

ACI DISTRIBUTOR AGREEMENT

This Wholesale Distributor Agreement is effective this 1st day of April, 2013, by and between ACI 340B Management Company ("ACI"), an Idaho corporation operating a principal place of business at 1161 W. River Street, Suite 240, Boise, ID 83702, and Gallagher Benefit Services, Inc., a Delaware corporation, ("Distributor"), (ACI and Distributor to be sometimes collectively referred to as the "Parties").

WHEREAS, ACI provides professional organizational experience and health care expertise to hospitals, pharmacies, health centers, and their patients to fully benefit from the Federal 340B drug discount program ("the 340B Program Services");

WHEREAS, ACI now desires to expand the distribution of the 340B Program Services to hospitals, pharmacies, health centers, and their patients through the use of additional independent distribution channels in selected geographic areas;

WHEREAS, Distributor is a distributor of a variety of products and services to healthcare customers throughout the United States;

WHEREAS, the Parties wish to form a strategic alliance to provide for the marketing, proposing, and selling of the 340B Services Program to eligible customers on a non-exclusive basis;

WHEREAS, the Parties wish to enter into a written wholesale distribution agreement under which the Parties shall share compensation related to the selling of the 340B Program Services by Distributors;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties mutually agree as follows:

I. ACI Obligations.

- A. ACI will provide Distributor access to the Products as an authorized distributor in order for Distributor to market, propose, and sell one or more of the Products (as set forth and described in Exhibit A, attached hereto) to customers on a non-exclusive basis.
- B. ACI will provide Distributor and its representatives appropriate training and continuing support as necessary to enable Distributor to adequately market and represent the 340 Program Services to customers and prospects. ACI will also provide reasonable administrative support to service the 340B Program Services sold by Distributor.

- C. ACI will develop the branding and logo creation to be used for joint marketing activities of the 340B Program Services ACI retains all rights to any such branding and logo creation. ACI grants Distributor a non-exclusive license to use the branding and logos solely for the purpose of marketing the 340B Program Services as set forth in this Agreement, for as long as this Agreement is in effect. Distributor shall not modify the branding and logos in any manner. ACI or a third party licensor retains all rights to any such branding and logo creation. ACI will provide Distributor copies of current 340B Program Services' marketing literature as a basis for the development of Distributor's own proprietary marketing literature. The cost of producing any of Distributor's proprietary marketing literature will be borne solely by Distributor. ACI will have prior editorial approval authority over all materials that are prepared by Distributor for the marketing of the 340B Program Services. Subject to the foregoing and to the rules promulgated by appropriate regulatory organizations, Distributor may, at its expense, continue to advertise or otherwise promote its own business without the need of obtaining ACI's consent.

II. Distributor's Obligations.

- A. Distributor will use its best efforts to market, propose and sell the Products to its customers and prospects in accordance with good industry practice. Good industry practice shall mean the standards that have developed in the industry, including, but not limited to providing the necessary staff and funding required for the success of any marketing initiative and actively promoting the sale of the 340B Program Services.
- B. Distributor will create a written marketing plan with the assistance of ACI, including but not limited to face-to-face meetings with prospective accounts and participating in and sponsoring marketing events, and Distributor will provide a copy of its written marketing plan to ACI upon request.
- C. Distributor will communicate to ACI on a regular basis regarding all marketing initiatives and customer and prospect contacts so as to minimize any potential conflicts. Whenever possible, Distributor will refer customers and prospects to ACI involving other products or services not normally marketed, proposed, or sold by Distributor.
- D. Following the sale of any of the 340B Program Services to any employer, Distributor agrees to maintain and make available to ACI, upon request, any records, documents or other information that ACI is required by law or otherwise to provide to any third party, including, without limitation, any governmental or regulatory agency or vendor, which relate in any way to the 340B Program Services sold by Distributor.

- E. Distributor further agrees not to take any action that is designed or intended to have the effect of discouraging any ACI client from maintaining a relationship with ACI existing as of the effective date of this Agreement.

