

**Pharmacy Operator: please check off ✓ applicable box**

independent  banner  chain  supermarket or merchandise outlet  franchise  regional health authority  not-for-profit health corporation

## PHARMACY AGREEMENT

BETWEEN:

### THE GOVERNMENT OF MANITOBA

as represented by the Minister of Health and Seniors Care or delegate

(hereinafter called "MANITOBA"),

- AND -

**Corporate Name**

\_\_\_\_\_  
*(corporate name/ or business name if doing business as an unincorporated proprietorship or partnership)*

owning and operating a licensed pharmacy under the retail name of

**Pharmacy Name**

\_\_\_\_\_  
*(store name or store number)*

located at

**Address**

\_\_\_\_\_, Province of Manitoba

\_\_\_\_\_  
*(civic address)*

(hereinafter called the "PHARMACY OWNER").

### WHEREAS:

- (a) the Minister of Health and Seniors Care is responsible for the administration of various provincial health statutes, including *The Prescription Drugs Cost Assistance Act*, C.C.S.M c.P115 (hereinafter defined as the "PDCAA") and *The Pharmaceutical Act*, C.C.S.M. c.P60 (hereinafter defined as the "Pharmaceutical Act");
- (b) through the Department of Health and Seniors Care (or commonly referred to as MHSC) the Minister of Health and Seniors Care administers the Provincial Drug Programs (as hereinafter defined), including *Manitoba Pharmacare* which is established by the PDCAA and the regulations made under the PDCAA;
- (c) since 1994 the Minister of Health and Seniors Care has maintained a computerized electronic information storage system called the Drug Programs Information Network (or commonly referred to as DPIN) for the purposes of the PDCAA and to perform claims administration, adjudication and payment functions in respect of prescription drugs and other items that pharmacies supply to Manitobans who are enrolled in the various Provincial Drug Programs;

- (d) the PHARMACY OWNER owns and/or operates a pharmacy in the Province of Manitoba and wishes to participate, or continue to participate, as the case may be, in DPIN in order to submit claims for payment from MHSC for prescription drugs and professional services that the PHARMACY OWNER provides to Manitobans who are enrolled in the various Provincial Drug Programs; and
- (e) in consideration of MHSC allowing the PHARMACY OWNER to participate, or continue to participate, in DPIN, the PHARMACY OWNER agrees to submit claims for payment to MHSC in accordance with the terms and conditions of this Agreement, the provisions of the Pharmacy Claims Submission Manual (as hereinafter defined) and the directives contained in any Policy (as hereinafter defined).

**NOW THEREFORE** MANITOBA and the PHARMACY OWNER agree with each other as follows:

## **SECTION 1.0 – DEFINITIONS, ETC.**

### **1.1 Definitions**

In this Agreement or in any amendment hereto or renewal hereof, the following words shall have the following meanings:

**“adjudicate”** or **“adjudicated”** means where MHSC determines whether an individual who is a resident of the Province of Manitoba is eligible for a Benefit under any of the Provincial Drug Programs and includes a determination of any applicable deductible in respect of the individual;

**“Association”** means the Manitoba Pharmaceutical Association as continued under the Pharmaceutical Act;

**“Benefit”** means a benefit payable by MHSC under *Manitoba Pharmacare* or any of the other Provincial Drug Programs on behalf of an Eligible Person in respect of the Cost of a Specified Drug and the Professional Services provided by the PHARMACY OWNER to the Eligible Person;

**“Benefit Year”** means the period beginning on April 1<sup>st</sup> of one year and ending on March 31<sup>st</sup> of the following year;

**“Beneficiary”** means an Eligible Person and his or her family unit members who are eligible to receive a Benefit;

**“Claim”** means a claim for payment of a Benefit that the PHARMACY OWNER completes and submits electronically to MHSC in accordance with the provisions of the Manual;

**“Claim Date”** means the date that a Claim is adjudicated in DPIN;

**“Claims Statement”** means a written statement as referred to in section 5.2.1 of this Agreement;

**“Cost”** has the same meaning as ‘cost of specified drug’ as that term is defined in the Prescription Drugs Payment of Benefits Regulation 60/96 made under the PDCAA;

**“Dispensed Date”** means the date that a Specified Drug is actually provided by the PHARMACY OWNER to a Beneficiary;

**“Drug Programs Information Network”** or **“DPIN”** means the computer system operated by MHSC that links participating pharmacies and outpatient hospital pharmacies to a central interactive database within MHSC;

**“Drug Utilization Review”** or **“DUR”** means a clinical evaluation process within DPIN that evaluates a drug prescription against the patient’s drug history and determines if there will be any adverse effect or precaution associated with the prescribed drug;

**“Effective Date”** means the date that this Agreement is signed by the Deputy Minister of Health and Seniors Care;

**“Electronic Funds Transfer”** or **“EFT”** means an electronic method of transmitting funds from MHSC to a financial institution designated by the PHARMACY OWNER;

**“Eligible Dependant”** means a person who is related to or dependant upon the Eligible Person and who is within a class of eligible dependants as determined under the Regulations;

**“Eligible Person”** means a person who is within a class of eligible persons under the Regulations;

**“Extemporaneous Preparation”** means a Specified Drug or combination of Specified Drugs prepared or compounded in accordance with the relevant Policy;

**“Formulary”** means, collectively, the Manitoba Drug Benefits and Interchangeability Formulary as established by the Specified Drugs Regulation and the Drug Interchangeability Formulary Regulation made under the Pharmaceutical Act;

**“Interchangeable Product”** means a pharmaceutical product that is designated as an interchangeable product in the Formulary;

**“Manitoba Health and Seniors Care”** or **“MHSC”** means The Department of Health as established under *The Department of Health Act* (Manitoba);

**“Manitoba Society of Pharmacists”** or **“MSP”** means the not-for-profit organization incorporated under *The Corporations Act* (Manitoba) and whose objectives include entering into arrangements with federal, provincial or municipal governments, departments or agencies thereof or any Crown or municipal corporation for the furtherance of the objects of the organization;

