

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

**340B Contract Pharmacy Services Agreement between
the City and County of San Francisco and Walgreen Co.**

This Agreement ("Agreement") is made the **first day of July 2016** in the City and County of San Francisco, State of California, by and between: **Walgreen Co., 104 Wilmot, MS-1446, Deerfield, IL 60015** hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, on behalf of the Department (as defined below) and those clinics identified in Section F of Appendix A-2 and listed on Appendix A-3 (collectively, the "Clinics"), attached hereto and incorporated herein by reference, hereinafter referred collectively referred to as the "City," acting by and through its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing." For purposes of clarity, the parties acknowledge and agree that all references to the "City" in this Agreement shall include the Department and the Clinics, as the context requires.

Recitals

WHEREAS, the Department of Public Health, San Francisco Health ("Department") qualifies for and participates in a federal drug discount program established under Section 340B of the Public Health Service Act that requires participating pharmaceutical manufacturers to extend discounted pricing to certain health care providers classified as covered entities;

WHEREAS, City is authorized: (i) to purchase prescription and non-prescription medications at reduced cost through Section 340B of the Public Health Service Act for outpatients of City Locations; and (ii) to contract with a licensed pharmacy to manage and dispense its 340B Drugs;

WHEREAS, a Request for Proposal ("RFP") was issued on June 6, 2013, and City selected Contractor as the highest qualified scorer pursuant to the RFP;

WHEREAS, City wishes to contract with Contractor to manage and dispense City's 340B Drugs pursuant to City's 340B Drug Program;

WHEREAS, Contractor agrees to manage and dispense City's 340B Drugs pursuant to the terms and conditions of this Agreement;

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

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number 41338-13/14 on July 21, 2014.

Now, THEREFORE, the parties agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of

City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement. No later than June 1st of each year during the term of this Agreement, City will provide Contractor with written notice of whether funds have been appropriated for the succeeding fiscal year. In the event that funds have been appropriated, such notice shall include the amount certified by the Controller for the succeeding fiscal year (or portion thereof) and the period for which such funds were certified.

THIS SECTION 1 CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Term of the Agreement. Subject to Section 1, the initial term of this Agreement shall be from the Effective Date (as defined below in Section 3 below) through June 30, 2021 (“Initial Term”), unless terminated earlier as provided herein. City shall have the right, in its sole discretion, to extend the term of this Agreement for five (5) additional one (1) year terms by providing written notice to Contractor within ninety (90) days of the end of the then current term. The parties agree that the optional one (1) year terms shall start and end as follows:

- Option 1: July 1, 2021 through June 30, 2022
- Option 2: July 1, 2022 through June 30, 2023
- Option 3: July 1, 2023 through June 30, 2024
- Option 4: July 1, 2024 through June 30, 2025
- Option 5: July 1, 2025 through June 30, 2026

The total duration of this Agreement, including the exercise of any options under this section, shall not exceed ten (10) years.

3. Effective Date of Agreement. This Agreement is effective as of July 1, 2016 (“Effective Date”).

4. Services Contractor Agrees to Perform. Contractor agrees to perform the services provided for in Appendices A-1 (340B Contract Pharmacy Services) and A-2 (Additional Services and Responsibilities of Contractor), attached hereto and incorporated by reference as though fully set forth herein.

5. Compensation.

a. Compensation shall be made in monthly payments as more fully described in Appendix A-1 (340B Contract Pharmacy Services) and Appendix B (Fee Schedule), attached hereto and incorporated herein by reference. In no event shall the total amount due from City to Contractor under this Agreement exceed **Nineteen Million Six Hundred Thousand Dollars (\$19,600,000)** during the Initial Term. A projected breakdown of amounts payable by City to Contractor each year during the term of this Agreement appears in Section 5 of Appendix B (Fee Schedule). No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by City, in its reasonable judgment, as being in all material respects in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation

provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

b. For purposes of clarity, the parties acknowledge and agree that “the amount due from City to Contractor under this Agreement” and “amounts payable by City to Contractor,” shall be the amount(s), if any, that City is required to pay Contractor each month pursuant to the terms of Section 4.2 of Appendix A-1 (340B Contract Pharmacy Services). For avoidance of doubt, “the amount due from City to Contractor under this Agreement” and “amounts payable by City to Contractor,” do not include amounts due from, or paid by, City to a third party to purchase 340B Drugs.

6. Guaranteed Maximum Costs. 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 City are not authorized to request, and City is not required to reimburse Contractor for, commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of City are not authorized to offer or promise, nor is 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.

7. Payment; Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. City agrees that invoices issued by Contractor in accordance with Section 4.1 of Appendix A-1 (340B Contract Pharmacy Services) are acceptable to City and the Controller. All amounts paid by City to Contractor shall be subject to audit by City according to the terms of this Agreement. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties".

8. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by City; (c) conspires to defraud City by getting a false claim allowed or paid by City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to City; or (e) is a beneficiary of an inadvertent submission of a false claim to City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to City within a reasonable time after discovery of the false claim.

9. Disallowance. If Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government because Contractor is suspended, debarred or otherwise excluded from participation in federal or state funded health care programs, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement. By executing this Agreement, Contractor certifies that Contractor is not currently suspended, debarred or otherwise excluded from participation in federal

assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material term of the Agreement.

10. Taxes. Except as otherwise provided in Appendix A-1 (340B Contract Pharmacy Services), payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

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

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

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

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

11. Payment Does Not Imply Acceptance of Work. The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay. The parties acknowledge and agree that Contractor is only providing services under this Agreement and Contractor is not providing any equipment, materials or components.

12. Qualified Personnel. Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor.

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

14. Independent Contractor; Payment of Taxes and Other Expenses.

a. Independent Contractor. Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor, or any relationship between the parties other than that of independent entities contracting solely for the purposes of effecting the provisions of this Agreement. Neither of the parties shall be construed to be the partner, co-venturer, or employee or representative of the other party. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. Payment of Taxes and Other Expenses. Should a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee. In the event that a relevant taxing authority notifies City that Contractor may be or is an employee of City for purposes of collection of any employment taxes, City shall immediately inform Contractor and agrees that Contractor may, in its sole discretion and at its own expense, take all steps necessary to appeal or otherwise object to or overturn such determination. City shall provide Contractor with all reasonably requested cooperation, information and assistance.

15. Insurance.

a. Contractor will self-insure or maintain at its sole expense, Commercial General Liability insurance with limits not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, and Professional Liability insurance with limits not less than \$5,000,000 per claim, and such other insurance as may be necessary to insure Contractor, its employees, and agents against any claim or claims for damages arising directly or indirectly in connection with Contractor's negligent acts, errors or omissions in connection with the performance of any services under this Agreement, and the use of any property or

facilities provided by Contractor. Contractor's insurance information is available at www.walgreens.com/insurance.

Field

b. Contractor shall obtain and maintain throughout the duration of this Agreement technology errors and omissions liability coverage with limits of \$1,000,000 per event, and \$2,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services to be provided under this Agreement and shall also provide coverage for the following risks:

- 1) Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information stored or transmitted in electronic form.
- 2) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks.
- 3) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

If coverage is maintained on a claims-made basis, Contractor shall maintain such coverage for an additional period of three (3) years following termination of this Agreement.

16. Indemnification.

Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor, or loss of or damage to property, arising from Contractor's negligent performance of or failure to perform any term or condition of this Agreement, 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 negligence or willful misconduct of City. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's reasonable costs of investigating any claims against City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually falls within this indemnification provision, even if the allegations may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter. Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other reasonable 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. Contractor shall also indemnify, defend and hold City harmless from all suits or claims or administrative proceedings for breaches of federal and/or State law regulating the use of Protected Information (as defined in Appendix E hereto) arising from Contractor's negligent performance of or failure to perform any term or condition of this Agreement, except where such breach is the result of the negligence or willful misconduct of City. In the event of concurrent negligence of City, its officers, employees and agents, and Contractor and its officers, employees and agents, the liability for any and all claims for injuries or damages to persons and/or property shall be apportioned under the California theory of comparative negligence.

17. INCIDENTAL AND CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL CONTRACTOR BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

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

19. Liquidated damages – *DELETED BY MUTUAL AGREEMENT OF THE PARTIES.*

20. Default; Remedies.

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

1) Either party fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

8.	Submitting False Claims; Monetary Penalties	37.	Drug-Free Workplace Policy
10.	Taxes	53.	Compliance with Laws
15.	Insurance	55.	Supervision of Minors
24.	Proprietary or Confidential Information of City and Contractor	57.	Protection of Private Information
30.	Assignment	58.	Graffiti Removal
			Appendix E: Business Associate Addendum

2) Either party fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of thirty (30) days after written notice thereof from the other party.

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

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

5) It is determined by the terminating party that the other party lacks any federal, state, or local license, permit, or approval, including, without limitation, certificate of need approval required for the services and operations contemplated by this Agreement or that such services and operations or the arrangements set forth in this Agreement may be inconsistent with, or subject a party to, potential negative consequences under any provision of federal or state law regulating the services contemplated by this Agreement or the arrangements between the parties as set forth herein.

b. On and after any Event of Default, the non-defaulting party shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement upon notice to the other party or to seek specific performance of all or any part of this Agreement. Both parties shall have the right to offset from any amounts due to the other party under this Agreement all damages, losses, costs or expenses incurred by the non-defaulting party as a result of such Event of Default.

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

21. Termination for Convenience.

a. Either party shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause upon three hundred sixty-five (365) calendar days' prior written notice to the other party. The notice shall specify the date on which termination shall become effective.

b. Upon delivery of notice of termination pursuant to this Section 21, each party shall commence and perform, with diligence, all actions reasonably necessary to effect the termination of this Agreement on the date specified.

22. Rights and Duties upon Termination or Expiration.

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

8.	Submitting False Claims; Monetary Penalties	24.	Proprietary or Confidential Information of City and Contractor
9.	Disallowance	27.	Works for Hire
10.	Taxes	28.	Audit and Inspection of Records
11.	Payment Does Not Imply Acceptance of Work	48.	Modification of Agreement
13.	Responsibility for Equipment	50.	Agreement Made in California; Venue
14.	Independent Contractor; Payment of Taxes and Other Expenses	51.	Construction
15.	Insurance	52.	Entire Agreement

16.	Indemnification	56.	Severability
17.	Incidental and Consequential Damages	57.	Protection of Private Information
18.	Liability of the City		And Item 1 of Appendix D attached to this Agreement

Subject to the immediately preceding sentence, upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect.

b. Effect of Termination. Upon termination of this Agreement, Contractor will provide City with an invoice detailing those drugs dispensed under the 340B Drug Program which have not been replenished. City will reimburse Contractor for those pharmaceutical products at the Inventory Replenishment Rates within sixty (60) days of receipt of the invoice. Each party will reimburse the other party any amounts due upon termination of this Agreement. Termination will have no effect upon the rights or obligations of the parties arising out of any transactions occurring prior to the effective date of such termination.

