

**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
McKesson Corporation**

TABLE OF CONTENTS

Article 1 Definitions 1

Article 2 Term of the Agreement..... 2

 2.1 Term. 2

 2.2 Holdover Extension..... 3

 2.3 City Disadvantage. 3

Article 3 Financial Matters 4

 3.1 Certification of Funds; Budget and Fiscal Provisions..... 4

 3.2 Certification of Funds..... 4

 3.3 Formal and Informal Agreement Changes. 4

 3.4 Guaranteed Maximum Price..... 4

 3.5 Discounts—Terms of Payment. 5

 3.6 Place of Manufacture. 5

 3.7 Electrical Products. (Reserved)..... 5

 3.8 Condition of Articles..... 5

 3.9 Inspection. 5

 3.10 F.O.B. Point. 5

 3.11 Failure to Deliver. (Reserved – See Supply Agreement, Attachment 2, Section 11(e)—Termination for Adjusted Fill Rate)..... 5

 3.12 Material Safety Data Sheets. (Reserved – See Supply Agreement, Attachment 2, Section 11(f) – Product Compliance/Quality) 5

 3.13 Invoice Format..... 5

 3.14 LBE Payment and Utilization Tracking System. (Reserved – Not Applicable) 5

 3.15 Getting paid for goods and/or services from the City. 5

 3.16 Audit and Inspection of Records. 6

 3.17 Submitting False Claims..... 6

Article 4 Distribution Terms..... 6

 4.1 Supply Agreement..... 6

 4.2 Assignment..... 6

 4.3 Warranty..... 6

4.4	Liquidated Damages. (Reserved – Contained in Attachment 2, Section 11(b)(i) of Appendix A – Supply Agreement)	7
Article 5	Insurance and Indemnity	7
5.1	Insurance Policy Requirements	7
5.2	Insurance Amendments	7
5.3	Distributor Indemnification	7
5.4	Survival	8
Article 6	Liability of the Parties	8
6.1	Liability of City	8
6.2	Liability of Distributor	8
6.3	Liability for Use of Equipment. (Reserved)	8
Article 7	Payment of Taxes	8
Article 8	Termination	8
8.1	Termination for Cause	9
8.2	External Event	9
8.3	Distributor Loss of GPO Contract	9
8.4	Distributor or City Insolvency	10
8.5	City Right to Termination for Distributor Change of Control Event	10
8.6	Mutual Consent	10
Article 9	Rights In Deliverables (Reserved)	10
Article 10	Additional Requirements Incorporated by Reference	10
10.1	Laws Incorporated by Reference	10
10.2	Conflict of Interest. (Reserved – Not used in P-250)	10
10.3	Prohibition on Use of Public Funds for Political Activity	10
10.4	Reserved	10
10.5	Non Discrimination Requirements	10
10.6	Local Business Enterprise and Non-Discrimination in Contracting Ordinance. (Reserved)	11
10.7	Minimum Compensation Ordinance. (As Applicable)	11
10.8	Health Care Accountability Ordinance	11
10.9	First Source Hiring Program	11

10.10	Alcohol and Drug-Free Workplace.	11
10.11	Limitations on Contributions.	11
10.12	Slavery Era Disclosure. (Reserved).....	12
10.13	Working with Minors. (Reserved).....	12
10.14	Consideration of Criminal History in Hiring and Employment Decisions.	12
10.15	Public Access to Nonprofit Records and Meetings. (Reserved)	12
10.16	Food Service Waste Reduction Requirements.	12
10.17	Distribution of Beverages and Water.	12
10.18	Tropical Hardwood and Virgin Redwood Ban.....	13
10.19	Preservative Treated Wood Products. (Reserved).....	13
Article 11	General Provisions.....	13
11.1	Notices to the Parties.	13
11.2	Compliance with Americans with Disabilities Act.	13
11.3	Reserved.	13
11.4	Sunshine Ordinance.....	13
11.5	Modification of this Agreement.	14
11.6	Dispute Resolution Procedure.	14
11.7	Government Code Claim Requirement.	15
11.8	Agreement Made in California; Venue.	15
11.9	Construction.....	15
11.10	Entire Agreement.....	15
11.11	Compliance with Laws.	15
11.12	Distributor’s Compliance with Laws.....	16
11.13	Federal and State Financial Participation.	16
11.14	(Reserved).....	17
11.15	Severability.....	17
11.16	Cooperative Drafting.	17
11.17	Order of Precedence.	17
11.18	No Waiver.....	17
11.19	Relationship of Parties.....	18
Article 12	Department Specific Terms (Reserved).....	18

Article 13	Data and Security	18
13.1	Confidential Information.	18
13.2	Purchase Data Confidentiality.	18
13.3	Payment Card Industry (“PCI”) Requirements. (Reserved)	18
13.4	Business Associate Agreement. (Reserved)	18
Article 14	MacBride And Signature	18
14.1	MacBride Principles -Northern Ireland.	18

AGREEMENT

This Agreement is made this 1st day of November, 2019, in the City and County of San Francisco, State of California, by and between McKesson Corporation (“Distributor”) and City.

Recitals

WHEREAS, the Department of Public Health (“Department”) wishes to enter into a group purchasing distribution agreement with McKesson; and

WHEREAS, this Agreement was procured as required by San Francisco Administrative Code Chapter 21.A.2, including the requirement that the City buy ninety percent (90%) of its pharmaceutical supply in order to obtain Prime Vendor pricing from Distributor; and

WHEREAS, the Department controls one or more “Facilities” (as defined in Article 1 below); and

WHEREAS, Distributor is engaged in the business of providing distribution services, including the purchasing and reselling of Products for which the City’s Group Purchasing Organization (“GPO”) has contracted with a supplier to provide City at a set price (“Contract Products”); and,

WHEREAS, Distributor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement; and

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, which are incorporated herein by reference.

1.2. **“Base Agreement”** means the current or successor pharmacy distribution services agreement, which may be extended or renewed from time to time, between Distributor and the City’s current GPO.

1.3. **"City" or "the City"** means the City and County of San Francisco, a municipal corporation, acting by and through both its Department of Public Health.

1.4. **“City Program Budget Revision”** means City’s reallocation of contingency amounts available with respect to the Agreement in accordance with Article 3 of the Agreement.

1.5. **“Contested Amount”** means the amount of a charge from Distributor that the City disputes in writing in good faith.

1.6. **"Distributor"** means McKesson Corporation, a Delaware corporation, with a place of business at 1 Post Street, San Francisco CA 94104 (herein also referred to as “McKesson,”).

1.7. **“Commencement Date”** means February 1, 2020, provided this Agreement has been approved by the Board of Supervisors and mutually executed by the Parties.

1.8. **“Controller”** means the Controller of the City and County of San Francisco.

1.9. **"Effective Date"** means the date upon which the City's Controller certifies the availability of funds for this Agreement as provided in Section 3.2.

1.10. **“Facility”** means any pharmacy over which City exercises control for the selection of a wholesale pharmaceutical distributor, whether by ownership or contract. A list of all Facilities as of the

Effective Date, including their respective “ship to” addresses and number of deliveries per week is attached to this Agreement as Attachment 1 and is incorporated herein by reference. The City may update Attachment 1 upon the written consent of Distributor (e.g. such as via email), which consent shall not be unreasonably withheld. Upon Distributor providing such consent, Attachment 1 shall be deemed to include the name of the pharmacy, its “ship to” address, and number of deliveries per week (whereupon such pharmacy shall become a Facility hereunder).

1.11. **“Guaranteed Maximum Price” or “GMP”** means the total not-to-exceed contract price certified by the Controller and detailed in Appendix B (Calculation of Charges). Any increase in the GMP will require a Formal Amendment to the Agreement.

1.12. **“Group Purchasing Organization” or “GPO”** means the current group purchasing organization authorized to provide competitively procured items to the City under San Francisco Administrative Code Section 21.A.2 as a member of such organization, directly or through distributors, as of the effective date of this Agreement.

1.13. **“Formal Amendment”** means a fully executed written amendment to this Agreement that has been approved by each Party in accordance with the terms of Article 3 of the Agreement. A Formal Amendment can either increase the GMP or reallocate contingency amounts.

1.14. **“Member Markup”** means the adjustment for City’s average total monthly Net Purchase Volume and invoice management practice as set forth in the markup matrix in Appendix A, Attachment 2 attached hereto.

1.15. **“Net Sales”** is defined as the invoice price to City, net of credits and returns, if any, but without deduction of uncollected amounts, for each Product purchased by City.

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

1.17. **“Prime Vendor”** means McKesson as Distributor under the Base Agreement or Successor Agreement.

1.18. **“Products”** means products for which the City’s Group Purchasing Organization (“GPO”) has contracted with Distributor to provide City at a set price, and additional products purchased at Wholesale Acquisition Cost as necessary for City to achieve its Prime Vendor commitment;

1.19. **“Services”** means distribution services of Distributor provided to the City under this Agreement, including the purchasing and reselling of Products;

1.20. **“Successor Agreement”** means a national pharmacy distribution services agreement following the Base Agreement’s expiration or early termination, including as the result of the GPO’s award to Distributor of a successor pharmacy distribution services agreement.

1.21. **“Uncontested Amount”** means an amount charged by Distributor that is not then a Contested Amount.

Article 2 Term of the Agreement

2.1 Term.

The term of this Agreement shall commence on February 1, 2020 and expire on January 31, 2024, so long as Distributor has a GPO Base Agreement in place, unless earlier terminated as otherwise provided herein. Both Parties understand and agree that within one year in advance of the expiration date, the City must commence its process to renew and/or replace this Agreement. In the event that such renewal is not completed before the expiration of the Term, the Holdover Extension of Section 2.2 will apply.

2.2 Holdover Extension.

Should this Agreement expire without a new agreement in place, at that time as mutually agreed by the Parties, this Agreement and associated budget may remain in full force and effect for a period of twelve (12) months. The best estimated Holdover Extension budget shall be detailed in Appendix B (Calculation of Charges). The applicable Product prices during the Holdover Extension shall be based upon the last year's annualized budget, plus [REDACTED], as reconciled to Distributor's actual Holdover Extension pricing at the start of the Holdover Extension term. For clarity, the Holdover Extension budget is not intended in any respect to place a cap on Distributor's pricing and the Holdover Extension may be exercised only if both mutually agree. The Holdover Extension term, if exercised, will be tied to the Holdover Extension budget. i.e., If the Holdover Extension budget is exhausted, the Holdover Extension term will expire unless otherwise mutually agreed. All terms and conditions of the Agreement shall apply during the Holdover Extension. Should drug prices and/or Distributor's cost of delivering Services change, the Parties may further discuss the Holdover Extension pricing.

2.3 City Disadvantage.

City will evaluate the terms and conditions of this Agreement and the Distributor's Successor Agreement to determine whether City may be materially disadvantaged by the terms and conditions of this Agreement and Successor Agreement as of the Successor Agreement Effective Date as compared to this Agreement ("Disadvantage"). If City determines in good faith that City may be Disadvantaged, City may send Distributor written notice thereof within ninety (90) days following the Successor Agreement Effective Date or amendment thereto, within the direct or indirect scope of such amendment. Upon Distributor's receipt of such notice, City will meet with Distributor to discuss in good faith such determination and will provide Distributor a reasonable opportunity to review and address such determination which may include addressing value added services and programs. If Distributor is unable to address City's determination of a Disadvantage to City's satisfaction, City may terminate this Agreement effective on sixty (60) days' prior written notice, or upon longer notice as determined appropriate by the City.

2.3.1 The determination of Disadvantage will be measured by comparing the terms and conditions of this Agreement and the Successor Agreement, as of the Successor Agreement effective date, exclusive of any term or condition that is a result of a regulatory change mandated to Distributor.

2.3.2 During the sixty (60) day or longer period following notice of termination under Section 2.3 above (the "Transition Period"), City may need to establish a relationship with another distributor to reasonably satisfy its pharmacy needs. Such relationship could cause Distributor to lose "Prime Vendor" status with City. In this event, during the Transition Period, Distributor shall not unilaterally increase the City markup set forth on Appendix A – Supply Agreement, Attachment 2 ("City Markup") or in any other way take away financial incentives or impose new fees on City as a result thereof.

2.3.3 For the avoidance of doubt, this Agreement shall be subject to the terms and conditions of the Successor Agreement, as modified by this Agreement, as of the Successor Agreement effective date regardless of whether City provides notice of Disadvantage or of its election to terminate this Agreement as described in this section.

