

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

Agreement between the City and County of San Francisco and

McKesson Plasma and Biologics LLC

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AGREEMENT

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

Recitals

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

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

WHEREAS, the Department controls one <https://www.linkedin.com/in/sarah-ghoneim-b156a215b/> or more “Facilities” (as defined in Article 1 below); and

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

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

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1. **"Agreement"** means this contract document, including all attached appendices, which are incorporated herein by reference.

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

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

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

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

1.6. **"Distributor"** means McKesson Plasma and Biologics LLC, a Tennessee limited liability company with its principal place of business at 2615 Medical Parkway Suite 1580, Murfreesboro, TN 37129, also referred to as “MPB”.

1.7. **"Commencement Date"** means November 1, 2019, provided this Agreement has been approved by the Board of Supervisors and mutually executed by the Parties.

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

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

1.10. **“Facility”** means any pharmacy over which City exercises control for the selection of a wholesale pharmaceutical distributor, whether by ownership or contract. A list of all Facilities as of the Effective Date, including their respective “ship to” addresses and number of deliveries per week is attached to this Agreement as Attachment 1 and is incorporated herein by reference. The City may update Attachment 1 upon the written consent of Distributor (e.g. such as via email), which consent shall not be unreasonably withheld. Upon Distributor providing such consent, Attachment 1 shall be deemed to include the name of the pharmacy, its “ship to” address, and number of deliveries per week (whereupon such pharmacy shall become a Facility hereunder).

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

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

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

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

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

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

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

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

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

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

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

Article 2 Term of the Agreement

2.1 Term.

The term of this Agreement shall commence on November 1, 2019 and expire on October 31, 2023, so long as Distributor has a GPO Base Agreement in place, unless earlier terminated as otherwise provided herein. Both Parties understand and agree that within one year in advance of the expiration date, the City must

commence its process to renew and/or replace this Agreement. In the event that such renewal is not completed before the expiration of the Term, the Holdover Extension of Section 2.2 will apply.

2.2 Holdover Extension.

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

2.3 City Disadvantage.

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

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

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

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

2.3.4 Notwithstanding anything to the contrary herein, determination of Disadvantage and the decision to terminate will be made within the strict confines of the provisions of

Section 2.3 herein. Determination of Disadvantage and the decision to terminate shall specifically not include consideration of competitor terms and conditions.

Article 3 Financial Matters

3.1 Certification of Funds; Budget and Fiscal Provisions.

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

3.2 Certification of Funds.

The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Distributor beyond the agreed upon contract scope unless the changed scope is authorized by Formal Amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation. For avoidance of doubt, the City is not permitted to continue ordering Services should funding not be certified.

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

3.3 Formal and Informal Agreement Changes.

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

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

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

3.4 Guaranteed Maximum Price.

Distributor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the Director of Health, in his or her sole discretion, concludes has been satisfactorily performed in material conformance with the requirements set forth in this Agreement. Payment shall be made in conformance with Appendix A, Attachment 3 (City Payment Terms), unless the City notifies the Distributor that a dispute as to the invoice exists in accordance with Section 11.6.1. In no event shall the amount of this Agreement exceed **TWO HUNDRED NINETY**

FIVE MILLION NINE HUNDRED THIRTY FOUR THOUSAND SEVEN HUNDRED NINETY DOLLARS (\$295,934,790). The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. Contested Amounts shall be resolved pursuant Section 11.6 (Dispute Resolution). Late payment charges, if applicable, shall be resolved pursuant to Appendix A, Attachment 3 (City Payment Terms), of the Agreement in accordance with the Base Agreement terms, and may be paid from budgeted contingency funds as appropriate.

3.5 Discounts—Terms of Payment.

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

3.6 Place of Manufacture.

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

3.7 Electrical Products. (Reserved)

3.8 Condition of Articles.

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

3.9 Inspection.

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

3.10 F.O.B. Point.

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

3.11 Failure to Deliver. (Reserved)

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

3.13 Invoice Format.

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

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

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

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

(b) The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer

identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

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

3.16 Audit and Inspection of Records.

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

3.17 Submitting False Claims.

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (1) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (2) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (3) conspires to defraud the City by getting a false claim allowed or paid by the City; (4) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (5) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

Article 4 Distribution Terms

4.1 Supply Agreement.

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

4.2 Assignment.

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

4.3 Warranty.

Distributor warrants to City that the Product distribution Services will be performed consistent with commercially reasonable professional procedures and practices, and in conformance with generally

accepted standards prevailing at the time the distribution is performed so that all distribution is performed as contemplated in this Agreement as detailed in Appendix A (Supply Agreement).

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

Article 5 Insurance and Indemnity

5.1 Insurance Policy Requirements.

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

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

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

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

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

5.2 Insurance Amendments.

In the event that Distributor amends said liability insurance in a manner that would materially alter the information contained in the insurance certificate provided to City, Distributor shall provide City with a new certificate as soon as practicable after Distributor makes such amendment(s). All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties." Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date.

5.3 Distributor Indemnification.

Distributor shall indemnify and save harmless City and its officers, agents and employees from, and if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Distributor or loss of or damage to property, arising directly or indirectly from Distributor's performance of this Agreement, including, but not limited to, Distributor's use of facilities or equipment provided by City or others, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except to the extent such loss, damage, injury, liability or claim is the result of

the active negligence or willful misconduct of City, in which case liability and damages shall be shared on a pro rata basis between the Parties under the California doctrine of comparative fault. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Distributor's obligation to indemnify City, Distributor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Distributor by City and continues at all times thereafter. Distributor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

5.4 Survival.

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

Article 6 Liability of the Parties

6.1 Liability of City.

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

6.2 Liability of Distributor.

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

6.3 Liability for Use of Equipment. (Reserved)

Article 7 Payment of Taxes

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

Article 8 Termination

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

In the event of any termination as set forth in this Article 8, unless otherwise agreed by the Parties or ordered by a receiver or court of competent jurisdiction, Distributor understands and agrees that such termination will not become effective for a period of twelve (12) months after Distributor provides notice of termination or until the City notifies Distributor in writing that a replacement Prime Vendor contract is in place, whichever occurs first. However, if the Guaranteed Maximum Price budget is exhausted, termination will become effective unless City seeks approval for additional funding.

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

8.1 Termination for Cause.

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

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

8.2 External Event.

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

8.3 Distributor Loss of GPO Contract.

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

8.4 Distributor or City Insolvency.

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

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

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

8.6 Mutual Consent.

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

Article 9 Rights In Deliverables (Reserved)

Article 10 Additional Requirements Incorporated by Reference

10.1 Laws Incorporated by Reference.

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

10.2 Conflict of Interest. (Reserved – Not used in P-250)

10.3 Prohibition on Use of Public Funds for Political Activity.

In performing the Services, Distributor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Distributor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 Reserved.

10.5 Non Discrimination Requirements.

10.5.1 Non Discrimination in Contracts: Distributor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Distributor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of

the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Distributor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

10.5.2 Non Discrimination in the Provision of Employee Benefits: San Francisco Administrative Code 12B.2. Distributor does not as of the date of this Agreement, and will not during the Term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

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

10.7 Minimum Compensation Ordinance. (As Applicable)

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

10.8 Health Care Accountability Ordinance.

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

10.9 First Source Hiring Program.

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

10.10 Alcohol and Drug-Free Workplace.

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

10.11 Limitations on Contributions.

By executing this Agreement, Distributor acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board

of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Distributor's board of directors; Distributor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Distributor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Distributor. Distributor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.12 Slavery Era Disclosure. (Reserved)

10.13 Working with Minors. (Reserved)

10.14 Consideration of Criminal History in Hiring and Employment Decisions.

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

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

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

10.16 Food Service Waste Reduction Requirements.

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

10.17 Distribution of Beverages and Water.

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

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

10.18 **Tropical Hardwood and Virgin Redwood Ban.**

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

10.19 **Preservative Treated Wood Products. (Reserved)**

Article 11 General Provisions

11.1 **Notices to the Parties.**

Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail (all notices to the City shall also be copied by e-mail), and shall be addressed as follows:

If to City:

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

If to Distributor:

McKesson Plasma and Biologics LLC
2615 Medical Parkway
Suite 1580
Murfreesboro, TN 37129
Attention: Travis Poe, Chief Operating Officer

With a copy to:

McKesson Plasma and Biologics LLC
One Post Street, 33rd Floor
San Francisco, CA 94104
Attention: MPB Legal Department

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

11.2 **Compliance with Americans with Disabilities Act.**

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

11.3 **Reserved.**

11.4 **Sunshine Ordinance.**

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

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

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

11.5 **Modification of this Agreement.**

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

11.6 **Dispute Resolution Procedure.**

11.6.1 **Negotiation; Non-Binding Alternative Dispute Resolution:** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance or receipt of services under this Agreement, including those related to non-payment or disputed invoices ("Disputes") in accordance with the following escalation process. Upon written notice by a party to the other party of a Dispute ("Dispute Notice"), such Dispute shall first be referred to Distributor's lead engagement partner or, principal, or managing director (or designee) and City's Contract Administrator (or designee), as defined in Appendix A (Supply Agreement). If they are unable to resolve the Dispute within ninety (90) days of the Dispute Notice, the Dispute will be escalated to Distributor's lead client service partner (or designee) and the Department of Public Health Chief Financial Officer (or designee). If the Parties are still unable to resolve the dispute within ninety (90) additional days, then pursuant to San Francisco Administrative Code Section 21.36, Distributor may submit to the Contracting Officer a written request for administrative review and documentation of the Distributor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Distributor of its right to judicial review.

