda referred to herein or attached hereto constitute the entire contract between the Parties with regard to the subject matter hereof, and supersede all prior agreements and understandings between the Parties, both written and oral, relating to the subject matter hereof. Any waiver of any breach of any provision of this Agreement shall not be a waiver of any subsequent breach of any provision of this Agreement. The terms and conditions of this Agreement are the result of an arm's length negotiations between the Parties and each Party has had the opportunity to obtain the advice of legal counsel regarding the negotiations and execution of this Agreement.

8.5 The use of the masculine, feminine or neuter gender and the use of the singular and plural shall not be to give the effect of any exclusion or limitation herein.

8.6 Any notices required to be given pursuant to this Agreement shall be sent by certified mail, return receipt requested, postage prepaid. Any such notice from Client shall be sent to the office of Elixir. Any such notice from Elixir shall be sent to the office of Client.

8.7 In the event of the unenforceability or invalidity of any section or provision of this Agreement, such section or provision shall be enforceable in part to the fullest extent permitted by law, and such invalidity or unenforceability shall not otherwise affect any other section or provision of this Agreement, and this Agreement shall otherwise remain in full force and effect.


[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

AUGLAIZE COUNTY, OHIO:

ELIXIR RX SOLUTIONS, LLC:

By: 
Name: Douglas A. Spencer

By: 
Name: Susan Thomas

Title: President

Title: General Manager

Date: February 4, 2021

Date: 2/4/2021

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

AUGLAIZE COUNTY, OHIO:

By: 
Name: Douglas A. Spencer
Title: President
Date: February 4, 2021

ELIXIR RX SOLUTIONS, LLC:

By: _____
Name: _____
Title: _____
Date: _____

Exhibit A
Administration Services

Elixir will:

1. Maintain a network of independently contracted Participating Pharmacies to provide Covered Medications to Eligible Members.
2. Design the Pharmacy Benefit in the System and activate the POS system on the Effective Date.
3. Load and test Eligible Member information in the System. Elixir requires a minimum of two weeks to test the accuracy of the initial Eligible Member information provided. Elixir is not responsible for inaccuracies in initial Eligible Member information in the System until such time as Elixir has tested it.
4. Process and adjudicate Claims for Covered Medications submitted by Participating Pharmacies for Eligible Members, including:
 - a. Verification that the Eligible Member is eligible on the date the Drug Product is dispensed.
 - b. Verification that the Drug Product dispensed is a Covered Medication.
 - c. Verification that the supply of the Drug Product dispensed is in the quantity permitted under the Plan Sponsor's Plan.
 - d. Pricing of the Claim.
 - e. Production and issuance of explanations of benefits (EOBs) for out-of-network Claims.
 - f. Production and issuance of Claims checks.
 - g. Tracking or application of any Eligible Member Deductible (as defined on Exhibit D), Copayment (as defined on Exhibit D), or Pharmacy Benefit maximum.
5. Maintain the Claims data supporting the invoice statements for Covered Medications dispensed by Participating Pharmacies and by non-Participating Pharmacies.
6. Provide Plan Sponsor with access to standard management reports.
7. Produce and distribute Cardholder Information, which includes:
 - a. Identification Cards (or Forms)
 - b. Plan information
 - c. Participating Pharmacy directory
 - d. Formulary (if necessary)
8. Conduct retrospective and concurrent drug utilization review and coordinate with Physicians to identify instances of misuse and abuse and prevent future misuse and abuse.
9. When specifically requested by Client, implement a Therapeutic Intervention Program, which is a proprietary program created by Elixir to educate Eligible Members and their Physicians about preferred Drug Products on the Formulary and encourage Physicians to prescribe, and Eligible Members to use, said Drug Products.
10. Conduct an annual member satisfaction survey and report results to Client if Client agrees to distribute the survey instrument through Client's internal email system.
11. Provide prior authorization ("Prior Authorization") services as set forth and directed by the Client for the Drug Products designated in Pharmacy Benefit implementation documents, as may be updated by the Client from time to time. Drug Products subject to Prior Authorization must meet Client-approved coverage criteria for any such Drug Product to qualify as a Covered Medication. To determine whether any Drug Product should be authorized for coverage under the Plan, Elixir will apply the applicable coverage criteria and rely on information provided by the Eligible Member's prescriber. Elixir will not attempt to make a determination of medical necessity and shall rely on the medical determination made by the prescriber to make a coverage determination.

Exhibit B

Business Associate Addendum

THIS BUSINESS ASSOCIATE ADDENDUM (“Addendum”) is effective as of the date of the agreement between Client (the Plan Sponsor of the Plan, a Covered Entity) and Elixir (a Business Associate) to which this Addendum is attached (the “Agreement”). Pursuant to the Agreement, Elixir performs certain services for Client, in connection with which Elixir may receive from, or create or receive on behalf of, Client health information that is considered PHI (as defined below). To the extent that such PHI is shared between the parties, this Addendum shall apply and shall set forth each party’s obligations with respect to such PHI. In consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

TERMS

1. Definitions

Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the HIPAA Rules (as defined below), the HITECH Standards (as defined below) or any future regulations promulgated or guidance issued by the Secretary (as defined below) thereunder.

- a) Breach. “Breach” shall have the same meaning as the term “breach” at 45 C.F.R. § 164.402.
- b) Electronic Health Record. “Electronic Health Record” shall mean an electronic record of health-related information on an Individual (as defined below) that is created, gathered, managed, and consulted by authorized health care clinicians and staff.
- c) Electronic PHI. “Electronic PHI” shall have the same meaning as the term “electronic protected health information” at 45 C.F.R. § 160.103, limited to the information created or received by Elixir from or on behalf of Client.
- d) HIPAA. “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996, as amended, and the implementation regulations thereunder, including without limitation the HIPAA Rules (as defined below) and the HITECH Standards (as defined below), and all future regulations promulgated thereunder.
- e) HIPAA Rules. “HIPAA Rules” means each of the Privacy Rule (as defined below), the Security Rule (as defined below), the Breach Notification Rule, and the Enforcement Rule at 45 CFR Part 160 and Part 164.
- f) HITECH Standards. “HITECH Standards” means Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH”), found at Title XIII of the American Recovery and Reinvestment Act of 2009, and any regulations promulgated thereunder, including all amendments to the HIPAA Rules.
- g) Individual. “Individual” shall have the same meaning as the term “individual” at 45 C.F.R. § 160.103, and any amendments thereto, and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- h) Privacy Rule. “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164.
- i) Protected Health Information. “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” at 45 C.F.R. § 160.103, and any amendments thereto, limited to the information created or received by Elixir from or on behalf of Client.
- j) Required By Law. “Required By Law” shall have the same meaning as the term “required by law” at 45 C.F.R. § 164.103.
- k) Secretary. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- l) Security Incident. “Security Incident” shall have the same meaning as the term “security incident” at 45 C.F.R. § 164.304.

- m) Security Rule. "Security Rule" shall mean the Security Standards for the Protection of Electronic PHI at 45 C.F.R. Parts 160, 162, and 164.
- n) Unsecured PHI. "Unsecured PHI" shall have the same meaning as the term "unsecured protected health information" at 45 C.F.R. § 164.402.

2. Relationship of Parties

In the performance of the work, duties, and obligations described in this Addendum, the Agreement, or under any other agreement between the parties, the parties acknowledge and agree that each party is at all times acting and performing as an independent contractor and at no time shall the relationship between the parties be construed as a partnership, joint venture, employment, principal/agent relationship, or master/servant relationship.

3. Obligations and Activities of Elixir

- a) Elixir agrees to not use or disclose PHI other than as permitted or required by this Addendum, the Agreement, any other agreement between the parties, or as Required By Law.
- b) Elixir will make reasonable efforts, to the extent practicable, to limit requests for and the use and disclosure of PHI to a Limited Data Set (as defined in 45 C.F.R. § 164.514(e)(2)) or, if needed by Elixir, to the minimum necessary PHI to accomplish the intended purpose of such use, disclosure or request, and as applicable, in accordance with the regulations and guidance issued by the Secretary on what constitutes the minimum necessary for Elixir to perform its obligations to Client under this Addendum, the Agreement, any other agreement between the parties, or as Required By Law.
- c) Elixir agrees to use appropriate safeguards to prevent the use or disclosure of PHI it creates, receives, maintains, or transmits on behalf of Client, other than as provided for by this Addendum or the Agreement.
- d) Elixir agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate shall comply with the applicable requirements of the Security Rule in the same manner such provisions apply to Covered Entity.
- e) Elixir agrees to mitigate, to the extent practicable, any harmful effect that is known to Elixir of a use or disclosure of PHI by Elixir in violation of the requirements of this Addendum.
- f) Following Elixir's discovery of a Breach of Unsecured PHI, Elixir shall notify Client of the Breach without unreasonable delay, and in no event later than ten (10) days after Elixir, or any of its employees or agents, discovered the Breach. To the extent that Elixir creates, receives, maintains or transmits Electronic PHI, Elixir agrees to report as soon as practicable to Client any Security Incident, as determined by Elixir, involving PHI of which Elixir becomes aware. Notwithstanding the foregoing, Elixir and Client acknowledge the ongoing existence and occurrence of attempted but unsuccessful Security Incidents that are trivial in nature, such as pings and port scans, and Client acknowledges and agrees that no additional notification to Client of such unsuccessful Security Incidents is required. However, to the extent that Elixir becomes aware of an unusually high number of such unsuccessful Security Incidents due to the repeated acts of a single party, Elixir shall notify Client of these attempts and provide the name, if available, of said party. At the request of Client, Elixir shall identify the date of the Security Incident, the scope of the Security Incident, Elixir's response to the Security Incident, and the identification of the party responsible for causing the Security Incident, if known.
- g) In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Elixir agrees to ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Elixir agree to the same restrictions, conditions, and requirements that apply through this Addendum to Elixir with respect to such information.
- h) Elixir shall provide access, at the request of Client and in a time and manner mutually acceptable to Elixir and Client, to PHI in a Designated Record Set to Client, or, as directed by Client, to an Individual or another person properly designated by the Individual, as necessary to satisfy Client's obligations under 45 C.F.R. § 164.524. If Elixir maintains PHI electronically in a Designated Record Set and if an Individual requests an electronic copy of such information, Elixir must provide Client, or the Individual or person properly designated by the Individual, as directed by Client, access to the PHI in the electronic form and format requested by the Individual, if it is readily producible in such form and format; or, if not, in a readable electronic form and

