

**City and County of San Francisco
Office of Contract Administration
Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685**

**Agreement between the City and County of San Francisco and
MedImpact Healthcare Systems, Inc.**

This Agreement is made this first day of July, 2008, in the City and County of San Francisco, State of California, by and between: MedImpact Healthcare Systems, 10680 Treena Street, 5th Floor, San Diego, CA 92131, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing."

Recitals

WHEREAS, the Department of Public Health, Community Health Network, ("Department") wishes to provide computerized approval to community pharmacies for prescriptions from Community Health Network providers for Community Health Network clients without other prescription insurance; and,

WHEREAS, a Request for Proposal ("RFP") was issued on December 10, 2007, and City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Contract; and,

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number PSC 2013- 04/05 on June 6, 2005;

Now, THEREFORE, the parties agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from July 1, 2008 to June 30, 2011.

3. Effective Date of Agreement

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

4. Services Contractor Agrees to Perform

The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.

5. Compensation

Compensation shall be made in monthly payments on or before the 30th day of each month for work, as set forth in Section 4 of this Agreement, that the Director of the Public Health Department, in his or her sole discretion, concludes has been performed as of the 30th day of the immediately preceding month. In no event shall the amount of this Agreement exceed Eight Hundred Forty Thousand Dollars (\$840,000). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by The Department of Public Health as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall City be liable for interest or late charges for any late payments.

6. Guaranteed Maximum Costs

a. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

b. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

c. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

d. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

7. Payment; Invoice Format

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by City to Contractor shall be subject to audit by City.

Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

8. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. Disallowance

If Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement.

By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material terms of the Agreement.

10. Taxes

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

b. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

(1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

(2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

(3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

(4) Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

11. Payment Does Not Imply Acceptance of Work

The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

12. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for Equipment

City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

14. Independent Contractor; Payment of Taxes and Other Expenses

a. Independent Contractor

Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. Payment of Taxes and Other Expenses.

Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any

credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(4) Professional liability insurance with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

(1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees for General Liability only.

(2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. All policies shall provide thirty (30) days' advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:

Office of Contract Management and Compliance
Department of Public Health
101 Grove Street, Room 307
San Francisco, California 94102

d. Should the required General Liability insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

h. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

16. Indemnification

Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

17. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

18. Liability of City

CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

19. Left blank by agreement of the parties. (Liquidated damages)

20. Default; Remedies

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

(1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, 53, 55, 57, 58, and item 1 of Appendix D attached to this Agreement.

(2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Contractor.

(3) Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

(4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21. Termination for Convenience

a. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

(1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.

(2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

(3) Terminating all existing orders and subcontracts.

(4) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.

(7) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

c. Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

(1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

(4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.

d. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. City's payment obligation under this Section shall survive termination of this Agreement.

22. Rights and Duties upon Termination or Expiration

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 18, 24, 26, 27, 28, 48 through 52, 56, 57 and item I of Appendix D attached to this Agreement.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

23. Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

24. Proprietary or Confidential Information of City

a. Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in

performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

b. Contractor shall maintain the usual and customary records for persons receiving Services under this Agreement. Contractor agrees that all private or confidential information concerning persons receiving Services under this Agreement, whether disclosed by the City or by the individuals themselves, shall be held in the strictest confidence, shall be used only in performance of this Agreement, and shall be disclosed to third parties only as authorized by law. Contractor understands and agrees that this duty of care shall extend to confidential information contained or conveyed in any form, including but not limited to documents, files, patient or client records, facsimiles, recordings, telephone calls, telephone answering machines, voice mail or other telephone voice recording systems, computer files, e-mail or other computer network communications, and computer backup files, including disks and hard copies. The City reserves the right to terminate this Agreement for default if Contractor violates the terms of this section.

c. Contractor shall maintain its books and records in accordance with the generally accepted standards for such books and records for five years after the end of the fiscal year in which Services are furnished under this Agreement. Such access shall include making the books, documents and records available for inspection, examination or copying by the City, the California Department of Health Services or the U.S. Department of Health and Human Services and the Attorney General of the United States at all reasonable times at the Contractor's place of business or at such other mutually agreeable location in California. This provision shall also apply to any subcontract under this Agreement and to any contract between a subcontractor and related organizations of the subcontractor, and to their books, documents and records. The City acknowledges its duties and responsibilities regarding such records under such statutes and regulations.

d. The City owns all records of persons receiving Services and all fiscal records funded by this Agreement if Contractor goes out of business. Contractor shall immediately transfer possession of all these records if Contractor goes out of business. If this Agreement is terminated by either party, or expires, records shall be submitted to the City upon request.

e. All of the reports, information, and other materials prepared or assembled by Contractor under this Agreement shall be submitted to the Department of Public Health Contract Administrator and shall not be divulged by Contractor to any other person or entity without the prior written permission of the Contract Administrator listed in Appendix A.

25. Notices to the Parties

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To CITY: Office of Contract Management and Compliance
Department of Public Health
1380 Howard Street, Room 442 FAX: (415) 554-2555
San Francisco, California 94103 e-mail: Yvonne.Eckhoff@sfdph.org

And: Sharon Kotabe, PharmD
Hospital Associate Administrator, FAX: (415) 206-2377
Pharmaceutical Services e-mail: Sharon.Kotabe/DPH/SFGOV
2789 25th Street, Room 2010
San Francisco, CA 94110

To CONTRACTOR: MedImpact Healthcare Systems, Inc.
10680 Treena St 5th Fl. FAX: (858) 621-5147
San Diego, CA 92131
Attention: Fred Howe

And: Nancy Radtke, Associate General Counsel

Any notice of default must be sent by registered mail.

26. Ownership of Results

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

27. Works for Hire

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. Audit and Inspection of Records

a. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

b. Contractor shall annually have its books of accounts audited by a Certified Public Accountant and a copy of said audit report and the associated management letter(s) shall be transmitted to the Director of Public Health or his /her designee within one hundred eighty (180) calendar days following Contractor's fiscal year end date. If Contractor expends \$500,000 or more in Federal funding per year, from any and all Federal awards, said audit shall be conducted in accordance with OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations. Said requirements can be found at the following website address: <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. If Contractor expends less than \$500,000 a year in Federal awards, Contractor is exempt from the single audit requirements for that year, but records must be available for review or audit by appropriate officials of the Federal Agency, pass-through entity and General Accounting Office. Contractor agrees to reimburse the City any cost adjustments necessitated by this audit report. Any audit report which addresses all or part of the period covered by this Agreement shall treat the service components identified in the detailed descriptions attached to Appendix A and referred to in the Program Budgets of Appendix B as discrete program entities of the Contractor.

c. The Director of Public Health or his / her designee may approve of a waiver of the aforementioned audit requirement if the contractual Services are of a consulting or personal services nature, these Services are paid for through fee for service terms which limit the City's risk with such contracts, and it is determined that the work associated with the audit would produce undue burdens or costs and would provide minimal benefits. A written request for a waiver must be submitted to the DIRECTOR ninety (90) calendar days before the end of the Agreement term or Contractor's fiscal year, whichever comes first.

d. Any financial adjustments necessitated by this audit report shall be made by Contractor to the City. If Contractor is under contract to the City, the adjustment may be made in the next subsequent billing by Contractor to the City, or may be made by another written schedule determined solely by the City. In the event Contractor is not under contract to the City, written arrangements shall be made for audit adjustments.

29. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

30. Assignment

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement.

31. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

32. Earned Income Credit (EIC) Forms

Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

a. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

c. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

d. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

33. Local Business Enterprise Utilization; Liquidated Damages

a. The LBE Ordinance

Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative

Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. Compliance and Enforcement

If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17.

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

34. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate

In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. Subcontracts

Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from

Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits

Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. Condition to Contract

As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

35. MacBride Principles—Northern Ireland

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

36. Tropical Hardwood and Virgin Redwood Ban

Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

37. Drug-Free Workplace Policy

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. Resource Conservation

Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

39. Compliance with Americans with Disabilities Act

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

40. Sunshine Ordinance

In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

41. Public Access to Meetings and Records

If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

42. Limitations on Contributions

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor

acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

43. Requiring Minimum Compensation for Covered Employees

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

44. Requiring Health Benefits for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement

As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified

economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. Hiring Decisions

Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. Exceptions

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. Liquidated Damages

Contractor agrees:

- (1) To be liable to the City for liquidated damages as provided in this section;
- (2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

(3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

(5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

(7) That in the event the City is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by this Chapter, the contractor will be liable for the City's costs and reasonable attorneys fees.

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. Subcontracts

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

46. Prohibition on Political Activity with City Funds

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

47. Preservative-treated Wood Containing Arsenic

Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

48. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

49. Administrative Remedy for Agreement Interpretation - *DELETED BY MUTUAL AGREEMENT OF THE PARTIES*

50. Agreement Made in California; Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

51. Construction

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

52. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48.

53. Compliance with Laws

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

54. Services Provided by Attorneys

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

55. Supervision of Minors

Contractor, and any subcontractors, shall comply with California Penal Code section 11105.3 and request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in Welfare and Institution Code section 15660(a) of any person who applies for employment or volunteer position with Contractor, or any subcontractor, in which he or she would have supervisory or disciplinary power over a minor under his or her care.

If Contractor, or any subcontractor, is providing services at a City park, playground, recreational center or beach (separately and collectively, "Recreational Site"), Contractor shall not hire, and shall prevent its subcontractors from hiring, any person for employment or volunteer position to provide those services if that person has been convicted of any offense that was listed in former Penal Code section 11105.3 (h)(1) or 11105.3(h)(3).

If Contractor, or any of its subcontractors, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code section 11105.3(c), then Contractor shall comply, and cause its subcontractors to comply with that section and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Contractor shall provide, or cause its subcontractors to provide City with a copy of any such notice at the same time that it provides notice to any parent or guardian.

Contractor shall expressly require any of its subcontractors with supervisory or disciplinary power over a minor to comply with this section of the Agreement as a condition of its contract with the subcontractor.

Contractor acknowledges and agrees that failure by Contractor or any of its subcontractors to comply with any provision of this section of the Agreement shall constitute an Event of Default. Contractor further acknowledges and agrees that such Event of Default shall be grounds for the City to terminate the Agreement, partially or in its entirety, to recover from Contractor any amounts paid under this Agreement, and to withhold any future payments to Contractor. The remedies provided in this Section shall not be limited to any other remedy available to the City hereunder, or in equity or law for an Event of Default, and each remedy may be exercised individually or in combination with any other available remedy. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

56. Severability

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

57. Protection of Private Information

Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

58. Graffiti Removal

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

59. Food Service Waste Reduction Requirements

Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to

determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

60. Slavery Era Disclosure

a. Contractor acknowledges that this contract shall not be binding upon the City until the Director receives the affidavit required by the San Francisco Administrative Code's Chapter 12Y, "San Francisco Slavery Era Disclosure Ordinance."

b. In the event the Director finds that Contractor has failed to file an affidavit as required by Section 12Y.4(a) and this Contract, or has willfully filed a false affidavit, the Contractor shall be liable for liquidated damages in an amount equal to the Contractor's net profit on the Contract, 10 percent of the total amount of the Contract, or \$1,000, whichever is greatest as determined by the Director. Contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the Contractor from any Contract with the City.

c. Contractor shall maintain records necessary for monitoring their compliance with this provision.

61. Additional Terms

Additional Terms are attached hereto as Appendix D and are incorporated into this Agreement by reference as though fully set forth herein.


IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

CONTRACTOR

Recommended by:

MedImpact Healthcare Systems, Inc.



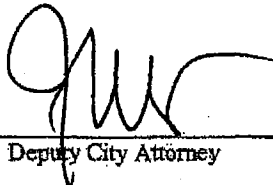
MITCHELL H. KATZ, M.D.
Director of Health / Date 6/2/08

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

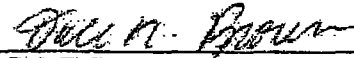
Approved as to Form:

Dennis J. Herrera
City Attorney

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.



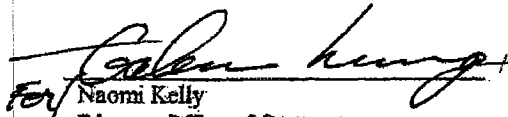
By: Deputy City Attorney / Date 6.25.08



Dale R. Brown / Date 6-13-08
Senior Vice President
10680 Treena Street, 5th Floor
San Diego, CA 92131-2446

Approved:

City vendor number: 50614



for Naomi Kelly / Date 6/30/08
Director Office of Contract
Administration and Purchaser

The Appendices listed below and attached hereto are incorporated into this Agreement by reference as though fully set forth herein.

Appendices

- A: Services to be provided by Contractor
- B: Calculation of Charges
- C: Reserved
- D: Additional Terms
- E: HIPAA Business Associate Agreement
- F: Invoice



PURCHASING DEPARTMENT

2008 JUN 26 PM 2:19

RECEIVED

Appendix A
Services to be provided by Contractor

1. Terms

A. Contract Administrator:

In performing the Services hereunder, Contractor shall report to **Sharon Kotabe**, Contract Administrator for the City, or his / her designee.

B. Reports:

Contractor shall submit written reports as requested by the City. The format for the content of such reports shall be determined by the City. The timely submission of all reports is a necessary and material term and condition of this Agreement. All reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

C. Evaluation:

Contractor shall participate as requested with the City, State and/or Federal government in evaluative studies designed to show the effectiveness of Contractor's Services. Contractor agrees to meet the requirements of and participate in the evaluation program and management information systems of the City. The City agrees that any final written reports generated through the evaluation program shall be made available to Contractor within thirty (30) working days. Contractor may submit a written response within thirty working days of receipt of any evaluation report and such response will become part of the official report.

