



# Alliance for Pharmacy Compounding

## APC AFFINITY PROVIDER AGREEMENT

This agreement, effective 7/11/23, by and between **The Alliance for Pharmacy Compounding**, a corporation organized and existing under the laws of the State of Texas (hereinafter referred to as "APC"), and **Capital Drug**.

**WHEREAS**, Capital Drug is engaged in wholesale distribution of FDA approved, finished form branded and generic drugs to independent pharmacies; and

**WHEREAS**, Capital Drug and APC desire to enter into a relationship, whereby APC will promote the sale of Capital Drug **finished form drug products only** hereinafter described, upon the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, it is mutually agreed upon as follows:

### 1. DUTIES OF APC

APC will use its best efforts to solicit interest in the sale of Capital Drug products by presenting Capital Drug in a clear, understandable, and professional manner. In this regard, APC will present Capital Drug to its **Pharmacy/Facility Members**. APC shall be responsible for developing its own marketing plan and may utilize marketing materials provided by Capital Drug. APC will always maintain professional conduct and appearance.

Once an APC **Pharmacy/Facility Member** has indicated interest, APC will refer the lead to Capital Drug for follow-up.

The conduct of APC on behalf of Capital Drug shall in all respects comply with the laws of the United States of America, the laws of the state of Texas, and the laws of any other state in which APC performs the Services pursuant to this Agreement, including any and all applicable fraud, waste and abuse laws; consumer fraud laws; consumer finance laws; disclosure requirements; federal and state self-referral and anti-kickback laws, and similar regulations.

Specific deliverables to Capital Drug from APC under this agreement include:

1. Ongoing lead generation via its APC **Pharmacy/Facility Member** recruitment efforts.
2. APC will introduce Capital Drug products and services. APC will not make guarantees on those products and services without the written permission of Capital Drug.
3. If Capital Drug is interested in becoming an APC Corporate Patron, APC will provide Bronze Level classification at a 50% discount. See the attachment for all benefits and services associated with Corporate Patrons.
4. Monthly list of PFM Members to include email addresses and phone numbers.
5. Permanent listing for Capital Drug on the APC website PFM section during the term of this agreement
6. Regular promotion of Capital Drug through social media posts and PFM benefits emails
7. Listing in APC member recruitment materials
8. Introductory all-member email announcement about Capital Drug relationship/offer with APC.
9. Right for Capital Drug to approve APC member-facing marketing, social media, etc., related to the agreement and products.
10. Logo use agreement

### 2. DUTIES OF Capital Drug

Capital Drug shall offer sufficient training to APC to satisfy the APC AGENT's ability to advise the APC Pharmacy/Facility Member on the product and/or service offerings delivered by Capital Drug.

Capital Drug shall provide marketing materials, logos and other related sales materials to help promote products and/or service offerings to APC within 15 days upon execution of this agreement.

Once the APC Pharmacy/Facility Member has engaged, setup account and made a purchase from Capital Drug, the obligations of APC to receive agreed-upon compensation have been fulfilled. APC shall receive from Capital Drug compensation as outlined in table below for purchases made by APC Pharmacy/Facility Members. Within 30 days after the last day of a calendar quarter, Capital Drug shall provide a report containing the list of products and/or services ordered by APC Pharmacy/Facility Members that have completed a purchase.

The conduct of Capital Drug shall in all respects comply with the laws of the United States of America, the laws of the state in which the Capital Drug reside, and the laws of any other state in which APC performs the Services pursuant to this Agreement, including any and all applicable fraud, waste and abuse laws; consumer fraud laws; consumer finance laws; disclosure requirements; federal and state self-referral and anti-kickback laws, and similar regulations.

Specific deliverables to APC from Capital Drug under this agreement include:

- Capital will create a specific Generic contract of finished form drugs only for ALLIANCE FOR PHARMACY COMPOUNDING, Pharmacy/Facility Members (PFM's)
- Customers can either elect to order via Capital Web-Site or via a tele-sales representative. If customer elects to work with Tele-Sales representative and a price is negotiated on a particular item that negotiated price will be available to all ALLIANCE FOR PHARMACY COMPOUNDING, PFM's.
- Capital and ALLIANCE FOR PHARMACY COMPOUNDING or an agent of ALLIANCE FOR PHARMACY COMPOUNDING will conduct a Monthly conference call to identify these items.
- - Items that are experiencing supply issues
  - Items that are priced out of market from primary supplier
  - If a negotiated price is made for 1 ALLIANCE FOR PHARMACY COMPOUNDING member that pricing will be available to all ALLIANCE FOR PHARMACY COMPOUNDING members automatically.
  - In the event we have an active or inactive customer identified on the attached member list they will be coded in our system as ALLIANCE FOR PHARMACY COMPOUNDING customers. We will attach the existing Capital/ALLIANCE FOR PHARMACY COMPOUNDING customers to the ALLIANCE FOR PHARMACY COMPOUNDING generic contract, as well as pay administrative fees to ALLIANCE FOR PHARMACY COMPOUNDING.

