



To: _____ Proposed for Meeting Date of: _____

Staff Informational Sheet

Topic: _____

CIP Number: _____

Budget Amount: _____

Funding Source: _____

Subject matter:

Background (problem/explanation):

Staff Recommendation:

Submitted By: _____

Title: _____

Department: _____

Date: _____

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF LEBANON, LACLEDE COUNTY, MISSOURI, (HEREINAFTER REFERRED TO AS "CITY") AUTHORIZING THE MAYOR PRO TEM AND CITY CLERK TO ENTER INTO AND EXECUTE A SHARX SERVICE AGREEMENT AND A BUSINESS ASSOCIATE AGREEMENT BETWEEN THE CITY AND SHARX LLC AND ANY OTHER DOCUMENTS NEEDED TO ENROLL IN THE SHARX RX PROGRAM.

WHEREAS, that Sharx is a non-insurance solution that provides dedicated advocates to help procure high cost maintenance, specialty medication, infusion therapies, and drugs that treat orphan conditions often directly from the manufacturers or mail order pharmacy partners; *and*

WHEREAS, that in an effort to help control rising costs of prescriptions, City Staff requests to enter into both a SHARx Services Agreement and a Business Associate Agreement with SHARx RX LLC; *and*

WHEARAS, that the initial enrollment fee is Thirty-Seven Thousand Eight Hundred Dollars (\$37,800.00) and the estimated annual savings using this program is in excess of Four Hundred Thousand Dollars (\$400,000.00); *and*

WHEAREAS, that each Agreement with SHARx RX LLC shall be for a term of one year ending June 30, 2023.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEBANON, LACLEDE COUNTY, MISSOURI, AS FOLLOWS:

SECTION 1: That the City Council of the City of Lebanon, Laclede County, Missouri, (hereinafter referred to as "City") hereby authorizes the Mayor Pro Tem and City Clerk to enter into and execute a SHARx Services Agreement and a Business Associate Agreement with SHARx RX LLC commencing July 1, 2022, and expiring June 30, 2023 and any other documents needed to enroll in the SHARx RX Program; the Business Associate Agreement is noted as an exhibit under the SHARx Services Agreement. Said Agreements are hereby attached and incorporated herewithin as marked "*Exhibit A.*"

SECTION 2: That the City Council hereby authorizes and directs the Finance Director to take administrative action to expend funds from Benefits Fund 70 for enrollment into the SHARx RX Program in the amount of Thirty-Seven Thousand Eight Hundred Dollars (\$37,800.00).

SECTION 3: That said Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved by the City Council of the City of Lebanon, Laclede County, Missouri, on this 13th day of June 2022.

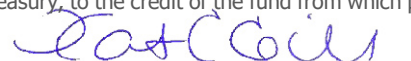
(Seal)
Attest:

Mayor Pro Tem Sheila Mitchell

City Clerk Laina Starnes

1st Reading: _____
2nd Reading: _____

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.



Kat Gill, Director of Finance

SHARx SERVICES AGREEMENT

This SHARx Services Agreement (this "Agreement"), entered into as 07/01/22, the "Effective Date", is by and between SHARx, LLC ("SHARx"), and City of Lebanon ("Client"), with an address of 401 S Jefferson, Lebanon, MO 65536, as the plan sponsor and/or administrator of a group health plan (the "Plan").

RECITALS

A. Client provides certain group health benefits, including without limitation prescription drug benefits, for certain current and former employees ("Eligible Employees") and their dependents who are enrolled in the Plan (collectively with Eligible Employees, "Eligible Participants").

B. SHARx offers, and Client desires to implement, a prescription advocacy savings program to provide Eligible Employees who elect to participate with alternative sourcing for medications (the "SHARx Program").

ARTICLE I. SERVICES AND TERM

1.1 Provision of Services. Subject to the terms and conditions of this Agreement, SHARx shall provide to Client, and Client shall purchase from SHARx, the services (collectively, the "Services") more particularly described in Article II of this Agreement, according to the program level selected by Client in the Scope of Work signed in connection with, and hereby incorporated into and made a part of this Agreement (the "Scope of Work").

1.2 Term. The term of this Agreement shall begin on the Effective Date and continue for twelve (12) months thereafter (the "Initial Term"), unless earlier terminated pursuant to Article VI. This Agreement shall automatically renew thereafter on a year-to-year basis (each a "Renewal Term" and collectively with the Initial Term, the "Term") upon the same terms and conditions except that the Fees (as defined in Section 4.1) are subject to change.

1.3 Scope of Undertaking. SHARx provides only the Services expressly set forth in this Agreement and the Scope of Work and does not assume any financial risk or obligation with respect to claims for benefits payable by Client under the Plan or any stop-loss policy. Nothing herein shall be deemed to constitute SHARx as a party to the Plan or to confer upon SHARx any authority or control respecting management of the Plan, authority or responsibility in connection with administration of the Plan, or responsibility for the terms or validity of the Plan. Client has the sole and final authority to control and manage operation of Client's Plan. SHARx is and shall remain an independent contractor with respect to the Services being performed hereunder and shall not for any purpose be deemed an employee of Client. SHARx and Client shall not be deemed partners, engaged in a joint venture or governed by any legal relationship other than that of independent contractors. SHARx shall not in any way be deemed to be an insurer, stop-loss carrier, underwriter, or guarantor with respect to any benefits payable under the SHARx Program, Plan or any stop-loss policy.

ARTICLE II. SHARx OBLIGATIONS

2.1 SHARx Obligations. SHARx shall provide the following Services to Client:

(a) SHARx will consult with Client to develop and implement the SHARx Program for its Eligible Participants, including without limitation, identifying the high cost and specialty medications required by Eligible Participants ("Target Medications"). Target Medications will be sourced by SHARx only when the savings exceed the Plan's previous cost of the Target Medication, and the Target Medications are otherwise excluded from coverage by the Plan due to cost or other factors ("Excluded"). Client acknowledges and agrees that SHARx partners with certain pharmacy benefits managers ("PPBMs") for Target Medications and that SHARx recommends that Client utilize one of its PPBMs. If Client elects to use a pharmacy benefits manager for the SHARx Program other than a PPBM ("Non-Approved PBM" and collectively with PPBM, a "PBM"), SHARx will provide the Services on a stand-alone, non-integrated basis and will have no responsibility for the Non-Approved PBM's processes, formulary or customer service. If SHARx is unable to source Target Medications without cost, the cost of Target Medications sourced through SHARx will be billed to the Client or the appropriate Eligible Employee, at the election of the Client, without mark-up.

