

KIOSK SERVICES AGREEMENT

This Kiosk Services Agreement, including as amended, supplemented or otherwise modified from time to time (the “Agreement”) is entered into between MED-Project LLC (“MED-Project”) and City of Lynden (“Host”) (each individually, a “Party,” collectively the “Parties”).

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Definitions.** The following terms shall have the respective meanings set forth below:

- 1.1. “Applicable Laws” shall mean all applicable federal, state, and local laws, statutes, ordinances, codes, rules, regulations, orders, decrees or pronouncements of any governmental, administrative or judicial authorities including, but not limited to, the “Take-back Law(s)” (defined below) identified in Exhibit A with respect to each “Jurisdiction” (defined below) identified in Exhibit A, federal Controlled Substances Act, 21 U.S.C. §§ 801 *et seq.*, U. S. Drug Enforcement Administration controlled substances disposal regulations, 21 C.F.R. §§ 1300 *et seq.*, U.S. Department of Transportation Hazardous Materials Regulations, 49 C.F.R. Parts 171-185,, if applicable, and any amendments or modifications to these legal requirements.
- 1.2. “DEA” shall mean the U.S. Drug Enforcement Administration.
- 1.3. “Effective Date” shall mean the date defined in Section 21 of this Agreement.
- 1.4. “Emergency Requests” shall mean requests for Services in Section 3.3 of this Agreement in response to any events, situations, activities or circumstances that pose a risk or potential risk of harm or injury to property or persons.
- 1.5. “Installation Vendor” shall mean the qualified vendor contracted by MED-Project and identified further in Exhibit F, including any installation vendor substituted by MED-Project for the initial Installation Vendor.
- 1.6. “Kiosks” shall mean DEA-compliant receptacles used for the collection of “Unwanted Medicine” (defined

below) provided by MED-Project and identified in Exhibit B.

- 1.7. “Host Collection Site” shall mean the site(s) listed in Exhibit C.
- 1.8. “Jurisdiction” shall mean a state, county, city, or other jurisdiction identified in Exhibit A.
- 1.9. “Losses” shall mean any costs, expenses, damages or diminution of value.
- 1.10. “Manager” shall mean the individual(s) identified in Exhibit D.
- 1.11. “Take-back Law” shall mean a law, regulation, ordinance, or other legal requirement identified in Exhibit A for each Jurisdiction.
- 1.12. “Plan” shall mean the approved MED-Project Product Stewardship Plan operating in each Jurisdiction.
- 1.13. “Services” shall mean the obligations identified in Sections 3.2, 3.3, and 3.4 of this Agreement.
- 1.14. “Termination Date” shall mean the date this Agreement terminates pursuant to Sections 9.1.1 through 9.1.5 of this Agreement.
- 1.15. “Vendor” shall mean the qualified vendor contracted by MED-Project and identified further in Exhibit E, including any vendor substituted by MED-Project for the initial Vendor.
- 1.16. “Unwanted Medicine” shall mean Unwanted Medicine as defined in the respective Plan operating in each Jurisdiction.

2. **Representations and Warranties.**

- 2.1. Host hereby represents and warrants as follows:
 - 2.1.1. Host is currently, and shall remain, in compliance with all Applicable Laws regarding the collection, handling, processing and disposal of Unwanted Medicine.
 - 2.1.2. Host possesses all required authorizations and authority to enter into this Agreement and this Agreement has been duly authorized and executed by Host in compliance with all required authorizations.
 - 2.1.3. Host’s execution, delivery, and performance of this Agreement does not, and will not, conflict with any agreement, instrument or understanding to which Host is a party or by which it may be bound.