D. Possession of Licenses/Permits:

Contractor warrants the possession of all licenses and/or permits required by the laws and regulations of the United States, the State of California, and the City to provide the Services. Failure to maintain these licenses and permits shall constitute a material breach of this Agreement.

E. Adequate Resources:

Contractor agrees that it has secured or shall secure at its own expense all persons, employees and equipment required to perform the Services required under this Agreement, and that all such Services shall be performed by Contractor, or under Contractor's supervision, by persons authorized by law to perform such Services.

F. Admission Policy:

Admission policies for the Services shall be in writing and available to the public. Except to the extent that the Services are to be rendered to a specific population as described in the programs listed in Section 2 of Appendix A, such policies must include a provision that clients are accepted for care without discrimination on the basis of race, color, creed, religion, sex, age, national origin, ancestry, sexual orientation, gender identification, disability, or AIDS/HIV status.

G. San Francisco Residents Only:

Only San Francisco residents shall be treated under the terms of this Agreement. Exceptions must have the written approval of the Contract Administrator.

H. Grievance Procedure:

Contractor agrees to establish and maintain a written Client Grievance Procedure which shall include the following elements as well as others that may be appropriate to the Services: (1) the name or title of the person or persons authorized to make a determination regarding the grievance; (2) the opportunity for the aggrieved party to discuss the grievance with those who will be making the determination; and (3) the right of a client dissatisfied with the decision to ask for a review and recommendation from the community advisory board or planning council that has purview over the aggrieved service. Contractor shall provide a copy of this procedure, and any amendments thereto, to each client and to the Director of Public Health or his/her designated agent (hereinafter referred to as "DIRECTOR"). Those clients who do not receive direct Services will be provided a copy of this procedure upon request.

I. Infection Control, Health and Safety:

(1) Contractor must have a Bloodborne Pathogen (BBP) Exposure Control plan as defined in the California Code of Regulations, Title 8, Section 5193, Bloodborne Pathogens (<http://www.dir.ca.gov/title8/5193.html>), and demonstrate compliance with all requirements including, but not limited to, exposure determination, training, immunization, use of personal protective equipment and safe needle devices, maintenance of a sharps injury log, post-exposure medical evaluations, and recordkeeping.

(2) Contractor must demonstrate personnel policies/procedures for protection of staff and clients from other communicable diseases prevalent in the population served. Such policies and procedures shall include, but not be limited to, work practices, personal protective equipment, staff/client Tuberculosis (TB) surveillance, training, etc.

(3) Contractor must demonstrate personnel policies/procedures for Tuberculosis (TB) exposure control consistent with the Centers for Disease Control and Prevention (CDC) recommendations for health care facilities and based on the Francis J. Curry National Tuberculosis Center: Template for Clinic Settings, as appropriate.

(4) Contractor is responsible for site conditions, equipment, health and safety of their employees, and all other persons who work or visit the job site.

(5) Contractor shall assume liability for any and all work-related injuries/illnesses including infectious exposures such as BBP and TB and demonstrate appropriate policies and procedures for reporting such events and providing appropriate post-exposure medical management as required by State workers' compensation laws and regulations.

(6) Contractor shall comply with all applicable Cal-OSHA standards including maintenance of the OSHA 300 Log of Work-Related Injuries and Illnesses.

(7) Contractor assumes responsibility for procuring all medical equipment and supplies for use by their staff, including safe needle devices, and provides and documents all appropriate training.

(8) Contractor shall demonstrate compliance with all state and local regulations with regard to handling and disposing of medical waste.

J. Client Fees and Third Party Revenue:

(1) Fees required by federal, state or City laws or regulations to be billed to the client, client's family, or insurance company, shall be determined in accordance with the client's ability to pay and in conformance with all applicable laws. Such fees shall approximate actual cost. No additional fees may be charged to the client or the client's family for the Services. Inability to pay shall not be the basis for denial of any Services provided under this Agreement.

(2) Contractor agrees that revenues or fees received by Contractor related to Services performed and materials developed or distributed with funding under this Agreement shall be used to increase the gross program funding such that a greater number of persons may receive Services. Accordingly, these revenues and fees shall not be deducted by Contractor from its billing to the City.

K. Patients Rights:

All applicable Patients Rights laws and procedures shall be implemented.

2. Description of Services

Detailed description of services are listed below and are attached hereto

Appendix A-1 Third Party Administrator

Appendix A-2 Clinic and Contracted Pharmacy

Appendix A-3 – Rite Aid and AG Pharmacy Agreement and Pass Through Approval

PROGRAM NARRATIVE

THIRD PARTY ADMINISTRATOR (TPA) - SERVICES

This Scope of work is intended to generally define and describe the tasks that the City expects the contractor to perform. This outline is to be used as a general guide and is not intended to be a complete list of all work that may have to be done to successfully serve each patient. Approximately 400,000 prescription claims are paid every year for 120,000 medically indigent adult patients of the CHN.

Determination of patient eligibility, approved providers, and definition of medically indigent patient shall be the responsibility of the CHN. In general, medically indigent patients of the CHN, as used in this contract, are residents of the City and County of San Francisco who are not eligible for and/or do not have third party (e.g. Medi-Cal, HMO, private insurance) coverage for outpatient medication. This contract does NOT include patients receiving care through the County's Community Behavioral Health Services (CBHS) from CBHS providers, patient receiving primary medical care from providers not affiliated with the CHN, or AIDS Drug Assistance Program (ADAP) covered medications for persons who are eligible for ADAP.

The following are work tasks assumed necessary to provide Third Party Administrator (TPA) services.

A. Services

The contractor shall:

- A1. Provide online, point-of-service electronic claims adjudication for prescriptions, which includes, but is not limited to: verifying patient and provider eligibility, formulary status of prescribed medication, patient co-pay status.
- A2. Operate the online claims adjudication twenty-four (24) hours per day, seven (7) days per week. Downtime shall be no more than 1% of total operating time within each month; performance significantly outside the established threshold of 1% shall be reflected in the annual monitoring report.
- A3. Accept updates to the patient eligibility database that are supplied electronically at a minimum of every ten (10) minutes. The format of the electronically supplied information shall be at the discretion of the CHN.
- A4. Accept twice monthly electronic full patient eligibility replacement files. Over-write patient eligibility information with new information as soon as it received from the CHN, inactivate record for patient's no longer eligible for CHN prescription services, and apply changes in prescription copay status and fees to appropriate patient records if applicable.
- A5. Possess or establish a process to correctly transmit patient eligibility information to the pharmacy associated with the clinic from which the patient receives care/is assigned.
- A6. Accept daily verbal (telephone) or facsimile revisions to the patient and prescriber eligibility files from the CHN, as necessary.
- A7. Accept monthly updates to the approved drug formulary supplied by the CHN via electronic or facsimile submission, and apply the updated information to the formulary database within one (1) business day of receipt.

- A8. Provide electronic documentation and tracking of non-formulary and restricted drug approvals.
- A9. Implement a CHN-defined prior authorization request (PAR) process, and track, monitor and report approvals and denials.
- A10. Establish or possess a process to identify, track, monitor and report co-payment collected from each of the selected pharmacies.
- A11. Accurately adjudicate claims submitted online by the selected pharmacies.
- A12. Establish or possess a process to track quantities of drug dispensed by each of the selected pharmacies, by NDC number, and provide CHN with weekly or bi-weekly reports of quantities dispensed, quantities to be ordered by CHN to the wholesaler for replenishment to the pharmacies, and quantities to be carried over until preestablished replenishment levels have been reached.
- A13. Establish or possess a process to use different pricing algorithms and fees for reimbursement to selected pharmacies, based on situations and parameters defined by the CHN.
- A14. Submit to the CHN contract administrator or designee for approval, bi-weekly invoices for prescription processing fees and non-replenished drug supplies paid through this contract to affiliated retail community pharmacies.
- A15. Submit invoices that include, but are not limited to: patient and provider specific information, by pharmacy; total fee charges by pharmacy, collected co-pay deducted by pharmacy; total monthly amount due.
- A16. Communicate changes in CHN policies relevant to this contract to the selected pharmacies in the CHN network within twenty-four hours of receipt of notification of change.
- A17. Remove and/or add pharmacy(s) to the CHN network at the discretion of the CHN. Change to the CHN pharmacy network shall occur within five (5) working days of receipt of written notice by the CHN.
- A18. Have fraud monitoring processes in place.
- A19. Provide documentation specified by CHN that CHN claims and prescription claim data are excluded from manufacturer rebate and other drug discount programs engaged in by the contractor.
- A20. Possess or establish a process to electronically transmit prescription data from participating pharmacies for individual patients to the patient's CHN electronic medical record.

B. Customer Support

The contractor shall:

- B1. Maintain toll-free telephone and facsimile 'help' lines that shall be staffed to assist with questions by CHN staff and prescribers, patients, and selected pharmacies. The customer service department shall have access to linguistic capabilities for Spanish, Russian, Cantonese, Mandarin, and Vietnamese, in addition to English.
- B2. Maintain, during off-hours, a toll-free voice mail recording system with all messages answered within the next business day.

- B3. Provide, upon request of the contract administrator, a report detailing the number and types of calls received according to date and time, as well as response call dates and times, and call abandoned.
- B4. Provide training to CHN and selected pharmacy staff for all applicable claims and reporting software and equipment provided by the contractor.
- B5. Provide technical support for claims and report query tools and reports as requested by the contract administrator.

C. Reports

The contractor shall:

- C1. Provide at no additional cost, monthly management reports that include but are not limited to: patient prescription benefit utilization; individual and aggregate provider prescribing patterns by drug and cost; prescription costs per therapeutic class.
- C2. Provide at no additional cost, monthly drug use reports that include but are not limited to: prescription claim per therapeutic class; generic substitution summary; non-formulary drug and prior authorization drugs approved or denied during the month.
- C3. Provide at no additional cost, monthly financial reports that include but are not limited to: co-pay amounts collected by participating pharmacies; Medi-Cal share of cost billed to the CHN by participating pharmacy; prescription claims by number and costs per participating pharmacy.
- C4. Provide at no additional cost, weekly or bi-weekly inventory reports that include but are not limited to: NDC number, name and description of drugs dispensed during the week, listed by participating pharmacy; replenishment order quantities per participating pharmacy and participating pharmacy account name and number; quantities of drugs not replenished and carried over to next scheduled inventory report period, by NDC number and participating pharmacy.
- C5. Provide at no additional cost, quarterly reports on total operating down times within each month and calls to the customer service help line, and responses to these calls.
- C6. Provide at no additional cost, online and 'real-time' claims information that may be used by the contract administrator for ad hoc report writing purposes.
- C7. Provide all reports in formats that can be printed and/or exported into spreadsheets (e.g. Excel) and data base management (e.g. Access) programs.

D. Other Services/Pertinent Information

The contractor shall:

- D1. Assist CHN in notifying participating pharmacies of all relevant CHN formulary and plan changes, at no additional cost.
- D2. Provide, at no additional cost, signs and flyers directed to CHN patients, announcing major plan changes. Announcements provided at no additional cost by the contractor shall not exceed one incidence per calendar year.
- D3. Possess or establish a process to notify participating pharmacies of other prescription benefit plans (e.g. ADAP, Medi-Cal) that should be billed prior to submission of claim to CHN.

- D4. Conduct and report results of an annual patient satisfaction survey for which the contract administrator has approved the survey tool(s) and methodology.
- D5. Meet with the contract administrator and other CHN staff as requested, and as needed.
- D6. Designate a dedicated account manager and service representative to the CHN.
- D7. Adhere to the implementation timeline established by the CHN, which shall be within sixty (60) days of contract certification.
- D8. Provide at no additional cost, a dedicated help line for CHN staff, patients and the contract administrator during the implementation phase and for a minimum of three (3) months following implementation.
- D9. Conduct audits and other quality improvement activities of their services and services of participating pharmacies, as requested and agreed upon by mutual consent of the contractor and contract administrator.
- D10. Administer MAC pricing programs designated by the contract administrator.
- D11. CHN shall receive 200 hours toward the services shown below. Hours can be used for the following services:
- File conversions;
 - Claims history loads;
 - Prior authorization loads;
 - Physician loads;
 - Facility loads;
 - Report customization;
 - Letter customization;
 - Development of prior authorization letter customization;
 - Customization or development of prior authorization guidelines;
 - Custom edits (including but not limited to benefit plan design edits);
 - On-site training; and
 - Non-standard ID Cards