2.3.4 Notwithstanding anything to the contrary herein, determination of Disadvantage and the decision to terminate will be made within the strict confines of the provisions of Section 2.3 herein. Determination of Disadvantage and the decision to terminate shall specifically not include consideration of competitor terms and conditions.

Article 3 Financial Matters

3.1 Certification of Funds; Budget and Fiscal Provisions.

This contract is subject to the budget and fiscal provisions of City's Charter. Charges will accrue only after prior written authorization certified by City's Controller and 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 section shall control against any and all other provisions of this contract.

3.2 Certification of Funds.

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. 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 Distributor beyond the agreed upon contract scope unless the changed scope is authorized by Formal Amendment and approved as required by law. 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. 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. For avoidance of doubt, the City is not permitted to continue ordering Services should funding not be certified.

Distributor and City will review the City's expenditure rate quarterly to ensure that each understands whether demand will exceed the Guaranteed Maximum Price currently certified by the Controller to enable the City to seek additional funds, as appropriate.

3.3 Formal and Informal Agreement Changes.

The Parties understand and agree that budget revisions are subject to the following:

3.3.1 Formal Contract Amendment: Distributor shall not be entitled to an increase in the Guaranteed Maximum Price 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 (Modification of this Agreement).

3.3.2 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 GMP or the Term by use of a written City Program Budget Revision.

3.4 Guaranteed Maximum Price.

Distributor shall provide an invoice to the City on a monthly basis for 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 Services identified in the invoice that the Director of Health, in his or her sole discretion, concludes has been satisfactorily performed in material conformance with the requirements set forth in this Agreement. Payment shall be made in conformance with Appendix A, Attachment 3, unless the City notifies the Distributor that a dispute as to the invoice exists in accordance with Section 11.6.1. In no event shall the amount of this Agreement exceed **THREE HUNDRED EIGHTY ONE MILLION THREE HUNDRED EIGHTY TWO THOUSAND NINE HUNDRED NINETY ONE DOLLARS (\$381,382,991)**. The breakdown of charges associated with this Agreement appears in Appendix B,

“Calculation of Charges,” attached hereto and incorporated by reference as though fully set forth herein. Contested Amounts shall be resolved pursuant Section 11.6 (Dispute Resolution). Late payment charges, if applicable, shall be resolved pursuant to Appendix A, Attachment 3, of the Agreement in accordance with to the Base Agreement terms, and may be paid from budgeted contingency funds as appropriate.

3.5 Discounts—Terms of Payment.

Discounts and terms of payment shall be as set forth in Appendix A - Supply Agreement, Attachment 2 (Member Markup and Commitments) of the Agreement.

3.6 Place of Manufacture.

No article furnished hereunder shall have been made in prison or by convict labor, except articles purchased for use by City’s detention facilities.

3.7 Electrical Products. (Reserved)

3.8 Condition of Articles.

Articles offered and furnished must be new and previously unused, unless otherwise specified herein.

3.9 Inspection.

All articles supplied shall be subject to inspection and acceptance or rejection by Purchasing or any department official charged with such duty. Non-conforming or rejected goods may be subject to reasonable storage fees.

3.10 F.O.B. Point.

F.O.B destination in San Francisco, freight prepaid and allowed, unless otherwise specified.

3.11 Failure to Deliver. (Reserved – See Supply Agreement, Attachment 2, Section 11(e)— Termination for Adjusted Fill Rate)

3.12 Material Safety Data Sheets. (Reserved – See Supply Agreement, Attachment 2, Section 11(f) – Product Compliance/Quality)

3.13 Invoice Format.

Invoices furnished by Distributor under this Agreement must be in a form acceptable to the Controller and City, sample copies of which are attached as Appendix F each to include a unique invoice number, unless mutually agreed by the Parties.

3.14 LBE Payment and Utilization Tracking System. (Reserved – Not Applicable)

3.15 Getting paid for goods and/or services from the City.

(a) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through, the City's Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit www.sfgov.org/ach.

(b) The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

(c) Payment shall be made by City as specified in Appendix A, and this Article 3.

3.16 Audit and Inspection of Records.

The City may, upon 30 days' advance written notice and in accordance with San Francisco Administrative Code Section 21.34, during business hours and without disruption to Distributor's regular business practices, at a location to mutually agreed to by the Parties, audit the books and records of Distributor to the extent that such books and records relate to the performance of this Agreement. Such books and records shall be maintained by Distributor for three years from the date of final payment under this Agreement, unless a shorter period is otherwise authorized in writing. The City understands and agrees that this audit right is limited to books and records related to the City and does not extend to books and records of other Distributor customers. If a third-party conducts the audit for the City, such third-party may be required to execute a non-disclosure agreement provided and approved by Distributor.

3.17 Submitting False Claims.

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 the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (1) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (2) 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; (3) conspires to defraud the City by getting a false claim allowed or paid by the City; (4) 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 (5) 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.

Article 4 Distribution Terms

4.1 Supply Agreement.

Distributor agrees to perform the Services provided for in Appendix A, "Supply Agreement." Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Distributor for Services beyond the scope listed in Appendix A unless Appendix A is modified as provided in Sections 3.3 above (Formal and Informal Agreement Changes).

4.2 Assignment.

Neither this Agreement nor any obligations hereunder may be assigned or delegated by Distributor unless first approved by City 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.

4.3 Warranty.

Distributor warrants to City that the Product distribution Services will be performed consistent with commercially reasonable professional procedures and practices, and in conformance with generally accepted standards prevailing at the time the distribution is performed so that all distribution is performed as contemplated in this Agreement as detailed in Appendix A (Supply Agreement).

4.4 **Liquidated Damages. (Reserved – Contained in Attachment 2, Section 11(b)(i) of Appendix A – Supply Agreement)**

Article 5 Insurance and Indemnity

5.1 Insurance Policy Requirements.

5.1.1 Distributor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

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

(b) Commercial General Liability insurance that includes the Products-completed operations hazard. Such insurance shall contain a minimum combined single limit of liability for bodily injury and property damage in the amounts of not less than \$2,000,000 per occurrence and \$10,000,000 in the aggregate. The liability limits may be satisfied through a combination of primary and excess policies. Distributor shall provide a certificate of insurance to City within fifteen (15) days following City's request therefor, indicating the foregoing coverage, issued by an insurer with A.M. Best rating of A-8 or greater authorized to do business in the state of California; and

(c) Commercial Automobile Liability Insurance with limits of \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned, and Hired auto coverage, as applicable.

5.1.2 Include as Additional Insured Vendors Endorsement, with respect to the terms of the written agreement, the City of San Francisco, its Officers, Agents, and Employees. Commercial Liability and Commercial Automobile Liability Insurance policies are primary insurance to any other insurance available to the City for the negligent acts, errors, or omissions solely caused by Distributor, with respect to any claims arising out of this Agreement.

5.2 Insurance Amendments.

In the event that Distributor amends said liability insurance in a manner that would materially alter the information contained in the insurance certificate provided to City, Distributor shall provide City with a new certificate as soon as practicable after Distributor makes such amendment(s). All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties." 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.

5.3 Distributor Indemnification.

Distributor 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 Distributor or loss of or damage to property, arising directly or indirectly from Distributor's performance of this Agreement, including, but not limited to, Distributor's use of facilities or equipment provided by City or others, 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 to the extent such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City, in which case liability and damages shall be shared on

a pro rata basis between the Parties under the California doctrine of comparative 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. In addition to Distributor's obligation to indemnify City, Distributor 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 Distributor by City and continues at all times thereafter. 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 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

5.4 Survival.

Section 5.3 and the obligations contained therein shall survive the expiration or earlier termination of this Agreement.

Article 6 Liability of the Parties

6.1 Liability of City.

CITY'S PAYMENT OBLIGATIONS FOR SERVICES UNDER THE AGREEMENT SHALL BE LIMITED TO THE AMOUNT OF THE GMP AUTHORIZED UNDER THIS CONTRACT. 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 OTHER THAN ANTICIPATED FEES UNDER THIS AGREEMENT, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

6.2 Liability of Distributor.

IN NO EVENT SHALL DISTRIBUTOR BE LIABLE TO CITY FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, INCIDENTAL OR INDIRECT DAMAGES TO CITY, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY AND WHETHER OR NOT DISTRIBUTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6.3 Liability for Use of Equipment. (Reserved)

Article 7 Payment of Taxes

City is exempt from federal taxes except on articles for resale. Distributor will enter state and local sales or use tax, and excise tax if applicable, on invoices.

Article 8 Termination

In addition to City's termination right set forth in Section 2.3 (City Disadvantage) above, City or Distributor may effect an early termination of this Agreement in the following circumstances.

In the event of any termination as set forth in this Article 8, unless otherwise agreed by the Parties or ordered by a receiver or court of competent jurisdiction, Distributor understands and agrees that such termination

will not become effective for a period of twelve (12) months after Distributor provides notice of termination or until the City notifies Distributor in writing that a replacement Prime Vendor contract is in place, whichever occurs first. However, if the Guaranteed Maximum Price budget is exhausted, termination will become effective unless City seeks approval for additional funding.

The Parties understand that the City requires, at minimum, twelve (12) months advance notice of anticipated budget exhaustion. Distributor and City will review current spend and purchase history during their quarterly reviews to enable the City to determine if certification of any additional funds will be required. For clarity, the addition of any funds beyond the GMP in excess of \$500,000 will require a Formal Amendment to this Agreement. The City understands and agrees that if additional funds are needed, Distributor may seek repricing, and such repricing is to be mutually agreed by the Parties in accordance with this Agreement.

8.1 Termination for Cause.

The City or Distributor may provide sixty (60) days prior written notice of an early termination of this Agreement upon the occurrence of a material breach by the other Party, as determined in good faith by the non-breaching Party. The non-breaching Party must give written notice to the breaching Party of the occurrence of such breach. The notice must describe in detail the nature of the breach. The breaching Party will have the opportunity to cure its breach to the reasonable satisfaction of the non-breaching Party during the sixty (60) day period beginning on the date the breaching Party receives the written notice (the "Cure Period"). In the alternative, if such breach is of a nature that it cannot be cured in sixty (60) days, the breaching Party must commence and diligently prosecute in good faith the cure of such breach within the Cure Period and cure such breach within ninety (90) days.

If the breach is not cured by the expiration of the Cure Period, then the non-breaching Party may provide written notice to the breaching Party that this Agreement will be terminated in thirty (30) days following such termination notice, or such longer period as may be mutually agreed in writing by the Parties.

8.2 External Event.

"External Event" shall mean an event or series of events external to and beyond the control of Distributor that has had a significant adverse impact on Distributor's business or operations. An External Event, by way of illustration and not of limitation, may include a federal, state or local governmental law, the actual enactment of a regulation or administrative action, or a fundamental change in a suppliers' pricing, economics or distribution policies. In response to an External Event, Distributor may, at its option, request in writing (a "Request") that the pricing and/or other terms of this Agreement be renegotiated so as to equitably reflect the effect of the External Event, and such Request will be provided to City. The Request shall identify the External Event and set forth the general nature and the specific adjustment(s) requested. As soon as practicable after receipt of such Request by City, Distributor and City shall meet and begin good faith negotiations. If, at the end of the sixty (60) days following receipt of a Request by City, Distributor and City have been unable to agree on satisfactory pricing or other supply terms, either Party shall have the right to terminate this Agreement, upon sixty (60) days' prior written notice to the other.

8.3 Distributor Loss of GPO Contract.

In the event the Base Agreement or any subsequent extension or replacement between City's current GPO and Distributor expires or is otherwise terminated for any reason during its Term, this Agreement shall automatically and simultaneously terminate without penalty to City or Distributor.

8.4 Distributor or City Insolvency.

City or Distributor may immediately terminate this Agreement without penalty if the other Party (City or Distributor, as applicable) becomes bankrupt or insolvent, makes an unauthorized assignment for the benefit of creditors or goes into liquidation, has proceedings initiated against it for the purpose of seeking a receiving order or winding up order, or applies to the courts for protection from its creditors.

8.5 City Right to Termination for Distributor Change of Control Event.

If Distributor experiences a “change of control”, then City may terminate this Agreement without penalty upon sixty (60) days’ written notice. For purposes of this Section 8.5, “change of control” shall mean the sale of all or substantially all of the assets of the Party, a merger, consolidation or acquisition of the Party with, by or into another corporation, or any change in ownership of more than fifty percent (50%) of the voting capital stock of the Party in one or more related transactions.

8.6 Mutual Consent.

If Distributor and City mutually agree to terminate this Agreement, then such termination will be without penalty to Distributor or City. For the avoidance of doubt, all Uncontested Amounts owed prior to such termination shall remain due and payable to Distributor.