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

agreed-upon non-binding alternative dispute resolution process. If the Parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law.

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

11.7 Government Code Claim Requirement.

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

11.8 Agreement Made in California; Venue.

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

11.9 Construction.

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

11.10 Entire Agreement.

The terms and conditions agreed between the Parties in this contract, including all Appendices and Attachments, which are hereby expressly incorporated herein by reference, sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

11.11 Compliance with Laws.

Each Party represents and warrants that to the best of its knowledge, after due inquiry, it is, and for the Term shall be, in material compliance with all applicable Federal, state laws, and local, ordinances and regulations that are material to the performance of its obligations under this Agreement ("Legal Requirements"), including, but not limited to, Legal Requirements pertaining to the handling and storage of the Products and Services, occupational health and safety, environmental protection, nondiscrimination, antitrust, health care regulation, the Health Insurance Portability and Accountability Act ("HIPAA") and equal employment opportunity.

11.12 Distributor's Compliance with Laws.

Nothing in this Agreement shall be construed as requiring Distributor to perform any obligations hereunder or engage in any action or omission that Distributor reasonably determines to violate, or to put Distributor in jeopardy of violating any applicable law. Without limiting the generality of the foregoing, Distributor shall comply with all applicable laws, rules, regulations, ordinances and governmental requirements, guidelines and pronouncements relating to controlled pharmaceutical drugs ("Controlled Substances"), including but not limited to the Federal Controlled Substances Act and regulations promulgated thereunder

by the Drug Enforcement Administration. In the event that performance of the terms of this Agreement would cause Distributor to be noncompliant with or in jeopardy of being noncompliant with any federal, state or local law, rule, regulation or ordinance or any governmental requirement, guideline or pronouncement involving Controlled Substances or any other regulated products or activities, including but not limited to the Drug Enforcement Administration's regulatory requirements for verifying its customers and reporting suspicious or excessive orders. Distributor shall have the right to do any of the following:

- (a) Within its sole and absolute discretion, limit or deny any order for Controlled Substances as warranted by Distributor's established diversion monitoring program, which is designed and implemented to take into account any federal, state or local law relating to Controlled Substances.
- (b) Immediately commence suspension proceedings against City, in whole or in part, without liability if, in Distributor's reasonable discretion:
 - (i) Continued performance of any part of this Agreement would violate any federal, state or local law, rule or regulation, or put Distributor in jeopardy of violating any federal, state or local law, rule or regulation regarding Controlled Substances or any other regulated products or activities; or
 - (ii) Distributor receives a complaint, notice, warning letter or other communication from a governmental agency alleging noncompliance with any Controlled Substances laws, rules or regulations in relation to Distributor's distribution of the Products under this Agreement or to City's actions or omissions with respect to Controlled Substances or any other regulated products or activities.

11.13 Federal and State Financial Participation.

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

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

11.13.2 During the Term, Distributor shall promptly notify City of any lawsuits, Claims, administrative actions or other proceedings asserted or commenced against it that assert, in whole or in part, claims that if successfully adjudicated against Distributor would materially impact Distributor's

ability to provide the Services, except where Distributor deems, in its sole discretion, that such notification would violate or cause Distributor to violate any applicable law, ordinance, rule, regulation or order.

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

11.14 (Reserved)

11.15 Severability.

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

11.16 Cooperative Drafting.

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

11.17 Order of Precedence.

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

11.18 No Waiver.

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

11.19 Relationship of Parties.

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

Article 12 Department Specific Terms (Reserved)

Article 13 Data and Security

13.1 Confidential Information.

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

13.2 Purchase Data Confidentiality.

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

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

13.4 Business Associate Agreement. (Reserved)

Article 14 MacBride And Signature


14.1 MacBride Principles -Northern Ireland.

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

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


CITY

Recommended by:

DocuSigned by:

 By: _____
28527524752949F...
 Grant Colfax, MD
 Director of Health
 Department of Public Health

DISTRIBUTOR


McKESSON PLASMA AND BIOLOGICS LLC

DocuSigned by:

 By: _____
10B3276F370C407...
 Scott Miller
 President
 Health Systems

Supplier ID: **0000038525**

Approved as to Form:

Dennis J. Herrera
 City Attorney

DocuSigned by:

 By: _____
BD54168A4C3B452...
 Louise S. Simpson
 Deputy City Attorney

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Appendix A
McKesson Plasma and Biologics LLC
Supply Agreement

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APPENDIX A TO THE P-250 – McKESSON PLASMA AND BIOLOGICS LLC SUPPLY AGREEMENT

1. PRIME VENDOR COMMITMENTS:

Throughout the Agreement Term, in order to receive the Member Markup, City must not order less than ninety percent (90%) of all dollars spent on Products by using Distributor as its prime vendor for the purchase of such Products normally purchased through plasma and specialty pharmaceutical distributors (“Prime Vendor”). To the extent that Distributor is unable to supply such Products, those purchases shall be excluded from the ninety percent (90%) calculation. City’s compliance with the foregoing ninety percent (90%) Prime Vendor commitment will be measured during each quarter during the Term, beginning on the Effective Date. Upon request by Distributor, City should provide documentation denoting total purchase dollars available to Distributor in order to verify compliance with the Prime Vendor commitment set forth above. For purposes of clarification (i) the ninety percent (90%) Prime Vendor purchase threshold set forth in this paragraph is a condition for receiving the applicable Member Markup and (ii) City’s failure to meet the ninety percent (90%) Prime Vendor threshold as set forth herein shall not constitute a breach of City’s obligations hereunder, but Distributor may, at its option and in its sole discretion, instead of seeking any other remedy available hereunder, upon sixty (60) days’ notice to City, proceed under this Appendix A such that such City will only receive Secondary Services under the Agreement (as set forth in Section B of Exhibit C.9 of the Base Agreement) for the quarter following the quarter in which such City fails to meet the ninety percent (90%) Prime Vendor commitment.

2. AUTOMATIC ALTERNATE SOURCING: (Reserved)

3. COST REPORTING:

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

4. CHANGE IN MEMBER STATUS:

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

5. OWN USE:

City and Facilities represent and warrant that (i) prescription Products being purchased for dispensing or administration to patients pursuant to a legitimate prescription, and (ii) any subsequent resale by City or any Facility will be in compliance with applicable law and to a licensed healthcare provider for its

dispensing or administration to patients pursuant to a legitimate prescription. City and Facilities shall defend, indemnify and hold Distributor harmless from any and all liability arising out of or due to nonadherence with such representation and warranty.

ATTACHMENT 1 - LIST OF CITY FACILITIES

Facility Acct ID	Facility Name	Address	City Name	State	Zip
52398	SFGH OP PHCY WAC A34	1001 POTRERO AVE RM1P2	SAN FRANCI SCO	CA	94110
98467	LAGUNA HONDA HOSPITAL	375 LAGUNA HONDA BLVD	SAN FRANCI SCO	CA	94116
098806	SAN FRAN GH MAIN OP-B PHS	1001 POTRERO AVE RM 1P2	SAN FRANCI SCO	CA	94110
171904	SFGH PHCY PUR PHS	1001 POTRERO AVE.	SAN FRANCI SCO	CA	94110
235070	SFGH PUR WAC A34	1001 POTRERO AVE.	SAN FRANCI SCO	CA	94110
235392	SAN FRANCISCO GH PHCY PUR	1001 POTRERO AVE.	SAN FRANCI SCO	CA	94110
518231	SFDPH/ADULT IM CL/STIER	101 GROVE STREET ROOM 102	SAN FRANCI SCO	CA	94102
900038	SFGH MED CENTER PHS	1001 POTRERO AVE.	SAN FRANCI SCO	CA	94110
900039	SFGH MED CENTER	1001 POTRERO AVE.	SAN FRANCI SCO	CA	94110

ATTACHMENT 2 – MEMBER MARKUP AND COMMITMENTS

1. MEMBER MARKUP:

In lieu of any other price reductions available in the Base Agreement, commencing on the Effective Date and for the entire duration of the Agreement Term, for subcutaneous and intravenous immune globulin, albumin factor, hyperimmune, and hemostasis products (collectively, “Plasma Products”) excluding any City purchases of 340B Plasma Products, City will receive the applicable Member Markup reflected on the following grid, subject to adjustment for City’s average total monthly Net Purchase Volume and invoice management practice. This Member Markup shall be adjusted quarterly based upon City’s average total monthly Net Purchase Volume over the prior calendar quarter. Distributor shall inform City of any change in the regular course of each quarterly business review meeting. All pharmaceutical products distributed by Distributor that are not Plasma Products (“Specialty Products”) will be priced at Cost, without any Member Markup or Markup Modifier. Distributor shall not increase any Member Markup matrix below during the Term.