CLINIC/ADDRESS	PHARMACY ADDRESS/LOCATION	STORE DEA #	STORE NABP #
Balboa Teen Health Center 1000 Cayuga Avenue	Rite Aid 1830 Ocean Avenue @ Balboa Terrace	BT6568666	527145
Children's Health Center 1001 Potrero Avenue, 6M	Rite Aid 1496 Market @ Van Ness	BT6061650	506785
Castro-Mission Health Center 3580 17 th Street	Rite Aid 1496 Market Street @ Van Ness	BT6061650	506785
Chinatown Public Health Center 1490 Mason Street	Rite Aid 776 Market Street @ 4 th Street	BT6074758	505783
Cole Street Youth Clinic 555 Cole Street	Rite Aid 1496 Market Street @ Van Ness	BT6061650	506785
Housing and Urban Health Clinic 238 Eddy	Rite Aid 1300 Bush Street @ Larkin	BP5422465	571629
Larkin Street Youth Center 1138 Sutter Street	Rite Aid 1300 Bush Street @ Larkin	BP5422465	571629
Maxine Hall Health Center 1301 Pierce Street	Rite Aid 776 Market Street @ 4 th Street	BT6074758	505783
North of Market Senior Services 333 Turk Street	Rite Aid 1300 Bush Street @ Larkin	BP5422465	571629
Ocean Park Health Center 1351 24 th Avenue	Rite Aid 5280 Geary Blvd @ 17 th Avenue	BT5696058	578572
Potrero Hill Health Center 1050 Wisconsin	AG Pharmacy 3636 Cesar Chavez @ Guerrero	BA6110631	552403
Silver Avenue Family Health Center 1525 Silver Avenue	Rite Aid 1496 Market Street @ Van Ness	BT6061650	506785
Southeast Health Center 2401 Keith Street	Rite Aid 776 Market Street @ 4 th Street	BT6074758	505783
Tom Waddell Health Center 50 Ivy Street	Rite Aid 1496 Market Street @ Van Ness	BT6061650	506785
Adult Medicine Clinic 1001 Potrero Avenue, 1M	Rite Aid 1496 Market Street @ Van Ness	BT6061650	506785
Family Health Center 995 Potrero Avenue, Bldg 80 (1 st and 5 th floors)	Rite Aid 1496 Market Street @ Van Ness	BT6061650	506785
Positive Health Clinic 995 Potrero Ave, Bldg 80 (6 th floor)	Rite Aid 1496 Market Street @ Van Ness	BT6061650	506785
Urgent Care Center 1001 Potrero Avenue	Rite Aid 1496 Market Street @ Van Ness	BT6061650	506785
Women's Health Center 1001 Potrero Avenue, 5M	AG Pharmacy 3636 Cesar Chavez @ Guerrero	BA6110631	552403

**Appendix A-3 – Rite Aid and AG Pharmacy Agreement
and Pass Through Approval**

PRESCRIPTION DRUG SERVICES AGREEMENT

This Prescription Drug Services Agreement ("AGREEMENT") is made and entered into by and between the Community Health Network clinics listed on Exhibit A ("CHN CLINICS"), and AG PHARMACY Corporation pharmacies listed on Exhibit A ("AG PHARMACY"), as of July 1, 2003 ("EFFECTIVE DATE")

RECITALS

- A. The 1992 Veteran's Health Care Act created Section 340B of the Public Health Services Act, which classifies certain health care clinics, including CHN clinics, as "Covered Entities" eligible to purchase outpatient drugs for their patients at favorable discounts from drug manufacturers who enter into drug purchasing agreements with the United States Department of Health and Human Services ("DHHS").
- B. California Business & Professions Code 4126, effective January 1, 2002, authorizes Covered Entities, including CHN clinics, to contract with pharmacies licensed under California state law, such as AG PHARMACY, to dispense Covered 340B Drugs for the Covered Entity, provided certain requirements are met, including adequate inventory control and limitation of dispensing to eligible outpatients of the Covered Entity.
- C. CHN clinics and AG PHARMACY mutually desire to enter into a "ship to/bill to" arrangement under which AG PHARMACY will receive shipment of Covered 340B Drugs, maintain inventory and controls, and dispense such drugs on behalf of CHN clinics only to eligible CHN clinic outpatients, all on the CHN clinics' behalf, and the CHN clinics will be billed and will pay for such drugs, in compliance with applicable laws and regulations.
- D. CHN clinics and AG PHARMACY mutually acknowledge that their intent in entering into this Agreement is solely to facilitate CHN clinics' participation in the 340B drug purchasing program, without having to establish and operate its own pharmacy. The services provided each to the other are only those necessary in order to fulfill this intent, and all financial arrangements established herein are mutually determined to represent either cost or fair market value for the items and services received. The parties expressly do not intend to take any action that would violate state or federal anti-kickback prohibitions, such as those appearing in Section 1128B of the Social Security Act, 42 USC Section 1320a-7b. Instead, it is the intention of the parties that this Agreement and all actions taken in connection herewith shall fully comply with the regulatory requirements of the safe harbor for personal services and management contracts appearing in 42 CFR Section 1001.952(d), and this Agreement shall in all respects be construed consistent herewith.

NOW, THEREFORE, in consideration of the promises, covenants and agreements hereinafter set forth, CHN clinics and AG PHARMACY hereby agree to the following terms and conditions:

- Covered 340B Drugs. The prescription outpatient drugs covered by this Agreement (hereinafter "Covered Drugs") include "Legend" drugs, that is those drugs with by federal law can be dispensed only pursuant to a prescription and which are required to bear the legend "Caution - Federal Law prohibits dispensing without prescription" listed on the CHN Drug Formulary. Other qualified prescriptions include insulin (on prescription only) and over the counter medications as long as prescribed by an authorized medical provider and on the CHN Drug Formulary. All Covered Drugs purchased under this Agreement are the property of the CHN clinic. All Covered Drugs subject to this Agreement are also subject to the Limiting Definition of "covered outpatient drug" set forth in Section 1927(k) of the Social Security Act, 42 USC 1396r-8(k)(2) & (3), which is incorporated as the applicable definition for the section of the 1992 Veterans Affairs Act that created Section 340B of the Public Health Services Act.

2. Eligible Patients. Only outpatients of CHN clinics, excluding CHN clinic patients who are Medi-Cal beneficiaries and for whom claims for pharmaceuticals will be submitted to the state's Medi-Cal program (see paragraph 11 below), who are in the patient eligibility database maintained by Pharmaceutical Care Network ("PCN"), the third party administrator for this Agreement, are eligible to receive Covered Drugs from AG PHARMACY ("ELIGIBLE PATIENTS"). Under no circumstance will AG PHARMACY dispense Covered Drugs purchased under this Agreement to anyone other than Eligible Patients of CHN clinics. AG PHARMACY shall dispense Covered Drugs to Eligible Patients only in the following circumstances:

2.1 Upon presentation of a prescription form bearing the Eligible Patient's name, and the signature of a legally qualified health care provider; OR,

2.2 Upon receipt of a prescription ordered by telephone or electronically on behalf of an Eligible Patient by a legally qualified health care provider; AND,

2.3 PCN on-line adjudication of prescription claim indicates patient is eligible for services at the specific AG PHARMACY location, and the prescribed drug is on the CHN drug formulary, or if not on the CHN drug formulary, prior authorization approval for dispensing is received.

3. Restocking and Inventory Maintenance.

3.1 CHN, at its cost will arrange with McKesson Drug Company ("McKESSON") to ship replenishment drug supplies directly to AG PHARMACY.

3.2 PCN will electronically track Covered Drugs dispensed by AG PHARMACY to Eligible Patients and notify CHN and AG PHARMACY at least weekly of supplies necessary to replenish inventory dispensed. Quantities of drug that have not reached the CHN established replenishment level will be carried forward until the established replenishment level, or 180-days post dispensing are reached (see paragraph 5 below.)

3.3 Based upon PCN's electronic records of Covered Drugs dispensed to Eligible Patients, CHN will order replenishment supplies for direct shipment by McKesson to AG PHARMACY. McKesson will send a packing slip with shipments to AG PHARMACY, and the invoice will be forwarded to CHN for payment.

3.4 AG PHARMACY will verify inventory received from McKesson and fax the verified packing slip to CHN.

3.5 Electronic inventory of Covered Drugs shall be accurately maintained by CHN and PCN, and it shall be in sufficient detail to protect against diversion to anyone other than Eligible Patients. AG PHARMACY shall maintain inventory and dispensing records as are adequate to permit the CHN clinic, CHN assigned auditor, DHHS, or any eligible drug manufacturer to determine upon audit to whom Covered Drugs have been dispensed.

3.6 AG PHARMACY shall return-to-stock and adjust electronic prescription dispensing history and drug inventory levels within fourteen working days of prescription filling if the patient has not picked up the prescription within that time.

3.7 AG PHARMACY shall readjudicate claims to other 3rd party payers (e.g. FamPak, ADAP) and adjust drug dispensing and inventory levels for prescriptions filled for Eligible Patients found to be eligible for these other 3rd party payments after the prescription has been filled and billed to CHN.

4. Culturally Sensitive, Patient and Provider Friendly Services. AG PHARMACY agrees to provide services in a culturally and linguistically sensitive manner to Eligible Patients. AG PHARMACY shall also provide telephone answering devices, facsimile machines and other electronic means to assist Eligible Patients and provider's request refills, place prescription orders, and communicate easily with the pharmacist. Extended hours (i.e. open daily until midnight) will be provided in at least one location, and CHN patients will be provided with all additional services and benefits (e.g. free delivery, 24-hour prescription services, MediSet filling) provided by AG PHARMACY to non-CHN patients. AG PHARMACY will label medication with both generic and brand names as appropriate and to decrease patient confusion and potential for medication error, AG PHARMACY shall assist in conducting patient satisfaction surveys designed by CHN. AG PHARMACY shall comply with CHN policies regarding maximum days supply, lost prescriptions, acceptable refill intervals, non-formulary drug requests, and other relevant prescription dispensing activity. AG PHARMACY shall assist in communicating plan and formulary changes to Eligible Patients served through this Agreement. Generic medications shall be dispensed in place of brand names unless specifically instructed by the CHN to dispense brand, or the prescriber in writing on the prescription does not approve that generic substitution.

5. Replenishment supplies from McKesson. CHN agrees to work closely with McKesson so as not to interrupt the flow of replenishment supplies of Covered Drugs to AG PHARMACY.

6. AG PHARMACY Dispensing Fee. AG PHARMACY and CHN agree that AG PHARMACY shall receive a Dispensing Fee as specified in Exhibit B, for each prescription of Covered Drugs filled for Eligible Patients and that such Dispensing Fee covers AG PHARMACY's costs and constitutes the sole and exclusive payment AG PHARMACY is entitled to receive hereunder, with the exception of Covered Drugs that do not reach replenishment levels 180 days or more after dispensed and Schedule II controlled substances. Covered Drugs that do not reach replenishment levels 180 days or more after dispensed and Schedule II controlled substances dispensed to Eligible Patients will be reimbursed as specified in Exhibit B. All fees and reimbursement will be paid for CHN by PCN to AG PHARMACY every 15 days.

7. Maintenance of Records. AG PHARMACY will preserve all records of shipment, receipts, and dispensing of 340B drugs for audit at any reasonable time for a period of three years following date of provision of services. It is understood by both parties under this Agreement that, under Section 340B(a)(5)(C) of the PHS Act, they are subject to audit by the drug manufacturers and the U.S. Public Health Service of DHHS of records that directly pertain to compliance with the Act.

8. Pharmacy Compliance Responsibility. AG PHARMACY shall be solely responsible for all professional advice and services rendered by it for the Eligible Patients. AG PHARMACY is responsible for and agrees to render services as herein provided in accordance with the rules and regulations of the California State Board of Pharmacy, all laws of the State of California, and all applicable laws and regulations resulting from the Veteran's Health Care Act of 1992 (P.L. 102-585, sec 602). It is expressly understood that relations between the Eligible Patients and AG PHARMACY shall be subject to the rules, limitations, and privileges incident to the pharmacy-patient relationship. AG PHARMACY shall be solely responsible, without interference from the CHN clinics or its agents to said Eligible Patient for pharmaceutical advice and service, including the right to refuse to serve any individual where such service would violate pharmacy ethics or any pharmacy laws or regulations.

9. Insurance. AG PHARMACY shall at its own expense maintain a policy of insurance covering professional acts and omissions with a licensed insurance carrier to be in an amount not less than one million dollars (\$1,000,000) per incident and three million dollars (\$3,000,000) in the aggregate, and said policy shall be maintained during the term of this agreement. AG PHARMACY shall cause its insurer to name CITY, its officers, agents and employees as an additional named insured on such policy, and shall provide CITY with a certificate and endorsement to such effect.

10. Medi-Cal Prescriptions. Notwithstanding anything herein to the contrary, AG PHARMACY will not use Covered 340B Drugs to dispense prescriptions paid for by a state Medicaid agency, but will use its non-340B inventory, and bill and collect Medicaid on its own account. When a Medicaid agency pays for drugs for its beneficiaries, it is generally entitled to claim a rebate from the drug manufacturer, to reduce its effective cost to a statutorily established price. Section 340B extends a similar price to Covered Entities, and requires that there be a mechanism to protect drug manufacturers from Medicaid rebate claims for Covered Drugs purchased pursuant to Section 340B. To avoid any chance that a State Medicaid agency will pay for 340B Drugs purchased hereunder and then submit prohibited rebate claims to the drug manufacturers, AG PHARMACY agrees to dispense non-340B drugs from its own inventory in filling Medi-Cal prescriptions for CHN clinic patients who are Medi-Cal beneficiaries, AG PHARMACY will take all reasonable steps necessary to obtain coverage from Medi-Cal for the costs associated with drugs prescribed for those patients, including activities necessary for requesting Treatment Authorization Request from Medi-Cal. CHN clinics shall not be liable to AG PHARMACY for dispensing fees or other costs in connection with prescriptions filled for Medi-Cal beneficiaries receiving a prescription whose cost will be covered by Medi-Cal. Drugs dispensed to Eligible Patients of the CHN which are not billed to Medi-Cal (i.e. for Medi-Cal share of cost patients who cannot pay their Medi-Cal share of cost) are covered under this Agreement up to the patient's Medi-Cal share of cost.

11. Patient Choice. AG PHARMACY understands and agrees that Eligible Patients of CHN clinics may elect not to use AG PHARMACY for pharmacy services. In the event that an Eligible Patient elects not to use AG PHARMACY for such services, the patient may obtain the prescription from the pharmacy provider of his or her choice. Subject to a patient's freedom to choose a provider of pharmacy services, CHN clinics will inform Eligible Patients that they may be eligible at no-cost to them prescription drugs ordered by CHN clinics, and advise them that such no-cost services have been arranged for only at AG PHARMACY.

