**EXCLUSIVE LISTING AGREEMENT**

**("the Agreement")**

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**
**AS REPRESENTED BY THE MINISTER OF HEALTH**
**1515 BLANSHARD STREET, VICTORIA, BC V8W 3C8**

**("the Province")**

**AND:**

**NAME OF SUPPLIER:**_____

**ADDRESS OF SUPPLIER:**_____

**("the Supplier")**

**(collectively, "the Parties")**

**WHEREAS:**

A. The Province is responsible for the operation and funding of the PharmaCare program ("PharmaCare"), including the establishment of terms and conditions for the determination, to be made by the Province, of which drug products will be eligible for listing on a PharmaCare formulary and reimbursement through PharmaCare;

B. The operation of PharmaCare by the Province is in accordance with, and subject to, the provisions of the *Pharmaceutical Services Act*, S.B.C. 2012, c. 22 and its associated regulations, including the Drug Price Regulation, B.C. Reg 344/2012, as amended;

C. The Supplier supplies one or more generic drug products for sale in the British Columbia market;

D. The Province requires that any supplier seeking to have a generic drug product determined as eligible for reimbursement through PharmaCare must submit a proposed price for such product, with the Province to subsequently make a determination of whether that product will be eligible for listing on a PharmaCare formulary and reimbursement through PharmaCare;

E. The Supplier seeks a determination that a generic drug product supplied by the Supplier is eligible for listing on a PharmaCare formulary and reimbursement through PharmaCare;

**NOW THEREFORE** in consideration of the mutual promises and covenants set forth in this Agreement, the Parties agree as follows:

1.0 Throughout this Agreement, unless the context requires otherwise the following definitions apply:

"**Accepted**" means the Province will list the Product on a PharmaCare formulary and make the Product eligible for PharmaCare reimbursement.

"**Agreed Price**" means the Manufacturer's List Price proposed by the Supplier to the Province in the Exclusive Listing Submission Workbook.

"**Exclusive Listing Submission Workbook"** means the document produced by the Province through which the Supplier has submitted required information about the Product and forms "Exhibit A" of this Agreement.

**"Competitor Product"** means a generic drug product that is supplied by an entity other than the Supplier and that is or would be part of the same Low Cost Alternative category as the Product.

**"Designation Period"** means the period commencing thirty days after the Listing Date and continuing for a period of twelve months, unless the Designation Period is ended prior to that time by the Province, in which case the Designation Period will end on the date established by the Province.

**"Listing Date"** means the date the Product is listed on a PharmaCare formulary and becomes eligible for reimbursement through PharmaCare.

"**Manufacturer's List Price**" in relation to the Product, is the price which the Supplier proposed to the Province as the published unit price at which the Product will be available for sale from the Supplier to distributors in British Columbia as of the Listing Date, and shall be considered the "manufacturer's list price" as defined in the *Drug Price Regulation*, B.C. Reg. 233/2012.

**"Product"** means the drug that is supplied by the Supplier and listed in the Exclusive Listing Submission Workbook.

2.0 If the Supplier submits the required information, the Province may consider the Product for designation as Accepted. For greater clarity, designation of a Product as Accepted will be at the sole discretion of the Province, as will the cancellation of such a designation.

3.0 If the Product is designated as Accepted by the Province, the Supplier will supply the Product in British Columbia at the Agreed Price beginning on the Listing Date, and continuing for so long as the Product is designated as Accepted, in accordance with the *Pharmaceutical Services Act* and its associated regulations, and on the terms and conditions set out in this Agreement.

4.0 The Supplier warrants that the Product will be available in sufficient amounts for delivery to pharmacies in British Columbia commencing on the Listing Date and continuing for so long as the Product is designated as Accepted.

5.0 Without limiting Section 4.0, the Supplier warrants that:

(a) prior to the Listing Date, sufficient amounts of the Product will be physically located in British Columbia to fulfil all requirements for the Product in British Columbia for a period of sixty days.

(b) after the Listing Date and for so long as the Product is designated as Accepted , sufficient amounts of the Product will be physically located in British Columbia to fulfil all requirements for the Product in British Columbia for a period of sixty days.

6.0 If at any time the Supplier foresees that it may not meet demand in British Columbia for the Product, or that it may not have sufficient amounts of the Product physically located in British Columbia to satisfy the requirements of Section 5.0, the Supplier shall, as soon as is reasonably practicable, notify the Province in writing. The Supplier shall further take all reasonable steps necessary to rectify the aforementioned situation as quickly as possible. Notwithstanding the above, the Supplier understands and acknowledges that the Province may, in its sole discretion, and without notice, determine that the Supplier is unable to meet demand in British Columbia for the Product, and:

(a) cancel the designation of the Product as Accepted, thereby cancelling the listing of the Product on a PharmaCare formulary and making the Product no longer eligible for PharmaCare reimbursement; and / or
(b) cancel the designation of the Product as an exclusive generic drug and designate one or more Competitor Products as Accepted.

7.0 The Supplier will indemnify the Province if for any reason it fails to supply the Product on the terms set out in, and in accordance with, this Agreement (other than for reasons which the Province, in its sole discretion, considers to be wholly outside the control of the Supplier). This indemnity covers all additional costs (including, but not limited to, costs relating to securing and/or subsidizing, or increasing the subsidy for, products provided by another supplier, additional dispensing fees, and all actual legal expenses) incurred by the Province as a result of the failure of the Supplier to supply the Product in accordance with this Agreement.