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

24. Proprietary or Confidential Information of City and Contractor.

a. Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

b. City understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, City may have access to private or confidential information which may be owned or controlled by Contractor and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Contractor. City agrees that all information disclosed by Contractor to City shall be held in confidence and used only in performance of the Agreement. City shall exercise the same standard of care to protect such information as a reasonably prudent party would use to protect its own proprietary data.

c. In the event that information regarding Contractor or this Agreement is requested under the San Francisco Sunshine Ordinance or the California Public Records Act, City shall promptly notify Contractor and City agrees that Contractor may, in its sole discretion and at its own expense, resist disclosure.

d. Contractor shall maintain the usual and customary records for persons receiving the services contemplated under this Agreement. Contractor agrees that all private or confidential information concerning persons receiving services under this Agreement, whether disclosed by City or by the individuals themselves, shall be held in the strictest confidence, shall be used only in performance of this Agreement, and shall be disclosed to third parties only as authorized by law. Contractor understands and

agrees that this duty of care shall extend to confidential information contained or conveyed in any form, including but not limited to documents, files, patient or client records, facsimiles, recordings, telephone calls, telephone answering machines, voice mail or other telephone voice recording systems, computer files, e-mail or other computer network communications, and computer backup files, including disks and hard copies. City reserves the right to terminate this Agreement for default if Contractor violates the terms of this section.

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

City:	Office of Contract Management and Compliance San Francisco Department of Public Health 101 Grove Street, Room 307 San Francisco, California 94102	FAX: (415) 554-2555 e-mail: Jacquie.Hale@sfdph.org	Field
And:	David Woods, Pharm.D. Chief Pharmacy Officer San Francisco General Hospital 2789 25th St, 2nd floor, #2010 San Francisco, CA 94110	FAX: (415) 206-2377 e-mail: david.woods@sfdph.org	Field
Contractor :	Walgreen Co. 104 Wilmot, MS-1446 Deerfield, IL 60015 Attn: 340B Legal (KDD)	FAX: (847) 315-2645 e-mail: HealthLawLegalNotices@walgreens.com	Field

Any notice of default must be sent by registered mail.

26. Ownership of Results – ~~DELETED BY MUTUAL AGREEMENT OF THE PARTIES.~~

27. Works for Hire – ~~DELETED BY MUTUAL AGREEMENT OF THE PARTIES.~~

28. Audit and Inspection of Records.

a. Audit by DHHS or Manufacturer. Both parties understand that, under Section 340B(a)(5)(C) of the Act, records that directly pertain to compliance with the Act are subject to audit by Manufacturer and the DHHS. The parties further understand that DHHS has published guidelines for such audits. Each party agrees to cooperate with such audits and to comply with applicable provisions of the audit guidelines and amendments thereto that may be published from time to time. Contractor and City understand and agree that a copy of this Agreement will be provided, upon request, to Manufacturer; provided that Manufacturer has signed a purchasing agreement with DHHS. In the event either party hereto receives such a request, it shall immediately inform the other party. City acknowledges and agrees that Contractor may, in its sole discretion, delete and/or redact all Contractor confidential and proprietary information set forth herein prior to the release of this Agreement.

b. City Records. City shall maintain customary records relating to its responsibilities under this Agreement, including but not limited to eligibility records for patients and payment information regarding the services provided by Contractor hereunder, for the periods required by law and shall make such records available to Contractor.

c. Contractor Records. Contractor shall maintain customary business and pharmacy records relating to its responsibilities under this Agreement, including without limitation prescription dispensing records regarding Eligible Patients, payments received from Eligible Patients and City, and 340B Drug ordering, receiving, and dispensing information (“Contractor Records”) in an accessible and auditable form, separate from the records of Contractor’s other operations, and in full compliance with all applicable state and federal laws, rules and regulations. Contractor Records shall be maintained by Contractor for such period as is required by applicable law. Notwithstanding the foregoing, unless otherwise provided for elsewhere in this Agreement or required by federal and state laws and regulations, Contractor Records shall not include Contractor’s usual and customary pricing data, any other financial and administrative records not related to Contractor responsibilities under this Agreement, or any proprietary or confidential information related to Private Insurers.

d. City Audits. During normal working hours and upon fifteen (15) business days advance written notice to the address set forth in Section 25 of this Agreement, below, Contractor shall permit City access to review Contractor Records in order to confirm that no diversion of 340B Drugs to non-Eligible Patients and no duplicate discounts have occurred (“Audit”) and also the right to make photocopies of Contractor Records. Contractor acknowledges that City may contract with an independent outside auditor with experience auditing pharmacies to conduct the Audit. City shall provide Contractor with advance notice of the identity of any such independent outside auditor and shall not utilize any such auditor to which Contractor has reasonable objection. City shall conduct no more than one Audit per calendar year. The parties acknowledge and agree that in no event shall Audit findings or conclusions be based upon either statistical sampling or extrapolation. Nothing in this paragraph shall be construed to prevent or limit: (i) an audit originated by Manufacturer, DHHS, HRSA, or as otherwise required by law; or (ii) review of the Report by City.

e. Compliance Violations. In the event that City determines that 340B Drug diversion or duplicate discounts have occurred or that it is otherwise unable to comply with its responsibility to ensure compliance with the 340B Drug Program, then it must take immediate remedial action to assure compliance and notify OPA regarding such compliance problems and actions taken to remedy those problems.

29. Subcontracting. Contractor will not subcontract the performance of 340B Pharmacy Services without the prior written consent of City; provided, however, that Contractor may subcontract the performance of any other obligation agreed to be performed by Contractor hereunder to a related entity, contractor, or subcontractor, provided that as a condition precedent to such subcontract, all services or other activities performed by such contractor or subcontractor shall be consistent with and comply with Contractor’s obligations under this Agreement. For purposes of clarity, the parties acknowledge and agree that the term “subcontract(s)” as used in this Agreement means only those contracts that Contractor enters into with a third party for the sole purpose of fulfilling Walgreens’ obligations arising from this Agreement; and the term “subcontractor” means any third party that enters into a subcontract with Contractor.

30. Assignment. The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement; provided, however, that Contractor may assign this Agreement in whole or in part to any direct or indirect parent,

subsidiary or affiliate without the consent of City, with at least sixty (60) days' notice to City. In the event that City does not receive notice of such assignment, City shall not be responsible for late payments.

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

32. Consideration of Criminal History in Hiring and Employment Decisions.

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

Field

b. The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco, and 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.

c. Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

d. Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received based on an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

e. Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 32(d), above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

f. Contractor or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under

this Agreement, that the Contractor or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

g. Contractor and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Contractor or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

h. Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

33. Local Business Enterprise Utilization; Liquidated Damages.

a. The LBE Ordinance. Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. Compliance and Enforcement

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

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

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

34. Nondiscrimination; Penalties.

a. Contractor Shall Not Discriminate. City has waived application of Chapters 12B and 12C of the San Francisco Administrative Code to Contractor.

b. Subcontracts. City has waived application of Chapters 12B and 12C of the San Francisco Administrative Code to Contractor.

c. Nondiscrimination in Benefits. City has waived application of Chapters 12B and 12C of the San Francisco Administrative Code to Contractor.

d. Condition to Contract. City has waived application of Chapters 12B and 12C of the San Francisco Administrative Code to Contractor.

e. Incorporation of Administrative Code Provisions by Reference. City has waived application of Chapters 12B and 12C of the San Francisco Administrative Code to Contractor.

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

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

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

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

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

this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

40. Sunshine Ordinance. In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request. Notwithstanding the foregoing, in the event City receives a request involving this Agreement or a record or business information from Contractor, it shall immediately inform Contractor and agrees that Contractor may, in its sole discretion and at its own expense, resist disclosure. Nothing in this paragraph shall be construed to prevent either party from providing a copy of this Agreement to Manufacturer or DHHS upon their request.

41. Public Access to Meetings and Records – *DELETED BY MUTUAL AGREEMENT OF THE PARTIES.* (Contractor is not a non-profit corporation)

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

43. Requiring Minimum Compensation for Covered Employees.

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

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

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

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

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

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

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

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

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

44. Requiring Health Benefits for Covered Employees. City has waived application of the requirements of the Health Care Accountability Ordinance to Contractor.

45. First Source Hiring Program.

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

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

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

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

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

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

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

6) Set the term of the requirements.

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

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

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

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

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

e. Liquidated Damages. Contractor agrees:

1) To be liable to City for liquidated damages as provided in this section;

2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

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

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

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

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

(b) In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year; therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to City by the failure of a contractor to comply with its first source referral contractual obligations.

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

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

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

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

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

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

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

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

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

52. Entire Agreement. This Agreement sets forth the entire agreement between the parties, and supersedes all other oral or written agreements between the parties relating to the subject matter of this Agreement. This contract may be modified only as provided in Section 48, "Modification of Agreement."

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

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

55. Supervision of Minors. In accordance with California Public Resources Code Section 5164, if Contractor, or any subcontractor, is providing services at a City park, playground, recreational center or beach, Contractor shall not hire, and shall prevent its subcontractors from hiring, any person for employment or a volunteer position in a position having supervisory or disciplinary authority over a minor if that person has been convicted of any offense listed in Public Resources Code Section 5164. In addition, if Contractor, or any subcontractor, is providing services to City involving the supervision or discipline of minors, Contractor and any subcontractor shall comply with any and all applicable requirements under federal or state law mandating criminal history screening for positions involving the

supervision of minors. In the event of a conflict between this section and Section 32, "Consideration of Criminal History in Hiring and Employment Decisions," of this Agreement, this section shall control.

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

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

58. Graffiti Removal - Reserved.

59. Food Service Waste Reduction Requirements. Effective June 1, 2007 Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

60. Slavery era disclosure – *DELETED BY MUTUAL AGREEMENT OF THE PARTIES.*

61. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, 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.

62. Dispute Resolution Procedure - *DELETED BY MUTUAL AGREEMENT OF THE PARTIES.*

63. Additional Terms. Appendixes A - F are attached as additional terms to this Agreement and are incorporated herein.

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

65. Access to Books and Records. As required by law and upon the written request of the Secretary of Health and Human Services, the Comptroller General of the Government Accounting Office, or their authorized representatives, Contractor shall make available all contracts, books, documents and records necessary to verify the nature and extent of the costs of providing services under this Agreement. Such inspection shall be available for a period of four (4) years after the furnishing of services hereunder. If Contractor carries out any of the duties of this Agreement through a subcontract with a related organization with a value of \$10,000 or more over a twelve (12) month period, Contractor agrees to include this requirement in any such subcontract. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by Client or Contractor by virtue of this Agreement.

[Remainder of Page Intentionally Blank; Signature Page Follows Immediately]

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

CITY

CONTRACTOR

Recommended by:

Walgreen Co.

Barbara A. Garcia, MPA / Date
Director of Health

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

Approved as to Form:

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

Dennis J. Herrera
City Attorney

By: _____ / Date
Kathy Murphy
Deputy City Attorney

Scott Schuler / 4.29.11
Divisional Vice President, Contracting Date
1417 Lake Cook Road, 3rd Floor
Deerfield, IL 60015

Approved:

City vendor number: 46703

Jaci Fong Director / Date
Office of Contract
Administration and Purchaser



Health Tech 4.26.16

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C	Insurance Waiver
D	Additional Term
E	Business Associate Addendum
F	Emergency Response

Appendix A
Services to be Provided by Contractor

1. Terms

A. Contract Administrator:

In performing the services hereunder, Contractor shall report to David Woods, Contract Administrator for City, or his / her designee.

