

## CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Confidentiality and Nondisclosure Agreement ("Agreement") is made and entered into this \_\_\_\_ day of February, 2017, ("Effective Date") by and between Boon-Chapman Benefit Administrators, Inc. ("Boon-Chapman"), having its corporate headquarters at 9401 Amberglen, Suite 100, Austin, TX 78729, Fort Bend County ("County"), and Innovative Rx Strategies, LLC ("Innovative Rx Strategies") having its principal place of business at 520 Lake Cook Road, Suite 130, Deerfield, IL 60015 (each a "Party" and together the "Parties").

WHEREAS, County and Boon-Chapman desire to review certain information from Innovative Rx Strategies for the purpose of evaluating service offerings by Maxor National Pharmacy Services Company ("Maxor") to County and evaluating the terms and conditions of the pharmacy benefit management ("PBM") contract between Maxor and County, as amended, ("PBM Agreement");

WHEREAS, the Innovative Rx Strategies considers some of the information requested to be confidential information ("Confidential Information") as defined below in Section 1; and

WHEREAS, Innovative Rx Strategies requires that County and Boon-Chapman treat such information as confidential as a condition to disclosing the requested Confidential Information.

NOW, THEREFORE, in consideration of the mutual promises herein set forth, the Parties agree as follows:

**1. Definition of Confidential Information.** The Confidential Information that the Innovative Rx Strategies is supplying to the County and Boon-Chapman under this Agreement means the information listed below:

a) an oral pricing analysis of County's 2016 prescription drug spend by comparing County's 2016 claims utilization with Maxor against County's 2016 pricing with Maxor to see if Maxor under-performed based upon the pricing in County's 2016 Renewal Amendment to Agreement Between Fort Bend County and Maxor Plus, LTD for Prescription Drug Management Services Pursuant to RFP 05-004; and b) an oral discussion on what Innovative Rx Strategies reasonably believes County can save on its annual prescription drug spend beginning January 1, 2018 if County renegotiates its current Maxor pricing as set forth in County's Addendum to Pharmacy Services Agreement Between MaxorPlus, LTD. and Fort Bend County dated January 1, 2017 compared to pricing negotiated by Innovative Rx Strategies with other PBMs in the market. The Confidential Information provided by Innovative Rx Strategies to County and Boon-Chapman is considered by Innovative Rx Strategies to be confidential, non-public, trade secret, proprietary, and valuable commercial information. Any Confidential Information submitted by Innovative Rx Strategies to County and Boon-Chapman in an electronic or written format will be clearly and conspicuously marked or designated as "confidential" or "proprietary." Furthermore, Innovative Rx Strategies will advise County and Boon-Chapman whether any Confidential Information disclosed orally is "confidential" or "proprietary" prior to disclosure.

Confidential Information does not include the terms of this Agreement, any prescription drug expenses invoices adjudicated under the Fort Bend County Employee Benefit Plan, or prescription drug utilization reports specific to the Fort Bend County Employee Benefit Plan. Furthermore, Confidential Information does not include any information as set forth in Section 5 of this Agreement.

**2. Texas Public Information Act.** All Parties acknowledge that County is subject to the Texas Public Information Act, Texas Government Code, Chapter 552 ("PIA") and agree that this Agreement is subject to the PIA. To the extent that compliance with any provision of this Agreement would result in non-compliance with the PIA, that portion of this Agreement has no force or effect. If County is requested under the provisions of the PIA, to disclose any item or data furnished that is subject to this agreement, County will notify the Party whose information has been requested in accordance with Texas Government Code Section Sec. 552.305. County will not release the information unless required to do so by the Texas Attorney General or a court of law. It is acknowledged by all Parties that County, their officers and employees have the right to rely on the Attorney General's decision and that County's officers and employees have no liability or obligation to any Party for disclosure of any item or data furnished to County or to any person in reliance on the Attorney General's decision or a court order.

3. **Use of Confidential Information.** Except as otherwise may be required by the PIA, County and Boon-Chapman may use and disclose Confidential Information only for the purpose described herein. Both County and Boon-Chapman further agree not to use Confidential Information for any purpose, except that set forth above. Further, both the County and Boon-Chapman agree not to either directly or indirectly, disclose, use or reproduce Confidential Information without prior written authorization from Innovative Rx Strategies. In particular, both County and Boon-Chapman agree to not disclose Confidential Information to any third party, including but not limited to a PBM, health insurance carrier, health plan, insurance broker, TPA, group purchasing organization, coalition, a governmental entity, association, another client/customer, and/or consultant who is not a Party to this Agreement without the Innovative Rx Strategies' prior written consent. However, the Parties agree that a County and Boon-Chapman may allow representatives of a governmental body, officers, directors, principals, and/or employees of the County and Boon-Chapman to receive Innovative Rx Strategies' Confidential Information if the representatives of a governmental entity, officers, directors, principals, and/or employees of the County and Boon-Chapman have been made aware of this Agreement and its terms. The Parties acknowledge and agree that the use or disclosure of Confidential Information under this Agreement shall be in accordance with all applicable state and federal laws, including without limitation, the Health Insurance Portability and Accountability Act ("HIPAA") and any regulations promulgated thereunder.

4. **Standard of Care.** Both County and Boon-Chapman shall protect Innovative Rx Strategies' Confidential Information with the same degree of care, but no less than a reasonable degree of care, as County and Boon-Chapman normally uses in the protection of its own confidential and proprietary information. Both County and Boon-Chapman shall use this standard of care to prevent the unauthorized use, disclosure, dissemination, or publication of the Innovative Rx Strategies' Confidential Information.

