

**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**

Product Purchase Agreement between the City and County of San Francisco

and

**Priority Healthcare Distribution, Inc.,
d/b/a CuraScript SD Specialty Distribution Contract ID: 1000020197**

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PRODUCT PURCHASE AGREEMENT

This Product Purchase Agreement is made this first day of December 2023 in the City and County of San Francisco (“City”), State of California, by and between Priority Healthcare Distribution, Inc., doing business as CuraScript SD Specialty Distribution having offices at 255 Technology Park, Lake Mary, Florida 32746 (“Distributor”) and City (as defined below).

Recitals

WHEREAS, the Department of Public Health (“Department”) wishes to procure specialty drugs from Distributor; and

WHEREAS, Contractor was selected pursuant to San Francisco Administrative Code Section 21.5(d) and

WHEREAS, this is a contract primarily for Commodities and therefore there is no Local Business Entity (“LBE”) subcontracting participation requirement for this Agreement; and

WHEREAS, Distributor was selected to serve as a Distributor for the goods described herein to ensure adequate levels of uninterrupted access to goods and/or service; and

WHEREAS, Distributor represents and warrants that it is qualified to deliver the goods required by City as set forth under this Agreement.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 **“Agreement”** means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

1.2 **“City”** means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director’s designated agent, hereinafter referred to as “Purchasing” and all City Departments authorized to utilize this Agreement for the purpose of securing the goods described herein.

1.3 **“CMD”** means the Contract Monitoring Division of the City.

1.4 **“Confidential Information”** means all information, ideas, concepts, plans, and data, not generally known, relating to the a Party’s business or operations, whether in writing, by computer memory, orally or in any other form or manner; including but not limited to, trade secrets, customer and vendor lists, business and marketing plans, financial information and projections; business partners; pricing of products and services; product handling strategies; technology plans and designs; trademark and logo designs; internet site designs, look, and functional features; software or computer applications; research; scientific information; clinical information; operational information; agreements and business terms with suppliers, customers, providers of services, and other contracted entities; and requirements of customers and potential customers.

1.5 **“Distributor”** or “Contractor” means Priority Healthcare Distribution, Inc. d/b/a CuraScript SD Specialty Distribution having offices at 255 Technology Park, Lake Mary, Florida 32746.

1.6 **“Mandatory City Requirements”** means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Distributor.

1.7 **“Party”** and **“Parties”** mean the City and Distributor either collectively or individually.

Article 2 Term of the Agreement

2.1 Term. The term of this Agreement shall commence on **December 1, 2023** and expire on **November 30, 2026** unless earlier terminated as otherwise provided herein.

Article 3 Financial Matters

3.1 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. Distributor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement. Notwithstanding the foregoing, in the event of termination pursuant to this Section 3.1, City shall pay Distributor any outstanding invoices related to purchases made prior to the date of termination.

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

3.2 Guaranteed Maximum Costs. The City's payment obligation to Distributor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Distributor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

3.3 Compensation.

3.3.1 Calculation of Charges. Distributor shall provide an invoice to the City on a monthly basis for goods delivered and/or Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for goods identified in the invoice that the City, in its sole discretion, concludes has been satisfactorily performed. In no event shall the amount of this Agreement exceed NINE MILLION DOLLARS (\$9,000,000) The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges." A portion of payment may be withheld until conclusion of the Agreement if agreed to by both Parties as retainage, described in Appendix B. City will not honor minimum service order charges for any services covered by this Agreement.

3.3.2 Payment Limited to Satisfactory Services and Delivery of Goods. Distributor is not entitled to any payments from City until City approves the goods delivered pursuant to this Agreement. Payments to Distributor by City shall not excuse Distributor from its obligation to replace unsatisfactory delivery of goods even if the unsatisfactory character may not have been apparent or detected at the time such payment was made. Goods delivered pursuant to this Agreement that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Distributor without delay at no cost to the City.

3.3.3 Withhold Payments (Reserved).

3.3.4 Invoice Format. Invoices furnished by Distributor under this Agreement must be in a form acceptable to the Controller and City and include a unique invoice number and a specific invoice date. Invoices shall be due and payable by Company from the due date on the Invoice. Invoices for Products shall reflect the payment terms and dating set forth under this Agreement.

3.3.5 Payment Terms.

(a) **Payment Due Date:** Unless City notifies the Distributor that a dispute exists, Payment shall be made within 30 calendar days, measured from (1) the delivery of goods and/or the rendering of services or (2) the date of receipt of the invoice, whichever is later. Payment is deemed to be made on the date on which City has issued a check to Distributor or, if Distributor has agreed to electronic payment, the date on which City has posted electronic payment to Distributor.