12. Pharmacy Site. AG PHARMACY agrees it will provide pharmacy services contracted for under this Agreement at one site only for each CHN clinic, as specified in Exhibit A.

13. Inspection by Manufacturer. AG PHARMACY and CHN clinics understand and agree that a copy of this Pharmacy Services Agreement will be provided, upon request, to a drug manufacturer who has signed a purchasing agreement with DHHS. In the event either party receives such a request, it shall immediately inform the other party.

14. Non-Assignment. Either party may not assign this Agreement without the prior written agreement of the other party.

15. Term and Termination. This Agreement shall commence on the Effective Date, and shall continue for a period of one year until the first anniversary of the Effective Date, and thereafter shall automatically renew for consecutive one year renewal terms, unless either party provides prior written notice to the other of such party's intention not to renew, at least thirty (30) days prior to the anniversary date, or until terminated by:

15.1 Mutual agreement of the parties;

15.2 Sixty (60) days prior written notice by either party;

15.3 CHN clinics, immediately and without prior notice, upon material breach of this Agreement by AG PHARMACY. Without limiting CHN clinic's right to assert any other act or failure to act as constituting a material breach by AG PHARMACY, AG PHARMACY's dispensing of a Covered Drug to an individual who is not an Eligible Patient or any other diversion of a Covered Drug shall be deemed to be a material breach. CHN clinic's failure to take action with respect to AG PHARMACY's failure to comply with any term or provision of this Agreement shall not be deemed to be a waiver of CHN's right to insist on future compliance with such term or provision;

15.4 AG PHARMACY, on 10 days' notice for non-payment or 30 days' notice for any other breach of this Agreement by CHN clinics unless within said period the default is cured.

16. Choice of Law. This Agreement shall be interpreted according to the laws of the State of California.

17. Confidentiality of Records. The parties agree to protect the confidentiality of each other's records and business information disclosed to it and not use such information other than necessary and appropriate in connection with performance of this Agreement. Each party acknowledges that disclosure of confidential information of the other would cause the other party irreparable harm and may, without limiting the remedies available for such breach, be enjoined at the instance of the harmed party. Upon termination of the Agreement, each party agrees to cease use of the other's information and to return it, or destroy it, as appropriate.

18. Patient Privacy and HIPAA Compliance. The parties recognize that each is a healthcare provider and a covered entity within the meaning of the Federal Health Insurance Portability and Accountability Act ("HIPAA"), and therefore responsible for compliance with HIPAA standards for electronic transactions. The Parties agree to protect and respect the rights of the patients of CHN clinics and AG PHARMACY to privacy and confidentiality concerning their medical and pharmaceutical records, and to protect all individually identifiable health information as protected health information from misuse or disclosure, in compliance with all applicable state and federal law. Without limiting the generality of the foregoing, the parties agree to use patient-specific information only for permitted treatment, billing and related record-keeping purposes, and to protect patient-specific information from unnecessary disclosure to persons not employed or contracted for by the parties, and from their own employees and contractors unless they have a need to know and agree to maintain the confidentiality of patient specific information. The Parties agree that all patient information created, maintained or transmitted electronically in connection with this Agreement shall comply in all respects with the requirements of HIPAA governing electronic transmission of individually identifiable patient information. See 42 CFR Section 160 et seq. Failure by either party to abide by these requirements shall be a basis for immediate termination of this Agreement.

19. Entire Agreement. This Agreement represents the entire understanding of the Parties. There are no other agreements or understandings between the parties, either oral or written, relating to Covered Drugs. Any amendments to this Agreement shall be in writing and signed by all parties.

20. Notice. Any notice required or given under this Agreement shall be provided in writing by one of the following methods: hand delivery, placing in the U.S. Postal Service, first class postage prepaid, facsimile transmission or e-mail transmission, to the addresses and to the attention of the person(s) specified below, or as modified at any time by either party by written notice hereunder.

To CITY: Office of Contract Management and Compliance Fax: (415) 554-2555
Department of Public Health
101 Grove Street, Room 307
San Francisco, CA 94102

and: Sharon Kotabe, PharmD Fax: (415) 206-2338
Contract Administrator
San Francisco Department of Public Health
CHN Associate Administrator for Pharmaceutical Services
2789 25th Street, Room 2008
San Francisco, CA 94110

To CONTRACTOR: Vivian Cheung Fax: (415) 643-9851
Pharmacist
AG PHARMACY
3636 Cesar Chavez St.
San Francisco, CA 94110

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

CONTRACTOR

RECOMMENDED BY:

Vivian Cheung
Pharmacist

Mitchell H. Katz 6/17/03
Date
MITCHELL H. KATZ, M.D.
Director of Health

AG PHARMACY
3636 Cesar Chavez St.
San Francisco, CA 94110

Federal ID: 91-1894563

APPROVED AS TO FORM:

Phone: 415 - 647-3757
FAX: 415 - 643-9851

DENNIS J. HERRERA
City Attorney

By Dennis Herrera 6/20/03
Deputy City Attorney Date

By: Vivian Cheung 6/16/03
Authorized Signature Date

Exhibit A – SPECIFIC CLINIC TO PHARMACY

CLINIC ADDRESS	PHARMACY ADDRESS	ID NUMBER
Potrero Hill Health Center 1050 Wisconsin	AG Pharmacy 3636 Cesar Chavez (@ Guerrero)	BA 6110631
Women's Health Center 1001 Potrero Avenue, 5M		

PRESCRIPTION DRUG SERVICES AGREEMENT

This Prescription Drug Services Agreement ("AGREEMENT") is made and entered into by and between the Community Health Network clinics listed on Exhibit A ("CHN CLINICS"), and RITE AID Corporation pharmacies listed on Exhibit A ("RITE AID"), as of July 1, 2003 ("EFFECTIVE DATE")

RECITALS

- A. The 1992 Veteran's Health Care Act created Section 340B of the Public Health Services Act, which classifies certain health care clinics, including CHN clinics, as "Covered Entities" eligible to purchase outpatient drugs for their patients at favorable discounts from drug manufacturers who enter into drug purchasing agreements with the United States Department of Health and Human Services ("DHHS").
- B. California Business & Professions Code 4126, effective January 1, 2002, authorizes Covered Entities, including CHN clinics, to contract with pharmacies licensed under California state law, such as RITE AID, to dispense Covered 340B Drugs for the Covered Entity, provided certain requirements are met, including adequate inventory control and limitation of dispensing to eligible outpatients of the Covered Entity.
- C. CHN clinics and RITE AID mutually desire to enter into a "ship to/bill to" arrangement under which RITE AID will receive shipment of Covered 340B Drugs, maintain inventory and controls, and dispense such drugs on behalf of CHN clinics only to eligible CHN clinic outpatients; all on the CHN clinics' behalf, and the CHN clinics will be billed and will pay for such drugs, in compliance with applicable laws and regulations.
- D. CHN clinics and RITE AID mutually acknowledge that their intent in entering into this Agreement is solely to facilitate CHN clinics' participation in the 340B drug purchasing program, without having to establish and operate its own pharmacy. The services provided each to the other are only those necessary in order to fulfill this intent, and all financial arrangements established herein are mutually determined to represent either cost or fair market value for the items and services received. The parties expressly do not intend to take any action that would violate state or federal anti-kickback prohibitions, such as those appearing in Section 1128B of the Social Security Act, 42 USC Section 1320a-7b. Instead, it is the intention of the parties that this Agreement and all actions taken in connection herewith shall fully comply with the regulatory requirements of the safe harbor for personal services and management contracts appearing in 42 CFR Section 1001.952(d), and this Agreement shall in all respects be construed consistent herewith.

NOW, THEREFORE, in consideration of the promises, covenants and agreements hereinafter set forth, CHN clinics and RITE AID hereby agree to the following terms and conditions:

- Covered 340B Drugs. The prescription outpatient drugs covered by this Agreement (hereinafter "Covered Drugs") include "Legend" drugs, that is those drugs with by federal law can be dispensed only pursuant to a prescription and which are required to bear the legend "Caution - Federal Law prohibits dispensing without prescription" listed on the CHN Drug Formulary. Other qualified prescriptions include insulin (on prescription only) and over the counter medications as long as prescribed by an authorized medical provider and on the CHN Drug Formulary. All Covered Drugs purchased under this Agreement are the property of the CHN clinic. All Covered Drugs subject to this Agreement are also subject to the Limiting Definition of "covered outpatient drug" set forth in Section 1927(k) of the Social Security Act, 42 USC 1396r-8(k)(2) & (3), which is incorporated as the applicable definition for the section of the 1992 Veterans Affairs Act that created Section 340B of the Public Health Services Act.
- Eligible Patients. Only outpatients of CHN clinics, excluding CHN clinic patients who are Medi-Cal beneficiaries and for whom claims for pharmaceuticals will be submitted to the state's Medi-Cal program (see paragraph 11 below), who are in the patient eligibility database maintained by Pharmaceutical Care Network ("PCN"), the third party administrator for this Agreement, are eligible to receive Covered Drugs from RITE AID ("ELIGIBLE PATIENTS"). Under no circumstance will RITE AID dispense Covered Drugs purchased under this Agreement to anyone other than Eligible Patients of CHN clinics. RITE AID shall dispense Covered Drugs to Eligible Patients only in the following circumstances:

2.1 Upon presentation of a prescription form bearing the Eligible Patient's name, and the signature of a legally qualified health care provider, OR,

2.2 Upon receipt of a prescription ordered by telephone or electronically on behalf of an Eligible Patient by a legally qualified health care provider, AND,

2.3 PCN on-line adjudication of prescription claim indicates patient is eligible for services at the specific RITE AID location, and the prescribed drug is on the CHN drug formulary, or if not on the CHN drug formulary, prior authorization approval for dispensing is received.

3. Restocking and Inventory Maintenance.

3.1 CHN, at its cost will arrange with McKesson Drug Company ("McKESSON") to ship replenishment drug supplies directly to RITE AID.

3.2 PCN will electronically track Covered Drugs dispensed by RITE AID to Eligible Patients and notify CHN and RITE AID at least weekly of supplies necessary to replenish inventory dispensed. Quantities of drug that have not reached the CHN established replenishment level will be carried forward until the established replenishment level, or 180-days post dispensing are reached (see paragraph 5 below.)

3.3 Based upon PCN's electronic records of Covered Drugs dispensed to Eligible Patients, CHN will order replenishment supplies for direct shipment by McKesson to RITE AID. McKesson will send a packing slip with shipments to RITE AID, and the invoice will be forwarded to CHN for payment.

3.4 RITE AID will verify inventory received from McKesson and fax the verified packing slip to CHN.

3.5 Electronic inventory of Covered Drugs shall be accurately maintained by CHN and PCN, and it shall be in sufficient detail to protect against diversion to anyone other than Eligible Patients. RITE AID shall maintain inventory and dispensing records as are adequate to permit the CHN/clinic, CHN assigned auditor, DHHS, or any eligible drug manufacturer to determine upon audit to whom Covered Drugs have been dispensed.

3.6 RITE AID shall return-to-stock and adjust electronic prescription dispensing history and drug inventory levels within fourteen working days of prescription filling if the patient has not picked up the prescription within that time.

3.7 RITE AID shall readjudicate claims to other 3rd party payers (e.g. FamPak, ADAP) and adjust drug dispensing and inventory levels for prescriptions filled for Eligible Patients found to be eligible for these other 3rd party payments after the prescription has been filled and billed to CHN.

4. Culturally Sensitive, Patient and Provider Friendly Services: RITE AID agrees to provide services in a culturally and linguistically sensitive manner to Eligible Patients. RITE AID shall also provide telephone answering devices, facsimile machines and other electronic means to assist Eligible Patients and provider's request refills, place prescription orders, and communicate easily with the pharmacist. Extended hours (i.e. open daily until midnight) will be provided in at least one location, and CHN patients will be provided with all additional services and benefits (e.g. free delivery, 24-hour prescription services, MediSet filling) provided by RITE AID to non-CHN patients. RITE AID will label medication with both generic and brand names as appropriate and to decrease patient confusion and potential for medication error. RITE AID shall assist in conducting patient satisfaction surveys designed by CHN. RITE AID shall comply with CHN policies regarding maximum days supply, lost prescriptions, acceptable refill intervals, non-formulary drug requests, and other relevant prescription dispensing activity. RITE AID shall assist in communicating plan and formulary changes to Eligible Patients served through this Agreement. Generic medications shall be dispensed in place of brand names unless specifically instructed by the CHN to dispense brand, or the prescriber in writing on the prescription does not approve that generic substitution.

5. Replenishment supplies from McKesson. CHN agrees to work closely with McKesson so as not to interrupt the flow of replenishment supplies of Covered Drugs to RITE AID.

6. RITE AID Dispensing Fee. RITE AID and CHN agree that RITE AID shall receive a Dispensing Fee as specified in Exhibit B, for each prescription of Covered Drugs filled for Eligible Patients and that such Dispensing Fee covers RITE AID's costs and constitutes the sole and exclusive payment RITE AID is entitled to receive hereunder, with the exception of Covered Drugs that do not reach replenishment levels 180 days or more after dispensed and Schedule II controlled substances. Covered Drugs that do not reach replenishment levels 180 days or more after dispensed and Schedule II controlled substances dispensed to Eligible Patients will be reimbursed as specified in Exhibit B. All fees and reimbursement will be paid for CHN by PCN to RITE AID every 15 days.

7. Maintenance of Records. RITE AID will preserve all records of shipment, receipts, and dispensing of 340B drugs for audit at any reasonable time for a period of three years following date of provision of services. It is understood by both parties under this Agreement that, under Section 340B(a)(5)(C) of the PHS Act, they are subject to audit by the drug manufacturers and the U.S. Public Health Service of DHHS of records that directly pertain to compliance with the Act.