B. Possession of Licenses/Permits:

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

C. Adequate Resources:

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

D. Infection Control, Health and Safety:

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

(2) Contractor must demonstrate personnel policies/procedures for protection of staff and clients from other communicable diseases prevalent in the population served.

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

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

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

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

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

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

E. Acknowledgment of Funding:

Contractor agrees to acknowledge the San Francisco Department of Public Health in any printed material or public announcement describing the San Francisco Department of Public Health-funded Services. Such documents or announcements shall contain a credit substantially as follows: "This program/service/activity/research project was funded through the Department of Public Health, City and County of San Francisco."

2. Description of Services

Detailed descriptions of the services to be performed under this Agreement are included in the following Appendices to this Agreement:

Appendix A-1: 340B Contract Pharmacy Services

Appendix A-2: Additional Services and Responsibility of Contractor

Appendix A-1
340B Contract Pharmacy Services

To the extent there are any conflicts between the terms of this Appendix A-1 and the Agreement, the terms of this Appendix A-1 shall control.

1. DEFINITIONS

- 1.1. “**340B Drugs**” means prescription outpatient pharmaceutical products prescribed by an authorized medical provider affiliated with City, including Legend Drugs. All 340B Drugs shall be subject to the limiting definition of “covered outpatient drug” set forth in Section 1927(k) of the Social Security Act, 42 USC 1396r-8(k)(2) & (3), which is incorporated as the applicable definition for Section 340B of the Public Health Service Act (the “**Act**”).
- 1.2. “**340B Drug Program**” means City’s program to purchase and either dispense or arrange for the dispensing of 340B Drugs to Eligible Patients in accordance with Section 340B of the Act.
- 1.3. “**ASN**” means the Supplier’s advance shipment notice.
- 1.4. “**Average Wholesale Price**” or “**AWP**” means the Average Wholesale Price for each drug product in the database as defined by MediSpan or another nationally recognized source used by Contractor.
- 1.5. “**Contracted Rate**” means the contracted and/or agreed upon reimbursement rate between Contractor and the applicable Private Insurer and includes any Eligible Patient co-pay and other amounts that may be due from an Eligible Patient or arise out of the coordination of benefits, as applicable. The Contracted Rate is proprietary and confidential information; therefore, Contractor will not disclose the Contracted Rate to City.
- 1.6. “**City Location(s)**” means those individual City Locations referenced in Appendix A-3 (City Locations and Retail Pharmacy Locations) which are authorized as Covered Entities to contract with a licensed pharmacy to manage and dispense 340B Drugs.
- 1.7. “**DHHS**” means the United States Department of Health and Human Services.
- 1.8. “**Eligible Patient(s)**” means those City outpatients who City determines are eligible to purchase and/or receive 340B Drugs from City Locations, subject to the limiting definition of “Patient” set forth in 61 Federal Register 55156 (1996), as the same may be modified or amended. For purposes of this Agreement, City patients who are Medicaid beneficiaries and for whom claims for pharmaceuticals are reimbursable by a state fee-for-service Medicaid program, are expressly excluded from this definition.
- 1.9. “**HRSA**” means the Health Resources and Services Administration.
- 1.10. “**Inventory Replenishment Rate**” means the amount due Contractor for each 340B Drug dispensed by Contractor but for which Contractor does not receive replenishment from the Supplier. The Inventory Replenishment Rate will be determined in accordance with Section 3 of Appendix B (Fee Schedule).
- 1.11. “**Legend Drug(s)**” means those drugs which, by federal law can be dispensed only pursuant to a prescription and which are required to bear the legend “Caution – Federal law prohibits dispensing without prescription.”

- 1.12. “**Manufacturer**” means any pharmaceutical manufacturer of 340B Drugs purchased by City and delivered to Contractor via Supplier pursuant to the terms of this Agreement.
- 1.13. “**NDC-11**” means a medication’s unique 11-digit number containing: (i) the labeler code assigned by the Food and Drug Administration; (ii) the product code; and (iii) the package size of the pharmaceutical product.
- 1.14. “**Non-Eligible 340B Drugs**” means drugs (based upon the NDC-11) that are not a 340B Drug, on the 340B Price File, and/or eligible for the 340B Drug Program.
- 1.15. “**OPA**” means the Office of Pharmacy Affairs.
- 1.16. “**POAck**” means the Supplier’s purchase order acknowledgement.
- 1.17. “**Prescriber List**” means the list of prescribers eligible to write prescriptions for 340B Drugs under the terms of this Agreement and the 340B Drug Program.
- 1.18. “**Price File**” means the list of 340B Drugs and associated pricing available from the Supplier.
- 1.19. “**Private Insurer**” means the Managed Medicaid, Medicare, and/or a private third-party insurer responsible: (i) for an Eligible Patient’s prescription coverage; and (ii) to reimburse Contractor the Contracted Rate for pharmacy services.
- 1.20. “**Program Eligibility Card**” means the card that City will provide to each Eligible Patient whose prescriptions are not reimbursable by a Private Insurer. The following information will be included on each Program Eligibility Card: the Eligible Patient’s medical record number and first and last name; appropriate BIN and PCN numbers; and, other information agreed to by the parties.
- 1.21. “**Report**” means the report made available by Contractor to City via Contractor’s online reporting and tracking system that describes activity pertaining to Contractor’s provision of 340B Pharmacy Services and Inventory Maintenance Services hereunder and includes, at a minimum: (i) City’s account number; (ii) a listing of each 340B-priced pharmaceutical ordered by Contractor; (iii) a description of information contained on each POAck received for each 340B-priced pharmaceutical product ordered by Contractor; (iv) a description of information contained on each ASN; and (v) a listing of all 340B Drugs actually received by Contractor. Availability of the Report is conditioned upon Supplier providing EDI data (Electronic Data Interface) to Contractor during the applicable Report period.
- 1.22. “**Retail Pharmacy**” means the specific retail pharmacy location(s) referenced in Appendix A-3 (City Locations and Retail Pharmacy Locations). Contractor shall provide City with written notice of any change in the specific retail pharmacy locations through which Contractor manages and dispenses medications pursuant to City’s 340B Drug Program. The notice shall be accompanied by an updated Appendix A-3 (City Locations and Retail Pharmacy Locations) reflecting such change(s), and shall identify the effective date of the change(s), which shall not be less than thirty (30) days following the issuance of the notice. Unless City provides Contractor with written notice of objection to the change(s) prior to the effective date specified in the notice, the term “Retail Pharmacy” shall be deemed to refer to the pharmacy locations listed on the updated Appendix A-3 (City Locations and Retail Pharmacy Locations) as of that effective date and City shall cooperate with Contractor in posting the revised list of Retail Pharmacies with HRSA. For purposes of clarity, the parties acknowledge and agree that the Retail Pharmacy locations listed in Appendix A-3 (City Locations and Retail Pharmacy) are contract pharmacies for purposes of HRSA’s

contract pharmacy guidelines (75 Federal Register 10272 (2010)), and as such they may be utilized to manage and dispense medications pursuant to City's 340B Drug Program.

1.23. "**Section 340B**" means Section 340B of the Act.

1.24. "**Slow Moving Drug**" means a 340B Drug that has been dispensed by Contractor but because the quantity of 340B Drug dispensed is less than a full package size, Contractor is unable to order replacement pharmaceutical products from the Supplier within the earlier of: (i) ninety (90) days from the date the 340B Drug was last dispensed by any Retail Pharmacy location; or (ii) one hundred eighty (180) days from the date that the 340B Drug was initially dispensed by any Retail Pharmacy location.

1.25. "**Supplier**" means the pharmaceutical manufacturer, supplier, or drug wholesaler that has entered into a written agreement with City to provide 340B Drugs to Contractor via a ship-to, bill-to arrangement, and also to provide reports, ASNs, POAck and any other information set forth herein.

1.26. "**Tax**" means any sales tax, imposition, assessment, excise tax or other government levied amount based on Contractor's retail sales of prescriptions to City's patients either on gross revenues or by transaction, whether such tax is designated a sales tax, gross receipts tax, retail occupation tax, value added tax, health care provider tax, transaction privilege tax, assessment, pharmacy user fee, or charge otherwise titled or styled. It includes any tax in existence or hereafter created whether or not the bearer of the tax is the retailer or consumer.

1.27. "**Usual and Customary Charge**" means the amount charged to a cash customer by the Retail Pharmacy at the time of dispensing for the Non-Eligible 340B Drug prescription exclusive of sales tax or other discounts claimed.

2. THE CITY'S RESPONSIBILITIES

2.1. Eligibility Verification. City prescribers on the Prescriber List will provide all Eligible Patients with a valid prescription as required by law which will contain, but not necessarily be limited to, the applicable City Location name, address and identification number, the eligible prescriber's name, and the Eligible Patient's full name. The prescription must be written or sent to Contractor by an individual on the Prescriber List who prescribed the pharmaceutical product as a result of seeing the Eligible Patient at a City Location. City will also provide each Eligible Patient whose prescriptions are not reimbursable by a Private Insurer with a Program Eligibility Card. In addition, City will transmit to Contractor, or an entity designated by Contractor, (i) an electronic file of City's patients that contains the data elements agreed to by the parties (the "Patient File"); (ii) the Prescriber List; and (iii) other information as agreed to by the parties (collectively, "Eligibility Information"). City will (i) update the Patient File at a minimum of one time each day via electronic interface; and (ii) provide an updated Prescriber List to Contractor on a monthly basis. The prescription, Program Eligibility Card (if applicable), and Eligibility Information provided by City will together establish eligibility and serve as evidence of City's authorization for Eligible Patients to receive 340B Drugs ("**Authorization**"). City and Contractor agree to the terms of the Business Associate Addendum attached to the Agreement as Appendix E, in order to support the Authorization process described in this Section 2.1.

2.2. Supplier. City acknowledges and agrees that establishing a successful replenishment process with the Supplier is essential to this Agreement and Contractor's provision of 340B Pharmacy Services and Inventory Maintenance Services. City will use best efforts to establish and maintain a Supplier arrangement agreeable to Contractor. Concurrent with the Effective Date or as soon as reasonably practicable thereafter, City shall provide Contractor with written notice of the identity of the Supplier. City shall not utilize any

Supplier to which Contractor reasonably objects. In the event that at any time during the term of this Agreement Contractor is unable to successfully place an order with Supplier for replacement 340B Drugs or reasonably believes such orders shall not be replenished by Supplier, Contractor shall not be obligated to perform its obligations under this Agreement, including its obligations to provide 340B Pharmacy Services or Inventory Maintenance Services (except with respect to any 340B Drugs already dispensed by Contractor), until such time as Contractor is able to place a successful order for replenishment.