**“Minister”** means the Minister of Health and Seniors Care for the Province of Manitoba and includes the Minister’s delegates;

**“Overpayment”** has the meaning given in section 9.0 of this Agreement;

**“PDCAA”** means *The Prescription Drugs Costs Assistance Act*, C.C.S.M. c.P115, as amended from time to time;

**“Pharmaceutical Act”** means *The Pharmaceutical Act*, C.C.S.M. c. P60, as amended from time to time and includes any regulations made under this Act;

**“Pharmacist”** means a person registered and practicing as a pharmacist under the *Pharmaceutical Act*;

**“Pharmacy”** means the licensed facility as specified at page 1 of this Agreement and that is owned and/ or operated by the PHARMACY OWNER;

**“Pharmacy Manager”** means the individual who is appointed by the PHARMACY OWNER to manage the Pharmacy;

**“Pharmacy Services”** means, collectively, to prepare, preserve or compound, and dispense Specified Drugs, and to provide Professional Services;

**“Pharmacy Claims Submission Manual”** or **“Manual”** means the MHSC document, as published and amended from time to time, that bears this or a similarly worded title, and that MHSC makes available in either print or electronic form to pharmacies in the Province of Manitoba;

**“Pharmaceutical Standards of Practice”** means the standards of practice issued by the Association from time to time;

**“PHIN”** means the Personal Health Identification Number that is assigned to a Manitoba resident and contained in a ‘registration certificate’ as defined in the PDCAA;

**“PIN”** means the Product Identification Number that is assigned by the Minister to a Specified Drug in order for such Specified Drug to be eligible as a Benefit;

**“Policy”** means any written policy approved by the Minister with respect to DPIN, including, but not limited to, any policy governing the participation in DPIN by pharmacies in the province of Manitoba;

**“Prescriber”** means a Canadian medical practitioner, licensed dentist, registered midwife, registered nurse (extended practice) or other health care professional who is authorized by his or her governing body to issue prescriptions;

**“prescription”** has the same meaning as in the Pharmaceutical Act; and **“prescribed”** has a corresponding meaning;

**“Prescription Drugs Payment of Benefits Regulation”** means Regulation No. 60/96 made under the PDCAA;

**“Price”** has the same meaning as ‘price of specified drug’ as defined in the Prescription Drugs Payment of Benefits Regulation;

**“Procedure”** means a written procedure approved by the Minister and that all pharmacy owners and operators in the Province of Manitoba must adhere to in order to participate in DPIN;

**“Professional Fees”** means the fees to be specified in writing by the PHARMACY OWNER to MHSC, with the PHARMACY OWNER using the form set out in Schedule “A” (Confirmation Of Professional Fees Notification Form) hereto, and which fees the PHARMACY OWNER may charge to MANITOBA, but not exceed (except after notification to MHSC in accordance with any Policy in that regard) for providing Professional Services to Eligible Persons;

**“Professional Services”** includes the following:

- (i) ensuring convenient access to medications and drug therapy expertise,
- (ii) verifying a Prescriber’s order,
- (iii) checking for drug interactions and confirming dosages,
- (iv) managing drug distribution systems to ensure safety, accuracy, quality and integrity of pharmaceuticals,
- (v) providing information about the optimal use of medications and promoting the cost-effectiveness of medications through evidence-based decision-making,
- (vi) reducing harm by decreasing unnecessary, unsafe or inappropriate use of medications,
- (vii) optimizing health outcomes by identifying, resolving, and preventing actual and potential medication-related problems, and
- (viii) monitoring and evaluating response to drug therapy in a collaborative framework with physicians and other health care providers;

**“Provincial Drug Programs”** means *Manitoba Pharmacare, Palliative Care Drug Access Program, Personal Care Home Drug Program, Family Services Drug Program, and Deductible Instalment Payment Program for Pharmacare (DIPPP)* and any other program that the Minister may designate in the future to form part of the Provincial Drug Programs;

**“Regulations”** means, the Specified Drugs Regulation, Prescription Drugs Payment of Benefits Regulation, and any other regulation made under the PDCAA;

**“Specified Drug”** means a prescription drug or other item such as medical device that is listed in the Specified Drugs Regulation;

**“Specified Drugs Regulation”** means Regulation No. 6/95, as amended from time to time, made under the PDCAA; and

**“Usual and Customary Professional Fee”** means the lowest or advertised fee that the PHARMACY OWNER usually charges to any Manitoban who is personally responsible for paying for the cost of a Specified Drug out of his or her own pocket (i.e. without reimbursement by MHSC or other third party payer) on the day of a transaction.

## **1.2 Interpretation**

1.2.1 Unless otherwise specified, words importing the singular include the plural and vice versa, and words importing one gender include all genders.

1.2.2 Any reference in this Agreement to a statute or regulation includes amendments made to such statute or regulation.

## **SECTION 2.0 – PURPOSE, TERM OF THIS AGREEMENT, SCHEDULES**

### **2.1 Purpose**

2.1.1 The purpose of this Agreement is to set out the terms and conditions under which the PHARMACY OWNER may participate, or continue to participate, as the case may be, in DPIN and to submit Claims to and receive EFT payments from MHSC for the provision of Pharmacy Services to Eligible Persons.

### **2.2 Term**

2.2.1 This Agreement shall commence on the Effective Date and shall remain in effect until terminated in accordance with the termination provisions of this Agreement.

## **2.3 Schedules**

2.3.1 The following Schedules form part of this Agreement:

- (a) Schedule "A" – CONFIRMATION OF PROFESSIONAL FEES FORM;
- (b) Schedule "B" – NOTICE OF CHANGE OF PROFESSIONAL FEES FORM; and
- (c) Schedule "C" – EXPLANATORY NOTES AND CLARIFICATIONS.