3.3.6 Reserved (LBE Payment and Utilization Tracking System).

3.3.7 Reserved (Getting paid by the City for Goods.)

3.3.8 Reserved. (Grant Funded Contracts.)

3.4 Audit and Inspection of Records.

3.4.1 Distributor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Distributor 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. Distributor 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 as conferred upon City by this Section. Distributor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (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.

3.6 Reserved (Payment of Prevailing Wages)

3.7 Contract Amendments; Budgeting Revisions.

3.7.1 Formal Contract Amendment: Distributor shall not be entitled to an increase in the Compensation or an extension of the Term unless the Parties agree to a Formal Amendment in accordance with the San Francisco Administrative Code and Section 11.5 (Modifications of this Agreement).

3.7.2 City Revisions to Program Budgets: The City shall have authority, without the execution of a Formal Amendment, to purchase additional Services and/or make changes to the work in accordance with the terms of this Agreement (including such terms that require Distributor's agreement), not involving an increase in the Compensation or the Term by use of a written City Revision to Program Budget.

3.7.3 City Program Scope Reduction. In order to preserve the Agreement and enable Distributor to continue to perform work albeit potentially on a reduced basis, the City shall have authority during the Term of the Agreement, without the execution of a Formal Amendment, to reduce scope, temporarily suspend the Agreement work, and/or convert the Term to month-to-month (Program Scope Reduction), by use of a written Revision to Program Budgets, executed by the Director of Health, or his or her designee, and Distributor. Distributor understands and agrees that the City's right to effect a Program Scope Reduction is intended to serve a public purpose and to protect the public fisc and is not intended to cause harm to or penalize Distributor. Distributor provides City with a full and final release of all claims arising from a Program Scope Reduction. Distributor further agrees that it will not sue the City for damages arising directly or indirectly from a City Program Scope Reduction.

Article 4 Goods

4.1 Reserved (Primary and Secondary Contractors.)

4.2 Goods.

4.2.1 Term Agreement – Indefinite Quantities. This is a term, indefinite quantities Agreement. Unless otherwise specified herein, deliveries will be required in quantities and at times as ordered during the period of the Agreement. Estimated quantities are approximate only. City, in its sole discretion, may purchase any greater or lesser quantity. Purchasing may make minor purchases of items requested in City's advertisement for bids or Distributor's bid from other suppliers when Purchasing determines, in its sole discretion, that the City has an immediate need for such items or that it is not practical to purchase against this Agreement.

4.2.2 All City purchase orders for Product are subject to review and acceptance by Distributor. Distributor reserves the right at any time after receipt of City's purchase order to accept or decline, in its sole discretion, any purchase order in its entirety or to accept less than the full quantity of a purchase order, on a case-by-case basis, for any reason. Partially filling a purchase order does not obligate Distributor to fill the remainder of the purchase order.

4.2.1 Place of Manufacture. (Reserved)

4.2.2 Electrical Products (Reserved).

4.2.3 Distribution and Shipping Terms. Distributor will ship all Products in compliance with Distributor's then-current Shipping Policy, which may be reasonably modified from time to time without City's consent. Distributor's current Shipping Policy is attached hereto as Appendix C and incorporated herein by reference. To the extent the provisions of this Agreement conflict with provisions of the Distributor's Shipping Policy, the provisions of the Distributor's Shipping Policy shall control.

4.2.4 Condition of Goods. Goods offered and furnished must be new and previously unused, and of manufacturer's latest model, unless otherwise specified herein. Distributor shall establish quality control measures, as applicable to department's operations, and promptly provide documented reports to City of any product defects or premature failures.

4.2.5 **Inspection.** All goods supplied shall be subject to inspection and acceptance or rejection by Purchasing or any department official responsible for inspection. Non-conforming or rejected goods may be subject to reasonable storage fees.

4.2.6 **F.O.B.** Goods shall be shipped to an F.O.B. destination in San Francisco, freight prepaid and allowed, unless otherwise specified in Appendix B (“Calculation of Charges”).

4.2.7 **Failure to Deliver.** If Distributor fails to deliver an article and/or Service of the quality, in the manner or within the time called for by this Agreement, such article and/or Service may be bought from any source by Purchasing. If such failure to deliver is within the control of Distributor and not an unforeseen event beyond the control of the Parties, and if City pays a greater price than the Agreement price for such alternate source, the excess price will be charged to and collected from Distributor or sureties on its bond if bond has been required; or, the City may terminate the Agreement for default; or, the City may return deliveries already made and receive a refund.

4.2.8 **Safety Data Sheets.** Where required by law or by City, Distributor will include Safety Data Sheets (SDSs) with delivery for applicable items. If SDS is not present, City will notify Distributor. All shipments of the same item shipped after City’s notification of SDS requirement must contain SDS documentation. Failure to include the SDSs for such items after notification from City will constitute a material breach of contract and may result in refusal to accept delivery.

