

CITY COUNCIL

The City of Orange Township, New Jersey

DATE March 19, 2024

NUMBER 178-2024

TITLE: **RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT WITH VERUSRX FOR PHARMACY BENEFIT MANAGEMENT SERVICES OF HIGH-COST THERAPY AND BRAND DRUGS FOR A ONE YEAR PERIOD FROM JUNE 1, 2024 THROUGH MAY 31, 2025 WITH TWO ONE YEAR OPTIONS TO RENEW**

WHEREAS, this is to request an award of a contract without the receipt of formal bids as an Extraordinary Unspecifiable Service [N.J.S.A. 40A:11-5(1)(a)(ii) and N.J.A.C. 5:34-2.3(b)]. I do certify to the following:

WHEREAS, the City of Orange Township, Essex County, New Jersey sees the need to address rising prescription drug costs and implement additional cost containment management and measures to maintain stable premium costs for its membership; and

WHEREAS, the City of Orange Township received a proposal from VerusRx, that provides various pharmacy benefit management services to health plans and payers; and

WHEREAS, the City of Orange Township desires that VerusRx provide prescription cost containment and member advocacy programs to members on behalf of the City of Orange Township; and

WHEREAS, VerusRx desires to provide such services, including but not limited to administration and claims processing services; and

WHEREAS, a Certification of Funds is not required, as VerusRx retains a fee of twenty-five percent (25%) of the City's savings per processed script; and

WHEREAS, invoices may be submitted from VerusPath and any other affiliates or subsidiaries of VerusRx.

NOW, THEREFORE BE IT RESOLVED by the City of Orange Township, County of Essex, State of New Jersey, as follows:

1. The proper officers of the City of Orange Township hereby authorize the execution of an agreement with VerusRx for a one (1) year period from June 1, 2024 through May 31, 2025, with two one year options to renew.
2. The City Clerk of the City of Orange Township is hereby directed to submit a copy of this adopted Resolution, along with an executed Agreement, to VerusRx.
3. This Resolution shall take effect immediately upon final passage according to law. All appropriate City of Orange Township officials are authorized and directed to perform all required acts to affect the purpose of this Resolution.



Adopted: **March 19, 2024**

Joyce L. Lanier
City Clerk

Tency A. Eason
Council President

PHARMACY SERVICES AGREEMENT

THIS PHARMACY SERVICES AGREEMENT (hereinafter the "Agreement") is entered into and effective as of the date designated and set forth on the signature page of the Agreement (hereinafter the "Effective Date") between City of Orange Township, with business offices located at 29 North Day Street, Orange, NJ 07050 (hereinafter known as "Client"), and VERUS RX LLC, a Texas limited liability company with business offices located at 12221 Merit Drive, Suite 1800, Dallas, TX 75251 (hereinafter known as "PBM"). Each of Client and PBM is individually referred to herein as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, PBM provides various pharmacy benefit management services to health plans and payers;

WHEREAS, Client desires that PBM provide prescription cost containment and member advocacy programs to Members on behalf of Client; and

WHEREAS, PBM desires to provide such services, including, but not limited to, administration and claims processing services.

NOW THEREFORE, in consideration of the mutual representations, warranties, covenants and Agreements contained herein, and for other good and valuable consideration had and received as set forth in this Agreement and in reliance upon the representations contained in this Agreement, the Parties agree on the terms and conditions as follows:

I. DEFINITIONS

- 1.1 **Client** shall mean each health plan or payer that has retained PBM to arrange for the provision of prescription dispensing services and pharmacy benefit management services to its Members and executes the Client Agreement.
- 1.2 **Contract Year** shall mean the one-year period beginning on the Effective Date (or annual anniversary thereof) and ending on the date immediately preceding the next annual anniversary of the Effective Date.
- 1.3 **HIPAA** shall mean the Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations promulgated thereunder.
- 1.4 **Member** shall mean those individuals who are entitled to Prescription Drug Services as identified in the Member List by Client, and as amended on New Eligibility Implementation Dates by documents, whether electronic or paper, transmitted by Client to PBM, including all covered Cardholders, and all of their covered dependents.
- 1.5 **Member List** shall have the meaning set forth in the Client Agreement.
- 1.6 **New Eligibility Implementation Date** shall mean the date on which PBM Services for newly eligible Members are to begin, or end, no later than two (2) Business Days after PBM's receipt of notice from Client. Client shall notify PBM of Member eligibility in an approved PBM format. PBM shall, as of the New Eligibility Implementation Date, begin its PBM Services for newly eligible Members, and terminate all PBM Services for those who are no longer eligible for service.
- 1.7 **PBM** The term "PBM" shall have the meaning defined in the preface and will include PBM's affiliates, subsidiaries, successors, or permitted assigns.
- 1.8 **Pharmaceutical Manufacturer** shall mean any pharmaceutical manufacturer or company, any drug wholesaler or distributor, any repackager, or any other third-party, that provides discounts, rebates, fees, chargebacks, or other payments, services or goods to PBM.

- 1.9 **Pharmacy** refers to an organization that is legally licensed by the State Board of Pharmacy in the state in which business is conducted to dispense drugs, is in business to dispense medications on an outpatient basis, and has signed a participation agreement with PBM to provide outpatient pharmacy services to Members of the Plan.
- 1.10 **Pharmacy Benefit Management Services or PBM Services** shall mean claims processing, eligibility verification, Participating Pharmacy contracting and management, Pharmaceutical Manufacturer contracting and administration, Financial Benefits management, reporting, formulary and clinical support, and other services as described herein. Unless otherwise agreed in writing, the PBM shall not provide Medicare Part D services under this Agreement.
- 1.11 **Plan** means any group health insurance plan, policy, agreement or other arrangement that includes coverage for prescription drugs and related pharmacy services.
- 1.12 **Plan Specs or Plan Benefit Design Guide** shall mean the guidelines that clarify Plan coverage, exclusions, limitations and co-pays.
- 1.13 **Prescription** means a medicinal substance required by law to be dispensed only by order of a duly Licensed Practitioner, a compound medication that includes such a medicinal substance or injectable insulin on prescription and may include any medical items provided in the Plan coverage and obtained pursuant to a Licensed Practitioner's order.
- 1.14 **Prescription Drug Plan** means a plan of the Client that offers prescriptions to Members.
- 1.15 **Specialty Drugs** means certain high-cost pharmaceuticals, biotech or biological drugs, as offered by PBM, that are used in the management of chronic or genetic disease, including but not limited to: injectable, infused, or oral medications, or products that otherwise may require special handling.
- 1.16 **TPA** means third-party administrator of the Plan and typically pays medical claims on behalf of Client.