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. Except as expressly reserved or modified herein, 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. (Reserved – Not used in P-250)

10.3 Prohibition on Use of Public Funds for Political Activity.

In performing the Services, Distributor 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. Distributor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 Reserved.

10.5 Non Discrimination Requirements.

10.5.1 Non Discrimination in Contracts: Distributor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Distributor 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. Distributor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

10.5.2 **Non Discrimination in the Provision of Employee Benefits:** San Francisco Administrative Code 12B.2. Distributor 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 **Local Business Enterprise and Non-Discrimination in Contracting Ordinance. (Reserved)**

10.7 **Minimum Compensation Ordinance. (As Applicable)**

Distributor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Distributor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Distributor certifies that it is in compliance with Chapter 12P.

10.8 **Health Care Accountability Ordinance.**

Distributor shall comply with San Francisco Administrative Code Chapter 12Q. Distributor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Distributor is subject to the enforcement and penalty provisions in Chapter 12Q.

10.9 **First Source Hiring Program.**

Distributor 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 Distributor 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 Distributor to remove from, City facilities personnel of any Distributor 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.

10.11 **Limitations on Contributions.**

By executing this Agreement, Distributor 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 Distributor's board of directors; Distributor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Distributor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Distributor. Distributor 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 Slavery Era Disclosure. (Reserved)

10.13 Working with Minors. (Reserved)

10.14 Consideration of Criminal History in Hiring and Employment Decisions.

Distributor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Distributor/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>. Distributor 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.

The requirements of Chapter 12T shall only apply to a Distributor'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 Public Access to Nonprofit Records and Meetings. (Reserved)

10.16 Food Service Waste Reduction Requirements.

Distributor 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 Distribution of Beverages and Water.

10.17.1 Sugar-Sweetened Beverage Prohibition. Distributor agrees that it shall not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

10.17.2 Packaged Water Prohibition. Distributor agrees that it shall not sell, provide, or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement.

10.18 Tropical Hardwood and Virgin Redwood Ban.

Pursuant to San Francisco Environment Code Section 804(b), the City urges Distributor 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 Preservative Treated Wood Products. (Reserved)

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 (all notices to the City shall also be copied by e-mail), and shall be addressed as follows:

If to City:

City and County of San Francisco
1001 Potrero Ave
San Francisco, CA 94110
Attention: Chief Pharmacy Officer
david.woods@sfdph.org
jessica.galens@sfdph.org

If to Distributor:

McKesson Corporation
6555 N. State Hwy 161
Building A, 3rd Floor
Irving, TX 75039
Attention: Director, Proposal & Contract Development

With a copy to:

McKesson Corporation
One Post Street, Law Department
San Francisco, CA 94104
Attention: Counsel, MHS

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 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 Reserved.

11.4 Sunshine Ordinance.

11.4.1 Public Records Request: Distributor acknowledges that this Agreement and all records related to its formation, Distributor's performance of Services, 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 Distributors Obligations: If the Department of Public Health receives a Public Records Request pertaining to Distributor, the Department will use its best efforts to notify Distributor of the Request and to provide Distributor with a description of the material that the Department deems responsive and the due date for disclosure ("Response Date"). If Distributor asserts that some or all of the material requested contains or reveals valuable trade secrets or other information belonging to Distributor 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 Distributor 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 Distributor's material, Distributor shall defend, indemnify and save harmless City and its officers, agents and employees from any and all such third party claims. Should Distributor 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: Distributor agrees that it will not sue the City for damages in connection with the disclosure by the City of information that Distributor 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 by written instrument executed by the Parties 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 twenty percent (20%) ("CMD Contract Modification Form").

11.6 Dispute Resolution Procedure.

11.6.1 Negotiation; Non-Binding Alternative Dispute Resolution: The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance or receipt of services under this Agreement, including those related to non-payment or disputed invoices, ("Disputes") in accordance with the following escalation process. Upon written notice by a party to the other party of a Dispute ("Dispute Notice"), such Dispute shall first be referred to Distributor's lead engagement partner or, principal, or managing director (or designee) and City's Contract Administrator (or designee), as defined in Appendix A (Supply Agreement). If they are unable to resolve the Dispute within ninety (90) days of the Dispute Notice, the Dispute will be escalated to Distributor's lead client service partner (or designee) and the Department of Public Health Chief Financial Officer (or designee). If the Parties are still unable to resolve the dispute within ninety (90) additional days, 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.

(a) After the Parties have exhausted the informal dispute resolution process outlined in Section 11.6.1, then, if agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon non-binding 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 California law.

(b) The status of any Dispute or controversy notwithstanding, Distributor and City shall each proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement. Neither Party will be entitled to legal fees or costs for matters resolved under this Section.

11.7 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.

11.8 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.

The terms and conditions agreed between the Parties in this contract, including all Appendices and Attachments, which are hereby expressly incorporated herein by reference, 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 represents and warrants that to the best of its knowledge, after due inquiry, it is, and for the Term shall be, in material compliance with all applicable Federal, state laws, and local ordinances and regulations that are material to the performance of its obligations under this Agreement ("Legal Requirements"), including, but not limited to, Legal Requirements pertaining to the handling and storage of the Products and Services, occupational health and safety, environmental protection, nondiscrimination, antitrust, health care regulation, the Health Insurance Portability and Accountability Act ("HIPAA") and equal employment opportunity.

11.12 Distributor's Compliance with Laws.

Nothing in this Agreement shall be construed as requiring Distributor to perform any obligations hereunder or engage in any action or omission that Distributor reasonably determines to violate, or to put Distributor in jeopardy of violating any applicable law. Without limiting the generality of the foregoing, Distributor shall comply with all applicable laws, rules, regulations, ordinances and governmental requirements, guidelines and pronouncements relating to controlled pharmaceutical drugs ("Controlled Substances"), including but not limited to the Federal Controlled Substances Act and regulations promulgated thereunder by the Drug Enforcement Administration. In the event that performance of the terms of this Agreement would cause Distributor to be noncompliant with or in jeopardy of being noncompliant with any federal, state or local law, rule, regulation or ordinance or any governmental requirement, guideline or pronouncement involving Controlled Substances or any other regulated products or activities, including but not limited to the Drug Enforcement Administration's regulatory requirements for verifying its customers and reporting suspicious or excessive orders. Distributor shall have the right to do any of the following:

(a) Within its sole and absolute discretion, limit or deny any order for Controlled Substances as warranted by Distributor's established diversion monitoring program, which is designed and implemented to take into account any federal, state or local law relating to Controlled Substances.

(b) Immediately commence suspension proceedings against City, in whole or in part, without liability if, in Distributor's reasonable discretion:

(i) Continued performance of any part of this Agreement would violate any federal, state or local law, rule or regulation, or put Distributor in jeopardy of violating any federal, state or local law, rule or regulation regarding Controlled Substances or any other regulated products or activities; or

(ii) Distributor receives a complaint, notice, warning letter or other communication from a governmental agency alleging noncompliance with any Controlled Substances laws, rules or regulations in relation to Distributor's distribution of the Products under this Agreement or to City's actions or omissions with respect to Controlled Substances or any other regulated products or activities.

11.13 Federal and State Financial Participation.

11.13.1 Distributor acknowledges that some or all of the items, products, or services 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 each Party certifies that it is currently not Excluded, directed to be Excluded from participation in any Federal or State assistance programs as Excluded is defined in 42 U.S.C. § 1320a-7b(f) ("Excluded"), or (2) debarred, suspended, declared ineligible, or voluntarily excluded by any Federal department or agency (collectively, "Debarred"). Each Party shall notify the other, as provided herein, within thirty (30) days of any such exclusion, suspension, ineligibility, or other sanction. This is a material term of this Agreement.

(a) 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.

11.13.2 During the Term, Distributor shall promptly notify City of any lawsuits, Claims, administrative actions or other proceedings asserted or commenced against it that assert, in whole or in part, claims that if successfully adjudicated against Distributor would materially impact Distributor's ability to provide the Services, except where Distributor deems, in its sole discretion, that such notification would violate or cause Distributor to violate any applicable law, ordinance, rule, regulation or order.

11.13.3 Discount Safe Harbor. Regulations implementing the Federal health care program anti-kickback law, 42 U.S.C. § 1320a-7b(b), include a "safe harbor" for "discounts" (see 42 C.F.R. § 1001.952(h)). To the extent that Distributor provides a price reduction to City pursuant to this Agreement, then Distributor shall comply with the requirements set forth in 42 C.F.R. § 1001.952(h)(2). City may have an obligation to accurately report, under any state or federal program which provides cost or charge based reimbursement for the Products or services covered by this Agreement, or as otherwise requested or required by any governmental agency, the net cost actually paid by City.

11.14 (Reserved)

11.15 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.

11.16 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.

11.17 Order of Precedence.

Distributor agrees to perform the Services described herein in accordance with the terms and conditions of this Agreement, and the Appendices, including Attachments. The terms of this Agreement are to be read and interpreted together with all other documents, appendices, exhibits, and addenda attached to the Agreement as a single agreement.

11.18 No Waiver.

No provision of this Agreement may be waived except by a writing signed by the Party against whom the waiver is sought to be enforced. Failure to enforce any provision of this Agreement does not constitute a waiver of future enforcement of that provision or of any other provision of this Agreement.

11.19 Relationship of Parties.

It is expressly understood and agreed by the Parties that nothing contained in this Agreement shall be construed to create a joint venture, partnership, association, agency, or like relationship between the Parties other than that of Parties contracting at arm's length with respect to the subject matter hereof. In no event shall either Party be liable for the debts or obligations of the other Party.

Article 12 Department Specific Terms (Reserved)

Article 13 Data and Security

13.1 Confidential Information.

"Confidential Information" means any other non-public information identified as confidential, including Distributor's pricing, by one Party to the other Party, and non-public information which the receiving Party should reasonably know to be confidential. For the avoidance of doubt, Confidential Information shall not include invoice data. City may not use or disclose any Confidential Information received from Distributor for any purpose (except as required by law) other than for the review, performance, evaluation, or administration of this Agreement without prior authorization of Distributor. Each Party shall exercise the same standard of care to protect such information as a reasonably prudent entity would use to protect its own Confidential Information. Distributor understands and agrees that its Confidential Information may be subject to public disclosure and Distributor shall have the rights set forth in Section 11.4 above.

13.2 Purchase Data Confidentiality.

City agrees that Distributor is not prohibited herein from disclosing de-identified purchase data that is gathered by Distributor to third party data aggregators (such as IMS Health and Symphony), to City's GPO, and to suppliers (for a supplier's own Products under this Agreement), unless an advance non-disclosure request is made by City and such request would not cause a conflict with any third-party obligations of Distributor.