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- 2.2. MED-Project hereby represents and warrants for itself, and to the extent applicable, with respect to Vendor, as follows:
- 2.2.1. Vendor is currently, and shall remain, in compliance with all Applicable Laws regarding the collection, handling, processing, and disposal of Unwanted Medicine.
 - 2.2.2. MED-Project possesses all required authorizations and authority to enter into this Agreement and this Agreement has been duly authorized and executed by MED-Project in compliance with all required authorizations.
 - 2.2.3. MED-Project's execution, delivery, and performance of this Agreement does not, and will not, conflict with any agreement, instrument or understanding to which MED-Project is a party or by which it may be bound.
3. **Services.**
- 3.1. Host, MED-Project, Vendor, and Installation Vendor shall perform all obligations required of them under this Agreement in compliance with Applicable Laws.
 - 3.2. MED-Project shall:
 - 3.2.1. If the Manager requests a Kiosk from MED-Project, and MED-Project approves the Kiosk request (which MED-Project shall not unreasonably deny), within 180 days of the approval have a Kiosk delivered to Host at a time mutually agreed to by both Parties and when the Manager is present;
 - 3.2.2. Have Kiosk maintenance performed if requested by the Manager and MED-Project approves the request (which MED-Project shall not unreasonably deny) or if deemed necessary by Vendor or MED-Project;
 - 3.3. MED-Project, through Vendor, shall:
 - 3.3.1. Review and inspect the Kiosk when Vendor collects Unwanted Medicine from the Kiosk;
 - 3.3.2. Supply each Kiosk with liners; liners must meet the requirements of Applicable Laws, including, but not limited to, 21 C.F.R. §§ 1300 *et seq.*;
 - 3.3.3. Provide Host with a regular schedule for the collection of Unwanted Medicine from Kiosk(s) and notify the Manager in advance of any changes to this schedule;
 - 3.3.4. Collect Unwanted Medicine in accordance with the schedule identified in Section 3.3.3 of this Agreement or upon request by the Manager and approval by MED-Project (which MED-Project shall not unreasonably deny);
 - 3.3.5. Respond to Emergency Requests from Host;
 - 3.3.6. Transport and dispose or cause the transportation and disposal of Unwanted Medicine collected from Kiosk(s) in accordance with all Applicable Laws.
 - 3.4. MED-Project, through the Installation Vendor, shall:
 - 3.4.1. Assist Host with installation of Kiosks if: (1) requested to do so by the Manager; (2) Host Collection Site provides appropriate and adequate space for installation of the Kiosk; and (3) the Manager is present at the Host Collection Site at the time of Kiosk installation.
 - 3.4.2. Remove Kiosk(s) from the Host Collection Site if a replacement Kiosk(s) is scheduled for delivery;
 - 3.4.3. Remove Kiosk(s) from the Host Collection Site if this Agreement terminates pursuant to Section 9 of this Agreement, and, if Kiosk removal causes damage to the floor, repair such damage to the floor in a good and workmanlike manner;
 - 3.5. MED-Project, Vendor, and Installation Vendor shall be solely responsible for providing all Services in Sections 3.2, 3.3, and 3.4 of this Agreement, respectively. Host agrees to look solely to MED-Project, Vendor, and Installation Vendor for such Services. MED-Project shall have the right to change Vendor(s) or Installation Vendor at any time at its sole discretion. In such a case, the new entity that becomes the Vendor or Installation Vendor will be responsible under this Agreement for Services required of Vendor or Installation Vendor, respectively, from and after the date of such change.
 - 3.6. Host shall allow MED-Project, Vendor, and Installation Vendor to provide the Services in Sections 3.2, 3.3, and 3.4 of this Agreement, respectively, at Host Collection Site and shall cooperate with MED-Project and its Vendor and

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Installation Vendor in the provision of these Services. Such cooperation includes, but is not limited to:

- 3.6.1. Identifying a Manager at Host Collection Site;
 - 3.6.2. Requesting Kiosk(s) from MED-Project within 30 days of the Effective Date and if a Kiosk becomes damaged or malfunctions and cannot be repaired;
 - 3.6.3. Providing appropriate and adequate space for the installation of Kiosk(s) in compliance with Applicable Laws and making the Manager present at Host Collection Site at the time of Kiosk installation;
 - 3.6.4. Notifying MED-Project of any Kiosk maintenance concerns or needs, including, but not limited to, any damage to or malfunction of a Kiosk;
 - 3.6.5. Notifying MED-Project and Vendor if a Kiosk is full, and;
 - 3.6.6. Labeling Kiosk(s) with the signage provided by MED-Project. Host shall not alter the design or appearance of Kiosk(s).
 - 3.6.7. Storing Unwanted Medicine in accordance with all Applicable Laws.
- 3.7. This Agreement only applies to Kiosk(s) and Host Collection Site(s) located within the Jurisdiction(s) identified in Exhibit A.