format as agreed to by Elixir, Client, and the Individual. Any fee that Elixir may charge for such electronic copy shall not be greater than Elixir's labor and supply costs in responding to the request.

- i) Elixir agrees to make any amendment(s) to PHI in its possession contained in a Designated Record Set as directed or agreed to by Client pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Client's obligations under 45 CFR 164.526, in a time and manner mutually acceptable to Elixir and Client.
- j) Elixir agrees to document disclosures of PHI and information related to such disclosures as would be required for Client to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. As of the compliance date set forth in the regulations promulgated under HITECH or as otherwise determined by the Secretary, in addition to the accounting of disclosure obligations required under 45 C.F.R. § 164.528, Elixir shall account for all disclosures of PHI made through an Electronic Health Record in accordance with the HITECH Standards and any future regulations promulgated thereunder.
- k) Within ten (10) business days (or such other date that Elixir and Client may reasonably agree upon) of receiving written notice from Client that Client has received a request for an accounting of disclosures of PHI, Elixir agrees to make available the information collected as required to permit Client to provide an accounting of disclosures as necessary to satisfy Client's obligations under 45 C.F.R. § 164.528.
- l) Elixir shall make its internal practices, books, and records, relating to the use and disclosure of PHI received from, or created or received by Elixir on behalf of Client, available to the Secretary for purposes of determining Client's or Elixir's compliance with the HIPAA Rules.
- m) To the extent Elixir is to carry out one or more of Client's obligation(s) under Subpart E of 45 CFR Part 164, Elixir shall comply with the requirements of Subpart E that apply to Client in the performance of such obligation(s).

4. Permitted Uses and Disclosures

Except as otherwise limited in this Addendum:

- a) Elixir reserves the right to **use** PHI for the proper management and administration of Elixir, to carry out the legal responsibilities of Elixir, and to provide data aggregation services to Client.
- b) Elixir may **use or disclose** PHI to perform functions, activities, services, Payment activities, or Health Care Operations for, or on behalf of, Client provided that such use or disclosure would not violate the Privacy Rule if done by Client.
- c) Elixir may **disclose** PHI in its possession for the proper management and administration of Elixir, provided that disclosures are Required by Law, or Elixir obtains reasonable assurances from the third party to whom the information is disclosed that such PHI will be held confidentially and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the third party, and the third party notifies Elixir of any instances of which it is aware in which the confidentiality of the PHI has been breached.

5. Obligations of Client

- a) Client shall notify Elixir in writing of any limitation(s) in its notice of privacy practices, to the extent that such limitation may affect Elixir's use or disclosure of PHI.
- b) Client shall notify Elixir, in writing and in a timely manner, of any change in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such change may affect Elixir's permitted or required use or disclosure of PHI.
- c) Client shall notify Elixir, in writing and in a timely manner, of any restriction to the use and/or disclosure of PHI, which Client has agreed to or is required to abide by under 45 C.F.R. § 164.522, to the extent that such restriction may affect Elixir's use or disclosure of PHI.
- d) Client shall have entered into a "Business Associate Agreement" with any third parties (e.g., case managers, brokers or third party administrators) to which Client directs and authorizes Elixir to disclose PHI.

6. Permissible Requests by Client

Client shall not request Elixir to use or disclose PHI in any manner that would not be permissible under the Privacy Rule or the Security Rule if done by Client.

7.

Termination

- a) Termination for Cause. Upon Client's knowledge of a material breach of this Addendum by Elixir, Client may either:
- i) Provide an opportunity for Elixir to cure the breach or end the violation and, if Elixir does not cure the breach or end the violation within the time specified by Client, terminate this Addendum; or
 - ii) Immediately terminate this Addendum if Elixir has breached a material term of this Addendum and cure is not possible.

Elixir shall ensure that it maintains the termination rights in this Section in any agreement it enters into with a subcontractor pursuant to Section 3(h) hereof.

b) Effect of Termination.

- i) Except as provided in paragraph (b)(ii) of this Section, upon termination of this Addendum, for any reason, Elixir, with respect to PHI received from Client, or created, maintained, or received by Elixir on behalf of Client, shall:
 - 1. Retain only that PHI which is necessary for Elixir to continue its proper management and administration or to carry out its legal responsibilities;
 - 2. Return to Client or, if agreed to by Client, destroy the remaining PHI that Elixir still maintains in any form;
 - 3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Elixir retains the PHI; and
 - 4. Not use or disclose the PHI retained by Elixir other than for the purposes for which such PHI was retained and subject to the same conditions set out in paragraphs (a) and (c) above under "Permitted Uses and Disclosures" which applied prior to termination.
- ii) In the event Elixir determines that returning or destroying the PHI is not feasible, Elixir shall provide to Client notification of the conditions that make return or destruction not feasible. Elixir shall extend the protections of this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction not feasible, for so long as Elixir maintains such PHI.
- iii) Elixir's obligations under this Section shall survive the termination of this Addendum.

8.

Miscellaneous

- a) Regulatory References. A reference in this Addendum to a section in the Privacy Rule or the Security Rule means the section as in effect or as amended and for which compliance is required.
- b) Amendment. No change, amendment, or modification of this Addendum shall be valid unless set forth in writing and executed by both parties. Notwithstanding the foregoing, the parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Addendum may be required to ensure compliance with such developments. The parties specifically agree to take such action as may be necessary from time to time for the parties to comply with the requirements of HIPAA. Client shall provide written notice to Elixir to the extent that any final regulation or amendment to final regulations promulgated by the Secretary under HITECH requires an amendment to this Addendum to comply with HIPAA. The parties agree to negotiate an amendment to the Addendum in good faith.
- c) Interpretation. Any ambiguity in this Addendum shall be resolved to permit Client and Elixir to comply with HIPAA.

Exhibit C
Appeals Process

The following is a summary of Elixir's appeals process related to the Pharmacy Benefit of an Eligible Member, which may be updated from time to time at the discretion of Elixir or as required by applicable law. The most current version of Elixir's appeals process is available upon request.

1. Appealing a Denied Claim

If a claim for benefits is denied, you may call Elixir toll free at (800)771-4648 to resolve your issue over the phone. If Elixir is unable to resolve your issue, you have the right to file a formal appeal as described below. If you wish to appeal a denied request for benefits or a rescission of coverage, you or your authorized representative must submit your appeal in writing as described below within 180 days of receiving the adverse benefit determination.

This written request should include:

1. the participant's name and ID number as shown on the prescription benefits card;
2. the provider's name;
3. the date of service;
4. the reason you disagree with the denial or coverage decision; and
5. any documentation or other written information to support your appeal.

You or your authorized representative may send a written appeal to: Elixir Services, Clinical Care Center, 10895 Lowell Avenue, Suite 100, Overland Park, KS 66210; or fax your request to: (866)552-8939.
For denied urgent claims for benefits, your provider may submit a written appeal as described above or call Elixir toll free at (800)771-4648 to request an appeal.

Note: You may designate an authorized representative who has the authority to represent you in all matters concerning your claim or appeal of a claim determination. If you have an authorized representative, any references to "you" or "participant" herein will also refer to the authorized representative.

2. Internal Appeal

Elixir will conduct a full and fair review of your appeal. The appeal may be reviewed by two pharmacists who did not make the initial benefit determination. If Elixir upholds the denial, you will receive a written explanation of the facts and basis for the denial and a description of additional appeal procedures, if applicable. If Elixir overturns the denial and approves the Claim, you will receive notification and Benefits will be paid, as appropriate.

If your urgent care claim was denied, you may request an expedited external review at the same time that you request an expedited internal appeal to Elixir. Immediately upon receipt of your request for an expedited external review, Elixir will determine whether the request meets the reviewability requirements for an external review. Immediately upon completing this review, Elixir will (i) submit the request to an independent review organization for external review; (ii) notify you or your provider that the request is not complete, and additional information is needed (along with a list of the information needed to complete the request); or (iii) notify you and/or your provider that the request is complete, but not eligible for review.