2.3. Orders and Payment to Supplier. City shall purchase 340B Drugs through a written contract with Supplier and will ensure that Supplier: (i) bills City for such 340B Drugs; and (ii) ships such 340B Drugs to the applicable Retail Pharmacy. The parties further agree that:

- 2.3.1. For each 340B Drug dispensed that reaches depletion at a full package size, Contractor will order from Supplier (on behalf of City) replacement 340B Drugs with the same NDC-11 as the 340B Drug dispensed. City, through Supplier, will ensure that such replacement 340B Drugs are delivered by Supplier to the applicable Retail.
- 2.3.2. City shall promptly review the Report and notify Contractor of any discrepancies between the information contained on the Report and the amount billed to City by the Supplier. Upon request from Contractor, City will promptly provide Contractor with copies of Supplier invoices pertaining to 340B Drugs received by Contractor.
- 2.3.3. City will establish account numbers with Supplier for each Retail Pharmacy (or, upon prior written consent from Contractor, fewer account numbers) and otherwise ensure that each such location may order and receive deliveries of replenishment 340B Drugs from Supplier.
- 2.3.4. City will make timely payments to Supplier in accordance with the terms of City's written agreement with Supplier.
- 2.3.5. City will hold title to replacement 340B Drugs from the time Supplier fills an order from Contractor made on behalf of City until the time that Contractor takes delivery of such drugs at the applicable Retail Pharmacy, at which time title shall pass to Contractor.

2.4. Prescriber List and Price File. City will provide Contractor with the Prescriber List on a monthly basis. Contractor will endeavor to obtain the Price File from Supplier on a monthly basis. City acknowledges and agrees that: (i) if for any reason Contractor is unable to obtain the Price File from Supplier, City will provide the Price File to Contractor upon request from Contractor; and (ii) Contractor may rely on all information set forth on any Price File that Contractor receives from Supplier or any Prescriber List that Contractor receives from City. City will provide Contractor with an updated Prescriber List and/or Price File ten (10) days in advance of any modifications thereto. Consistent with Walgreens' customary business practices, modifications to the Price File will be implemented within fifteen (15) business days following receipt by Walgreens. Modifications to the Prescriber File will be implemented as promptly as is commercially practicable. In the event that City fails to comply with the requirements of this Section 2.4, Contractor will not retroactively adjust claims except to avoid diversion.

2.5. Changes with Supplier or Program Design. City will notify Contractor at least one hundred twenty (120) calendar days prior to any change in the Supplier used to provide 340B Drugs hereunder and at least sixty (60) calendar days prior to any changes to the amount that Contractor shall collect at the time of dispensing from each Eligible Patient whose prescription is not reimbursable by a Private Insurer. In the event City fails to notify Contractor of a change in Supplier as required herein: (i) City will reimburse Contractor in accordance with the Usual and Customary Charge for any services or pharmaceuticals provided by Contractor after the effective date of such change; and (ii) Contractor will not reverse any claim or make adjustments to its Invoices due to changes in the Supplier except to avoid diversion.

- 2.6. Patient Choice. City will inform Eligible Patients that they are free to choose a pharmacy provider.
- 2.7. Compliance with Laws. City agrees to comply with applicable federal and state laws and regulations. Such compliance shall include establishing appropriate control procedures to ensure that only Eligible Patients receive 340B Drugs from City's authorized 340B pharmacy locations.
- 2.8. Product Warranty. Upon request from Contractor and to the extent it is reasonably able to do so, City shall pass through to Contractor all applicable benefits under any and all manufacturer warranties and indemnification obligations with respect to any merchandise which Contractor receives to replenish its inventory of 340B Drugs dispensed to Eligible Patients. Upon request from Contractor, City will, for the benefit of City and Contractor, obtain from the Supplier a certificate of insurance for product liability, continuing guarantee and indemnification for 340B Drugs. City will use commercially reasonable efforts to ensure that the Supplier obtains from all merchandise manufacturers an assumption of responsibility and the defense and indemnification of City and Contractor in connection with 340B Drugs, the packaging thereof, and any related materials for third party claims made against City and Contractor. In addition, City will use commercially reasonable efforts to ensure the Supplier complies with the applicable rules and regulations as promulgated by the U.S. Food and Drug Administration, and any other applicable federal, state and local laws and regulations in effect as of the Effective Date of this Agreement or as enacted or adopted during the term hereof, with respect to title and transfers thereof to the merchandise.
- 2.9. Approvals. City represents and warrants that it has received all necessary approvals of its 340B Drug Program and this Agreement from the applicable State Board of Pharmacy and as otherwise required by applicable laws and regulations. City agrees to execute any documents Contractor deems reasonably necessary to effectuate the terms of this Agreement, including the provision of 340B Pharmacy Services and Inventory Maintenance Services, consistent with applicable law.
- 2.10. Accessibility. All electronic files or protocols that City provides to Walgreens pursuant to this Agreement must be delivered in a format(s) accessible to Walgreens. Such files include, but are not limited to, historical claim files, and files in support of PARs (as defined in Section B6 of Appendix A-2) or other clinical program requirements.

3. CONTRACTOR'S SERVICES AND RESPONSIBILITIES

- 3.1. 340B Pharmacy Services. Upon receipt of Authorization, Contractor shall render to Eligible Patients all professional advice and comprehensive pharmacy services customarily provided by it to its patients or as otherwise required by law ("**340B Pharmacy Services**"). Contractor agrees to render 340B Pharmacy Services as herein provided in accordance with the rules and regulations of the applicable State Board of Pharmacy and all applicable federal laws and regulations. It is expressly understood that relations between an Eligible Patient and Contractor shall be subject to the rules, limitations, and privileges incident to the pharmacy-patient relationship. Contractor shall be solely responsible, without interference from City or its agents to said Eligible Patient for pharmaceutical advice and service, including the right to refuse to serve any individual where such service would violate pharmacy ethics or any pharmacy laws or regulations.
- 3.2. Inventory Maintenance Services. Contractor shall provide the 340B Drug inventory maintenance services set forth herein with respect to City ("**Inventory Maintenance Services**"). Each 340B Drug shall be dispensed from a Retail Pharmacy's customarily maintained non-340B-priced inventory at the 340B price and shall be replenished with 340B-priced inventory with the same NDC-11 as the drug dispensed. The Inventory Maintenance Services provided by Contractor hereunder will include the following:

- 3.2.1. In accordance with Section 2.3 of this Appendix A-1, including sub-parts, for each 340B Drug that reaches depletion at a full package size, Contractor will order 340B Drugs from the Supplier on behalf of the applicable City Location in order to replenish the 340B Drugs dispensed to Eligible Patients by Contractor.
- 3.2.2. Contractor shall promptly notify City in the event Contractor cannot or does not receive 340B Drugs at the NDC-11 level replenishment from the Supplier for a period greater than ninety (90) calendar days from the original date of an order fulfillment attempt by the Supplier (“**Overdue Drug**”). City will reimburse Contractor the Inventory Replenishment Rate for any Overdue Drug dispensed prior to the date of Contractor’s notice. Following notice by Contractor, Contractor may block the dispensing of Overdue Drugs and/or require City to remove Overdue Drugs from the Price File or discontinue prescribing Overdue Drugs for their 340B Drug Program. In the event a City prescriber writes a prescription for an Overdue Drug after the date of Contractor’s notice, City acknowledges and agrees such prescription shall be considered a Non-Eligible 340B Drug and City will reimburse Contractor the Inventory Replenishment Rate.
- 3.2.3. Following notice by Contractor, Contractor may block the dispensing of any 340B Drugs on the Price File that Contractor determines it is unable to manage and dispense due to logistical and/or operational constraints (“**Blocked Drug**”). In addition, Contractor may require City to remove Blocked Drugs from the Price File or discontinue prescribing such drugs for their 340B Drug Program. City acknowledges that any 340B Drugs dispensed prior to becoming a Blocked Drug shall be subject to the Slow Moving Drug replenishment process. In the event a City prescriber writes a prescription for a Blocked Drug after the date of Contractor’s notice, City acknowledges and agrees such prescription shall be considered a Non-Eligible 340B Drug and Contractor may collect the Usual and Customary Charge from the patient.
- 3.2.4. City will reimburse Contractor the Inventory Replenishment Rate for Slow Moving Drugs.

3.3. Tracking System. Contractor will maintain an electronic tracking system that is capable of tracking 340B Drugs received from the Supplier, preventing the diversion of 340B Drugs to individuals who are not Eligible Patients and verifying that such diversion has not occurred. The tracking system shall be able to provide comparisons of Eligible Patient prescriptions and dispensing records and a comparison of 340B Drug purchasing and dispensing records. Upon reasonable request by City and no more than once annually, Contractor will permit City or its duly authorized representative, in accordance with Section 28.d of the Agreement, to have reasonable access to the tracking system in order to review the efficacy of such tracking system. City acknowledges and agrees that any such review shall be limited to Contractor’s Records (as defined in Section 28.c of the Agreement). Contractor will reasonably cooperate with City to address any potential irregularities detected and will make adjustments to the tracking system that are reasonably necessary to prevent diversion of 340B Drugs to individuals who are not Eligible Patients.

3.4. Withholding of Contractor Services. Notwithstanding any provision to the contrary, City acknowledges and agrees that Contractor may withhold dispensing of a 340B Drug to an Eligible Patient for good cause, including but not necessarily limited to, the Eligible Patient’s failure to pay for services rendered (e.g., patient payment responsibility amounts); requests by Eligible Patient for quantities of drugs in excess of prescribed quantities or refill limitations; or where, in the professional judgment of the dispensing pharmacist, the prescription should not be filled.

3.5. Reconciliation. Contractor will conduct a monthly reconciliation of 340B Drugs dispensed against those 340B Drugs received by Contractor (“**Reconciliation**”). Reconciliation shall only apply with respect to pharmaceuticals that have reached full package size and for which Contractor has or should have received replenishment from the Supplier. Reconciliation shall include the following:

- 3.5.1. *Excess Replenishment:* In the event Contractor determines that the quantity of 340B Drugs provided to Contractor exceeds the quantity of 340B Drugs dispensed to Eligible Patients hereunder, Contractor will either: (i) adjust the virtual inventory so that such excess is applied against future 340B Drug prescriptions dispensed hereunder; or (ii) reimburse City for such drugs in accordance with the 340B Drug price as set forth on the Price File and if Contractor determines that the 340B Drug price as set forth on the Price File is less than the amount the Supplier would charge Contractor for the same NDC-11 at non-340B Drug Program rates, Contractor will also reimburse the Supplier the difference between such amounts.
- 3.5.2. *Deficient Replenishment:* In the event Contractor determines that the quantity of 340B Drugs provided to Contractor is less than the quantity of 340B Drugs dispensed to Eligible Patients hereunder, Contractor will notify City and City will instruct the Supplier to provide 340B Drugs to Contractor. If, for whatever reason, the Supplier is unable to provide 340B Drugs with the same NDC-11 as the 340B Drug ordered hereunder, City will reimburse Contractor for said drugs at the Inventory Replenishment Rate.
- 3.5.3. *340B Drugs Dispensed to non-Eligible Patient Without a Private Insurer:* In the event Contractor determines 340B Drugs have been dispensed to non-Eligible Patients without a Private Insurer, Contractor will either: (i) adjust the virtual inventory so that such excess is applied against future 340B Drug prescriptions dispensed hereunder; or (ii) reimburse Supplier the difference between the 340B Drug price as set forth on the Price File and the amount the Supplier would charge Contractor for the same NDC-11 at non-340B Drug Program rates. Such pharmaceutical shall be considered a Non-Eligible 340B Drug and City shall reimburse Contractor the difference between the Usual and Customary Charge and any amounts Contractor has already received with respect to such Non-Eligible 340B Drug.
- 3.5.4. *340B Drugs Dispensed to non-Eligible Patient with a Private Insurer:* In the event Contractor determines 340B Drugs have been dispensed to non-Eligible Patients with a Private Insurer, Contractor will either: (i) adjust the virtual inventory so that such excess is applied against future 340B Drug prescriptions dispensed hereunder; or (ii) reimburse Supplier the difference between the 340B Drug price as set forth on the Price File and the amount the Supplier would charge Contractor for the same NDC-11 at non-340B Drug Program rates. City shall receive no amounts arising out of the Contracted Rate and to the extent City previously received any such amounts or credits for such drug, City shall immediately remit such amounts or forfeit such credits to Contractor.

