

PHARMACY SAVINGS PROGRAM AGREEMENT

THIS PHARMACY SAVINGS PROGRAM AGREEMENT (this “Agreement”) is effective the **24th** day of **January, 2012** (the “Effective Date”) by and between Envision Medical Solutions, Inc., a Florida corporation, (hereinafter, “Envision”) whose address is 3710 Corporex Park Drive, Suite 215, Tampa, Florida 33619, and **El Dorado County**, a **political subdivision of the state of California**, (hereinafter “County”), whose address is 330 Fair Lane, Placerville, CA 95667.

RECITATIONS

WHEREAS, Envision administers programs which provide savings for prescription drugs to participating individuals; and

WHEREAS, County has determined that the pharmacy savings program (the “Program”) administered by Envision would be of benefit to the residents of the County (hereinafter “Participants”).

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and incorporated herein by reference.

2. **Definitions.**

2.1 **“Dispensing Fee”** means an amount added to the negotiated price of an Eligible Drug (except for drugs purchased at the Pharmacy’s U&C Price) which includes the negotiated fee payable to the pharmacy, and the Administrative Fee payable to Envision.

2.2 **“Eligible Drug”** means a drug for which Envision has negotiated a discount price with Participating Pharmacies.

2.3 **“Participant”** means an individual (or a family member of such individual) to whom County has issued an Rx Card for the purchase of Eligible Drugs.

2.4 **“Participating Pharmacy”** means a pharmacy that has entered into an agreement with Envision to dispense Eligible Drugs to Participants under the Program. County acknowledges that Eligible Drugs must be obtained only from Participating Pharmacies.

2.5 **“Program”** shall have the meaning set forth in the recitals to this Agreement.

2.6 **“Program Services”** shall have the meaning set forth in Section 3.1 of this Agreement.

2.7 **“Rx Card”** means the “no-cost” prescription drug cards issued by County and administered by Envision for the use by Participants to purchase Eligible Drugs.

2.8 **“Transaction”** means an electronic record received by Envision via its computer system for each Eligible Drug purchased by a Participant. A Transaction shall include purchases of Eligible Drugs at the Participating Pharmacy’s U&C Price.

2.9 **“U&C Price”** means the usual and customary price charged by the Participating Pharmacy for the same drug to cash-paying customers.

3. **Description of Program**

3.1 County acknowledges that the Program administered hereunder is a prescription drug savings program under which its Participants will receive preferred pricing for certain prescription drugs dispensed by a Participating Pharmacy (“Program Services”). Participants are solely responsible for the payment in full of all drug costs and fees charged by the pharmacy. Neither Envision nor County shall be liable for the payment of any drugs, supplies, or other items dispensed to Participants.

3.2 The Program is being offered and administered by Envision. County acknowledges that the Program is not insurance, County shall not describe the Program as insurance in any printed or electronic media, and no enrollment fee or other periodic fee will be charged to Participants for the use of the Program.

4. **Program Administration Services.** Envision will perform the following “Program Administration Services” under this Agreement:

4.1 **Rx Cards.** Envision shall design the Rx Cards to be distributed to the Participants. All cards or card images must contain certain statements and disclaimers on the front or back of the card which include, but may not be limited to, the following: (i) The name and/or logo of the Program; (ii) the phone number for customer service; (iii) the Program’s website address; (iv) a prominent statement in at least 12 pt. type that “THIS IS NOT HEALTH INSURANCE”, (v) a statement that “This Is A Free Card And May Not Be Sold”, and (vi) Void where prohibited by law. Envision shall provide County with a sample of the printed Rx Card for approval prior to card production.

4.2 **Pharmacy Network.** Envision shall arrange for the dispensing of Eligible Drugs to Participants pursuant to contracts with Participating Pharmacies. County acknowledges that the pharmacy network may change from time to time. Envision shall update the list of Participating Pharmacies to reflect any changes in the network, including pharmacy addresses and telephone numbers. County acknowledges that the availability of drugs is subject to market conditions and that Envision cannot, and does not, assure the availability of any drug from any Participating Pharmacy.