II. GENERAL TERMS AND CONDITIONS

1. **Effective Date.** The effective date of this agreement is as of the date designated and set forth on the signature page of the Agreement. This Agreement will include Exhibit A- Network Pricing, Exhibit B- Administrative Service Charges, Exhibit C- Business Associate Agreement, Exhibit D Confidentiality Agreement and Exhibit E- Initial Plan Benefit Design.
2. **Relationship of Parties.** The relationship between Client and PBM is that of an independent contractor. None of the provisions of this Agreement shall be construed to create a relationship of agency, joint venture, ownership, control or employment between the Parties other than that of independent parties contracting solely for purposes of effectuating this Agreement.
3. **Client Obligations.**
 - a. **Member List.** Client or Client's Agent shall provide to PBM electronic files reflecting an initial listing of all Members ("Member List"). Client shall be responsible for updating the Member List to reflect all additions and terminations of Members. Such Member List must be provided to PBM at least thirty (30) days prior to implementation or upon such other timeframe as may be agreed between the Parties in writing. The Member List shall contain the following minimum information:
 - i. Each Member's: identification number; social security number or other unique identification number; full name (last, first, and middle initial); gender; date of birth; address; effective date of participation or termination in Prescription Drug Services under the Benefit Plan; person code(s), coverage code and relationship code(s);
 - ii. The Benefit Plan group number;
 - iii. Medicare participation status

- b. **Subsequent Eligibility Data.** Client or its Agent will provide to PBM a list of Member additions, terminations and changes with dates through secure e-mail or File Transfer Protocol (SFTP) in compliance with PBM membership data specifications or by paper. All additions, terminations and changes with dates will be entered into the computer system within two business days of receipt. Charges for paper or manual submission are listed in Exhibit B of this Client Agreement and will be paid by Client to PBM on each invoice identifying manual eligibility input. There will be no charge for additions, terminations and/or changes with dates submitted through secure e-mail or File Transfer Protocol (SFTP). Client or its Agent is responsible for providing PBM with all additions, terminations and changes. PBM will not monitor or update eligibility without written notice from Client or its Agent. Client or its Agent is responsible for providing termination dates for any Member. If a prior Member does not appear on an eligibility report, then PBM will place the Member on a drop by absence report which will be provided to Client or its Agent. A Member will be terminated by PBM from the Plan unless within 24 hours of PBM sending the drop by absence report, Client or its Agents advises PBM not to.
- c. **Accuracy of Member List.** Client shall be solely responsible for ensuring the accuracy, completeness, reliability, and timeliness of the Member List and for paying PBM for all Paid Claims dispensed to persons listed as active on the Member List. Any errors or omissions in the Member List are the sole responsibility of Client. PBM may not deny claims submitted by any Participating Pharmacy for payment subsequent to such Participating Pharmacy appropriately receiving approval via the Online Adjudication System.
- d. **Payments to Pharmacies.** Client acknowledges that PBM has contracts with Participating Pharmacies for the provision of, and payment for, prescription drug services provided to Members pursuant to this Client Agreement at agreed upon reimbursement rates. The Participating Pharmacy contracts include timely payment provisions which require client to pay PBM on the due date in Section 3.12 and 3.13 below.
- e. **Communication with Members.** Client will accurately describe and represent the PBM Services provided by PBM and Participating Pharmacy(ies) in all communications to Members.
- f. **Delegation of Client Obligations.** Client may have delegated certain of its obligations in this Client Agreement to a third-party; however, notwithstanding the foregoing, Client acknowledges and agrees that Client is ultimately responsible for discharging all of its duties and obligations under this Client Agreement.
- g. **Client's Payment Obligation to PBM.** Client shall reimburse PBM for claims submitted by Pharmacies in compliance with Section 6 of this Agreement in the amount described in the particular Prescription Drug Plan the total amount invoiced on each Statement, by the due date. Client will pay, via check or wire transfer, the amount due to PBM within two (2) business days of receipt of invoice and invoice detail. Said payment shall be made by wire transfer or ACH to a bank designated by PBM. In addition, Client shall pay to PBM, by the due date PBM's Administrative Fees and Additional Fees set forth in Exhibit B hereunder, and any other fees as expressly identified in this Client Agreement.
- h. **Claims Paid After Termination of Agreement.** Client will be responsible for prescription claims as well as the Administrative Fees associated with all claims incurred up to and including the final date of the contract and PBM will have 60 days after termination to process and finalize those claims.
- i. **Other Fees.** In addition to the sum necessary to pay claims described in Section 3.12, Client will be billed and will remit Other Fees as stated on the invoice. The Fee Schedule for claims processed is shown as Exhibit "B".
- j. **Late Payments by Client.** Client acknowledges that any late payment to PBM may cause a disruption in service to its Members from Pharmacies. When PBM is notified of such

refusal of service, PBM will use commercially reasonable efforts to collect payment from Client and if payment is received use commercially reasonable efforts to encourage Pharmacy to work in good faith with the Pharmacy to subsequently provide services to Client's Members.

- k. **Late Fees.** Late fee of no more than 1.5% per month of total unpaid claims and Administrative Fees will be applied to unpaid invoices after 10 days from the date PBM forwards the Invoice and invoice detail to Client or the Plan. When Client fails to timely satisfy all its monetary obligations, money that is received will first be applied to late fees then to the balance of the invoice obligation. Manufacturer Rebate payments will be withheld and applied to any outstanding balances greater than 60 days in arrears.
 - l. **Deposit.** If, at any time: (i) Client has two or more invoices past due and outstanding, or (ii) PBM has reasonable ground to believe Client may be delinquent in payment of fees based on Client's financial data (e.g., persistent negative cash flow, delayed reinsurance payment, bankruptcy or insolvency), PBM may require that Client provide to PBM a deposit in an amount equal to the average of the last three (3) months of billing history as the basis for determining the one (1) month deposit amount or, if three (3) months billing history is not available, the most recent month of billing history for the basis. PBM will retain the deposit until the earlier of termination of this Agreement (following any run-off period), or six (6) consecutive months of timely payments of all Fees following submission of the deposit, and may apply to deposit to delinquent fees until return of the deposit.
 - m. **Payments to Third-Parties.** A Claim that is received from a third-party payer (e.g., Medicaid, Medicare, or an insurer), or its designate, that has paid such Claim in error and which Claim is payable by Client, shall be treated and charged as a DMR and paid in accordance with the Benefit Plan. In this case, Client shall pay the Claim and PBM shall reimburse the third-party payer.
 - n. **Interest; Time Value.** Client acknowledges and agrees that it shall not have a right to interest on, or the time value of, any rebate payments received by PBM or monies payable under this Client Agreement.
4. **PBM Obligations.** PBM shall provide to Client PBM Services described in this Agreement, and at the rate set forth in, this Client Agreement and all attached applicable Exhibits, including, without limitation:
- a. Exhibit A – Service Fees
 - b. Exhibit B – Business Associate Agreement PBM and Client
 - c. Exhibit C – Confidentiality Agreement PBM and Client
5. **Confidentiality.** The terms and conditions of this contract and plan exhibits are considered confidential and proprietary to both PBM and Client, and both Parties agree not to disclose the terms and conditions, in whole or in part, to any third-party except Pharmacies and as necessary and appropriate to fulfill the obligations pursuant to this Agreement. Client will ensure that its Agent is also bound to this confidentiality obligation. Parties will maintain the confidentiality of protected health information in accordance with all applicable federal and state laws and regulations, including the privacy regulations promulgated under HIPAA. For each Client participating in the Pharmacy Program, each Party will provide copies of their executed BAA with the Covered Entity to the other Party.
6. **Term.**
- a. **Term of Agreement.** The initial term of this Agreement shall be one (1) year from the Effective Date with two (2) one year options to renew. The Agreement will be renewed for successive one-year terms unless either Party gives written notice of intent to terminate ninety (90) days before the renewal date subject to the Agreement.
 - b. **Termination Due to Breach.** In the event of a breach of any of the terms of this Agreement, the non-breaching Party shall provide written notice to the breaching Party stating the nature of the breach. If the breach is not cured within thirty (30) days (or such shorter

period as may be provided herein) after the breaching Party has received such written notice, the Agreement may be terminated immediately upon written notice to the breaching Party.