(b) SHARx will work collaboratively with Client's human resources department, benefits consultants, insurance companies, the PBM and other Client resources (collectively, "Client Representatives") to design and implement the SHARx Program.

(c) SHARx will provide Client with introductory and ongoing educational and promotional programs and materials for the SHARx Program for Client to distribute or make available to Eligible Participants. After Client makes such materials available and introduces the SHARx Program to its Eligible Participants, SHARx will contact and offer enrollment to Eligible Participants and will enroll Eligible Participants who elect to participate in the SHARx Program (“Enrollees”). The parties acknowledge and agree that Eligible Participants are not required to enroll in the SHARx Program and will do so on a voluntary basis.

(d) SHARx will work with drug manufacturers, available patient assistance programs, funds, foundations, discount programs and international medication sources, as applicable, to source Target Medications.

(e) SHARx will provide an online registration and tracking portal for fulfillment of Target Medications.

(f) SHARx will provide Client with the following administrative Services in connection with the SHARx Program:

- (i) Tracking and reporting to Client on Enrollees, including Enrollee satisfaction with the SHARx Program.
- (ii) Monitoring and tracking Target Medication orders, fulfillment, and claims.
- (iii) Quarterly prescription savings analysis.
- (iv) Providing introductory and ongoing educational materials for Client and Client Representatives.
- (v) Maintaining books and records of all transactions subject to this Agreement and between Client and Enrollees in accordance with standards of record keeping customary in the health and welfare benefits administration industry.
- (vi) Maintaining compliance with all relevant statutes and regulations to carry out its obligations under this Agreement.

2.2 Reliance on Instructions and Plan Documents. SHARx may rely upon any written instructions or information relating to SHARx’s performance of Services provided to SHARx by Client or Client Representatives, and reasonably believed by SHARx to be genuine and authorized by Client. SHARx may rely on, and is under no obligation to investigate the accuracy or completeness of the information in, the Plan documents and insurance policies (including, if applicable, any stop-loss policies) provided to SHARx by Client or Client Representatives. SHARx shall incur no liability resulting from SHARx’s reasonable reliance on such instructions or information.

2.3 Standard of Care. SHARx shall use reasonable care and due diligence in the exercise of its powers under the performance of its duties under this Agreement.

2.4 Non-Discretionary Duties. SHARx and Client agree that the duties to be performed by SHARx hereunder are non-discretionary duties.

2.5 Limits on Services. Client acknowledges and agrees that not all Target Medications can be sourced through, and that SHARx does not and cannot control the cost of Target Medications that are sourced through, the SHARx Program. Certain Target Medications may be available to Enrollees at no cost, but other Target Medications will require Client or, if elected by Client, Enrollees to pay a portion of the cost of such Target Medications. SHARx DOES NOT GUARANTEE THAT TARGET MEDICATIONS WILL BE AVAILABLE AT NO COST OR A REDUCED COST TO ENROLLEES, CLIENT OR THE PLAN, AND SHARx HEREBY DISCLAIMS ANY WARRANTIES REGARDING THE FINANCIAL BENEFITS OF THE SHARx PROGRAM FOR OR ANY COST SAVINGS TO ENROLLEES, CLIENT OR THE PLAN. SHARx’s only guaranty hereunder, if applicable, is the ROI Guaranty.

2.6 Subcontractors. Client agrees that SHARx may subcontract with other qualified entities for various purposes, as determined by SHARx in its reasonable discretion, for the provision of the Services. SHARx will be responsible for the performance of subcontractors hereunder.

ARTICLE III. CLIENT OBLIGATIONS

3.1 Client Obligations. To enable SHARx to perform its obligations under this Agreement, Client agrees

to the following:

(a) Information to SHARx. Client shall furnish to SHARx all information necessary for SHARx to perform its functions hereunder as reasonably determined by SHARx, including information concerning the Plan and the eligibility of individuals to participate in and receive Plan benefits. SHARx shall have no responsibility with regard to benefits paid in error due to Client's failure to timely update any information required to be furnished pursuant to this Section.

(b) Banking Arrangements.

(i) Client shall provide sufficient funds to cover all of its obligations under the SHARx Program and the Plan, and SHARx has no duty or obligation, legal or otherwise, to make payments or provide Services under this Agreement should Client fail to provide such funding. At an interval to be mutually agreed upon, SHARx shall notify Client of the amount needed to pay approved payments, and Client shall authorize payment from its designated bank account for such payments ("Payment Account") OR transfer funds via electronic funds transfer ("EFT") to SHARx within 5 days of receipt of invoice. Client shall enter into such agreements and provide instructions to its bank, if applicable, in order to grant SHARx viewing access to Client's Payment Account and to facilitate payments under this Agreement through a Payment Facilitator (as hereinafter defined).

(ii) In order for SHARx to pull funds from Client, Client acknowledges and agrees that as of the Effective Date, SHARx utilizes Bill.com, Inc. to facilitate payments under the SHARx Program. Client will authorize Bill.com, Inc. or another payment portal or facilitator designated by SHARx ("Payment Facilitator"), to initiate entries to the Payment Account on behalf of SHARx, or to enable SHARx to initiate such entries directly to such Payment Account, in order to pay amounts that Client owes to SHARx under this Agreement and to initiate adjustments for any transactions credited to or debited from such Payment Account in error.

(c) Plan Responsibilities. Client has the sole authority and responsibility for the Plan and its operation, including the authority and responsibility for administering, construing, and interpreting the provisions of the Plan and making all determinations thereunder. The Client gives SHARx the authority to act on behalf of Client, but only as expressly stated in this Agreement or as mutually agreed upon in writing between Client and SHARx. All final determinations as to an Enrollee's entitlement to Plan benefits are to be made by Client, including any determination upon appeal of a denied claim for Plan benefits. The Client is considered the plan administrator and named fiduciary of the Plan benefits for purposes of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended. Client shall operate the SHARx Program in compliance with and as required by applicable federal, state, and local statutes and regulations.