III. Compensation and Expenses. In consideration of the 340B Program Services sold and the services provided by Distributor pursuant to Section II of this Agreement, and for so long as the case-specific 340B Program Services written by Distributor pursuant to this Agreement remain in effect, and ACI continues to receive case-specific compensation from the 340B Program Services sold by Distributor to such Client:

- A. ACI shall pay to Distributor a percentage of the fees received by ACI, in accordance with the schedule of compensation as set forth and described in Exhibit B, attached hereto, unless otherwise mutually agreed to by the Parties. ACI shall pay Distributor on a monthly basis. The payments will be calculated based upon the revenue received from the Clients by ACI prior to such monthly payment dates. ACI shall provide Distributor with sufficient supporting documentation in the form of a statement itemizing the amount paid, the name of the Client, the name of the product or service, and the name of the Distributor's producing representative.
- B. Any payments made by ACI pursuant to this Section III shall be treated as a full discharge of ACI's obligation to pay compensation to such Distributor.
- C. Distributor shall be solely responsible for any costs or expenses incurred by Distributor in the performance of its obligations under this Agreement and ACI shall have no responsibility for such costs or expenses incurred by Distributor unless otherwise mutually agreed to by the Parties in writing.

IV. Independent Contractor Relationship between Distributor and ACI. Each Party is and will remain at all times an independent contractor and no provision of this Agreement will, or may be deemed to, create or imply any relationship of employment, joint venture, partnership, franchise or agency between the Parties and the Parties hereby signify their express intention to this effect. The Parties agree to treat each other as independent contractors and as such, each will be solely responsible for the conduct and actions of their respective employees, representatives, and agents and neither of them shall have any liability of any kind for the actions or omissions of the other. Distributor shall not be controlled by ACI as to the specific manner of Distributor's business, it being understood that the primary interest of ACI is in the results achieved by Distributor. Distributor further agrees that it is not an agent of ACI, that it has no authority to enter into agreements on behalf of ACI, and that it will not represent itself to any party in any way that will suggest that it has any authority, apparent or actual, to act for ACI or bind ACI in any way. Distributor and Distributor's employees, representatives, and agents shall not be eligible for and shall not be provided any of the benefits provided by ACI to its employees, including, but not limited to, retirement benefits, health insurance, workers' compensation insurance, and unemployment insurance. In the event Distributor and/or Distributor's employees, representatives, or agents hereafter becomes eligible to participate in any such benefits, Distributor, on behalf of Distributor and its employees, representatives, and agents, hereby waives any right to participate in such benefits. Such waiver is not dependent upon Distributor's status as an independent contractor.

V. Distributor's Representations and Warranties. Distributor represents and warrants to the ACI that:

1. it has obtained, or will timely obtain, all required vendor appointments, licenses, registrations, permits and other governmental certifications, authorizations and approvals for the firm and its respective employees, representatives, and agents (collectively, "licenses") necessary to perform its duties hereunder, that all of such current licenses are in full force and effect and will be maintained in order for Distributor to receive compensation pursuant to Section III above, that no action or claim is pending to revoke or terminate any of such licenses or declare any such license invalid, and that only persons properly holding any such licenses will sell, solicit or negotiate the Products;
2. as of the effective date of this Agreement, it has obtained a professional liability insurance policy covering the firm and its respective employees, representatives, and agents, and that Distributor will provide ACI with a certificate or other evidence of such insurance coverage upon request;
3. it further warrants that, if at any time during the term of this Agreement, it is either unable or unwilling to maintain such a policy in force, Distributor will so inform ACI, in writing, at least 30 days prior to the date such coverage will lapse; and

4. it will be responsible for carrying out and will carry out its obligations under this Agreement in compliance with all applicable federal and state laws and the rules of any applicable state insurance departments.