City’s Average Total Monthly Net Purchase Volume Annual Aggregated Spend	Weekly Statement Pay	15 Day Statement Pay	30 Day Invoice Payment
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

- a. Consignment Incentive. In the event City elects to execute products consignment agreement with Distributor, Distributor shall decrease the Member Markup by - [REDACTED] % ([REDACTED]) for City.
- b. For purposes of this Attachment 2, [REDACTED].
- c. For the avoidance of doubt, Distributor will pay Administrative Fees to the GPO as set forth in the Base Agreement.

2. MINIMUM COMMITMENTS:

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

commitments, and/or other terms, Distributor shall have the right to terminate for breach in accordance with Article 8 of the Agreement and/or the right to reprice.

- a. a minimum monthly Net purchase volume [REDACTED] (“Net Purchase Volume”).

3. PAYMENT TERMS:

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

- 4. **CSOS MARKUP: (Reserved)**
- 5. **DELIVERY FREQUENCY: (Reserved)**
- 6. **REBATES/DISCOUNTS: (Reserved)**
- 7. **CONDITION FOR REBATES/DISCOUNTS: (Reserved)**
- 8. **DISTRIBUTOR’S DUTIES:**

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

9. CLASS OF TRADE:

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

10. DEFINITION OF COST; MEMBER MARKUP:

- a. **In General.** Except as set forth herein or as otherwise agreed by City and Distributor, Distributor shall invoice City for purchases of Products at Cost (as defined below) plus, for Plasma Products only (excluding any City purchases of 340B Plasma Products) the Member Markup (as defined above) determined based on certain criteria applicable to City; additionally, the criteria includes, without limitation, the payment terms ("City Payment Terms") as defined in Attachment 3 hereto.
- b. **Cost for Contract Products.** [REDACTED]

Cost for Non-Contract Products. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11. PRODUCT SUPPLY:

a. **Distribution Centers.** Distributor may have multiple warehouses, or distribution centers, in different geographic locations (each, a "DC") and shall assign City to a primary DC. Thereafter, Distributor shall provide City with at least ninety (90) days' prior written notice before assigning City to a different primary DC. Notwithstanding the foregoing, City acknowledges that as of the effective date of this Appendix A, Distributor has only one DC, which is located in Memphis, Tennessee, and City is assigned to that DC as of the Effective Date.

b. **Product Warehousing.** Distributor shall warehouse, at its own expense, such quantities of Products as Distributor reasonably determines are necessary to satisfy the City's purchasing requirements. Distributor's determination of such purchasing requirements shall be based on City's purchasing history, as well as the estimated monthly usage data that City provides to Distributor with all Product stocking requests;

[REDACTED]

Distributor shall provide City with a written procedure or an electronic application for City's Product stocking requests. Subject to availability and supplier lead times and, for new suppliers, subject to time for submitting and processing applications and loading data, Distributor shall place Products in stock at DCs within ten (10) business days of the date of City's request or the date of receipt of City's notification of newly awarded products that either replace existing Contract Products.

c. **Approval of Suppliers.** Distributor's Product warehousing obligations pursuant to this Section are subject to applicable suppliers meeting Distributor's reasonable standards and other criteria pertinent to Distributor's business, such as credit worthiness, liability insurance, good standing with Federal regulatory agencies such as the federal Food and Drug Administration ("FDA") and the Federal Drug Enforcement Administration.

- d. **Scheduled Deliveries.** Distributor shall make scheduled deliveries using contracted third party couriers or common carriers. Products will be delivered to City F.O.B. destination, freight prepaid and absorbed, except as otherwise set forth below, Monday through Friday (and Saturday, if applicable). Distributor shall provide City with an order delivery time window that meets City's reasonable needs, but may be subject to limitations of contracted third party couriers and common carriers. Distributor shall communicate to City in a timely manner any changes or delays to the delivery time. Distributor shall make scheduled deliveries in boxes or clean, reusable totes, using third party couriers, or common carriers. Distributor shall deliver temperature-sensitive Products in insulated containers capable of maintaining the appropriate temperature during transport.
- e. **Order Transmission Deadlines.** Distributor's order transmission deadlines for City shall be no earlier than 7:00 p.m. CST Sunday through Thursday for next day Product delivery. Distributor's order transmission deadline on Friday shall be no earlier than 4:00 p.m. CST for delivery on Saturday for those members that receive Saturday deliveries.
- f. **Emergency Deliveries.** Included as part of City's payment for Products and/or Services hereunder, Distributor shall provide [REDACTED] Emergency Delivery per calendar year, per City location (e.g., if City facility's inpatient pharmacy is separate from City facility's outpatient pharmacy, each location shall be entitled to [REDACTED] Emergency Delivery per calendar year included as part of City's payment for Products and/or Services hereunder). The Emergency Deliveries provided to City location can only be used by the account number for that location and cannot be used by any other account numbers. For purposes of this Section, an "Emergency Delivery" is defined as any of the following:
 - i. Weekend or holiday delivery (unless such delivery is a scheduled delivery for City);
 - ii. City contacting DC on a business day, and needing a Product delivered to City's pharmacy prior to the next scheduled delivery on an urgent basis;
 - iii. City contacting DC on a business day, but after order transmission deadline, to add on a Product or adjust Product quantity.

Beginning with the [REDACTED] Emergency Delivery in a year for a given City location, Distributor may charge City [REDACTED] per occurrence or Distributor's actual freight cost, whichever is lower. In the case of any Emergency Delivery that results in Distributor's costs grossly exceeding the [REDACTED] charge, Distributor shall notify City of such anticipated costs before accepting the Emergency Delivery request and, with City's prior consent which may be given verbally at the time of placing the order. Distributor may charge City an amount equal to Distributor's actual costs for completing such Emergency Delivery.

[REDACTED]

h. **Product Compliance/Quality.**

- i. **Product Compliance:** Distributor represents and warrants as follows, which representations and warranties shall survive the expiration or earlier termination of this Agreement:
 - a. The Products shall be distributed and sold by Distributor in compliance with applicable Federal, state and local laws; and
 - b. From the time of Distributor's receipt of Products from the applicable supplier to the date of delivery to the City, Products shall not be adulterated or misbranded by Distributor within the meaning of the Federal Food, Drug and Cosmetic Act, as amended.
- ii. **Product Condition.** Unless otherwise agreed upon by City, all Products shall be new and shall not be delivered to City if expired unless City accepts delivery after receiving prior notice from Distributor (which notice may be through Distributor's McKesson Connect or any subsequent online ordering system) of the condition of such Products.
- iii. **Product Shelf Life.** Distributor shall deliver Products to City at least six (6) months prior to the expiration date of such Products. Distributor shall use its best efforts to deliver Products with the longest possible shelf life and the latest possible expiration dates. In the event that the only Product available is within six (6) months of its expiration date, Distributor shall notify City in writing of such dating. Upon receiving such notice, City may choose whether to accept any such Product.
- iv. **Product Integrity; Source of Products.** Distributor shall purchase all Products distributed and sold to City pursuant to this Agreement directly from the applicable manufacturer or the applicable manufacturer's exclusive distributor (as such terms are defined under the Drug Supply Chain Security Act). Distributor reserves the right to exclude any of the above entities that Distributor in its sole discretion determines is a gray market distributor.
- v. **Pass Through of Warranties, Representations, and Indemnity Obligations.** Distributor shall pass through to City any representations, warranties and rights and claims to defense and indemnity made by each supplier of a Product (including representations, warranties and rights and claims to defense and indemnity, relating to intellectual property, product liability or negligence) with respect to such Product, to the fullest extent permitted to be passed through by supplier. Nothing herein limits or obviates any right or remedies Distributor may have under its agreements with such suppliers. Furthermore, Distributor represents and warrants that it will make commercially reasonable efforts to (i) cooperate with all requests made by City to enforce such representations, warranties and rights and claims to defense and indemnity against such manufacturers and (ii) obtain consents from the manufacturers in passing through to the GPO and City such representations, warranties, and rights to defense and indemnification.
- vi. Distributor will not knowingly ship a Product for which it has received notice of recall.

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

12. ORDERING:

- a. **Distributor's Ordering Technology.** Included as part of City's payment for Products and/or Services hereunder, Distributor shall provide City the option to use the following systems to create, manage and transmit orders to Distributor:
 - i. Over-the-phone order taking capabilities; and
 - ii. A secure internet-based ordering application; and
 - iii. Exchange of standard Electronic Data Interchange ("EDI") transactions for ordering, order confirmation, and catalog creation and maintenance. For members that elect to use EDI to order from Distributor, City shall be responsible for all costs associated with equipping their facilities with EDI-capable software; provided, however, that Distributor shall not impose any fees on City as a result of using EDI as their ordering transmission method.
- b. **Purchase Orders.** Distributor shall accept City's orders, order supplements and order modifications on purchase orders delivered to Distributor via facsimile, telephone, or hard copy, through the preferred method of electronic order transmission using EDI through Distributor-provided technology as described in Attachment 2, Section 12(a) (Distributor's Ordering Technology), or through such other electronic method acceptable to Distributor. Such orders shall not add to, modify, or vary the terms of this Agreement. Distributor's ordering technology shall accommodate City's alphanumeric purchase order number.
- c. **Product Substitution.** Distributor shall have no unilateral right to substitute other products for any Product ordered.
- d. **Order Confirmation.**

Within twenty (20) minutes of City's order transmission, Distributor shall provide electronic confirmation of the transmitted order. The confirmation is an inventory commitment and shall include the following data: list of all Products ordered, quantity ordered, quantity to be shipped, reasons for Product unavailability, Product description, Product National Drug Code ("NDC") number, Distributor's Product number, invoice price per Product, each Product's extended invoice price for quantity committed, total invoice price for the

order, contract type description for each Product, and City's purchase order number. Contract type description examples include GPO contract, local or individual contract, and Distributor back-up contract.