3. Reconsideration – Failure to Meet Coverage Criteria

Elixir applies a review process to certain drugs to define the conditions ("Coverage Criteria") under which such drugs will be covered under your pharmacy benefits. These Coverage Criteria are developed by the Elixir Clinical Care Center and are subject to review and revision from time to time. In the event such Coverage Criteria are not met, the benefit or claim is not a covered benefit, and therefore not eligible for the other appeal rights provided herein. However, you or your provider may request that Elixir reconsider the application of the Coverage Criteria. Upon receipt of such request, two pharmacists not involved in the initial review will reconsider the Coverage Criteria denial and provide notice to you of the outcome of such reconsideration.

4. External Review

If you are not satisfied with the determination made during the internal review, or if Elixir fails to respond to your appeal within the applicable time, you may be entitled to request an immediate external review of the determination made by Elixir. If one of the above applies, you may request a free external review of an adverse benefit determination if (i) the determination involves a question of medical judgment; (ii) coverage was terminated retroactively; or (iii) if it is otherwise required by applicable law. You may also have the right to pursue external review in the event that Elixir has failed to

comply with the internal claims and appeals process, except if such failure is related to minor violations that did not cause, and are not likely to cause, you harm.

You may request (i) a standard external review by sending a written request to the address set out in the determination letter or (ii) an expedited external review, in urgent situations as detailed below, by calling Elixir toll free at (800)771-4648 or by sending a written request to the address set out in the determination letter. A request must be made within 120 days from the date of the final internal determination from Elixir. An external review request should include (i) a specific request for an external review; (ii) the participant's name, address, and insurance ID number; (iii) your authorized representative's name and address, when applicable; (iv) the service that was denied, the date of service, the provider's name; and (v) any new, relevant information that was not provided during the internal appeal. An external review will be performed by an Independent Review Organization (IRO). Elixir has entered into agreements with three or more IROs that have agreed to perform such reviews. There are two types of external reviews available, a standard external review and an expedited external review.

5. Standard External Review

Within the applicable time frame, Elixir will review the external review request to determine whether (i) the applicable member was covered under the Plan at the time the prescription drug product or service at issue in the request was provided or requested; (ii) the applicable internal appeals have been exhausted; and (iii) all the information and forms required to process the request have been provided. Following review, Elixir will forward the information to the appropriate IRO, which is determined by rotating review assignments among the IROs. Elixir will provide the assigned IRO with the documents and information considered in making the determination. The documents include (a) all relevant medical records; (b) all other documents relied upon by Elixir; (c) all other information or evidence that you or your provider submitted regarding the claim; and (d) all other information or evidence that you or your provider wish to submit regarding the claim, including, as explained below, any information or evidence that was not previously provided. If your claim involves an issue of medical judgment or rescission that is subject to external review, you may submit in writing to the IRO within ten (10) business days following the date you receive notice from the IRO, any additional information that you want the IRO to consider when conducting the external review. In reaching a decision, the IRO will review the claim without regard to any decisions or conclusions reached by Elixir. The IRO will provide written notice of its determination (the "Final External Review Decision") within 45 days after it receives the request for the external review (unless the IRO requests additional time and you agree). The IRO will deliver the notice of Final External Review Decision to you and Elixir, including the basis for its determination. Upon receipt of a Final External Review Decision reversing the determination by Elixir, Elixir will notify you within 48 hours of receiving the IRO's decision. The Plan will immediately provide coverage or payment of the Benefits at issue in accordance with the terms and conditions of the Plan. If the Final External Review Decision is that payment or referral will not be made, the Plan will not be obligated to provide benefits for the prescription drug product or service and you will have exhausted your appeal rights. All Final External Review Decisions by an IRO are final and binding on all parties and not subject to further appeal rights.

6. Expedited External Review

An expedited external review is similar to a standard external review, except with certain shorter time periods, and the timeframe for you or your provider to submit additional information to the IRO is eliminated. In some instances you may file an expedited external review before completing the internal appeals process. You may make a written or verbal request for an expedited external review if you receive either (i) an adverse benefit determination of a claim or appeal if the adverse benefit determination involves a medical condition for which, in the opinion of your prescriber, the time frame for completion of an expedited internal appeal would seriously jeopardize the life or health of the participant or would jeopardize the participant's ability to regain maximum function and you have filed a request for an expedited internal appeal; or (ii) a final appeal decision, if the determination, in the opinion of your prescriber, involves a medical condition where the time frame for completion of a standard external review would seriously jeopardize the life or health of the participant or would jeopardize the participant's ability to regain maximum function, or if the final appeal decision concerns an admission, availability of care, continued stay, or prescription drug product or service for which the participant received emergency services, but has not been discharged from a facility. Immediately upon receipt of the request, Elixir will determine whether the participant (i) was covered under the Plan at the time the prescription drug product or service that is at issue in the request was provided; and (ii) has provided all the information and forms required so that Elixir may process the request. After completing the review, Elixir will immediately assign an IRO in the same manner Elixir utilizes to assign standard external reviews to IROs. The IRO will determine if the matter contains an issue involving medical judgment and, upon a determination that a request is eligible for expedited external review, Elixir will provide all necessary documents and information considered in making the determination to the assigned IRO. The IRO, to the extent the information or documents are available and the IRO considers them appropriate, must consider the same type of information and documents considered in a standard external review. In reaching a decision, the IRO will review the claim without regard to any

decisions or conclusions reached by Elixir. The IRO will provide notice of the Final External Review Decision for an expedited external review as expeditiously as the participant's medical condition or circumstances require, but in no event more than 72 hours after the IRO receives the request. If the IRO's notice of the Final External Review Decision is not in writing, within 48 hours of providing such notice, the assigned IRO will provide written confirmation of the decision to you and to Elixir. All Final External Review Decisions by an IRO are final and binding on all parties and not subject to further appeal rights.

7. Time Frames

The following list provides the required timing for the corresponding actions. The timing is based on when the request is received, unless otherwise noted below.

a. Urgent Care Claims

- i. If your Request is complete, Elixir must notify you and your provider of the benefit determination within 72 hours.
- ii. If your request is incomplete, Elixir must notify you that it is incomplete within 24 hours.
 1. You must then provide the completed request to Elixir within 48 hours after receiving the notice requiring additional information.
 2. Elixir must notify you and your provider of the benefit determination within 48 hours after receiving the additional information.
- iii. If Elixir denies your request for benefits, you must appeal an adverse benefit determination no later than 180 days after receiving such determination.
- iv. Elixir must notify you of the internal appeal decision within 72 hours of receiving the appeal.

b. Pre-Service Claims (a Claim submitted prior to receiving the benefit)

- i. If your request for benefits is filed improperly, Elixir must notify you within 5 days.
- ii. If your request for benefits is incomplete, Elixir must notify you within 15 days.
- iii. You must then provide completed request for benefits information to Elixir within 45 days.
- iv. Elixir must notify you of the benefit determination within 15 days of a completed request or upon the receipt of all additional required information if your initial request was incomplete.
- v. You must appeal an adverse benefit determination no later than 180 days after receiving such determination.
- vi. Elixir must notify you of the internal appeal decision within 15 days of receiving such appeal.

c. Post-Service Claims – a claim submitted after receiving the benefit

- i. If your claim is incomplete, Elixir must notify you within 30 days.
- ii. You must then provide completed claim information to Elixir within 45 days.
- iii. Elixir must notify you of the benefit determination 30 days of a completed claim filing or upon the receipt of all additional required information if your initial claim was incomplete.
- iv. You must appeal an adverse benefit determination no later than 180 days after receiving such determination.
- v. Elixir must notify you of the internal appeal decision within 15 days of receiving such appeal.

d. External Review

- i. You must submit a request for external review to Elixir within 120 days after receiving the internal appeal determination.
- ii. For an expedited external review, the IRO will provide notice of its determination within 72 hours.
- iii. For a standard external review, Elixir will complete a preliminary review to ensure the request meets requirements for an external review within 5 business days.
- iv. You may submit in writing to the IRO any additional information that you want the IRO to consider within 10 business days.
- v. For a standard external review, the IRO will provide written notice of its determination within 45 days.