- c. **Effects of Termination.** Termination shall have no effect upon the rights and obligations of the Parties arising out of any transactions occurring prior to the effective date of such termination. If this Agreement is terminated pursuant to Section 13:
- i. All further obligations of the Parties under this Agreement shall terminate as of the termination date;
 - ii. All confidential information provided by either Party, except confidential information required by law to be retained by a Party, shall be immediately returned by the receiving Party, upon request, or such receiving Party shall certify to the disclosing Party that such confidential materials have been destroyed;
 - iii. Neither Party shall be relieved of any obligation or liability arising from any prior breach by such Party of any provision of this Agreement,
 - iv. Termination of this Agreement does not automatically terminate any other agreements entered into between PBM and Client.

7. **Governing Law, Jurisdiction, Venue, Attorneys' Fees.**

- a. This Agreement shall be interpreted and governed in accordance with the laws of the State of Texas, without regard to principles of conflict of laws.
- b. In the event either Party initiates litigation pursuant to this Agreement, the Parties hereby irrevocably and unconditionally submit to the exclusive jurisdiction of the state and federal district courts located in Dallas County, Texas, waive any objection to forum or venue and agree to accept service of process by mail in any action arising out of this Agreement.
- c. In the event of litigation relating to this Agreement, the prevailing Party shall be entitled to recover from the other Party its costs and expenses (including, without limitation, legal fees and expenses) incurred in connection with such litigation; and for the avoidance of doubt, this provision shall be in addition to, and not in limitation of, the ability of any Party to recover fees and costs as provided elsewhere in this Agreement.
- d. EACH PARTY HERETO HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS MSA, INCLUDING ANY EXHIBITS AND ATTACHMENTS, OR THE SUBJECT MATTER HEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH SUCH LEGAL COUNSEL.

8. **Indemnification.**

- a. PBM shall indemnify and hold Client, and their officers, directors, shareholders, employees, successors, other agents and permitted assigns ("Client Indemnitees"), harmless from and against any claims, liabilities, damages, judgments or other losses (including attorneys' fees) imposed upon or incurred by Client Indemnitees, or any of them, arising out of or as a direct result of any breach of this Agreement by PBM, or the negligence of PBM, or its officers, directors, employees or other agents, or its successors

and assigns, in connection with the performance of any of their respective obligations under this Agreement.

- b. Client shall indemnify and hold PBM and their officers, directors, shareholders, employees, successors, other agents and permitted assigns (“PBM Indemnitees”), harmless from and against any claims, liabilities, damages, judgments or other losses (including attorneys’ fees) imposed upon or incurred by PBM Indemnitees, or any of them, arising out of or as a direct result of the negligence of Client, or its officers, directors, employees or other agents, or its successors and assigns, in connection any of their respective obligations under this Agreement.
- c. For each Party, its indemnification obligations apply only to the limited extent that such claims, liabilities, damages, judgments or other losses (including attorneys’ fees) were caused by its negligence or breach, or the negligence or breach, as applicable, by its officers, directors, employees or other agents, or its successors and assigns, in connection with their obligations under this Agreement. That is, an indemnitor’s indemnification obligations will not apply to any claims, liabilities, damages, judgments or other losses (including attorneys’ fees) to the extent caused by any Party to be indemnified hereunder or any other person or entity not an indemnitee.
- d. Client and PBM agree that Party’s obligation to defend or pay the defense cost of the indemnitees shall apply if and when and to the extent that a court or other forum of competent jurisdiction has determined the percentage of Party’s fault for the liability alleged, in which case the Party shall be obligated to pay the amount equal to the percentage of fault that has been actually determined.

9. **Notices.**

- a. All notices, approvals, consents, requests, and other communications hereunder shall be in writing and shall be delivered (i) by personal delivery, or (ii) by national overnight courier service, or (iii) by certified or registered mail, return receipt requested, or (iv) via facsimile transmission, with confirmed receipt, or (v) via email.
- b. Notice shall be effective upon receipt except for notice via fax (as discussed above) or email, which shall be effective only when the recipient, by return or reply email or notice delivered by other method provided for in this Section, acknowledges having received that email (with an automatic “read receipt” or similar notice not constituting an acknowledgement of an email receipt for purposes of this Section, but which acknowledgement of acceptance shall also include cases where recipient ‘replies’ to such prior email, including the body of the prior email in such ‘reply’).
- c. Such notices shall be sent to the applicable party or parties at the address specified on the signature page hereof, subject to notice of changes thereof from any party with at least ten (10) business days’ notice to the other party.
- d. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

10. **Force Majeure.** Neither Party will be liable for any losses arising out of the delay or interruption of its performance of obligations under the Agreement due to any acts of God, acts of civil or military authorities, civil disturbances, wars, strikes or other labor disputes, terrorism, fires, nuclear, cyber, chemical or biological attacks, pandemics, epidemics, interruptions of power, supply or telecommunications, utility, transportation problems, unavailability of materials or equipment from suppliers, delays due to third-party vendors, Internet services or network provider services, acts or omissions of a third-party, infiltration or disruption of the Services by a third-party by any means, including without limitation, DDoS attacks, software viruses, time bombs or any other software program or technology designed to disrupt data, systems or servers and/or delay the Services, or other catastrophes or any other occurrences which are beyond such Party’s reasonable control (each a “Force Majeure Event”). The Party delayed will provide the other Party notice of

any such delay or interruption as soon as reasonably practicable, will use commercially reasonable efforts to minimize any delays or interruptions resulting from the Force Majeure Event; however, in no event will any failure to pay any monetary sum due under this Agreement be excused for any Force Majeure Event.