Capital and ALLIANCE FOR PHARMACY COMPOUNDING or an agent of ALLIANCE FOR PHARMACY COMPOUNDING will conduct a Monthly conference call to identify these items.

**Brand Discount Program**

Capital will offer Branded RX at a discount to APC pharmacy/facility members. If a customer purchases \$750.00 worth of GRX they will be eligible to order up to \$750.00 worth of Brand RX. (please see table below) Capital will invoice all Brand purchases @ WAC then place a credit on the customer's statement, depicting the Brand discount.

Tier	Monthly \$	% Brand Credit
1	\$750.00	1%
2	\$1,250.00	2%
3	\$2,000.00	3%

*ALLIANCE FOR PHARMACY COMPOUNDING Administrative Fee*

Capital will offer the ALLIANCE FOR PHARMACY COMPOUNDING office an administrative fee for Generic purchases.

**Aggregated Generic Purchases from all APC Customers**

- \$10,000.00 - \$50,000 = 3%
- \$50,000.01 - \$100,000.00 = 4%
- \$100,000.00 – Beyond = 5%

All credits or administrative fees paid to APC will be net of any credits related to returns, damages, pricing discrepancies, mis-shipments and any other credit(s) deemed appropriate by Capital Drug

**3. NO AGENCY**

APC is an independent contractor and under no circumstances will APC commit Capital Drug to the delivery of Capital Drug products

and services, purport to legally bind Capital Drug in any matter, or hold itself out as an employee or agent with legal authority to bind Capital Drug. APC may include Capital Drug's logo on its website and marketing materials; however, a sample must be submitted to Capital Drug prior to the printing of the same for Capital Drug's written approval.

#### **4. RULES OF CONDUCT**

In the course of marketing Capital Drug's products and services, APC and its marketing representatives shall adhere to the highest level of professional conduct, which includes, but is not limited to:

- (a) APC and each of its marketing representatives shall not disparage, denigrate, "run down" or make any negative comments regarding another Capital Drug competitor's product, or service.
- (b) Under no circumstances shall APC or any of its marketing representatives instruct, advise, or otherwise assist any APC Pharmacy/Facility Member, or any other individual or entity in submitting a claim or reimbursement request to an insurer or any federally or state-funded third-party payer program, including but not limited to Medicare, Medicaid, TRICARE, or any other federal or state health care program.

Except as stated above where the violation of a provision of this Agreement operates as an automatic termination of this Agreement, any violation of any provision of section 4 of this Agreement shall be grounds for termination by Capital Drug of this Agreement for cause at Capital Drug's sole discretion.

#### **5. PERSONNEL**

APC shall not perform any duties under this Agreement, unless APC's Director of Business Development has completed all the following:

- (a) Attended the Capital Drug presentation and Product Training and completed any other tests or courses Capital Drug deems necessary to perform the duties as provided herein.
- (b) Received Capital Drug approval to promote Capital Drug products and services.

Capital Drug shall provide APC the tools, resources, and educational materials to satisfy the duties of APC's obligations as noted in Section 2 of this agreement.

#### **6. INDEMNITY**

Both Capital Drug & APC shall defend, indemnify, and hold harmless the other Party from any and all claims, demands, losses, liabilities, fines, damages or expenses, including but not limited to attorney's fees and expert fees, arising in any way from actual or alleged acts or omissions of both Parties under this Agreement. Both Capital Drug & APC defense and indemnity obligations hereunder shall not be limited by any insurance coverage that may or may not be available to it. This indemnity provision shall not apply to claims or damages caused by the sole negligence of a party indemnified hereunder.

#### **7. COMMISSIONS**

Subject to the terms and conditions of this Agreement, APC will receive a commission in the amount of (see section 2) percent from the sales of Capital Drug services from APC Pharmacy/Facility Members.