Exhibit D
Financial Terms

1. Definitions

- a. "Average Wholesale Price" or "AWP" means the current wholesale price of a "Drug Product" as established by its manufacturer and as reported in a nationally recognized drug database.
- b. "Brand Drug Product" means a "Drug Product" that is not classified as a "Generic Drug Product".
- c. "Compound Drug" means a formulation containing one or more "Drug Products", which is extemporaneously prepared by a Participating Pharmacy in accordance with a Physician's prescription order.
- d. "Copayment" or "Deductible" means the amount an Eligible Member is required to pay a Participating Pharmacy, in accordance with the terms of the Plan, for a Covered Medication dispensed by the Participating Pharmacy.
- e. "Generic Drug Product" means a Drug Product with an FDA-approved "Abbreviated New Drug Application" (or "ANDA"), provided such Drug Product (i) is available from more than two (2) Drug Product manufacturers and/or (ii) has a "Maximum Allowable Cost".
- f. "Limited Distribution Drug" or "LDD" means a Drug that is only available through a limited number of specialty pharmacies.
- g. "Maximum Allowable Cost" or "MAC" means the maximum cost allowed for a Generic Drug Product, as set by Elixir from time to time.
- h. "Orphan Drug" means a drug intended for use in a rare disease or condition as defined by the Orphan Drug Act.
- i. "PMPM" means per member per month.
- j. "Specialty Drug" means a high-cost, complex pharmaceutical that may have unique clinical, administration, distribution, or handling requirements and may not be commonly available through traditional retail or mail pharmacies; excluding, however, all Limited Distribution Drugs and Orphan Drugs.
- k. "Specialty Drug List" means a list of Specialty Drugs, Limited Distribution Drugs, and Orphan Drugs maintained by Elixir and updated from time to time in the sole discretion of Elixir.
1. "Usual and Customary Charge" or "U&C" means the Pharmacy Services price Pharmacy submits to Elixir as its usual and customary charge.

2. Retail Pharmacy Paid Claim Charge

For each Covered Medication dispensed by a retail Participating Pharmacy to an Eligible Member, Client agrees to pay Elixir the "Retail Pharmacy Paid Claim Charge", plus any applicable sales or excise tax or other handling or governmental charge (as determined by law), less any applicable Copayment or Deductible, as described in the Plan. The Retail Pharmacy Service Charge is:

For Calendar Year 2021:

- a. For Brand Drug Products, 30-Day's Supply, the lesser of: (i) AWP – 18% plus a \$0.75 dispensing fee, or (ii) the U&C.
- b. For Generic Drug Products, 30-Day's Supply, the lesser of: (i) MAC plus a \$0.75 dispensing fee, (ii) AWP – 18% plus a \$0.75 dispensing fee; or (iii) the U&C.
- c. For Brand Drug Products, 90-Day's Supply, the lesser of: (i) AWP – 22.50% plus a \$0.00 dispensing fee, or (ii) the U&C.

- d. For Generic Drug Products, 90-Day's Supply, the lesser of: (i) MAC plus a \$0.00 dispensing fee, (ii) AWP – 22.50% plus a \$0.00 dispensing fee, or (iii) the U&C.
- e. For Compound Drugs, the amount the Participating Pharmacy has agreed to accept from Elixir (net of any co-payments, coinsurances, or deductible amounts), plus any applicable sales or excise tax or other handling or governmental charge (as determined by law).

For Calendar Year 2022:

- a. For Brand Drug Products, 30-Day's Supply, the lesser of: (i) AWP – 18.10% plus a \$0.75 dispensing fee, or (ii) the U&C.
- b. For Generic Drug Products, 30-Day's Supply, the lesser of: (i) MAC plus a \$0.75 dispensing fee, (ii) AWP – 18.10% plus a \$0.75 dispensing fee; or (iii) the U&C.
- c. For Brand Drug Products, 90-Day's Supply, the lesser of: (i) AWP – 22.60% plus a \$0.00 dispensing fee, or (ii) the U&C.
- d. For Generic Drug Products, 90-Day's Supply, the lesser of: (i) MAC plus a \$0.00 dispensing fee, (ii) AWP – 22.60% plus a \$0.00 dispensing fee, or (iii) the U&C.
- e. For Compound Drugs, the amount the Participating Pharmacy has agreed to accept from Elixir (net of any co-payments, coinsurances, or deductible amounts), plus any applicable sales or excise tax or other handling or governmental charge (as determined by law).

For Calendar Year 2023:

- a. For Brand Drug Products, 30-Day's Supply, the lesser of: (i) AWP – 18.20% plus a \$0.75 dispensing fee, or (ii) the U&C.
- b. For Generic Drug Products, 30-Day's Supply, the lesser of: (i) MAC plus a \$0.75 dispensing fee, (ii) AWP – 18.20% plus a \$0.75 dispensing fee; or (iii) the U&C.
- c. For Brand Drug Products, 90-Day's Supply, the lesser of: (i) AWP – 22.70% plus a \$0.00 dispensing fee, or (ii) the U&C.
- d. For Generic Drug Products, 90-Day's Supply, the lesser of: (i) MAC plus a \$0.00 dispensing fee, (ii) AWP – 22.70% plus a \$0.00 dispensing fee, or (iii) the U&C.
- e. For Compound Drugs, the amount the Participating Pharmacy has agreed to accept from Elixir (net of any co-payments, coinsurances, or deductible amounts), plus any applicable sales or excise tax or other handling or governmental charge (as determined by law).

For purposes of the foregoing provisions in this Exhibit D, any reference to “Retail 30” or “30-Days’ Supply” or “30-day supplies” shall mean any Covered Medication dispensed in a 1- to 83-day supply; and, provided further, any reference to “Retail 90” or “90-Days’ Supply” or “90-day supplies” shall mean any Covered Medication dispensed in a days’ supply of 84 or more.

Subject to the terms and conditions herein, Elixir shall provide Client with the following dollar-for-dollar minimum financial guarantees with respect to Retail Pharmacy Paid Claim Charges:

Post-AWP Settlement Minimum Discount Guarantees & Maximum Dispensing Fees	
Type	Brand
Retail 30 Drug Products	Calendar Year 2021: AWP – 18.00% Discount Calendar Year 2022: AWP – 18.10% Discount Calendar Year 2023: AWP – 18.20% Discount \$0.75 Dispensing Fee
Retail 90 Drug Products	Calendar Year 2021: AWP – 22.50% Discount Calendar Year 2022: AWP – 22.60% Discount Calendar Year 2023: AWP – 22.70% Discount \$0.00 Dispensing Fee
	Generic Calendar Year 2021: AWP – 80% Discount Calendar Year 2022: AWP – 82% Discount Calendar Year 2023: AWP – 84% Discount \$0.75 Dispensing Fee Calendar Year 2021: AWP – 87.00% Discount Calendar Year 2022: AWP – 87.50% Discount Calendar Year 2023: AWP – 88.00% Discount \$0.00 Dispensing Fee

With respect to the foregoing Generic Drug Product guarantees, the effective generic discount and the generic discount guarantee calculation includes Claims for the following: MAC generics, non-MAC generics, multi-source generics, generics in their FDA-granted exclusivity period, patent litigated generics, generics with limited supply, U&C Claims, and generic medications prescribed and/or dispensed in conjunction with a specialty medication. The above generics will NOT be included in the brand discount guarantees.

The following types of Claims shall be excluded from the foregoing guarantees: Specialty Drugs, single-source generics, Compound Drugs, vaccines, in-house Claims, reversed Claims, OTC Drug Products, Claims subject to Most Favored Nations pricing, and Claims for Drug Products designated as “Currently in Shortage” or other similar designation in the Drug Shortages database maintained by the FDA.

100% member paid claims (zero balance due claims) will be included in the foregoing guarantees, with discounts for these claims calculated based on the ingredient cost prior to the application of member paid amount.

Additionally, if Client requires Elixir to include any currently non-contracted pharmacies as Participating Pharmacies, and Elixir is unable to obtain rates from such pharmacies as favorable as those guaranteed by Elixir hereunder, then Claims from such pharmacies shall also be excluded from the financial guarantees hereunder. If at any time applicable laws, regulations or administrative or judicial interpretations or rulings increase the amounts Elixir must pay to Participating Pharmacies, the foregoing financial guarantees will be amended by mutual agreement of the parties to reflect such increase.

3. Mail Pharmacy Paid Claim Charge

The mail Participating Pharmacy designated by Elixir and approved by Client is the exclusive provider of mail Pharmacy Services. For each Covered Medication dispensed by the mail Participating Pharmacy to an Eligible Member, Client agrees to pay Elixir the mail pharmacy Paid Claim Charge, plus any applicable sales or excise tax or other handling or governmental charge (as determined by law), less any applicable Copayment or Deductible, as described in the Plan. The Mail Pharmacy Service Charge is:

For Calendar Year 2021:

- a. For Brand Drug Products, the greater of: (i) \$10.00; or (ii) AWP – 24.50% plus a \$0.00 dispensing fee.
- b. For Generic Drug Products, the greater of: (i) \$10.00; or (ii) AWP – 24.50% plus a \$0.00 dispensing fee.
- c. For Compound Drugs, the amount the Participating Pharmacy has agreed to accept from Elixir (net of any co-payments, coinsurances, or deductible amounts), plus any applicable sales or excise tax or other handling or governmental charge (as determined by law).

For Calendar Year 2022:

- a. For Brand Drug Products, the greater of: (i) \$10.00; or (ii) AWP – 24.50% plus a \$0.00 dispensing fee.
- b. For Generic Drug Products, the greater of: (i) \$10.00; or (ii) AWP – 24.50% plus a \$0.00 dispensing fee.
- c. For Compound Drugs, the amount the Participating Pharmacy has agreed to accept from Elixir (net of any co-payments, coinsurances, or deductible amounts), plus any applicable sales or excise tax or other handling or governmental charge (as determined by law).