3.2 No Solicitation. Client acknowledges and agrees that SHARx has invested and will continue to invest substantial time and money in its development of its employees and its relationship with its PPBM service partners. Client agrees that during the Term of this Agreement and for a period of one (1) year thereafter, Client will not, directly or indirectly, whether by Client's own action or by assisting others, either individually or as a stockholder, director, officer, consultant, independent contractor, employee, agent, member, or otherwise of or through any entity, joint venture or person, or in any other capacity: (a) employ or offer to employ in any capacity, solicit or attempt to solicit, divert or entice away, or otherwise interfere with the employment of, any employee of SHARx who has provided Services to Client under this Agreement, or (b) solicit or attempt to solicit, or otherwise interfere with the business relationship between SHARx and its PPBMs. Client further agrees that: (1) it would be difficult to measure precisely the damages to SHARx from any breach by Client of this Section 3.2; (2) injury to SHARx from any such breach would be incalculable and irremediable; and (3) money damages would therefore be an inadequate remedy for any such breach. Accordingly, in addition to any other remedy SHARx may have at law or in equity, SHARx shall have the right, without posting a bond or other security, to seek injunctive relief or enforcement of this Section by specific performance.

ARTICLE IV. FEES; PAYMENTS

4.1 SHARx Program Fees. Client shall pay SHARx the monthly fees ("Fees") for Services rendered hereunder in accordance with the SHARx Program selected by Client in the Scope of Work. The Fees for the Initial Term are set forth on Schedule 1 attached hereto for each SHARx Program level. As of the Effective Date, the available SHARx Programs include:

(a) Classic Program. In the Classic Program, Client has the option to define and include high cost maintenance medications, specialty medicines and medications through medical (injections and infusions) ("MTM"). The Fees for the Classic Program are charged on a per Eligible Employee per month ("PEPM") basis. Eligible Employee count will be established as of the Effective Date and updated on the first day of each month thereafter during the Term.

(b) Limited Program. In the Limited Program, Client has the option to define and include specialty medicines and MTM. The Fees for the Limited Program are charged on a PEPM basis. Eligible Employee count will be established as of the Effective Date and updated on the first day of each month thereafter during the Term.

(c) Borders Program. In the Borders Program, Client selects and pays the cost of selected Target Medications available through international mail order through the SHARx Program ("Medication Cost"), plus a Fee calculated as a percentage of the Medication Cost. Client will order the selected Target Medication from SHARx, and, unless Client has elected to have the Enrollee pay for the cost thereof, SHARx will pay the international supplier for the Target Medication and Client will reimburse SHARx for the Medication Cost, plus the Fee, monthly in arrears. If Client has elected to have the Enrollee pay the Medication Cost, Enrollee will pay the Medication Cost by credit card provided by the Enrollee at the time the order is placed, and Client will pay the Fee monthly in arrears.

(d) Borders Program with Conversion to Classic Program. In the Borders Program with Conversion to Classic Program ("Borders/Conversion Program"), Client enrolls in the SHARx Program proactively before it has Enrollees who are in need of Target Medications. Client is required to use a PPBM in order to participate in the Borders/Conversion Program. There are no PEPM Fees for the Borders/Conversion Program. When SHARx orders a Target Medication, the Medication Cost and the Fees will be the same as those in the Borders Program. When SHARx has determined that sourcing the Target Medications through the Classic program is lower cost for Client, SHARx will notify Client of the same and the Client will convert to the Classic Program. The PEPM fee for the Classic program will become due as of the first of the following month.

Client will select the applicable SHARx Program by completing and signing the Scope of Work.

4.2 Payment of Fees and Expenses.

(a) (i) Classic Program and Limited Program. Client shall pay SHARx the Fees for the Classic Program and the Limited Program in twelve (12) monthly installments beginning on the Effective Date and on the first day of each month thereafter during the Term. Invoices for the Classic Program and the Limited Program Fees will be sent on the schedule set forth in the Scope of Work and are due in advance on the first day of the month in which the Services will be rendered. For example, the invoice for Fees due on April 1st for the month of April, will be on March 15th. The invoice will include the Eligible Employee count and the PEPM fee due.

(ii) Borders Program and Borders/Conversion Program. Client shall pay SHARx the Fees for the Borders Program and Borders/Conversion Program in bi-monthly installments in arrears beginning on the first day of the month immediately succeeding the Effective Date. Invoices for the Fees for the Borders Program and Borders/Conversion Program will be sent on the schedule set forth in the Scope of Work and will be due on the same dates on which invoices for the Medication Costs are sent and due. Each such invoice will include the Target Medication name, the Medication Cost, the total shipping cost, and the Fee due.

(iii) Medication Costs. For any Program, unless Client has elected to have the Enrollee pay directly for the Target Medication (in which case the Medication Cost is charged to the Enrollee's credit card at the time the order is placed) Client shall pay SHARx for the Medication Costs in two rounds of invoices each month on the schedule set forth in the Scope of Work. The invoices will be due as set forth in the Scope of Work. Each such invoice will include the Target Medication name, the Medication Cost, the total shipping cost, and the Fee due. These invoices will list the medication name, Rx cost, and a total shipping cost for all prescriptions ordered.

(b) Client shall pay SHARx the Fees for the Classic Program and the Limited Program in twelve (12) monthly installments beginning on the Effective Date and on the first day of each month thereafter during the Term. If the Effective Date is other than the first day of a month, the Fees for the first and last months of the Term shall be prorated for the number of days during which Client received Services hereunder. On the first day of each month during the Term and on the first day of the month following the end of the Term, Client shall pay SHARx for any Medication Costs incurred in the preceding month and, for the Borders Program and Borders/Conversion Program, if applicable, the Fees due for the immediately preceding month in arrears. SHARx shall invoice Client on or before the twenty-fifth (25th) day of each month for Fees and Medication Costs due. Client shall make payment or authorize SHARx to draft payments no later than five (5) days after the invoice date.

(c) Client agrees to pay or allow SHARx to draft payment of the invoiced amount in full and any subsequent adjustments shall be reflected in the next billing cycle.

(d) Should Client fail to make payment or authorize SHARx to draft payment within the time periods specified herein, SHARx may suspend all Services hereunder until all past due amounts are received by SHARx. Notwithstanding any other remedies provided herein, any amount due hereunder that is not timely paid shall thereafter bear interest until paid at a rate of interest equal to the prime rate per annum set forth in the money rates section of *The New York Times*, plus three percent (3%) per annum, or the maximum rate permitted by law, whichever is less (the "Default Rate"). If Client elects to have the Plan, its third party administrator or another third party (each, a "Third Party") handle payments under this Agreement on its behalf, Client acknowledges and agrees that it will remain responsible to SHARx for late payments hereunder by any such Third Party.