13. INVOICES:

- a. **Invoice Information.** In addition to a packing slip, an invoice shall accompany each delivery of Products from Distributor or be made available through Distributor's web-based ordering system; provided, however, that for any order for which the delivery location is not the same as the City's location, shipping documentation may instead accompany such delivery instead of an invoice. Each invoice shall contain the price confirmed by Distributor at the time of City's order confirmation. For purposes of clarification, the price for a Product shall be locked in at the time of the order confirmation. Additionally, all invoices shall include, at a minimum, the following information (as applicable): invoice date, list of all Products ordered, Product quantity ordered, Product quantity shipped, reasons for Product unavailability, Product description (including supplier's name), Product number, Distributor's Product number, price per Product, each Product's extended price for quantity shipped, total price for the invoice (as set forth above), contract indicator for each Product, indications if Products are prescription, or non-prescription, City's purchase order number, Distributor's shipping address and shipping location's DEA number, Distributor invoice number or other applicable tracking number, and the payment due date. Distributor shall also provide members with the option of including the Global Location Number ("GLN") and Global Trade Identification Number ("GTIN") for each Product on an invoice, provided that City has provided such GLN and/or GTIN to Distributor in a format acceptable to Distributor. Distributor will separately invoice Controlled Substances (as defined herein).
- b. **Electronic Invoicing.** At City's election, Distributor shall invoice City electronically by using a standard EDI format or a customized format mutually agreed upon by City and Distributor. Distributor shall not charge City for such electronic invoicing.
- c. **Sales Taxes.** Sales taxes levied by any competent jurisdiction in which City or Distributor is located, based upon the transactions covered by this Agreement shall be passed on to the City by including a line item for the sales tax in the charge for the taxed Product and is also included in the Guaranteed Maximum Price.
- d. **Drop Shipment Invoice Services.** "Drop Shipments" are Products shipped from the supplier directly to City but invoiced to Distributor for the purpose of billing City. Upon request of City and with permission of the supplier and Distributor, Distributor shall provide invoices to City for Drop Shipments. Drop Shipments shall be invoiced at Cost plus any freight handling fee or other charge imposed by the supplier, without any Member Markup, and no additional fees will apply to the City for such Drop Shipments. In the event (i) Distributor elects to no longer carries a Product in a DC, provided such Product meets Distributor's reasonable minimum eligibility requirements to be carried by Distributor, or (ii) an entity affiliated with Distributor previously shipped a Product that is now shipped by Distributor, or (iii) an entity affiliated with Distributor ships a Product, or (iv) a Product is out of stock at City's DC, City may obtain a Drop Shipment from the supplier. In such an event, Distributor shall without exception invoice these Drop Shipments at Cost plus the applicable Member Markup under this Appendix A. All Drop

Shipments invoiced by the Distributor shall be added to the City's total purchase volume for the purposes of slotting the City in the Markup Matrix.

e. **Invoice Corrections.**

- i. **Denied Chargebacks.** "Denied Chargebacks" are invoices to City resulting from chargebacks for Products provided to City under applicable supplier agreements that are ultimately uncollectible from supplier despite Distributor's good faith efforts to collect from supplier. City shall not be responsible for any Denied Chargebacks dated later than sixty (60) days from an applicable Product's original invoice date.
- ii. **Overcharges and Undercharges.** Distributor shall thoroughly research City-reported price overcharges and any undercharges and shall use commercially reasonable efforts to respond to City with findings within five (5) business days of receipt of such report. Subject to supplier approval, if City was overcharged or undercharged as reported by City for a Contract Product, Distributor shall promptly either credit or, in its discretion, charge the City for the difference or credit the entire original purchase and deliver to City a revised invoice stating the correct contract price ("Billing Correction"). Distributor shall make Billing Corrections of which it is aware regardless of whether the City reported an overcharge.
- iii. **Non-Contract Product Undercharges.** Distributor shall research any City-reported undercharges and respond to City within ten (10) business days of the request. In addition, if Distributor discovers a price undercharge for a Non-Contract Product, Distributor shall promptly contact the affected City. City shall be responsible for any Billing Correction issued by Distributor to correct Non-Contract Product undercharges, provided that such Billing Correction is invoiced no later than sixty (60) days from the Product's original invoice date.

14. **ADDITIONAL REQUIREMENTS:**

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

15. DISTRIBUTOR SALES REPRESENTATIVES AND CUSTOMER SERVICE:

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

ATTACHMENT 3 - CITY PAYMENT TERMS

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

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

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

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

REGULAR PAYMENT TERMS

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

1. WEEKLY STATEMENT PAYMENT

[REDACTED]

2. 15-DAY INVOICE PAYMENT

[REDACTED]

3. SEMI-MONTHLY STATEMENT PAYMENT

[REDACTED]

4. MONTHLY STATEMENT PAYMENT

[REDACTED]

5. PAYMENT UPON DELIVERY (C.O.D.). Subject to Attachment 3, Section (c) (Revocation of Credit Privileges) above.

ATTACHMENT 4 - PRODUCT RETURN POLICY

McKesson Plasma and Biologics LLC Return Goods Policy (Effective as of December 1, 2016)

Items Eligible for Return

- All product must be stored and returned in accordance with the protocol supplied by MPB and may vary depending on whether the product is refrigerated or ambient.
- Frozen products are not eligible for return and will not be accepted by MPB.
- Refrigerated product that is received in damaged condition must be reported within [REDACTED] business days of receipt.
- Ambient (room temperature) product that is received in damaged condition must be reported within [REDACTED] business days of receipt.
- Product that is purchased on a non-returnable basis, including refrigerated products, is not eligible for credit.
- Due to the unique manufacturing process of certain products and limitations on usage, MPB follows all manufacturer policies regarding acceptance of returns. MPB allows returns on products when the manufacturer policy deems the returned product fit.
- MPB sells products as non-returnable only when the manufacturer policy does not allow returns.

Return Authorization (RA)

- All customers must obtain a RA number from a Plasma Service Representative prior to returning a product. To request a RA number, contact MPB at 877.625.2566 or mpbreturns@mckesson.com.
- RA requests must be made within [REDACTED] of product delivery.

RA IS VALID FOR [REDACTED] FROM THE DATE OF APPROVAL. PRODUCT NOT RETURNED WITHIN [REDACTED] OF RECEIPT OF A RA WILL NOT BE CREDITED.

- RA provides the right to return product. It does not guarantee credit. Credit will be provided when product is received and all return requirements have been met.
- Any product that is returned without a signed RA will not be credited.
- Customers will receive a copy of the Product Care and Returns Shipping Procedures when requesting a RA from a Plasma Service Representative.

Credit and Restocking Fee

- The credit amount for returned products is based on the original purchase price.
- All returns pursuant to this Return Goods Policy are subject to a restocking fee [REDACTED]

Required Procedures for Returning ALL Items

- All returns MUST follow the Product Care and Returns Shipping Procedures.

- Detailed care instructions for refrigerated and ambient product is provided in the RA, this Return Goods Policy, and the Product Care and Returns Shipping Procedure.
- To receive credit, Product must be returned in its original manufacturer packaging, and be free of markings or other damage.

Important Notes

- MPB reserves the right to change without notice the Return Goods Policy.
- MPB is not responsible for Products returned without prior return authorization and reserves the right to reject said shipment and charge the customer for any incurred costs.
- All returns must comply with all applicable laws, rules, regulations, policies and procedures. Returned Products must also include the original invoice number in order to be saleable, in compliance with the Drug Supply Chain Security Act.
- For consignment products, please refer to the separate MPB Consignment Product Returns Goods Policy and Consignment Product Care and Return Shipping Procedures.

ATTACHMENT 5: DISTRIBUTOR'S CUSTOMER FACING MANAGEMENT REPORTING SYSTEM CAPABILITIES

DISTRIBUTOR'S MEMBER-FACING ORDERING SYSTEM CAPABILITIES

This Exhibit sets forth the minimum specifications required for the order entry systems provided by Distributor, pursuant to Section 10 of the Base Agreement ("Ordering System"):

- 1.** Product catalog shall include:
 - a.** All Products stocked at the DC assigned to service City shall be visible to City in the Ordering System. Such Ordering System shall clearly identify and distinguish Product labels to facilitate such identification (e.g., where there are two different labels for the same manufacturer's Product). Such Product identification and distinction shall be obvious to City personnel familiar with Distributor's Ordering System.
 - b.** All Contract Products shall be visible to City in the Ordering System, even if such Products are not stocked in the DC assigned to service City.
- 2.** The Ordering System shall include the current invoice price applicable to City, which is the price the City would be invoiced if City ordered the Product that day; provided, however, that for Non-Contract Products, the invoice price applicable to the City will be the price at the time of electronic order confirmation.
- 3.** If an ordered Product is not available, the Ordering System shall inform the City of the reason for the unavailability and provide an easy mechanism to locate generically equivalent Products. In no case shall the system's suggested alternative Products suggest Distributor's Contract Products or any other Distributor-preferred products before suggesting GPO Contract Products, when applicable.