For Calendar Year 2023:

- a. For Brand Drug Products, the greater of: (i) \$10.00; or (ii) AWP – 24.50% plus a \$0.00 dispensing fee.
- b. For Generic Drug Products, the greater of: (i) \$10.00; or (ii) AWP – 24.50% plus a \$0.00 dispensing fee.
- c. For Compound Drugs, the amount the Participating Pharmacy has agreed to accept from Elixir (net of any co-payments, coinsurances, or deductible amounts), plus any applicable sales or excise tax or other handling or governmental charge (as determined by law).

Notwithstanding the foregoing, and subject to the terms and conditions herein, with respect to Mail Pharmacy dispensed by authorized Mail Pharmacies only, Elixir shall provide Client with the following minimum financial guarantee with respect to Best-In-Class Specialty Pharmacy Service Charge:

Post-AWP Settlement Minimum Discount Guarantees & Maximum Dispensing Fees		
Type	Brand	Generic
Mail Pharmacy	AWP – 24.50% Discount	AWP – 85% Discount
	AWP – 24.60% Discount	\$0.00 Dispensing Fee
	AWP – 24.70% Discount \$0.00 Dispensing Fee	

4. Best-In-Class Specialty Pharmacy Paid Claim Charge

The “Best-In-Class Specialty” Participating Pharmacies designated by Elixir and approved by Client are the exclusive providers of specialty Pharmacy Services. If and when Client elects to participate in Elixir’s Best-In-Class Specialty Pharmacy program, for each Covered Medication that is a Specialty Drug, and dispensed by a Best-In-Class Specialty Participating Pharmacy, Client agrees to pay Elixir the “Best-In-Class Specialty Pharmacy Paid Claim Charge”, expressed as an AWP discount, plus any applicable sales or excise tax or other handling or governmental charge (as determined by law), less any applicable Copayment or Deductible, as described in the Plan. The Best-In-Class Specialty Pharmacy Service Charge is maintained by Elixir on the Specialty Drug List, which may be updated from time to time in Elixir’s discretion and provided to Client upon request. The Best-In-Class Specialty Pharmacy Service Charge includes the cost of certain “Ancillary Supplies”, including syringes, needles, and alcohol swabs. The Best-In-Class Specialty Pharmacy Service Charge does not include the cost of home infusion supplies, devices and in-home nursing services. Elixir reserves the right to modify the Specialty Drug List from time to time.

Notwithstanding the foregoing, and subject to the terms and conditions herein, with respect to Specialty Drugs dispensed by authorized BIC Specialty Pharmacies only, Elixir shall provide Client with the following minimum financial guarantee with respect to Best-In-Class Specialty Pharmacy Service Charge:

Post-AWP Settlement Minimum Discount Guarantees & Maximum Dispensing Fees	
Type	Best-in-Class (BIC) Network
Specialty Drugs	AWP –22.00 Discount \$0.00 Dispensing Fee

The following types of Claims shall be excluded from the foregoing BIC Specialty guarantees: Compound Drug Claims; reversed Claims; OTC Drug Products; Limited Distribution Drugs (which may include Orphan Drugs); U&C Claims; and Claims for any Specialty Drug Products dispensed by a pharmacy that is not a BIC Specialty Pharmacy awarded that particular Specialty Drug Product. Note that with respect to Specialty Drug Products dispensed by a pharmacy that is not a BIC Specialty Pharmacy awarded that particular Specialty Drug Product, Elixir will bill to Client, and Client shall pay Elixir, the Non Best-In-Class Specialty Pharmacy Paid Claim Charge specified further below in this Exhibit D.

This rate includes the cost of certain “Ancillary Supplies”, including syringes, needles, and alcohol swabs. The rate does not include the cost of home infusion supplies, devices and in-home nursing services. This rate also does not apply to Limited Distribution Drugs, which are negotiated separately.

5. Non-Best-In-Class Specialty Pharmacy Paid Claim Charge

In the event that a Specialty Drug, Limited Distribution Drug, or Orphan Drug is dispensed from a pharmacy other than the Best-In-Class Specialty Participating Pharmacy listed on the Specialty Drug List, Client agrees to pay Elixir the “Non-Best-In-Class Specialty Pharmacy Paid Claim Charge”, plus any applicable sales or excise tax or other handling or governmental charges (as determined by law), less any applicable Copayment and/or Deductible, as described in the Plan. The Non-Best-In-Class Specialty Pharmacy Service Charge is:

- a. For Brand Drug Products, AWP – 11% plus a \$0.75 dispensing fee.
- b. For Generic Drug Products, AWP – 11% plus a \$0.75 dispensing fee.

The Non-Best-In-Class Specialty Pharmacy Service Charge includes the cost of certain “Ancillary Supplies”, including syringes, needles, and alcohol swabs. The Non-Best-In-Class Specialty Pharmacy Service Charge does not include the cost of home infusion supplies, devices and in-home nursing services.

The Non-Best-In-Class Specialty Pharmacy Paid Claim Charge does not apply to Limited Distribution Drugs. Elixir will submit all Claims for Limited Distribution Drugs by Non-Best-In-Class Specialty Pharmacies to Client for authorization.

6. Guarantee Methodology

The parties hereby acknowledge and agree that with respect to all guarantees set forth in this Exhibit, (i) following the end of each contract year in which it is determined that Elixir has failed to meet any such guarantee, if any, Elixir shall pay such guarantee’s shortfall value to Client within 180 days of the end of such contract year; and (ii) to the extent Elixir outperforms any one or more of these guarantees, Elixir may use the cost savings associated with such outperformance and apply those savings to offset any underperformance by Elixir with respect to any other guarantee in this Exhibit. Notwithstanding the foregoing, the guarantees provided in this Exhibit shall not be effective and no underperformance shall accrue until the date this Agreement is executed by both parties.

7. Miscellaneous Charges

Client shall pay the Miscellaneous Charges to Elixir listed below:

- a. Administration Fee: \$0.00 per paid Claim.
- b. Direct member reimbursement Claims: \$2.50 per such Claim.
- c. Prior Authorizations:
 - i. Simple Review (prescriber outreach & BIC member advocacy referral): \$10.00 per review.
 - ii. Complex Criteria Review (pharmacist review of coverage criteria involving physician): \$50.00 per review.
 - iii. Pharmacist Clinical Review (review of experimental/investigational Drug Product): \$75.00 per review.
- d. External Appeal of Coverage Denial – Pursuant to the Appeals Process set forth on Exhibit C, Elixir may request an external appeal review from an accredited independent review organization (“IRO”) in the event of a coverage denial. Elixir will pass through all costs of the IRO to Client as a billed charge pursuant to the payment terms of this Agreement, as well as a \$100.00 fee paid to Elixir for the administration of such review.
- e. For each Vaccine Claim covered by Client and processed through a Participating Pharmacy contracted with Elixir to administer Vaccines, Client agrees to pay an additional Vaccine Administration Charge of up to, but not more than, \$25.00 per Claim.
- f. Cardholder Identification (“ID”) Cards – Elixir issues initial Cardholder ID Cards to Client prior to the Effective Date at \$1.00 per ID Card. After the Effective Date, Elixir issues Cardholder ID Cards to Client at \$1.00 per ID Card. If Client requests Elixir to send Cardholder ID Cards to each Cardholder, Client agrees to pay Elixir’s applicable postage costs.

8. Program Charges

If Client elects to implement any of the below listed Elixir Programs, Client shall pay the corresponding Program Charges to Elixir listed below:

- a. RightCHOICE Program: \$0.05 PMPM.
- b. Medical Channel Management Program: \$0.10 PMPM.
- c. All Elixir Step Therapy Programs: \$0.20 PMPM.
- d. BIC Align Program: \$0.20 PMPM.
- e. Rx-OTC Program: \$0.05 PMPM.
- f. CareTrakRx-Pain Management Program: \$0.10 PMPM.

9. Formulary Program Discounts

Under certain conditions, Elixir will pay Formulary Program (as defined below in Exhibit E to this Agreement) discounts, in the form of Rebates, to Client subject to Client's participation in the Formulary Program and overall compliance with Exhibit E to this Agreement. Client agrees that Rebate payments are based upon Plan design over which Elixir has no discretionary control or authority, and such Rebate payments are subject to change due to various factors, as described in this Agreement. Rebate payments are made within thirty days after six months from the end of the quarter in which Paid Claims were incurred. Elixir will pay Client the greater of the flat dollar limits listed below or Ninety percent (90%) of all Rebate payments received by Elixir from pharmaceutical manufacturers or intermediaries that are denominated by such manufacturers or intermediaries as Rebates in agreements with Elixir and that are attributed directly to the claims for Pharmacy Services paid by Client. Rebates will be paid to Client as follows:

For qualified 3-Tier Plans on the Select Formulary:

- a. For each eligible Brand Drug Product, as described in Exhibit E, that is a non-Specialty Drug Covered Medication dispensed through a retail pharmacy for a 30-day supply, Elixir shall pay Client a minimum of:
 - For Calendar Year 2021: \$150.00.
 - For Calendar Year 2022: \$165.00.
 - For Calendar Year 2023: \$180.00.
- b. For each eligible Brand Drug Product, as described in Exhibit E, that is a non-Specialty Drug Covered Medication dispensed through a retail pharmacy for a 90-day supply, Elixir shall pay Client a minimum of :
 - For Calendar Year 2021: \$450.00.
 - For Calendar Year 2022: \$495.00.
 - For Calendar Year 2023: \$544.00.
- c. For each eligible Brand Drug Product, as described in Exhibit E, that is a non-Specialty Drug Covered Medication dispensed through a mail pharmacy, Elixir shall pay Client a minimum of:
 - For Calendar Year 2021: \$550.00.
 - For Calendar Year 2022: \$605.00.
 - For Calendar Year 2023: \$665.00.
- d. For each eligible Brand Drug Product, as described in Exhibit E, that is a Specialty Drug Covered Medication dispensed through a contracted pharmacy, Elixir shall pay Client a minimum of:
 - For Calendar Year 2021: \$1300.00.
 - For Calendar Year 2022: \$1430.00.
 - For Calendar Year 2023: \$1573.00.

