

AGREEMENT

This Services Agreement (the "Agreement") made this 17 day of May, 2012 by and between Lexington Fayette Urban County Government, having a business address at 200 East Main Street, Lexington, KY 40507, ("LFUCG") and Kroger Limited Partnership I for its Mid South Division having a business address at 1600 Ormsby Station Ct., Louisville, KY 40223 ("Pharmacy").

RECITALS

- A. Pharmacy is a retail pharmacy licensed and engaged in the business of providing pharmaceutical services, including the supplying of prescription and non-prescription drugs, medications, biologicals, and other pharmaceutical services, including vaccinations.
- B. LFUCG desires to provide its designated employees the opportunity to obtain certain vaccinations from Pharmacy.
- C. Pharmacy has provided LFUCG with satisfactory evidence that vaccinations will be administered by immunization certified professionals, under a signed protocol as required by KRS 315.010.
- D. LFUCG is willing to provide authorization to Pharmacy to administer vaccinations through the Pharmacy's vaccination program in furtherance of safeguarding and protecting the health of the employees of LFUCG, subject to the terms and conditions of this Agreement.
- E. The parties desire to reduce the agreement for vaccination services to writing.

NOW, THEREFORE, in consideration of the covenants and conditions expressed herein, the parties agree as follows:

1. Services.

(a) LFUCG authorizes Pharmacy to administer vaccinations to eligible employees. Pharmacy will provide and administer influenza vaccinations to LFUCG eligible employees during the **2012-2013 flu seasons** for **\$18.00 per vaccination** for service.

(b) Pharmacy will administer vaccinations to LFUCG eligible employees **18 years** of age or older, and have completed and executed an Influenza Immunization Consent Form. Vaccinations are subject to availability and delivery of vaccine to Pharmacy. Priority may be given to fire, police and other first responders. Vaccinations will be provided and administered in accordance with Center of Disease Control (CDC) guidelines and Pharmacy protocol. Eligible employees may be subject to tiered prioritization if suggested by the CDC in event of any vaccination shortage.

(c) LFUCG employees who inform Pharmacy that they are pregnant at the time of the vaccination must present Pharmacy with a valid prescription from their physician. The prescription must contain the word "administer" for Pharmacy to administer the vaccination.

(d) LFUCG employees may be referred to their primary care physician if they have a history of serious adverse reactions to previous vaccinations or other medical indication or condition that would require attention by a physician (e.g. moderate to acute illness). Pharmacy will inform employees that they must remain near the vaccination area for 20 minutes after receiving vaccination to see if an adverse reaction occurs.

(e) Vaccinations will be administered during normal business hours in the designated pharmacy (s) or at other sites mutually agreeable to LFUCG and Pharmacy.

(f) LFUCG has procedures in place to identify employees eligible to receive influenza vaccinations by Pharmacy. A qualifying, eligible LFUCG employee will provide and present an LFUCG employee badge to the Kroger Pharmacy staff and the employee ID number is documented.

2. **Invoices.** Pharmacy will invoice LFUCG monthly for all vaccinations provided to eligible employees during the previous month. LFUCG agrees to pay each invoice in full, net 30 days from the date of each invoice.

3. **Representations and Warranties.** Pharmacy represents and warrants that the vaccinations provided to LFUCG shall be provided and administered in accordance with currently accepted professional principles and conformance with the regulations of the applicable state board of pharmacy and department of health, including the appropriate accessory and cautionary instructions, and the expiration date when applicable.

4. **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 3, NEITHER PARTY MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED ARE HEREBY DISCLAIMED.

5. **Term and Termination.**

(a) The initial term of this Agreement shall commence as of the date written above and shall continue in full force and effect until terminated as set forth herein. This Agreement may be terminated by either party at any time for any or no reason upon written notice to the other party.

(b) Except as otherwise provided in this Agreement, following the effective date of termination of this Agreement, the provisions of this Agreement shall be of no further force or effect; provided, however, that each party to this Agreement shall remain liable for any obligations or liabilities arising prior to the effective date of termination.