3.6. Report Availability. Walgreens shall make Reports available to City via the online reporting and tracking system. The online reporting and tracking system will be available 24 hours a day, 7 days a week, subject to downtime associated with system maintenance, system upgrades or unexpected system outages.

3.7. Additional Services and Responsibilities. Contractor shall also perform those services set forth on Appendix A-2 (Additional Services and Responsibilities of Contractor), attached to the Agreement and incorporated herein by reference.

4. REIMBURSEMENT AND BILLING

4.1. Invoice for Services. Contractor will invoice City on a monthly basis for all amounts arising under this Agreement during the previous calendar month (“**Invoice**”). The Invoice will detail: (i) the number of prescriptions dispensed hereunder; (ii) any amounts due Contractor including any and all fees, costs, charges, or reimbursement amounts, including but not necessarily limited to any amount arising out of the

Tax, changes in the Supplier, Overdue Drugs, Slow Moving Drugs, 340B Pharmacy Services, Inventory Management Services, prescription dispensing services provided pursuant to Section F of Appendix A-2 (Additional Services and Responsibilities of Contractor), and a Reconciliation (“**Contractor Balance**”); and (iii) any amounts due City arising out of a Reconciliation or Sections 1 and 2 of Appendix B (Fee Schedule), if applicable (“**City Balance**”). The Invoice will be made available to City no later than the fifteenth (15th) day of each month via the online reporting tool. If the City Balance is less than the Contractor Balance, Contractor will also send a hard copy of the Invoice to City at the address set forth in Section 25 of this Agreement.

4.2. Monthly Payments. If the Contractor Balance is less than the City Balance, Contractor shall pay City the difference between such amounts within thirty (30) calendar days from the Invoice date. Contractor’s payment to City shall be made via electronic funds transfer or to the location set forth in Section 25 of this Agreement. If the City Balance is less than the Contractor Balance, City shall pay Contractor the difference between such amounts within thirty (30) calendar days from the Invoice date. City’s payment to Contractor shall be made to the following location: Walgreen Co., P.O. Box 90480, Chicago, IL 60696-0480.

4.3. Payment for Private Insurer Coverage. Contractor will process and bill Private Insurers at the existing Contracted Rates.

4.4. Over/Underpayments. In the event City believes that it has made an overpayment, City shall immediately notify Contractor and provide a complete explanation thereof with specific details and documentation to support any claim of overpayment. Upon review and acceptance by Contractor of such overpayment, Contractor will pay City an amount equal to the overpaid amount within thirty (30) calendar days of Contractor’s written acceptance of such overpayment. If Contractor believes that City made any underpayments to Contractor, Contractor shall immediately notify City and provide a complete explanation thereof with specific details and documentation to support any claim of underpayment. Upon review and acceptance by City of such underpayment, City will pay Contractor an amount equal to the underpaid amount within thirty (30) calendar days of City’s written acceptance of such underpayment. Except for verified amounts arising out of any audit or Reconciliation permitted by this Agreement, or as otherwise required by law, all claims of overpayment or underpayment must be made within one hundred eighty (180) calendar days after payment is due.

5. IMPLEMENTATION

5.1 City and Contractor acknowledge and agree that Contractor’s obligation to provide services hereunder, including but not limited to 340B Pharmacy Services and Inventory Maintenance Services, will commence upon the mutual written agreement (such written agreement may be via email) of the parties following the Effective Date (“**Implementation Date**”). The parties further agree that 340B claims will not be processed retroactively, i.e., 340B claims will not be processed for the period between the Effective Date and the Implementation Date.

6. GENERAL PROVISIONS

6.1. Advertising. Neither party may advertise or use any trademarks, service marks, or symbols of the other party without first receiving the written consent of the party owning the mark and/or symbol with the following exceptions: (i) City may use the name and the addresses of Contractor in City’s informational brochures or other publications City provides to its patients or potential patients; and (ii) Contractor may use City’s name, trademark, service mark, and/or symbols to inform patients and the general public that

Contractor is a pharmacy contracted for the dispensing of 340B Drugs to Eligible Patients. Any other reference to Contractor in any City materials must be pre-approved, in writing, by Contractor.

6.2. Dispute Resolution. The parties shall attempt to resolve any dispute or claim arising out of the interpretation of or performance under this Agreement through informal discussions. When a dispute arises, either party may submit a written complaint to the other party describing and proposing the manner of resolving that dispute. The party receiving that complaint shall respond by accepting, rejecting, or modifying that proposal, in writing, within thirty (30) calendar days upon receipt of such complaint. If the claim or dispute cannot be resolved through informal discussions, the claimant may bring a legal action in a court of competent jurisdiction to adjudicate its claim or to enforce or interpret any part of this Agreement.

6.3. Force Majeure. The performance by either party hereunder will be excused to the extent of circumstances beyond such party's reasonable control, such as flood, tornado, earthquake, or other natural disaster, epidemic, war, material destruction of facilities, fire, acts of God, etc. In such event, the parties will use their best efforts to resume performance as soon as reasonably possible under the circumstances giving rise to the party's failure to perform.

6.4. Regulatory Compliance. City and Contractor mutually acknowledge that their intent in entering into this Agreement is solely to facilitate City's 340B Drug Program. All financial arrangements established herein are mutually determined to represent either cost or fair market value for the items and services received. The parties expressly do not intend to take any action that would violate state or federal anti-kickback prohibitions, such as those appearing in Section 1128B of the Social Security Act, 42 USC Section 1320a-7b. Instead, it is the intention of the parties that this Agreement, and all actions taken in connection herewith, shall to the greatest extent possible be construed to be consistent with the regulatory requirements of the safe harbor for personal services and management contracts appearing in 42 CFR Section 1001.952(d) or health centers appearing in 42 CFR Section 1001.952(w). Both parties agree that they will neither knowingly resell nor transfer a 340B Drug to an individual who is not an Eligible Patient nor will they dispense 340B Drugs to any person whose prescription is reimbursable by a State Medicaid Agency.

Appendix A-2
Additional Services and Responsibilities of Contractor

Notwithstanding anything to the contrary in the Agreement, the parties acknowledge and agree that (i) Contractor is obligated to provide the additional services and responsibilities described in Sections A through D of this Appendix A-2 only with respect to the Retail Pharmacies; (ii) Contractor is not obligated to perform the additional services and responsibilities described in Sections A through D of this Appendix A-2 with respect to the SFGH Pharmacy; and (iii) Contractor is obligated to provide the additional services and responsibilities described in Section E of this Appendix A-2 only with respect to the SFGH Pharmacy.

**A. 340B PROGRAM PARTICIPATION COORDINATION
FOR RETAIL PHARMACIES**

In addition to those services and responsibilities set forth elsewhere in the Agreement, Contractor shall:

- A1. Possess excellent knowledge and understanding of the Federal 340B drug pricing program, including and not limited to the following: regulations and requirements of the program, contract pharmacy arrangements, virtual inventory management procedures, drug replenishment using 11-digit NDC processes, government and drug manufacturer auditing requirements.
- A2. Upon review of current City 340B participation and systems, provide recommendations and implementation strategies for ways to improve efficiency, guide 340B program compliance, and maximize benefits of 340B program participation.
- A3. Assist City with accurate posting on the HRSA database of all pertinent information required of City as a 340B covered entity, including assistance with registering the Retail Pharmacies to City.
- A4. Meet with the contract administrator and other City staff as reasonably requested, and as needed.
- A5. Designate a dedicated account manager and service representative to City.
- A6. Provide at no additional cost, a dedicated help line for City staff and the contract administrator during the contract implementation phase and for a minimum of three (3) months following the Implementation Date.
- A7. Provide training to selected City staff of all applicable claims and reporting software and equipment provided by Contractor.
- A8. Assist City in preventing drug diversion and duplicate manufacturer discounts by conducting monthly reconciliation audits and other quality improvement activities related to Contractor's services and services of any subcontractors and the Retail Pharmacies, as requested and agreed upon by mutual consent of Contractor and contract administrator.
- A10. Assist City in developing policies and procedures, as necessary to maintain compliance with all HRSA and OPA 340B program participation requirements, as requested and agreed upon by mutual consent of Contractor and the contract administrator.
- A11. Assist City in the identification of opportunities and implementation of systems to enhance cost savings and revenue enhancement.

B. THIRD PARTY CLAIMS ADJUDICATION COORDINATION FOR RETAIL PHARMACIES

In addition to those services and responsibilities set forth elsewhere in the Agreement, Contractor shall:

B1. Provide directly or through a City-approved subcontractor, ability of online, point-of-service electronic claims adjudication for prescriptions, which includes and is not limited to: verifying patient and provider eligibility, formulary status of prescribed medication, and patient co-payment status.

B2. Provide online claims adjudication services twenty-four (24) hours per day, seven (7) days per week, excluding downtime associated with scheduled maintenance and system upgrades. Downtime shall be no more than 1% of the total operating time within each month; performance significantly outside of the established threshold of 1% shall be reflected in Contractor's annual monitoring report.

B3. Possess the ability to identify adjudicated claims eligible to be replenished by 340B drug purchases among claims adjudicated for all patients receiving care from City providers, and ability to monitor revenue from claims not replenished but billed to commercial and other non-Medi-Cal third party payers.

B4. Possess systems to compare and apply different pricing and cost information (*e.g.*, Medicare MAC pricing, pharmacy "usual and customary" price) to individual adjudicated claims based on City established parameters and criteria, and bill City the lowest of negotiated City dispensing fee and other applied pricing parameter (*e.g.*, Medicare MAC pricing, pharmacy "usual and customary" price.)

B5. Accept monthly updates to the approved City drug formulary via electronic or verbal (telephone) communication, and apply the updated information to the formulary database within seventy-two (72) business hours.

B6. Implement through Contractor's prescription claims processor, a City-defined prior authorization request ("PAR") process that includes the use of step criteria, including DEA step criteria, Code 1 override capability, and point of service messaging. Track approvals and denials, including providing documentation and tracking of non-formulary approvals, and an appropriate PAR mechanism as defined by City. City shall only reimburse Contractor for medications that have received the required prior authorization according to the terms of this Agreement and the protocols furnished in writing to Contractor by City. Using protocols furnished by City, Contractor will grant PARs for specifically identified medications. When prior approvals are requested by authorized providers in writing using the PAR form mutually agreed to by the parties and faxed to Contractor, a response letter will be faxed to the prescriber within twenty-four (24) hours. Contractor will, at City's discretion, refer PARs for specific medications or requests for specific doses of medications, as defined in City's PAR protocols provided to Contractor, to City for its review. Contractor shall be responsible for sending on-line messages to the Retail Pharmacies at City request. The PAR protocols furnished by City on prior approval medications shall only be changed at City's discretion. Upon written notification by City to Contractor, of PAR protocol changes, Contractor agrees to put in place all changes within five (5) business days.

