

## VACCINATION SERVICES AGREEMENT

THIS VACCINATION SERVICES AGREEMENT (“Agreement”) is made and entered into as of the **15th day of May, 2017** (“Effective Date”), by and between **Lexington Fayette County Urban Government, (LFUCG)** (hereinafter referred to as “Company”) and **Kroger Limited Partnership I for its Louisville Division** (hereinafter referred to as “PHARMACY”).

### WITNESSETH

WHEREAS, COMPANY desires to make available vaccinations to certain eligible individuals (hereinafter referred to as “Participants”); and

WHEREAS, PHARMACY desires to provide the vaccinations to Participants in accordance with, and subject to, the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, are good and valuable considerations, the receipt and sufficiency of which hereby are acknowledged, the parties hereby agree as follows:

#### 1. DEFINITIONS

1.1 “Services” mean provision and administration of vaccinations by PHARMACY to Participants as set forth on Exhibit A which is attached hereto and incorporated herein.

1.2 “Participants” mean any individual identified by COMPANY as eligible to receive Services from PHARMACY.

#### 2. RELATIONSHIP BETWEEN COMPANY AND PHARMACY

2.1 Independent Contractors. The parties hereto are independent contractors. This Agreement shall not be construed or deemed to create an employer/employee, principal/agent or any relationship between COMPANY and PHARMACY other than that of independent entities contracting with each other solely for the purpose of carrying out the terms and conditions of this Agreement. Neither party shall hold itself out as the partner, agent or employee of the other party nor make representations or warranties on behalf of the party, except as otherwise expressly agreed to herein.

2.2 Use of Name. Neither party shall be entitled to use the other party’s name or any of its registered, proprietary marks in any endorsements or advertising, except as otherwise expressly provided herein or with the express written consent of the other party, except

for production of PHARMACY listings where PHARMACY authorizes inclusion of its participating pharmacies without prior approval.

2.3 Practice of PHARMACY. The provision of services by PHARMACY shall be exclusively under the direction, control and supervision of the PHARMACY, and COMPANY shall have no right or authority to interfere with or in any manner direct or control the provision of Services by PHARMACY.

### 3. COMPANY RESPONSIBILITIES.

3.1 Availability of Services. COMPANY will notify Participants of when and where Services are available from PHARMACY. COMPANY will identify patients eligible to receive Services and provide PHARMACY with all the information required to enable PHARMACY to fulfill its duties and obligations under this Agreement. COMPANY will provide a workspace for PHARMACY to provide the Services in a setting that will enable PHARMACY to safely provide Services to Participants. COMPANY will provide furniture, to include, but is not limited to, tables and chairs, and allow PHARMACY personnel reasonable access to telephones for business use.

3.2 Eligibility. COMPANY shall provide adequate controls for the purpose of monitoring the eligibility of Participants.

3.3 Reimbursement. COMPANY will reimburse PHARMACY for Services according to the rate(s) set forth on Exhibit A.

### 4. PHARMACY RESPONSIBILITIES.

4.1 Professional Judgment. PHARMACY reserves the right of professional judgment in the denial of any Services.

4.2 Services. Subject to availability of the vaccine, as referred to in 8.13, PHARMACY agrees to provide the Services to Participants. Services shall be performed in accordance with professional standards and applicable federal, state, and local, laws, rules, and regulations. PHARMACY will provide the Services to Participants for the amounts listed in Exhibit A.

4.3 Documentation. PHARMACY will document Services as required by law and in a manner sufficient for billing purposes.

4.4 Prescription Service Charges. PHARMACY agrees to accept as full payment the amounts set forth in Exhibit A for the Services. PHARMACY will collect, in accordance with its usual collection practices, amounts due for services not covered by this Agreement and any applicable co-insurance or co-pay amounts.

5. PAYMENT. PHARMACY will invoice COMPANY within thirty (30) days of provision of the Services rendered. COMPANY will issue payment within thirty (30) days of receiving the invoice.