4.3 **Qualified Personnel.** Distributor shall use only competent personnel under the supervision of, and in the employment of or contracted with, Distributor (or Distributor’s authorized subcontractors) to deliver the goods. Distributor will consider City’s reasonable requests, made in good faith, regarding assignment and/or removal of personnel, but all personnel must be supervised by Distributor. Distributor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

4.4 **Contractor Vaccination Policy.** Should the Contractor visit on premises, Contractor agrees to follow DPH’s physical location vaccination policy.

4.5 **Independent Contractor; Payment of Employment Taxes and Other Expenses.**

4.5.1 **Independent Contractor.** For the purposes of this Section 4.5, “Contractor” shall be deemed to include not only Distributor, but also any agent or employee of Distributor. Distributor acknowledges and agrees that at all times, Distributor or any agent or employee of Distributor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it delivers the goods required by this Agreement and work requested by City under this Agreement. Distributor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Distributor or any agent or employee of Distributor 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. Distributor or any agent or employee of Distributor is liable for the acts and omissions of itself, its employees and its agents. Distributor 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 Distributor’s performing any of the obligations pursuant to this Agreement, or any agent or employee of Distributor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Distributor or any agent or employee of Distributor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Distributor’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 Distributor performs work under this Agreement. Should City determine that Distributor, or any agent or employee of Distributor, is not performing in accordance with the requirements of this Agreement, City shall provide Distributor

with written notice of such failure. Within five (5) business days of Distributor's receipt of such notice, and in accordance with Distributor policy and procedure, Distributor shall remedy the deficiency. Notwithstanding, if City believes that an action of Distributor, or any agent or employee of Distributor, warrants immediate remedial action by Distributor, City shall contact Distributor and provide Distributor in writing with the reason for requesting such immediate action.

4.5.2 Payment of Employment Taxes and Other Expenses. Should a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Distributor 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 Distributor 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 Distributor for City, upon notification of such fact by City, Distributor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Distributor under this Agreement (again, offsetting any amounts already paid by Distributor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.5 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Distributor shall not be considered an employee of City. Notwithstanding the foregoing, Distributor agrees to indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

4.6 Assignment. Neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by either Party unless first approved by the other Party by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

4.7 Warranty. Distributor warrants to City that the manufacturer's warranty and service will be passed on to the City at the time of delivery, to the extent permissible by law.

4.8 Liquidated Damages (Reserved)

4.9 Performance Bond (Reserved)

4.10 Fidelity Bond (Reserved)

4.11 Emergency - Priority 1 Service. In case of an emergency that affects any part of the San Francisco Bay Area, Distributor will give the City and County of San Francisco Priority 1 service with regard to the goods procured under this Agreement unless preempted by State and/or Federal laws, or other existing contractual obligations. Distributor will make every good faith effort in attempting to deliver products using all modes of transportation available. Distributor shall provide a 24-hour emergency telephone number of a company representative who is able to receive and process orders for immediate delivery or will call in the event of an emergency. In addition, the Distributor shall charge fair and competitive prices for goods ordered during an emergency and not covered under the awarded Agreement.

4.11.1

Article 5 Insurance and Indemnity

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

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

(b) 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.

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

(d) Professional Liability Coverage (Reserved)

(e) Technology Errors and Omissions Coverage (Reserved)

(f) Cyber and Privacy Insurance with limits of not less than \$1,000,000 per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

(g) Reserved. (Pollution Liability Insurance)

5.1.2 Additional Insured Endorsements

(a) The Commercial General Liability policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) The Commercial Automobile Liability Insurance policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(c) Reserved. (Pollution Auto Liability Insurance Additional Insured Endorsement.)

5.1.3 Waiver of Subrogation Endorsements

(a) The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Distributor, its employees, agents and subcontractors.

5.1.4 Primary Insurance Endorsements

(a) The Commercial General Liability policy shall provide 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

(b) The Commercial Automobile Liability Insurance policy shall provide 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

(c) Reserved. (Pollution Liability Insurance Primary Insurance Endorsement)

5.1.5 Other Insurance Requirements

(a) Thirty (30) days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages below the limits required herein, except for non-payment for which no less than ten (10) days' notice shall be provided to City unless said policies are immediately replaced by a substantially similar insurance program without a disruption in coverage while continuing to meet the requirements herein. Notices shall be sent to the City address set forth in Section 11.1 entitled "Notices to the Parties."

(b) Should any of the required insurance be provided under a claims-made form, Distributor 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 Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(c) 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.

(d) 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.

(e) Before commencing any services, Distributor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher at the inception of each policy, that are authorized to do business in the State of California in form evidencing all coverages set forth above. Review of the insurance by City shall not relieve or decrease Distributor's liability hereunder.

(f) If Distributor will use any subcontractor(s) shall ensure such subcontractors maintain appropriate levels of insurance based on the specific services that they're providing.