4. Payment.

- 4.1. Host shall not be responsible for paying the charges of MED-Project, Vendor, or Installation Vendor for the Services MED-Project, Vendor, or Installation Vendor render under Sections 3.2, 3.3, and 3.4 of this Agreement, respectively.

5. Nature of the Relationship.

- 5.1. Each Party is entering into and will perform the activities contemplated by this Agreement solely as an independent entity. This Agreement does not create any other relationship between the Parties, or with Vendor or Installation Vendor, including but not limited to the relationship of partners, joint ventures, or agent or legal representative of the other for any purpose whatsoever. None of the Parties will (i) make any representation that would create an

apparent agency, partnership, co-employment or joint venture relationship with any other Party or with Vendor or Installation Vendor, (ii) have the power, expressed or implied, to obligate or bind the other or the Vendor or Installation Vendor in any manner whatsoever, or (iii) be responsible for any act or omission of the other or the Vendor or the Installation Vendor or any employee of the other or of the Vendor or of the Installation Vendor. No employee of Host, MED-Project, Vendor or the Installation Vendor is or will be considered an employee of any other Party for any purpose in connection with the performance of this Agreement. No Party to this Agreement has the ability to direct, control, schedule, hire or discipline any other Party's employee or the employees of Vendor or Installation Vendor.

6. Report of Theft or Diversion.

- 6.1. In the event of any theft, unexplained loss, or diversion of Unwanted Medicine collected at a Kiosk, or environmental incident, including spills and releases reported to any governmental authority, occurring during performance of this Agreement, the Party that becomes aware of such condition or event shall notify the other Party immediately.
- 6.2. A Party with information about the conditions or events referenced in Section 6.1 of this Agreement will provide to the other Party any information about such conditions or events necessary for, and on a timeframe that allows, that other Party to meet its obligations under Applicable Laws.

7. Indemnification.

- 7.1. To the fullest extent permitted by law, MED-Project shall defend, indemnify, and hold harmless Host from and against all Losses to the extent arising out of or related to any and all third party claims, liabilities, liens, demands, obligations, actions, proceedings, suits or causes of action to the extent arising out of or related to MED-Project's and/or Vendor's and/or Installation Vendor's (a) breach of this Agreement, or (b) sole negligence, recklessness, or willful misconduct.
- 7.2. Notwithstanding the foregoing language in Section 7.1, MED-Project shall not be liable for Losses

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under Section 7.1 to the extent such Losses arise out of or relate to Host's (a) breach of this Agreement, or (b) sole negligence, recklessness, or willful misconduct.

8. Limitation of Liability

8.1. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING ECONOMIC DAMAGES AND LOST PROFITS, ARISING FROM OR RELATING TO ANY BREACH OF THIS AGREEMENT OR TORT, EVEN IF SUCH PARTY WAS AWARE OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF THESE DAMAGES.

9. Term, Termination.

9.1. The term of this Agreement shall commence as of the Effective Date and shall continue in force until: Notice from Host to MED-Project of MED-Project's breach of this Agreement. This Agreement shall terminate immediately upon such notice if MED-Project does not take immediate steps to cure the breach.

9.1.1. Notice from MED-Project to Host of Host's breach of this Agreement. This Agreement shall terminate immediately upon such notice if Host does not take immediate steps to cure the breach .

9.1.2. Notice from either Party to the other Party that this Agreement is terminated without cause. This Agreement shall terminate seven days after such notice.

9.1.3. If the representations and warranties set forth in Section 2.1 or 2.2 cease to continue to be correct, or DEA issues a notice, guidance, regulation or other communication applicable to Host, Vendor, Installation Vendor, or MED-Project making it reasonable to conclude that activities contemplated by this Agreement are viewed by DEA as impermissible or a violation of Applicable Laws, this Agreement shall terminate immediately.