(e) Client acknowledges and agrees that the Fees due under the Classic Program and the Limited Program are deemed earned and due to SHARx for the 12-month Term as of the first day of each 12-month Term. If the Client has an average annual number of Eligible Employees that is 100 or less during any 12-month Term of this Agreement and this Agreement is terminated prior to the end of the initial 12-month Term for any reason other than SHARx's uncured default, the balance of the Fees for the remainder of the initial 12-month Term (the "Balance Due") automatically will be due and payable in full. For purposes of calculating the Balance Due, it will be assumed that the Eligible Employee count for the remainder of the 12-month Term will be the same as such count in the month during which the termination occurred. Notwithstanding the foregoing, however, if the average annual number of Eligible Employees of Client is more than 100 during any 12-month Term of this Agreement, the Client will have the right to terminate and SHARx will waive payment of the Balance Due. SHARx acknowledges and agrees that in the event Client exercises its right to terminate this Agreement as described in this Section 4.2(d) and the average annual number of Eligible Employees of Client is more than 100 during any 12-month Term of this Agreement, Client will be entitled to the waiver of the Balance Due described in the preceding sentence.

4.3 Fee Adjustments. The SHARx Program Fees, whether on a PEPM basis or calculated as a percentage of the Medication Cost, will not change during the Initial Term of this Agreement. For clarity, if the number of Eligible Employees increases or if the Medication Cost increases, the price PEPM or the percentage of Medication Cost, as applicable, will not change but the total Fees will be increased because the number of Eligible Employees or the Medication Cost has increased. Thereafter, SHARx may increase the Fees effective as of the first day of each Renewal Term by providing to Client written notice of such increase at least sixty (60) days prior to the end of the then current Term of this Agreement. Any Fee increase will be effective as of the first day of the Renewal Term. If Client does not agree to a Fee increase, Client must notify SHARx of such disagreement in writing prior to the last day of the then current Term to allow the parties to negotiate mutually acceptable Fees. If the parties are unable to agree on a Fee prior to the last day of the then current Term, this Agreement will terminate on the last day of the then current Term.

4.4 ROI Guaranty.

(a) On the conditions set forth in this Section 4.4, if the average annual number of Eligible Employees of Client is more than 100 during any 12-month Term of this Agreement, and if Client has elected the Classic Program or the Limited Program for the entire 12-month Term, then SHARx guarantees that the Savings (as hereinafter defined) to Client for Target Medications shall be at least equal to the Fees (excluding any Medication Costs and expenses paid or reimbursed by Client) paid to SHARx minus compensation paid to any distribution partner for such Term. If such Fees paid are more than the Savings to Client and Client elects to terminate or not renew this Agreement, SHARx shall refund to Client within ninety (90) days after the expiration or termination of this Agreement, the amount by which the Fees exceed Client's Savings (the "ROI Guaranty"). For example, if

Client's Savings on Target Medications are \$100,000 and Client pays \$120,000 in Fees, then SHARx will refund to Client \$20,000 of the Fees paid as aforesaid. The ROI Guaranty is applicable only if Client has elected to include all applicable Target Medications under the Classic Program or the Limited Program, and all such Target Medications are Excluded from Plan coverage.

(b) As used herein, "Savings" means the difference between the cost of the Target Medication (whether \$0.00 or a reduced rate) paid by Client (or reimbursed by Client or the Plan to an Enrollee) for the Target Medication under the SHARx Program (the "SHARx Cost") and the Standard Client Cost (as hereinafter defined) for the Target Medication. "Standard Client Cost" means (i) the cost actually paid or reimbursed by Client or the Plan for the Target Medication prior to participation in the SHARx Program, or (ii) the cost that the Client or the Plan would pay or reimburse for the Target Medication in the absence of the SHARx Program, or (iii) if neither (a) nor (ii) are applicable, the cost of the Target Medication as published by a third party website such as www.WellRx.com. For clarity, amounts paid by SHARx to third parties for the Target Medications are not counted in SHARx Cost, and loss of rebates by the Client or Plan are not counted in the Standard Client Cost.

ARTICLE V. CONFIDENTIALITY; OWNERSHIP AND USE OF DATA

5.1 Confidentiality.

(a) As used in this Agreement, "Confidential Information" means all non-public data and information, in any form, that is disclosed by a party or its affiliates (a "Disclosing Party") under the terms and for purposes of this Agreement, except for information that a party receiving such information (a "Receiving Party") can demonstrate: (a) became generally available to the public other than as a result of a disclosure by the Receiving Party or its Representatives (as hereinafter defined) in violation of this Agreement; (ii) was independently developed or conceived by the Receiving Party without use of Confidential Information; (iii) became available to the Receiving Party by a third party who had the right to make the disclosure; or (iv) was known to the Receiving Party without an obligation of confidentiality prior to disclosure by the Disclosing Party.

(b) The Receiving Party shall not, and shall cause its affiliates and each of its and its affiliates' officers, directors, employees, agents, advisors, contractors (including any subcontractors) and representatives (collectively, "Representatives") not to disclose to any other person or use, except for purposes of this Agreement (and only in accordance with applicable law), any information that is the Disclosing Party's Confidential Information; provided, however, that the Receiving Party may disclose Confidential Information disclosed to it: (a) to its Representatives who, in the reasonable judgment of the Receiving Party, need to know such Confidential Information in connection with this Agreement; (ii) upon the order of any court or administrative agency; (iii) upon the request or demand of any regulatory agency or authority having jurisdiction over the Disclosing Party and its Representatives; or (iv) to the extent compelled by legal process or required or requested pursuant to subpoena, interrogatories or other discovery requests; provided, that in the case of clauses (ii), (iii) or (iv), the Receiving Party shall notify the Disclosing Party of the proposed disclosure as far in advance of such disclosure as practicable and use reasonable efforts to ensure that any Confidential Information so disclosed is accorded confidential treatment satisfactory to the Disclosing Party, when and if available.

(c) The Receiving Party shall, and shall cause its Representatives to, protect Confidential Information disclosed to it using the same degree of care, but not less than a reasonable degree of care, to prevent the unauthorized disclosure of such Confidential Information, as such Receiving Party uses to protect its own confidential information of a like nature.

(d) The Receiving Party and its Representatives shall not reproduce, disclose or disseminate the Confidential Information of the Disclosing Party to third parties without the prior written consent of the Disclosing Party. Upon termination of this Agreement for any reason, the Receiving Party shall return all Confidential Information of the Disclosing Party, including any copies thereof, to the Disclosing Party upon the Disclosing Party's written request. Notwithstanding the communication and dissemination of Confidential Information necessary to provide the Services required by this Agreement, all records and other information pertaining to the SHARx Program shall be treated as the Confidential Information of Client.