4.3 **Customer Service.** Envision shall maintain and operate a “Help Desk” with toll-free customer service numbers adequately staffed with trained personnel for call volume during normal business hours for the use by Participants and Participating Pharmacies to resolve technical problems. County acknowledges that Help Desk personnel will not quote drug prices over the telephone, as the actual price of the purchased drug may differ from pharmacy to pharmacy.

4.4 **Transaction Processing.** Envision shall electronically process Transactions for Eligible Drugs dispensed by Participating Pharmacies to Participants. Envision shall pass through to Participants, at the point-of-sale, 100% of its negotiated discounts with Participating Pharmacies for the Program. No edits or conditions will be applied to Transactions other than as indicated herein.

4.5 **Dispensing Fee.** Envision shall direct Participating Pharmacies (via its computer system) to collect a Dispensing Fee from Participants in addition to the negotiated price of the Eligible Drug, except for those drugs where the Participating Pharmacy’s U&C Price is equal to or less than the negotiated drug price plus the Dispensing Fee. In those cases where the U&C Price is equal to or less than the negotiated drug price plus the Dispensing Fee, the Participating Pharmacy will be directed to charge the Participant only the U&C Price.

4.6 **Reporting.** Envision will provide to County detailed monthly reports showing the number of Transactions and the aggregate amount of savings to Participants for those Transactions, and such other reports as reasonably requested by County; provided, however, that such reports are not made public without prior written permission of Envision.

4.7 **Website Hosting.** Envision will create and host a website customized for the Program which includes a participating pharmacy locator, drug pricing calculator, and Program terms and conditions. The County shall be responsible for any additional content to be included on the web page. Envision makes no representations or warranties as to County's compliance with applicable law in connection with the website.

4.8 **Program Marketing, Outreach and Distribution.** Envision and the County shall promote and market the Program to prospective participants in a professional and ethical manner. Envision and the County shall make reasonable efforts to identify and contact prospective Participants using new and existing methods of written and electronic communication with prospective Participants, including, but not limited to, newsletters, announcements, and County's website. Envision shall print Rx Cards per Envision's current print specifications and/or make same available for download from County's website, and make reasonable efforts to distribute Rx Cards to prospective Participants. Envision acknowledges that all promotional or informational materials must be pre-approved by the County.

4.9 **Distribution.** County acknowledges and agrees that the Rx Cards shall be provided by Envision to the prospective participants free of charge and County shall not sell the Rx Cards or otherwise receive any consideration from the prospective participants or any third parties for the Rx Cards.

5. **Duties of the County.** County shall have the following duties with respect to this Agreement:

5.1 **Cooperation.** County shall cooperate with Envision to ensure all necessary approvals are received in a timely manner.

5.2 **Promotional Locations.** County will provide a list of locations where cards, posters, etc. should be delivered.

6. **Term and Termination.**

6.1 **Term.** This Agreement shall remain in force for an initial period of three (3) years from the Effective Date. Thereafter, this Agreement may be extended by County for successive one (1) year periods by notifying Envision no later than thirty (30) days prior to the close of the initial period or any subsequent period.

6.2 **Termination.** This Agreement may be terminated as follows:

6.2.1 **For Cause.** By either party in the event the other party breaches any of its material obligations hereunder; provided, however, that the breaching party shall have ten (10) days to correct such breach after written notice is given.

6.2.2 **Insolvency.** By either party in the event the other party (i) is adjudicated insolvent or that makes an assignment for the benefit of creditors; (ii) files or has filed against it, or has an entry of an order for relief against it, in any voluntary or involuntary proceeding under any bankruptcy,

insolvency, reorganization or receivership law, or seeks relief as therein allowed, which filing or order shall not have been vacated within sixty (60) calendar days from the entry thereof; (iii) has a receiver appointed for all or a substantial portion of its property and such appointment shall not be discharged or vacated within sixty (60) calendar days of the date thereof; (iv) custody, attachment or sequestration by a court of competent jurisdiction is assumed of all or a significant portion of its property; or (v) ceases to do business or otherwise terminates its business operations, is declared insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement or similar proceeding.