11. **Consent to Amend.** This Agreement or any part or section of it may be amended at any time during the term of this Agreement only by mutual written consent of duly authorized representatives of PBM and Client.
12. **Headings.** The headings of Provisions, Sections and Exhibits contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
13. **Compliance with Laws and Regulations.** This Agreement will be in compliance with all pertinent federal and state statutes and regulations. If this Agreement, or any part hereof, is found not to be in compliance with any pertinent federal or state statute or regulation, then the Parties shall renegotiate the Agreement for the sole purpose of correcting the non-compliance. PBM has no responsibility to advise Client regarding Client's compliance with any applicable law, statutes, rules or regulations relating to PBM Services provided under this Agreement.
14. **Construction.** For purposes of this Agreement, whenever the context requires, the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include the masculine and feminine genders.
 - a. The Parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.
 - b. As used in this Agreement, the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words "without limitation."
 - c. Except as otherwise indicated, all references in this Agreement to "Provisions" and "Sections" and "Exhibits" are intended to refer to Provisions of this Agreement, Sections of this Agreement and Exhibits to this Agreement.
15. **HIPAA Compliance.** The Parties will comply with all applicable regulations published pursuant to HIPAA, as of the effective enforcement date of each standard, including execution of a business associate agreement with a covered entity. In addition, without limiting any other provision of this Agreement:
 - a. all services provided by PBM under this Agreement will be provided in such a manner as to enable Client to remain at all times in compliance with all applicable HIPAA regulations applicable to Client to the extent that Client's compliance depends upon the manner in which such services are performed by PBM; and
 - b. all software, application programs and other products licensed or supplied by PBM under this Agreement will contain such characteristics and functionality (including as applicable, but not limited to, the ability to accept and securely transmit data using the standard HIPAA transaction sets) as necessary to ensure that Client's use of such software, application programs and other products and associate documentation from PBM, when utilized by Client in the manner as directed by PBM, will fully comply with the HIPAA regulations applicable to Client.
16. **Trademarks; Advertising.**
 - a. Each Party acknowledges the other Party's sole and exclusive ownership of its own Marks. Subject to the terms and conditions set forth in this Provision, neither Party may advertise or use any Marks of the other Party without receiving the prior written consent of the Party owning the Marks.
 - b. Client may reference the name and the addresses of PBM or any Participating Pharmacy in informational brochures PBM provides to Client or potential Clients and their Members.

Client will use due diligence to ensure the accuracy of such information and will immediately correct incomplete or inaccurate information.

- c. Any other reference to PBM or any Participating Pharmacy in any PBM materials must be pre-approved, in writing, by PBM.

17. **Proprietary Information.**

- a. During the duration of this Agreement and thereafter, neither Party shall use the other Party's Proprietary Information for any purposes, except to perform its obligations hereunder or ascertain the other Party's compliance with the terms of this Agreement.
- b. "Proprietary Information" means all financial information, marketing information, sales information, client information, know-how, methodology, formulary, compositions, and other specifications, analytical procedures, reports, market studies, programs, software and other pharmacy, research, technical, and marketing information disclosed, directly or indirectly, by either Party to the other Party designated "Confidential", "Proprietary" or the like, or which by its nature is information normally intended to be held in confidence, unless the receiving Party demonstrates that such information: (a) is or becomes public knowledge through no fault of the receiving Party; (b) is legally in the possession of the receiving Party prior to receipt from the disclosing Party, as shown by receiving Party's written records; or (c) is subsequently and lawfully received without obligation of confidentiality from a third-party under no nondisclosure obligation with respect to such information.

18. **Counterparts, Facsimile, Electronic.**

- a. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party, it being understood that each Party need not sign the same counterpart.
- b. This Agreement may be executed and delivered by facsimile or electronically and upon such delivery the facsimile or electronic signature will be deemed to have the same effect as if the original signature had been delivered to the other Party.
- c. The original signature copy shall be delivered to the other Party by express overnight delivery; and the failure to deliver the original signature copy and/or the non-receipt of the original signature copy shall have no effect upon the binding and enforceable nature of this Agreement.

- 19. **Entire Agreement.** This Agreement, including the Exhibits attached hereto, constitutes the entire agreement between PBM and Client with respect to the subject matter hereof.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and to become effective as of the 1st day of June, ("Effective Date").

CLIENT

PBM

By: _____

By: _____

Name: Christopher Hartwyk

***Erison Rodriguez
EVP & Chief Operating Officer***

Title: Business Administrator

Verus Rx, LLC

Company: City of Orange Township

Exhibit “A”

Service Fees

VerusPath Path Services	Service Fee
Patient Assistance Program	25% of Savings
Copay Maximization Program	25% of Savings
International Sourcing	25% of Savings
Cost of Goods (International)	Pass Thru From Vendor

For purposes of these VerusPath Services, the following terms apply:

1.1 “Patient Assistance Program” means a process whereby VerusPath engages in patient advocacy and actively assists Covered Persons in obtaining financial assistance for medications (e.g. medications excluded from coverage under a Group Health Plan) at low or no cost. If needed, Excel shall assist Plan Sponsors in adding language into the Group Health Plan’s Summary Plan Description to permit VerusPath to administer this program on behalf of the Plan Sponsor.

1.2 “Copay Maximization Program” VerusPath maximizes the co-pay structure for brand and specialty drugs. VerusPath will work with Plan Sponsor’s PBMs to set the co-pay tier at the maximum level for any given assistance program. If needed, Excel shall assist Plan Sponsors in adding language into the Group Health Plan’s Summary Plan Description to permit VerusPath to administer this program on behalf of the Plan Sponsor.

1.3 “Savings”, for purposes of determining Service Fees due to VerusPath hereunder shall be defined as the difference between the amount the Plan Sponsor would have been invoiced for a given Claim without the relevant VerusPath Service and the amount the Plan Sponsor was actually invoiced for that claim as a result of the Service rendered by VerusPath.

IN WITNESS WHEREOF, the Parties have caused this **“Exhibit A” Service Fees** to be incorporated with the Pharmacy Services Agreement between the Parties.

CLIENT

PBM

By: _____

By: _____

Name: Christopher Hartwyk

Erison Rodriguez
EVP & Chief Operating Officer

Title: Business Administrator

Verus Rx, LLC

Exhibit "B"

Business Associate Agreement

BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement (the "Agreement") is entered into and effective as of the date designated and set forth on the signature page of the Agreement (hereinafter the "Effective Date") by and between the health plan ("Covered Entity") of City of Orange Township ("Plan Sponsor"), and Verus Rx, LLC, a Business Associate ("BA").

WHEREAS, Covered Entity and BA have entered into an Agreement whereby BA provides pharmacy benefit management services to Covered Entity;

WHEREAS, Covered Entity wishes to disclose certain information to BA pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI");

WHEREAS, Covered Entity and BA intend to protect the privacy and provide for the security of PHI disclosed to BA pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (collectively referred to as "HIPAA Regulations") including the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164 of the Code of Federal Regulations ("C.F.R."), Subparts A & E ("Privacy Rule"), the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and C ("Security Rule"), the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 and the implementing regulations, as issued and amended by the Secretary ("HITECH"), that are applicable to business associates, and other applicable laws; and

WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, 45 C.F.R. § 164.504(e) and § 164.314(a), as the same may be amended from time to time.