VI. Non-Exclusivity. The Parties agree that this Agreement is non-exclusive as to the Distribution Territory. Nothing in this Agreement shall be construed as to prohibit ACI from allowing any other agent, broker, or consultant including its own representatives to market, propose, or sell the 340B Program Services to Clients. Further, nothing in this Agreement shall be construed as to prohibit ACI from entering into similar distribution agreements with other persons for the sale of the 340B Program Services to clients and prospects.

VII. Mutual Indemnification. Each of the Parties shall indemnify and hold the other and their employees, officers, directors, affiliates and controlling persons (collectively, the "Indemnified Parties") harmless from and against any and all claims (including the reasonable cost of attorney fees in investigating or defending the same), liabilities, losses, damages, judgments or other expenses of any kind (other than those resulting from the sole negligence, recklessness or willful misconduct of one of the Indemnified Parties in performing its duties described hereunder) that may be imposed on, incurred by or asserted against the Indemnified Parties in connection with the performance by the applicable Party of the obligations undertaken by it in this Agreement or arising out of any breach of their respective representations under this Agreement. The indemnifying Party shall have the right to defend the claim, and the Indemnified Party shall cooperate with the indemnifying Party in such defense and shall have the right to participate in such defense at its expense. The Indemnified Party shall give written notice to the indemnifying Party promptly after the assertion of any claim or demand with respect to any matter for which indemnity would be sought hereunder. If the indemnifying Party fails to promptly and diligently pursue defense of such claim, then the Indemnified Party shall be entitled to pursue such defense subject to reimbursement by the indemnifying Party of the reasonable expenses (including attorney fees) incurred in connection with such defense. Notwithstanding anything herein to the contrary, no indemnifying Party is authorized to confess judgment on behalf of an Indemnified Party or to settle any matter which obligates an Indemnified Party to pay any amounts without the prior written consent of the applicable Indemnified Party, given or withheld in such Indemnified Party's discretion.

VIII. Term and Termination of the Agreement.

- A. The term of this Agreement shall be in effect for one year from the Effective Date, and that will automatically renew for additional one-year terms unless terminated by either Party. Either Party may terminate this Agreement for any reason or for no reason by giving ninety (90) days written notice to the other. Any termination pursuant to this paragraph will not affect ACI's obligation to pay Distributor any unpaid accrued compensation or future compensation as provided for in Section III of this Agreement.
- B. ACI may terminate this Agreement upon twenty-four (24) hours written notice if: a) Distributor ceases substantial business operations for any reason; b) Distributor's

failure to perform its obligation hereunder threatens to do harm to ACI's business, good name, or reputation; or c) Distributor otherwise breaches the terms of this Agreement.

- C. Notwithstanding any other terms of this Agreement, upon termination of this Agreement, the obligations of the Parties shall cease, other than the obligations of the Parties under Sections II.D. and E., III., IV., V, VII, VIII, IX., X., and XI. of this Agreement, which obligations shall survive such termination.

IX. Ownership of Intellectual Property. ACI is constantly working to develop proprietary marketing materials, processes, know-how, techniques, websites/portals, and hardcopy materials for its business, whether or not reduced to practice, patentable, or registrable under copyright, patent, or similar laws (collectively "Intellectual Property"). While Distributor may be involved in the production, dissemination or utilization of such Intellectual Property, ACI shall retain the sole right, title, and interest in any of these materials, underlying software, processes, code or technology whether in electronic form or otherwise. Similarly, any Intellectual Property that Distributor develops in its support of the fulfillment of its obligations pursuant to this Agreement shall remain the property of Distributor, and Distributor shall retain the sole right, title, and interest in any of these materials, underlying software, processes, code or technology whether in electronic form or otherwise.