## **SECTION 3.0 – UNDERTAKINGS AND OBLIGATIONS OF PHARMACY OWNER**

### **3.1 Compliance with laws, licenses and permits**

3.1.1 The PHARMACY OWNER shall cause all personnel and pharmacists who the PHARMACY OWNER employs or with whom the PHARMACY OWNER contracts to provide the Pharmacy Services to be bound by and comply with the provisions of this Agreement and all applicable laws, regulations, and rules regarding the practice of pharmacy including, but not limited to, any applicable regulations and rules of practice made from time to time by the Association under the Pharmaceutical Act.

3.1.2 The PHARMACY OWNER shall obtain and maintain in good standing, and shall cause all pharmacists it employs or contracts with to obtain and maintain in good standing, at all times, any and all licenses, certificates, and permits that are necessary to allow the PHARMACY OWNER and the pharmacists who the PHARMACY OWNER employs or retains to undertake the practice of pharmacy and to lawfully dispense medications. The PHARMACY OWNER shall provide evidence of such good standing, certification and licensure without charge to MHSC within five (5) calendar days of any written request thereof by MHSC.

### **3.2 Notification**

3.2.1 The PHARMACY OWNER shall promptly notify MANITOBA in writing at the address specified in clause 13.1.1 (a) of this Agreement, but in no event later than five (5) calendar days of the happening of any of the following events:

- (a) any suspension, revocation, restriction, limitation or disciplinary action commenced, taken against the PHARMACY OWNER or placed on any license, certificate or permit issued to the PHARMACY OWNER, or to any Pharmacist who the PHARMACY OWNER employs or contracts with for the provision of the Pharmacy Services;

- (b) any change in the address or contact person as specified in clause 13.1.1(b) herein;
- (c) if the legal or operating name of the PHARMACY OWNER changes;
- (d) if there is any change of ownership (including any change in majority share ownership if the PHARMACY OWNER is a corporation) of the PHARMACY; or
- (e) if the PHARMACY OWNER appoints another individual as the Pharmacy Manager.

### **3.3 *Advertising and promotions***

- 3.3.1 The PHARMACY OWNER shall not use any name, logo, symbol, service mark or trademark belonging to MANITOBA, MHSC, or any other department or agency of the Government of Manitoba in any advertising or promotional materials or otherwise, without the prior written consent of the affected party.
- 3.3.2 The PHARMACY OWNER agrees that MHSC may use the name of the PHARMACY OWNER and location of the Pharmacy in any directory of pharmacies or similar document or communication that MHSC may publish and make available to the public in any format or medium.
- 3.3.3 As and when required by MHSC, the PHARMACY OWNER shall make available to its customers and clients any public information or materials provided by MHSC to the PHARMACY OWNER regarding DPIN, the Provincial Drug Programs, the Regulations, or any changes to any or all of these.

### **3.4 *Relationship of the parties***

- 3.4.1 The PHARMACY OWNER shall not represent itself as an agent or representative of MANITOBA or MHSC in respect of any Pharmacy Services or other functions or services it provides to customers or clients.
- 3.4.2 Nothing in this Agreement shall be construed to require the PHARMACY OWNER or any pharmacist employed or engaged by the PHARMACY OWNER to provide any Pharmacy Services or dispense any Specified Drug to any Beneficiary if, in the pharmacist's professional judgment, such Specified Drug should not be dispensed to the Beneficiary. In such event, the PHARMACY OWNER shall keep a record of the circumstances of the decision not to provide a Specified Drug to the Beneficiary.



### **3.5 Conditions of dispensing**

3.5.1 The PHARMACY OWNER shall cause all Pharmacists and personnel who the PHARMACY OWNER employs or contracts with to undertake the following activities in the course of providing the Pharmacy Services:

- (a) confirm whether any customer or client of the Pharmacy is a Beneficiary and if a Beneficiary, to correctly determine in which of the Provincial Drug Programs the Beneficiary is enrolled;
- (b) verify that any drug product sought by a Beneficiary is listed in the Specified Drugs Regulation and, without limiting the generality of the foregoing, in no event will the PHARMACY OWNER switch the drug specified in the Beneficiary's Prescription to a drug that is not listed on the Specified Drugs Regulation or the Formulary, except for generic substitution or where required by medical necessity in the opinion of a medical physician;
- (c) except if required by any applicable laws, regulations or rules regarding the practice of pharmacy, the PHARMACY OWNER shall not implement any drug substitution program that is inconsistent with any Policy in that regard or the Specified Drugs Regulation;
- (d) except where prohibited by any applicable laws, rules and regulations regarding the practice of pharmacy, follow MHSC's Policies and Procedures for drug utilization review and generic or therapeutic substitutions prior to dispensing medications and comply with MHSC's Procedures for contacting prescribers to facilitate generic substitution and Formulary compliance;
- (e) in accordance with section 2(2) of the Prescription Drugs Payment of Benefits Regulation, take all reasonable measures to determine that a Beneficiary is not entitled to benefits from any other Federal/Provincial/Municipal drug program such as Health Canada's First Nations and Inuit Health Branch, Veterans Affairs Canada, RCMP, Workers Compensation Board, and Manitoba Public Insurance; and if MHSC determines that the PHARMACY OWNER has incorrectly billed MHSC instead of the other Federal/Provincial/Municipal drug programs, the PHARMACY OWNER agrees to repay the relevant amount to MANITOBA immediately on written demand from MHSC; the PHARMACY OWNER further agrees that MHSC may recover such amount by way of set/offset from any future amount payable by MHSC to the PHARMACY OWNER, whether or not the correct payee reimburses the PHARMACY OWNER; and

- (f) comply with all other applicable conditions of dispensing as may be set out in this Agreement, the Manual, the Regulations, the Pharmaceutical Act or the Pharmaceutical Standards of Practice, or all of them.

3.5.2 The PHARMACY OWNER acknowledges that the activities specified in section 3.5.1 are more particularly described in the Manual.

### **3.6 Claims Submission**

3.6.1 The PHARMACY OWNER shall provide MHSC with the following information:

- (a) the lowest price of a Specified Drug which the PHARMACY OWNER charges any customer or client who is not a Beneficiary; and
- (b) the lesser of (i) the Usual and Customary Professional Fee; and (ii) any maximum amount that may be charged as a Professional Fee in accordance with the Manual or the Regulations, or both.