NOW THEREFORE, in consideration of the mutual representations, warranties, covenants and Agreements contained herein, and for other good and valuable consideration had and received as set forth in this Agreement and in reliance upon the representations contained in this Agreement, the Parties agree on the terms and conditions as follows:

- A. ***Definitions.*** For the purposes of this Agreement, terms used, but not otherwise defined, shall have the meaning as those in 45 C.F.R. §§ 160.103, 164.304, 164.501 and 164.504, and the following terms have the definitions set forth below:
- (1) "Disclosure" with respect to PHI, shall mean the release, transfer, provision of access to or divulging in any other manner of PHI outside the entity holding the PHI.
 - (2) "Individual" shall mean the person who is the subject of the PHI.
 - (3) "Parties" shall mean Covered Entity and BA.
 - (4) "Protected Health Information" or "PHI" shall mean any information created or received by Covered Entity, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual;

the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

- (5) "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

B. **Stated Purpose for Which BA May Use or Disclose PHI.** The Parties hereby agree that except as otherwise limited in this Agreement, BA shall be permitted to use or disclose PHI provided or made available from Covered Entity to perform any function, activity or service for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the HIPAA Regulations if done by Covered Entity.

C. **BA Obligations.** BA covenants and agrees that it shall:

- (1) Only use and disclose PHI if such use or disclosure is in compliance with each applicable requirement of 45 C.F.R. § 164.504(e) of the Privacy Rule and not further use or disclose the PHI provided or made available by Covered Entity other than as permitted or required by this Agreement or as required by applicable law or regulation.
- (2) Establish and maintain appropriate safeguards as necessary to prevent the use or disclosure of PHI other than as permitted under this Agreement.
- (3) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity. BA acknowledges that 45 C.F.R. §§ 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), and 164.316 (Policies and Procedures and Documentation Requirements) of the Security Rule apply to BA, and BA agrees to fully comply with these regulations.
- (4) Mitigate and establish procedures for mitigating, to the greatest extent possible, any deleterious effects from use and/or disclosure of PHI by BA in violation of this Addendum and/or the Privacy Rule and/or the Security Rule.
- (5) Report to Covered Entity any use or disclosure of PHI that BA is aware of that is not provided for or allowed by this Agreement or the Privacy Rule, Security Rule, or HITECH, and to assist in determinations relating to the notification process, arising out of BA's performance under this Agreement.
- (6) Ensure that any of its agents or subcontractors, or other third Parties with which BA does business that are provided, maintain, create, and/or receive PHI on behalf of Covered Entity, are aware of and bound to BA's obligations under this Agreement. Ensure that any agents or subcontractors who will have access to electronic PHI will also implement reasonable and appropriate safeguards to protect the information.
- (7) Make available to Covered Entity such information as Covered Entity may require to fulfill Covered Entity's obligations to provide access to, amendment of, and account for disclosures with respect to PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR §§164.524, 164.526, and 164.528.

Accounting for disclosures is required for purposes other than treatment, payment, and healthcare operations and will be provided at the time of each disclosure. In the event that there are modifications to the HIPAA Regulations, BA will assist Covered Entity with developing a process for accounting for disclosures for the purposes of including treatment, payment, and

healthcare operations, as applicable to the services provided by BA to Covered Entity, if an electronic health record is used or maintained.

- (8) Make available to the Secretary of the U.S. Department of Health and Human Services all internal practices, books and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created by, the BA on behalf of the Covered Entity, for purposes of determining Covered Entity's compliance with the Privacy Rule, Security Rule, and/or related statutes and regulations.

D. **Permitted Disclosures.** Notwithstanding Article C (1), above, Parties agree that, pursuant to federal law, BA may:

- (1) Use PHI in its possession for its proper management and administration and to fulfill any of its present or future legal responsibilities provided that such uses are permitted under state and federal confidentiality laws.
- (2) Use PHI in its possession to provide data aggregation services relating to the health care operations, as provided for in 45 C.F.R. § 164.501, of the Covered Entity.
- (3) Disclose PHI in its possession to third Parties for the purpose of its proper management and administration or to fulfill any of its present or future legal responsibilities provided that (i) the disclosures are Required By Law, as provided for in 45 C.F.R. § 164.103, or (ii) BA has received from the third Party written assurances that the PHI will be held confidentially, that the PHI will only be used or further disclosed as Required By Law or for the purpose for which it was disclosed to the third Party, and that the third Party will notify BA of any instances of which it is aware in which the confidentiality of the information has been breached, as required under 45 C.F.R. § 164.504(e)(4).
- (4) De-identify any and all PHI provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514(b), and further provided that the BA maintains the documentation required by 45 C.F.R. § 164.514(b), which may be in the form of a written assurance from BA. Pursuant to 45 C.F.R. § 164.502(d)(2), de-identified information does not constitute PHI and is not subject to the terms of this Agreement.

E. **Obligations of Covered Entity.** With respect to the use and/or disclosure of PHI by BA, the Covered Entity hereby agrees:

- (1) to use appropriate safeguards to maintain and ensure the confidentiality, privacy, and security of PHI transmitted to BA pursuant to the Agreement, in accordance with the standards and requirements of HIPAA and the HIPAA Regulations, until such PHI is received by BA.
- (2) to inform BA of any changes in, or withdrawal of, the consent or authorization provided to the Covered Entity by individuals pursuant to 45 C.F.R. § 164.506 or § 164.508.
- (3) to notify BA, in writing and in a timely manner, of any arrangements permitted or required of the Covered Entity under 45 C.F.R. Parts 160 and 164 that may impact in any manner the use and/or disclosure of PHI by BA under the Agreement, including, but not limited to, restrictions on the use and/or disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by the Covered Entity.
- (4) that BA may make any use and/or disclosure of PHI permitted under 45 C.F.R. § 164.512.

F. **Termination.** Notwithstanding any other provision under the Agreement and pursuant to

federal law, each Party agrees that the Agreement may be terminated by the other Party without penalty should the other Party violate a material obligation under this Agreement.

- G. **Return or Destruction of PHI.** Upon termination or expiration of the Agreement, BA shall return to Covered Entity any and all PHI received from, or created by, BA on behalf of Covered Entity that is maintained by BA in any form whatsoever, including any copies or replicas. If returning the PHI to Covered Entity is not feasible, BA shall destroy any and all PHI maintained by BA in any form whatsoever, including any copies or replicas. Should the return or destruction of the PHI be determined by BA to not be feasible, the Parties agree that the terms of this Agreement shall extend to the PHI until otherwise indicated by the Covered Entity, and any further use or disclosure of the PHI by BA shall be limited to that purpose which renders the return or destruction of the PHI infeasible.
- H. **Amendment to Comply with Law.** The Parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The Parties agree to take such action as is necessary to comply with the standards and requirements of HIPAA, the HIPAA Regulations and other applicable laws relating to the security or confidentiality of PHI. Upon either Party's request, the other Party agrees to promptly enter into negotiations concerning the terms of an amendment to this Agreement.
- I. **No Third-Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- J. **Term.** This Agreement shall become effective on the Agreement Effective Date and shall expire when all of the PHI provided by Covered Entity to BA is destroyed or returned to Covered Entity pursuant to Section G. The Parties agree that Sections B, C, D, E, and I of the Agreement shall survive the termination or expiration of the Agreement. In the event of a conflict between this Agreement and other terms and conditions agreed to by the Parties, the terms of this Agreement shall control with respect to its subject matter.
- K. **Notice.** Notices required or given pursuant to a privacy or security incident shall be delivered in writing to BA or Covered Entity, as appropriate, and submitted to the address indicated below:

For BA: Verus Rx, LLC
David A. Rendall, President/CEO
12221 Merit Drive, Suite 1800
Dallas, Texas 75231

For Covered Entity: City of Orange Township
29 North Day Street
Orange, NJ 07050

- L. **Parties to Agreement.** Covered Entity and BA acknowledge and agree that they are the Parties to this Agreement and to the Agreement, and, to the extent such Parties are not so identified in the Agreement, the Agreement is hereby amended accordingly.