8. Pharmacy Compliance Responsibility. RITE AID shall be solely responsible for all professional advice and services rendered by it for the Eligible Patients. RITE AID is responsible for and agrees to render services as herein provided in accordance with the rules and regulations of the California State Board of Pharmacy, all laws of the State of California, and all applicable laws and regulations resulting from the Veteran's Health Care Act of 1992 (P.L. 102-585, sec 602). It is expressly understood that relations between the Eligible Patients and RITE AID shall be subject to the rules, limitations, and privileges incident to the pharmacy-patient relationship. RITE AID shall be solely responsible, without interference from the CHN clinics or its agents to said Eligible Patient for pharmaceutical advice and service, including the right to refuse to serve any individual where such service would violate pharmacy ethics or any pharmacy laws or regulations.

9. Insurance. RITE AID shall at its own expense maintain a policy of insurance covering professional acts and omissions with a licensed insurance carrier to be in an amount not less than one million dollars (\$1,000,000) per incident and three million dollars (\$3,000,000) in the aggregate, and said policy shall be maintained during the term of this agreement. RITE AID shall cause its insurer to name CITY, its officers, agents and employees as an additional named insured on such policy, and shall provide CITY with a certificate and endorsement to such effect.

10. Medi-Cal Prescriptions. Notwithstanding anything herein to the contrary, RITE AID will not use Covered 340B Drugs to dispense prescriptions paid for by a state Medicaid agency, but will use its non-340B inventory, and bill and collect Medicaid on its own account. When a Medicaid agency pays for drugs for its beneficiaries, it is generally entitled to claim a rebate from the drug manufacturer, to reduce its effective cost to a statutorily established price. Section 340B extends a similar price to Covered Entities, and requires that there be a mechanism to protect drug manufacturers from Medicaid rebate claims for Covered Drugs purchased pursuant to Section 340B. To avoid any chance that a State Medicaid agency will pay for 340B Drugs purchased hereunder and then submit prohibited rebate claims to the drug manufacturers, RITE AID agrees to dispense non-340B drugs from its own inventory in filling Medi-Cal prescriptions for CHN clinic patients who are Medi-Cal beneficiaries. RITE AID will take all reasonable steps necessary to obtain coverage from Medi-Cal for the costs associated with drugs prescribed for those patients, including activities necessary for requesting Treatment Authorization Request from Medi-Cal. CHN clinics shall not be liable to RITE AID for dispensing fees or other costs in connection with prescriptions filled for Medi-Cal beneficiaries receiving a prescription whose cost will be covered by Medi-Cal. Drugs dispensed to Eligible Patients of the CHN which are not billed to Medi-Cal (i.e. for Medi-Cal share of cost patients who cannot pay their Medi-Cal share of cost) are covered under this Agreement up to the patient's Medi-Cal share of cost.

11. Patient Choice. RITE AID understands and agrees that Eligible Patients of CHN clinics may elect not to use RITE AID for pharmacy services. In the event that an Eligible Patient elects not to use RITE AID for such services, the patient may obtain the prescription from the pharmacy provider of his or her choice. Subject to a patient's freedom to choose a provider of pharmacy services, CHN clinics will inform Eligible Patients that they may be eligible at no-cost to them prescription drugs ordered by CHN clinics, and advise them that such no-cost services have been arranged for only at RITE AID.

12. Pharmacy Site. RITE AID agrees it will provide pharmacy services contracted for under this Agreement at one site only for each CHN clinic, as specified in Exhibit A.

13. Inspection by Manufacturer. RITE AID and CHN clinics understand and agree that a copy of this Pharmacy Services Agreement will be provided, upon request, to a drug manufacturer who has signed a purchasing agreement with DHHS. In the event either party receives such a request, it shall immediately inform the other party.

14. Non-Assignment. Either party may not assign this Agreement without the prior written agreement of the other party.

15. Term and Termination. This Agreement shall commence on the Effective Date, and shall continue for a period of one year until the first anniversary of the Effective Date, and thereafter shall automatically renew for consecutive one year renewal terms, unless either party provides prior written notice to the other of such party's intention not to renew, at least thirty (30) days prior to the anniversary date, or until terminated by:

15.1 Mutual agreement of the parties;

15.2 Sixty (60) days prior written notice by either party;

15.3 CHN clinics, immediately and without prior notice, upon material breach of this Agreement by RITE AID. Without limiting CHN clinic's right to assert any other act or failure to act as constituting a material breach by RITE AID, RITE AID's dispensing of a Covered Drug to an individual who is not an Eligible Patient or any other diversion of a Covered Drug shall be deemed to be a material breach. CHN clinic's failure to take action with respect to RITE AID's failure to comply with any term or provision of this Agreement shall not be deemed to be a waiver of CHN's right to insist on future compliance with such term or provision;

15.4 RITE AID, on 10 days' notice for non-payment or 30 days' notice for any other breach of this Agreement by CHN clinics unless within said period the default is cured.

16. Choice of Law. This Agreement shall be interpreted according to the laws of the State of California.

17. Confidentiality of Records. The parties agree to protect the confidentiality of each other's records and business information disclosed to it and not use such information other than necessary and appropriate in connection with performance of this Agreement. Each party acknowledges that disclosure of confidential information of the other would cause the other party irreparable harm and may, without limiting the remedies available for such breach, be enjoined at the instance of the harmed party. Upon termination of the Agreement, each party agrees to cease use of the other's information and to return it, or destroy it, as appropriate.

18. Patient Privacy and HIPAA Compliance. The parties recognize that each is a healthcare provider and a covered entity within the meaning of the Federal Health Insurance Portability and Accountability Act ("HIPAA"), and therefore responsible for compliance with HIPAA standards for electronic transactions. The Parties agree to protect and respect the rights of the patients of CHN clinics and RITE AID to privacy and confidentiality concerning their medical and pharmaceutical records, and to protect all individually identifiable health information as protected health information from misuse or disclosure, in compliance with all applicable state and federal law. Without limiting the generality of the foregoing, the parties agree to use patient-specific information only for permitted treatment, billing and related record-keeping purposes, and to protect patient-specific information from unnecessary disclosure to persons not employed or contracted for by the parties, and from their own employees and contractors unless they have a need to know and agree to maintain the confidentiality of patient specific information. The Parties agree that all patient information created, maintained or transmitted electronically in connection with this Agreement shall comply in all respects with the requirements of HIPAA governing electronic transmission of individually identifiable patient information. See 42 CFR Section 160 et seq. Failure by either party to abide by these requirements shall be a basis for immediate termination of this Agreement.

19. Entire Agreement. This Agreement represents the entire understanding of the Parties. There are no other agreements or understandings between the parties, either oral or written, relating to Covered Drugs. Any amendments to this Agreement shall be in writing and signed by all parties.

20. Notice. Any notice required or given under this Agreement shall be provided in writing by one of the following methods: hand delivery, placing in the U.S. Postal Service, first class postage prepaid, facsimile transmission or e-mail transmission, to the addresses and to the attention of the person(s) specified below, or as modified at any time by either party by written notice hereunder.

To CITY: Office of Contract Management and Compliance Fax: (415) 554-2555
Department of Public Health
101 Grove Street, Room 307
San Francisco, CA 94102

and: Sharon Kotabe, PharmD Fax: (415) 206-2338
Contract Administrator
San Francisco Department of Public Health
CHN Associate Administrator for Pharmaceutical Services
2789 25th Street, Room 2008
San Francisco, CA 94110

To CONTRACTOR: William F. Wolfe Fax: (717) 730-8227
Vice President Managed Care
RITE AID CORPORATION
30 Hunter Lane
Camp Hill, PA 17011

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

CONTRACTOR

RECOMMENDED BY:

Mitchell H. Katz / 6/12/03
MITCHELL H. KATZ, M.D. Date
Director of Health

William F. Wolfe
Vice President Managed Care

RITE AID CORPORATION
30 Hunter Lane
Camp Hill, PA 17011

Federal ID: 95-4391249

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

Phone: 717 - 730-8217
FAX: 717 - 730-8227

By *Dennis J. Herrera* / 6/20/03
Deputy City Attorney Date

By: *William F. Wolfe* / 6/10/03
Authorized Signature Date

Exhibit A – SPECIFIC CLINIC TO PHARMACY

CLINIC NAME	CLINIC ADDRESS	CITY	CLINIC PHONE	CLINIC ZIP
Balboa Teen Health Center 1000 Cayuga Avenue	1830 Ocean Avenue @ Balboa Terrace	6382	BT6568666	527145
Children's Health Center 1001 Potrero Avenue, 6M	4045 24 th Street @ Castro	5896	BT5237690	591392
Castro-Mission Health Center 3580 17 th Street	1496 Market Street @ Van Ness	6227	BT6061650	506785
Chinatown Public Health Center 1490 Mason Street	776 Market Street @ 4 th Street	6233	BT6074758	505783
Cole Street Youth Clinic 555 Cole Street	1496 Market Street @ Van Ness	6227	BT6061650	506785
Larkin Street Youth Center 1138 Sutter Street	1300 Bush Street @ Larkin	5900	BP5422465	571629
Maxine Hall Health Center 1301 Pierce Street	776 Market Street @ 4 th Street	6233	BT6074758	505783
North of Market Senior Services 333 Turk Street	1300 Bush Street @ Larkin	5900	BP5422465	571629
Ocean Park Health Center 1351 24 th Avenue	5280 Geary Blvd @ 17 th Avenue	6205	BT5696058	578572
Silver Avenue Family Health Center 1525 Silver Avenue	4045 24 th Street @ Castro	5896	BT5237690	591392
Southeast Health Center 2401 Keith Street	776 Market Street @ 4 th Street	6233	BT6074758	505783
Tom Waddell Health Center 50 Ivy Street	1496 Market Street @ Van Ness	6227	BT6061650	506785
Adult Medicine Clinic 1001 Potrero Avenue, 1M	1496 Market Street @ Van Ness	6227	BT6061650	506785
Family Health Center 995 Potrero Avenue, Bldg 80 (1 st and 5 th floors)	1496 Market Street @ Van Ness	6227	BT6061650	506785
Positive Health Clinic 995 Potrero Ave, Bldg 80 (6 th floor)	1496 Market Street @ Van Ness	6227	BT6061650	506785
Urgent Care Center 1001 Potrero Avenue	1496 Market Street @ Van Ness	6227	BT6061650	506785



George Agnost,
City Attorney

November 27, 1984

OPINION NO. B4 - 29

SUBJECT: Civil Service Commission Jurisdiction over Grant Funded Programs

REQUESTED BY: Dianne Feinstein
Mayor

PREPARED BY: Burk E. Delventhal
Mara E. Rosales
Deputy City Attorneys

QUESTION PRESENTED

Do proposals for grant awards funded from federal, state or City monies contemplate either the creation of positions in City service or the award of personal services contracts within the meaning of San Francisco Charter Section 8.300 so as to come within the jurisdiction of the Civil Service Commission?

CONCLUSION

Where federal, state or City monies are used to fund all or part of a proposed program, the relationship created between the City and recipient determines Civil Service Commission jurisdiction. Generally, where City grant-funding agencies are merely a conduit of federal, state or City funded grant awards for the rendition of services or the provision of facilities to, for or on behalf of individuals in the community rather than the governmental entity, neither a personal services contract nor a position in a City department or office is created by the award of the grant and the Civil Service Commission has no jurisdiction in these cases.

INTRODUCTION

Many opinions have been written by this office concerning Civil Service Commission (hereinafter "Commission") jurisdiction over "personal services contracts", (e.g., City Attorney's Opinions 79-57; 80-70.) At least one opinion has addressed the issue of Commission jurisdiction where state law either mandates or encourages contracting out for "personal services" with the private sector. (City Attorney Opn. 83-23).

By written request and through discussions with your staff, you have advised this office of certain facts that raise the question whether the Commission has jurisdiction to review all grant awards made by City grant-giving agencies to private non-profit agencies.

At the outset, it is important to state that the legal issues you raise are both interesting and novel. Extensive and thorough research has not produced any substantial or definitive case law on the subject. However, a study of the relevant authority governing civil service principles has proved instructive and helpful in analyzing the issues and conclusions drawn herein.

You have advised us of the following facts. The City receives grant-assistance monies from the state and federal governments to administer, distribute and award to eligible non-profit agencies. The non-profit recipient designs a program it wants funded and applies to a special grant-giving/planning department of the City (e.g. Mayor's Criminal Justice Council, Office of Community Development, Community Substance Abuse, etc.) for funding. In some cases, the City uses its own monies for these purposes.

The grant awards are for comprehensive programs of services, generally involving numerous personnel and the use of the recipient's own facilities. The City often does not have the type of facilities needed to provide these services and this is a critical consideration in the funding decision.

The City does not supervise the recipient's employees or their job performance. Rather the City provides oversight and technical assistance to ensure that grant funds from the City are being spent in accordance with the terms of the grant. The grant recipient does not render services to, for or on behalf of a City department but to the residents of San Francisco who are in need of the particular services the recipient offers.

ANALYSIS

Section 8.300 (a) of the San Francisco Charter (hereinafter "Charter") provides,

All positions in all departments and offices of the city and county . . . where the compensation is paid by the city and county shall be filled from the lists of eligibles prepared by the civil service commission.

The civil service provisions embrace only permanent positions held or to be held by city employees and do not pertain to work or services rendered by independent contractors. (Estate of McMillin (1956) 46 Cal.2d 121; Kennedy v. Ross (1946) 28 Cal.2d 569; San Francisco v. Boyd (1941) 17 Cal.2d 606.