6.2.3 **Termination for Convenience.** This Agreement may be terminated, without cause, after the first anniversary of the Effective Date by delivering to the other party written notice at least thirty (30) days prior to the effective date of termination.

6.3 **Effect of Termination.** Termination of this Agreement for any reason shall not release any party hereto from obligations incurred under this Agreement prior to the date of termination. Upon termination of this Agreement, County shall cease the distribution of Rx Cards by any means; however, Rx Cards distributed prior to termination shall continue to be effective. Envision reserves the right to suspend the ability of Rx Cards to be used after termination of this Agreement if County continues to distribute Rx Cards.

7. **Compensation.**

7.1 **Envision.** A portion of the Dispensing Fee shall be retained by Envision as compensation for Program Administration Services (Envision's "Administrative Fee"). No portion of the Dispensing Fee shall be paid to County.

8. **No Partnership / Compliance with Laws / Indemnity.** This Agreement does not create a partnership or joint venture between the parties hereto. Envision shall not be responsible for County's (and/or of its officer's, employee's, agent's and/or contractor's) acts, omissions, negligence, misconduct or misrepresentations. Additionally, County shall comply with all applicable laws and the policies of Envision (including, without limitation, complying with the terms of the use of the Rx Cards and the Program) in connection with the services to be performed by County and shall provide such services in accordance with the highest ethical and professional standards. County shall not hold Envision nor its members, shareholders, officers, affiliates or agents, responsible, nor shall County seek compensation for any claims, damages, losses and expenses (including reasonable attorneys' fees and costs for all investigations, preparations, discovery, negotiations, trials and appeals) that arise from (i) the provision by County or its designee of erroneous information; (ii) County's failure to comply with state or federal law in the operation of the Program; and/or (iii) any act, omission, or breach of a representation by County hereunder. Envision shall hold harmless County and its employees, officials, and agents from any claims, damages, losses and expenses (including reasonable attorneys' fees and costs for all investigations, preparations, discovery, negotiations, trials and appeals) that arise from (i) Envision's failure to comply with state or federal law in the operation of the Program; (ii) the dispensing of drugs by any pharmacy; and/or (iii) any act, omission, or breach of a representation by County hereunder.

9. **Program Operator.** County acknowledges and agrees that Envision is the owner/operator of the underlying discount drug card hereunder and reserves the right to suspend services at any time for good cause (e.g. breach by County of a term or condition of this Agreement, order of an applicable regulatory authority).

10. **Confidentiality.** Except as otherwise stated herein or to comply with the Public Records Act, County shall not disclose the business terms of this Agreement or any information of, or concerning Envision which has either been provided by Envision or obtained by County in connection with this

Agreement (including this Agreement and the terms of this Agreement) or related to the services rendered under this Agreement, including Protected Health Information under HIPAA, all of which information is deemed confidential information. All data, information, and knowledge supplied by Envision shall be used by County exclusively for the purposes of performing this Agreement. Upon termination of this Agreement, County shall return to the other party, all confidential information provided including, without limitation, all copies and electronic magnetic versions thereof.

11. **Injunctive Relief.** County acknowledges and agrees that in the event County (and/or its officers, employees, agents and/or contractors) distributes the Rx Cards in violation of the terms of this Agreement or otherwise violates the terms of this Agreement, then, notwithstanding the provisions of Sections 21 and 22 herein, Envision shall be entitled to seek a temporary or permanent injunction from any court of competent jurisdiction, enjoining and restraining County (and/or its officers, employees, agents and/or contractors) from distributing the Rx Cards and/or otherwise violating the terms of this Agreement, either directly or indirectly. Such right to seek an injunction shall be cumulative and in addition to any and all other remedies that may be possessed by Envision.