5.2 Indemnification.

5.2.1 Distributor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all third party claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) of every kind arising directly or indirectly from Distributor's performance of this Agreement ("Claims), 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, and except where such Claim is the result of the active negligence or willful misconduct of City, in which case damages shall be apportioned pro rata in accordance with each Party's percentage of fault. 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.

5.2.2 As a condition of indemnification, the Party seeking indemnification shall notify, to the extent possible under applicable law, the indemnifying Party in writing promptly upon learning of any Claim for which indemnification may be sought hereunder. Distributor 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 arising directly or

indirectly from the receipt by City, or any of its officers or agents, of Distributor's delivery of goods pursuant to this Agreement.

Article 6 Liability of the Parties

6.1 Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY 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 GOODS DELIVERED IN CONNECTION WITH THIS AGREEMENT REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE FOREGOING LIMITATIONS OF LIABILITY ARE A CONDITION AND MATERIAL CONSIDERATION FOR THEIR ENTRY INTO THIS AGREEMENT.

6.2 Liability for Use of Equipment. City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Distributor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

6.3 Liability for Incidental and Consequential Damages. Distributor shall not be responsible for incidental and consequential damages resulting in whole or in part from Distributor's acts or omissions.

Article 7 Payment of Taxes

7.1 Distributor to Pay All Taxes. Except for any applicable California sales and use taxes charged by Distributor to City, Distributor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Goods delivered pursuant hereto. Distributor shall remit to the State of California any sales or use taxes paid by City to Distributor under this Agreement. Distributor agrees to promptly provide information requested by the City to verify Distributor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 Possessory Interest Taxes. Contractor acknowledges 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.

7.3 Distributor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Distributor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

7.4 Distributor, 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. Distributor 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.

7.5 Distributor, 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). Distributor 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.

7.6 Distributor 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.

7.7 **Withholding.** Distributor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Distributor further acknowledges and agrees that City may withhold any payments due to Distributor under this Agreement if Distributor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Distributor, without interest, upon Distributor coming back into compliance with its obligations.

Article 8 Termination and Default

8.1 **Distributor's Right to Suspend.** In the event that Distributor determines, acting in its sole discretion, that the City has breached a material term of this Agreement, excluding non-payment of disputed amounts, Distributor has the right temporarily to suspend distribution on the condition that Distributor works actively with the City to bring the City back into compliance. In no even shall such suspension last more than 30 days.

8.2 Termination for Convenience

8.2.1 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.

8.2.2 Within 30 days after the specified termination date, Distributor shall submit to City an invoice, which shall set forth all final payment due, if any.

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

8.3 Termination for Default; Remedies.

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

(a) Distributor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

3.5	Submitting False Claims.	10.10	Alcohol and Drug-Free Workplace
4.6	Assignment	10.13	Working with Minors
Article 5	Insurance and Indemnity	11.11	Compliance with Laws
Article 7	Payment of Taxes	Article 13	Data and Security

(b) Distributor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within ten days after written notice thereof from City to Distributor. If Distributor defaults a second time in the same manner as a prior

default cured by Distributor, City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five (5) days for Distributor to cure the default.

(c) Distributor (i) is generally not paying its debts as they become due; (ii) 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; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Distributor or of any substantial part of Distributor's property; or (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Distributor or with respect to any substantial part of Distributor's property, (ii) 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 (iii) ordering the dissolution, winding-up or liquidation of Distributor.

8.3.2 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, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Distributor any Event of Default; Distributor 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 Distributor under this Agreement or any other agreement between City and Distributor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Distributor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City. This Section 8.2.2 shall survive termination of the Agreement.

8.3.3 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. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.3.4 Any notice of default must be sent by registered mail to the address set forth in Article 11.

8.4 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.

8.5 Rights and Duties upon Termination or Expiration.

8.5.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Delivery of Goods	11.6	Dispute Resolution Procedure
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3.3.8	Federal and/or State Funded Contracts	11.8	Agreement Made in California; Venue
3.4	Audit and Inspection of Records	11.9	Construction
3.5	Submitting False Claims	11.10	Entire Agreement
Article 5	Insurance and Indemnity	11.11	Compliance with Laws
6.1	Liability of City	11.12	Severability
6.3	Liability for Incidental and Consequential Damages	Article 12	Department Specific Terms
Article 7	Payment of Taxes	Article 13	Data and Security
		Appendix E	BAA (Reserved)

8.5.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect.

Article 9 Rights In Deliverables (Reserved)

Article 10 Additional Requirements Incorporated by Reference

10.1 Laws Incorporated by Reference. The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement (“Mandatory City Requirements”) are available at http://www.amlegal.com/codes/client/san-francisco_ca/.