13.3 Payment Card Industry ("PCI") Requirements. (Reserved)

13.4 Business Associate Agreement. (Reserved)

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, Distributor confirms that Distributor 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:

 Grant Colfax, MD
 Director of Health
 Department of Public Health

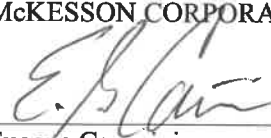
Approved as to Form:

Dennis J. Herrera
 City Attorney

By: _____
 Louise S. Simpson
 Deputy City Attorney

DISTRIBUTOR

McKESSON CORPORATION

 9/24/19
 Eugene Cavacini
 Senior Vice President and Chief Operating Officer
 McKesson Pharmaceutical Solutions and Services

Supplier ID: 0000015454

APPENDICES

A:	PHARMACY DISTRIBUTION SERVICES SUPPLY AGREEMENT	
	ATTACHMENT 1 – LIST OF CITY FACILITIES	
	ATTACHMENT 2 – MEMBER MARKUP AND COMMITMENTS	
	ATTACHMENT 3 – CITY PAYMENT TERMS	
	ATTACHMENT 4 – PRODUCT RETURN POLICY	
	ATTACHMENT 5 – DISTRIBUTOR’S CUSTOMER FACING MANAGEMENT REPORTING SYSTEM CAPABILITIES	
	ATTACHMENT 6 – NON-INJECTABLE GENERICS AUTO-SHIP PROGRAM DESCRIPTION	
	ATTACHMENT 7 – DISASTER RESPONSE PLAN	
B:	CALCULATION OF PHARMACY DISTRIBUTION SERVICES CHARGES	
C:	DPH STATEMENT OF WORK	
D:	DISTRIBUTOR’S CERTIFICATE OF INSURANCE	
E:	BUSINESS ASSOCIATE AGREEMENT (Reserved)	
F:	DISTRIBUTOR’S SAMPLE INVOICE	
G:	PUBLIC MEETING AND PUBLIC RECORDS DISCLOSURE PROCESS	

Appendix A
Pharmacy Distribution Services Supply Agreement

APPENDIX A TO THE P-250 - SUPPLY AGREEMENT	3
1. PRIME VENDOR COMMITMENTS:	3
2. AUTOMATIC ALTERNATE [REDACTED] :	3
3. COST REPORTING:	4
4. CHANGE IN MEMBER STATUS:.....	4
5. OWN USE:.....	4
ATTACHMENT 1 - LIST OF CITY FACILITIES	5
ATTACHMENT 2 – MEMBER MARKUP AND COMMITMENTS	8
1. MEMBER MARKUP:.....	8
2. MINIMUM COMMITMENTS:.....	9
3. PAYMENT TERMS:	9
4. CSOS MARKUP:.....	9
5. DELIVERY FREQUENCY:	10
6. REBATES/DISCOUNTS.....	10
7. CONDITION FOR REBATES/DISCOUNTS:	10
8. DISTRIBUTOR’S DUTIES:.....	10
9. CLASS OF TRADE:	10
10. DEFINITION OF COST; MEMBER MARKUP:.....	10
11. PRODUCT SUPPLY:	12
12. ORDERING:	16
13. INVOICES:	17
14. ADDITIONAL REQUIREMENTS:	19
15. DISTRIBUTOR SALES REPRESENTATIVES AND CUSTOMER SERVICE:	19
ATTACHMENT 3 - CITY PAYMENT TERMS.....	21
1. WEEKLY STATEMENT PAYMENT	22
2. 15-DAY INVOICE PAYMENT	22
3. SEMI-MONTHLY STATEMENT PAYMENT	22
4. MONTHLY STATEMENT PAYMENT	22
5. PAYMENT UPON DELIVERY (C.O.D.).....	22
ATTACHMENT 4 - PRODUCT RETURN POLICY	23
1. RETURNED GOODS	23
2. DEFINITIONS	23
3. PRODUCTS AUTHORIZED FOR RETURN TO DISTRIBUTOR	23
4. EXCLUDED MERCHANDISE:.....	24
5. PRODUCT SHORTAGES AND MISPICKS	24
6. CREDITS ISSUED	25
7. CITY ELIGIBILITY	25

8. PRICING ON RECALLED AND RETURNED GOODS25

9. NOTIFICATION OF CHANGES26

ATTACHMENT 5 - DISTRIBUTOR’S CUSTOMER-FACING MANAGEMENT REPORTING SYSTEM
CAPABILITIES27

ATTACHMENT 6 - NON-INJECTABLE GENERICS AUTO-SHIP PROGRAM DESCRIPTION29

ATTACHMENT 7 - DISASTER RESPONSE PLAN32

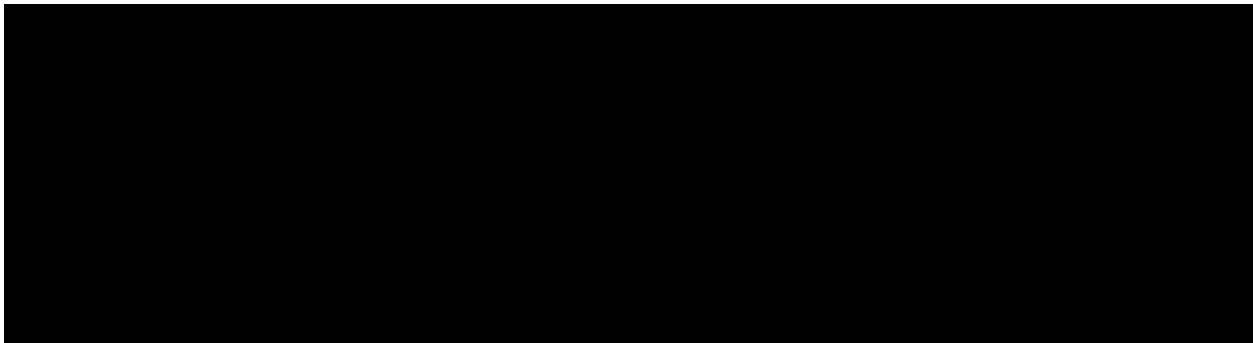
APPENDIX A TO THE P-250 - SUPPLY AGREEMENT
For Pharmacy Distribution Services

1. PRIME VENDOR COMMITMENTS:

- a. **Prime Vendor for Wholesale Pharmaceuticals:** Throughout the Agreement Term, in order to receive the Member Markup, City must not order less than ninety percent (90%) of all dollars spent on Products by using Distributor as its Prime Vendor for the purchase of such Products normally purchased through wholesale pharmaceutical distributors.
- b. **Prime Vendor for Non-Injectable Generic Products:** In addition, as a further and separate condition to City's access to the terms and pricing of this Agreement, City must purchase not less than ninety percent (90%) of City's requirements of Non-Injectable Generic Products (defined below) available from Distributor as its Prime Vendor for the purchase of such Products normally purchased through wholesale pharmaceutical distributors ("Non-Injectable Generics Prime Vendor"); provided, however, that to the extent that Distributor is unable to supply such Products, those purchases shall be excluded from the ninety percent (90%) calculation. "Non-Injectable Generics Product(s)" shall be limited to generic versions of the following non-injectable pharmaceutical Product categories: (1) oral solids (e.g., tablets, capsules); (2) oral liquids (e.g., suspensions, syrups); (3) topicals (e.g., creams, ointments, liquids, sprays, patches, suppositories); (4) respiratory (e.g., solutions for inhalation, aerosols, sprays); and (5) ophthalmics and otics (e.g., eye drops, eye ointments, ear drops). Non-Injectable Generic Products shall include both over-the-counter ("OTC") and prescription ("Rx") of the foregoing Product categories, including but not limited to Distributor's private label OTC Products.

City's compliance with the ninety percent (90%) Non-Injectable Generics Prime Vendor commitment of this paragraph will be measured during each quarter during the Term, beginning on the Agreement Effective Date. Upon request by Distributor, City shall make internal documentation denoting total purchase dollars available to Distributor for audit in order to verify compliance with the Non-Injectable Generics Prime Vendor commitment set forth above. If Distributor believes that City is not using Distributor as the Non-Injectable Generics Prime Vendor, then (1) Distributor shall provide evidence supporting such belief to City; (2) Distributor and City shall promptly meet to discuss in good faith City's continued participation under this Agreement, and (3) Distributor may discontinue the City's ability to purchase from the Non-Injectable Generics Products at the pricing set forth in in this Agreement. Distributor will provide City with a minimum of thirty (30) days written notice. The Parties shall work together to identify the cause of City's noncompliance.

2. AUTOMATIC ALTERNATE [REDACTED]:





3. COST REPORTING:

City will comply with all laws, including reporting or reflecting discounts, rebates and other price reductions pursuant to 42 U.S.C. §1320a-7b(b)(3)(A) on cost reports or claims submitted to federal or state healthcare programs, retaining invoices and related pricing documentation and making them available on request to healthcare program representatives. Thus, City or any Facility, if applicable, will accurately report, under any state or federal program which provides cost or charge based reimbursements for the Products and services covered by this Agreement, the net cost actually paid by City or any Facility. Distributor will comply with all laws, including requirements under 42 U.S.C. §1320a-7b(b)(3)(A) to (i) disclose on invoices or statements the amount of all discounts, rebates and other price reductions on Products purchased hereunder, and (ii) provide City with notice of City's obligations to report and disclose such discounts, rebates and other price reductions. City and any Facility, if applicable, will each accurately report pricing, together with any reductions in price, in connection with any federal or state pricing survey (e.g., National Average Drug Acquisition Cost Survey).

4. CHANGE IN MEMBER STATUS:

Distributor understands and agrees that if during the Term of this Agreement the City's status as a GPO member changes, any change to the terms of this Agreement will require as appropriate a new agreement or a Formal Amendment pursuant to Section 3.3.1 of the Agreement.

5. OWN USE:

City and Facilities represent and warrant that (i) prescription Products being purchased for dispensing or administration to patients pursuant to a legitimate prescription, and (ii) any subsequent resale by City or any Facility will be in compliance with applicable law and to a licensed healthcare provider for its dispensing or administration to patients pursuant to a legitimate prescription. City and Facilities shall defend, indemnify and hold Distributor harmless from any and all liability arising out of or due to nonadherence with such representation and warranty.

ATTACHMENT 1 - LIST OF CITY FACILITIES

The following list may be updated quarterly by informal agreement pursuant to Section 3.3.2:

GPO City ID	Facility Name	Address	Number of Scheduled Deliveries per Week
40169	SAN FRANCISCO GH PHCY PUR	1001 POTRERO AVE RM1P2, SAN FRANCISCO, CA 94110	6
40170	SFGH SFCC TOM WADDELL PUR	1001 POTRERO AVE. RM 1P2, SAN FRANCISCO CA 94110	6
40172	LAGUNA HONDA HOSPITAL	375 LAGUNA HONDA BLVD, SAN FRANCISCO, CA 94116	5
40174	CBHS PHARMACY SERVICES	1380 HOWARD ST, STE 130, SAN FRANCISCO CA	5
40175	S F COUNTY JAIL #8 PHCY	425 7TH STREET, SAN FRANCISCO, CA 94103	5
40176	S F CITY JAIL #7 PHCY	1 MORELAND DRIVE, SAN BRUNO, CA 94066	5
103230	SFDPH/ADULT IMCL/STIER	101 GROVE STREET ROOM 102, SAN FRANCISCO, CA 94102	5
40170	WALG/03185/SFCCC PHS	825 MARKET STREET SAN FRANCISCO CA 94103	5
853297	WALG/03711/SF GEN HOS PHS	1189 POTRERO AVE SAN FRANCISCO CA 94110	5
853429	WALG/03711/SFCCC PHS	1201 TARVAL SAN FRANCISCO CA 94116	5
853551	WALG/13666/SF GEN HOS PHS	1300 BUSH STREET SAN FRANCISCO CA 94109	5
854407	WALG/04609/SF GEN HOS PHS	1301 MARKET STREET SAN FRANCISCO CA 94103	5
852694	WALG/00893/SF GEN HOS PHS	1344 STOCKTON SAN FRANCISCO CA 94133	5
40169	WALG/07150/SF GEN HOS PHS	965 GENEVA AVE SAN FRANCISCO CA 94122	5
40169	WALG/13583/SF GEN HOS PHS	901 HYDE STREET SAN FRANCISCO CA 94109	5
855653	WALG/02153/SF GEN HOS PHS	790 VAN NESS AVE SAN FRANCISCO CA 94102	5

CONFIDENTIAL AND PROPRIETARY TO DISTRIBUTOR SUBJECT TO PROTECTION FROM RELEASE
UNDER PUBLIC RECORDS LAWS

848550	WALG/03849/SF GEN HOS PHS	745 CLEMENT STREET SAN FRANCISCO CA 94118	5
848548	WALG/05487/SFGEN HOS PHS	5300 3RD STREET SAN FRANCISCO CA 94124	5
40172	WALG/13667/SF GEN HOS PHS	5280 GEARY STREET SAN FRANCISCO CA 94118	5
40172	WALG/01283/SF GEN HOS PHS	500 GEARY STREET SAN FRANCISCO CA 94102	5
1901112	WALG/02244/SF GEN HOS PHS	3801 3RD STREET SUITE 550 SAN FRANCISCO CA 94124	5
40169	WALG/04318/SF GEN HOS PHS	4129 18TH STREET SAN FRANCISCO CA 94114	5
852694	WALG/1120/SF GEN HOS PHS	4645 MISSION STREET SAN FRANCISCO CA 94112	5
2240080	WALG/01327/SF GEN HOS PHS	498 CASTRO STREET , SAN FRANCISCO, CA 94114	5
1901112	PRK SFCR SFGH PHY PUR PHS	4060 BUSINESS PARK DR COLUMBUS oh 43204	5
853272	WALG/00890/SF GEN HOS PHS	135 POWELL STREET , SAN FRANCISCO, CA 94102	5
1900696	WALG/02866/SF GEN HOS PHS	1363 DIVISADERO STREET , SAN FRANCISCO, CA 94115	5
851499	WALG/13668/SFCCC PHS	1496 MARKET STREET, SAN FRANCISCO, CA 94102	5
1900696	WALG/01393/SF GEN HOS PHS	1630 OCEAN AVE SAN FRANCISCO, CA 94112	5
852534	WALG/03869/SF GEN HOS PHS	1750 NORIEGA STREET SAN FRANCISCO CA 94122	5
851499	WALG/01126/SF GEN HOS PHS	1979 MISSION STREET SAN FRANCISCO CA 94103	5
1900696	WALG/06557/SFCCC PHS	199 PARNASSUS SAN FRANCISCO CA 94103	5
1901112	WALG/02705/SF GEN HOS PHS	2050 IRVING STREET SAN FRANCISCO CA 94122	5
1901112	WALG/15296/SF GEN HOS PHS	2262 MARKET STREET SAN FRANCISCO CA 94114	5