Exhibit E
Formulary Program

1. Definitions

- a. "Formulary Program" shall mean a program established by Elixir under which pharmaceutical manufacturers provide Elixir with discounts, which are (i) due and payable to Elixir pursuant to the terms of contracts with pharmaceutical manufacturers; and (ii) directly attributable to the dispensing of Covered Medications on the Formulary to Eligible Members.
- b. "Formulary Program Claim Exclusions" shall mean (i) Claims for Brand Drug Products that are also available as Generic Drug Products, (ii) 100% Copayment Claims, (iii) Claims submitted by Eligible Members, (iv) Claims where Elixir is the secondary payer, (v) Claims for Compound Drugs and over-the-counter Drug Products, and (vi) Claims filled through Client-owned, university, long term care, 340b pharmacies, or pharmacies located on the premises of a Client.
- c. "Rebates" shall mean retrospective rebates paid to Elixir that are directly attributable to the utilization of certain pharmaceuticals by Eligible Members. Rebates do not include administrative fees paid by pharmaceutical manufacturers to Elixir in connection with Elixir's administration of Formulary Program discounts.

2. Terms of Formulary Program

- a. Elixir agrees to allow Client to participate in the Formulary Program in Client's sole discretion, and Elixir agrees to pay certain Formulary Program discounts to Client to the extent such Formulary Program discounts are attributable to Client's participation in the Formulary Program and Eligible Members' use of the Formulary, and as are described in Exhibit D, but if and only if Client meets its obligations under Exhibit D and this Exhibit E of this Agreement, and if and only if Client meets such other reasonable and generally applicable requirements for participation in the Formulary Program and associated parameters as may be communicated by Elixir to Client from time to time.
- b. Client (or its Agent) shall have sole discretion regarding participation in Elixir's Formulary Program, which may include, but is not limited to, the distribution of Formularies to Cardholders prior to the Effective Date and as necessary thereafter, and which participation shall require Client's conformance to the Formulary. By choosing to participate in the Formulary Program, Client further warrants that Client is not participating in any other formulary program and that Client's Agent is not participating in any other formulary program on behalf of Client.
- c. Client understands that its eligibility to receive any payments from Elixir under this Exhibit E may change from time to time due to changes in Client's Plan; changes in Elixir's agreements with pharmaceutical manufacturers or Rebate intermediaries; changes in laws or governmental actions, including but not limited to such laws or actions affecting prescription drug benefits, benefits structure, or pricing (including Rebates); the selection of certain services, such as prior authorization or open formulary management; or any change in the Formulary Program. Client acknowledges and agrees that only Claims for Brand Drug Products (as defined on Exhibit D) with an FDA-approved "New Drug Application" ("NDA") are eligible for such payments. Client further acknowledges and agrees that Formulary Program Claim Exclusions are not eligible for such payments.
- d. Subject to Client's participation in the Formulary Program and compliance with Sections 2.b. and 2.c., above, Elixir shall pay to Client certain amounts received by Elixir as discounts or Rebates, pursuant to the Formulary Program, from drug manufacturers or intermediaries, which amounts are denominated as discounts or Rebates by such manufacturers or intermediaries and which are attributable to Pharmacy Services utilized by Eligible Members, and consistent with the amounts provided for in accordance with Exhibit D hereto. Client acknowledges and agrees that it shall not have a right to interest on, or the time value of, any discount, Rebate or other payments received by Elixir during the collection period for monies payable to Client under this Exhibit E. Client acknowledges that Rebate payments from manufacturers or

intermediaries are received on a periodic basis by Elixir and relate to earlier months' claims. Elixir reserves the right to delay payment to Client of any amounts hereunder, and to offset any Rebate payments otherwise due hereunder.

e. Client acknowledges that it may be eligible for Rebate payments under this Agreement only so long as Client (or its Agent) does not (i) contract directly or indirectly with anyone else for discounts, utilization limits, rebates or other financial incentives on pharmaceutical products or formulary programs without Elixir's prior written consent, (ii) change the Plan to add a new Drug Product exclusion after the Effective Date, or (iii) realize a material change in the utilization of rebate eligible Drug Products. In the event that Client negotiates or arranges with a pharmaceutical manufacturer or intermediary for rebates or similar discounts, without limiting Elixir's right to other remedies, Elixir may immediately terminate Client's participation in the Formulary Program, terminate this Agreement according to the terms of Section 5.2 hereof, and/or recover from Client all amounts paid by Elixir to Client for Rebates on claims submitted by Client (or on behalf of Client) for Rebates other than through Elixir.

f. Client hereby represents and warrants, and shall recertify on a periodic basis in a form acceptable to Elixir, with respect to any Plan which receives funding from Medicare/Medicaid, Title V, Children's Medical Services, or another government healthcare program as defined in Section 1128(h) of the Social Security Act (or any successor thereto) ("Government Programs") and for which the Client receives amounts hereunder that are attributable to such Plan, each such Plan is operating under a risk contract with the Centers for Medicare and Medicaid Services ("CMS") or a state Medicaid program, and operates in accordance with §§ 1876(g) or 1903(m) of the Social Security Act, under a federal statutory demonstration authority or successor statute or authority. Client agrees to notify Elixir in writing of any such Plan that does not meet any of the criteria set forth herein, and Elixir, in compliance with applicable law, shall not submit prescription drug claims for any Eligible Members in such Plan for prescriptions filled by a Participating Pharmacy. Nothing herein prohibits a Client that receives the retiree drug subsidy ("RDS") from CMS for eligible Plan Participants under the Medicare Part D Rules (42 C.F.R. Part 423, Subpart R) from receiving Rebates relating to such eligible Plan Participants' prescription drug claims under this Agreement. The parties hereto acknowledge and agree that any Rebate reimbursement provided to Client pursuant to this Agreement is a "discount" under 42 U.S.C. § 1320a-7b(b)(3) and 42 C.F.R. § 1001.952(h) (the "Discount Safe Harbor"). For the purpose of complying with the Discount Safe Harbor, Elixir shall clearly denote in invoices and other statements amounts that constitute Rebate reimbursement hereunder. Client shall properly disclose and appropriately reflect all Rebate reimbursement in the costs claimed or the charges made to any Government Program. Without limiting the foregoing, if Client claims a subsidy from CMS for eligible Plan Participants under the Medicare Part D Rules (42 C.F.R. Part 423, Subpart R), Client shall properly disclose and appropriately reflect any Rebate reimbursement paid by Elixir to Client in the Allowable Retiree Costs (as defined at 42 C.F.R. § 423.882) and other information submitted to CMS for payment of such subsidy in accordance with the Medicare Part D Rules, all applicable sub-regulatory guidance and CMS policies.

IN THE MATTER OF APPROVING THE AGREEMENT BETWEEN AUGLAIZE COUNTY AND EAGON & ASSOCIATES, INC. FOR PROFESSIONAL SERVICES IN RELATION TO THE ST. MARYS LANDFILL MONITORING; AUTHORIZING THE EXECUTION OF SAID AGREEMENT.

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 4th day of February, 2021.

Commissioner Bergman moved the adoption of the following:

RESOLUTION

WHEREAS, Auglaize County being responsible for the environmental monitoring at the St. Marys Landfill, must enter into an agreement with a company licensed to perform said monitoring services; and,

WHEREAS, the Board of County Commissioners has agreed to contract with Eagon & Associates, Inc. of Worthington, Ohio for the professional environmental monitoring services; and,

WHEREAS, an Agreement has been presented to the Board of County Commissioners by Eagon & Associates, Inc. outlining the professional consulting services to be provided by Eagon & Associates, Inc. at an estimated total cost for each of the following tasks:

- Task 1 Semiannual Detection and Assessment Groundwater Monitoring \$18,634.00;
- Task 2 Semiannual Groundwater and Monitoring Reports \$10,990.00;
- Task 3 Alternate Source Demonstration \$3,564.00;
- Task 4 Revise Statistical Analysis Plan for Detection Program \$5,196.00;
- Task 5 Revise GWDMP \$1,262.00;
- Task 6 Misc. Hydro \$3,721.00;
- Geochemical Testing \$25,971.00
- Total \$69,338.00; and,

WHEREAS, the Board of County Commissioners was requested by the Solid Waste Coordinator Scott Cisco to approve and execute the agreement.