- M. ***Nominal Fee.*** Covered Entity will pay BA a mutually agreeable fee to cover the costs associated with BA's response to PHI-related requests by Covered Entity or individuals hereunder.
- N. ***Entire Agreement.*** This Agreement, which includes any and all attachments, exhibits, riders, and other documents referenced herein, constitutes the entire and full agreement between the Parties hereto with respect to the subject matter hereof and supersedes any previous contract and no changes, amendments or alterations will be effective unless reduced to a writing signed by a duly authorized representative of both Parties. Any prior agreements, documents, understandings, or representations relating to the subject matter of this Agreement not expressly set forth herein or referred to or incorporated herein by reference are of no force or effect.

COVERED ENTITY

BUSINESS ASSOCIATE

By: _____

Name: Christopher Hartwyk

Position: Business Administrator

Company: City of Orange Township

By: _____

Erison Rodriguez
EVP & Chief Operating Officer
Verus Rx LLC

Exhibit "C"

Confidentiality Agreement

Mutual Non-Disclosure and Confidentiality Agreement

This *Mutual Non-Disclosure and Confidentiality Agreement* (the "Agreement") is made effective on the date as set forth on the signature page of this Agreement ("Effective Date") by and between Verus Rx LLC, a Texas limited liability company with offices at 12221 Merit Drive, Suite 1800, Dallas, Texas 75251, together with all legal entities, affiliates, subsidiaries and successors in interest thereof owned and/or controlled by any or all of such Parties, (hereinafter referred to as "PBM"), and City of Orange Township together with all legal entities, affiliates, subsidiaries and successors in interest thereof owned and/or controlled by such party, (hereinafter collectively referred to as "Client"), and with both PBM and Client sometimes individually referred to as a "Party", a "Disclosing Party" or a "Receiving Party", or collectively referred to as the "Parties".

WHEREAS, PBM and Client are considering a possible business relationship and therefore the Parties intend to exchange certain confidential and proprietary information about their respective businesses, including but not limited to financial and operational information as more specifically identified and set forth herein below ("Confidential and Proprietary Information") with each other; and

WHEREAS, it is specifically acknowledged and agreed by PBM and Client that all Confidential and Proprietary Information provided by one of the Parties (the "Disclosing Party") to the other Party (the "Receiving Party") as described herein is strictly and highly confidential and/or proprietary in nature and that substantial damages to the Disclosing Party may result if such Confidential and Proprietary Information is not treated in a very careful and secure manner by the Receiving Party so as to prevent unauthorized disclosure to any third-parties; and

WHEREAS, both PBM and Client agree to execute and deliver this Agreement as a condition to the receipt, review, evaluation and inspection of the Confidential and Proprietary Information to be received by each Receiving Party as provided by or on behalf of the Disclosing Party whether such Disclosing Party is PBM or Client.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to, and of being granted the opportunity to receive, review, evaluate and inspect the Confidential and Proprietary Information, PBM and Client agree to the terms and conditions as follows:

1. **Representative**. For purposes of this Agreement, (i) the term "Representative" shall mean, as to any person, its directors, officers, employees, agents and advisors (including, without limitation, financial advisors, attorneys and accountants), and (ii) the term "person" shall be broadly interpreted to include, without limitation, any corporation, limited liability company, general or limited partnership, business trust, unincorporated associated or other entity or individual.
2. **Confidential and Proprietary Information**. For purposes of this Agreement, the term "Confidential and Proprietary Information" shall mean and include:

- a. all information, whether tangible or electronic, furnished by the Disclosing Party or its Representatives to the Receiving Party or its Representatives relating to the business relationship, whether furnished before or after the date hereof and the effectiveness of this Agreement and regardless of the manner in which it is furnished; and
- b. all business strategy, business plans, financial information, financing relationships, operational information, product information, pricing information, employee records and files, financial projections, sales projections, customer contracts, customer and vendor lists and files, manufacturing sources and techniques, business partners, associates, representatives and consultants, databases, patient information, provider information, network data, notes, analyses, compilations, studies, projections, diagrams, presentations, reports, drawings, depictions, summaries, translations, charts, graphs, spreadsheets, lists, software applications, scripts, valuations, appraisals, databases, interpretations or other documents prepared and disclosed by the Disclosing Party or tendered, delivered or provided by the Receiving Party or any of its Representatives which contain or are based upon, in whole or in part, any Confidential and Proprietary Information.
- c. The Receiving Party agrees that any information not otherwise previously known by the Receiving Party relating to the Disclosing Party's marketing information, business strategy, business plans, discounts, savings information, network coverage, customer files and records, financial data, operational information, pricing, employee records and files, projections, sales, customer contracts, customer and vendor lists and files, marketing and sales materials, sources and techniques, business partners, and associates shall be treated as strictly confidential and/or proprietary information, unless used as authorized by this Agreement.

3. **No Disclosure.**

- a. The Parties agree to keep confidential all Confidential and Proprietary Information, whether tangible or electronic, and shall not, without the other Party's prior written consent, disclose to any third-party, firm, corporation or entity, including affiliates of the Parties, such Confidential and Proprietary Information.
- b. The Parties shall limit the disclosure of the Confidential and Proprietary Information to only those management and staff, employees, principals, partners, officers and agents (including attorneys, accountants, bankers and consultants) of the Party reasonably necessary to evaluate the proposed business relationship.
- c. Each Party shall use the Confidential and Proprietary Information only for the purpose of its internal evaluation of the proposed business relationship.
- d. Neither Party shall make any other use, in whole or in part, of any such Confidential and Proprietary Information without the prior written consent of the other.
- e. Each Party agrees that, in complying with its confidentiality obligations under this Agreement, such Party shall use the same means it uses to protect its own confidential proprietary information, but in any event not less than reasonable means, to prevent the disclosure and to protect the confidentiality of the Confidential and Proprietary Information.
- f. Each Party agrees not to hire, solicit for employment, cause a direct solicitation for employment or enter into a consulting agreement with any employees of the other Party for a period of one year after the termination date of this Agreement.
- g. Nothing herein, however, shall preclude either Party from hiring any individual who (i) responds to a general employment solicitation, (ii) initiates discussions regarding such employment without any direct solicitation to such individual, or (iii) has been terminated by the other Party prior to commencement of employment discussions between such potential employer and such individual.