10.2 Conflict of Interest. By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City’s Charter; Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

10.3 Prohibition on Use of Public Funds for Political Activity. In performing the services or delivering the goods, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 Consideration of Salary History. Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or “Pay Parity Act.” Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee’s salary history without that employee’s authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

10.5 Nondiscrimination Requirements

10.5.1 Nondiscrimination in Contracts. Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. 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 employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

10.6 Reserved (Local Business Enterprise and Non-Discrimination in Contracting Ordinance).

10.7 Reserved (Minimum Compensation Ordinance).

10.8 Reserved (Health Care Accountability Ordinance).

10.9 First Source Hiring Program. Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

10.10 Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

If Contractor is informed prior to issuance of an Authorization Document that it will be paid with federal or state funds, Contractor agrees in the performance of this Agreement to maintain a drug-free workplace by notifying employees that unlawful drug use is prohibited and specifying what actions will be taken against employees for violations; establishing an on-going drug-free awareness program that includes employee notification and, as appropriate, rehabilitation. Contractor can comply with this requirement by implementing a drug-free workplace program that complies with the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. § 701) and California Drug-Free Workplace Act of 1990 Cal. Gov. Code, § 8350 et seq.

10.11 Limitations on Contributions. By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of 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, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until

the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. 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 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.12 Reserved (Slavery Era Disclosure).

10.13 Reserved (Working with Minors).

10.14 Consideration of Criminal History and Employment Decisions.

10.14.1 Unless pre-empted by Federal or State law, Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

10.14.2 The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

10.15 Reserved. (Public Access to Nonprofit Records and Meetings.)

10.16 Food Service Waste Reduction Requirements. Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

10.17 Reserved. (Distribution of Beverages and Water.)

10.18 Tropical Hardwood and Virgin Redwood Ban. Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

10.19 Reserved.

10.20 Reserved. (Preservative Treated Wood Products.)

10.21 Reserved (Sweat Free Procurement)

10.22 Reserved (Environment Code Chapter 5, Resource Conservation Ordinance).

10.23 Reserved (Prop J Approval).

10.24 Use of City Opinion. Neither Party shall quote, paraphrase, or otherwise refer to or use any opinion of the other Party, its officers or agents, without prior written permission of the other Party.

Article 11 General Provisions

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

To City: Department of Public Health
Office of Contract Management and Compliance
101 Grove Street, Room 410
San Francisco, California 94102
e-mail: dph-contractsrms410@sfdph.org

and

David Smith, PharmD e-mail: David.e.smith@sfdph.org
Chief Pharmacy Officer
San Francisco Dept. of Public Health
101 Grove Street
San Francisco, California 94102

To
Distributor: Express Scripts, Inc.
c/o Priority Healthcare Distribution, Inc.
One Express Way
St. Louis, MO 63121
Attn: Legal Department

With a copy to:
Priority Healthcare Distribution, Inc.
255 Technology Park Drive
Lake Mary, FL 32746
Attn: General Manager

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

11.2 Compliance with Americans with Disabilities Act. Distributor shall provide the Services and/or goods in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

11.3 Incorporation of Recitals. The matters recited above are hereby incorporated into and made part of this Agreement.

11.4 Sunshine Ordinance.

11.4.1 Distributor acknowledges that this Agreement and all records related to its formation, Distributor's performance of Services or delivery of the goods, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

11.4.2 Contractor's Obligations: If the Department of Public Health receives a Public Records Request pertaining to Contractor, the Department will use its best efforts to notify Contractor of the Request and to provide Contractor with a description of the material that the Department deems responsive and the due date for disclosure ("Response Date"). If Contractor asserts that some or all of the material requested contains or reveals valuable trade secrets or other information belonging to Contractor that is exempt from disclosure and directs the City in writing to withhold such material from production ("Withholding Directive"), then the City will comply with the Withholding Directive on the condition that Contractor seeks judicial relief on or before the Response Date. If any third-party initiates or threatens to initiate legal action to compel the production of Contractor's material, Contractor shall defend, indemnify and save harmless City and its officers, agents and employees from any and all such third party claims. Should Contractor fail to seek judicial relief on or before Response Date, the City shall proceed with the disclosure of responsive documents.

11.4.3 Agreement not to Sue: Contractor agrees that it will not sue the City for damages in connection with the disclosure by the City of information that Contractor asserts is exempt from disclosure, so long as such disclosure was inadvertent and the City uses reasonable efforts to mitigate the effects of the inadvertent disclosure and/or uses reasonable efforts to retrieve the information as appropriate.