THEREFORE, BE IT RESOLVED that the Board of Commissioners, Auglaize County, Ohio does hereby approve the Agreement between Auglaize County and Eagon & Associates, Inc. for professional environmental monitoring services at the St. Marys Landfill; and,

BE IT FURTHER RESOLVED that the Board of County Commissioners authorizing the President of the Board, Douglas A. Spencer, to execute the Agreement with Eagon & Associates, Inc. as presented.

Commissioner Bambauer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this
4th day of
February, 2021

BOARD OF COUNTY COMMISSIONERS
AUGLAIZE COUNTY, OHIO

Douglas A. Spencer,
Douglas A. Spencer

David Bambauer,
David Bambauer

John N. Bergman,
John N. Bergman

cc: Solid Waste/Recycle Coordinator
/ Eagon & Associates, Inc.

EXHIBIT A

EAGON & ASSOCIATES, INC.
GENERAL CONTRACT CONDITIONS AND AGREEMENT

All proposals submitted by Eagon & Associates, Inc. hereinafter referred to as the CONSULTANT, shall be subject to the following general contract conditions unless any such conditions are specifically waived or modified in writing prior to acceptance of the proposal. This contract pertains to the services set forth in the proposal to be performed for St. Mary's Landfill hereinafter referred to as the CLIENT under the terms and conditions set forth herein.

1. Proposal and Acceptance

The proposal submitted herewith shall become a binding contract when signed and/or accepted by the CLIENT by letter, purchase order, or other written document.

2. Proposal Duration

This proposal shall be valid for 90 days from the proposal date. Subsequent to that date, the CONSULTANT reserves the right to review the basis for payment schedule to allow for changing costs and to adjust estimated starting and completion times.

3. Scope of Work

The scope of work to be performed under this contract is as described in the proposal. The CONSULTANT agrees to perform the work in accordance with the standard of care and skill exercised by comparable consultants performing similar work in the same geographical area as the consultant in performing the services of the type and scope set forth in the proposal. If mutually agreeable to the CLIENT and the CONSULTANT, the CONSULTANT may obtain the services of others to perform certain activities contained in the work scope as defined in the proposal.

4. Basis for Payment

The CONSULTANT will invoice the CLIENT each month for the work performed during the preceding month. Payment shall be made on terms of "net" within 30 days. Past-due balances shall be subject to a 1.2 percent per month service charge, which service charge to the CLIENT specifically agrees to. There shall be no retainage provision and cash discounts shall not be allowed. All work performed by the CONSULTANT shall be billed in accordance with the fee schedule or basis for payment defined in the proposal and incorporated herein by reference.

In the event of a default in payments in accordance with the provisions of these general specifications and the proposal, the CONSULTANT may, at its option, discontinue further services on the project, or may elect to continue the project upon payment of all previous balances and payment in advance for further services. In the event the CONSULTANT is required to bring any legal action for the purpose of collecting any amounts due it under the terms of this contract and proposal, the CLIENT shall indemnify the CONSULTANT for all reasonable attorney fees and costs incurred in connection with the collection of such account.

5. Site Access

The CLIENT shall be fully responsible for obtaining necessary permission (if the site is not owned by the CLIENT) or making the requisite notification of site personnel to allow the CONSULTANT, its agents, subcontractors, and representatives, to have access to the site at reasonable times through the contract performance. When performing test borings or soil tests pursuant to the scope of work, the CONSULTANT will take reasonable precautions to control damage to the site from use of equipment. However, some damage or alteration may occur and the CLIENT agrees to assume responsibility for such damage or alteration.

6. Underground Utilities

The CLIENT shall be responsible for designating the location of all utility lines and underground structures on the Site. The CLIENT agrees to indemnify, defend, and hold the CONSULTANT harmless for damage to utilities or underground utilities or underground structures which are not correctly located by the CLIENT. The CONSULTANT shall take actions as required to insure reasonable care is exercised in operating equipment in the vicinity of the located utilities.

7. Safety

The CONSULTANT shall be responsible for matters relating to the health and safety of its personnel in performance of the work. The CLIENT shall be responsible for matters relating to the health and safety of its personnel in performance of the work.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed individually or by their duly authorized officers.

Eagon & Associates, Inc.

CONSULTANT

St. Mary's Landfill

CLIENT

By:  Michael T. Gibson

By: 

Its: _____
(Authorized Agent)

Its: _____
(Authorized Agent)

Date: January 29, 2001

Date: February 4, 2001

8. Discovery of Unanticipated Hazardous Materials

Hazardous or toxic materials may exist at a site which were not anticipated. The CONSULTANT and CLIENT agree that the discovery of unanticipated materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. It is agreed that the discovery of unanticipated hazardous materials may make it necessary to take immediate measures to protect human health and safety, and/or the environment. The CONSULTANT agrees to notify the CLIENT as soon as practically possible should unanticipated suspected hazardous materials be encountered. The CLIENT agrees to compensate the CONSULTANT for the additional cost of such work and agrees to indemnify, defend and hold the CONSULTANT harmless from any claim or liability for injury or loss arising from the CONSULTANTS encountering of unanticipated hazardous materials or suspected hazardous materials.

9. Indemnification

To the fullest extent of the law, the CLIENT shall indemnify and hold the CONSULTANT harmless from and against any and all claims, defense costs, including attorney's fees, damages, losses, expenses, and other liabilities arising out of the CLIENTS activities or presence on the site, provided that the CLIENT shall not be required to indemnify the CONSULTANT against liability for damages caused by the negligence or intentional misconduct of the CONSULTANT, its agents, subcontractors, or employees.

10. Insurance

Attached is an insurance schedule describing in detail the various types of liability insurance carried by the CONSULTANT together with the limits of liability in each instance (Exhibit B). The CLIENT acknowledges having been given notice of such insurance. Certificates of such insurance will be furnished to the CLIENT upon request. The CONSULTANT will obtain, if possible, additional or other insurance as requested by the CLIENT at the CLIENTS expense to cover other risks or to increase the limits of liability of existing policies.

11. Confidentiality

The CONSULTANT agrees not to disclose confidential information, directly or indirectly, without the CLIENTS written consent to any third party, or use such information for other than the tasks assigned to the CONSULTANT in the scope of work. The CONSULTANT agrees to obtain and deliver to the CLIENT at the expiration of this Contract all documents, models, drawings, calculations, memoranda and other materials or records prepared in the course of the CONSULTANT'S work if so requested by the CLIENT, except one record set which will be protected as "CLIENT Confidential".

12. Professional Statement

Professional and technical services are and shall be performed to the best of the CONSULTANTS ability. However, the CLIENT understands that findings, analyses, recommendations and reports must of necessity be based upon interpretation of data acquired and compiled as proposed herein. Nothing in this proposal or in the understanding with the CLIENT shall be construed to act as a warranty or guarantee.

13. Work Completion Schedule

The CONSULTANT will make every effort to start and complete the work in schedule as outlined in the proposal-contract. However, the CONSULTANT shall not be held liable or responsible for schedule delays which are beyond the CONSULTANTS control, such delays including but not limited to strikes, labor disputes, riots, civil disturbances, transportation, material shortages, change in scope of work, fires, or acts of God.

14. Severability and Survival

Any element of this Contract later held to violate the law shall be deemed void, and all remaining provisions shall continue in force. However, the CLIENT and the CONSULTANT will in good faith attempt to replace any invalid or unenforceable provision with one that is valid and enforceable, and which comes as close as possible to expressing the intent of the original provision. All terms and conditions of this Contract allocating liability between the CLIENT and the CONSULTANT shall survive the completion of this services hereunder and the termination of this Contract.

EXHIBIT B

CONSULTANT'S INSURANCE

<u>TYPE OF COVERAGE</u>	<u>MINIMUM LIMITS OF COVERAGE</u>
A. Worker's Compensation - Coverage A Employers' Liability - Coverage B	Statutory \$1,000,000
B. Comprehensive General Liability (including Contractual Liability): Bodily Injury or Property Damage including Products and Completed Operations	\$1,000,000 each occurrence \$2,000,000 aggregate
C. Comprehensive Automobile Liability (Owned, Hired, and Non-owned Vehicles): Bodily Injury or Property Damage Combined Single Limit	\$1,000,000 each person \$1,000,000 aggregate
D. Professional Liability	\$5,000,000 each claim \$5,000,000 aggregate
E. Umbrella	\$4,000,000 per occurrence \$4,000,000 aggregate

Note: Minimum limits can be satisfied by underlying limits or a combination of underlying and umbrella limits for all coverage items described, except Professional Liability.

IN THE MATTER OF APPROVING THE CONTRACTOR'S PAY REQUEST #1 FROM SMITH BOUGHAN MECHANICAL SERVICES FOR THE AUGLAIZE INDUSTRIES 2020 CDBG HVAC IMPROVEMENT PROJECT, USING PY 2019 CDBG ALLOCATION PROGRAM FUNDS.