CONFIDENTIAL AND PROPRIETARY TO DISTRIBUTOR SUBJECT TO PROTECTION FROM RELEASE
UNDER PUBLIC RECORDS LAWS

1901112	WALG/01626/SF GEN HOS PHS	2494 SAN BRUNO AVE SAN FRANCISCO CA 94134	5
1901112	WALG/03475/SF GEN HOS PHS	25 POINT LOBOS AVE SAN FRANCISCO CA 94121	5
1901112	WALG/04231/SF GEN HOS PHS	2690 MISSIONS STREET SAN FRANCISCO CA 94110	5
1901112	WALG/01054/SF GEN HOS PHS	3398 MISSION AVE SAN FRANCISCO CA 94110	5
1901112	WALG/03849/SF GEN HOS PHS	3400 CESAR CHAVEZ STREET SAN FRANCISCO CA 94110	5

ATTACHMENT 2 – MEMBER MARKUP AND COMMITMENTS

1. MEMBER MARKUP:

In lieu of any other price reductions available in the Base Agreement, commencing on the Effective Date for the entire duration of the Agreement Term, City will receive the Member Markup reflected on the following grid, subject to adjustment for City’s average total monthly Net Purchase Volume and invoice management practice. This Member Markup shall be adjusted quarterly based upon City’s average total monthly Net Purchase Volume over the prior calendar quarter. Distributor shall inform City of any change in the regular course of each quarterly business review meeting.

City’s Average Total Monthly Net Purchase Volume			Weekly Statement Pay	Semi- monthly Statement and 15 Day Invoice Payment	30 Day Invoice Payment
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] and

- c. all MPB products will be priced in accordance with the Plasma Product Distribution Agreement between MPB and GPO effective May 1, 2015 (as may be amended, modified, supplemented, renewed, replaced, restated or extended, the “MPB Agreement”), and not the Addendum Member Markup.
- d. For purposes of clarification, (a) MPB will pay administrative fees on MPB products as provided in the MPB Agreement; and (b) Distributor will continue to pay GPO Administrative Fees on all Products, including drop ship products, as provided in the Base Agreement. Notwithstanding

anything to the contrary contained in the Base Agreement, Distributor shall have no obligation to drop ship blood plasma products from vendors other than MPB. [REDACTED]

- e. For the avoidance of doubt, Distributor will pay Administrative Fees to the GPO as set forth in the Base Agreement.

2. MINIMUM COMMITMENTS:

The Member Markup is conditioned upon City maintaining, and City agrees to and shall maintain, the following minimum commitments (“Minimum Commitments”). If City fails to meet the Minimum Commitments during any calendar quarter during the Agreement Term, in addition to other remedies herein, Distributor will have the right to open negotiations to reasonably adjust the Member Markup matrix. As soon as practicable after receipt of such markup adjustment request by City, Distributor and City shall meet and begin good faith negotiations. If, at the end of the sixty (60) days following receipt of the adjustment request by City, Distributor and City have been unable to agree on satisfactory pricing, minimum commitments, and/or other terms, Distributor shall have the right to terminate for breach in accordance with Article 8 of the Agreement and/or the right to reprice.

- a. a minimum monthly Net purchase volume [REDACTED] (“Net Purchase Volume”);
- b. a minimum Net purchase ratio of generic Rx Product purchases to Rx Product purchases [REDACTED];
- c. a minimum Net purchase ratio [REDACTED] and [REDACTED]
- d. for non-340B accounts, participate in the automatic substitution program for Products ordered through the McKesson OneStop Generics™ non-injectable generics program for GPO.

3. PAYMENT TERMS:

The above listed payment terms, as more fully described in Attachment 3 herein, will be made available to City so long as justified under Distributor’s general credit policies. City may elect to move to another payment term by providing written notice to Distributor. Distributor reserves the right to adjust pricing to the corresponding payment term that most closely matches City’s demonstrated payment history by providing notice to City. Any price change that increases the GMP must be by Formal Amendment in accordance with Section 3.3.1 of the Agreement.

4. CSOS MARKUP:

In the event City elects not to remit orders for Schedule II Products using Distributor’s electronic controlled substance ordering system (CSOS), Distributor shall INCREASE the Member Markup by [REDACTED]

5. DELIVERY FREQUENCY:

The Member Markup is conditioned upon each Facility receiving no more than the number of scheduled deliveries per week set forth on Attachment 1, excluding Sundays or holidays.

6. REBATES/DISCOUNTS.

a.



- b. **Rebate Earning and Payment.** Each rebate in this Agreement shall be paid via credit memo (unless Distributor and City agree to a different manner of payment) no later than thirty (30) days following the end of the period in which such rebate is earned. Monthly and quarterly rebates shall be paid on a calendar basis, prorated for any partial periods. Not-to-exceed amounts will be prorated for any partial periods. Rebates that are subject to a not-to-exceed (“NTE”) amount terminate when the NTE amount is earned and McKesson shall have no liability for payment of any amount in excess of the NTE amount.

7. CONDITION FOR REBATES/DISCOUNTS:

To qualify for the rebates and discounts in this Agreement, City and Facilities must meet the Minimum Commitments throughout the Agreement Term. In the event of any default or breach by City or any Facility of its obligations under this Agreement, such Facility’s (or Facilities’) eligibility for the rebates and discounts in this Agreement may be suspended, upon Distributor’s notice (verbal or via email) to City and/or Facility(ies), until such time as City and/or Facility(ies) cure such default or breach. In the event of termination of this Agreement by any party for any reason whatsoever during the Agreement Term hereof, City and Facilities’ eligibility for rebates and discounts shall immediately cease (for the avoidance of doubt, Distributor’s obligation to pay any rebate earned prior to such termination would survive). For purposes of clarification, nothing herein shall obligate City to pay back any discounts or rebates received from Distributor under this Agreement.

8. DISTRIBUTOR’S DUTIES:

Distributor shall provide Services with respect to the purchasing and re-selling of Products to City, as required by the Base Agreement.

9. CLASS OF TRADE:

Distributor shall abide by the City’s GPO class of trade designation.

10. DEFINITION OF COST; MEMBER MARKUP:

- a. **In General.** Except as set forth herein or as otherwise agreed by City and Distributor, Distributor shall invoice City for purchases of Products at Cost (as defined below) plus the Member Markup (as defined above) determined based on certain criteria applicable to City; additionally, the criteria includes, without limitation, the payment terms (“City Payment Terms”) as defined in Attachment 3 hereto.

b.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11. **PRODUCT SUPPLY:**

- a. **Distribution Centers.** Distributor may have multiple warehouses, or distribution centers, in different geographic locations (each, a "DC") and shall assign City that purchases Products and/or Services under this Agreement to a primary DC. Thereafter, Distributor shall provide City with at least ninety (90) days' prior written notice before assigning City to a different primary DC.
- i. **Product Warehousing.** Distributor shall warehouse, at its own expense, such quantities of Products as Distributor reasonably determines are necessary to satisfy the City's purchasing requirements. Distributor's determination of such purchasing requirements shall be based on City's purchasing history, as well as the estimated monthly usage data that City provides to Distributor with all Product stocking requests; [REDACTED]
- [REDACTED]
- Distributor shall provide City with a written procedure or an electronic application for City's Product stocking requests. Subject to availability and supplier lead times, and, for new suppliers, subject to time for submitting and processing applications and loading data, Distributor shall place Products in stock at DCs within ten (10) business days of the date of City's request or the date of receipt of GPO's notification of newly awarded generic products that either replace existing GPO Contract Products or are in addition to newly awarded generic Products.
- ii. **Approval of Suppliers.** Distributor's Product warehousing obligations pursuant to this Section are subject to applicable suppliers' meeting Distributor's reasonable standards and other criteria pertinent to Distributor's business, such as credit worthiness, liability insurance, good standing with Federal regulatory agencies such as the federal Food and Drug Administration ("FDA") and the Federal Drug Enforcement Administration.
- b. **Scheduled Deliveries.** Distributor shall deliver Products to City F.O.B. destination, freight prepaid and absorbed, except as otherwise set forth below, Monday through Friday (and Saturday, if applicable), but shall not deliver Products on Sundays or holidays. Distributor shall provide City with an order delivery time window that meets City's reasonable needs. Distributor shall communicate to the City in a timely manner any changes or delays to the delivery time window and in all cases use commercially reasonable efforts to make each delivery during the regularly scheduled time window [REDACTED]
- Distributor shall make scheduled deliveries in boxes or clean, reusable totes, using Distributor's own transportation vehicles, contracted third party couriers, or common carriers. During the transportation of any Controlled Substance (as defined herein), Distributor shall take all reasonable efforts to ensure the safety and quality of such Controlled Substance as required and communicated to Distributor by the Supplier of such Controlled Substance. Distributor shall deliver temperature-sensitive Products in insulated containers capable of maintaining the appropriate temperature during transport.



- c. **Order Transmission Deadlines.** Distributor's order transmission deadlines for City shall be no earlier than 7:00 p.m. PST Sunday through Thursday for next day Product delivery. Distributor's order transmission deadline on Friday shall be no earlier than 4:00 p.m. PST for delivery on Saturday for those members that receive Saturday deliveries.
- d. **Emergency Deliveries.** Included as part of City's payment for Products and/or Services hereunder, City may receive [REDACTED] Emergency Deliveries per month, per City location with average net monthly purchases in excess of [REDACTED] per month (e.g., if City's inpatient pharmacy is separate from City's outpatient pharmacy, [REDACTED]). The Emergency Deliveries provided to City location can be used only by the account number for that location and cannot be used by any other account numbers, even for accounts in the same IDN. For purposes of this Section, an "Emergency Delivery" is defined as any of the following:
- i. Weekend or holiday delivery (unless such delivery is a scheduled delivery for City);
 - ii. City contacting DC on a business day, and needing a Product delivered to City's pharmacy prior to the next scheduled delivery on an urgent basis;
 - iii. City contacting DC on a business day, but after order transmission deadline, to add on a Product or adjust Product quantity; or
 - iv. Overnight shipment of Product, excluding Product that requires overnight shipping (e.g., refrigerated or frozen Product), from a DC in Distributor's network, but not City's assigned primary DC.

Beginning with the [REDACTED] Emergency Delivery in a given month for a given City location, Distributor may charge City no more than [REDACTED] per occurrence. "Will-call" orders picked up by City during normal daytime business hours shall not be considered Emergency Deliveries and shall not count towards the [REDACTED] Emergency Deliveries per month that are included as part of each City's payment for Products and/or Services hereunder. In the case of any Emergency Delivery that results in Distributor [REDACTED]



the City will have the unilateral right to terminate

this Agreement with thirty (30) days written notice for breach. During the thirty (30) day notice period, City may establish a relationship with another distributor to reasonably satisfy its pharmacy needs, and such relationship may cause Distributor to lose “Prime Vendor” status with the City. In this event, Distributor may not increase the applicable Member Markup or in any other way take away financial incentives or impose new fees on City as a result of losing the Prime Vendor status.