X. Confidentiality. Each Party hereby acknowledges that it may from time to time receive proprietary and confidential information and trade secrets of the other Party ("Confidential Information") in electronic form or otherwise and that such Confidential Information is very valuable to the other Party. Any information provided by one Party to another shall be deemed confidential unless otherwise noted by the disclosing Party (or unless otherwise falling into one of the categories of non-confidential information set forth below). Such Confidential Information may include, without limitation, the terms of this Agreement, information regarding ACI's customers, any information related to compensation paid by ACI to Distributor, any account specific information transmitted to ACI by Distributor for the purpose of obtaining an insurance quotation, client lists, marketing materials, price quotations, financial statements, drawings, technical data, future development plans, strategies, responses to requests for quotations, proposals, contact people, and other pricing information.

Each Party will not disclose such Confidential Information of the other Party to any third party (other than each Party may share such information and data with its respective attorneys and independent accountants) or use the Confidential Information for any purposes other than the promotion, marketing and referrals pursuant to the terms of this Agreement. Each Party will use commercially reasonable efforts (but not less than those efforts required by its internal policies and practices) to prevent any unauthorized person from having access to any Confidential Information.

Notwithstanding anything to the contrary set forth in this Agreement, the requirement of non-disclosure and the obligations of confidentiality shall not apply to any information which: (a) at the time of disclosure is legally in the possession of the other Party with no duty of confidentiality, (b) is independently developed by the other Party, (c) is or becomes publicly available through no wrongdoing of the other Party, (d) becomes available to other Party on a nonconfidential basis from a person, other than the disclosing Party, who is not bound by a confidentiality obligation or otherwise restricted from transmitting the information to the other Party, or (e) is disclosed pursuant to an order by a court or other governmental body, or other lawful process, to disclose; however, the disclosing Party shall have the right to obtain a protective order which limits the disclosure to the minimum amount necessary to comply with the order.

In the event a Party or any of its representatives is requested (by oral question or request for information or documents in legal proceedings, interrogatories, subpoena or similar process) by any individual or entity or any local, state or federal governmental agency, to disclose any of the Confidential Information of the other Party ("Discloser"), the Party receiving such request ("Recipient") will (i) provide the Discloser with prompt (and in any event within three (3) business days) notice of any such request or requirement, (ii) cooperate fully with the Discloser, so that either or both Parties may seek an appropriate protective order, and (iii) in the event an order is issued, comply with the terms and intent of this Agreement to the fullest extent possible without violating such order of the court. Nothing herein shall preclude disclosure of such Confidential Information pursuant to any lawful process if (i) Recipient has been provided with an opinion of competent counsel that such disclosure is mandated by applicable law, (ii) disclosure is then made to the minimum extent necessary to comply with such process, (iii) Recipient seeks reasonable and appropriate confidentiality arrangements from the body issuing such process under which disclosure will be made, and (iv) disclosure is made under such confidentiality arrangements as may be approved or directed by the body issuing such process.

The Parties agree that nothing herein shall be deemed a waiver or limitation of ACI's right to use common law or statutory means to protect information which is a trade secret.

XI. Miscellaneous.

- A. This Agreement will be governed by and construed in accordance with the substantive laws of the State of Indiana without regard to conflict of law principles, and all proceedings relating to the subject matter hereof will be maintained exclusively in the courts situated in Marion County, Indiana, or any contiguous county, or in the federal court having jurisdiction over such counties, and both of the Parties hereby consent to personal jurisdiction and venue therein and waive any right to object to personal jurisdiction or venue. The parties hereby waive the right to a jury trial as to any issue related to this Agreement to the extent permitted by law.
- B. Neither Party shall be liable to the other for, and each party expressly waives, any consequential, incidental, special exemplary, or punitive damages.