ATTACHMENT 6: NON-INJECTABLE GENERICS AUTO SHIP PROGRAM DESCRIPTION

(RESERVED)

ATTACHMENT 7: DISASTER RESPONSE PLAN

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

Planning for an Emergency

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

Procedures during an Emergency

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

Action following an Emergency

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

Appendixes

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

Appendix B
MPB CALCULATION OF CHARGES

1. Method of Payment
 - A. Distributor shall submit invoices as set forth in Attachment 3 to Appendix A, and in Section 3.13 above.
2. Program Budget and Final Invoice
 - A. The Program Budget is attached hereto as Appendix B-1: MPB Program Budget.
 - B. Distributor understands that, of the maximum dollar obligation listed in Section 3.4 of this Agreement, **\$23,072,154** is included as a contingency amount and is neither to be used in Program Budget attached to this Appendix, or available to Distributor without a modification to this Agreement executed in the same manner as this Agreement or a revision to the Program Budget of this Appendix B, which has been approved by Contract Administrator. Distributor further understands that no payment of any portion of this contingency amount will be made unless and until such modification or budget revision has been fully approved and executed in accordance with applicable City and Department of Public Health laws, regulations and policies/procedures and certification as to the availability of funds by Controller. Distributor agrees to fully comply with these laws, regulations, and policies/procedures.
 - C. Distributor agrees to comply with its Program Budget of this Appendix B in the provision of Services. Changes to the budget that do not increase or reduce the maximum dollar obligation of the City are subject to the provisions of the Department of Public Health Policy/Procedure Regarding Contract Budget Changes. Distributor agrees to comply fully with that policy/procedure.
 - D. A final closing invoice, clearly marked "FINAL," shall be submitted no later than forty-five (45) calendar days following the closing date of the Agreement, and shall include only those Services rendered during the referenced period of performance. If Services are not invoiced during this period, all unexpended funding set aside for this Agreement will revert to City. City's final reimbursement to the Distributor at the close of the Agreement period shall be adjusted to conform to actual units certified multiplied by the unit rates identified in the Program Budget attached hereto, and shall not exceed the total amount authorized and certified for this Agreement.
3. No invoices for Services provided by law firms or attorneys, including, without limitation, as subcontractors of Distributor, will be paid unless the provider received advance written approval from the City Attorney.

Appendix B-1 - Budget

Line #	Departmental Unit	FY 19 20	FY 20 21	FY 21 22	FY 22 23	FY 23 24	Budgeted Amount
		11/1/2019 - 6/30/2020	7/1/2020 - 6/30/2021	7/1/2021 - 6/30/2022	7/1/2022 - 6/30/2023	7/1/2023 - 9/30/2023	
1	DPH Wide (Specialty / Gene therapy)	\$ 11,333,333.33	\$ 24,480,000.00	\$ 35,251,200.00	\$ 50,761,728.00	\$ 24,365,629.00	\$ 146,191,890.33
2		\$ 11,333,333.33	\$ 24,480,000.00	\$ 35,251,200.00	\$ 50,761,728.00	\$ 24,365,629.00	\$ 146,191,890.33
3					Sub Total (All Units)		\$ 146,191,890.33
4							Specialty Drugs / Gene therapy Innovation Initiatives
5							\$ 56,822,609.00
6							Subtotal of All Pharmaceuticals
7							\$ 203,014,499.00
8							Contingency
9							\$ 23,072,154.00
							Sub Total
							\$ 226,086,653.00
							Holdover Amount (Calculated from the last 12 months of the contract)
							\$ 69,848,137.00
							Guaranteed Maximum Cost
							\$ 295,934,790.00

Starting FY 20/21 45% annual increase to account for specialty and gene therapy drug inflation.

Line 4: Is an amount to account for future innovations in the field of specialty and gene therapy. This is calculated By taking 15% of the amount of the Pharma drugs + 15% of the amount of the specialty drugs. The Department anticipates significant future developments in the area of specialty drugs and gene therapy.

Line 8: 25 % of the last 12 months of the contract (9 months of FY 22/23 and 3 months of FY 23/24) will give DPH 1 year of uninterrupted service to find an alternate vendor if needed.

Appendix C
DPH Statement of Work

1. Terms

A. Contract Administrator:

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

B. Reports:

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

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

C. Evaluation:

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

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

The City agrees that any final written reports generated through the evaluation program shall be made available to Distributor within thirty (30) working days. Distributor may submit a written response within thirty working days of receipt of any evaluation report and such response will become part of the official report.

D. Possession of Licenses/Permits:

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

E. Adequate Resources:

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

F. Infection Control, Health and Safety:

- (1) Distributor must have a Bloodborne Pathogen (BBP) Exposure Control plan as defined in the California Code of Regulations, Title 8, Section 5193, Bloodborne Pathogens (<http://www.dir.ca.gov/title8/5193.html>), and demonstrate compliance with all requirements including, but not limited to, exposure determination, training, immunization, use of personal protective equipment and safe needle devices, maintenance of a sharps injury log, post-exposure medical evaluations, and recordkeeping.
- (2) Distributor is responsible for site conditions, equipment, health and safety of their employees, and all other persons who work or visit the job site.
- (3) Distributor shall assume liability for any and all work-related injuries/illnesses including infectious exposures such as BBP and TB and demonstrate appropriate policies and procedures for reporting such events and providing appropriate post-exposure medical management as required by State workers' compensation laws and regulations.
- (4) Distributor shall comply with all applicable Cal-OSHA standards including maintenance of the OSHA 300 Log of Work-Related Injuries and Illnesses.
- (5) Distributor assumes responsibility for procuring all medical equipment and supplies for use by their staff, including safe needle devices, and provides and documents all appropriate training.
- (6) Distributor shall demonstrate compliance with all state and local regulations with regard to handling and disposing of medical waste.

G. RESERVED.

H. Acknowledgment of Funding: Reserved.

I. Hospital Policy 16.27:

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

2. Description of Services

Distributor agrees to perform the following Services:

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

Detailed description(s) of services are listed in Appendix A, McKesson Plasma and Biologics LLC Supply Agreement.

Attachment 1 to Appendix C

**PERFORMANCE IMPROVEMENT PLAN
AND PERFORMANCE MEASURE GRID**

Contract Services

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

Distributor Name	Services Provided	Measure Name	Metric (What data is being collected?)
MPB	Pharmacy	GPO Contract	Provide a quarterly update on GPO contracts to DOP to review current contracts loaded and or notification of new contracts.
MPB		Quarterly business reviews to review quarterly and annual spend	Meet on a quarterly basis with McKesson representatives to review quarterly and annual spend. Provide data to measure against budget dollars for contract.

Appendix D
McKesson Plasma and Biologics LLC
Consignment Agreement

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APPENDIX D TO THE P-250 – McKESSON PLASMA AND BIOLOGICS LLC CONSIGNMENT AGREEMENT

1. Definitions.

Capitalized terms used as defined terms in this Pharmaceutical Products Consignment Agreement (this “Agreement”) shall have the meanings given to them in the P-250, unless otherwise defined herein. For purposes of this Agreement, the following terms shall have the following meanings:

“**Consignment Products**” means certain recombinant factor and/or other pharmaceutical products that MPB makes available to its customers through its consignment program (the “MPB Consignment Program”). A list of Consignment Products is attached hereto as Schedule B. Schedule B may be updated from time to time pursuant to Section 3 (e) below.

“**Facilities**” means any and all existing and future facilities with respect to which City exercises control over the selection of a wholesale pharmaceutical distributor for Consignment Products. A list of City’s existing Facilities is attached hereto as Attachment 1, List of Facilities. The addition of Facilities during the term of this Agreement is subject to prior written approval by MPB and such Facility’s execution and delivery of any requested documentation. Attachment 1 may be updated from time to time by MPB, upon notice to City, to reflect any additional Facilities so approved. At all times, MPB’s books and records shall control with respect to the identification of Facilities participating under this Agreement.

2. Consignment Relationship; No Liens.

(a) MPB and City have an existing relationship, and are entering into a new relationship pursuant to this Agreement, whereby MPB will provide Consignment Products and services related to Consignment Products to City under the terms of this Agreement and the P-250. The terms and conditions of the P-250 will apply to the relationship established in this Agreement, except to the extent modified by the terms of this Agreement. In the event of any conflict in the terms of this Agreement and the P-250, this Agreement shall control for purposes of City’s purchases of Consignment Products.

(b) The nature of the relationship between the Parties established in this Agreement is a consignment relationship, under which MPB will deliver Consignment Products to City, yet title to Consignment Products shall not pass, and no sale of Consignment Products shall occur, until the date of the Consignment Product Transfer (as defined in Section 5(b)). Notwithstanding the foregoing, the Parties expressly agree and acknowledge that the arrangement between them as established by this Agreement shall not constitute a “consignment” within the meaning of Article 9 the Uniform Commercial Code of any applicable jurisdiction, but rather a “security agreement” as therein defined.