4. **Nature of Information and Equitable Relief.**

- a. The Parties each hereby accept the representations of the other Party that the Confidential and Proprietary Information of the other Party is of a special, unique, unusual, extraordinary, and intellectual character and that money damages would not be a sufficient remedy for any breach of this Agreement by it or its representatives and that specific performance and injunctive or other equitable remedies for any such breach shall be available to it.
- b. The Parties also acknowledge that the interests of the other Party in such Confidential and Proprietary Information may be irreparably injured by disclosure of such Confidential and Proprietary Information.
- c. The remedy stated above may be pursued in addition to any other remedies applicable at law or equity for breach of this Agreement, and any Party that has received information agrees to waive any requirement for the securing and/or posting of any bond in connection with such remedy.
- d. Receiving Party hereby expressly acknowledges and agrees that its failure or threatened failure to comply with the provisions of this Agreement may cause irreparable harm and damage to the Disclosing Party for which the Disclosing Party will have no adequate remedy at law and which is reasonably foreseeable to have a material adverse effect upon the Disclosing Party.
- e. Accordingly, the Disclosing Party shall be entitled to seek a temporary, preliminary and/or permanent injunction in order to prevent or restrain any such breach by Receiving Party and the Disclosing Party shall not be required to post bond as a condition of the granting of such injunctive relief.
- f. Without limiting the foregoing provisions of this Section, Receiving Party assumes liability for all costs, expenses and damages (including, but not limited to, attorneys' fees and investigation costs) arising from any breach of this Agreement by Receiving Party (and/or its direct and indirect subsidiaries and direct and indirect parent entities), including without limitation, unauthorized use or disclosure of Confidential and Proprietary Information to third-parties by agents, attorneys, accountants, or employees of Receiving Party or any other person to whom Receiving Party makes known any Confidential and Proprietary Information.

5. **Confidential and Proprietary Information Exceptions.** Notwithstanding the foregoing, for purposes of this Agreement, "Confidential and Proprietary Information" shall not include any information which:

- a. is or becomes generally available to the public other than as a result of a disclosure by the Receiving Party or its Representatives in breach or other violation of this Agreement;
- b. was in the possession of the Receiving Party on a non-confidential basis prior to its disclosure by the Disclosing Party or any of its Representatives to the Receiving Party, unless the Receiving Party is aware that the source of such information was bound by a confidentiality agreement with the Disclosing Party or any of its Representatives or otherwise under a contractual, legal, fiduciary or other obligation not to transmit the information to the Receiving Party;
- c. becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or any of its Representatives unless the Receiving Party is aware that such source was bound by a confidentiality agreement with the Disclosing Party or any of its Representatives or otherwise under a contractual, legal, fiduciary or

- other obligation to the Disclosing Party or any of its Representatives not to transmit the information to the Receiving Party;
- d. was independently developed by the Receiving Party without reference to or use of any of the Confidential and Proprietary Information;
 - e. or is required to be disclosed by applicable law, regulation, or legal or regulatory process; however, in such event, the Receiving Party agrees to take all reasonable steps to preserve the confidential or privileged nature of the Confidential and Proprietary Information.

6. No Solicitation of Persons.

- a. The Parties acknowledge the importance of the respective businesses carried on by PBM and Client, respectively, and their affiliates, and thus, during the time period from the Effective Date herein to the third anniversary date (the "Restricted Period"), each of the Parties covenant and agree that none of such Parties shall knowingly and intentionally, (directly or indirectly), attempt to induce or solicit or assist any third-party in inducing, soliciting or assisting any broker, agent, agency, third-party administrator, customer, client, vendor, officer, director, employee, partner, supplier, shareholder, consultant, contractor or business constituent to reduce, lessen, decrease, resign, or terminate a business relationship with, or disengage, depart from, or to leave employment or engagement with PBM or Client, respectively, or any affiliate or to accept employment or engagement elsewhere; provided that such business relationship, employment or engagement was actually known to such inducing, soliciting or assisting Party, and such Party, as the Receiving Party, was informed of or discovered such employment, engagement or business relationship during the Receiving Party's evaluation of the transaction contemplated by this Agreement.
- b. The Parties acknowledge that placing general public advertisements soliciting individuals of the type then employed or otherwise engaged by one of the Parties or its affiliates in newspapers, Internet job sites and similar media generally accessible to the public shall not be deemed to be a breach of this Agreement.

7. Term.

- a. The term of this Agreement shall be for a period of one (1) year from the Effective Date hereof with two one year options to renew with the confidentiality provisions, the non-solicitation provisions, the enforcement provisions and the governing law provisions being enforceable during the Restricted Period hereof or until terminated by the mutual written consent of all the Parties hereto.
- b. This term and restriction apply to all business relationship(s) engaged in or negotiated by the Parties hereto, including subsequent, follow-up, repeat, extended, or renegotiated business relationship(s) as well as the initial business relationship, and any further business relationships.

8. Return or Destruction of Materials and Information.

- a. In the event that the Disclosing Party, in its sole discretion, so requests or the business relationship is not consummated by the Receiving Party, the Receiving Party shall, upon the Disclosing Party's written request, either promptly destroy or deliver and return to the Disclosing Party, at the Receiving Party's option, all Confidential and Proprietary Information delivered by the Disclosing Party or any of its Representatives to the Receiving Party or any of its Representatives, and destroy all copies, reproductions, summaries, analyses or extracts thereof or based thereon (whether in hard-copy form or

on intangible media, such as electronic mail or computer files) in the Receiving Party's possession or in the possession of any Representatives of the Receiving Party; provided, however, that if a legal proceeding has been instituted to seek disclosure of the Confidential and Proprietary Information, such material shall not be destroyed until the proceeding is settled or a final judgment with respect thereto has been rendered.

- b. Notwithstanding the foregoing, the Receiving Party's outside accountants may retain in confidence one file copy of their work papers and final reports in accordance with their professional obligations and applicable laws and regulations, and the Receiving Party is not required to return or destroy such work papers and reports.

9. **No Representations of Accuracy or Completeness.**

- a. Subject to the terms and conditions of a definitive agreement regarding the business relationship and without prejudice thereto, each Party hereto acknowledges that neither it nor its Representatives, nor any of the directors, officers, employees, agents or controlling persons of such Party and its Representatives, makes any express or implied representation or warranty as to the accuracy or completeness of the Confidential and Proprietary Information.
- b. The Receiving Party shall not be entitled to rely on the accuracy or completeness of any Confidential and Proprietary Information, but shall be entitled to rely solely on such representations and warranties regarding the accuracy and completeness of the Confidential and Proprietary Information as may be made to it in any definitive agreement relating to the business relationship, subject to the terms and conditions of such definitive agreement.
- c. Each of the Parties hereto understands and agrees that nothing in this Agreement shall be construed to require either Party hereto to disclose or otherwise provide any particular Confidential and Proprietary Information to the other Party hereto, and that each Party hereto shall be entitled, in its sole discretion, to withhold from the other Party hereto any Confidential and Proprietary Information.