6. Indemnification.

(a) To the extent allowed by law, LFUCG agrees to indemnify, defend and hold Pharmacy harmless from and against all claims and judgments of every kind or character, including without limitation any penalty, fine, or liability resulting from any violation of local, state and federal laws, regulations and interpretations, that may be made against it resulting from, or arising out of, a breach by LFUCG of the terms of this Agreement and agrees to pay to Pharmacy all costs, damages and monies that Pharmacy may incur in defending against such claims or judgments, including all expenses and attorney, accountant and expert witness fees and all costs of discovery, litigation, settlement, investigation and negotiations. In no event will LFUCG's indemnification act as a waiver of any defense, immunity or damage limitation LFUCG may otherwise have available as to third parties.

(b) Pharmacy agrees to indemnify, defend and hold LFUCG harmless from and against all claims and judgments of every kind or character, including without limitation any penalty, fine, or liability resulting from any violation of local, state and federal laws, regulations and interpretations, that may be made against it resulting from, or arising out of, a breach by Pharmacy of the terms of this Agreement, and agrees to pay to LFUCG all costs, damages and monies that LFUCG may incur in defending against such claims or judgments, including all expenses and attorney, accountant and expert witness fees and all costs of discovery, litigation, settlement, investigation and negotiations.

Pharmacy further agrees to indemnify, hold harmless and defend LFUCG from and against any and all claims which may be asserted by any other persons, parties, entities, companies, firms or corporations against LFUCG in any way arising out of Pharmacy's, its officers', employees' or agents' conduct.

Each party agrees to promptly notify the other of any claim or demand arising under this Agreement for which any indemnification is sought hereunder. This section shall survive termination and expiration of this Agreement.

7. Liability Insurance.

(a) LFUCG Insurance. LFUCG shall maintain, at its expense, throughout the term of this Agreement, policies of liability insurance with minimum limits of \$1 million per occurrence and \$3 million annual aggregate. LFUCG is Self Insured and the Fund is certified by the Commonwealth of Kentucky. A copy of the self insurance master contract is attached as Exhibit A.

(b) Pharmacy Insurance. Pharmacy shall maintain, at its expense, throughout the term of this Agreement, policies of professional and general liability, malpractice, and errors and omissions insurance with minimum limits of \$1 million per occurrence and \$3 million annual aggregate. If any such policies are of the "claims made" type, then the insured party shall purchase an extended reporting endorsement ("tail coverage") or shall obtain "prior acts" coverage upon any change in carrier so that coverage for acts and omissions during the term of this Agreement is maintained as on an occurrence basis.

8. Change of Law. In the event of a change in the law, regulations or the official interpretations thereof which materially affects the ability of either party to perform its obligations hereunder or materially affects the economics of the relationship hereby created, the affected party

may give written notice to renegotiate to the other party. The parties will then proceed to negotiate in good faith to reform this Agreement to meet the requirements of such change. If the parties fail to agree on such a reformation within 30 days of the notice to renegotiate, either party may terminate this Agreement by written notice to the other party.

9. Confidentiality. All information and materials provided by either party to the other party shall remain proprietary to the disclosing party, so long as it is not otherwise available to the general public. Neither party shall disclose any of such information or materials or use them except as may be required to perform obligations hereunder or as required by law. Neither party shall use any of the information or materials described above or any trademark or service mark of the other without the prior written consent. Each party shall cease any and all usage of proprietary information, trademarks and service marks immediately upon termination of this Agreement.

The parties shall maintain the confidentiality of all records and information relating to vaccinations received by eligible employees and only release such records and information in accordance with this Agreement or as required by applicable law or governmental order. However, LFUCG shall remain free to provide any documents that it is required to provide by law pursuant to the Kentucky Open Records Act.

10. Notices. Any notices to be given hereunder by either party to the other may be effected by personal delivery in writing or by mail, registered or certified, postage prepaid with return requested. Mailed notices shall be addressed to the parties at the address appearing below. Notices delivered personally will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated as of two days after mailing. Either party may change its address above by written notice in accordance with this section.