- (a) Any dispute or claim with respect to the entitlement and/or amount of commissions shall be made in writing to Capital Drug within Sixty (60) days from the end of the month for which commissions are claimed as to entitlement and/or amount. Failure to timely raise in writing any claims or disputes with respect to entitlement or amount shall constitute a total waiver by APC for any such commissions.
- (b) Commissions will be paid within 30 days of a calendar quarter's end for all orders from the previous quarter.
- (c) Payment for the previous quarter shall be made to APC via ACH. To facilitate this payment, APC and Capital Drug agree to the following verification process:
  - a) No later than the 15<sup>th</sup> day of the first month of each quarter, APC shall make available to Capital Drug a list of APC

Pharmacy/Facility Members, so that Capital Drug may compare it against its customer list; and  
b) No later than the 15<sup>th</sup> day of the first month of each quarter, Capital Drug shall make available to APC a list of its compounding pharmacy/facility customers, so that APC may compare it against its member list; and Capital Drug shall provide transaction data sufficient to document the commission payment due to APC.

APC and Capital Drug will sign a non-disclosure agreement, expressing the understanding that the APC membership list and Capital Drug compounder customer list are the intellectual property of the parties respectively, and as such, are confidential and may only be used by the other party for purposes of verifying and reconciling residual payments.

## **8. TECHNICAL SUPPORT**

Capital Drug shall provide APC and its marketing representative with basic technical and training support, sales terms and conditions, pricing policies, and bulletins as they are made available by Capital Drug so that the APC marketing representative is reasonably versed on the services he or she will promote.

## **9. GOVERNING LAW**

APC and its marketing representatives shall comply with all applicable federal, state, and local laws and regulations as well as applicable industry ethical codes and guidelines in performing their duties and responsibilities. This Agreement shall be deemed to have been made in Texas and shall be governed and construed in accordance with the laws of the State of Texas, in which APC is incorporated.

## **10. TERM**

This Agreement shall continue in force for three (3) years and will automatically renew every year after initial term for an additional one-year term, unless terminated as set forth herein. It is, however, expressly understood that Capital Drug has complete and sole discretion to appoint, decrease or add to its staff related to this agreement, at any time, for any reason.

## **11. DISPUTES**

Any claim, matter or controversy arising out of or relating to this APC agreement, or the breach thereof, shall be decided by arbitration in accordance with the Commercial Industry Rules of the American Arbitration Association governing at that time, unless the parties mutually agree otherwise in writing. The prevailing party in any such arbitration shall be entitled to recover reasonable attorney's fees, expenses of council, expert witness fees and any other arbitration expenses. The award of the arbitrator(s) shall be final and binding, and may be enforced in any court of competent jurisdiction.

## **12. TERMINATION**

Either party may terminate this Agreement for cause by sending written notice of termination to the other party. Termination for cause shall require 90-days prior written notice. Such notice in the event of a termination for cause shall detail the circumstances giving rise to the termination for cause. In the event Capital Drug terminates this agreement for cause, APC shall be paid commissions for sales through the date of the termination but shall forfeit any further compensation. Any compensation accrued prior to termination shall be paid within 30 days after the date of termination. APC specifically waives any claim it might have to damages in quantum meruit in the event this Agreement is terminated by Capital Drug for cause.

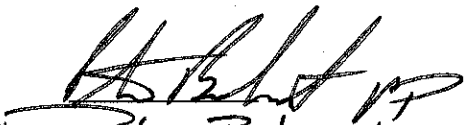
## **13. ENTIRE AGREEMENT**

This Agreement, embodies the entire agreement between the parties hereto, and there are no verbal or collateral agreements between them. All preliminary negotiations, representations and discussions are deemed merged herein. This Agreement may be altered or modified only in writing and signed by all parties hereto. If any provision of this Agreement is unenforceable or invalid, such unenforceable or invalid provision shall be deemed severed from the Agreement and the remaining provisions of this Agreement shall not be affected thereby.

IN WITNESS, WHEREOF, the parties have executed this Agreement on the date and year above first written.

Capital Drug:

ALLIANCE FOR PHARMACY COMPOUNDING:

Signature:   
Print Name: Peter Behrent  
Address: 873 Williams Ave  
Columbus, OH 43212  
Phone Number: 800-282-2754  
Date: 7/11/23

Signature: \_\_\_\_\_  
Print Name: Scott Brunner, CAE  
100 Daingerfield Road, Su 100  
Alexandria, Virginia 22314