9.1.4. Two years from the Effective Date, unless the Termination Date is extended pursuant to Section 15 of this Agreement.

9.2. Compliance with Section 3.4.3 of this Agreement shall be MED-Project's sole financial obligation with respect to any termination of the Agreement.

10. Severability.

10.1. In the event any provision of this Agreement shall be judicially interpreted or held to be void or otherwise unenforceable as written, such provision shall be deemed to be revised and modified to the extent necessary to make it legally enforceable. In the event that a provision cannot be made legally enforceable, the remaining terms of this Agreement shall be enforceable as though the void or unenforceable provision did not exist.

11. Assignment/Subcontracting.

11.1. Except as expressly contemplated under this Agreement, neither Party shall assign or subcontract any of its duties or obligations hereunder or assign this Agreement or its rights hereunder without the express written permission of the other Party, such consent not to be unreasonably withheld. Any assignment, delegation or subcontracting in violation of the above shall be void and ineffective. Notwithstanding this or any other provision of this Agreement: (i) MED-Project shall have the right at any time to substitute Vendors or Installation Vendors, and (ii) Each Party may transfer or assign this Agreement and that Party's respective rights and obligations hereunder in connection with any transfer of ownership, merger, or acquisition.

12. Survival.

12.1. The obligations set forth in Sections 5, 7, 8, 9.2, and 18 shall survive termination of this Agreement.

13. Third Party Beneficiaries.

13.1. Except as specifically set forth herein, nothing in this Agreement, express or implied, is intended or shall be construed to confer upon or give to any person, entity, company or organization, other than Host or MED-Project, any right, remedy, cause of action or claim under or by reason of this

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Agreement or any term or provision hereof, all of which shall be for the sole and exclusive benefit of Host and MED-Project.

14. Notice.

- 14.1. All notices to be provided in connection with this Agreement, including “requests” in sections 3.2.1, 3.2.2, 3.3.4, 3.4.1, and 3.6.2 of this Agreement, shall be in writing. Notices shall be deemed effective (i) when delivered by hand to the Party entitled to receive notice, (ii) on the next business day after delivery to a nationally-recognized express delivery service with instructions and payment for overnight delivery, or (iii) upon confirmation of receipt when sent by e-mail.
- 14.2. All notices in connection with this Agreement shall be sent to the individual or individuals that each Party designates to receive such correspondence on behalf of the Party. Initially, notices shall be provided, if to MED-Project, to:

Jim Wilson, P.E.
Senior Director, Compliance and Risk
Management
MED-Project LLC
1800 M Street, NW, Suite 400S
Washington, DC 20036
legalaffairs@med-project.org
Phone: (844) 677-6532
Fax: (510) 686-8837

and if to Host, to:

Holly Vega
Support Services Manager
Lynden Police Department
203 19th Street
Lynden, WA 98264
E-mail: vegah@lyndenwa.org
Phone: (360) 255-7898
Fax: (360) 354-7609

15. Complete Agreement, Headings, Modification.

- 15.1. This Agreement, along with its Exhibits, sets forth the complete agreement of the Parties with respect to the subject matter hereof. No prior or

contemporaneous oral or written agreement or representation shall be effective to modify the express terms of this Agreement. Headings have been inserted for the convenient reference of the Parties and shall not be used to modify or interpret the express terms of the Agreement. No modification to this Agreement shall be valid unless it is made in writing, specifically states that it amends this Agreement, and is signed by authorized representatives of both Parties.

- 15.2. Notwithstanding Section 15.1, the Jurisdictions and Take-back Law for each Jurisdiction may be added to, edited in, or removed from Exhibit A through the mutual written consent of an authorized individual from each Party.
- 15.3. Notwithstanding Section 15.1, Kiosk(s), Host Collection Site(s), and Manager(s) may be added to or removed from Exhibits B, C, and D of this Agreement, respectively, through the mutual written consent of an authorized individual from each Party.
- 15.4. Notwithstanding Section 15.1, MED-Project may substitute Vendor or Installation Vendor in Exhibit E and F, respectively, without written consent from the Host.