(c) City shall not take any action that purports to establish ownership of the Consignment Products prior to a Consignment Product Transfer, and expressly waives any lien or claim that it may have against the Consignment Products or the proceeds of the sale of any Consignment Products. At all times when any Consignment Product is in the custody of the City, City shall keep such Consignment Product free from all liens, taxes, and encumbrances that may be asserted by any third party prior to Consignment Product Transfer.

(d) City agrees to utilize MPB as their prime vendor of pharmaceutical products covered under MPB's Consignment Program.

(e) This Agreement shall not cover physician offices or clinics, medical groups or specialty clinics, unless otherwise set forth herein or agreed to by MPB, in its sole discretion. For clarity, Consignment Products shipped to a contract pharmacy or any Facility in its capacity as a contract pharmacy are purchases of the 340B covered entity and not the contract pharmacy.

(f) Covered Goods and Distribution. Notwithstanding anything to the contrary herein, (i) MPB reserves the right at all times to determine the products it will stock and sell in its pharmaceutical distribution centers, and the manner in which it will comply with all applicable law or industry guidelines, (ii) MPB is not required to sell pursuant to this Agreement any products sold by a subsidiary, division or other business operations of MPB (other than MPB's pharmaceutical distribution centers) or any Affiliate (as defined below) of MPB, and (iii) MPB is not liable with respect to any supply shortages or allocations or other distribution restrictions established by a governmental authority or the manufacturer. An "Affiliate" is defined as any entity controlling, controlled by or under common control with MPB.

3. Ordering.

(a) Initial Inventory. City shall order an initial inventory of Consignment Products as selected by City from Schedule B, List of Consignment Products, subject to any vendor restrictions. City inventory purchased prior to the Effective Date of this Agreement is not eligible for inclusion as Consignment Products under this Agreement.

(b) Additional Inventory. City may order additional or replacement inventory of Consignment Products from MPB at any time during the Term (as defined in Section 2.1 of the P-250). MPB will have no obligation to ship additional or replacement inventory of any Consignment Product after a Consignment Product Transfer occurs without an order from City.

(c) Order Placement. City or Facilities may only place orders for Consignment Products with MPB by telephone at 877-625-2566 or via email at mpbconsignment@mckesson.com.

(d) Order Processing. If MPB receives an order on a business day by [REDACTED] MPB will process the order [REDACTED]. MPB will process orders received on a non-business day, or on a business day after [REDACTED]. Emergency orders will be handled as mutually agreed by MPB and City.

(e) Changes to List of Consignment Products. MPB may amend Schedule B at any time in its sole discretion to reflect the addition to or deletion of Consignment Products available through the MPB Consignment Program. MPB will reasonably endeavor to provide City with an updated list of all available Consignment Products in MPB's Consignment Program on a quarterly basis. Such updates may be provided via email or MPB's quarterly products catalog.

4. Delivery and Acceptance of Additional Inventory.

(a) Standard Deliveries. MPB’s common carrier or contracted courier delivers based on City’s orders for next business day delivery from MPB’s servicing distribution center. [REDACTED]

(b) Emergency Deliveries. Upon request, MPB will provide emergency deliveries of Rx Consignment Product, subject to additional charges which shall be communicated to City upon request.

(c) Notification of Delivery. MPB shall notify City (which notice may be provided electronically) of (i) the delivery of any material amount of Consignment Product and (ii) the removal or replacement of any material amount of Consignment Product at City pursuant to Section 5(e).

5. Consignment Product Storage, Counts and Transfer.

(a) City agrees to store, maintain and utilize all Consignment Products in accordance with Section 7(c).

(b) Consignment Product Transfer Occurs. City shall be deemed to have purchased Consignment Product from MPB on the earlier date of (i) the Time of Order Confirmation or, (ii) following delivery thereof to City, such Consignment Product does not appear on a manual count performed in accordance with Section 5(d), subject in each case to Section 5(c). Such deemed purchase shall constitute a “Consignment Product Transfer.” “Time of Order Confirmation” means the time at which City reports to MPB that the Consignment Product is no longer in City’s inventory.

(c) Consignment Product Transfer Does Not Occur. A Consignment Product Transfer shall not be deemed to have occurred if a Consignment Product (i) appears on a Consignment Product count, or (ii) does not appear on a count, but reappears on a subsequent count, unless such Consignment Product has left City’s premises, and/or had its packaging or efficacy compromised. MPB shall issue a credit to City if City has previously paid for any Consignment Product that reappears under clause (ii) of this sub-section.

(d) Inventory Counts. MPB or City shall perform a manual count of all Consignment Products consigned to City pursuant to this Agreement from time to time, in accordance with one or more of the following procedures:

(i) Monthly Counts. On a monthly basis, MPB shall provide City with an Excel tracking template (an “Inventory Reconciliation Report”) listing all Consignment Products currently shown in MPB’s records to be in City’s consignment inventory. City shall: (i) complete such Inventory Reconciliation Report by providing the then-current on-hand inventory quantity of each Consignment Product that was not the subject of a Consignment Product Transfer on or after the date of any previous Inventory Reconciliation Report; and (ii) return the completed Inventory Reconciliation Report to

MPB within two (2) business days of receipt. Each Inventory Reconciliation Report shall include information requested by MPB, such as product name, NDC number, quantity on hand, quantity received, quantity dispensed, and lot numbers and expiration dates for each Consignment Product on hand, received or dispensed.

- (ii) Additional Counts. MPB may from time to time, request manual counts of Consignment Products in addition to the counts required pursuant to Section 5(d)(i) above, in which event City shall provide to MPB a written report of the results of such additional manual counts within five (5) business days after such request.
- (iii) MPB Counts. MPB may, from time to time and during normal business hours, send to City's premises one or more designated representatives to perform a manual count of all Consignment Products at City's Facility. MPB shall give City reasonable advance notice prior of any such visit. City shall cooperate with such representatives in performing such manual count by providing the representatives with access to Facilities at which Consignment Products are located.
- (iv) Verification of Lot Numbers. MPB may, from time to time, call City to verify the lot numbers of all Consignment Products on consignment with City. City shall cooperate with MPB to perform such verification as needed.

(e) Removal of Consignment Product. Notwithstanding anything in this Agreement to the contrary, MPB may remove and/or replace Consignment Product inventory at City's Facilities at any time and for any purpose, including, for example, to replace short-dated inventory.

6. Pricing; Payment.

(a) Price Determination and Invoices. MPB shall invoice City for purchases of Consignment Products [REDACTED]. The Parties agree and acknowledge all Consignment Products shall be billed by MPB to City at the price in effect as of the date that the Consignment Product Transfer occurs, not the date on which the inventory of the Consignment Products was delivered to City.

(b) Taxes. City shall pay all applicable taxes in connection with its purchase of Consignment Products (other than taxes based on MPB's net income). If applicable, City may provide MPB with a tax-exemption certificate, and MPB will take into account the tax-exemption certificate in invoicing City for Consignment Products.

(c) Returns of Consignment Products. In the event of any return of Consignment Products to MPB, MPB shall be responsible for all related shipping or freight charges. All returned Consignment Products must be in their original condition. For purposes of this section, "**original condition**" shall mean in the physical condition

in which City received said product from MPB. All such returns are governed by the MPB Return Goods Policy as set forth in the Supply Agreement.

7. Covenants of City.

City covenants to MPB as follows:

(a) City shall maintain all appropriate licenses required for City's premises where Consignment Products are located.

(b) From the time of delivery of Consignment Product to City and until Consignment Product has been dispensed to patients, undergone Consignment Product Transfer or been returned to MPB as set forth herein, City shall properly store and handle such Consignment Product in accordance with all applicable laws, rules, regulations and standards (including without limitation security, recordkeeping and reporting requirements) and all applicable manufacturer's guidelines and labeling requirements (including without limitation package inserts) regarding storage and handling of Consignment Product. City covenants and agrees to defend, indemnify and hold harmless MPB from and against any and all liability arising out of or due to City's non-adherence to the requirements set forth in the preceding sentence.

(c) City shall store Consignment Products in a secure and identifiable area in accordance with the manufacturers' guidelines, segregated from other pharmaceutical products, at City's Facility. For purposes of this Agreement, "secure and identifiable" means a controlled area within the Facility-licensed area.

(d) City shall clearly identify Consignment Products as products from MPB.

(e) City shall restrict access to the Consignment Products to authorized City personnel only.

(f) City shall utilize all Consignment Products on a first-in, first-out basis.

(g) City shall indicate on its books and records that Consignment Products are property of MPB and are not part of City's inventory.

(h) City shall not participate in any other distributors' consignment programs for products offered through the MPB Consignment Program during the term of this Agreement.

(i) City shall not return to MPB pharmaceutical products obtained on consignment.