- C. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, such provision will be fully severable, and this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never been a part of this Agreement. In such event, the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of each such illegal, invalid or unenforceable provision, there will be added as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible to be legal, valid and enforceable.
- D. The forbearance or neglect of either party to insist upon strict compliance with any of the provisions of this Agreement, whether continuing or not, or to declare a termination against any of the Parties, shall not be construed as a waiver of any of rights or privileges hereunder. No waiver of any right or privilege of any of the Parties arising from any default or failure of performance by any other of the Parties shall affect any of the injured Parties' rights or privileges in the event of a further default or failure of performance.
- E. Each Party represents and warrants to the other Party that this Agreement is the binding, legal obligation of such Party, is enforceable according to its terms, and will not result in any violation of any other agreement, instrument, or contract to which such Party is a party.
- F. This Agreement, along with the Exhibits attached hereto, constitutes the complete and exclusive statement of the agreement and understanding between the Parties with respect to the subject matter hereof, which supersedes all prior proposals, and all prior and contemporaneous agreements, representations and understandings, oral or written, of the Parties with respect to such subject matter. In the event of any conflict between this Agreement and any Exhibit attached hereto, this Agreement shall control. This Agreement may not be modified in any way unless by written agreement signed by both Parties.
- G. No Party shall assign all or any portion of its rights under or interests in this Agreement or delegate any of its duties without prior written consent of the other Party. Any written request for assignment or delegation must be accompanied by written acceptance of the assignment or delegation by the assignee or delegation by the delegatee. Except where otherwise agreed in writing by the Parties, any assignment or delegation by a Party will not release that Party from its obligations pursuant to the Agreement. For purposes of this provision, the term "assignment" shall include any change in control of Distributor, whether by sale of stock or assets, merger or otherwise. This Agreement shall be binding upon the successors and assigns of the Parties and shall inure to the exclusive benefit of and shall be enforceable by the Parties and their respective successors and permitted assigns of the parties hereto.

- H. Nothing contained in this Agreement is intended or shall be construed to confer upon any person or entity (other than the Parties hereto) any rights, benefits or remedies of any kind or character whatsoever, and no person or entity shall be deemed a third-party beneficiary under or by reason of this Agreement.
- I. The captions used in this Agreement are included for convenience of reference only and in no way define or delineate any of the provisions hereof or otherwise affect their construction or effect.
- J. The language used in this Agreement shall be deemed to be the language chosen by the Parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any Party. Any reference to federal, state, local or foreign statute or law shall be deemed to also refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.
- K. All notices, reports, communications or requests required by, or permitted under, this Agreement, shall be in writing and shall be deemed effective (i) if delivered personally, on the date received, (ii) if delivered by overnight courier, on the next business day after deposit with the courier service absent persuasive evidence of the failure of delivery thereof on such date and then on the day of delivery indicated by such evidence, and (iii) if mailed, four (4) business days after mailing if sent by U.S. registered or certified mail, at the following addresses, or any other address of which either Party shall notify the other Party in writing:

If to Distributor: Scott Ringold
Area Senior Vice President
Gallagher Benefit Services
201 West 103rd Street, Suite 505
Indianapolis, Indiana 46290-1137
Facsimile: (317) 587-0780

If to ACI: Adam Grad
CEO, ACI 340B Management Company
1161 W. River Street, Suite 240
Boise, ID 83702
Facsimile: (208) 343-4664

All expenses of delivery shall be borne by the Party giving such notice. Any Party may change its address or contact person for notification purposes by giving the other Party written notice and the date upon which it will become effective in accordance with the terms of this Section XI. The Parties acknowledge that delivery by electronic mail shall be valid upon a showing of conclusive evidence by the Party delivering the notice of the actual receipt and opening of such.

- L. This Agreement may be executed in any number of counterparts. Any Party hereto may execute any such counterpart, each of which when executed and delivered together shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. This Agreement shall become binding when one or more counterparts taken together shall have been executed and delivered by the Parties.

The signatories to this Agreement on behalf of ACI and Distributor respectively represent and warrant that they are duly authorized to enter into this Agreement on behalf of the Party on whose behalf they purport to execute this Agreement.

IN WITNESS THEREOF, the undersigned have executed this Agreement to be effective as of the date first written above.

Gallagher Benefit Services, Inc.

By: 

Name: Scott Ringold

Title: Area Senior Vice President

ACI 340B Management Company.

By: 

Name: Adam Grace

Title: Ceo