The theme underlying the concept of a civil service system is that the State or municipality must resort to the services of civil servants, and not independent contractors in the private sector, to perform the continuous, routine, daily tasks for the operational needs of the public entity. (See Burum v. State Compensation Ins. Fund (1947) 30 Cal.2d 575, 582; Kennedy, supra; Boyd, supra; State Compensation Insurance Fund v. Riley (1937) 9 Cal.2d 126; California State Employees Association v. Williams (1970) 7 Cal.App.3d 390; County of Los Angeles v. Ford (1953) 121 Cal.App.2d 407; Stockburger v. Riley (1937) 21 Cal.App.2d 165; see also City Attorney Opinions 80-70; 80-33; 79-57.)

In view of the Commission's broad authority to protect the merit system against dissolution, prior opinions of this office have concluded that the Commission has the power to review all proposed personal services contracts to determine whether the Commission has jurisdiction to provide the requested services through the classified civil service (City Attorney Opns. 79-57, 80-70.)

stated otherwise, if the contract calls for personal services to be rendered to, for or on behalf of, a City department, then the Commission must look at it and decide whether the services should be provided through the merit system or by the private sector.

Hence, the precise question before us is whether proposals for grant awards involve the rendition of personal services to, for or on behalf of the public entity so as to require their review by the Commission before they are awarded. Clearly, the facts presented to us do not establish an employer-employee relationship between the City and the recipients of grant awards. While the recipient receives funds for a program of services, neither the recipient nor its employees fill positions in a department or office of the City. Thus, the only question that remains is whether grant awards can be said to be personal services contracts.

Legal scholars and the courts envision contracting for personal services as creating that relationship whereby the public entity tenders consideration and in exchange receives or procures services it desires for its operational needs from the

private sector rather than from its own public employees (Armed Services Procurement Regulations (ASPR) Section 22-102.1(a) quoted in Katz, Service Contracting and the Right of Civil Service Personnel (1971) 4 Public Contract Law Journal 1; Miller, Administration by Contract: A New Concern for the Administrative Lawyer (1961) 36 N.Y.U. Law Review 957, 968; See Hayman, Government by Contract: Boon or Bane (1961) 21 Pub. Ad. Rev. 59, 61; 1 Pub. Empl. Bargain, CCH paragraph 3525 (1977). See also State Civil Service Law - Civil Service Restrictions on Contracting Out by State Agencies (1980) 55 Wash. Law Rev. 419 and cases and journals cited therein.)

The general characteristics of a grant award have been described as follows and are typical of the grants awards in question:

Key → (1) The basic intent and purpose is to stimulate, support, or aid another party's activities; (2) the government asks the recipient to define what it will do to achieve the objectives of the program. This is usually accomplished through submission of a proposal. The recipient is responsible for deciding what that proposal will be or how it will obtain the results it seeks; (3) there is no buyer-seller relationship and the government's role is that of patron or partner; (4) the relationship is less formal and expressed in less detail than a procurement relationship; (5) price or estimated cost of project plays a small role in selection of recipient. (U. S. Commission on Government Procurement Report (1972) Vol.3, Part F, Federal Grant Type Assistance Programs.)

25% Points

These features define a relationship whereby the public entity offers assistance, guidance, stimulation or supervision on a project or program to the recipient. The recipient in turn, utilizes the support of the governmental body to achieve a particular objective.

Key

Other significant factors relative to grant awards are that the supervision or control exercised by the City is minimal at best and primarily restricted to technical assistance. Second, the contemplated tasks or services are not to be rendered to, for or on behalf of the City. Instead, the recipient provides services to the community to respond to a need for those particular services. The relationship between the City and the recipient in some ways resembles that between an independent contractor and the City: recipient has sole control over its employees, provides the facilities, and offers highly specialized services. However, a critical factor weighing against independent contractor status is that the recipient does not perform services to, for, or on behalf of the City.

Imp

These considerations compel the conclusion that the provision of grant-assistance funds to grant recipients does not create a personal services contract within the scope of civil service principles.

In a related context a similar result was reached by the California Attorney General in two recent opinions. (58 Opn. Cal. Atty. Gen. 586, Aug. 14, 1975; 63 Opn. Cal. Atty. Gen. 290, Apr. 10, 1980.)

The precise issue in 58 Opn. Cal. Atty. Gen. 586 was whether grant awards made by the Office of Criminal Justice Planning in accordance with the Omnibus Crime Control and Safe Street Act of 1968 (42 U.S.C. sec. 3701 et seq.) constituted personal services contracts pursuant to Government Code section 14780, requiring screening and approval by the Department of General Services of certain "contracts."

63 Opn. Cal. Atty. Gen. 290 concerned an identical question but the grant awards there were given by the California Department of Aging pursuant to the Comprehensive Older Americans Act Amendments of 1978 (42 U.S.C. sec. 3001 et seq.)

In both cases, the Attorney General weighed the facts. The State was a conduit of the federal funds and the State did not procure goods or services from the recipient in the usual contract sense. Any controls exercised by the State were to ensure that the funds were properly expended and accounted for. The conclusion reached by the Attorney General was that grant awards like those before it that called for assistance not procurement services did not fall within the definition of personal services contracts.

Prior opinions of this office also support the conclusion that grant awards are not personal services contracts within the contemplation of the Charter. The question posed in Opinion 73-90 was whether the Purchaser, pursuant to his authority to enter into personal services contracts required by City departments (Charter § 7.100), was required to negotiate and execute the Mayor's Criminal Justice Council operating agency agreements. We concluded that since the Mayor's Criminal Justice Council agreements were not required by City departments but were to benefit third parties, the agreements were not personal services contracts within the meaning of the Charter. (See also Opn. 73-7.) Therefore, the Purchaser was neither required nor empowered to review the negotiations for and execution of operating agency agreements between the City and third party recipients of grant funds.

The Purchaser's review of proposed personal services contracts required by the City pursuant to Charter Section 7.100 is necessary to ensure the City's money will be used in the most economic fashion. (Opn. 73-90, p. 2.) However, the purposes underlying Section 7.100 are not served or applicable when federal, state or City grant monies are channeled through City departments to benefit recipients in the community. Federal and State government grantors usually provide guidelines, regulations, and administrative safeguards to protect against abuse by recipients of grant funds. These same rules also delineate how the funds are to be expended. City grant funding agencies also carefully supervise the expenditure of City funds in the same fashion.

Similarly, the Commission's implied power to review personal services contracts required by the City finds its genesis in "an implicit necessity for protecting the policy of the organic civil service mandate against dissolution and destruction." (California State Employees Association v. Williams, supra, 7 Cal.App.3d 390, 397.) This legitimate concern is not jeopardized, however, when the recipients of grant awards provide services to, for or on behalf of parties other than the City. The ideals of efficiency and expediency in government underlying the merit system are likewise not impaired by allowing proposals for grant awards to be awarded without the Commission's review. Since the recipients' progress is monitored by the City's overseeing agency it can address any potential for abuse.

In sum, the aforementioned special characteristics of a grant award make it significantly different from a personal services relationship. And, in view of the policies underlying the Commission's jurisdiction to review proposed personal services contracts, it must be concluded that the Commission does not have jurisdiction to review proposed grant awards. Hence a line of demarcation can be drawn between personal services contracts and grant awards. The former play a central role in the governmental procurement process, the latter contemplate the rendition of some service or the institution of a program under circumstances where it is not rendered to, for or on behalf of the government. The former are subject to the jurisdiction of the Commission, the latter are not. A word of caution is appropriate. What is important is not the label or the medium of the relationship. Rather the inquiry must focus upon the function that is to be discharged with the public entity. Should the grant award involve the undertaking of a program that traditionally or historically has been performed by civil

servants or concern a basic governmental function, then such a grant award would be deemed to, for or on behalf of the government. However, the mere fact that the grant award involves some benefit to the community or some individuals does not make it into a personal services contract.

Conversely, if the characteristics of a grant award do not resemble the elements typical of an assistance relationship or where a grant award requires active participation by the City, i.e., in addition to financing the entire program or project the City imposes regulations, requirements, responsibilities to such an extent that it exercises a significant degree of control over program design, management, direction, performance of employees, etc., then the matter should be referred to the Commission for its review. In this case, Commission screening is necessary since the City's role may be akin to an employer or procurer and not a patron. Without any review by the Commission, grant awarding by the City in this case may result in awarding grants to a recipient who proposes to provide services to, for or on behalf of the City that can be adequately performed by civil servants. Thus, in cases of doubt, the matter should be referred to the Commission.

For your guidance, grant awards that do not require Commission review are those made to recipients who are (i) non-profit (ii) provide services to, for, and on behalf of San Francisco's residents and (iii) meet the elements of an assistance relationship outlined above. Examples of eligible recipients are those who provide services in such areas as: juvenile/adult delinquency prevention; community cultural and educational development (e.g., painting of murals, conducting music, theatre, art workshops, organizing parades or street fairs) community job training, community health and mental health; community safety awareness; community youth, children and senior programs.

The role of the recipient and the City must be examined carefully. Generally, if the recipient is eligible to receive assistance from the City, and the City's role is limited to imposing restrictions to ensure that funds are properly expended and accounted for and to providing technical support, then the grant award is outside the scope of the Commission jurisdiction and need not be submitted to the Commission for its review.

Dianne Feinstein

B

November 27, 1984

The Controller may certify the availability of funds for those proposals for grant awards outside of the Commission's jurisdiction as set forth above without Commission's review and approval.

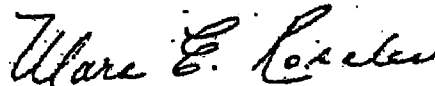
You are so advised.

Respectfully submitted,

GEORGE AGNOST
CITY ATTORNEY

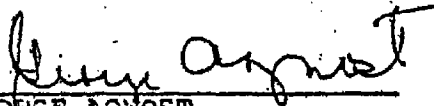


Berk E. Delventhal
Deputy City Attorney



Mara E. Rosales
Deputy City Attorney

APPROVED:



GEORGE AGNOST
CITY ATTORNEY :

4461D

Appendix B
Calculation of Charges
1. Method of Payment

Actual Cost

A. Contractor shall submit monthly invoices in the format attached in Appendix F, by the fifteenth (15th) working day of each month for reimbursement of the actual costs for Services of the immediately preceding month. All costs associated with the Services shall be reported on the invoice each month. All costs incurred under this Agreement shall be due and payable only after Services have been rendered and in no case in advance of such Services.

2. Program Budgets and Final Invoice

A. Program Budgets are listed below and are attached hereto.

Appendix B-1 Administrative Fee Schedule

Appendix B-2 Fees

B. Contractor understands that, of the maximum dollar obligation listed in Section 5 of this Agreement, \$90,000 is included as a contingency amount and is neither to be used in Program Budgets attached to this Appendix, or available to Contractor without a modification to this Agreement executed in the same manner as this Agreement or a revision to the Program Budgets of Appendix B, which has been approved by Contract Administrator. An additional pass through amount of two million three hundred thousand dollars (\$2,300,000 per fiscal year) in annual pharmacy dispensing. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

Contractor further understands that no payment of any portion of this contingency amount will be made unless and until such modification or budget revision has been fully approved and executed in accordance with applicable City and Department of Public Health laws, regulations and policies/procedures and certification as to the availability of funds by Controller. Contractor agrees to fully comply with these laws, regulations, and policies/procedures.

C. Contractor agrees to comply with its Program Budgets of Appendix B in the provision of Services. Changes to the budget that do not increase or reduce the maximum dollar obligation of the City are subject to the provisions of the Department of Public Health Policy/Procedure Regarding Contract Budget Changes. Contractor agrees to comply fully with that policy/procedure.

D. A final closing invoice, clearly marked "FINAL," shall be submitted no later than forty-five (45) calendar days following the closing date of the Agreement, and shall include only those costs incurred during the referenced period of performance. If costs are not invoiced during this period, all unexpended funding set aside for this Agreement will revert to City.

ADMINISTRATIVE FEE SCHEDULE

CLAIMS PROCESSING FEE:

\$0.22 Per Member Per Month

- * *Processing charges must meet an aggregated minimum average of \$750.00 per bi-weekly invoice cycle to qualify for fee schedule, otherwise a flat fee of \$750.00 will be billed and payable in such cycle. Add ten percent (10%) to Claims Processing Fees if reports are requested in a format other than via FTP.*
-

The Claims Processing Fee includes the following:

- Processing and payment of all Claims
- Concurrent Drug Utilization Reviews (DUR)
- Monthly and quarterly standard reports
- Administration of a standard MAC program
- Standard benefit design and implementation services
- Eligibility management
- EOB Claims payment detail sent to Participating Pharmacies
- Biweekly Check-Run Control Totals sent to Client
- MedAccess[®] - fifteen (15) users with Claims and profile access
- MedOptimize[®] - fifteen (15) concurrent users
- MedFocus[®] Report
- Deductible with/without benefit maximum
- Maximum benefit only by group
- Administrative Overrides
- Toll free customer service help desk
- On-line messaging

CLAIM RATES*

Prescription processing professional fee

CHN will pay a professional fee of \$10.00 per replenishment prescription dispensed through participating pharmacies named in this Agreement to CHN eligible patients covered by this Agreement.

Reimbursement for drug cost

Drugs dispensed to CHN patients under this Agreement shall be replaced to the dispensing participating pharmacy, and there shall be no remuneration for these drugs except for the following:

- A. Schedule II controlled substances shall be reimbursed and not replenished.
The following formula shall apply:

Brand name drugs:

Average Wholesale Price (AWP) less 15% plus a \$2.00 Dispensing Fee

Generic drugs:

Lower of AWP less 20%, HCFA MAC or third party administrator's proprietary MAC plus Dispensing Fee.