10. **No Legal Obligation for Business Relationship.**

- a. Until a separate definitive agreement regarding a potential relationship or business relationship has been executed by the Parties, neither Party shall be under any legal obligation or have any liability to the other Party of any nature whatsoever with respect to any proposal, term sheet, letter of intent, or draft agreement relating to any such potential relationship or business relationship (other than with respect to the confidentiality and other matters set forth herein).
- b. Either Party can end the discussions at any time, for any reason, and without liability to the other.

11. **Representations and Warranties.** Each Party herein expressly represents and warrants to all other Parties hereto that (a) before executing this Agreement, said Party has fully informed itself of the terms, contents, conditions and effects of this Agreement; (b) said Party has relied solely and completely upon its own judgment in executing this Agreement; (c) said Party has had the opportunity to seek and has obtained the advice of its own legal, tax and business advisors before executing this Agreement; (d) said Party has acted voluntarily and of its own free will in executing this Agreement; and (e) this Agreement is the result of arm's length negotiations conducted by and among the Parties and their respective counsel.

12. **Notices.**

- a. All notices, approvals, consents, requests, and other communications hereunder shall be in writing and shall be delivered (i) by personal delivery, or (ii) by national overnight courier service, or (iii) by certified or registered mail, return receipt requested, or (iv) via facsimile transmission, with confirmed receipt, or (v) via email.
- b. Notice shall be effective upon receipt except for notice via fax (as discussed above) or email, which shall be effective only when the recipient, by return or reply email or notice delivered by other method provided for in this Section, acknowledges having received that email (with an automatic "read receipt" or similar notice not constituting an acknowledgement of an email receipt for purposes of this Section, but which acknowledgement of acceptance shall also include cases where recipient 'replies' to such prior email, including the body of the prior email in such 'reply').
- c. Such notices shall be sent to the applicable party or parties at the address specified herein, subject to notice of changes thereof from any party with at least ten (10) business days' notice to the other party.
- d. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

13. **Indemnification.**

- a. The Receiving Party agrees to indemnify and hold the Disclosing Party harmless against that portion of any claim, liability, judgment, settlement, loss or expense (including reasonable attorney's fees and costs) arising directly out of: (a) the Receiving Party's (or its officers, directors, agents, employees or affiliates) unauthorized use or disclosure of the Confidential and Proprietary Information; and/or (b) the use or disclosure of the Confidential and Proprietary Information by third-parties to whom the Receiving Party has provided the Confidential and Proprietary Information (except where the Disclosing Party has specifically directed the Receiving Party to disclose its Confidential and Proprietary Information to a third-party; and/or from actions taken to enforce the terms of this Agreement.
- b. The Parties acknowledge and agree that the Disclosing Party will suffer substantial and irreparable damage to it or its good will and business which cannot be compensated by damages alone in the event of the Receiving Party's breach, whether actual, threatened or attempted (each of which shall be considered a breach), of the obligation to safeguard the Confidential and Proprietary Information.
- c. In the event of any such breach by the Receiving Party, in addition to any other legal rights, remedies or damages available at law or in equity, the Disclosing Party may be entitled to seek temporary, preliminary or permanent injunctive relief to prevent or restrain any such breach, and the moving Party will not be required to post bond as a condition for the granting of such relief.

14. **Miscellaneous:**

- a. In the event that any one or more of the provisions of this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable, the remainder of this Agreement shall not be affected thereby.
- b. This Agreement contains the entire agreement and understanding concerning the subject matter hereof, supersedes, and replaces all prior negotiations and proposed agreements, written or oral.

- c. Neither of the Parties may alter, amend, nor modify this Agreement except by an instrument in writing signed by both Parties and/or their duly authorized representatives.
- d. Neither Party will make or permit to be made any announcement or disclosure of the proposed business relationship without the prior written consent of the other Party.
- e. Neither Party shall make use of the other Party's name or any information acquired through its dealings with the other Party for publicity or marketing purposes without the prior written consent of the other Party.
- f. The Parties agree to only make contact with each other via those persons whose names and addresses are notified in writing to them by the other Party, and not with any other person including (without limitation) directors, officers, employees of the other Party or any person who has a business relationship of any kind with the other Party (including, without limitation, landlords, suppliers, customers and subcontractors).
- g. Each Party confirms that it is acting as principal and not as nominee, agent or broker for any other person and that it will be responsible for any costs incurred by it or its advisers in considering or pursuing the proposed business relationship and in complying with the terms of this Agreement.
- h. This Agreement may be signed in counterparts for all purposes.
- i. Neither of the Parties may alter, amend, nor modify this Agreement except by an instrument in writing signed by both Parties and/or their duly authorized representatives.

15. Governing Law, Jurisdiction and Venue.

- a. The validity, construction and interpretation of this Agreement, and duties of the Parties hereto, shall be governed by the laws of the State of Texas, United States of America.
- b. The Parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of, or in connection with, this Agreement or the transactions contemplated hereby shall be brought exclusively and only in the United States District Court for the Northern District of Texas or any other Texas state court sitting in Dallas County, Texas.
- c. Each of the Parties hereby consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding of which is brought in any such court has been brought in an inconvenient forum.
- d. In the event of litigation relating to this Agreement, the prevailing Party shall be entitled to recover from the other Party its costs and expenses (including, without limitation, legal fees and expenses) incurred in connection with such litigation.

16. **Force Majeure.** Neither Party will be liable for any losses arising out of the delay or interruption of its performance of obligations under the Agreement due to any acts of God, acts of civil or military authorities, civil disturbances, wars, strikes or other labor disputes, terrorism, fires, nuclear, cyber, chemical or biological attacks, pandemics, epidemics, interruptions of power, supply or telecommunications or other catastrophes which are beyond such Party's reasonable control (each a "Force Majeure Event").

THE TERMS AND CONDITIONS HEREIN ARE EXPRESSLY ACCEPTED AND AGREED TO BY THE PARTIES TO BE EFFECTIVE AS OF JUNE 1st , 2024, (“EFFECTIVE DATE”).

“Client”

“PBM”

Signature

Erison Rodriguez

Print: Christopher Hartwyk

EVP & Chief Operating Officer

VerusRx LLC

Title: Business Administrator

Company: City of Orange Township



STATE OF NEW JERSEY BUSINESS REGISTRATION CERTIFICATE

Taxpayer Name: VERUS RX, LLC
Trade Name:
Address: 12221 MERIT DRIVE SUITE 1800
DALLAS, TX 75251
Certificate Number: 2922000
Effective Date: November 29, 2023
Date of Issuance: December 12, 2023

For Office Use Only:
20231212115735805