1. As a measurement of Distributor’s performance under this Agreement, Distributor shall calculate a monthly Adjusted Fill Rate for City. Minimum Adjusted Fill Rates shall only apply if City (i) purchases at least [REDACTED] per month of Products, (ii) has purchased from Distributor for longer than thirty (30) days, (iii) is utilizing Distributor as its primary distributor of Products and/or provider of Services; and (iv) is in full compliance with the requirements of Section 2C(Purchasing Commitments) of the Base Agreement.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

f. **Product Compliance/Quality.**

- i. **Product Compliance:** Distributor represents and warrants as follows, which representations and warranties shall survive the expiration or earlier termination of this Agreement:
 - a. The Products shall be distributed and sold by Distributor in compliance with applicable Federal, state and local laws; and
 - b. Distributor represents and warrants Distributor's Private Label Products against defects in design and manufacturing. Furthermore, as of the date of delivery to City, Distributor's Private Label Products shall not be adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended, nor shall any Distributor's Private Label Products violate any applicable law, ordinance, rule, regulation or order.
 - c. From the time of Distributor's receipt of Products from the applicable supplier to the date of delivery to the City, Products shall not be adulterated or misbranded by Distributor within the meaning of the Federal Food, Drug and Cosmetic Act, as amended.
- ii. **Product Condition.** Unless otherwise agreed upon by City, all Products shall be new and shall not be delivered to City if expired unless City accepts delivery after receiving prior notice from Distributor (which notice may be through Distributor's McKesson Connect or any subsequent online ordering system) of the condition of such Products.
- iii. **Product Shelf Life.** Distributor shall deliver Products to City at least six (6) months prior to the expiration date of such Products. Distributor shall use its best efforts to deliver Products with the longest possible shelf life and the latest possible expiration dates. In the event that the only Product available is within six (6) months of its expiration date, Distributor shall notify City in writing of such dating. Upon receiving such notice, an City may choose whether to accept any such Product.
- iv. **Product Integrity; Source of Products.** Distributor shall purchase all (i) Products (except for OTC Products) distributed and sold to City pursuant to this Agreement directly from the applicable manufacturer or the applicable manufacturer's exclusive distributor (as such terms are defined under the Drug Supply Chain Security Act), and (ii) all over-the-counter ("OTC") Products distributed and sold to City pursuant to this Agreement directly from the applicable manufacturer or from a distributor(s) approved by the applicable manufacturer. Nothing in this Agreement restricts a third-party logistics provider from providing Pharmaceutical Products to Distributor on behalf of either the manufacturer or the exclusive distributor, or a re-packager who purchased direct from the manufacturer or the exclusive distributor from providing Pharmaceutical Products to Distributor. Distributor reserves the right to exclude any of the above entities that Distributor in its sole discretion determines is a gray market distributor.
- v. **Pass Through of Warranties, Representations, and Indemnity Obligations.** Distributor shall pass through to City any representations, warranties and rights and claims to defense and indemnity made by each supplier of a Product (including

representations, warranties and rights and claims to defense and indemnity, relating to intellectual property, product liability or negligence) with respect to such Product, to the fullest extent permitted to be passed through by supplier. Nothing herein limits or obviates any right or remedies Distributor may have under its agreements with such suppliers. Furthermore, Distributor represents and warrants that it will make commercially reasonable efforts to (i) cooperate with all requests made by City to enforce such representations, warranties and rights and claims to defense and indemnity against such manufacturers and (ii) obtain consents from the manufacturers in passing through to the GPO and City such representations, warranties, and rights to defense and indemnification.

vi. Distributor will not knowingly ship a Product for which it has received notice of recall.

- g. **Force Majeure**. Notwithstanding anything in this Agreement to the contrary, Distributor shall be excused from the performance of its obligations under this Agreement if, and for so long as, and only to the extent that, the non-performance of such obligations occurs by reason of any act of God, including but not limited to fire, flood, storm, earthquake, epidemic or natural disaster, or by reason of war, terrorism or national emergency and only to the extent such failure or delay in performance is not caused by Distributor's own fault or negligence ("Force Majeure"), provided that Distributor shall use commercially reasonable efforts to minimize the effects of the Force Majeure and resume performance. If such Force Majeure occurs unabated for a period of thirty (30) days or longer, the City may terminate this Agreement upon five (5) days written notice to Distributor. In addition, Distributor hereby agrees to use commercially reasonable efforts to deliver pharmaceutical products to City despite labor disputes, including delivering across picket lines and delivering to alternate delivery points; provided such activity does not put Distributor's employees', representatives', agents' or contractors' safety at risk.

12. ORDERING:

- a. **Distributor's Ordering Technology**. Included as part of City's payment for Products and/or Services hereunder, Distributor shall provide City the option to use the following systems to create, manage and transmit orders to Distributor:
- i. Over-the-phone order taking capabilities; and
 - ii. Mobile Manager 25 or similar hand-held, over-the-phone transmission device with a bar code scanning capability; and
 - iii. A secure internet-based ordering application; and
 - iv. Exchange of standard Electronic Data Interchange ("EDI") transactions for ordering, order confirmation, and catalog creation and maintenance. For members that elect to use EDI to order from Distributor, City shall be responsible for all costs associated with equipping their facilities with EDI-capable software; provided, however, that Distributor shall not impose any fees on City as a result of using EDI as their ordering transmission method.
- b. **Purchase Orders**. Distributor shall accept City's orders, order supplements and order modifications on purchase orders delivered to Distributor via facsimile, telephone, or hard copy, through the preferred method of electronic order transmission using EDI through Distributor-provided technology as described in Attachment 2, Section 12(a) (Distributor's Ordering

Technology), or through such other electronic method acceptable to Distributor. Such orders shall not add to, modify, or vary the terms of this Agreement. Distributor's ordering technology shall accommodate City's alphanumeric purchase order number.

- c. **Product Substitution.** Distributor shall have no unilateral right to substitute other products for any Product ordered except that Distributor may automatically enroll City into GPO's generics automatic substitution program as set forth in Attachment 6. For clarity, City may opt out of automatic substitution program.
- d. **Order Confirmation.**
 - i. Within twenty (20) minutes of City's order transmission, Distributor shall provide electronic confirmation of the transmitted order. The confirmation is an inventory commitment and shall include the following data: list of all Products ordered, quantity ordered, quantity to be shipped, reasons for Product unavailability, Product description, Product National Drug Code ("NDC") number, Distributor's Product number, invoice price per Product, each Product's extended invoice price for quantity committed, total invoice price for the order, contract type description for each Product, and City's purchase order number. Contract type description examples include GPO contract, local or individual contract, and Distributor back-up contract.
 - ii. In the event that City is limited to Mobile Manager 25 or other similar hand-held order technology, as its method of order transmission, Distributor shall provide order confirmation via purchase order print back at its own expense.

13. INVOICES:

- a. **Invoice Information.** In addition to a packing slip, an invoice shall accompany each delivery of Products from Distributor or be made available through Distributor's web-based ordering system; provided, however, that for any order for which the delivery location is not the same as the City's location, shipping documentation may instead accompany such delivery instead of an invoice. Each invoice shall contain the price confirmed by Distributor at the time of City's order confirmation. For purposes of clarification, the price for a Product shall be locked in at the time of the order confirmation. Additionally, all invoices shall include, at a minimum, the following information (as applicable): invoice date, list of all Products ordered, Product quantity ordered, Product quantity shipped, reasons for Product unavailability, Product description (including supplier's name), Product number, Distributor's Product number, price per Product, each Product's extended price for quantity shipped, total price for the invoice (as set forth above), contract indicator for each Product, indications if Products are prescription, Controlled Substance (as defined herein), or non-prescription, City's purchase order number, Distributor's shipping address and shipping location's DEA number, Distributor invoice number or other applicable tracking number, and the payment due date. Distributor shall also provide members with the option of including the Global Location Number ("GLN") and Global Trade Identification Number ("GTIN") for each Product on an invoice, provided that City has provided such GLN and/or GTIN to Distributor in a format acceptable to Distributor. Distributor will separately invoice Controlled Substances (as defined herein).
- b. **Electronic Invoicing.** At City's election, Distributor shall invoice City electronically by using a standard EDI format or a customized format mutually agreed upon by City and Distributor. Distributor shall not charge City for such electronic invoicing.

- c. **Sales Taxes.** Sales taxes levied by any competent jurisdiction in which City or Distributor is located, based upon the transactions covered by this Agreement shall be passed on to the City by including a line item for the sales tax in the charge for the taxed Product and is also included in the Guaranteed Maximum Price.
- d. **Drop Shipment Invoice Services.** “Drop Shipments” are Products shipped from the supplier directly to City but invoiced to Distributor for the purpose of billing City. Upon request of City and with permission of the supplier and Distributor, Distributor shall provide invoices to City for Drop Shipments. Drop Shipments shall be invoiced at Cost plus any freight handling fee or other charge imposed by the supplier, without any Member Markup, and no additional fees will apply to the City for such Drop Shipments. In the event (i) Distributor no longer carries a Product in City’s DC, (ii) an entity affiliated with Distributor has become the shipper of a Product that was previously shipped by Distributor solely as a result of a voluntary decision by Distributor and not due to any action or request of a supplier, or (iii) a Product is temporarily out of stock (other than due to the supplier's inability to provide such Product) at City’s DC, and, with respect to sub (i) and sub (iii) above, in each case such Product is carried by Distributor at another DC, the applicable City may obtain a Drop Shipment from the supplier. In such an event, Distributor shall (1) with respect to sub (i) and sub (iii) above, without exception invoice these Drop Shipments at Cost plus the applicable Member Markup, and (2) with respect to sub (ii) above, Distributor will ensure that the affected City is made whole for the difference between the Product's cost (as charged by Distributor's affiliate) and the applicable Member Markup that would have been paid hereunder by the City for such Product, but for Distributor's voluntary decision. All Drop Shipments, including plasma Products and other purchases pursuant to this subsection, invoiced by the Distributor shall be added to the City's total purchase volume for the purposes of slotting the City in the Member Markup.
- e. **Invoice Corrections.**
 - i. **Denied Chargebacks.** “Denied Chargebacks” are invoices to City resulting from chargebacks for Products provided to City under applicable supplier agreements that are ultimately uncollectible from supplier despite Distributor's good faith efforts to collect from supplier. City shall not be responsible for any Denied Chargebacks dated later than sixty (60) days from an applicable Product's original invoice date.
 - ii. **Overcharges and Undercharges.** Distributor shall thoroughly research City-reported price overcharges and any undercharges and shall use commercially reasonable efforts to respond to City with findings within five (5) business days of receipt of such report. Subject to supplier approval, if City was overcharged or undercharged as reported by City for a Contract Product, Distributor shall promptly either credit or, in its discretion, charge the City for the difference or credit the entire original purchase and deliver to City a revised invoice stating the correct contract price (“Billing Correction”). Distributor shall make Billing Corrections of which it is aware regardless of whether the City reported an overcharge.
 - iii. **Non-Contract Product Undercharges.** Distributor shall research any City-reported undercharges and respond to City within ten (10) business days of the request. In addition, if Distributor discovers a price undercharge for a Non-Contract Product, Distributor shall promptly contact the affected City. City shall be responsible for

any Billing Correction issued by Distributor to correct Non-Contract Product undercharges, provided that such Billing Correction is invoiced no later than sixty (60) days from the Product's original invoice date.

14. ADDITIONAL REQUIREMENTS:

- a. **Return of Products.** City has the right to return Products to Distributor in accordance with the terms set forth in Attachment 4 attached hereto.
- b. **Product Recalls.** If Distributor is made aware of a Product recall impacting Products distributed to City by Distributor, Distributor shall provide written notice to City thereof within one (1) business day after Distributor has received confirmation of the relevant details of such recall from the applicable supplier (which notice, may be made electronically through Distributor's McKesson Connect or any subsequent online ordering system). This Section does not apply to recalls that are only at the wholesale level.
- c. **Notice of Temporary Service Interruptions.** Distributor shall give City thirty (30) days' prior written notice of Distributor's intent to perform a physical inventory or any other scheduled or anticipated activity that may negatively impact delivery times or customer service capabilities.
- d. **Disaster Response Plan.** Distributor shall adhere to the terms of its disaster response plan a summary of which is attached hereto as Attachment 7, as revised from time to time as mutually agreed by the Parties. ("Disaster Response Plan").

15. DISTRIBUTOR SALES REPRESENTATIVES AND CUSTOMER SERVICE:

- a. **Distributor Sales Representatives.** Distributor shall assign a sales representative to serve as City's primary liaison to Distributor. Distributor's sales representatives shall provide on-site City staff training with respect to Distributor's technology and programs, optimal pharmacy purchasing and inventory management methodology, timely follow-up and effective problem-solving in response to City requests. Distributor's sales representative should be generally knowledgeable about Distributor's business and the pharmaceutical products industry and make on-site visits to City no less frequently than once per month unless otherwise requested by City. In addition to normally scheduled sales calls, Distributor's sales representatives shall schedule and conduct quarterly business reviews with City's pharmacy management and pharmacy purchasing staff, the occurrence of which shall depend on the City participating. Distributor shall establish a specific timetable for sales calls by sales representatives to satisfy the needs of the City.
- b. **Vendor Credentialing.** Distributor shall consult with City to identify City's policies relating to access to facilities and personnel. Distributor agrees to comply with City's policies and procedures regarding access to facilities and personnel, including without limitation policies relating to vendor registration and credentialing to the extent they are not inconsistent with Distributor's employee policies, including its code of conduct. In the event there is an inconsistency between City's policies and Distributor's policies that would affect Distributor's access to City's facilities, Distributor shall consult with City with respect to the conflict in an effort to come to a reasonable resolution. Before visiting any ZSFG facilities, it is required that a HCIR create a profile with "VendorMate." VendorMate is the company that manages the credentialing process of policy 16.27 for SFGH. For questions, or to register as a HCIR please contact the Director of Materials Management, or designee (during normal business hours) at (415) 206-5315 or sign on to <https://sfdph.vendormate.com> for details.