(e) Both parties agree to comply with terms and conditions of the Business Associate Agreement set forth in Exhibit A attached hereto and incorporated herein by reference (the "Business Associate Agreement").

5.2 Ownership and Use of Data.

(a) SHARx agrees that all books, records, lists of names, journals, ledgers and other recorded information developed specifically in connection with the Services shall always be and remain the property of Client. Client shall be entitled to reasonable access to said records for purposes of fulfilling its obligations to Enrollees. Upon termination of this Agreement, SHARx may deliver said records and SHARx Program information, in original form or on electronic media, as reasonably determined by Client and SHARx, to Client or its designated agent. Any paper records will be shipped at cost to Client. Any special turnover reports at time of termination will be provided at an additional cost to Client. SHARx shall maintain copies of any records required by law following termination of this Agreement. (This provision shall not apply to such records that have been destroyed in the ordinary course of business or must be maintained by SHARx as required by applicable laws.)

(b) Client agrees that SHARx is the sole owner of the following materials and that Client has no right to use them following termination of this Agreement, it being agreed that such materials were not prepared at the expense of or for Client: (i) educational and promotional programs and materials relating to the SHARx Programs; (ii) SHARx's online portal and tracking system; and (iii) any other documents, equipment and materials provided by SHARx to Client in connection with the provision of the Services.

ARTICLE VI. TERMINATION

6.1 Termination for Cause. If either party materially defaults in the performance of any of its obligations under this Agreement (except for a default in payments to SHARx), which default shall not be substantially cured within thirty (30) days after written notice is given to the defaulting party specifying the default, then the party not in default may, by giving notice to the defaulting party, terminate this Agreement as of a date specified in such notice of termination. Notwithstanding the foregoing, with respect to material defaults (except for a default in payments to SHARx) that cannot reasonably be cured within thirty (30) days, it shall not be a default under this Section if the defaulting party in good faith proceeds within thirty (30) days to commence curing said default and thereafter prosecutes with due diligence the curing of such default to conclusion.

6.2 Termination or Suspension for Nonpayment. In addition to any other remedies provided for in this Agreement, should Client (i) default in the payment when due of any amount due to SHARx or (ii) fail to provide sufficient funds to cover all of its obligations under this Agreement, SHARx shall have the right upon written notice to Client, to suspend all Services provided under this Agreement; provided, however, at no time shall SHARx limit or restrict Client's access to any SHARx Program information. Should Client fail to cure such payment or funding default within ten (10) business days after receipt of such notice of default (the "Cure Period"), SHARx may, in its sole discretion, continue to suspend Services or terminate this Agreement immediately and without additional notice upon expiration of the Cure Period.

6.3 Termination for Insolvency. If either party is declared insolvent or bankrupt in a legal proceeding, is the subject of any proceedings related to its liquidation, insolvency or for the appointment of a receiver, conservator or similar officer for it, makes an assignment for the benefit of all or substantially all of its creditors, or enters into an agreement for the composition, extension or readjustment of all or substantially all of its obligations, then all payment obligations under this Agreement shall be deemed to be administrative expenses of the bankrupt party. The liquidator, trustee, receiver, conservator, new owner, manager or other agent or representative shall have sixty (60) days to notify the other party that it is terminating this Agreement as of a date within such sixty (60) day period. If the other party is not so notified, this Agreement shall not be terminated, but shall continue on all of the terms and conditions stated in this Agreement, including without limitation, the payment terms specified in Article IV.

6.4 Termination without Cause. Notwithstanding anything to the contrary herein, this Agreement may be terminated by Client or by SHARx at any time, with or without cause, upon delivery of advance written notice to the other party, and neither party shall have any further obligation to the other, except for (i) payment of the Balance Due under Section 4.2(d) by Client if its average annual number of Eligible Employees of Client is 100 or less during the 12-month Term of this Agreement, and (ii) performance of the termination obligations as set forth in Section 6.6.

6.5 Termination of Plan. Notwithstanding anything to the contrary, Client may terminate this Agreement at any time if Client decides in its sole discretion to cease offering group health benefits to its Eligible Employees

or in the event the Plan is terminated for any reason, and neither party shall have any further obligation to the other, except as set forth in Section 6.6.

6.6 Termination Obligations.

(a) Upon the expiration or termination of this Agreement for any reason, SHARx shall have no further obligation to provide any Services.

(b) Upon the expiration or termination of this Agreement for any reason other than SHARx's uncured default, Client shall pay to SHARx all payments due to SHARx for: (i) Services rendered through the date of expiration or termination of this Agreement, (ii) the Balance Due (if Client has elected the Classic Program or the Limited Program and its average annual number of Eligible Employees is 100 or less, as set forth in Section 4.2(d)), and (iii) for Medication Costs or other expenses due to SHARx. Upon the expiration or termination of this Agreement for SHARx's uncured default, Client shall pay SHARx for Fees, Medication Costs and other expenses due to SHARx as of and through the date of expiration or termination. SHARx will invoice Client for the amounts due under this Section 6.6(b) within 30 days of the date of expiration or termination.

(c) Upon the expiration or termination of this Agreement for any reason, the parties shall return the Confidential Information of the other party in accordance with Section 5.1(d).

6.7 Survival. The following Sections of this Agreement, and any other Sections which, by their terms should survive the expiration or termination of this Agreement, shall survive the expiration or termination of this Agreement: Section 3.1(b) (Banking Arrangements) to the extent payments due to SHARx are still outstanding; Section 3.2 (No Solicitation); Section 4.2 (Payment of Fees and Expenses); Article V (Confidentiality; Ownership and Use of Data); Section 6.6 (Termination Obligations); Article VII (Indemnities; Limitation of Liability); and Article VIII (Miscellaneous).