3.6.2 In order to qualify for payment from MHSC, any Claim that the PHARMACY OWNER submits to MHSC must:

- (a) be solely in respect of the Pharmacy Services actually provided;
- (b) contain complete and accurate information and contain all of the data elements as required in the Manual;
- (c) be submitted by way of an electronic Point of Service (POS) technology or such other means as may be approved by MHSC or as specified in the Manual; and
- (d) be submitted within the time limits set out in the Manual, failing which MHSC will have no responsibility whatsoever for payment.

3.6.3 The PHARMACY OWNER shall not charge any Beneficiary more than the amount that the PHARMACY OWNER usually charges to its cash paying customers or clients for the same Prescription or Professional Service, or both.

3.6.4 At the same time that the PHARMACY OWNER signs this Agreement, the PHARMACY OWNER shall complete and submit to MHSC a Confirmation of Professional Fees Notification in the form set out in Schedule "A" (Confirmation Of Professional Fees Form) to this Agreement and thereafter, from time to time, a Professional Fee Change Notification in the form set out in Schedule "B" (Notice Of Change Of Professional Fees Form) to this Agreement.

3.6.5 The PHARMACY OWNER shall ensure that the fee that the PHARMACY OWNER charges for any Specified Drug, Extemporaneous Preparation or

Professional Service shall comply with the relevant provisions in the Manual, subject only to any restriction or limitation of such provisions, or any of them, as may be set out in this Agreement, the Regulations, any Policy, or all of them.

- 3.6.6 The PHARMACY OWNER shall provide a pharmacy receipt in writing to each customer or client who is dispensed a Specified Drug and such receipt shall contain the information set out in the Pharmaceutical Act. If any customer or client requests a replacement or duplicate copy of a pharmacy receipt for payment, the PHARMACY OWNER shall note on the receipt the date of the original receipt and the fact that it is a duplicate of the original.
- 3.6.7 The PHARMACY OWNER shall ensure that the applicable deductible as specified in the DPIN is actually collected from a Beneficiary before the PHARMACY OWNER submits any Claim whatsoever to MHSC with regards to the Beneficiary. For greater certainty, any amount paid to the PHARMACY OWNER by or on behalf of a drug manufacturer or distributor under any initiative or program operated by or on behalf of the drug manufacturer or distributor does not qualify as payment towards any Beneficiary's applicable deductible.
- 3.6.8 The PHARMACY OWNER shall use MHSC's online network that is part of DPIN in a manner consistent with any Policy in that regard and to transmit information to MHSC with respect to each Specified Drug dispensed by the PHARMACY OWNER to any person for the purposes of:
- (a) adjudicating whether the person is eligible for Benefits; and
  - (b) submitting all information to the Minister that is required to be submitted pursuant to the PDCAA or the Regulations, including for purposes of the DUR.

## **SECTION 4.0 – CLAIMS ADJUDICATION, PAYMENT**

### **4.1 *Claims Adjudication***

- 4.1.1 Following receipt of a Claim, MHSC shall adjudicate the Claim against the requirements of this Agreement, the applicable provisions of the Manual, any Policy, and any Procedure.
- 4.1.2 If MHSC determines that the Claim does not qualify for payment in whole or in part or has not been submitted by the PHARMACY OWNER in accordance with the requirements of this Agreement, the applicable provisions of the Manual, a Policy or Procedure, or any of these, MHSC may reject the Claim or conditionally accept the Claim with adjustments.

- 4.1.3 The PHARMACY OWNER shall provide MHSC with such additional information as MHSC may require in order for MHSC to verify any information originally submitted with a Claim.
- 4.1.4 MHSC shall endeavor to adjudicate all Claims in near real time. Additionally, MHSC shall use commercially reasonable efforts to ensure that any systems changes that affect the POS technology are tested before implementation at the Pharmacy level. The PHARMACY OWNER shall ensure that its computer software is upgraded to the satisfaction of MHSC's information technology personnel so as to accompany any technology changes that MHSC may choose to implement in the public interest.
- 4.1.5 MHSC will send a Claims Statement to the PHARMACY OWNER reflecting MHSC's adjudication of such Claim.
- 4.2 ***Payment***
- 4.2.1 If MHSC determines that a Claim qualifies for payment, MHSC will remit payment via EFT to the PHARMACY OWNER.

## **SECTION 5.0 – NO WAIVER, REJECTIONS, REVERSALS, DISPUTED ITEMS, AND COUNTERFEIT DRUGS**

- 5.1 ***No waiver***
- 5.1.1 Any acceptance and payment of a Claim by MHSC with or without adjustments shall not prevent MHSC from re-adjudicating, auditing or reversing any Claim, in whole or in part, at any time in the future.
- 5.2 ***Rejections, Reversals and Disputed items***
- 5.2.1 Where MHSC rejects a Claim, reverses a Claim, or accepts a Claim with adjustments, MHSC will provide, in a Claims Statement, the PHARMACY OWNER with a written explanation by way of applying the adjudication codes set out in the Manual.
- 5.2.2 Any Claim that MHSC rejects, reverses, or accepts for reasons other than lateness, including any Claim submitted with errors by the PHARMACY OWNER, may be re-submitted by the PHARMACY OWNER for a "one-time" re-adjudication by MHSC, provided that the PHARMACY OWNER delivers a resubmitted Claim to MHSC within thirty (30) days from the date of receiving the Claims Statement. Upon receipt of the resubmitted Claim, MHSC will re-adjudicate the resubmitted Claim as soon as reasonably practicable and in a manner consistent with section 5.2.1 herein.