- c. **Distributor Customer Service.** Distributor shall provide telephone customer service to promptly respond to City's routine questions and issues during normal business hours. Distributor shall adequately train its telephone customer service agents in Distributor's operations, pharmacy purchasing, price verification research, and inventory supply research policies and procedures.

ATTACHMENT 3 - CITY PAYMENT TERMS

For all payment plans, the funds must be received by the Distributor at the designated remittance address on or before the dates due. Payments due on Saturday shall be due on the preceding Friday. Payments due on a Sunday shall be due on the following Monday. Payments due on a holiday shall be due on the preceding business day except when the holiday falls on a Monday. In that instance, payments shall be due on the following business day.

In the event City chooses to utilize an electronic payment program or card-based platform for the payment of Products ("E-Payable Program"), the Distributor shall participate in City's E-Payable Program, will offer its full and timely cooperation in assisting City, or its designate, to make such E-Payable Program operate successfully, and shall not impose any additional fees, costs, penalties, surcharges or other charges to City based upon E-Payable Program utilization.

- a. Late Payment Charges. Any service charges on past due amounts will accrue only on the unpaid balance of undisputed amounts at a daily rate not to exceed [REDACTED] per month ([REDACTED] Annual Percentage Rate). At the City's request, Distributor may waive late payment charges acting in its sole discretion.
- b. Disputed Invoices. Should the City dispute an invoice in good faith, City may report the issue to Distributor within thirty (30) business days of invoice date. Distributor shall promptly research the disputed invoice and City and Distributor shall use good faith to resolve the dispute. Disputed invoices are not subject to late fees or penalties during the resolution of the dispute. Upon resolution of such dispute, late fees or penalties applicable may be applied if City was not justified in disputing the applicable item(s) on invoice.
- c. Revocation of Credit Privileges. Notwithstanding any other provision of the Agreement, should City have an excessive late payment history or a substantial past due balance, Distributor shall notify GPO and City in writing of the problem prior to Distributor removing City's credit privileges. If Distributor rescinds City's credit privileges, the City shall be entitled to continue to purchase Products and Services from Distributor on a C.O.D. basis.
- d. Set-Off. Distributor shall set off any amount owing at any time from City against any amount payable at any time by Distributor to City (i.e., credits-on-account as set forth in the Agreement shall be deducted from amounts due before calculating any late payment penalties owed by the City).

The following payment terms will be made available to City so long as justified under Distributor's general credit policies. The City may elect to move to another payment term by providing written notice to the Distributor. Distributor reserves the right to adjust pricing to the term that most closely matches City's demonstrated payment history.

REGULAR PAYMENT TERMS

PAYMENT TERMS BEYOND THE TERMS STATED HEREIN SHALL BE NEGOTIATED BETWEEN THE CITY AND THE DISTRIBUTOR and Distributor will disclose the terms to GPO during the reporting process set forth in the Base Agreement.

1. **WEEKLY STATEMENT PAYMENT**

[REDACTED]

2. **15-DAY INVOICE PAYMENT**

[REDACTED]

3. **SEMI-MONTHLY STATEMENT PAYMENT**

[REDACTED]

4. **MONTHLY STATEMENT PAYMENT**

[REDACTED]

5. **PAYMENT UPON DELIVERY (C.O.D.)**

Subject to Attachment 3, Section (c) (Revocation of Credit Privileges) above.

ATTACHMENT 4 - PRODUCT RETURN POLICY

1. RETURNED GOODS

Subject to any separate policy and/or terms and conditions for returned goods adopted by Distributor for purposes of complying with any applicable federal and/or state law, rule or regulation (including without limitation laws, rules and regulations of the State of Florida), Distributor will process returned goods for items purchased by City from Distributor, in accordance with Distributor's Returned Goods Policy (which is subject to change by Distributor, effective on thirty (30) days' prior notice to City, as follows:

2. DEFINITIONS

(a) Saleable Products shall include the following:

- 1) Products are determined saleable by Distributor based on the ability to resell the item without special handling, refurbishing or other expense; or
- 2) Saleable Products must have dating of current month plus six (6) months remaining until expiration. Exceptions to this dating policy are:
 - A) Refrigerated and other temperature-controlled Products; or
 - B) Products deemed permanently short-dated by Distributor and manufacturers/vendors.

In the above-specified instance as set forth in Subsection (a)(2)(B) above, City shall be permitted to return the Products with current month plus three (3) months remaining until expiration.

(b) Unsaleable Products:

- 1) Products with less than current month plus six (6) months remaining until expiration (except as otherwise provided in Subsection (1)(a));
- 2) Torn or damaged packaging;
- 3) Labels attached (prescription or price sticker);
- 4) Soiled, stained or worn;
- 5) Safety or security seals not intact; or
- 6) Prescription Products returned to Distributor that does not include City's signature on the returns authorization form to assure that such Products have been stored and protected under proper conditions specified by the manufacturer/vendor.

Distributor reserves the right to determine whether Products are Saleable or Unsaleable on inspection of the returned item.

3. PRODUCTS AUTHORIZED FOR RETURN TO DISTRIBUTOR

City must provide signed verification certifying that proper conditions for storage, handling and shipping have been maintained for all Products returned to Distributor.

- a) Saleable and Unsaleable Products that were purchased from Distributor unless otherwise blocked for return (determined by manufacturer/vendor or Distributor);
- b) If prescription ("Rx") Products, City has attested that each specific unit of returned Rx Products was purchased from Distributor and that the conditions specified by the manufacturer/vendor for

CONFIDENTIAL AND PROPRIETARY TO DISTRIBUTOR SUBJECT TO PROTECTION FROM RELEASE
UNDER PUBLIC RECORDS LAWS

storage, protection, handling, and shipping have been maintained at all times. Returned Rx Products must also include the original invoice number in order to be Saleable, in compliance with the Drug Supply Chain Security Act.

- c) Unsaleable Products purchased from Distributor which can be returned by Distributor to the manufacturer/vendor according to their policy;
- d) Distributor Private Label Merchandise (Valu-Rite®, Health Mart®, Sunmark®, etc); and
- e) Manufacturer/vendor recall or market withdrawal in original manufacturer containers. Authorized returns of partials require City to include pill counts, NDC expiration date and lot number for any Products not returned in its original manufacturer container.

4. EXCLUDED MERCHANDISE:

- a) Products not purchased from Distributor;
- b) Products not physically carried by Distributor;
- c) Products not eligible for return to the manufacturer/vendor or deemed collectible by Distributor;
- d) Saleable Products returned that do not meet proper storage conditions;
- e) Unsaleable returns on City's or its buying group's private label Products;
- f) Products not in their original container;
- g) Overbagged or "robot-ready" Products;
- h) Products requiring refrigeration except for Products shipped by Distributor in error or received damaged;
- i) Repackaged Products that have less than nine (9) months dating or are defined as Unsaleable Products;
- j) ScanPak™ Unit Dose and ScanPak™ Multi Dose Products that have less than nine (9) months dating or are defined as Unsaleable Products;
- k) Products discontinued by manufacturer/vendor and no longer stocked by Distributor;
- l) Controlled Substances containing hazardous materials;
- m) Partial bottles, liquids and other containers except for recalls of Products other than Controlled Substances;
- n) Schedule II Controlled Substances will be evaluated on individual return requests;
- o) Products damaged or defaced at the City facility location or on the shelf; and
- p) Home Healthcare Hub Products unless said Products were received damaged by City from Distributor or said Products have been recalled/withdrawn by the manufacturer/vendor.

5. PRODUCT SHORTAGES AND MISPICKS

Distributor will provide credit for Product shortages and mispicks, provided that (x) City provides Distributor the applicable invoice number and (y) any claim is submitted within five (5) business days of the original invoice date. Claims filed after five (5) business days will not be considered.

6. CREDITS ISSUED

Distributor will provide the following credit based on the pricing rules outlined below in Subsection (6) as calculated from invoice date to credit request date:

Saleable	██████████	██████████	
	██████████	██████████	
Received Damaged or Short-dated	██████████	██████████	
	██████████	██████████	
Recall*		██████████	if and to the extent Distributor recovers an equal percent from the manufacturer/vendor.
Unsaleable Products Eligible for Return to Distributor*		██████████	if and to the extent Distributor recovers an equal percent from the manufacturer/vendor.

* Notwithstanding anything in this Agreement to the contrary, with regard to Unsaleable Products, recalls, market withdrawals and any other manufacturer/vendor initiated returns (collectively, "Unsaleable and Recalled Merchandise"), in the event a pharmaceutical manufacturer/vendor fails for any reason to pay Distributor for the cost of or any amounts due with respect to any Unsaleable or Recalled Merchandise returned to Distributor by City or City's agent, City agrees that City will be responsible for the collection of any unpaid monies due from the manufacturer/vendor, and shall fully reimburse Distributor for any credits or other forms of advance, including deductions, that have already been paid to or received by City for such Unsaleable or Recalled Merchandise.

7. CITY ELIGIBILITY

Distributor reserves the right to designate if the Products returned by City are eligible for return, and to determine the appropriate percentage of credit to be provided.

8. PRICING ON RECALLED AND RETURNED GOODS

Distributor will use the invoice price when City provides a valid invoice number.

If no invoice number is provided, the lowest price determined under the following pricing rules will apply:

- (a) City will be credited the contract price for Products which are Contract Products on the date that return authorization is created.
- (b) City will be credited a weighted average price based on City's past twelve (12) month purchase history for Non-Contract Rx/OTC Products.
- (c) City will be credited the lowest price paid by City over the past twelve (12) months for Non-Contract Generics Products.

CONFIDENTIAL AND PROPRIETARY TO DISTRIBUTOR SUBJECT TO PROTECTION FROM RELEASE
UNDER PUBLIC RECORDS LAWS

(d) City will be credited the manufacturer's/vendor's published acquisition cost (exclusive of cash discounts) on the date of the return authorization for Non-Contract Products purchased more than twelve (12) months prior to the date the return authorization is created.

Any handling charges will apply where appropriate to the determined price.

Final credit will be issued based on the condition and timing of the returned goods to Distributor.

9. NOTIFICATION OF CHANGES

Distributor reserves the right to change the above stated Returned Goods Policy at any time with thirty (30) days' notification to City, including without limitation implementing modifications required to meet applicable federal and/or state laws, rules and regulations, FDA and other regulatory guidelines, and any additional restrictions applicable to returned Products.

**ATTACHMENT 5 - DISTRIBUTOR'S CUSTOMER-FACING MANAGEMENT REPORTING
SYSTEM CAPABILITIES**

This Exhibit sets forth the minimum specifications required for purchase history and management reporting systems that shall be provided by Distributor ("Reporting Systems").

1. Distributor's Reporting Systems shall include a minimum twenty-four (24) months of City's purchase history, detailed by month, to include actual prices paid, quantities purchased, and quantities returned or credited, contract type indicator (e.g., GPO, individual, etc.) and Product description.
2. The Reporting Systems shall include all Products in the Ordering System's catalog in addition to the Products that have purchase history. Such Reporting Systems shall clearly identify and distinguish Product labels to facilitate such identification. Such Product identification and distinction shall be obvious to a customer familiar with Distributor's Reporting Systems.
3. The Reporting System shall create reports at the individual facility level and roll up sales history to summarize sales at the IDN level. City shall be able to define which Distributor account numbers to combine/include when creating a sales history report.
4. Reserved.
5. The Reporting Systems shall include an advanced report-writing function that City shall be able to use to create and customize reports as needed. Examples of reports that are available include:
 - a. 80/20 velocity report
 - b. Purchases by Supplier
 - c. Purchases by therapeutic class
 - d. Purchases by generic name
 - e. Controlled substance purchases
 - f. Contract priced Product listing, with delineation by contract type
 - g. Purchases by Product category, such as: branded vs. generic Product, single source vs. multiple source Product, Rx vs. non-Rx Product
 - h. Purchases by Orange Book bioequivalence codes
6. The Reporting System shall accommodate user-defined query parameters, including time-period of purchase history and the ability to limit the report by Supplier and contract type. The Reporting System shall have the capability to generate a purchase history report for all City Net Sales over a prior twelve (12) month period, including Product NDC, Product description, total units purchased, current price WITHOUT Member Markup (the price the City would be invoiced WITHOUT Member Markup if City ordered the Product that day), and current price WITH Member Markup (the price the City would be invoiced if City ordered the Product that day).
7. Reports shall be viewable on-screen, printed, or downloaded/exported in a standard format that is easily imported into Microsoft Excel.