12. **Relationship with Contracted Pharmacies.** County acknowledges that Envision is neither an operator of pharmacies nor exercises control over the professional judgment used by any pharmacist when dispensing drugs to Participants. Nothing in this Agreement shall be construed to require a Participating Pharmacy to dispense any drug or supplies to anyone if, in the pharmacist's professional judgment, such drug or supplies should not be dispensed. County agrees that it shall hold harmless Envision from any claim arising from the dispensing of drugs by any pharmacy.

13. **Non-Compete.** During the term of this Agreement, County shall not offer discount drug cards from a competitor of Envision, unless otherwise agreed, in writing, at the commencement of this Agreement. This provision shall not be deemed to restrict or limit County to provide health plans to employees and retirees, or County to provide residents services through Medi-Cal.

14. **Legal Status.** Nothing in this Agreement shall be deemed to confer upon Envision (i) the status of fiduciary as defined in either the Employee Retirement Income Security Act of 1974, as amended ("ERISA") or the Americans with Disabilities Act, as amended ("ADA"); (ii) any liability for the terms or validity of the Program; or (iii) any liability for disclosing or reporting information regarding the Program or changes in the Program as may be required by law to be disclosed to any Participants.

15. **Regulation.** Envision shall provide Program services nationwide where permitted by law. If any law or regulation now existing or subsequently enacted restricts or prohibits the provision of some or all of these services, such service shall be discontinued in such jurisdiction. The discontinuance of a Program service under this Section shall not be deemed to be a breach of this Agreement. Should Envision receive information from a state regarding County and the services being provided, then Envision may ask County to cease providing services in that state if directed so by the regulatory body in that State and County shall comply.

16. **Notices.** All notices, given or required to be given under this Agreement, shall be made in writing and shall be sent by registered or certified mail, return receipt requested, by reputable overnight delivery service, or by hand delivery to the address of Envision set forth above, to the attention of Barry I. Katz, R.Ph, President and Eugene P. Samuels, JD, MBA, General Counsel, or to the address of County, to the attention of Kimberly A. Kerr, Assistant Chief Administrative Officer, or at such other address provided in writing by either party to the other party. The date of the mailing of such notice shall be deemed to be the date of such notice.

17. **Assignment / Binding Effect.** County may not assign this Agreement without the written consent of Envision. Envision may assign this Agreement without County's consent either to an affiliate or a purchaser of Envision or its assets. This Agreement shall be binding on successors and/or assigns of the parties.

18. **Modifications.** This Agreement may not be modified, amended or otherwise altered whatsoever, except by written instrument executed by the parties.

19. **Severability of Provisions.** Except as otherwise provided herein, if any provision of this Agreement is determined to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as to such jurisdiction only as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

20. **Controlling Law.** The laws of the State of California shall govern the construction and enforcement of this Agreement. Venue for disputes shall be El Dorado County, California.

21. **Mediation.** If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be conclusively resolved through negotiation within ten (10) days from the date the aggrieved party gives written notice to the other parties of the dispute, such disputing parties shall initially attempt to resolve the dispute by mediation, to be conducted by a certified mediator agreed upon by the disputing parties to be held in Tampa, Florida. The parties will share the expenses of the mediation equally.

22. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes any prior understanding or agreements of any kind preceding this Agreement with respect to the subject matter hereof, and no modification or revision hereof shall have any force or effect unless the same shall be in writing and executed by the parties hereto. Either party's failure at any time to insist upon strict performance of any condition, promise, agreement or undertaking set forth herein shall not constitute a waiver or relinquishment of the right to insist upon strict performance of the same condition, promise, agreement or undertaking at a future time.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

ENVISION:

COUNTY:

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: Chair, Board of Supervisors

Attest: _____

Corporate Secretary

**Requesting Contract Administrator
Concurrence:**

By: _____

Name: Kimberly A. Kerr

Title: Assistant Chief Administrative Officer

Department: Chief Administrative Office

Date: _____

Requesting Department Head Concurrence:

By: _____

Name: Terri Daly

Title: Chief Administrative Officer

Department: Chief Administrative Office

Date: _____