16. Signatures.

- 16.1. This Agreement is legally binding when, and not until, each Party has received from the other a counterpart of this Agreement signed by an authorized representative. The Parties may sign separate, identical counterparts of this document; taken together, they constitute one Agreement. The signed counterpart may be delivered by any reasonable means, including electronic transmission.

17. Jurisdiction and Venue.

- 17.1. This Agreement is made and entered into in Washington and shall be interpreted and construed in accordance with the laws of Washington. The Parties submit to the exclusive jurisdiction of the Washington state and federal courts.

18. Publicity/Disclosure.

- 18.1. Unless required by law, neither Party may disclose the terms or subject matter of this Agreement to any third party, without the prior written consent of the other Party, except that MED-Project or Host may

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provide this Agreement to the Vendor and Installation Vendor.

18.2. Neither Party shall use the name, trade name, service marks, trademarks, trade dress or logos of the other Party in releases, advertising or any other publications, without such Party's prior written consent in each instance; except that either Party is authorized to use the other Party's name, trade name and logo with regard to public outreach and educational efforts taken with regard to the Plan. This provision applies to written and online releases and communications, including those appearing on a website and those circulated via social media platforms including, but not limited to, Facebook, Twitter, and LinkedIn.

19. Authority.

- 19.1. Each individual executing this Agreement in a representative capacity represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of the Party and its employees and that upon execution, this Agreement shall be binding upon the Party and its employees in accordance with its terms.
- 19.2. Each individual amending and/or providing written consent under this Agreement represents and warrants that he or she is duly authorized to make such amendments and/or consents on behalf of the Party and its employees.

20. Waiver.

20.1. No consent or waiver, express or implied by a Party, to or of any breach or default by the other in the performance by that other Party of obligations under this Agreement shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by that other Party of the same or any other obligation of that Party under this Agreement. Failure of a Party to complain of any act or failure to act of the other, or to declare the other in default, irrespective of how long that failure continues, shall not constitute a waiver by that Party of rights under this Agreement. The giving of consent by a Party in any one instance shall not limit or waive the necessity to obtain that Party's consent in any future instance.

21. Effective Date

21.1. The Agreement shall be effective on the last date signed by a Party in accordance with Section 16 of this Agreement.

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IN WITNESS WHEREOF, the Parties hereto by their duly authorized representatives have executed and delivered this Agreement as of the Effective Date.

City of Lynden

MED-Project LLC

By: _____

Name: Scott Korthuis

Title: Mayor

Date: _____

By: _____

Name: Jim Wilson, P.E.

Title: Senior Director Compliance and Risk Management

Date: _____

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Exhibit A:

Jurisdiction and Take-back Law Definitions

Jurisdiction	Take-back Law
Whatcom County, WA	Whatcom County Secure Medicine Return Ordinance, Whatcom County Code Chapter 24.15 (2017)

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Exhibit B

Kiosk(s) Approved for Inclusion in the MED-Project Product Stewardship Plan

Kiosk Description	Host Collection Site
MED-Project Kiosk	Lynden Police Department 203 19 th Street Lynden, WA 98264

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Exhibit C

Host Collection Site(s)

Name	Address
Lynden Police Department	203 19 th Street Lynden, WA 98264

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Exhibit D

Manager(s)

Name	Manager's Work Address	Host Collection Site Address	Telephone Number	Email Address
Holly Vega	Lynden Police Department 203 19 th Street Lynden, WA 98264	Lynden Police Department 203 19 th Street Lynden, WA 98264	(360) 2557879	vegah@lyndenwa.org
John Billester, Chief	Lynden Police Department 203 19 th Street Lynden, WA 98264	Lynden Police Department 203 19 th Street Lynden, WA 98264	(360) 3542828	billesterj@lyndenwa.org

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Exhibit E

Notice and Contact Data for Vendor

Stericycle Specialty Waste Solutions, Inc.
Address: 2850 100th Court NE, Blaine, MN 55449
Phone: (612) 285-9865

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Exhibit F

Notice and Contact Data for Installation Vendor

Balfour Beatty Construction, LLC
Address: 415 1st Ave N., Seattle, WA 98109
Phone: (206) 447-7699