

# Agreement to Continue Pharmacy Benefits with Pre-liquidation Pharmacy Vendor

[Pharmacy Vendor] acted as a third-party administrator to facilitate prescription benefits for workers' compensation claimants of [Company Name]. In order to prevent disruption in service of the [Pharmacy Vendor] pharmacy program during the transition to liquidation of [Company Name], [Pharmacy Vendor] is willing to continue the program during a period of [ ] weeks after the liquidation order is entered.

[Pharmacy Vendor] ("Pharmacy Vendor") and guaranty funds ("Signatory Guaranty Fund") executing this Agreement will continue services for a period of not less than [ ] days from liquidation in accordance with the following terms:

*NOTE: We suggest leaving the number of days as a matter to be determined in the specific liquidation. It may make sense in many cases to make it consistent with the timeframe for workers comp indemnity prepay.*

**Deactivation.** During this continuation period, if the Signatory Guaranty Fund transfers future pharmacy benefit services to its chosen vendor, it will notify Pharmacy Vendor within [ ] days so that Pharmacy Vendor may deactivate its program.

*NOTE: Specific time frame to deactivate should be negotiated with Pharmacy Vendor.*

**Claimant History Report.** Upon execution of this Agreement each Signatory Guaranty Fund shall be provided with the "Claimant History Report" with content and format substantially similar to that in the attached Appendix A.

*NOTE: Coordinating Committee should negotiate with the Pharmacy Vendor and receiver to obtain a claim history report even for those funds that do not sign the Pharmacy Agreement.*

**Claimant Requests.** Before dispensing any new medications not included on the attached Claimant History Report (“First Fill”), Pharmacy Vendor shall obtain prior approval from the guaranty association contact (“Designee”) as designated by the Signatory Guaranty Fund in this Agreement.

For all medication requests, upon receipt of a claimant’s request for medication from the pharmacy, Pharmacy Vendor will review the request, prepare a request for prior authorization (“PA”) and submit it to the Signatory Guaranty Fund. The Pharmacy Vendor will make three (3) attempts to contact the Signatory Guaranty Fund, using Guaranty Fund Key Contacts list in the attached Appendix B. If the Signatory Guaranty Fund agrees to authorize the PA or authorizes subject to conditions allowed under state law, they will respond to the Pharmacy Vendor who will, in turn, notify the pharmacy. If the Signatory Guaranty Fund does not respond to the PA, it will [notify the pharmacy that the request is not eligible to be refilled through the point of sale transaction] OR [be deemed rejected] and the Pharmacy Vendor will close the request. A visual outline of these procedures is documented in the Request for Prior Authorization Flow Chart attached as Appendix C.

*NOTE: The amount of claimants may be so numerous that the Signatory Guaranty Fund chooses to significantly modify the second paragraph under Claimant Requests to state that “All other medication requests will receive Prior Authorization (“PA”) provided the medications are listed in the Claimant History Report (see Appendix A), are prescribed by a currently authorized treating physician, and have not previously been denied.” If this amendment is used, make sure to delete Appendix C from the Agreement.*

**Billing.** Pharmacy Vendor will invoice Signatory Guaranty Fund directly for pharmacy benefits in accordance with the relevant state’s law. Invoices will be specific to claimant and itemized to illustrate various medications dispensed.

*NOTE: Signatory Guaranty Fund should state whether they wish to receive paper or electronic invoices.*

**Payment.** Signatory Guaranty Fund will remit payment on these invoices promptly to the extent the claims fall within their statutory parameters and in accordance with state law; Pharmacy Vendor recognizes that the Signatory Guaranty Fund will not be able to remit payment until appropriate claim records are received from the liquidator. Payment of these invoices is

expected within [ ] days in most cases, subject to receipt of claims and claim records and coverage verification.

**Enrollment/Termination/Administration**. Signatory Guaranty Fund contacts will have the ability to enroll new, terminate, and administer claims manually by contacting the [Pharmacy Vendor Representative] at [telephone/email] as listed in the Pharmacy Vendor Key Contacts in the attached Appendix D.