11.5 Modification of this Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement. Distributor shall cooperate with Department to submit to the Director of CMD any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

11.6 Dispute Resolution Procedure.

11.6.1 Negotiation; Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of Services or delivery of the goods under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Distributor may submit to the Contracting Officer a written request for administrative review and documentation of the Distributor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Distributor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the Parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under applicable law. The status of any dispute or controversy notwithstanding, Distributor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

11.6.2 Government Code Claim Requirement. No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Distributor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

11.7 Force Majeure. Notwithstanding anything to the contrary herein, neither Party shall be liable in any manner for any delay to perform its obligations under this Agreement where the cause of such delay is beyond a Party's reasonable control, including, without limitation, any delay or failure due

to strikes, labor disputes, riots, earthquakes, storms, hurricanes, floods or other extreme weather conditions, fires, explosions, acts of God, embargoes, war or other outbreak of hostilities, government acts or regulations, or the failure or inability of carriers, suppliers, delivery services, or telecommunications providers to provide services necessary to enable a Party to perform its obligations hereunder. In such event, the Parties agree to use their best efforts to resume performance as soon as reasonably possible under the circumstances giving rise to the Party's failure to perform.

11.8 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.

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

11.10 Entire Agreement. This contract sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

11.11 Compliance with Laws. Each Party shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules 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.

11.12 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.

11.13 Cooperative Drafting. This Agreement has been drafted through a cooperative effort of City and Distributor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

11.14 Order of Precedence. Distributor agrees to perform the Services or furnish the goods described herein in accordance with the terms and conditions of this Agreement. If the Appendices to this Agreement include any standard printed terms from the Distributor, Distributor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Distributor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department, Distributor's bid, and Distributor's printed terms, respectively.

11.15 Notification of Legal Requests. To the extent permissible by applicable law, each Party shall immediately notify the other Party upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") related to all data given to the other Party in the performance of this Agreement ("Data"), or which in any way might reasonably require access to Data.

11.16 Cooperative Agreement (Reserved)

Article 12 Department Specific Terms

12.1 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.

12.2 Exclusion Lists and Employee Verification.

12.2.1 Distributor acknowledges that some or all of the items or products that Distributor furnishes to City under this Agreement may be included, directly or indirectly, in whole or in part, in claims submitted by City to Federal or State health care programs. By executing this Agreement Distributor certifies that it is not currently, and shall not during the term of this Agreement become, excluded, directed to be excluded, suspended, ineligible or otherwise sanctioned from participation in any Federal or State assistance programs. Distributor shall notify City, as provided in Section 11.1 (“Notices to the Parties”), within thirty (30) days of any such exclusion, suspension, ineligibility, or other sanction. This is a material term of this Agreement.

12.2.2 Distributor agrees to indemnify and hold harmless City and City’s officers, directors, employees, agents, successors and permitted assigns from and against any and all (including but not limited to Federal, State, or third party) civil monetary penalties, assessments, repayment obligations, losses, damages, settlement agreements and expenses (including reasonable attorneys’ fees) arising from the exclusion, suspension, ineligibility, or other sanction of Distributor and/or Distributor’s workforce (including those who oversee Distributor’s workforce, supervisors and governing body members) from participation in any Federal or State assistance program.

Article 13 Data and Security

13.1 Nondisclosure of Confidential Information.

13.1.1 **Protection of Private Information.** If this Agreement requires City to disclose “Private Information” to Distributor within the meaning of San Francisco Administrative Code Chapter 12M, Distributor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services or delivery of the goods under this Agreement. Distributor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 **Confidential Information.** Subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67), each Party shall take all reasonable actions and do all things reasonably necessary to ensure that any Confidential Information disclosed by one Party (“Disclosing Party”) to the other (Receiving Party”) under this Agreement shall not be disclosed or used for purposes outside this Agreement. The foregoing prohibition shall not apply to disclosures: (a) to the Receiving Party’s attorney or accountant; (b) made pursuant to a request from a legal or regulatory authority; (c) by the Receiving Party to its Affiliate (provided such Affiliate is subject to confidentiality restrictions at least as stringent as set forth herein);, or (d) that are required pursuant to a court order or by law. The foregoing prohibition shall not apply to information that: (i) a Party can show it knew prior to disclosure without obligation of confidentiality; (ii) is or becomes public knowledge through no fault of said Party; or (iii) is lawfully disclosed by a third party under no obligation of confidentiality. This Section shall survive any termination of this Agreement for a period of three (3) years thereafter.

13.2 Reserved (Payment Card Industry (“PCI”) Requirements).

Article 14 MacBride And Signature

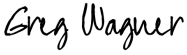
14.1 MacBride Principles -Northern Ireland.