6. TERMS AND TERMINATION

6.1 Term of Agreement. Subject to termination rights set forth in this Agreement, performance under this Agreement shall commence on the Effective Date set forth above and shall continue for a period of one (1) year or until terminated in accordance with the provisions set forth below.

6.2 Termination for Default. If there is any material default by either party hereto in the performance of the terms and conditions of this Agreement, the non-defaulting party may terminate this Agreement if the defaulting party is provided with written notice of the default and fails to cure the default within ten (10) days of its receipt of such written notice.

6.3 Termination Without Cause. Either party may terminate this Agreement at any time without cause as of a date it specifies, by giving the other party at least thirty (30) days prior written notice of its intent to terminate, including the effective date of termination. Nothing in this Agreement shall be construed to limit either party's lawful remedies in the event of a material default of this Agreement.

6.4 Immediate Termination. This Agreement may be terminated immediately, upon written notice from either party, in the event of the passage of a law, promulgation of a regulation or an investigation by any regulatory body that would materially and adversely affect or prohibit this Agreement or the performance of either party with regard to the subject of this Agreement.

6.5 Effect of Termination. Following the effective date of termination, this Agreement shall be of no further force and effect except that each party hereto shall remain liable for any rights, obligations or liabilities arising from activities carried on by it under this Agreement prior to the effective date of termination. COMPANY shall be obligated to process and pay any amount due PHARMACY through the effective date of termination and until all Services rendered through the effective date of termination have been processed and paid.

7. RECORDS, DATA COLLECTION, CITATIONS AND RIGHT TO INSPECT RECORDS.

7.1 Access to Books and Records. Subject to laws, rules and regulations applicable to patient confidentiality, PHARMACY shall permit COMPANY and its employees or agents access, during regular business hours and upon reasonable written notice, to inspect books and records directly relating to the Services provided hereunder. Such information shall specifically be limited to such records as necessary to permit COMPANY to audit Participant charges.

7.2 PHARMACY Information. COMPANY will not, except as required by applicable law or governmental order, release to any party without PHARMACY'S consent, any information relating to PHARMACY which COMPANY obtains as a result of, or incident to, the relationship described in this Agreement, provided such information is not publicly known or available or otherwise available to COMPANY on a non-confidential basis.

7.3 Confidentiality of Patient Information. The parties shall maintain the confidentiality of all records and information relating to a Participant and only release such records and information in accordance with this Agreement or as required or permitted by applicable law or governmental order. Further PHARMACY and COMPANY each agree to implement reasonable and appropriate administrative, technical and physical security measures to ensure the integrity and confidentiality of Protected Health Information to the extent required the regulations promulgated pursuant to the Health Insurance Portability and Accountability Act as may be amended from time to time.

## 8. MISCELLANEOUS

8.1 Compliance with Law. The parties hereto agree to comply with all federal, state, and local laws, orders and regulations that are applicable to the terms and conditions of this Agreement. COMPANY represents and warrants that it is not currently excluded from participation under federal health care programs pursuant to 42 U.S.C. 1320a-7, is not currently the subject of any pending exclusion proceeding under that section, and have not been adjudicated or determined to have committed any action that would subject it to mandatory or permissive exclusion under that section for which such an exclusion has not been implemented. COMPANY shall notify PHARMACY immediately of its receipt of notice of exclusion or proposed exclusion from federal health care programs under 42 U.S.C. 1320a-7, or of the date of any adjudication or determination that it has committed any action which would subject it to mandatory or permissive exclusion under that section.

8.2 Mutual Indemnification. To the extent allowable by law, each party hereto shall indemnify and hold harmless the other for any and all loss, damage, liability, and expense, including reasonable attorney's fees and court costs, to the extent caused by the negligent acts or omissions or willful misconduct of the party or the respective party's employees or agents. This shall in no way be construed as a waiver of sovereign immunity or any other third party defense available to either party. If this Agreement is terminated, the rights and obligation of the parties regarding indemnification under this paragraph shall survive the termination of this Agreement regarding any liability for acts for omissions that occurred prior to the termination date.