(j) City agrees it will carry sufficient first party All Risk Insurance to cover a total loss of Consignment Products held in inventory, which are under the care, custody and control of City. Such insurance will be in an amount sufficient to cover the maximum value of product inventory held at any one time. MPB shall be named "loss payee" for the full replacement value of Consignment Product inventory. City will provide to MPB a certificate of insurance as proof of such coverage and naming MPB "loss payee." City agrees that its failure to secure and maintain first party All Risk Insurance as required, provide a certificate of insurance, or add MPB as "loss payee" will not release City of its responsibility for the replacement cost of any damage to

Consignment Products held in inventory.

8. Risk of Loss; Disclaimer of Liabilities.

(a) At all times when Consignment Products are located with City, City shall be liable for all loss or damage to or destruction of such Consignment Products, except to the extent such loss, damage or destruction is caused by the gross negligence or willful misconduct of MPB. City acknowledges that any Consignment Product received damaged or that is otherwise unacceptable should be returned to MPB immediately in accordance with the MPB Return Goods Policy set forth in Attachment C.

(b) CITY ACKNOWLEDGES THAT MPB IS NOT THE MANUFACTURER OF ANY CONSIGNMENT PRODUCT AND MPB DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, FOR ALL CONSIGNMENT PRODUCTS AND RELATED SERVICES. NO ORAL OR WRITTEN INFORMATION PROVIDED BY MPB, ITS EMPLOYEES OR OTHER REPRESENTATIVES WILL CREATE ANY SUCH WARRANTY. IN NO EVENT WILL MPB BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR RELATED TO CONSIGNMENT PRODUCTS OR RELATED SERVICES. THIS SECTION 8 AND THE OBLIGATIONS CONTAINED HEREIN WILL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

9. Post Termination.

Upon termination of this Agreement or the P-250 for any reason:

(a) City shall have no further access to Consignment Products and shall secure Consignment Products to ensure no further access occurs; and

(b) City shall return Consignment Products to MPB, or give MPB immediate access to Consignment Products for purposes of removal, and will cooperate fully with MPB regarding such return; and

(c) City shall be charged pursuant to Section 6, at MPB's price to City for Consignment Products on a consigned basis at the time of the return, for any Consignment Products missing or which are returned opened, damaged or in any other condition that causes MPB to question the integrity of any of Consignment Products.

10. P-250.

Except as expressly amended or modified hereby, all obligations of City under and as defined in the P-250 remain unchanged and in full force and effect. The provisions of this Agreement that, by their nature, are to be performed after the termination of the Consignment Program shall survive until they have been fully performed or otherwise discharged or waived. Additionally, until all amounts due under this Agreement have been paid or all Consignment Product has been returned to MPB, the provisions of Section 7 shall survive.

11. CHANGE IN MEMBER STATUS:

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

12. OWN USE:

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

ATTACHMENT 1 A - LIST OF CITY FACILITIES

Facility Acct ID	Facility Name	Address	City Name	State	Zip
171904	SFGH PHCY PUR PHS	1001 POTRERO AVE.	SAN FRANCISCO	CA	94110
235070	SFGH PUR WAC A34	1001 POTRERO AVE.	SAN FRANCISCO	CA	94110
235392	SAN FRANCISCO GH PHCY PUR	1001 POTRERO AVE.	SAN FRANCISCO	CA	94110

ATTACHMENT 1 B – LIST OF CONSIGNMENT PRODUCTS

The table is completely redacted with a solid black box, obscuring all data. The redaction covers the entire content area of the page, leaving only the header and footer text visible.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ATTACHMENT 2 – MEMBER MARKUP AND COMMITMENTS

1. MEMBER MARKUP:

Consignment Program Markup	Cost

2. MINIMUM COMMITMENTS: (Reserved)

3. PAYMENT TERMS:

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

4. CSOS MARKUP: (Reserved)

5. DELIVERY FREQUENCY: (Reserved)

6. REBATES/DISCOUNTS: (Reserved)

7. CONDITION FOR REBATES/DISCOUNTS: (Reserved)

8. DISTRIBUTOR’S DUTIES: (Reserved)

9. CLASS OF TRADE: (Reserved)

10. DEFINITION OF COST; MEMBER MARKUP: (Reserved)

11. PRODUCT SUPPLY:

- a. **Distribution Centers.** Distributor may have multiple warehouses, or distribution centers, in different geographic locations (each, a "DC") and shall assign City to a primary DC. Thereafter, Distributor shall provide City with at least ninety (90) days' prior written notice before assigning City to a different primary DC. Notwithstanding the foregoing, City acknowledges that as of the effective date of this Appendix A, Distributor has only one DC, which is located in Memphis, Tennessee, and City is assigned to that DC as of the Effective Date.
- b. **Product Warehousing.** Distributor shall warehouse, at its own expense, such quantities of Products as Distributor reasonably determines are necessary to satisfy City’s purchasing requirements. Distributor's determination of such purchasing requirements shall be based on

City's purchasing history, as well as the estimated monthly usage data that City provides to Distributor with all Product stocking requests; [REDACTED]

[REDACTED] Distributor shall provide City with a written procedure or an electronic application for City's Product stocking requests. Subject to availability and supplier lead times and, for new suppliers, subject to time for submitting and processing applications and loading data, Distributor shall place Products in stock at DCs within ten (10) business days of the date of a City's request or the date of receipt of City's notification of newly awarded products that either replace existing Contract Products.

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

12. ORDERING: (Reserved)

13. INVOICES: (Reserved)

14. ADDITIONAL REQUIREMENTS:

- a. **Return of Products.** City has the right to return Products to Distributor in accordance with the terms set forth in Attachment 4 attached hereto.
- b. **Product Recalls.** If Distributor is made aware of a Product recall impacting Products distributed to City by Distributor, Distributor shall provide written notice to City thereof within one (1) business day after Distributor has received confirmation of the relevant details of such recall from

the applicable supplier (which notice, may be made electronically through Distributor's McKesson Connect or any subsequent online ordering system). This Section does not apply to recalls that are only at the wholesale level.

- c. **Notice of Temporary Service Interruptions.** Distributor shall give City thirty (30) days' prior written notice of Distributor's intent to perform a physical inventory or any other scheduled or anticipated activity that may negatively impact delivery times or customer service capabilities.
- d. **Disaster Response Plan.** Distributor shall adhere to the terms of its disaster response plan a summary of which is attached hereto as Attachment 7, as may be revised from time to time (“Disaster Response Plan”).

15. DISTRIBUTOR SALES REPRESENTATIVES AND CUSTOMER SERVICE: (Reserved)

ATTACHMENT 3 - CITY PAYMENT TERMS

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

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

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

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

REGULAR PAYMENT TERMS

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

1. WEEKLY STATEMENT PAYMENT

[REDACTED]

2. 15-DAY INVOICE PAYMENT

[REDACTED]

3. SEMI-MONTHLY STATEMENT PAYMENT

[REDACTED]

4. MONTHLY STATEMENT PAYMENT

[REDACTED]

5. PAYMENT UPON DELIVERY (C.O.D.). Subject to Attachment 3, Section (c) (Revocation of Credit Privileges) above.

ATTACHMENT 4 - PRODUCT RETURN POLICY
MPB CONSIGNMENT RETURN GOODS POLICY

Items eligible for return

- All Consignment Product must be stored and returned in accordance with the protocol for refrigerated product.
- Consignment product that is received in damaged condition must be reported within [REDACTED] of receipt.
- Consignment product with [REDACTED] must be returned and, subject to this policy, will be replaced with longer-dated product. Replacement product will not be shipped without City authorization. If City authorizes shipment of replacement product, Dated Product will not be picked up until the replacement product has arrived.

Return authorization (RA)

- RA provides the right to remove product from City inventory by returning it to MPB.
- To obtain RA for consignment product, contact MPB at contact 877.625.2566, and select option 1 then option 7, or mpbconsignment@mckesson.com.
- City will be contacted by a Plasma Consignment Specialist to initiate eligible returns of Dated Product. RA is valid for [REDACTED] from the date of approval.
- Credit will be issued only if all return requirements have been met.
- If product is returned without a signed RA, it will not be processed or removed from City consignment inventory.

Required procedures for returning ALL items

- All returns MUST follow the Consignment Product Care and Return Shipping Procedures as detailed below.
- Detailed care instructions for refrigerated product are provided in the RA, this Consignment Return Goods Policy, and the Consignment Product Care and Return Shipping Procedures below.
- Product must be returned in its original manufacturer packaging, in accordance with the shipping instructions provided, and be free of markings or other damage (except for product received in damaged condition), to be eligible for removal from City consignment inventory.

Important Notes

- MPB reserves the right to change without notice the Return Goods Policy.
- MPB is not responsible for merchandise returned without prior return authorization and reserves the right to reject said shipment and charge the City for any incurred costs.
- Product not returned within [REDACTED] of receipt of an RA will no longer be eligible for return.
- All returns must comply with all applicable laws, rules, regulations, policies and procedures. Returned Products must also include the original invoice number in order to be saleable, in compliance with the Drug Supply Chain Security Act.

CONSIGNMENT PRODUCT CARE & RETURN SHIPPING PROCEDURES

Required procedures for consignment product:

All consignment product must be stored and returned in accordance with the protocol for refrigerated product.

This type of product requires frozen gel packs or foam bricks.