The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

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

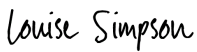
CITY

Recommended by:

DocuSigned by:

11/28/2023 | 1:39 PM PST
28527524752949F...
Grant Colfax, MD
Director of Health
Department of Public Health

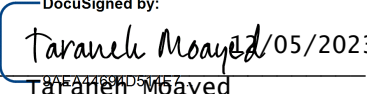
Approved as to Form:

David Chiu
City Attorney

DocuSigned by:

11/28/2023 | 12:19 PM PST
BD54168A4C3B452...
Louise Simpson
Deputy City Attorney

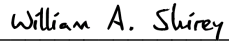
Approved:
Sailaja Kurella
Director of the Office of Contract Administration, and
Purchaser

DocuSigned by:

11/28/2023 | 8:17 AM PST
By: 
Name: Taranek Moayed

DISTRIBUTOR

**Priority Healthcare Distribution, Inc., d/b/a
CuraScript SD Specialty Distribution**

DocuSigned by:

11/15/2023 | 9:58 AM CST
33994C223676466...
William A. Shirey
President
Priority Healthcare Distribution, Inc., d/b/a
CuraScript SD Specialty

Supplier ID: 0000022018

DS

RPM for GPM 11.15.23

Appendices

- A: Scope of Services
- B: Calculation of Charges
- C: Returned Goods Policy
- D: Shipping Policy
- E: Business Associate Agreement (Reserved)
- F: Invoice

Appendix A

Scope of Services

Terms

A. Contract Administrator:

In performing the Services hereunder, Distributor shall report to **David Smith**, Contract Administrator for the City, or his / her designee. Contact information for the Contract Administrator or his/her designee shall be provided by the City.

B. Reports:

Subject to the terms of Section 4.9, Distributor shall submit written reports as requested by the City. The format for the content of such reports shall be mutually agreed upon by the Parties. The timely submission of all reports is a necessary and material term and condition of this Agreement.

For services solicited under a Group Purchasing Organization (GPO) the Distributor shall report all applicable sales under this agreement to the respective GPO.

D. Possession of Licenses/Permits:

Distributor 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:

Distributor 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 Distributor, or under Distributor's supervision, by persons authorized by law to perform such Services.

2. Description of Services

Distributor agrees to perform the following Services listed below and attached hereto.

Attachment 1 to Appendix A
PERFORMANCE IMPROVEMENT PLAN
AND PERFORMANCE MEASURE GRID

Contract Services

AIM: All services provided through contractual agreement are provided safely and effectively for patient care and support services, annually. Distributor agrees to make reasonable effort to ensure that orders are fulfilled in 48 hours. Distributor also agrees to provide next day service on all refrigerated products. Distributor and City agree to meet annually to review the performance.

Contract Name	Services Provided	Measure Name	Metric (What data is being collected?)
1. CuraScript SD	Pharmacy	Order Fulfillment	Distributor agrees to make reasonable effort to ensure that orders are fulfilled in 48 hours
2. CuraScript SD	Shipping	Order Fulfillment	Distributor agrees to provide next day service on all refrigerated products.
3. CuraScript SD	Review Performance	Annual review	Distributor and City agree to meet annually to review the performance.

Appendix A-1

Scope of Work

Orders may be placed via phone, email or on line. Distributor are closed on all national holidays. Order and shipping hours are 8:00 AM PST to 4:00 PM PST. Orders placed after 4:00 PM PST will ship on the next business day. Refrigerated and specialty/rare disease products are shipped via UPS overnight. Ambient products (Nexplanon) ship via 2 day air. City should direct all customer service issues and inquiries to Distributor's customer support number (800) 211-1455.

NDC	GROUP	ITEM #	DESCRIPTION
78206014501	NEXPLANON	444251	NEXPLANON 68MG IMPLANT
	LITERATURE	276987	SUBLOCADE PHYSICIAN INFO
12496030001	SUBLOCADE	276979	SUBLOCADE 300MG/1.5ML PFS SQ.C3
173051900	FLOLAN	253065	FLOLAN 1.5MG VL EA PAH
173085702	PH 12 STERILE DILUENT FOR	265861	FLOLAN PH 12 DILNT PAH 2X50ML
66215060206	UPTRAVI	264881	UPTRAVI 200MCG TAB 60CT
47335023783	AMBRISENTAN	379115	AMBRISENTAN 10MG TAB 30
12496010001	SUBLOCADE	276960	SUBLOCADE 100MG/.5ML PFS SQ.C3
47335023683	AMBRISENTAN	379131	AMBRISENTAN 5MG TAB 30
KIT143001/02	EGRIFTA	403660	EGRIFTA SV INJECTION BX B2OF2
62064024130	EGRIFTA	403636	EGRIFTA SV 2MG SDV 30/BX
70539000102	TYMLOS	276995	TYMLOS 80MCG PF MULTI-DOSE PEN

Department of Public Health may order new products when available and added to the above list. Such products have to be exclusively distributed by Distributor. The products will be added to this list with mutual agreement via a Revision to Program Budget per section 3.7.2.

Product price is determined by the manufacturer's list price, and may be updated from time to time.

Distributor will take reasonable commercial measures to notify Company of updates to the product price.