8.3 Assignment. No assignment of right or delegation of duties under this Agreement shall be made by either party, except to a subsidiary or affiliate of such party, without the express written approval of the other party. Any attempt at assignment in violation of this Section shall be void. Such approval shall not be unreasonably withheld.

8.4 Force Majeure. The duties, obligations, and liabilities hereunder of all parties to this Agreement are limited in the event of circumstances beyond their control, such as a

major disaster, epidemic, war, complete or partial destruction of facilities, disability of a significant number of personnel, or significant labor dispute. In such an event, the parties hereto agree to use reasonable efforts under the circumstances to fulfill their duties and obligations under this Agreement.

8.5 Severability. If any provision or application of this Agreement shall be adjudicated to be void or invalid, then the remaining provisions or applications hereof not specifically so adjudicated to be void or invalid shall be performed and observed without reference to the provision or applications so adjudicated.

8.6 Effect of Severable Provision. In the event that a term or provision of this Agreement is rendered invalid or unenforceable or declared null and void, and its removal has the effect of materially altering the obligations of either COMPANY or PHARMACY in such a manner as, in the reasonable judgment of the affected party, (i) will cause financial hardship to such party, or (ii) will cause such party to act in violation of its governing or organizational documents, the party so affected shall have the right to terminate this Agreement upon thirty (30) days prior written notice to the other party.

8.7 Notices. All notices required to be given hereunder shall be made in writing and shall be deemed sufficiently given if delivered or mailed by first class registered or certified mail, return receipt requested, to COMPANY or PHARMACY, at the address set forth below or at such addresses as may subsequently be provided in writing to the respective parties. The notice shall be effective on the date indicated on the return receipt:

To PHARMACY:

Name: Kroger Pharmacy – Louisville Division  
Street: 1600 Ormsby Station Court  
City, State Zip code: Louisville, KY 40223  
Attn: Pheli Roberts

To COMPANY:

Name: Lexington-Fayette Urban County Government  
Street: 200 East Main, 8<sup>th</sup> Floor  
City, State Zip Code: Lexington, KY 40507  
Attn: Beth Beldon, Human Resources Manager

8.8 Amendment. This Agreement or any part or section of it may be amended at any time during the term of the Agreement only by the mutual written consent of a duly authorized representative of COMPANY and PHARMACY. Any other amendment or alteration of this Agreement without such written consent shall be considered null and void.

8.9 Headings. The heading of articles and sections contained in this Agreement are for reference purposes only and should not affect in any way the meaning or interpretation of this Agreement.

8.10 Governing Law. This Agreement shall be governed by the laws of the State of California.

8.12 No Referrals. No provision of this Agreement is intended as an inducement or offer to give or receive anything of value, either directly or indirectly, for the referral of patients or for the arranging or furnishing of any item or service for which payment may be made by a federal or state health care program.

8.13 Availability. The parties agree that PHARMACY'S duty to provide Services is subject to the availability of the vaccine(s). Should any vaccine become unavailable or it short supply, PHARMACY will not be required to provide Services for such vaccine(s) pursuant to this Agreement. Furthermore, PHARMACY reserves the right to allocate the vaccine(s) as appropriate in its sole discretion and PHARMACY will have no liability to COMPANY should the short supply or unavailability of the vaccine(s) prevent PHARMACY from performing under this Agreement. The failure of PHARMACY to provide Services due to the shortage or lack of vaccine(s) 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 WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first set forth above.

PHARMACY:

By: Phil Roberts  
Title: Pharmacy Clinical Sales Manager

COMPANY

By: Jim Gray  
Title: Jim Gray, Mayor