ARTICLE VII. INDEMNITIES; LIMITATION OF LIABILITY

7.1 Indemnity.

(a) In performing its obligations under this Agreement, SHARx neither insures nor underwrites the liability of Client's Plan. SHARx shall have no duty or obligation to defend against any legal action or proceeding brought to recover a claim for Plan benefits or any causes of actions for expenses or liabilities incident to the Plan. Except as otherwise explicitly provided in this Agreement, Client shall retain the responsibility for all Plan benefit claims and all expenses and liabilities incidental to the Plan. Client agrees to defend, indemnify and hold harmless SHARx, its affiliates, and its and its affiliates directors, officers, agents and employees from and against any and all amounts, claims, suits, judgments, damages, losses and expenses and expenses, including reasonable legal fees and costs (collectively, "Losses"), to the extent arising out of Clients' (i) gross negligence, willful misconduct or fraud; (ii) failure to observe the terms of the Plan; (iii) breach of fiduciary duty (except for those items listed in Section 7.1(b)(iii) below); and (iv) material breach of this Agreement, provided in each case that such Losses did not arise in whole or in part out of SHARx's (A) failure to provide information or accurate information to Client, (B) failure to observe the terms of this Agreement, or (C) failure to cooperate with Client. Before indemnifying SHARx, Client shall have the opportunity to recover, or attempt to recover, any such Loss from the payee (where applicable) and shall be given a reasonable period of time in which to do so. SHARx shall notify Client, in writing, promptly upon incurring (or discovering or believing that it has incurred) any such Loss, such notification containing sufficient detail to enable Client to attempt to recover such Loss in a timely fashion. The parties shall reasonably consult regarding the circumstances of the Loss and shall cooperate in an attempt to recover it, if possible.

(b) SHARx agrees to defend, indemnify and hold harmless Client, its trustees, directors, officers, agents and employees from and against any and all Losses to the extent arising out of SHARx's (i) gross negligence, willful misconduct or fraud; (ii) material breach of this Agreement, and (iii) receipt or payment of financial incentives if such receipt or payment is alleged or found to be a prohibited transaction, provided in each case that such Losses did not arise in whole or in part out of Client's (A) failure to provide information or accurate information to SHARx, (B) failure to observe the terms of this Agreement, or (C) failure to cooperate with SHARx. Before indemnifying Client, SHARx shall have the opportunity to recover, or attempt to recover, any such Loss from the payee (where applicable) and shall be given a reasonable period of time in which to do so. Client shall notify SHARx, in writing, promptly upon incurring (or discovering or believing that it has incurred) any such Loss, such notification containing sufficient detail to enable SHARx to attempt to recover such Loss in a timely fashion. The parties shall

reasonably consult regarding the circumstances of the Loss and shall cooperate in an attempt to recover it, if possible.

7.2 Limitation of Liability. The duties of each party to this Agreement are limited to those specifically set forth in this Agreement. Neither party shall be liable to the other party for any special, indirect, incidental, exemplary, or consequential damages, including without limitation lost profits, business interruption, loss of use, or loss of information, regardless of whether such party was advised of the possibility of any of the foregoing.

ARTICLE VIII. MISCELLANEOUS

8.1 Binding Nature and Assignment. This Agreement shall be binding on the parties and their respective successors and assigns. Notwithstanding subcontracting arrangements disclosed in this Agreement by SHARx, neither party, whether by operation of law or otherwise, may assign its rights or delegate its rights or delegate its material obligations under this Agreement without the prior written consent of the other party.

8.2 Entire Agreement. This Agreement, including any Exhibits attached to this Agreement, each of which is incorporated herein for all purposes, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement as of the date hereof and supersedes any prior agreements or arrangements between SHARx and Client regarding the subject matter of this Agreement. This Agreement may be amended, modified or changed only by a written instrument executed by both SHARx and Client.

8.3 Trademarks and Related Provisions. The trademarks, service marks, trade names, and logos of SHARx and its affiliates are the property of SHARx and its affiliates, and Client has no right to use such marks, names, or logos unless authorized in writing by SHARx. The trademarks, service marks, trade names, and logos of Client and its affiliates are the property of Client and its affiliates, and SHARx has no right to use such marks, names, or logos unless authorized in writing by Client. Neither party shall use another party's copyrights, symbols, trademarks, or service marks in advertising or promotional materials or otherwise without the prior written consent of such other party. During the Term of this Agreement, Client hereby provides written authorization for SHARx to use its logo in connection with services and communications provided to Client and Eligible Participants with respect to the SHARx Program.

8.4 Severability. If any provision of this Agreement is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is illegal, unenforceable or void, it being the intent and agreement of the parties that this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it legal and enforceable while preserving its intent or, if that is not possible, by substituting therefore another provision that is legal and enforceable and achieves the same objective. In addition, if such illegal, unenforceable or void provision does not relate to the payments to be made to SHARx, and if the remainder of this Agreement shall not be affected by such declaration or finding and is capable of substantial performance, then each provision not so affected shall be enforced to the maximum extent permitted by law.

8.5 Waiver. No delay or omission by either party to exercise any right or power under this Agreement shall impair such right or power or be construed to be a waiver thereof. A waiver by either party of any of the covenants to be performed by the other or any breach shall not be construed to be a waiver of any succeeding breach or of any other covenant. All remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity or otherwise.

8.6 Force Majeure. Each party shall be excused from performance under this Agreement (except with respect to the payment of monies) for any period and to the extent that it is prevented from performing any action, in whole or in part, as a result of delays beyond its reasonable control caused by the other party or by an act of God, war, civil disturbance, court order, labor dispute, third party nonperformance, or other cause beyond its reasonable control, including without limitation, failures or fluctuations in electrical power, heat, light, air conditioning or telecommunications equipment. Such nonperformance shall not be a default or a ground for termination of this Agreement. Each party shall endeavor to promptly remedy the cause of any such nonperformance.

8.7 Notices. Wherever under this Agreement either party is required or permitted to give notices to the other, such notice shall be deemed given when in writing and when delivered personally in hand, by nationally recognized independent courier service, or by certified mail, postage prepaid, to the other party at the address set forth below:

Address for SHARx: SHARx, LLC 600 Mason Ridge Center Drive FL2 St. Louis, MO 63141 Attention: Legal	Address for Client: City of Lebanon 401 S Jefferson P.O. Box 111 Lebanon, MO 65536
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Either party may from time to time change its address for notification purposes by giving the other prior notice of the new address and the date upon which such new address shall become effective, which will be not less than five (5) days after the date such notice is delivered to the other party.

8.8 Choice of Law; Venue. The laws of the State of Missouri (without regard to choice of law principles that might apply the law of another jurisdiction) shall govern the validity of this Agreement, the construction of its terms, and the interpretation and enforcement of the rights and duties of the parties, and venue for any action relating to this Agreement is exclusively in the state and federal courts of St. Louis County, Missouri.

8.9 Beneficiaries. This Agreement is solely for the benefit of the parties and their successors and permitted assigns and does not confer any rights or remedies on any other person or entity.