Appendix B

Calculation of Charges

1. Method of Payment

A. Distributor shall submit monthly invoices by the fifteenth (15th) working day of each month based upon the number of units of service that were delivered in the immediately preceding month. All deliverables associated with the Services listed in Section 2 of Appendix A, times the unit rate as shown in the Program Budgets listed in Section 2 of Appendix B shall be reported on the invoice(s) each month.

2. Program Budgets and Final Invoice

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

Appendix B-1 Budget – Specialty Drugs

B. Distributor understands that, of the maximum dollar obligation listed in section 3.3.1 of this Agreement, **\$964,286** is included as a contingency amount and is neither to be used in Program Budgets attached to this Appendix, or available to Distributor without a modification to this Agreement as specified in section 3.7 Contract Amendments; City Revisions to Program Budgets. Distributor 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. Distributor agrees to fully comply with these laws, regulations, and policies/procedures.

C. 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. Distributor 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 Services rendered during the referenced period of performance. If Services are not invoiced during this period, all unexpended funding set aside for this Agreement will revert to City. City’s final reimbursement to the Distributor at the close of the Agreement period shall be adjusted to conform to actual units certified multiplied by the unit rates identified in the Program Budgets attached hereto, and shall not exceed the total amount authorized and certified for this Agreement.

Appendix B-1
Budget – Specialty Drugs

	Date	TOTAL
Year 1	12/1/2023 - 11/30/2024	\$ 2,678,571
Year 2	12/1/2024 - 11/30/2025	\$ 2,678,571
Year 3	12/1/2025 - 11/30/2026	\$ 2,678,572
Subtotal		\$ 8,035,714
Contingency		\$964,286
Not To Exceed Amount		\$9,000,000

Appendix C

Returned Goods Policy

Return Policy

CuraScript SD Specialty Distribution (CuraScript SD) requires a Return Goods Authorization (RGA) form for products to be returned. An RGA form can be obtained by calling the Customer Service Department at 877.599.7748 or by using www.curascriptonline.com. All products must be returned to CuraScript SD within 30 days of RGA request; products received without a signed RGA will not be accepted and will be destroyed. RGA documentation must match lot numbers of returned products*.

Products Eligible for Return

Only products purchased from CuraScript SD will be eligible for return. All products returned must be in the original package (unopened, unmarked, and in original containers) and stored and shipped in compliance with PDMA guidelines to be eligible for credit. CuraScript SD reserves the right to determine the eligibility of product to be returned for credit upon receipt and inspection; a return processing fee of up to 20% will apply.

Shipping Errors or Damages

The CuraScript SD Customer Service Department must be notified on the same day of delivery for refrigerated products and within 72 hours of the day of delivery for non-refrigerated products.

Expired Products

Expired products are subject to the manufacturers return policy; customer will only receive credit equal to credit granted by the manufacturer, less a 20% return processing fee.

CuraScript SD will arrange for pickup of all authorized products to be returned. CuraScript SD will charge a freight fee for this service, unless the return is the result of a CuraScript SD error.

Items Not Eligible for Return

1. Discontinued products or products deemed non-returnable by the manufacturer
2. Opened, marked or repackaged products
3. Controlled or hazardous drugs
4. Special ordered products
5. Drop shipped products
6. Any products not purchased from CuraScript SD
7. Partial boxes/cases (unless as a result of a recall)

*CuraScript SD follows all federal and state regulations regarding returns and pedigree requirements.

Conditions for Eligibility

1. Only products purchased from CuraScript SD are eligible for return.
2. All products must be received by CuraScript SD within 30 days of the RGA to be eligible for credit.
3. Product returned must be accompanied by signed RGA documentation and match quantity, lot and expiration of products received.
4. Product returned must be received in the original package undamaged, unopened and unmarked to be eligible for credit.
5. Pharmaceutical products must be stored and shipped in compliance with PDMA guidelines to be eligible for credit.

- 6.** Unless otherwise authorized by CuraScript SD, refrigerated products must maintain cold chain conditions.

Appendix D

Shipping Policy

All orders are shipped prepaid by CuraScript SD. Products may arrive in separate shipments based on product requirements; stock availability may also affect the number of shipments per order.

Standard Shipping Services

CuraScript SD provides Next Day service on all refrigerated products. Second Day delivery is customary on all other pharmaceuticals, while medical supplies, fluids and hazardous materials are shipped via Ground service. Friday-for-Monday delivery on refrigerated products is offered at no additional charge.

Emergency Shipping Options

CuraScript SD offers expedited and emergency shipping options within the United States, Puerto Rico and Guam for an additional charge. Please contact your Account Manager to request emergency shipping.

Appendix E
Business Associate Agreement Reserved

Appendix F

Invoice

Invoices shall be in a form acceptable to the Contract Administrator, contain all requested information, and shall conform to the requirements specified in Section 3.3.4 of the Agreement.