- 5.2.3 If a Claim is not resubmitted by the PHARMACY OWNER within the thirty (30) day period specified in section 5.2.2 herein, or if the resubmitted Claim is rejected by MHSC for lateness, the PHARMACY OWNER agrees that MHSC will have no obligation whatsoever to reconsider the Claim or to pay the amount originally billed in the Claim.
- 5.2.4 Unless a shorter period is required by law, any Claim submitted for payment in relation to medications which are not picked-up by a Beneficiary must be reversed by the PHARMACY OWNER within twenty-eight (28) days of submission and any failure to do so will require a written explanation by the Pharmacy Manager and may also result in a complaint being filed by MHSC to the Association as a complaint regarding a Professional Standard of Practice or failure to provide proper patient care.
- 5.2.5 Any overpayment or any payment reversed in whole or in part by MHSC for any reason, including re-adjudication, audit or as a result of any disclosure by the PHARMACY OWNER may be set off or off set by MHSC in accordance with the overpayment provisions set out in this Agreement.
- 5.2.6 It shall be the obligation of the PHARMACY OWNER to review each Claims Statement received from MHSC to verify its accuracy and correctness. The PHARMACY OWNER shall notify MHSC in writing within sixty (60) days of receipt of a Claims Statement of any information therein that the PHARMACY OWNER disputes, including if the PHARMACY OWNER reasonably believes that MHSC has made a mistake or error in processing or adjudicating the Claim. Otherwise, adjudications will be final and binding on the PHARMACY OWNER. Upon giving notice under this provision, the PHARMACY OWNER must provide MHSC with detailed reasons in writing why the PHARMACY OWNER believes there is a mistake or error, together with any other information that MHSC may subsequently require to verify any possible amount owing. This provision applies only to alleged mistakes and errors that a PHARMACY OWNER believes that MHSC has made in processing or adjudicating a Claim and does not apply to any re-adjudication as referred to in section 5.2.2 herein.

### **5.3 *Counterfeit drugs, Detection and reporting, No D.I.N. spinning***

- 5.3.1 The PHARMACY OWNER shall notify MHSC immediately in writing if it becomes aware that it has provided to a Beneficiary any drug that is not designated on the Formulary or that is a counterfeit. Furthermore, the PHARMACY OWNER shall fully cooperate with MHSC in any measures to be taken by MHSC to determine if any other Beneficiary has received a non-designated or counterfeit drug.
- 5.3.2 The PHARMACY OWNER represents and warrants that
- (a) it will purchase prescription drugs and eligible supplies only from reputable wholesalers and/or manufacturers who are licensed by Health Canada or

otherwise authorized by the Association to sell or distribute such products;

- (b) it will not participate in any activity that involves substituting (aka. D.I.N. spinning) any drug designated on the Formulary with a drug that is not designated on the Formulary.

## **SECTION 6.0 – CLAIMS**

### **6.1 *Claims review or audit***

- 6.1.1 In addition to the powers of the Minister's powers under the PDCAA, MHSC may, at its option and at any time, conduct a review or audit the accounts and records of the PHARMACY OWNER relating to any Claim submitted by the PHARMACY OWNER to determine whether the PHARMACY OWNER has complied with the terms and conditions of this Agreement.
- 6.1.2 Any review or audit will be conducted by MHSC's auditors, inspectors or representatives in accordance with the following provisions and at the times and in conformance with the relevant provisions of the Manual:
  - (a) MHSC will provide the PHARMACY OWNER with advance notice of any review or audit and MHSC's auditors, inspectors or representatives will endeavor to conduct the review or audit within the time frames set out in the Manual;
  - (b) the scope and coverage of any review or audit shall be determined by the Minister and may take the form of any one or more of the processes set out in the Manual;
  - (c) the PHARMACY OWNER shall cooperate fully with MHSC's auditors, inspectors, or representatives in any review or audit and shall provide such information as MHSC's auditors, inspectors or representatives may require, including providing to MHSC's auditors, inspectors or representatives all available copies of any Beneficiary profiles, Prescriptions, shipping invoices, internal invoices, manufacturers' invoices, wholesalers' invoices, documentation of item receipt by the Beneficiary, and evidence of other or additional drug benefit coverage;
  - (d) where access to its premises is requested by MHSC's auditors, inspectors, or representatives, the PHARMACY OWNER shall provide such access during regular business hours and shall provide reasonable assistance to MHSC's auditors, inspectors or representatives to allow them to inspect, review and take copies of any and all pharmacy records pertaining to the provision of Pharmacy Services to Beneficiaries. Unless authorized by law or by the PHARMACY OWNER, MHSC's auditors, inspectors, or representatives shall not, remove or cause to be removed

any original books, records or supporting documentation from the Pharmacy or other premises where the PHARMACY OWNER conducts business.

## **6.2 *Right of Reversal***

- 6.2.1 If the PHARMACY OWNER fails, neglects or refuses to comply with all of the requirements of this Section 6.0, MHSC shall have the right to reverse all applicable paid Claims (e.g. Claims subject to audit) and may, at MHSC's sole discretion and pursuant to clause 10.2.1(d) herein, immediately terminate this Agreement.
- 6.2.2 If MHSC conducts any review or audit of the PHARMACY OWNER a written report of such the review or audit will be sent to the PHARMACY OWNER within sixty (60) days of the date of such review or audit. If there any findings or conclusions in such report that may result in MHSC recovering any Claim, the PHARMACY OWNER will have up to thirty (30) days to submit a written response disputing any or all of such findings to MHSC. Within sixty (60) days of receiving the written response from the PHARMACY OWNER, MHSC will send a final report of the review or audit to the PHARMACY OWNER. In the event that such final review or audit results in a recovery of paid Claims, the PHARMACY OWNER has up to thirty (30) days in which to pay to MHSC (drawn payable to the "Minister of Finance") I) the full amount of the Overpayment identified by MHSC. If the PHARMACY OWNER fails to remit payment in full to MHSC within such thirty (30) day period, MHSC may, in addition to any other remedies available to MANITOBA, withhold payment of any future Claims to the PHARMACY OWNER until such time that the Overpayment is paid in full to MHSC.