8.0 The Supplier warrants and represents that all information provided by the Supplier to the Province in relation to the Product is accurate and complete, and the Supplier acknowledges that the Province has relied on the information provided by the Supplier in designating the Product as Accepted and in designating the Product as an exclusive generic drug pursuant to section 3.1(1) of the Drug Price Regulation.

If:

(a) the Supplier has provided inaccurate or incomplete information in relation to the Product;
(b) the Province has designated the Product as Accepted and as an exclusive generic drug, and in doing so, has relied in whole or in part on the inaccurate or incomplete information provided by the Supplier; and
(c) the Province subsequently cancels the designation of the Product as Accepted or cancels the designation of the Product as an exclusive generic drug on the basis that the information provided by the Supplier was inaccurate or incomplete,

the Supplier, if required by the Province, will indemnify the Province for any costs (including, but not limited to, costs relating to securing and/or subsidizing, or increasing the subsidy for, products provided by another supplier, additional dispensing fees, and all actual legal expenses) incurred by the Province in relation to the change in designation of the Product.

9.0 Effective thirty days after the Listing Date, if any Competitor Product has been designated as Accepted, the Province will cancel the designation of that Competitor Product as Accepted, and the Province will not designate a Competitor Product as Accepted during the Designation Period.

10.0 This Agreement may be terminated at the sole discretion of the Province.

11.0 The Parties acknowledge that notwithstanding anything in this Agreement, actual PharmaCare reimbursement is subject to the *Pharmaceutical Services Act* and its associated regulations, PharmaCare policies, plan rules, and reimbursement practices as may be amended from time to time in the sole discretion of the Province. The Parties further acknowledge that the Province, when deciding whether to make a generic drug eligible for PharmaCare coverage, has sole discretion in determining whether any generic drug meets the eligibility criteria other than list price, and those eligibility criteria may be amended from time to time.

12.0 The Parties acknowledge that the Province is subject to the British Columbia *Freedom of Information and Protection of Privacy Act* and must comply with any order of the Office of the Information and Privacy Commissioner.

13.0 The Parties acknowledge that nothing contained within this Agreement is intended to supersede the *Pharmaceutical Services Act* or its associated regulations, and nothing contained within this Agreement prevents the Government of British Columbia from enacting or amending legislation respecting or relating to any matter contained in this Agreement. If there is a conflict between any provision of this Agreement or the *Pharmaceutical Services Act* or its associated regulations, then such conflict will be resolved as follows:

(a) a provision in the *Pharmaceutical Services Act* will prevail over any conflicting provision in its associated regulations, and over any conflicting provision in this Agreement;

(b) a provision in an associated regulation to the *Pharmaceutical Services Act* will prevail over any conflicting provision in this Agreement.

14.0 Any written communication between the Parties, including any notice contemplated by this Agreement, is to be mailed, delivered, or faxed to the following addresses:

**To the Supplier:**

At the address and facsimile number noted above

**To the Province:**

Medical Beneficiary & Pharmaceutical Services Division
Ministry of Health
301 – 960 Quayside Drive
New Westminster, BC V3M 6G2
Facsimile No.: 604-660-5405
Attention: Executive Director, Business Management and Supplier Relations & Systems

Any written communication from either Party will be deemed to have been received by the other Party on the fifth business day after mailing if mailed, or on the date of personal delivery if delivered, or on the date of transmission if faxed.

Either Party may, from time to time, notify the other Party in writing of a change of address or facsimile number, and following receipt of such notice, the new address or facsimile number will, for the purposes of this Agreement, be deemed to be the address or facsimile number of the Party that gave notice.

15.0 This Agreement shall be governed by and construed under the laws of the Province of British Columbia and the Parties agree to attorn to the exclusive jurisdiction of the courts of the Province of British Columbia.

16.0 The Parties acknowledge and agree that the terms and provisions of this Agreement shall be construed fairly as to each Party and not in favor of or against either Party regardless of which Party was generally responsible for the preparation of this Agreement.

17.0 A waiver by either Party of any term of this Agreement or of any breach of this Agreement is effective only if that waiver is in writing and signed by the waiving Party. Such a waiver is not to be interpreted as a waiver of any other term or any other breach.

18.0 This Agreement may be executed by facsimile and simultaneously in two or more counterparts, each of which shall be deemed an original, but both of which together shall constitute a single agreement.

19.0 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement.

**IN WITNESS WHEREOF**, the Parties have each caused this Agreement to be duly executed as of the dates written below.

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| Agreed to for and on behalf of Her Majesty ) | Agreed to for and on behalf of ) |
| The Queen in Right of the Province of British) | _____ ) |
| Columbia by a duly authorized representative) | by a duly authorized representative ) |
| of the Minister of Health ) | of the Supplier ) |
| Medical Beneficiary and Pharmaceutical ) | |
| Services Division ) | |
| By: _____ | By: _____ |
| Name: Kelly Uyeno | Name: _____ |
| Title: Executive Director, Business Management, Supplier Relations and Systems | Title: _____ |
| Date: _____ | Date: _____ |