If to Pharmacy:

Kroger Limited Partnership I
Attn: Randy Gaither
1600 Ormsby Station Ct.
Louisville, KY 40223

If to LFUCG:

11. Force Majeure. Force Majeure shall mean any event or condition, not existing as of the effective date of this Agreement, not reasonably foreseeable as of such date and not reasonably within the control of either party, which prevents in whole or in material part the performance by one of the parties of its obligations hereunder or which renders the performance of such obligations so difficult or costly as to make such performance commercially unreasonable. Without limiting the foregoing, the following shall constitute events or conditions of Force Majeure: acts of State of governmental action, riots, disturbances, war, strikes, lockouts, slowdowns, prolonged shortage of energy supplies, epidemics, fire, flood, hurricane, typhoon, earthquake, lightning and explosion. Following written notice to the other party, a party affected by an event of Force Majeure shall be released without any liability on its part from the performance of its obligations under this Agreement, except for the obligation to pay any amounts due and owing hereunder, but only to the extent and only for the period that its performance of such obligations is prevented by the event of Force Majeure. During the period that the performance by one of the parties of its obligations under this Agreement has been suspended due to Force Majeure, the other party may suspend the performance of all or part of its obligations hereunder to the extent that such suspension is

commercially reasonable.

12. **Effect of Delay and Waiver.** No delay or failure by either party to enforce any of the provisions of this Agreement, or to exercise any right herein granted, shall be deemed a waiver thereof or limitation in any respect on the right of the other party thereafter to enforce all provisions of this Agreement and to exercise any such right. Any of the terms and conditions of this Agreement may be waived at any time, and from time to time, in writing by the party entitled to the benefit thereof without affecting any other terms and conditions of this Agreement. The waiver by either party hereto of a breach of any provisions of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

13. **Governing Law.** This Agreement shall be governed by, and construed in accordance with the laws of the state of Kentucky without regard to conflict of laws provisions.

14. **Invalidity of Provisions.** Should any part of this Agreement for any reason be declared by any court of competent jurisdiction to be invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall continue in full force and effect as if this Agreement had been executed with the invalid portion hereof eliminated, it being the intention of the parties that they would have executed the remaining portion of this Agreement without including any such part, parts or portions which may for any reason be hereafter declared invalid.

15. **Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other, except that Pharmacy may assign its rights and obligations under the Agreement to any entity that controls, is controlled by, or is under common control with Pharmacy.

16. **Independent Contractor.** None of the provisions of this Agreement is intended to create, nor shall be deemed or construed to create, any relationship among the parties other than that of independent entities contracting solely for the purpose of implementing the provisions of this Agreement. Neither party shall be responsible for or have control over the means, method or manner the services hereunder are provided. Neither of the parties shall be construed to be the agent, partner, co-venturer, employee or representative of the other, nor will either party have an express or implied right of authority to assume or create any obligation or responsibility on behalf of or in the name of the other party.

17. **Survival.** The terms contained in this Agreement which by their nature are intended to survive termination, shall survive termination of this Agreement.

18. **Headings.** All section headings contained herein are for convenience or reference only and are not intended to define or limit the scope of any provisions of this Agreement.


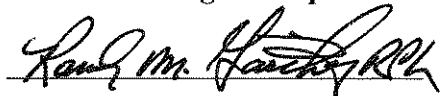
19. **Counterparts.** This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

20. **Entire Agreement.** This Agreement, including the introductory sentence, any exhibits attached hereto, and amendments that may be executed by both authorized representatives of both parties in the future, sets forth the entire understanding and agreement between the parties with

reference to the subject matter hereof and may not be altered, amended or modified without the consent of both parties.

21. Availability. The parties agree that Pharmacy's duty to provide vaccinations is subject to the availability of the vaccine. Should the vaccine become unavailable, Pharmacy will not be required to provide vaccinations pursuant to this Agreement. Furthermore, Pharmacy will have no liability to LFUCG should the unavailability of the vaccine prevent Pharmacy from performing under this Agreement. The failure of Pharmacy to provide vaccinations due to the lack of vaccine will not result in a penalty and will not constitute a breach of this Agreement by Pharmacy and relieves Pharmacy's obligations pursuant to this Agreement to provide Services. In the event it is impossible for the Kroger Pharmacy to provide the vaccinations due to unavailability of the vaccine, it will notify the Human Resources Manager for Total Rewards by certified letter. This certified letter will indicate unavailability of the vaccine, and the reason for unavailability.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.


Kroger Limited Partnership I
By KRGP Inc. its general partner
By: 
Name: Randy M. Gaither
Title: Pharmacy Merchandiser
Date: 5-17-2012

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