## **SECTION 7.0 – INSURANCE, LIABILITY AND INDEMNITY**

### **7.1 *Pharmacy insurance***

- 7.1.1 The PHARMACY OWNER shall obtain and maintain in full force and effect and throughout the term of this Agreement such policies of general liability, professional liability and any other insurance of the types and amounts as are reasonably and customarily carried by pharmacies with respect to their operations, including, but not limited to, the following:
- (a) pharmacist's professional liability insurance, including protection from claims for bodily and personal injury to members of the public, including Beneficiaries, from the PHARMACY OWNER's pharmacy operations; and
  - (b) comprehensive general liability insurance coverage in the amount of at least TWO MILLION (\$2,000,000) DOLLARS per occurrence.

- 7.1.2 Upon the request of MHSC, the PHARMACY OWNER shall provide MHSC with evidence of such insurance coverage satisfactory to MHSC. If the insurance purchased by the PHARMACY OWNER does not satisfy the requirements of section 7.1.1 herein or is of a "claims made" variety, the PHARMACY OWNER shall purchase an extended period of indemnity so that the MHSC is protected from any and all claims brought against MHSC for a period of not less than three (3) years subsequent to the date of termination of this Agreement.
- 7.1.3 In the event of termination or material modification of any such policies of insurance the PHARMACY OWNER shall promptly provide written notice thereof to MHSC.

## **7.2 *No liability, Indemnification***

- 7.2.1 MANITOBA, MHSC, the Minister and their respective employees, agents and auditors shall not be liable or suffer loss for any claim, injury, demand or judgment of any kind whatsoever arising out of the sale, compounding, preparation, dispensing, manufacturing, labeling, consultation, communication of information on the prescribed or recognized use of medication, use of any medication or any service provided, records made or pharmacological study of such records preferred, by the PHARMACY OWNER pursuant to this Agreement.
- 7.2.2 Regardless of the insurance coverage required in this Section 7.0, the PHARMACY OWNER shall fully indemnify, defend and hold harmless MANITOBA, MHSC, the Minister and their respective employees, agents and auditors from and against the following:
- (a) the full amount of any losses, expenses, claims demands, damages, judgments, awards, or costs arising out of or attributable to any of the foregoing; and
  - (b) any claims or demands brought by any Beneficiary or his or her Eligible Dependant or other parties in respect of (i) any payment made by MHSC to the PHARMACY OWNER pursuant to this Agreement; (ii) the delivery of Pharmacy Services; and (iii) any liability or expense arising from any claim or proceeding resulting from any act or omission, or any breach of this Agreement, by the PHARMACY OWNER or by its employees, agents or contractors.



## **SECTION 8 – RECORDS AND PRIVACY**

### **8.1 *Duration of record keeping***

8.1.1 The PHARMACY OWNER shall maintain pharmacy records relating to Beneficiaries and their Prescriptions in accordance with the time periods required by any applicable laws, but in any case not less than two (2) years from the date that the pharmacy record was made.

### **8.2 *Privacy***

8.2.1 The PHARMACY OWNER shall comply with all applicable laws regarding the privacy of Beneficiaries and their personal health information, including but not limited to any provincial privacy laws such as *The Personal Health Information Act* (Manitoba) and applicable federal laws such as the *Personal Information Protection and Electronic Documents Act* (Canada), and with respect to any privacy rules or procedures required by the Association.

## **SECTION 9.0 – OVERPAYMENTS**

### **9.1 *Recovery of overpayments***

9.1.1 If, at any time, MHSC determines by way of a claims review, audit, adjudication, re-adjudication, adjustment, reversal, or otherwise that MANITOBA overpaid any amount to the PHARMACY OWNER or paid the PHARMACY OWNER any amount that the PHARMACY OWNER was not entitled to receive or paid the PHARMACY OWNER any amount in error, MHSC may, without restricting any remedies otherwise available to MANITOBA under this Agreement or at law, immediately take either or both of the following steps:

- (a) require the PHARMACY OWNER or any successor to or transferee of the PHARMACY OWNER, or both, to repay such amount that MHSC determines to be owed to MANITOBA; or
- (b) off-set or set-off such amount from any future amounts payable by MANITOBA to the PHARMACY OWNER or its successor or transferee.

9.1.2 For purposes of section 9.1.1 a “successor or transferee” includes any person or entity that purchases or acquires the Pharmacy from the PHARMACY OWNER.

## **SECTION 10.0 – DEFAULT**

### **10.1 *Events of default***

10.1.1 The PHARMACY OWNER will be in default of this Agreement if any of the following occur:

- (a) the PHARMACY OWNER is in breach of any term or condition of this Agreement;
- (b) the PHARMACY OWNER or any pharmacist or other personnel whom the PHARMACY OWNER employs or contracts with to provide the Pharmacy Services, has provided any false, misleading, or inaccurate information to MHSC in support of its request to participate in DPIN, in the submission of any Claim, or the provision of information to MHSC for audit or inspection purposes;
- (c) the PHARMACY OWNER or any pharmacist or other personnel whom the PHARMACY OWNER employs or contracts with to provide the Pharmacy Services, ceases to be licensed or permitted to provide the Pharmacy Services under applicable provincial laws or pharmacy regulatory authorities;
- (d) the PHARMACY OWNER ceases to operate, becomes bankrupt or insolvent, goes into receivership or takes the benefit of any statute from time to time being in force relating to bankrupt or insolvent debtors; or
- (e) an order is made or resolution passed for the winding up of the PHARMACY OWNER or the PHARMACY OWNER is dissolved, if the PHARMACY OWNER is a corporation.

### **10.2 *Remedies on default, Notice***

10.2.1 If MHSC determines that the PHARMACY OWNER is in default under this Agreement, MHSC will notify the PHARMACY OWNER in writing and may, without restricting any remedies otherwise available to MHSC at law, including under the PDCAA, take any or all of the following steps:

- (a) require the PHARMACY OWNER to cure the default within such time period specified by Manitoba Health in such notice;
- (b) withhold any funds otherwise payable by MHSC under this Agreement if the PHARMACY OWNER was not in default;
- (c) suspend the PHARMACY OWNER's participation in DPIN, including the ability to submit any Claims to MHSC following the date of suspension; or

(d) terminate the PHARMACY OWNER's participation in DPIN.