- B. Drugs that have not reached the agreed upon replenishment point 180-days after being dispensed shall be reimbursed. The following formula shall apply:

Brand name drugs:

Average Wholesale Price (AWP) less 15% less \$8.00 per prescription dispensed during the 180-day replenishment period

Generic drugs:

Lower of AWP less 20%, HCFA MAC or third party administrator's proprietary MAC less \$8.00 per prescription dispensed during the 180-day replenishment period.

Prescriptions and claims submitted to Medicaid, Medicare or ADAP shall not be submitted for payment or replenishment to CHN.

Contractor shall reverse CHN claim and prescription processing fee, and bill identified appropriate payer for claims found to have been erroneously billed to CHN.

* CHN delegates its pharmacy network administration to CONTRACTOR. Such delegation shall include authorizing CONTRACTOR to establish participation agreements with participating pharmacies. CONTRACTOR shall negotiate with participating pharmacies at various reimbursement rates (including AWP discounts, dispensing fees, and MAC) and compensation terms throughout the term of the contract, and shall charge CHN the blended rates set forth in above. The blended rate represents the single AWP discount payable by CHN on applicable claims, which may be greater or less than the actual rate paid to participating pharmacies. CHN acknowledges and agrees that, as compensation for administering the pharmacy network, CONTRACTOR shall retain such difference, if any, between the reimbursement paid to participating pharmacies for claims and the reimbursement received by CONTRACTOR from CHN for claims (the "Network Administration Fee" or "NAF").

- The term "AWP" shall mean the current average wholesale price or industry benchmark price of a prescription drug as set forth in the First Data Bank Blue Book, including its supplements, or other nationally recognized pricing source as determined by MedImpact in its sole discretion. "AWP" does not represent a true wholesale price, but rather is a fluctuating benchmark provided to pricing sources (such as First Data Bank) by pharmaceutical manufacturers. In addition, in the event that the methodology for calculating the AWP pricing benchmark used by MedImpact hereunder changes or is replaced with another benchmark or methodology for any reason, MedImpact may switch to such new pricing benchmark or modify the pricing under this Agreement so as to maintain comparable pricing under the new benchmark or methodology as existed prior to such change.
- The term "MAC" shall mean the then current *maximum allowable cost* of certain prescription products, selected in accordance with criteria established by MedImpact, that are subject to MedImpact's MAC pricing formulas. Multi-source drugs are eligible for the MAC list if they are: (i) A-rated generics; (ii) thirty (30) days after they are readily available through more than two (2) generic vendors; and (iii) the products are not exclusive. Such criteria and pricing formulas are subject to change from time to time at MedImpact's sole discretion. Client agrees to accept any of MedImpact's MAC lists as amended from time to time in MedImpact's sole discretion.

1. CLAIMS PROCESSING

- A. Direct Member Reimbursement (DMR) \$1.50 per Claim
- B. Client Requested Claims Adjustment \$1.50 per Claim plus Time and Materials for Service Request
- C. Coordination of Benefit Claims (Paper processed claims) \$1.50 per Claim

2. PHARMACY NETWORKS

- A. CITY Requested Pharmacy Audits
 - Level 1 Basic Services \$0.009 Per approved claim per month (PCPM)
 - Level 2 – Documentation & Verification \$0.024 PCPM
 - Level 3 – On-site Audits \$0.024 PCPM + time & materials (travel costs) + \$150/hour per person
 - Optional Reports
 - Standard To be quoted upon request
 - Customized
- B. Pharmacist Call Center Support Included in Claims Processing Fee

3. IMPLEMENTATION AND CHANGE SERVICES

- A. Standard Services Included in Claims Processing Fee
- B. Customized Services Custom Requirements
\$175.00/hour of IT time, plus time and materials to support custom or new requirements
- C. Eligibility and Plan Benefit Support
 - Late Fee Time and materials to include any necessary overtime charges associated with data conversion and eligibility processing
 - Post-loading fee Post-Loading Changes
\$175.00/hour of IT time, plus time and materials to support custom or new requirements

4. REPORTING, DATA AND MANAGEMENT TOOLS

A. Core Reports
 Additional standard reports \$100.00 per report
 Custom reports as requested (to include):
 Programming time \$175.00 per hour
 Run time \$100.00 per hour

Changes in selection of standard reports \$50.00 minimum charge

B. MedOptimize®
 Fifteen (15) concurrent users
 Included
 Additional concurrent users: \$500.00 per user per month

Client is responsible for telephone line charges, installation and set-up fees, equipment, including emulation software, and meeting MedImpact's minimum system requirements.

Client shall be responsible for reasonable time and material charges for training.

C. MedAccess®
 Fifteen (15) users included with
 Claims and profile access
 Additional concurrent users \$500.00 per user per month
 Custom Screen Development or Access Time & materials
 First Data Bank Drug file access (read only) \$5,000.00* per user per year
 *rate to be adjusted based on any
 change in the drug file license fee

Client is responsible for telephone line charges, installation and set-up fees, equipment, including emulation software, and meeting MedImpact's minimum system requirements.

D. MedResults®
 \$3,000 set up fee
 \$5.00 per notice

E. Personal Health/Physician Access \$0.02 per paid Claim

F. Health Management System (Powered by WorldDoc)
 Essential Services \$0.55 per eligible user per month
 Nurse Line \$0.25 per eligible user per month

5. CLINICAL SERVICES \$0.09 per member per month

A. Clinical Program Management Consultative Services Included in above fee

B. Client Pharmacy & Therapeutics Committee Participation Included in above fee

- C. Drug Monograph Preparation
 - i. Standard Drug Monograph Preparation Included in above fee
 - ii. Custom Drug Monograph Preparation Quoted upon request

- D. Other Client Clinical Consultations \$225.00/hour for special projects

- E. Concurrent Drug Utilization Review Included in Claims Processing Fee

- F. Therapeutic Prior Authorization \$25.00 per Claim requiring TH PA

- G. Formulary Services
 - MedImpact Standard Formulary \$0.05 per member per month
 - Includes:
 - a. Assistance in the coding of the selected medication Formulary for Claims adjudication;
 - b. Initial working copy of the MedImpact recommended drug Formulary for Client to photocopy, print, and distribute to providers;
 - c. Quarterly MedImpact updates; and
 - d. Custom Formulary will incur additional charges as outlined in this Exhibit B.

- | | | |
|----|---|--|
| H. | Retrospective Drug Utilization Evaluations (DUE) | One (1) standard, scheduled per quarter included |
| | <i>MedImpact schedules standard DUEs on a quarterly basis; Client will be charged time and materials for modifications.</i> | Additional or Enhanced DUEs \$0.09 per member per month with a \$24,000.00 minimum charge per year |

Client shall be responsible for all travel and lodging expenses and for reasonable time and materials charges for Clinical Pharmacist attendance at Pharmacy & Therapeutics (P&T) Committee meetings.

- | | | |
|----|---|---|
| I. | Comprehensive Clinical Management Package, if requested | \$0.20 per member per month (minimum annual charge of \$150,000.00) |
| J. | Benefit Coverage/Administrative Standard & Expedited Appeal, If requested | \$100.00 per Eligible Member appeal |
| | Medical Necessity Standard & Expedited Appeal | \$225.00 per Eligible Member appeal |
| | First Level Appeal | Fees paid by Client for each Eligible Member appeal |
| | Second Level Appeal | |

6. NON-STANDARD, EXCESSIVE OR ADDITIONAL SERVICES

- | | | |
|----|---|---------------|
| A. | Non-Standard or Excessive Services or Materials | \$175.00/hour |
| B. | Additional Services | \$175.00/hour |

THE FOLLOWING INCUR ADDITIONAL CHARGES:

- | | |
|---|---|
| Paper submitted Claims
<i>(Charged to the submitting Participating Pharmacy)</i> | \$1.00 per Claim |
| Modified Paid Claims Data Files
NCPDP Modified/MedImpact format
Non-standard format | \$75.00 per tape, CD, FTP
\$100.00 per tape, CD, FTP |
| Plan file data
<i>(Manual input and maintenance from hardcopy)</i> | |
| Members | \$1.00 per record |
| Groups/Divisions | \$10.00 per record |
| Physicians | \$5.00 per record |
| ID cards | <u>Price Per Card</u> |
| Standard cards (plastic) | \$0.50 |
| Custom cards (plastic) | \$1.25 |

Mailings	
Inserted & mailed w/financial reports	\$0.10 per insert
Additional cost of separate mailing	\$1.00 per packet
Out-of-pocket expenses	Time and materials
Mailing expenses/postage	
Air freight/overnight letters	
Information technology programming time	\$175.00 per hour
Fiscal Intermediary Expenses	
Checks written to third parties (Administrative fee beyond first 5 checks authorized by CHN)	\$10.00 per check
Faxing to pharmacies upon request by CHN	\$0.10/page

Patient and Prescriber Satisfaction Surveys

Assistance in development and draft(s) of patient and prescriber satisfaction surveys	Included
Printing, photocopying, and distribution to participants done by CONTRACTOR at CHNY'S request	Fee to be mutually agreed upon
Tabulating, electronic reporting of results, and distribution of results to be done by CONTRACTOR at CHN'S request	Fee to be mutually agreed upon

COMPENSATION

- A. In no event shall CHN be financially responsible for more than the amount set forth in Section 5 in this Agreement without there first being a modification of the Agreement.

FEES

1. Prescription processing professional fee

CHN will pay a professional fee of \$10.00 per replenishment prescription dispensed through participating pharmacies named in this contract to CHN eligible patients covered by this contract.

2. Reimbursement for drug cost

Drugs dispensed to CHN patients under this contract shall be replaced to the dispensing participating pharmacy, and there shall be no remuneration for these drugs except for the following:

- A. Schedule II controlled substances shall be reimbursed and not replenished. The following formula shall apply:

Brand name drugs:

Average Wholesale Price (AWP) less 15% plus a \$2 Dispensing Fee

Generic drugs:

Lower of AWP less 20%, HCFA MAC or third party administrator's proprietary MAC plus \$2 Dispensing Fee

- B. Drugs that have not reached the agreed upon replenishment point 180-days after being dispensed shall be reimbursed. The following formula shall apply:

Brand name drugs:

Average Wholesale Price (AWP) less 15% less \$8 per prescription dispensed during the 180-day replenishment period

Generic drugs:

Lower of AWP less 20%, HCFA MAC or third party administrator's proprietary MAC, less \$8 per prescription dispensed during the 180-day replenishment period

3. Claims

- A. Prescriptions and claims submitted to Medicaid, Medicare or ADAP shall not be submitted for payment or replenishment to CHN.
- B. Contractor shall reverse CHN claim and prescription processing fee, and bill identified appropriate payer for claims found to have been erroneously billed to CHN.

**Appendix C
Insurance Waiver**

RESERVED

THIS PAGE IS LEFT BLANK AND IS NOT BEING USED

Appendix D
Additional Terms

1. HIPAA

The parties acknowledge that CITY is a Covered Entity as defined in the Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA") and is therefore required to abide by the Privacy Rule contained therein. The parties further agree that CONTRACTOR falls within the following definition under the HIPAA regulations:

- A Covered Entity subject to HIPAA and the Privacy Rule contained therein; or
- A Business Associate subject to the terms set forth in Appendix E;
- Not Applicable, CONTRACTOR will not have access to Protected Health Information.

2. THIRD PARTY BENEFICIARIES

No third parties are intended by the parties hereto to be third party beneficiaries under this Agreement, and no action to enforce the terms of this Agreement may be brought against either party by any person who is not a party hereto.

3. MATERIALS REVIEW

CONTRACTOR agrees that all materials, including without limitation print, audio, video, and electronic materials, developed, produced, or distributed by personnel or with funding under this Agreement shall be subject to review and approval by the Contract Administrator prior to such production, development or distribution. CONTRACTOR agrees to provide such materials sufficiently in advance of any deadlines to allow for adequate review. CITY agrees to conduct the review in a manner which does not impose unreasonable delays on CONTRACTOR'S work, which may include review by members of target communities.

Appendix E
HIPAA BUSINESS ASSOCIATE ADDENDUM

This Exhibit contains requirements set forth in the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104-191 and the regulations promulgated thereunder by the U.S. Department of Health and Human Services and other applicable laws. The City and County of San Francisco, referred to in this agreement as CITY, is the Covered Entity and is referred to below as CE. The CONTRACTOR is the Business Associate, and is referred to below as Associate. The agreement between CITY and CONTRACTOR to which this Addendum is attached is referred to in this Addendum as the Contract.

This HIPAA Business Associate Addendum ("Addendum") supplements and is made a part of the contract ("Contract") by and between Covered Entity ("CE") and Business Associate ("Associate"), [and is effective as of April 14, 2003 for existing contracts and the effective date for future contracts].

RECITALS

A. CE wishes to disclose certain information to Associate pursuant to the terms of the Contract, some of which may constitute Protected Health Information ("PHI") (defined below).

B. CE and Associate intend to protect the privacy and provide for the security of PHI disclosed to Associate pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

C. As part of the HIPAA Regulations, the Privacy Rule (defined below) requires CE to enter into a contract containing specific requirements with Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.502(e) and 164.504(e) of the Code of Federal Regulations ("CFR") and contained in this Addendum.

In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

1. Definitions.

A. **Business Associate** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 160.103.

B. **Covered Entity** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 160.103.

C. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.

D. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.

E. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.

F. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 CFR Parts 160 and 164.

G. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501. [45 CFR §§ 160.103 and 164.501]

H. **Protected Information** shall mean PHI provided by CE to Associate or created or received by Associate on CE's behalf.