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 4th day of February, 2021.

Commissioner John N. Bergman moved the adoption of the following:

RESOLUTION

WHEREAS, on September 15, 2020, Resolution #20-297, the Board of County Commissioners awarded the bid for the PY 2019 CDBG Allocation Program project for the Auglaize Industries 2020 CDBG HVAC Improvement Project to Smith Boughan Mechanical Services at the cost of \$149,300.00; and,

WHEREAS, on January 19, 2021, Resolution #21-036, the Board of County Commissioners approved Change Order No. 1 in the amount of \$16,619.00 and on January 26, 2021, Resolution #21-042, the Board of County Commissioners approved Change Order No. 2 in the amount of \$3,633.00 to increase the contract to \$169,552.00; and,

WHEREAS, the Board of County Commissioners has now been presented with a Contractor's Pay Request #1 in the amount of \$89,990.00 from Smith Boughan Mechanical Services for the Auglaize Industries 2020 CDBG HVAC Improvement Project.

THEREFORE, BE IT RESOLVED that the Board of Commissioners, Auglaize County, Ohio, does hereby approve the Pay Request #1 in the amount of \$89,990.00, and does authorize execution by the President of the Board of County Commissioners for said Contractor's Pay Request #1 from Smith Boughan Mechanical Services, with the CDBG Grant amount of \$30,300.00 and \$59,690.00 from the County's RLF commitment.

Commissioner David Bambauer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this
4th day of
February, 2021

BOARD OF COUNTY COMMISSIONERS
AUGLAIZE COUNTY, OHIO

Douglas A. Spencer, Yes
Douglas A. Spencer

David Bambauer, Yes
David Bambauer

John N. Bergman, Yes
John N. Bergman

cc: Poggemeyer Design Group
✓ Smith Boughan Mechanical Services

IN THE MATTER OF SETTING THE DATE AND TIME AT WHICH TO RECEIVE QUALIFICATION STATEMENTS AND PROPOSALS FROM FIRMS QUALIFIED TO PROVIDE ADMINISTRATIVE SERVICES AND TECHNICAL ASSISTANCE FOR THE PY 2021 CDBG COMMUNITY DEVELOPMENT PROGRAMS.

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 4th day of February, 2021.

Commissioner Bergman moved the adoption of the following:

RESOLUTION

WHEREAS, it is necessary for the Board of County Commissioners to request qualification statements and proposals from professional planning, community development, economic development, and/or other qualified consulting firms to perform necessary functions for its PY 2021 CDBG Community Development Programs (including the Allocation, Neighborhood Revitalization Program, Residential Public Infrastructure Program, Economic Development Program, and Target of Opportunity Program and Critical Infrastructure Investment Program) and any/new programs announced by ODSA under CDBG, HOME, and OHTF programs. The scope of work includes the development of a grant application, environmental review record, A & E, planning and related services for these programs including a fair housing component and coordination and/or data entry on ODSA OCEAN system and technical assistance for grant activities and related CDBG/RLF planning work such as CDIS.

THEREFORE, BE IT RESOLVED that the Board of County Commissioners of Auglaize County, Ohio, does hereby set **Friday, February 26, 2021 at 4:00 p.m.** as the date and time to receive, in its office, qualification statements and proposals from firms qualified to provide administrative or technical services for PY2021 CDBG Community Development Programs (including the Allocation, Neighborhood Revitalization Program, Residential Public Infrastructure Program, Economic Development Program, and Target of Opportunity Program and Critical Infrastructure Investment Program).

Commissioner Bambauer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this
4th day of
February, 2021

BOARD OF COUNTY COMMISSIONERS
AUGLAIZE COUNTY, OHIO

Douglas A. Spencer YS
Douglas A. Spencer

David Bambauer Yeo
David Bambauer

John N. Bergman Yeo
John N. Bergman

- cc: Poggemeyer Design Group, Inc.
✓ Burns, Bertsch & Harris
✓ CT Consultants
✓ Christopher T. Wojno, AICP
✓ MS Consultants, Inc.
✓ Access Engineering
✓ Choice One Engineering

REQUEST FOR QUALIFICATIONS/PROPOSALS

The Auglaize County Board of Commissioners requests qualification statements and proposals from qualified professional planning, community development, economic development, and/or other qualified consulting firms to perform necessary functions for its PY2021 CDBG Community Development Program (including the Allocation, Neighborhood Revitalization Program, Residential Public Infrastructure Program, Economic Development Program, and Target of Opportunity Program and Critical Infrastructure Investment Program) and any/new programs announced by ODSA under CDBG, HOME, and OHTF programs. The scope of work includes the development of a grant application, environmental review record, A & E, planning and related services for these programs including a fair housing component and coordination and/or data entry on ODSA OCEAN system and technical assistance for grant activities and related CDBG/RLF planning work such as CDIS.

All proposals must be responsive to the Scope of Services section of this RFP and must meet the content of RFQ/RFP criteria. Offerors are invited to submit one original and one copy of their response to Auglaize County Board of County Commissioners, 209 South Blackhoof Street, Room 201, Wapakoneta, Ohio 45895 no later than 4:00 p.m., **Friday, February 26, 2021**. The complete RFQ/RFP criteria may be requested from Erica L. Preston at 419-739-6710 or view the public notice and RFQ/RFP criteria on the county's website at <https://www2.auglaizecounty.org/legal-notices>.

IN THE MATTER OF AUTHORIZING THE COUNTY AUDITOR TO DRAW WARRANTS FOR THEN AND NOW CERTIFICATE PAYMENTS.

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 4th day of February, 2021.

Commissioner Bergman moved the adoption of the following:

RESOLUTION

WHEREAS, the practice of using “Then and Now Certificates” has been instituted by the County Auditor.

THEREFORE, BE IT RESOLVED that the Board of County Commissioners, Auglaize County, Ohio, the taxing authority for Auglaize County, having thirty (30) days to approve payment by resolution from receipt of “Then and Now Certificates”, does hereby approve the following:

<u>Check</u>	<u>Amount</u>	<u>Vendor</u>
449239	320.00	St. Marys Trucking Co
449277	3114.54	Telephone Service Company
449282	2480.32	City of Wapakoneta
449287	1574.77	Speckman Auto Parts
449298	1007.69	Midwest Electric
449301	2561.25	Mikes Sanitation
449307	1242.14	Kohls Department Store
449311	1500.00	Development Projects Inc
449321	564.40	Alloway
449322	1173.00	N.W.G.S.
449329	250.00	St. Marys Trucking Co
449342	170.87	Card Member Services Minster Bank
449344	1030.98	Blue Tarp Financial
449349	3,328.00	Kofile Technologies
449350	800.00	Jaime Cupp
449351	800.00	Kacey Cupp
449352	117.87	Cooper Farms
449354	749.97	Cincinnati Bell Technology Solutions
449356	1914.08	New Knoxville Supply Company
449358	253.52	Miller’s Textiles
449360	502.50	Setex
449367	611.14	Matthew Bender & Co
449368	298.39	Matthew Bender & Co. Inc.
449382	150.00	Shawnee Weekday Early Learning Center
449391	10622.81	Poggemeyer Design
449391	8002.32	RRR Tire
449408	762.61	Auglaize County Juvenile Court
449417	12258.07	City of Wapakoneta
449930	19083.75	City of St Marys

Commissioner Bambauer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this
4th day
February, 2021

BOARD OF COUNTY COMMISSIONERS
AUGLAIZE COUNTY, OHIO

Douglas A. Spencer, yes
Douglas A. Spencer

David Bambauer, yes
David Bambauer

John N. Bergman, yes
John N. Bergman

County Commissioners Office
Auglaize County, Ohio
February 4, 2021

NO. #21-056

IN THE MATTER OF AMENDING RESOLUTION #20-178 FOR THE EXPIRATION OF THE TAX INCENTIVE AGREEMENT WITHIN THE NEW BREMEN ACTIVE ENTERPRISE ZONE LOCATED IN THE COUNTY.

The Board of County Commissioners of Auglaize County, Ohio, met in regular session on the 4th day of February, 2021.

Commissioner Bergman moved the adoption of the following:

RESOLUTION

WHEREAS, on May 5, 2020 in Resolution #20-178 the New Bremen Village Enterprise Zone for the Safeway Building was erroneously classified as "continue" and the resolution must be amended to indicated that the Safeway Building had expired during the Auglaize County Tax TIRC meeting held on April 28, 2020 due to the expiration of the tax incentive agreement on December 31, 2019.

THEREFORE, BE IT RESOLVED that the Board of County Commissioners, Auglaize County, Ohio, does hereby amend Resolution #20-178 to correct the New Bremen Village Enterprise Zone for Safeway Building to be classified as "Expired".

Commissioner Bambauer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this
4th day of
February, 2021

BOARD OF COUNTY COMMISSIONERS
AUGLAIZE COUNTY, OHIO

Douglas A. Spencer Yes
Douglas A. Spencer

David Bambauer Yes
David Bambauer

John N. Bergman Yes
John N. Bergman

cc: Village of New Bremen
County Auditor – Janet Schuler
Safeway Building