10.2.2 MHSC will not take any steps under clauses 10.2.1 (b), (c) or (d) herein without first providing written notice thereof to the PHARMACY OWNER and, in the sole discretion of MHSC, a reasonable period of time to cure any default identified by MHSC.

## **SECTION 11.0 – TERMINATION FOR CONVENIENCE. CONTINUING OBLIGATIONS**

11.1.1 In addition to any other rights under this Agreement, either Party may terminate this Agreement at any time without cause upon providing the other party with ninety (90) days written notice to terminate.

11.1.2 All obligations of MHSC to process Claims from the PHARMACY OWNER shall cease on the date specified in any notice provided under section 10.2.1 or section 11.1.1 herein. However, the PHARMACY OWNER may, within ninety (90) days following the effective date of termination, submit any Claims for Pharmacy Services that the PHARMACY OWNER provided prior to the date of termination. The Parties will follow the normal Claims submission and adjudication processes in respect of such Claims and any other Claims filed prior to, but outstanding as at, the date of termination.

11.1.3 All rights and obligations of the Parties which expressly herein, or by their nature, survive termination of this Agreement shall survive unless and until they are fulfilled, or by their nature expire.

## **SECTION 12.0 – GENERAL PROVISIONS**

### ***12.1 Entire Agreement / Amendment***

12.1.1 This Agreement, including the Schedules hereto, the Manual, any Policy, and any Procedure constitute the entire understanding of the Parties hereto with respect to the subject matter hereof and, upon execution by the Parties, supercedes all prior oral or written agreements between the Parties with respect to the subject matter hereof.

12.1.2 No modification, alteration or waiver of any term, covenant or condition of this Agreement shall be valid unless it is agreed to in writing by both Parties, except that in the case of a general amendment to this Agreement the provisions set out in subsection 12.1.3 (b) herein shall apply. For purposes of this section 12.1.2 and subsection 12.1.3(b), a "general amendment" means an amendment that will be made to all Pharmacy Agreements made between MANITOBA and pharmacy owners and operators in the Province of Manitoba.

12.1.3 The PHARMACY OWNER acknowledges that

- (a) MHSC may, in its sole discretion and at any time, amend the Pharmacy Claims Submission Manual, any Policy and any Procedure;
- (b) except for the provisions of Section 11.0 which shall not be subject to this subsection 12.1.3 (b), where MHSC determines that a general amendment is required to be made to the form and content of this Pharmacy Agreement, such amendment will not require the consent of the PHARMACY OWNER and will come into effect on a date to be specified by MHSC in writing; and
- (c) nothing in this Agreement fetters or prevents the Minister, in her sole discretion, from seeking legislative, cabinet, or other approval to amend the PDCAA , the Specified Drug Benefit Regulation, or any other health related act or regulation and any such amendment shall not require the consent of the PHARMACY OWNER. Where practical, MHSC intends to consult with selected stakeholders prior to making any amendment to the Manual, any Policy, or any Procedure, or making any general amendment to the form and content of this Agreement.

12.1.4 Any change or amendment to the Pharmacy Claims Submission Manual, any Policy or Procedure, the PDCAA, the Specified Drug Benefit Regulation, or any other applicable statute or regulation, will be communicated by MHSC to the PHARMACY OWNER through one or more of the following mediums:

- (a) pharmacy newsletters issued by the Association or MS; or
- (b) drug bulletins or postings on MHSC's website.

**12.2 Laws etc.**

12.2.1 This Agreement shall be governed by and interpreted in accordance with the laws of the province of Manitoba and all applicable laws of Canada. This Agreement shall also be interpreted in accordance with the explanations and clarifications set out in Schedule "C" (Explanatory Notes and Clarifications) to this Agreement.

12.2.2 All obligations for a PHARMACY OWNER as set out herein shall be deemed to include an obligation of the PHARMACY OWNER to ensure that the personnel and pharmacists it employs or contracts with will abide by the same terms and conditions of this Agreement when acting for the PHARMACY OWNER, unless the context requires otherwise.

12.2.3 No waiver of a breach of any covenant or condition shall be construed to be a waiver of any subsequent breach. No act, delay or omission done, suffered, or permitted by the parties shall be deemed to exhaust or impair any right, remedy or power of the parties hereunder.

- 12.2.4 Should any provision of this Agreement be held or ruled unenforceable or ineffective under the law, such a ruling will in no way affect the validity or enforceability of any other clause or provision contained herein.
- 12.2.5 Each party intends that this Agreement will not benefit or create any right or cause of action on behalf of any person other than the parties to this Agreement, their lawful administrators, successors and assigns, and that no other person will be entitled to rely on its provisions.
- 12.2.6 In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of any Schedule or Annex hereto or the Pharmacy Claims Submission Manual, the terms and conditions of this Agreement shall prevail.

### **12.3 *Subcontracting or Assignment***

- 12.3.1 This Agreement or any rights or obligations of MANITOBA hereunder may be subcontracted or assigned, in whole or in part, by MHSC to any other party without the prior written consent of the PHARMACY OWNER.
- 12.3.2 The PHARMACY OWNER's obligations and benefits under this Agreement may not be subcontracted or assigned, whether in whole or in part, by the PHARMACY OWNER, except with the prior written consent of MHSC.
- 12.3.3 This Agreement is binding upon the parties and their respective administrators, successors and permitted assigns. Any reference to the parties in this Agreement shall include, apply to, bind and benefit the permitted assigns and successors of the parties and any corporation, partnership, individual, or person acting in a fiduciary capacity on their behalf.