5. **Exclusions.** The restrictions set forth shall not apply with respect to any of the Confidential Information that: (a) is already available to the public; (b) becomes available to the public through no fault or breach of County or Boon-Chapman, its officers, directors, principals and employees; (c) is independently developed by the County or Boon-Chapman without breach of this Agreement; (d) is rightfully received by the County or Boon-Chapman from a third party without a duty of confidentiality or other restriction on disclosure; (e) is disclosed by the County or Boon-Chapman with the Innovative Rx Strategies' prior written approval; or (f) is required to be disclosed pursuant to an order of a court, administrative agency, or governmental body, or any law, rule, regulation, subpoena, judicial or administrative process, or in accordance with applicable professional standards. If a County or Boon-Chapman is required by a government body or court of law to disclose Confidential Information, County and Boon-Chapman (as applicable) agrees to give the Innovative Rx Strategies reasonable advance notice (when possible) so that the Innovative Rx Strategies may contest the disclosure or seek a protective order or modification of any disclosure, subject to applicable confidentiality constraints imposed by such government body or court of law or applicable law. Both County and Boon-Chapman shall thereafter be entitled to disclose Confidential Information to the extent required by law.

6. **Proprietary Interest.** Neither County or Boon-Chapman acquire any rights in Innovative Rx Strategies' Confidential Information under this Agreement except the limited rights necessary to carry out the purposes set forth in this Agreement. This Agreement grants no license by a Party to any other Party to this Agreement, either directly or by implication, estoppel or otherwise. This Agreement is not intended, nor shall it be construed, to confer any right upon any person or entity not a Party to this Agreement.

7. **Warranty.** Innovative Rx Strategies warrants that it has the right to make the disclosures under this Agreement. **NO OTHER WARRANTIES ARE MADE BY ANY PARTY UNDER THIS AGREEMENT. ANY INFORMATION EXCHANGED UNDER THIS AGREEMENT IS PROVIDED "AS IS."**

8. **Term and Termination.** This Agreement shall become effective as of the Effective Date and terminate upon the earliest of: (a) ninety (90) days from the Effective Date; (b) upon ten (10) days written notice from one Party to the other, with or without cause; or (c) automatically at the conclusion of the Parties' relationship. Termination of this Agreement shall not relieve County or Boon-Chapman of any of the obligations set forth in this Agreement with respect to Innovative Rx Strategies' Confidential Information and both County and Boon-Chapman shall continue to maintain information as confidential as is required by this Agreement.

9. **Miscellaneous.**

- a. The Parties mutually acknowledge and agree that this Agreement shall be construed and enforced in accordance with the laws of the State of Texas, without regard to the internal law of Texas regarding conflict of laws. **The Parties acknowledge that they have read and understand this clause and agree willingly to its terms.**
- b. No Party has an obligation under this Agreement to purchase any service or item from any other Party to this Agreement. No Party has an obligation under this Agreement to commercially offer any products using or incorporating Confidential Information.
- c. Each Party acknowledges that damages for improper use or disclosure of Confidential Information shall be irreparable; therefore, the injured Party is entitled to seek equitable relief, including injunction and preliminary injunction, in addition to all other remedies.
- d. All additions or modifications to this Agreement must be made in writing and signed by all the Parties. This Agreement does not create any agency or partnership relationship. This Agreement is not assignable or transferable without the prior written consent of the other Parties. This Agreement applies to all successors in interest.
- e. This document contains the entire agreement between the Parties as to the Confidential Information and supersedes any previous or contemporaneous understandings, commitments, or agreements, whether written or oral, as to such Confidential Information.
- f. All duties and obligations set forth in this Agreement apply equally to all officers, directors, principals, and employees of the Parties. County and Boon-Chapman agree that all Confidential Information will only be made known to employees of the County and Boon-Chapman who have a need to know such Confidential Information.
- g. If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, shall be invalid, illegal or unenforceable in any respect, it shall be ineffective to the extent of such invalidity, illegality or unenforceability, and the validity, legality and enforceability of the remaining provisions contained in this Agreement shall remain in effect.
- h. Any notice given under this Agreement shall be deemed received if in writing, and if sent by hand delivery, electronic mail, overnight courier which provides confirmation of delivery, or certified mail, return receipt requested, sent to the applicable party at its address set forth with its signature to this Agreement, or to such other address or to the attention of such other person as either party may designate in writing pursuant to this provision. Notices sent by certified mail shall be deemed received three (3) business days following mailing.
- i. This Agreement may be executed in counterparts and transmitted by electronic mail.

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

Fort Bend County

Attest:

By: \_\_\_\_\_  
Title: County Judge

\_\_\_\_\_  
Fort Bend County Clerk

Notice Address:

Fort Bend County  
Attn: County Judge  
401 Jackson Street  
Richmond, Texas 77469

w/copy to

Fort Bend County  
Attn: Risk Manager  
301 Jackson Street  
Richmond, Texas 77469  
Via email: Scott, Wyatt.Scott@fortbendcountytexas.gov

Boon-Chapman

By: Kevin S. Chapman  
Title: President

Notice Address:  
Boon-Chapman  
9401 Amberglen, Suite 100  
Austin, TX 78729  
Attn: Kevin Chapman  
kevinc@boonchapman.com

Innovative Rx Strategies, LLC

By: Michael J. Staab  
Title: Co-CEO

Notice Address:  
Innovative Rx Strategies, LLC  
520 Lake Cook Road, Suite 130  
Deerfield, IL 60015  
Attn: Michael Staab, J.D., LL.M. - Co-CEO  
michael.staab@innovativerxstrategies.com