B7. Make available via Contractor's online reporting and tracking system information regarding non-formulary and restricted drug approvals.

B8. Remove and/or add Retail Pharmacies at the discretion of City's contract administrator or designee and in accordance with the terms of Section 48 (Modification of Agreement) of the Contract. The Parties shall cooperate in posting the revised list of Retail Pharmacies with HRSA.

B9. Provide, upon the request of City, documentation that City claims and prescription claim data are excluded from manufacturer rebate programs engaged in by Contractor.

B10. Work cooperatively with City in an effort to establish a process to electronically transmit prescription data from the Retail Pharmacies for individual patients to the patient's Department electronic medical record.

B11. Maintain toll-free telephone and facsimile "help" lines that shall be staffed to assist with questions by City staff and prescribers, and Retail Pharmacies.

B12. Maintain, during off-hours, a toll-free voice mail recording system with all messages answered within the next business day.

C. CONTRACT PHARMACY COORDINATION FOR RETAIL PHARMACIES

Contractor shall ensure that at least one (1) Retail Pharmacy will provide 24-hour, 7-days per week prescription services and that each Retail Pharmacy shall:

C1. Possess a current and valid pharmacy permit issued by the California Board of Pharmacy, and is recognized as a pharmacy provider by the National Association of Boards of Pharmacy (NABP).

C2. Be posted on the OPA website as a contract pharmacy for City 340B covered entity(s.)

C3. Be an authorized California State Medi-Cal provider.

C4. Be an authorized AIDS Drug Assistance Program (ADAP) provider.

C5. Be currently contracted, in good standing, with Medicare Part D plans including all plans serving dual eligible Medicare recipients.

C6. Possess an operating computerized patient drug profile system that provides concurrent information to the dispensing pharmacist on patient-specific drug-drug interactions, drug-nutrient interactions, and potential adverse effects. The computerized system must also be able to generate written drug information and dosing instructions intended for the lay public that may be provided to the patient.

C7. Accept telephone, facsimile or electronically transmitted prescriptions for eligible patients from authorized City prescribers.

C8. Have the ability to process and adjudicate prescription claims online, using an 11-digit NDC identification code.

C9. Establish with the drug wholesale distributor designated by City a "ship to" account for replenishment of drug inventory dispensed to City patients.

C10. Accept replenishment drug inventory on a daily delivery schedule from City's designated wholesale distributor.

C11. Return to stock any pharmaceutical not picked up and sold to a patient within ten (10) working days.

- C12. Stock and dispense its customarily maintained inventory.
- C13. Comply with City policies regarding maximum days' supply, lost prescriptions, acceptable refill intervals, and non-formulary drug requests.
- C14. Make available via Contractor's online reporting and tracking system, auditable records of purchasing, inventory management, and prescription transactions.
- C15. Provide culturally sensitive and linguistically appropriate prescription services to all City patients.
- C16. Assist City with communicating major 340B program changes to City patients.

D. REQUIRED REPORTS FOR RETAIL PHARMACIES

Contractor will make available to City via Contractor's online reporting and tracking system, and at no additional cost to City:

- D1. Monthly management reports that include and are not limited to: patient prescription benefit utilization; individual and aggregate provider prescribing patterns by drug and cost; prescription costs per therapeutic class.
- D2. Monthly drug use reports that include and are not limited to: prescription claim per therapeutic class; non-formulary and prior authorization drugs approved or denied during the month.
- D3. Monthly financial reports that include and are not limited to: co-payment amounts collected by individual Retail Pharmacies; prescription claims by number and costs per participating pharmacy; total of individual claim charges to City showing use of prescription dispensing fee or Medicare MAC/pharmacy 'usual and customary' price and deduction from charge of prescription copayment amount; revenue realized by claim from commercial and other non-Medi-Cal prescription payer sources.
- D4. Inventory reports at periods specified by City's contract administrator that shall include and are not limited to: 11-digit NDC number, name and description of drugs dispensed for report period listed by participating pharmacy; replenishment order quantities per participating pharmacy and pharmacy account name and number; quantities of drugs not replenished and carried over to next replenishment period, by 11-digit NDC number and participating pharmacy.
- D5. Monthly reports, by pharmacy and 11-digit NDC number, of drugs not reaching replenishment levels (full package size) 180-days after last dispensed, and amount owed to the pharmacy for non-replenished drug based on a billing algorithm.
- D6. Monthly reports of drugs replenished to contract pharmacies identifying individual Clinics from which claims used for replenishment report were generated. Report of replenished and non-replenished drugs for this report shall be listed by 11-digit NDC number, drug name, quantities dispensed, and quantities replenished.
- D7. Program data accurate to within one (1) business day.
- D8. All reports in formats that can be printed and/or exported into spreadsheets (e.g., Excel) and data base management (e.g. Access) programs.

E. SAN FRANCISCO GENERAL HOSPITAL OUTPATIENT PHARMACY

E1. City owns and operates the San Francisco General Hospital Outpatient Pharmacy located at 1001 Potrero Ave, San Francisco, CA ("SFGH Pharmacy"). The SFGH Pharmacy is registered with HRSA as a 340B contract pharmacy for City and dispenses 340B Drugs to Eligible Patients. City has requested that Contractor provide those administrative services described below for the SFGH Pharmacy and Contractor has agreed to provide such services, all in accordance with the terms and subject to the conditions of this Agreement. The parties further agree as follows:

E1.1 Contractor will provide online, point of service electronic claims adjudications for prescriptions, which includes and is not limited to: verifying patient and provider eligibility, formulary status of prescribed medication, including prior authorization process as described in Section B6, and co-payment status. City agrees to (i) communicate to Contractor complete information regarding the benefit design of City's 340B Program for Eligible Patients who do not have prescription drug coverage, and provide Contractor with at least sixty (60) days' advance notice of any changes to such benefit design; (ii) transmit electronically in NCPDP Telecommunication Standard D.0 certain mutually agreed upon prescription claim information by a standard claim switching organization to Contractor, or an entity designated by Contractor, for those prescription claims that City determines are eligible for City's 340B Program; (iii) transmit such prescription claim information using a specific BIN, PCN, and group information specified by Contractor; (iv) receive in NCPDP Telecommunication Standard D.0 prescription claim adjudication information from Contractor, or an entity designated by Contractor; and (v) comply with all procedures and rules mutually agreed upon between the parties.

E1.2 Contractor agrees to (i) process those prescription claims submitted by City in accordance with Section E1.1 above according to City's 340B Program benefit design and as mutually agreed to by the parties; (ii) transmit to City the applicable claim status/copayment/coinsurance deductible amount (if applicable) for claims submitted by City in accordance with Section E1.1; and (iii) make available to City customary claim adjudication reports.

E1.3 The parties agree that Contractor's only obligations with respect to the SFGH Pharmacy are those obligations specifically set forth in this Section E1, and that Contractor will not perform any services with respect to the SFGH Pharmacy that are not specifically described in this Section E1, including but not limited to 340B Pharmacy Services and Inventory Maintenance Services.

E1.4 City is solely responsible for the accuracy, completeness, reliability, and timeliness of all prescription claims information provided to Contractor, or an entity designated by Contractor, by City, and any omissions or errors in such information are the sole responsibility of City. Contractor shall be entitled to rely on the accuracy and completeness of all prescription claim information submitted by City to Contractor, or an entity designated by Contractor.

F. PRESCRIPTION DISPENSING SERVICES

F.1 During hours when the SFGH Pharmacy is closed, a mutually agreed upon Retail Pharmacy location will provide prescription dispensing services (in accordance with Contractor's customary business practices) to Eligible Patients of the following Clinics:

340B ID	ENTITY NAME	SUB NAME	ADDRESS	CITY	STATE
CH09107AA	SAN FRANCISCO COMMUNITY CLINIC CONSORTIUM	LYON-MARTIN HEALTH SERVICES, A PROGRAM OF HEALTHRIGHT360	1748 MARKET ST APT 201	SAN FRANCISCO	CA
CH09107BM	SAN FRANCISCO COMMUNITY CLINIC CONSORTIUM	TENDERLOIN HEALTH SERVICES, A PROGRAM OF HEALTHRIGHT360	330 ELLIS ST	SAN FRANCISCO	CA
CH09107BS	SAN FRANCISCO COMMUNITY CLINIC CONSORTIUM	HEALTHRIGHT360 - INTEGRATED CARE CENTER	1735 MISSION STREET	SAN FRANCISCO	CA
CH09107U	SAN FRANCISCO COMMUNITY CLINIC CONSORTIUM	HEALTHRIGHT360	558 CLAYTON ST	SAN FRANCISCO	CA
CH090660	MISSION AREA HEALTH ASSOCIATES	MISSION NEIGHBORHOOD HEALTH CENTER	240 SHOTWELL ST	SAN FRANCISCO	CA
CHC00381-00	SAN FRANCISCO MEDICAL CENTER OUTPATIENT IMPROVEMENT PROGRAMS	SOUTH OF MARKET HEALTH CENTER	229 7TH ST	SAN FRANCISCO	CA
FQHC638033	SAN FRANCISCO MEDICAL CENTER OUTPATIENT IMPROVEMENT PROGRAMS	SOUTH OF MARKET HEALTH CENTER	229 7TH ST	SAN FRANCISCO	CA

The parties acknowledge and agree that Eligible Patients whose prescriptions are not reimbursable by a Private Insurer must present a Program Eligibility Card to Contractor with each prescription in order to receive prescription dispensing services pursuant to this Section F1. The prescription and Program Eligibility Card will serve as authorization for Contractor to provide prescription dispensing services pursuant to this Section F1. Any and all drugs dispensed pursuant to this Section F1 shall be Non-Eligible 340B Drugs and City shall reimburse Walgreens as follows:

Brand Name Drugs: The lesser of the Average Wholesale Price of the dispensed medication minus 11% plus a dispensing fee of \$1.00 **or** the Usual and Customary Charge.

Generic Drugs: The lesser of the Average Wholesale Price of the dispensed medication minus 55% plus a dispensing fee of \$1.00 **or** the Usual and Customary Charge.