CONFIDENTIAL AND PROPRIETARY TO DISTRIBUTOR SUBJECT TO PROTECTION FROM RELEASE
UNDER PUBLIC RECORDS LAWS

- 8.** City shall be able to access the Reporting Systems via multiple logins to the Reporting Systems, and each such login shall have a separate password and secure access.

ATTACHMENT 6 - NON-INJECTABLE GENERICS AUTO-SHIP PROGRAM DESCRIPTION

Non-Injectable Generics Auto-Ship Program Description

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]



ATTACHMENT 7: DISASTER RESPONSE PLAN

Distributor will submit a comprehensive Disaster Response Plan (substantively addressing the topics identified below) to City as part of this Agreement.

Planning for an Emergency

- I.** Introduction
- II.** Corporate Objective
- III.** Definition of an Emergency
- IV.** Review Internal Plans and Policies
- V.** Establish an Evacuation Procedure
- VI.** Meet with Community Experts
- VII.** Identify Specific Codes and Regulations
- VIII.** Identify critical Products, Operations and Services
- IX.** Locate Company Specific Resources for Emergencies
- X.** Training
- XI.** Distribution of the Plan

Procedures during an Emergency

- XII.** Procedure for Reporting Emergencies
- XIII.** Procedure for Evaluating Severity of an Emergency
- XIV.** Emergency Response Team
- XV.** Communications During an Emergency
- XVI.** Procedure for Handling Emergencies
- XVII.** Contacting Outside Service
- XVIII.** Hazardous Materials
- XIX.** Evacuation Procedure
- XX.** First Aid

Action following an Emergency

- XXI.** Recovery and Restoration
- XXII.** Evaluation and Modification of the Plan

Appendixes

- Appendix I Persons Qualified to Act as Emergency Coordinators
- Appendix II Outside Agencies--Emergency Telephone Listing
- Appendix III Internal Emergency Phone Call List Sample
- Appendix IV Evacuation Routes
- Appendix V Emergency Assembly Reporting Procedure
- Appendix VI Job Descriptions
- Appendix VII Persons Responsible for Hazardous Waste Management
- Appendix VIII Emergency Checklists
- Appendix IX Guidance for Preparation of Spillage Confirmation Report
- Appendix X Business Continuity and Disaster Preparedness Websites

Appendix B
U.S. PHARMACEUTICAL CALCULATION OF CHARGES

1. Method of Payment

A. Distributor shall submit invoices as set forth in Attachment 3 to Appendix A, and in Section 3.13 above.

2. Program Budget and Final Invoice

A. The Program Budget is attached hereto as Appendix B-1: U.S. Pharmaceutical Program Budget.

B. Distributor understands that, of the maximum dollar obligation listed in Section 3.4 of this Agreement, **\$30,535,486** is included as a contingency amount and is neither to be used in Program Budget attached to this Appendix, or available to Distributor without a modification to this Agreement executed in the same manner as this Agreement or a revision to the Program Budget of this Appendix B, which has been approved by Contract Administrator. 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. Distributor agrees to comply with its Program Budget of this 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. 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 Budget attached hereto, and shall not exceed the total amount authorized and certified for this Agreement.

3. No invoices for Services provided by law firms or attorneys, including, without limitation, as subcontractors of Distributor, will be paid unless the provider received advance written approval from the City Attorney.

Appendix B-1 Budget

Line #	Departmental Unit	FY 19 20	FY 20 21	FY 21 22	FY 22 23	FY 23 24	Budgeted Amount
		2/1/2020 - 6/30/2020	7/1/2020 - 6/30/2021	7/1/2021 - 6/30/2022	7/1/2022 - 6/30/2023	7/1/2023 - 1/31/2024	
1	Zuckerberg San Francisco General Hospital	\$ 8,635,585.00	\$ 23,005,207.00	\$ 25,535,779.00	\$ 28,344,714.00	\$ 18,353,202.00	\$ 103,874,487.00
2	Laguna Honda Hospital	\$ 5,281,070.00	\$ 14,068,777.00	\$ 15,616,342.00	\$ 17,334,139.00	\$ 11,223,855.00	\$ 63,524,183.00
3	Jail Health Services	\$ 1,352,565.00	\$ 3,603,242.00	\$ 3,999,598.00	\$ 4,439,553.00	\$ 2,874,610.00	\$ 16,269,568.00
4	Primary Care	\$ 872,945.00	\$ 2,325,537.00	\$ 2,581,346.00	\$ 2,865,294.00	\$ 1,855,278.00	\$ 10,500,400.00
5	Community Behavioral Health	\$ 3,091,665.00	\$ 8,236,200.00	\$ 9,142,182.00	\$ 10,147,822.00	\$ 6,570,715.00	\$ 37,188,584.00
6	Public Health Division	\$ 266,665.00	\$ 710,400.00	\$ 788,544.00	\$ 875,283.00	\$ 566,746.00	\$ 3,207,638.00
7		\$ 19,500,495.00	\$ 51,949,363.00	\$ 57,663,791.00	\$ 64,006,805.00	\$ 41,444,406.00	\$ 234,564,860.00
8					Sub Total (All Units)		\$ 234,564,860.00
9					FY 20 21 Pharmaceutical Innovation Initiatives		\$ 34,395,955.00
10					Subtotal of All Pharmaceuticals		\$ 268,960,815.00
11					Taxes (Over the Counter)		\$ 150,000.00
12					Sub Total		\$ 269,110,815.00
13					Contingency		\$ 30,535,486.00
14					Sub Total		\$ 299,646,301.00
15					Holdover Amount (Calculated based on the last 12 months of the contract)		\$81,736,690.00
16					Guaranteed Maximum Cost		\$ 381,382,991.00

Starting FY 20/21 11% annual increase to account for anticipated drug price inflation.

Line 9: HCV in Jail Health. Funding for such services are subject to budgetary approval. Emerging Specialty Drugs expected to be ready for use on patients over the course of the Agreement.

Line 11: Only Over the Counter (OTC) Drugs are taxable

Line 15: 20 % of the last 12 months of the contract (5 months of FY 22/23 and 7 months of FY 23/24) will give DPH 1 year of uninterrupted service to find an alternate vendor if needed. Holdover terms are outlined under section 2.2 of the contract. The holdover period shall be 2/1/2024 - 1/31/2025.

Appendix C
DPH Statement of Work

1. Terms

A. Contract Administrator:

In performing the Services hereunder, Distributor's designated representative shall report to David Woods, Contract Administrator for the City, or his / her designee.

B. Reports:

Distributor shall submit written reports on the progress of the Services as reasonably requested by the City. The format for the content of such reports shall be determined by the City. The timely submission of all reports may be 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.

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

C. Evaluation:

Distributor shall participate as reasonably requested with the City, State and/or Federal government in evaluative studies designed to show the effectiveness of Distributor's Services. Distributor agrees to meet the requirements of and participate in such evaluation program and management information systems of the City.

For contracts for the provision of services at San Francisco General or Laguna Honda Hospital and Rehabilitation Center, the evaluation program shall include agreed upon performance measures as specified in the Performance Improvement Plan and Performance Measure Grid which is presented in Attachment 1 to Appendix C. Performance measures are reported annually to the Zuckerberg San Francisco General performance improvement committees (PIPS and Quality Council) or the to the Administration Office of Laguna Honda Hospital and Rehabilitation Center.

The City agrees that any final written reports generated through the evaluation program shall be made available to Distributor within thirty (30) working days. Distributor 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:

Distributor shall possess 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 may 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.

F. Infection Control, Health and Safety:

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

(3) Distributor 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.

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

(5) Distributor 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.

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

G. RESERVED.

H. Acknowledgment of Funding: Reserved.

I. Hospital Policy 16.27:

It is the policy of Zuckerberg San Francisco General (ZSFG) to provide quality patient care and trauma services with compassion and respect, while maintaining patient privacy and safety. ZSFG is committed to providing reasonable opportunities for Health Care Industry Representatives (HCIRs), external representatives/vendors, to present and demonstrate their products and/or services to the appropriate ZSFG personnel. However, the primary objective of ZSFG is patient care and it is therefore necessary for all HCIRs to follow guidelines that protect patient rights and the vendor relationship. Therefore, all HCIR's that will come onto the campus of Zuckerberg San Francisco General Hospital must comply with Hospital Policy 16.27 "PRODUCT EVALUATION AND PHARMACEUTICAL SERVICES: GUIDELINES FOR SALES PERSONNEL, HEALTHCARE INDUSTRY REPRESENTATIVES, AND PHARMACEUTICAL COMPANY REPRESENTATIVES"

2. Description of Services

Distributor agrees to perform the following Services:

All written Deliverables, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

Detailed description(s) of services are listed in Appendix A, Pharmacy Distribution Services Supply Agreement.

Attachment 1 to Appendix C

**PERFORMANCE IMPROVEMENT PLAN
AND PERFORMANCE MEASURE GRID**

Contract Services

AIM: All ZSFG services provided through contractual agreement are provided safely and effectively for patient care and support services, annually.

Distributor Name	Services Provided	Measure Name	Metric (What data is being collected?)
McKesson Corporation	Pharmacy Distribution Services	Adjusted Fill Rate	McKesson to maintain an adjusted service level of at least █ % or higher. █ █ █ █ █ █ █ █ █
McKesson Corporation	Pharmacy	GPO Contract	Provide a quarterly update on GPO contracts to DOP to review current contracts loaded and or notification of new contracts.

McKesson Corporation		Quarterly business reviews to review quarterly and annual spend	Meet on a quarterly basis with McKesson representatives to review quarterly and annual spend. Provide data to measure against budget dollars for contract.
----------------------	--	---	--

Appendix D
Distributor's Certificate of Insurance

Appendix E
Business Associate Agreement
Reserved

Appendix F
Distributor's Sample Invoice

Appendix G

PUBLIC MEETING AND PUBLIC RECORDS DISCLOSURE PROCESS

Exhibit 1 to Each McKesson Distribution Agreement

1. **Distribution Agreements:** McKesson Corporation and McKesson Plasma and Biologics LLC (collectively “McKesson”) and the City, acting by and through its Department of Public Health (“Department”), have negotiated P-250 Agreements (each identified as the “Negotiated Agreement”), portions of which McKesson asserts constitute, contain or reveal valuable trade secrets or other proprietary and confidential information belonging to McKesson that is exempt from disclosure under the California Public Records Act and chapter 67 of the San Francisco Administrative Code (the “Sunshine Laws”).

2. **Redactions:** McKesson will provide the City with a redacted version of each Negotiated Agreement from which McKesson has removed information that it maintains is exempt from public disclosure under the Sunshine Laws (“Redacted Agreement”). The City agrees to not release any version of either Negotiated Agreement other than the Redacted Agreement in response to a public records request under the Sunshine Laws.

3. **Negotiated Agreement Review:** McKesson understands that each Negotiated Agreement is subject to full unredacted review by the City’s third-party Budget Analyst and the San Francisco Board of Supervisors (collectively “Board”). The City will inform the Board regarding the portions of each Negotiated Agreement that City has agreed to not release, as well as the requirements of this Exhibit 1.

4. **Records Request:** If the Department receives a public records request pertaining to McKesson, the Department will use its best efforts to notify McKesson of the Request and to provide McKesson with a description of the material that the Department deems responsive and the due date for disclosure (“Response Date”). If McKesson asserts that some or all of the material requested contains or reveals valuable trade secrets or other proprietary and confidential information belonging to McKesson 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 McKesson 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 McKesson’s material, McKesson shall defend, indemnify and save harmless City and its officers, agents and employees from any and all such third-party claims. Should McKesson fail to seek judicial relief on or before Response Date, the City shall proceed with the disclosure of responsive documents.

5. **Agreement not to Sue:** McKesson agrees that it will not sue the City for damages in connection with the disclosure by the City of information that McKesson 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.

6. Upon McKesson's signature, this Agreement is effective as of the date of the City's signature below.


CITY

MCKESSON CORPORATION

Date:

Date:

By: _____
Grant Colfax, MD
Director of Health
Department of Public Health

By:  9/24/19
Eugene Cavacini
Senior Vice President and Chief Operating Officer
McKesson Pharmaceutical Solutions and Services

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
Louise S. Simpson
Deputy City Attorney