**Holiday, emergency, weekend protocol**. To provide temporary supply non-drug list medication to a claimant during weekend hours when an adjuster cannot be reached for immediate authorization the following procedures will be followed:

- The pharmacy contacts Pharmacy Vendor during weekend/holiday hours
- Pharmacy Vendor determines if the claimant is eligible for this process. The prescription will be filled only if the claim meets the following criteria:
  - The doctor prescribing the medication is not restricted on the claim.
  - The claim is not closed.
  - The claim is not in First Fill.
  - The medication has not been denied on the claim previously.
  - The medication cannot be one of the following medications unless the caller specifies that the claimant is having surgery and must be in compliance with the TIRF REMS Access Program: **Actiq, Fentora, Onsolis, or Fentanyl Lozenges or compounded medication**
  - Medication has not been previously denied by adjuster.
  - Medication is for the covered work place injury.
- Pharmacy Vendor is permitted, in these cases, to authorize a five (5) day supply.

**Reporting**. Pharmacy Vendor will provide the following reports to each Signatory Guaranty Fund on a monthly basis by the 15<sup>th</sup> of every month:

-Savings and Utilization Report;

-Utilization Management Savings Report; and

-Program detail in Excel.

These reports will be substantially in the format and content to the example reports attached hereto as Appendix E.

Reports will be sent to the Designee of the Signatory Guaranty Fund as the Signatory Guaranty Fund so indicates in this Agreement.

*Note: We will include samples of each of the above reports in our insolvency handbook. The actual forms in the appendix may need to be the vendor's form*

**LIMITATION OF LIABILITY:** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES OF THE OTHER PARTY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**Separate Obligations.** Each Signatory Guaranty Fund shall be separately obligated for any responsibility under this Agreement. No Signatory Guaranty Fund shall be obligated or may be pursued for any other Signatory Guaranty Fund's obligations under this Agreement.

**Disputes.** In the event of any dispute arising under this Agreement, the parties agree to first attempt to resolve such dispute through negotiation and the state's medical dispute process, if applicable. If the parties are unable to resolve the dispute through negotiation, they agree to submit the matter to the [Provide Court and Case Number], provided, however, the parties agree that any dispute on the issue of whether a payment was authorized under this Agreement shall be determined by applying the laws of the state where the Signatory Guaranty Fund resides, including that state's applicable workers' compensation law.

**Confidentiality.** (a) Pharmacy Vendor and Signatory Guaranty Fund agree to keep confidential all non-public information regarding the other party that is disclosed to it or its representatives in connection with the pricing, negotiation and execution of the Agreement, whether disclosed before or after the date of this Agreement. Either party may disclose confidential information it has received to its attorneys, accountants and other representatives or employees who have a

need to know in connection with this Agreement, provided that such persons shall also have the same obligation of confidentiality any breach of which will be the responsibility of the receiving party that disclosed the information. **(b) Patient Records.** Each party shall keep and maintain patient information and records in accordance with applicable law, and shall not release such information except as permitted or required by applicable law.

**Assignment.** Neither party shall assign this Agreement, in whole or in part, without the express written consent of the other party, which consent shall not be unreasonably withheld.

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**Entire Agreement.** This Agreement represents the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements with respect thereto. This Agreement may be amended and any provision herein may be waived by either party, but only in writing signed by the party against whom such amendment or waiver is sought to be enforced.

**Amendments.** No amendment or modification of this Agreement or any exhibit hereto shall be valid or binding unless the same shall be made in writing and signed on behalf of each party.

**Counterparts.** This Agreement may be executed in one or more counterparts all of which together constitute one and the same instrument and shall become effective as to the Pharmacy Vendor and the guaranty associations when signed by the party and delivered to the other party by mail, fax, or email. This Agreement may be signed electronically by any party and such electronic signature shall be honored as though it were an original signature.

[Pharmacy Vendor]

“Pharmacy Vendor”

By: \_\_\_\_\_

As its: \_\_\_\_\_

Date: \_\_\_\_\_

[Guaranty Association]

“Signatory Guaranty Fund”

By: \_\_\_\_\_

As its: \_\_\_\_\_

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Date: \_\_\_\_\_

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Designee Name: \_\_\_\_\_

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Designee Email: \_\_\_\_\_

Designee Phone: \_\_\_\_\_

## **Appendices**

Appendix A – Sample Claimant History Report



Appendix A - Sam...tory Report.xlsx

Appendix B – Guaranty Fund Key Contacts

Appendix C – Request for Prior Authorization Flow Chart



Appendix C - PA Flow Chart.pdf

Appendix D – Pharmacy Vendor Key Contacts



Appendix D - Sam...ndor Reports.pdf

## Appendix E – Sample Pharmacy Vendor Reports



Appendix E - Sam...ndor Reports.pdf