Appendix A-3
City Locations and Retail Pharmacy Locations

A. City Locations

340B ID	ENTITY NAME	SUB NAME	ADDRESS	CITY	STATE
DSH050228	SAN FRANCISCO GENERAL HOSPITAL		1001 POTRERO AVE.	SAN FRANCISCO	CA
DSH050228C	SAN FRANCISCO GENERAL HOSPITAL	SFGH/URGENT CARE CENTER	995 POTRERO AVENUE, WARD 81	SAN FRANCISCO	CA
DSH050228B	SAN FRANCISCO GENERAL HOSPITAL	SFGH /RENAL CENTER	1001 POTRERO AVENUE, BLDG 100, RM 359	SAN FRANCISCO	CA
DSH050228E	SAN FRANCISCO GENERAL HOSPITAL	PSYCHIATRIC EMERGENCY SERVICES	1001 POTRERO AVENUE	SAN FRANCISCO	CA
DSH050228F	SAN FRANCISCO GENERAL HOSPITAL	ADULT MEDICAL CENTER/UC POSITIVE HEALTH PROGRAM (WARD 86)	995 POTRERO AVENUE, WARD 86	SAN FRANCISCO	CA
DSH050228J	SAN FRANCISCO GENERAL HOSPITAL	ADULT MEDICAL CENTER/CARDIAC CLINIC	995 POTRERO AVENUE	SAN FRANCISCO	CA
DSH050228H	SAN FRANCISCO GENERAL HOSPITAL	ADULT MEDICAL CENTER/DIABETIC CLINIC	995 POTRERO AVENUE	SAN FRANCISCO	CA
DSH050228G	SAN FRANCISCO GENERAL HOSPITAL	ADULT MEDICAL CENTER/CHEST CLINIC	995 POTRERO AVENUE	SAN FRANCISCO	CA
CH09107A	SAN FRANCISCO COMMUNITY CLINIC CONSORTIUM	TOM WADDELL HEALTH CENTER	50 LECH WALES A	SAN FRANCISCO	CA
CH09107B	SAN FRANCISCO COMMUNITY CLINIC CONSORTIUM	ADULT MEDICINE CLINIC	1001 POTRERO AVENUE, ROOM 1M	SAN FRANCISCO	CA
CH09107BN	SAN FRANCISCO COMMUNITY CLINIC CONSORTIUM	CHPY-COLE STREET CLINIC	COLE STREET CLINIC: 555 COLE STREET	SAN FRANCISCO	CA
CH09107BP	SAN FRANCISCO COMMUNITY CLINIC CONSORTIUM	BALBOA TEEN HEALTH CENTER	BALBOA TEEN HEALTH CENTER: 1000 CAYUGA AVENUE ROOM 156	SAN FRANCISCO	CA
CH09107BQ	SAN FRANCISCO COMMUNITY CLINIC CONSORTIUM	CHPY-LARKIN STREET YOUTH CENTER	LARKIN STREET CLINIC: 1138 SUTTER STREET	SAN FRANCISCO	CA

CH09107BR	SAN FRANCISCO COMMUNITY CLINIC CONSORTIUM	TOM WADDELL URBAN HEALTH CLINIC	220 GOLDEN GATE AVENUE	SAN FRANCISCO	CA
CH09107C	SAN FRANCISCO COMMUNITY CLINIC CONSORTIUM	CASTRO-MISSION HEALTH CENTER - HEALTH CENTER #1	3850 17TH ST	SAN FRANCISCO	CA
CH09107D	SAN FRANCISCO COMMUNITY CLINIC CONSORTIUM	MAXINE HALL HEALTH CENTER	1301 PIERCE ST	SAN FRANCISCO	CA
CH09107E	SAN FRANCISCO COMMUNITY CLINIC CONSORTIUM	SILVER AVENUE FAMILY HEALTH CENTER	1525 SILVER AVE	SAN FRANCISCO	CA
CH09107F	SAN FRANCISCO COMMUNITY CLINIC CONSORTIUM	CHINATOWN PUBLIC HEALTH CENTER	1490 MASON ST	SAN FRANCISCO	CA
CH09107G	SAN FRANCISCO COMMUNITY CLINIC CONSORTIUM	OCEAN PARK HEALTH CENTER	1351 24TH AVE	SAN FRANCISCO	CA
CH09107H	SAN FRANCISCO COMMUNITY CLINIC CONSORTIUM	POTRERO HILL HEALTH CTR	1050 WISCONSIN STREET	SAN FRANCISCO	CA
CH09107I	SAN FRANCISCO COMMUNITY CLINIC CONSORTIUM	SOUTHEAST HEALTH CENTER	2401 KEITH STREET	SAN FRANCISCO	CA
CH09107K	SAN FRANCISCO COMMUNITY CLINIC CONSORTIUM	FAMILY HEALTH CENTER - WARDS 81, 85	995 POTRERO AVE, BLDG 80	SAN FRANCISCO	CA
CH09107L	SAN FRANCISCO COMMUNITY CLINIC CONSORTIUM	ADULT MEDICINE CLINICS-WARD 86	995 POTRERO AVE, BLDG 80, 6TH FL	SAN FRANCISCO	CA
CH09107M	SAN FRANCISCO COMMUNITY CLINIC CONSORTIUM	CHILDRENS HEALTH CENTER	1001 POTRERO AVENUE, 6M	SAN FRANCISCO	CA
CH09107N	SAN FRANCISCO COMMUNITY CLINIC CONSORTIUM	CURRY SENIOR SERVICES	333 TURK STREET	SAN FRANCISCO	CA
CH09107P	SAN FRANCISCO COMMUNITY CLINIC CONSORTIUM	URGENT CARE HEALTH CENTER	995 POTRERO AVENUE	SAN FRANCISCO	CA

B. Retail Pharmacy Locations:

	LOCATION	ADDRESS	CITY	STATE	ZIP CODE
1	893	1344 STOCKTON ST	SAN FRANCISCO	CA	94133
2	1054	3398 MISSION ST	SAN FRANCISCO	CA	94110
3	1120	4645 MISSION ST	SAN FRANCISCO	CA	94112
4	1126	1979 MISSION ST	SAN FRANCISCO	CA	94103
5	1327	498 CASTRO ST	SAN FRANCISCO	CA	94114
6	1393	1630 OCEAN AVE	SAN FRANCISCO	CA	94112
7	1626	2494 SAN BRUNO AVE	SAN FRANCISCO	CA	94134
8	2153	790 VAN NESS AVE	SAN FRANCISCO	CA	94102
9	2244	3801 3RD ST	SAN FRANCISCO	CA	94124
10	2866	1363 DIVISADERO ST	SAN FRANCISCO	CA	94115
11	3185	825 MARKET ST	SAN FRANCISCO	CA	94103
12	3711	1189 POTRERO AVE	SAN FRANCISCO	CA	94110
13	4231	2690 MISSION ST	SAN FRANCISCO	CA	94110
14	4318	4129 18TH ST	SAN FRANCISCO	CA	94114
15	4609	1301 MARKET ST	SAN FRANCISCO	CA	94103
16	5487	5300 3RD ST	SAN FRANCISCO	CA	94124
17	7150	965 GENEVA AVE	SAN FRANCISCO	CA	94112
18	9886	3400 CESAR CHAVEZ	SAN FRANCISCO	CA	94110
19	13583	901 HYDE ST	SAN FRANCISCO	CA	94109
20	13666	1300 BUSH ST	SAN FRANCISCO	CA	94109
21	13667	5280 GEARY BLVD	SAN FRANCISCO	CA	94118
22	13668	1496 MARKET ST	SAN FRANCISCO	CA	94102
23	13669	776 MARKET ST	SAN FRANCISCO	CA	94102
24	3849	745 CLEMENT ST	SAN FRANCISCO	CA	94118
25	3475	25 POINT LOBOS AVE	SAN FRANCISCO	CA	94121
26	6557	199 PARNASSUS AVE	SAN FRANCISCO	CA	94117
27	2705	2050 IRVING ST	SAN FRANCISCO	CA	94112
28	1241	1201 TARAVAL ST	SAN FRANCISCO	CA	94116
29	3869	1750 NORIEGA ST	SAN FRANCISCO	CA	3869
30	890	135 POWELL ST	SAN FRANCISCO	CA	94102
31	1283	500 GEARY ST	SAN FRANCISCO	CA	94102
32	15296	2262 MARKET ST	SAN FRANCISCO	CA	94114

**Appendix A-4
Performance Guarantees**

The “Performance Standards” set forth in this exhibit are measured monthly, or as otherwise indicated below, and reported quarterly. Walgreens shall provide a quarterly performance guarantee report of Walgreen’s performance on the Performance Standards.

Performance Standards		
Description	Performance Standard	Measurement Period
DUPLICATE DISCOUNTS		
System to prevent duplicate discounts	Prescriptions from excluded payers (e.g., Medi-Cal Fee For Service) are not replenished with 340B drug. – 100% accuracy	Monthly
REPORTING AVAILABILITY AND ACCURACY		
Report availability and Accuracy	Inventory tracking is perpetual and entity has access to inventory reports at any time. - < 1% downtime	Monthly
Reconciliation Reports	Contractor will conduct a monthly reconciliation of 340B drugs dispensed against those 340B drugs received by Contractor.	Monthly
FILE MANAGEMENT AND PRODUCTION		
Eligibility File Load Accuracy	99% of usable, error free program eligibility files received are loaded by the vendor without error. Calculated as the number of eligibility files audited and found to be processed and loaded without error divided by the total number of eligibility files received.	Monthly
PRIOR AUTHORIZATION		
Prior Authorization Turnaround Time (TAT)	95% of Prior Authorization requests will be completed within 2 business days of receipt of request, measured as time of receipt of request to time of final decision or deferral to DPH, once all required information to process the request has been received. Business days exclude weekends and Federally recognized holidays.	Monthly

Appendix B Fee Schedule

1. Self-Pay Patients. For those Eligible Patients whose prescriptions are not reimbursable by a Private Insurer, Contractor shall receive the following amounts:

- 1.1 \$0.50 administrative fee for the Inventory Maintenance Services (“**Self-Pay Administrative Fee**”); and
- 1.2 \$15.00 dispensing fee for the 340B Pharmacy Services (“**Self-Pay Dispensing Fee**”).

At the time of dispensing, Contractor shall collect from the Eligible Patient the patient responsibility amount as indicated by Covered Entity on the Authorization (“**Self-Pay Co-Pay**”). The Self-Pay Administrative Fee and the Self-Pay Dispensing Fee shall collectively be referred to as the Self-Pay Fees. If the Self-Pay Fees exceed the Self-Pay Co-Pay Contractor shall invoice City in accordance with Article 4 of Appendix A-1 (340B Contract Pharmacy Services) for any remaining amounts due Contractor. Notwithstanding the foregoing, if at the time of dispensing Contractor determines the Usual and Customary Charge is equal to or less than the total of the Self-Pay Administrative Fee, Self-Pay Dispensing Fee and the price for the 340B Drug as set forth in the Price File, such drug shall be considered a Non-Eligible 340B Drug and Contractor shall collect from the Eligible Patient the patient responsibility amount (Self-Pay Co-Pay) and Contractor shall invoice City for any remaining amounts due Contractor.

2. Private Insurer Patients. For those Eligible Patients whose prescriptions are reimbursable by a Private Insurer, Contractor will process and bill the Eligible Patient’s Private Insurer for the Contracted Rate provided to the Retail Pharmacy, as applicable, at the time of dispensing. Subject to the provisions that follow, Contractor shall be entitled to retain up to 20% of the Contracted Rate for the Inventory Maintenance Services and such billing services (“**Private Insurer Administrative Fee**”) and a \$15.00 dispensing fee for the 340B Pharmacy Services (“**Private Insurer Dispensing Fee**”). Upon determination by Contractor that it has received the Contracted Rate for the Eligible Patient’s prescription and provided that: (i) City is current in its payment obligations to Contractor; and (ii) the Contracted Rate exceeds the sum of Private Insurer Dispensing Fee, the Private Insurer Administrative Fee and the Drug Price; Contractor will retain an amount equal to the sum of the Private Insurer Dispensing Fee and the Private Insurer Administrative Fee (such sum the “**Private Insurer Fee**”) and, in accordance with Article 4 of Appendix A-1 (340B Contract Pharmacy Services), remit to City the difference between the Private Insurer Fee and the Contracted Rate. If the difference between the Contracted Rate and the Private Insurer Fee is less than or equal to the Drug Price, Contractor agrees to accept and retain the Contracted Rate as payment in full and there will be no further adjustment between the parties.