### **12.4 *Confidential Business Information***

- 12.4.1 The PHARMACY OWNER acknowledges that in the performance of the services to be rendered hereunder, the PHARMACY OWNER may have access to certain confidential business information regarding MHSC, including but not limited to the following: manuals, marketing strategies, customer lists, information technology and quality assurance procedures, and all copies thereof (collectively, the "Confidential Information"). The PHARMACY OWNER shall not disclose or use or enable anyone else to disclose or use, in whole or in part, any such Confidential Information other than for the purpose of providing the services to be provided hereunder unless required by law and shall promptly return all Confidential Information to MHSC upon termination of this Agreement.
- 12.4.2 MANITOBA acknowledges that in the performance of the services to be rendered hereunder, MHSC may have access to certain confidential business information regarding the Pharmacy. MANITOBA shall not disclose or use or enable anyone

else to disclose or use, in whole or in part, any such confidential business information other than for the purpose of providing the services to be provided hereunder unless required by law and shall promptly return all confidential business information to the PHARMACY OWNER upon termination of this Agreement.

## **12.5 *Proprietary Rights***

12.5.1 So long as this Agreement is in effect and MHSC allows the PHARMACY OWNER to participate in DPIN, the PHARMACY OWNER is granted a license to use, reproduce or adapt any non confidential information, data, work, compilation, computer program, manual, process or invention obtained from, provided by, or owned by MHSC including, but not limited to, programs, services, business practices, procedures, and manuals without MHSC's prior written consent.

## **12.6 *Disaster Planning and Force Majeure, Independent Contractor***

12.6.1 ***Disaster Planning***: The PHARMACY OWNER shall take all reasonable steps to cooperate and coordinate with MANITOBA to facilitate disaster planning efforts for continued provision of Pharmacy Services in cases of a disaster, emergency or an event described in subsection 12.6.2 herein.

12.6.2 ***Force Majeure***: Any Party's delay in, or failure of, performance under this Agreement shall be excused where such delay or failure is the result of causes that are beyond the reasonable control of the affected Party, including acts of God (e.g., nature, fire, flood, etc.), terrorism, war, civil disturbance, court order, governmental intervention, epidemic, pandemic, failures or fluctuations in electrical power, heat, light, air conditioning, computer, software, communications, transmission or mechanical failure, work stoppage, delays or failure to act, or other catastrophe beyond a party's reasonable control. In such an event, the parties will use commercially reasonable efforts to resume performance as soon as possible under the circumstances giving rise to the Party's failure to perform.

12.6.3 The PHARMACY OWNER acknowledges that it is not a contractor or service provider of MANITOBA, MHSC, or any department or agency thereof and nothing in this Agreement is intended to create a partnership, joint venture or agency relationship between the PHARMACY OWNER and MANITOBA, MHSC or any department or agency thereof.

## **SECTION 13.0 – NOTICE**

13.1 Subject to the other provisions of this Agreement and the Manual which may require or permit communication between the Parties by electronic or other means, any notice required to be given pursuant to the terms hereof shall be in

writing and sent by registered mail, facsimile to the other party at the address or facsimile number listed below or to the last reported address or facsimile number of such party, as follows:

(a) TO MANITOBA:

Manitoba Health and Seniors Care  
Pharmaceutical Policy Unit, Non-Insured Benefits Branch  
1074 - 300 Carlton Street  
Winnipeg, Manitoba R3B 3M9

Attention: Pharmacy Agreement Coordinator  
Pharmaceutical Policy Unit

Facsimile: (204) 786-8560

(b) TO PHARMACY OWNER:

CORPORATE NAME  
CONTACT  
ADDRESS

Phone  
Fax  
Email

- 13.2 Any such notice, which is sent by registered mail, shall be deemed to have been received by the respective party on the third day following the date of mailing. Any notice, which is sent by facsimile, shall be deemed to have been received on the next business day following transmission.
- 13.3 Either Party may change its contact individual or address for notification by written notice to the other Party given in accordance with sections 13.1(a) and (b) herein.

**SECTION 14.0 – PERSONAL LIABILITY**

14.1 If the PHARMACY OWNER is

- (a) a sole proprietorship,
- (b) a partnership, or
- (c) a corporation that is liquidated or dissolved or whose corporate charter expires or is revoked or that otherwise ceases to exist while this Agreement is in effect, or
- (d) owes any outstanding undertakings or obligations to MANITOBA as of the date the PHARMACY OWNER was liquidated or dissolved or its corporate charter expired or revoked or that it ceased to exist;

the sole proprietor, each and every partner within the partnership, or the individual who signed this Agreement on behalf of the PHARMACY OWNER if the PHARMACY OWNER is a corporation, as the case may be, is and shall be personally liable (and in the case of partnership on a joint and several basis) to MANITOBA for carrying out all of the PHARMACY OWNER’s undertakings and obligations under this Agreement.

**SECTION 15.0 – EXECUTION**

15.1 The undersigned have executed this Agreement on the dates noted below.

**SIGNED AND DELIVERED**

**FOR THE GOVERNMENT OF  
MANITOBA**

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Minister of Health and Seniors Care or  
delegate

\_\_\_\_\_  
Print name of witness

\_\_\_\_\_  
Print name of delegate (if applicable)

\_\_\_\_\_  
Title of delegate (if applicable)

\_\_\_\_\_  
Date



**FOR THE PHARMACY OWNER**

*(if PHARMACY OWNER is a corporation,  
otherwise please use ALTERNATE SIGNATURE  
block below)*

\_\_\_\_\_  
Witness (or affix corporate seal)

\_\_\_\_\_  
Signature of authorized signing officer

\_\_\_\_\_  
Print name of witness

\_\_\_\_\_  
Print name of signing officer

\_\_\_\_\_  
Title or position of signing officer

\_\_\_\_\_  
Date

**ALTERNATE SIGNATURE**

*(if PHARMACY OWNER is a sole proprietorship or  
partnership)*

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name of witness

\_\_\_\_\_  
Print name of signatory

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**NOTE:** *please insert either "sole proprietor" or  
"partner" on the Title line above. If the signatory is a  
partner, please check off  the applicable box below  
to indicate whether the signatory is signing in his or  
her personal capacity  () or as the agent of a  
corporate partner  (). Also, please provide names  
of all partners in the following spaces or attach a  
separate page if more space is required:*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_