2. Obligations of Associate.

A. **Permitted Uses.** Associate shall not use Protected Information except for the purpose of performing Associate's obligations under the Contract and as permitted under the Contract and Addendum. Further, Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule if so used by CE except that Associate may use Protected Information (i) for the proper management and administration of Associate, (ii) to carry out the legal responsibilities of Associate, or (iii) for Data Aggregation purposes for the Health Care Operations of CE. [45 CFR §§ 164.504(e)(2)(i), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)]

B. **Permitted Disclosures.** Associate shall not disclose Protected Information except for the purpose of performing Associate's obligations under the Contract and as permitted under the Contract and Addendum or in any manner that would constitute a violation of the Privacy Rule if disclosed by CE, except that Associate may disclose Protected Information (i) for the proper management and administration of Associate; (ii) to carry out the legal responsibilities of Associate; (iii) as required by law, or (iv) for Data Aggregation purposes for the Health Care Operations of CE.

To the extent that Associate discloses Protected Information to a third party, Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) an agreement from such third party to immediately notify Associate of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach. [45 CFR §§ 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)]

C. **Appropriate Safeguards.** Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by this Contract. [45 CFR § 164.504(e)(2)(ii)(B)] Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Associate's operations and the nature and scope of its activities.

D. **Reporting of Improper Use or Disclosure.** Associate shall notify the compliance office of CE in writing of any use or disclosure of Protected Information otherwise than as provided for by the Contract and this Addendum within five (5) days of becoming aware of such use or disclosure. [45 CFR § 164.504(e)(2)(ii)(C)]. Such notice shall be sent to: DPH Compliance Office, 2789 Twenty-fifth Street, San Francisco, CA 94110 or can be sent via e-mail to CHN_Hotline@chinsf.org.

E. **Associate's Agents.** Associate shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to Associate with respect to such PHI. [45 CFR § 164.504(e)(2)(D)] Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation. (See 45 CFR §§ 164.530(f) and 164.530(e)(1))

F. **Access to Protected Information.** Associate shall make Protected Information maintained by Associate or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR Section 164.524. [45 CFR § 164.504(e)(2)(ii)(E)]

G. **Amendment of PHI.** Within ten (10) days of receipt of a request from CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors shall make such Protected Information available to CE for amendment and incorporate any such amendment to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR Section 164.526. If any individual requests an amendment of Protected Information directly from Associate or its agents or subcontractors, Associate must notify CE in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by Associate or its agents or subcontractors shall be the responsibility of CE. [45 CFR § 164.504(e)(2)(ii)(F)]

H. Accounting Rights. Within ten (10) days of notice by CE of a request for an accounting of disclosures of Protected Information, Associate and its agents or subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR Section 164.528, as determined by CE. Associate agrees to implement a process that allows for an accounting to be collected and maintained by Associate and its agents or subcontractors for at least six (6) years prior to the request, but not before the compliance date of the Privacy Rule. At a minimum, such information shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Associate or its agents or subcontractors, Associate shall within five (5) days of a request forward it to CE in writing. It shall be CE's responsibility to prepare and deliver any such accounting requested. Associate shall not disclose any Protected Information except as set forth in Sections 2.b. of this Addendum. [45 CFR §§ 164.504(e)(2)(ii)(G) and 165.528]

I. Governmental Access to Records. Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining Associate's compliance with the Privacy Rule. [45 CFR § 164.504(e)(2)(ii)(H)] Associate shall provide to CE a copy of any Protected Information that Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary.

J. Minimum Necessary. Associate (and its agents or subcontractors) shall only request, use and disclose the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [45 CFR § 164.514(d)(3)]

K. Data Ownership. Associate acknowledges that Associate has no ownership rights with respect to the Protected Information.

L. Retention of Protected Information. Notwithstanding Section 3.c of this Addendum, Associate and its subcontractors or agents shall retain all Protected Information throughout the term of the Contract and shall continue to maintain the information required under Section 2.h of this Addendum for a period of six (6) years after termination of the Contract. (See 45 CFR §§ 164.530(j)(2) and 164.526(d). [Note: Section 164.530(j)(2) requires retention of records for six years from their creation, but the standard of six years after termination of the Contract may be easier to implement.])

M. Notification of Breach. During the term of this Contract, Associate shall notify the Compliance Office of the CE within twenty-four (24) hours of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI of which Associate becomes aware and / or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. (This provision should be negotiated)

Notification can occur through use of e-mail or by telephone. The Compliance Office E-mail address is CHN_Hotline@chnsf.org and the telephone numbers are: (415) 642-5790 and (415) 252-3078.

N. Audits, Inspection and Enforcement Involving the Use of Protected Information. Within ten (10) days of a written request by CE, Associate and its agents or subcontractors shall allow CE to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Addendum for the purpose of determining whether Associate has complied with this Addendum; provided, however, that (i) Associate and CE shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) CE shall protect the confidentiality of all confidential and proprietary information of Associate to which CE has access during the course of such inspection; and (iii) CE shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Associate. The fact that CE inspects, or fails to inspect, or has the right to inspect, Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Associate of its responsibility to comply with this Addendum, nor does CE's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of CE's enforcement rights under this Contract. (This provision should be negotiated)

3. Termination.

A. **Material Breach.** A breach by Associate of any material provision of this Addendum, as determined by CE, shall constitute a material breach of the Contract and shall provide grounds for immediate termination of the Contract by CE pursuant to Section 20 of the Contract. [45 CFR § 164.504(e)(2)(iii)]

B. **Judicial or Administrative Proceedings.** CE may terminate this Contract, effective immediately, if (i) Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the Associate has violated any standard or requirement of HIPAA, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

C. **Effect of Termination.** Upon termination of this Contract for any reason, Associate shall, at the option of CE, return or destroy all Protected Information that Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by CE, Associate shall continue to extend the protections of Section 2 of this Addendum to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 CFR § 164.504(e)(ii)(2)(I)] If CE elects destruction of the PHI, Associate shall certify in writing to CE that such PHI has been destroyed.

4. **Disclaimer.** CE makes no warranty or representation that compliance by Associate with this Addendum, HIPAA or the HIPAA Regulations will be adequate or satisfactory for Associate's own purposes. Associate is solely responsible for all decisions made by Associate regarding the safeguarding of PHI.

5. **Certification.** To the extent that CE determines that such examination is necessary to comply with CE's legal obligations pursuant to HIPAA relating to certification of its security practices, CE or its authorized agents or contractors, may, at CE's expense examine Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to CE the extent to which Associate's security safeguards comply with HIPAA, the HIPAA Regulations or this Addendum.

6. **Amendment.** The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Contract may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the Privacy Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that CE must receive satisfactory written assurance from Associate that Associate will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the Privacy Rule or other applicable laws. CE may terminate this Contract upon thirty (30) days written notice in the event (i) Associate does not promptly enter into negotiations to amend this Contract when requested by CE pursuant to this Section or (ii) Associate does not enter into an amendment to this Contract providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the Privacy Rule.

8. **Assistance in Litigation or Administrative Proceedings.** Associate shall make itself, and any subcontractors, employees or agents assisting Associate in the performance of its obligations under this Contract, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers or employees based upon a claimed violation of HIPAA, the Privacy Rule or other laws relating to security and privacy, except where Associate or its subcontractor, employee or agent is a named adverse party.

9. **No Third Party Beneficiaries.** Nothing express or implied in this Contract is intended to confer, nor shall anything herein confer, upon any person other than CE, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

10. **Effect on Contract.** Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Contract shall remain in force and effect.

11. **Interpretation.** The provisions of this Addendum shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. This Addendum and the Contract shall be interpreted as broadly as necessary to implement and comply with HIPAA and the Privacy Rule. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the Privacy Rule.

Appendix F
Invoice

ACORD CERTIFICATE OF LIABILITY INSURANCE

04/15/2008

PRODUCER JAYCE MCCLELLAN MCCLELLAN INSURANCE AGENCY P.O. BOX 99 CARLSBAD, CA 92018	Serial # 100855	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
	INSURED MEDIMPACT HEALTHCARE SYSTEMS ATTN: GAIL DAVIS 10660 TREENA STREET, 5TH FLOOR SAN DIEGO, CA 92131	INSURERS AFFORDING COVERAGE INSURER A: HARTFORD INSURANCE CO. OF THE INSURER B: HARTFORD CASUALTY INSURANCE INSURER C: GREAT AMERICAN E&S INSURANCE CO INSURER D: INSURER E:

COVERAGES
 THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CLASS	ACCT. TYPE	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	72UJUNUS3775	4/15/08	4/15/09	EACH OCCURRENCE \$ 1,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO <input type="checkbox"/> LOC				DAMAGE TO RENTED PREMISES (As presented) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP OF AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY	<input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	72UJUNUS3775 72UJUNUS3775	4/15/08 4/15/08	4/15/09 4/15/09	COMBINED SINGLE LIMIT (Per accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		<input type="checkbox"/> GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				
B		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> DECLAR. <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> RETENTION \$ 10,000	72RHURY5521	4/15/08	4/15/09	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
		WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/AGENTIVE OFFICER/ MEMBER EXCLUDED? <input type="checkbox"/> If yes, attach work SPECIAL PROVISIONS/NOT				WC STATE & LOCAL LAWS \$ OTHER \$ EL EACH ACCIDENT \$ EL DISEASE - PER EMPLOYEE \$ EL DISEASE - POLICY LIMIT \$
C		OTHER PROFESSIONAL LIABILITY	TER3895138	4/07/08	4/07/08	\$5,000,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS:
 CERTIFICATE HOLDER IS NAMED ADDITIONAL INSURED AS RESPECTS GENERAL LIABILITY PER THE ATTACHED ENDORSEMENT

CERTIFICATE HOLDER CITY AND COUNTY OF SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH CBHS CONTRACTS OFFICE 1380 HOWARD STREET, ROOM 412 SAN FRANCISCO, CA 94103-2614	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL SEND BY MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. AUTHORIZED REPRESENTATIVE [Signature]
---	--

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
08/03/2007 09:22

PRODUCER Barney & Barney LLC CA Insurance Lic: 0C03950 9171 Towne Centre Drive Suite 500 San Diego, CA 92122 858-457-3414	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
INSURED MedImpact Healthcare Systems Attn: Gail Davis 10680 Trenea Street, 5th Floor San Diego, CA 92131	INSURER A: Twin City Fire Insurance Company	29459
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	72WERQ6448	8/1/2007	8/1/2008	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	OTHER Workers' Compensation - States on File with Carrier	72WERQ6448	8/1/2007	8/1/2008	Statutory Limits (Stop Gap)

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 *10 Days Notice of Cancellation for Non-Payment of Premium.

CERTIFICATE HOLDER

City and County of San Francisco
 Department of Public Health
 CBHS Contracts Office
 1380 Howard Street, Room 442
 San Francisco, CA 94103-2614

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
 Mary Jones



ACORD 25 (2001/08) Client # 40057 Mst # 5117

Cert # 75991

Subject:

© ACORD CORPORATION 1988

POLICY NUMBER:

72UJUNUS3775
MedImpact Healthcare Systems, Inc.

COMMERCIAL GENERAL LIABILITY



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY ADDITIONAL INSURED AMENDMENT OF CONDITIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

City and County of San Francisco, its officers, agents and employees

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

With respect to insurance provided to the person or organization shown in the Schedule of this Endorsement, Condition 4. Other Insurance is replaced by the following:

4. Other Insurance.

If other valid and collectible insurance is available for a loss we cover under Coverages A and B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary and we will not seek contribution from other insurance available to the person or organization shown in the Schedule of this endorsement except when b. below applies.

b. Excess Insurance

This insurance is excess over any of the other insurance whether primary, excess, contingent or on any other basis:

- (1) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work;"
- (2) That is Fire Insurance for premises rented to you; or
- (3) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Coverage A (Section I).

When this insurance is excess, we will have no duty under Coverage A or B to defend any claim or "suit" that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

Elizabeth
Fitzgerald/ADMSVC/SFGOV
04/15/2008 03:26 PM

To Junko Craft/DPH/SFGOV@SFGOV, Yvonne
Eckhoff/DPH/SFGOV@SFGOV
cc
bcc
Subject Re: MedImpact - Insurance waiver request

Junko,

We have reviewed MedImpact's request, please see our comments.

The General/ Auto Liability, and Excess coverages expired today April 15, 2008. Must submit renewal documents
Professional Liability expired April 7, 2008. Must submit renewal documents.

If the Hired Auto and Non-Owned Auto coverage shares the same policy as the General Liability, the endorsement for the General Liability applies for both coverages.

I don't know what the issue is with the Professional Liability. Appendix C requires \$5MM and \$100,000 deductible. Contractors should determine their own deductibles as it impacts the premium.

Revision to Section 15. (g) you can eliminate the phrase "that are authorized to do business in the State of California", many insurance carriers that are not authorized to do business in California go through surplus lines which is permitted by the California Department of Insurance. This authorization is granted solely for this contract.

With regard to Section 15. (c), the City will not waive the requirement to notify the City regarding the "reduction of insurance".

Elizabeth Fitzgerald
Risk Analyst
Risk Management Division
25 Van Ness Avenue, Ste. 410
San Francisco, CA 94102
Tel. 415-554-2303
Fax 415-554-2357
Email: elizabeth.fitzgerald@sfgov.org

Junko Craft/DPH/SFGOV



Junko Craft/DPH/SFGOV
04/15/2008 02:47 PM

To Elizabeth Fitzgerald/ADMSVC/SFGOV@SFGOV
cc
Subject Re: MedImpact - Insurance waiver request

Hi, Elizabeth,

I understand that you have received the certificate and Additional Insured Endorsement I faxed this morning.

Please let us know the status of your review.

Thanks!

Junko Craft
CBHS-Contract
City and County of San Francisco
Department of Public Health