3. Inventory Replenishment Rate. The Inventory Replenishment Rate shall be the following:

- 3.1 *Brand Name Drugs*: the Average Wholesale Price of the dispensed pharmaceutical product minus 16.65%.
- 3.2 *Generic Drugs*: the Average Wholesale Price of the dispensed pharmaceutical product minus 85%.

4. Annual Price Adjustment. On the one year anniversary date of the Effective Date and annually thereafter, the parties agree that the Self-Pay Administrative Fee, Self-Pay Dispensing Fee, Private Insurer Administrative Fee and the Private Insurer Dispensing Fee shall each be increased in an amount equal to the percentage increase for Private Industry Workers in Health Services occupations for the twelve (12) months ending the previous March as published by the U.S. Department of Labor, Bureau of Labor Statistics in the

Employment Cost Index. Such adjustments shall commence thirty (30) days after notification and submission of reasonably satisfactory documentation by Contractor to City.

5. Anticipated Available Funds; Contingency Amounts.

5.1 Both parties understand and acknowledge that the following is a breakdown of the funds that City anticipates will be available to City on an annual basis for purposes of meeting City’s obligations with respect to “amounts payable by City to Contractor” or “amount due from City to Contractor”:

Initial Term

Effective Date through June 30, 2017	\$3,500,000
July 1, 2017 through June 30, 2018	\$3,500,000
July 1, 2018 through June 30, 2019	\$3,500,000
July 1, 2019 through June 30, 2020	\$3,500,000
July 1, 2020 through June 30, 2021	\$3,500,000
Contingency (12%)	\$2,100,000
Not-to-Exceed Amount	\$19,600,000

Optional One Year Extensions

Option 1:	1 year	July 1, 2021 through June 30, 2022	\$3,500,000
Option 2:	1 year	July 1, 2022 through June 30, 2023	\$3,500,000
Option 3:	1 year	July 1, 2023 through June 30, 2024	\$3,500,000
Option 4:	1 year	July 1, 2024 through June 30, 2025	\$3,500,000
Option 5:	1 year	July 1, 2025 through June 30, 2026	\$3,500,000
Contingency (12%)			\$2,100,000
Not-to-Exceed Amount			\$19,600,000

Total for Initial Term and Optional One Year Extensions

Total Award (10 years)	\$35,000,000
Total Contingency Amount (12%)	\$4,200,000
Total Not-To-Exceed Amount	\$39,200,000

5.2 Contractor understands that, of the maximum dollar obligation listed in Section 5 of this Agreement (Compensation) and in Section 5.1 above, \$4,200,000 is included as a contingency amount and is neither to be used in Appendix B (Fee Schedule) nor available to Contractor without a modification to this Agreement executed in the same manner as this Agreement. Contractor further understands that no payment of any portion of this contingency amount will be made unless and until such modification 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.

**Appendix C
Insurance Waiver**

[Reserved]

**Appendix D
Additional Terms**

1. PROTECTED HEALTH INFORMATION AND BAA

The parties acknowledge that CITY is a Covered Entity as defined in the Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA") and is required to comply with the HIPAA Privacy Rule governing the access, transmission, and storage of health information.

The parties acknowledge that CONTRACTOR is one of the following:

- CONTRACTOR will render services under this contract that include possession or knowledge of identifiable Protected Health Information (PHI), such as health status, health care history, or payment for health care history obtained from CITY. Specifically, CONTRACTOR will:
- Create PHI
 - Receive PHI
 - Maintain PHI
 - Transmit PHI and/or
 - Access PHI

The Business Associate Agreement (BAA) in Appendix E is required. Please note that BAA requires attachments to be completed.

- CONTRACTOR will not have knowledge of, create, receive, maintain, transmit, or have access to any Protected Health Information (PHI), such as health status, health care history, or payment for health care history obtained from CITY.

The Business Associate Agreement is not required.

2. THIRD PARTY BENEFICIARIES

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

Appendix E
BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (“Addendum”) supplements and is made a part of the contract (“Contract”) by and between the City and County of San Francisco, Covered Entity (“CE”) and Contractor, Business Associate (“BA”).

RECITALS

- A. CE wishes to disclose certain information to BA pursuant to the terms of the Contract, some of which may constitute Protected Health Information (“PHI”) (defined below).
- B. CE and BA intend to protect the privacy and provide for the security of PHI disclosed to BA pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and regulations promulgated there under by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws, including, but not limited to, California Civil Code §§ 56, et seq., California Civil Code §§ 1798, et seq., California Welfare & Institutions Code §§5328, et seq., and the regulations promulgated there under (the “California Regulations”).
- C. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(a) and (e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this Addendum.

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

1. Definitions

- a. **Breach** shall have the meaning given to such term under the HITECH Act and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402].
- b. **Breach Notification Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and D.
- c. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
- d. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- e. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- f. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- g. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
- h. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.
- i. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- j. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- k. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past,

present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].

- l. **Protected Information** shall mean PHI provided by CE to BA or created, maintained, received or transmitted by BA on CE's behalf.
 - m. **Security Incident** shall have the meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. Section 164.304.
 - n. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
 - o. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402.
- 2. Obligations of Business Associate**
- a. **Permitted Uses.** BA shall use Protected Information only for the purpose of performing BA's obligations under the Contract and as permitted or required under the Contract and Addendum, or as required by law. Further, BA shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, BA may use Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE [45 C.F.R. Sections 164.504(e)(2) and 164.504(e)(4)(i)].
 - b. **Permitted Disclosures.** BA shall disclose Protected Information only for the purpose of performing BA's obligations under the Contract and as permitted or required under the Contract and Addendum, or as required by law. BA shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and used or disclosed only as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches, suspected breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2.m. of the Addendum, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)].
 - c. **Prohibited Uses and Disclosures.** BA shall not use or disclose PHI other than as permitted or required by the Contract and Addendum, or as required by law. BA shall not use or disclose Protected Information for fundraising or marketing purposes. BA shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates [42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(vi)]. BA shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2), and the HIPAA regulations, 45 C.F.R. Section 164.502(a)(5)(ii); however,

this prohibition shall not affect payment by CE to BA for services provided pursuant to the Contract.

- d. **Appropriate Safeguards.** BA shall implement appropriate safeguards to prevent the use or disclosure of Protected Information other than as permitted by the Contract or Addendum, including, but not limited to, administrative, physical and technical safeguards in accordance with the Security Rule, including, but not limited to, 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. BA shall comply with the policies and procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931]
- e. **Business Associate's Subcontractors and Agents.** BA shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of BA, agree in writing to the same restrictions and conditions that apply to BA with respect to such Protected Information and implement the safeguards required by paragraph 2.d. above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. BA shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).
- f. **Accounting of Disclosures.** Within ten (10) calendar days of a request by CE for an accounting of disclosures of Protected Information or upon any disclosure of Protected Information for which CE is required to account to an individual, BA and its agents and subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935 (c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents and subcontractors for at least six(6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. If a patient submits a request for an accounting directly to BA or its agents or subcontractors, BA shall forward the request to CE in writing within five(5) calendar days.
- g. **Governmental Access to Records.** BA shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining BA's compliance with HIPAA [45 C.F.R. Section 164.504(e)(2)(ii)(I)]. BA shall provide CE a copy of any Protected Information and other documents and records that BA provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- h. **Minimum Necessary.** BA, its agents and subcontractors shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)] BA understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."

- i. **Data Ownership.** BA acknowledges that BA has no ownership rights with respect to the Protected Information.
- j. **Notification of Possible Breach.** BA shall notify CE within twenty-four (24) hours of any suspected or actual breach of Protected Information; any use or disclosure of Protected Information not permitted by the Contract or Addendum; any security incident (i.e., any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system) related to Protected Information, and any actual or suspected use or disclosure of data in violation of any applicable federal or state laws by BA or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual who unsecured Protected Information has been, or is reasonably believed by the business associate to have been, accessed, acquired, used, or disclosed, as well as any other available information that CE is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BA shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. (This provision should be negotiated.) [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]
- k. **Breach Pattern or Practice by Business Associate's Subcontractors and Agents.** Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(ii), if the BA knows of a pattern of activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or Addendum or other arrangement, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the Contract or other arrangement if feasible. BA shall provide written notice to CE of any pattern of activity or practice of a subcontractor or agent that BA believes constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or Addendum or other arrangement within five (5) days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

3. Termination

- a. **Material Breach.** A breach by BA of any provision of this Addendum, as determined by CE, shall constitute a material breach of the Contract and shall provide grounds for immediate termination of the Contract, any provision in the Contract to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].
- b. **Judicial or Administrative Proceedings.** CE may terminate the Contract, effective immediately, if (i) BA is named as defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- c. **Effect of Termination.** Upon termination of the Contract for any reason, BA shall, at the option of CE, return or destroy all Protected Information that BA and its agents and subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by CE, BA shall continue to extend the protections and satisfy the obligations of Section 2 of this Addendum to such information, and limit further use and disclosure of such PHI to those purposes that make the return or destruction of the information infeasible [45 C.F.R. Section 164.504(e)(ii)(2)(J)]. If CE elects destruction of the PHI, BA shall certify in

writing to CE that such PHI has been destroyed in accordance with the Secretary's guidance regarding proper destruction of PHI.

d. **Disclaimer**

CE makes no warranty or representation that compliance by BA with this Addendum, HIPAA, the HITECH Act, or the HIPAA Regulations or corresponding California law provisions will be adequate or satisfactory for BA's own purposes. BA is solely responsible for all decisions made by BA regarding the safeguarding of PHI.

4. Amendment to Comply with Law.

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

5. Reimbursement for Fines or Penalties

In the event that CE pays a fine to a state or federal regulatory agency, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible use or disclosure of PHI by BA or its subcontractors or agents, then BA shall reimburse CE in the amount of such fine or penalties or damages within thirty (30) calendar days.

Appendix F Emergency Response

Contractor will develop and maintain an Agency Disaster and Emergency Response Plan containing Site Specific Emergency Response Plan(s) for each of its service sites. The agency-wide plan should address disaster coordination between and among service sites. Contractor will update the Agency/site(s) plan as needed and Contractor will train all employees regarding the provisions of the plan for their Agency/site(s). Contractor will attest on its annual Community Programs' Contractor Declaration of Compliance whether it has developed and maintained an Agency Disaster and Emergency Response Plan, including a site specific emergency response plan for each of its service sites. CONTRACTOR is advised that Community Programs Contract Compliance Section staff will review these plans during a compliance site review. Information should be kept in an Agency/Program Administrative Binder, along with other contractual documentation requirements for easy accessibility and inspection.

In a declared emergency, Contractor's employees shall become emergency workers and participate in the emergency response of Community Programs, Department of Public Health. Contractors are required to identify and keep Community Programs staff informed as to which two staff members will serve as Contractor's prime contacts with Community Programs in the event of a declared emergency.