8.10 Counterparts; Electronic Signature. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one original agreement. Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Effective Date.

SHARx, LLC

CLIENT:

By: _____

By: City of Lebanon

Name: Paul Pruitt

Name: Sheila Mitchell

Its: Chief Executive Officer

Its: Mayor Pro Tem

Date: _____

Date: _____

Attest:

City Clerk Laina Starnes

SCHEDULE 1
SHARx PROGRAM FEES

- (a) Classic Program. The Fees for the Classic Program are: \$21.00 PEPM.
- (b) Limited Program. The Fees for the Limited Program are: \$18.50 PEPM.
- (c) Borders Program. The Fees for the Borders Program are amount equal to twenty percent (20%) of the Medication Cost.
- (d) Borders/Conversion Program. Prior to conversion, the Fees for the Borders/Conversion Program are amount equal to twenty percent (20%) of the Medication Cost. After conversion, the Fees for the Classic Program are: \$21.00 PEPM.

EXHIBIT A
BUSINESS ASSOCIATE AGREEMENT

(Attached hereto)

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this “Agreement”), entered into as of 07/01/22, is between City of Lebanon (the “Covered Entity”) and SHARx, LLC (the “Business Associate” and, together with Covered Entity, the “Parties”) in order to address the requirements of the HIPAA Security and Privacy Rules with respect to “Business Associates.”

WHEREAS, Business Associate and its representatives are, or will be, performing certain functions, activities and services to or on behalf of Covered Entity as defined within a separate “Scope of Work,” and both Parties are subject to the requirements of HIPAA; and

WHEREAS, Covered Entity and Business Associate acknowledge that this Agreement required by law to comply with all applicable requirements of the HIPAA Security and Privacy Rules, and all additional security requirements of the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), Title XIII of the American Recovery and Reinvestment Act of 2009 (ARRA), that are applicable to “Business Associates” (as defined in the HIPAA Security and Privacy Rules).

NOW, THEREFORE, in connection with the creation, receipt, maintenance, transmission, use or disclosure of “Protected Health Information” (as defined in Section V. and referred to herein as “PHI”) as a Business Associate (as defined in the Section V) of the Covered Entity, the Parties hereby agree as follows:

I. OBLIGATIONS AND ACTIVITIES OF THE BUSINESS ASSOCIATE

Business Associate agrees to:

1. Create, receive, maintain, transmit, use, or disclose PHI only in a manner that is consistent with the Agreement or as required by law. Business Associate may only use or disclose PHI needed to perform the duties set forth in the Scope of Work for the treatment, payment or health care operations of the Covered Entity. Such instances include, but are not limited to: communicating with patient assistance programs on behalf of a covered member, obtaining prescriptions and other PHI from a covered member’s health care provider, obtaining manufacturer coupons, and other activities needed to support the Covered Entity’s obligations.
2. Use or disclose PHI as required by law or as permitted by this Agreement. Business Associate shall not use or disclose PHI in a manner that would violate the Privacy Rule. Business Associate shall not release or sell individual PHI to engage in marketing or fundraising activities without prior authorization from the individual.
3. Use or disclose PHI for the proper management and administration of Business Associate, or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that confidentiality of the information has been breached. Business Associate may use PHI to create de-identified information that may be used or disclosed by Business Associate for any lawful purpose, provided that the information has been de-identified in accordance with the de-identification requirements of 45 C.F.R. 164.51.

4. Use appropriate safeguards, and establish, implement and maintain administrative, physical and technical safeguards that comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI (the “Security Rule”), to prevent use or disclosure of PHI other than as provided for by the Agreement.
5. Report to the Covered Entity any use or disclosure of PHI not provided by the Agreement of which it becomes aware, including Breaches of Unsecured PHI as required by 45 CFR 164.410, and any Security Incident of which it becomes aware.
 - a. In the event of a Breach by the Business Associate of Unsecured PHI, as the terms “breach” and “unsecured PHI” are defined in 45 CFR 164.402, the Business Associate shall report such Breach or potential Breach to the Covered Entity within ten (10) business days of becoming aware of such Breach.. The Business Associate’s report shall include all information available to the Business Associate as necessary to allow the Covered Entity to provide a notification of the Breach consistent with 45 CFR 164.404.
 - b. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate from an unauthorized use or disclosure of PHI in Business Associates possession or control.
 - c. Business Associate and Covered Entity acknowledge and agree that this section constitutes notice by Business Associate to Covered Entity of the ongoing existence of, occurrence of, and attempts by third parties that constitute unsuccessful Security Incidents and no additional notice to Covered Entity with respect to such incidents shall be required. The following are illustrative of unsuccessful Security Incidents when they do not result in unauthorized access, use, disclosure, modification, or destruction of PHI or interference with an information system: Pings on a firewall; Port scans; Attempts to log on to a system or enter a database with an invalid password or username; and Malware (e.g., worms, viruses).
4. Require each agent, including a Subcontractor, who creates, receives, maintains or transmits PHI on behalf of the Business Associate, to agree to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such information.
5. Make PHI available in a Designated Record Set to or on behalf of the Covered Entity as necessary to satisfy the Covered Entity’s obligations under 45 CFR 164.524 within ten (10) business days of receipt of such request. The Business Associate may deny such requests if the requested information is meant to be shared with the Employer of a Health Plan and is for more than Summary Health Information.
6. Make any amendment(s) to PHI in a Designated Record Set as agreed to by the Covered entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy the Covered Entity’s obligations under 45 CFR 164.526.

7. Maintain and make available the information required to provide an accounting of disclosures to or on behalf of the Covered Entity as necessary to satisfy the Covered Entity's obligations under 45 CFR 164.528. The Business Associate shall not be required to maintain a record of disclosures of PHI (1) made for the purpose of Treatment, Payment or Healthcare Operations, (2) made to an individual who is the subject of the PHI, or (3) made pursuant to an authorization that is valid under HIPAA.
8. To the extent Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164 (the "Privacy Rule"), Comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations.
9. Make its internal practices, books and records available to the Secretary for purposes of determining compliance with HIPAA rules.
10. Disclose PHI to report violations of law to appropriate Federal or State authorities.
11. In performing its obligations under this Agreement and the Scope of Work, use, disclose or request only the minimum necessary PHI to accomplish the intended purpose of the use, disclosure, or request.
12. Acknowledge and agree that from time to time the Department of Health and Human Services may modify the standard transactions now identified in 45 CFR 162.1101–162.1802. The Business Associate and its agents and Subcontractors agree to abide by any changes to such standard transactions that are applicable to the services defined in the Scope of Work.
13. Disclose to a Subcontractor or otherwise allow a Subcontractor to access PHI only if the Subcontractor enters in its own agreement with Business Associate and agrees to abide by the administrative, physical and technical safeguards that reasonably protect the confidentiality, integrity and availability of electronic PHI in compliance with the Security Rules.

II. OBLIGATIONS OF THE COVERED ENTITY

Covered Entity agrees to:

1. Notify Business Associate, in writing and in a timely manner, of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI and in the policies and procedures of Covered Entity under 45 C.F.R. §164.530, to the extent that such limitation may affect Business Associate's use or disclosure of PHI, and to notify Business Associate of any material changes thereof.

2. Notify Business Associate, in writing and in a timely manner, of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
3. Notify Business Associate, in writing and in a timely manner, of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

III. TERM AND TERMINATION

1. This Agreement shall be effective as of the date first set forth above and shall terminate as provided in Section III.3 below or when all PHI previously provided by the Covered Entity to the Business Associate, or transferred by the Business Associate to any of its subcontractors, or created or received by the Business Associate or a Business Associate subcontractor on behalf of the Covered Entity, is destroyed or returned to the Covered Entity.
2. Upon either Party's knowledge or reasonable belief that the other Party is in or has committed a breach or violation of any material obligation set forth in this Agreement that is required pursuant to 45 CFR 164.314(a)(2)(i) or 45 CFR 164.504(e)(2), the non-breaching party may:
 - a. terminate this Agreement with immediate effect by delivering written notice of such termination to the breaching party regardless of whether such Breach is continuing at the time the non-breaching party delivers such notice; or
 - b. require the breaching party to demonstrate that it has taken appropriate steps that are, in the non-breaching party's sole discretion, reasonably designed to prevent a recurrence of such Breach.
3. Obligations of the Business Associate upon termination. Upon termination of this Agreement pursuant to Section III.2, the Business Associate shall promptly return to the Covered Entity, or, if agreed to by the Covered Entity, destroy, all PHI previously created, maintained or received by the Business Associate on behalf of the Covered Entity that the Business Associate maintains in any form. The Business Associate shall retain no copies of such PHI.
4. Retention of PHI. The Business Associate may retain PHI to the extent reasonably necessary to permit the Business Associate to comply with applicable laws and so long as the Business Associate extends the protections of this Agreement to all such PHI and takes all actions necessary to limit further uses and disclosures of such PHI for so long as the Business Associate retains such PHI. If the Covered Entity and the Business Associate determine in good faith that termination of this Agreement and the return or destruction of all PHI previously provided by the Covered Entity to the Business Associate would cause irreparable business interruption or harm to the Covered Entity, or if termination of this Agreement is otherwise not feasible, then (1) the Covered Entity or the Business Associate may report such situation to the Secretary of Health and Human Services and (2) the Business Associate shall extend the protections of this Agreement to all such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI. Upon termination of the condition that makes retention of

PHI by the Business Associate necessary for the Business Associate's compliance with law or that makes return or destruction of PHI infeasible, the Business Associate shall return or destroy such PHI as instructed by the Covered Entity.

5. **Survival.** The obligations of the Business Associate under this Section III shall survive the termination of this Agreement.

IV. LEGAL PROVISIONS

1. **Indemnification.** Each Party (an "Indemnifying Party") shall, to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the other Party and such other Party's employees, directors and agents (each, an "Indemnitee") from and against any and all losses, costs, claims, penalties, fines, demands, liabilities, legal actions, judgments and expenses of every kind (including reasonable attorneys' fees, including at trial and on appeal) asserted or imposed against any Indemnitee arising out of the acts or omissions of the Indemnifying Party or any Subcontractor or consultant of the Indemnifying Party or any of the Indemnifying Party's employees, directors or agents related to any material Breach of this Agreement or negligent failure to comply with HIPAA. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR IN ANY OTHER INDEMNIFICATION PROVISIONS TO THE CONTRARY, BUSINESS ASSOCIATE'S TOTAL LIABILITY UNDER THIS AGREEMENT TO ANY PERSONS INDEMNIFIED SHALL IN NO EVENT EXCEED THE LIMITS OF ITS CYBERSECURITY INSURANCE COVERAGE, AS APPLICABLE, ACTUALLY PAID FOR OR ON ACCOUNT OF ANY CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT.
2. **Amendment.** The Covered Entity and the Business Associate may amend this Agreement by mutual written consent.
3. **Severability.** If any provision of this Agreement is held invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable any other portion of this Agreement. The entire Agreement will be construed as if it did not contain the particular invalid or unenforceable provision(s), and the rights and obligations of the Business Associate and the Covered Entity will be construed and enforced accordingly.
4. **Waiver.** The failure by one Party to require performance of any provision of this Agreement shall not affect such Party's right to require performance at any time thereafter, nor shall a waiver of any Breach or default of this Agreement constitute a waiver of any subsequent Breach or default or a waiver of the provision itself.
5. **Entire Agreement.** This Agreement supersedes and replaces any and all prior Business Associate Agreements between the Parties. To the extent that the Scope of Work addresses the rights and obligations contained in this Agreement, this Agreement supersedes and replaces all provisions in the Scope of Work related to the subject matter of this Agreement.

V. DEFINITIONS

“**Breach**” shall generally have the same meaning given to such term under 45 CFR 164.402.

“**Designated Record Set**” shall generally have the same meaning given to such term under 45 CFR 164.501.

“**HIPAA Rules**” shall generally have the same meaning as the Privacy, Security, Breach Notification, and Enforcement Rules under 45 CFR Part 160 and Part 164.

“**Protected Health Information**” or “**PHI**” shall generally have the same meaning given to such term under 45 CFR 160.103.

“**Secretary**” shall generally mean the Secretary of the United States Department of Health and Human Services.

“**Security Incident**” shall generally have the meaning given to such term under 45 CFR 164.304.

Capitalized terms used but not defined in this Agreement shall have the meaning given to such terms in the HIPAA Privacy Rule and Security Rule.

IN WITNESS WHEREOF, the parties execute this Agreement by their duly authorized representatives as the date set forth above.

SHARx, LLC
(Business Associate)

City of Lebanon
(Covered Entity)

By: Paul Pruitt

By: _____

Name: Paul Pruitt

Name: Michael Schumacher

Title: Chief Executive Officer

Title: City Administrator