As soon as you receive the product, follow these steps:

1. Place product directly in refrigerator in accordance with manufacturer's instructions
2. Place ice packs in freezer
 - DO NOT place entire box with product inside in refrigerator. The product will not stay at required temperature and will be discarded.

When you are ready to ship the product back, follow these steps:

1. Product should be shipped back in the same type of Styrofoam cooler in which it was delivered.
2. Place frozen gel packs or foam bricks in bottom of cooler.
3. Place bubble wrap or other suitable packing material on top of the packs or bricks.
4. Place product in a plastic bag, if possible, tightly seal, and place in cooler on top of the bubble wrap or packing material.
5. Place more packing material on top of the product, and place lid back in cooler.
6. Place the cooler in the box.
7. Place appropriate documentation (RA and the signed Ongoing Assurance Letter included with the RA) on top of cooler, close the box, and secure tightly with tape.
8. If product is not shipped back in original container, label the box "Refrigerated".
9. Ensure that the RA number is prominently displayed on the outside shipping container or address label.
10. Use prepaid FedEx shipping slip and return.

MPB reserves the right to change without notice the Consignment Product Care & Return Shipping Procedures.

ATTACHMENT 5: DISTRIBUTOR'S CUSTOMER FACING MANAGEMENT REPORTING SYSTEM CAPABILITIES

DISTRIBUTOR'S MEMBER-FACING ORDERING SYSTEM CAPABILITIES

This Exhibit sets forth the minimum specifications required for the order entry systems provided by Distributor, pursuant to Section 10 of the Base Agreement ("Ordering System"):

1. Product catalog shall include:
 - a. All Products stocked at the DC assigned to service City shall be visible to City in the Ordering System. Such Ordering System shall clearly identify and distinguish Product labels to facilitate such identification (e.g., where there are two different labels for the same manufacturer's Product). Such Product identification and distinction shall be obvious to City personnel familiar with Distributor's Ordering System.
 - b. All Contract Products shall be visible to City in the Ordering System, even if such Products are not stocked in the DC assigned to service City.

2. The Ordering System shall include the current invoice price applicable to City, which is the price the City would be invoiced if City ordered the Product that day; provided, however, that for Non-Contract Products, the invoice price applicable to the City will be the price at the time of electronic order confirmation.

3. If an ordered Product is not available, the Ordering System shall inform the City of the reason for the unavailability and provide an easy mechanism to locate generically equivalent Products. In no case shall the system's suggested alternative Products suggest Distributor's Contract Products or any other Distributor-preferred products before suggesting GPO Contract Products, when applicable.

ATTACHMENT 6: NON-INJECTABLE GENERICS AUTO SHIP PROGRAM DESCRIPTION

(RESERVED)

ATTACHMENT 7: DISASTER RESPONSE PLAN

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

Planning for an Emergency

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

Procedures during an Emergency

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

Action following an Emergency

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

Appendixes

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

Appendix E
Business Associate Agreement
Reserved

Appendix F
Distributor's Sample Invoice

Appendix G

PUBLIC MEETING AND PUBLIC RECORDS DISCLOSURE PROCESS

Exhibit 1 to Each McKesson Distribution Agreement

- 1. Distribution Agreements:** McKesson Corporation and McKesson Plasma and Biologics (collectively “McKesson”) and the City, acting by and through its Department of Public Health (“Department”), have negotiated Distribution Agreements (each identified as the “Negotiated Agreement”), portions of which McKesson asserts constitute, contain or reveal valuable trade secrets or other information belonging to McKesson that is exempt from disclosure under the California Public Records Act and chapter 67 of the San Francisco Administrative Code (the “Sunshine Laws”).
- 2. Redactions:** McKesson will provide the City with a redacted version of each Negotiated Agreement from which McKesson has removed information that it maintains is exempt from public disclosure under the Sunshine Laws (“Redacted Agreement”). The City agrees to not release any version of either Negotiated Agreement other than the Redacted Agreement in response to a public records request under the Sunshine Laws.
- 3. Negotiated Agreement Review:** McKesson understands that each Negotiated Agreement is subject to full unredacted review by the City’s third-party Budget Analyst and the San Francisco Board of Supervisors (collectively “Board”). The City will inform the Board regarding the portions of each Negotiated Agreement that City has agreed to not release, as well as the requirements of this Exhibit 1.
- 4. Records Request:** If the Department receives a public records request pertaining to McKesson, the Department will use its best efforts to notify McKesson of the Request and to provide McKesson with a description of the material that the Department deems responsive and the due date for disclosure (“Response Date”). If McKesson asserts that some or all of the material requested contains or reveals valuable trade secrets or other information belonging to McKesson that is exempt from disclosure and directs the City in writing to withhold such material from production (“Withholding Directive”), then the City will comply with the Withholding Directive on the condition that McKesson seeks judicial relief on or before the Response Date. If any third-party initiates or threatens to initiate legal action to compel the production of McKesson’s material, McKesson shall defend, indemnify and save harmless City and its officers, agents and employees from any and all such third party claims. Should McKesson fail to seek judicial relief on or before Response Date, the City shall proceed with the disclosure of responsive documents.
- 5. Agreement not to Sue:** McKesson agrees that it will not sue the City for damages in connection with the disclosure by the City of information that McKesson asserts is exempt from disclosure, so long as such disclosure was inadvertent and the City uses reasonable efforts to mitigate the effects of the inadvertent disclosure and/or uses reasonable efforts to retrieve the information as appropriate.

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

CITY

**MCKESSON CORPORATION and
MCKESSON PLASMA AND BIOLOGICS**

Date:

Date:

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

By: _____
Travis Poe
Chief Operating Officer
McKesson Plasma and Biologics

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
Louise S. Simpson
Deputy City Attorney

Appendix H
PARENT GUARANTEE

BACKGROUND

McKesson Plasma and Biologics (“MPB”) and the City and County of San Francisco (“City”) have entered into a supply agreement, part of the Agreement between MPB and City as of April 1, 2019 (“MPB Agreement”).

MPB is a wholly-owned subsidiary of McKesson Corporation (“MPB Parent”). The City has requested that MPB Parent provide a guarantee of performance of MPB’s obligations under the MPB Agreement and MPB Parent has agreed to provide the guarantee on the terms and conditions set forth in this Parent Guarantee (“Guarantee”).

Accordingly, MPB Parent and City agree as follows:

GUARANTEE

1. Subject to all of the terms of this Guarantee, MPB Parent hereby unconditionally guarantees to the City, by way of an independent undertaking towards the City, the financial liabilities of MPB under the MPB Agreement (the “Obligations”). If MPB is in default of its performance of the Obligations and fails to cure such default within the period allowed for cure under the MPB Agreement, then the City will provide prompt written notice of any such default of MPB. MPB Parent will cure or cause to be cured such default within sixty (60) days after receipt by MPB Parent of written notice thereof specifying the nature of such default.

2. This Guarantee is valid and will remain in full force for the Term of the MPB Agreement, including as extended by Formal Amendment (“Term”).

3. Notwithstanding anything to the contrary elsewhere in this Guarantee, (i) any remedies, defenses and rights available to MPB towards the City (which include, without limitation, any and all disclaimers, exclusive remedies and limitations of liability in the MPB Agreement) will be available to MPB Parent should MPB Parent be required by the City to cover the Obligations; (ii) MPB Parent will be entitled to assert any and all defenses and claims available to MPB under the terms of the MPB Agreement; and (iii) in no event will MPB Parent’s liability under this Guarantee exceed the amounts set forth in the MPB Agreement as limitations on the liability of MPB thereunder, nor will the collective liability of MPB Parent and MPB under this Guarantee and the MPB Agreement exceed the limitations of liability set forth in the MPB Agreement.

4. MPB Parent represents and warrants to the City that:

- a. it has been duly incorporated as a company and is validly existing and has all necessary corporate power and authority to enter into and deliver this Guarantee and to perform its obligations hereunder;
- b. all necessary corporate action has been taken by it to authorize this Guarantee; and
- c. this Guarantee constitutes a legal, valid and binding contractual obligation of MPB Parent.

5. MPB Parent agrees that it will not be released from this Guarantee by any act or omission of MPB whereby (in absence of this provision) MPB Parent would or might be released, including, whether or not known to MPB Parent:

- a. any alteration in the obligations undertaken by MPB pursuant to the terms of the MPB Agreement;
- b. any legal limitation, disability, incapacity or other circumstances relating to MPB or any other person; or
- c. the dissolution, amalgamation, reconstruction, reorganization, change in status, function, control or ownership, insolvency, liquidation or the appointment of an administrator or receiver of MPB or any other person,

provided that nothing in this paragraph 5 will create any greater obligation of MPB Parent than the Obligation which MPB has failed to complete.

6. The provisions of this Guarantee will be considered as severable, so that the invalidity or unenforceability of any provisions will not affect the validity or enforceability of the remaining provisions and any invalid or unenforceable provision will be enforced to the maximum extent possible; provided that no such severability will be effective if it materially changes the benefit of this Guarantee to either party.

7. This Guarantee is limited to and subject to the terms of the MPB Agreement . The obligations and financial liabilities of MPB Parent for Services provided under the agreement between City and MPB Parent (“MPB Parent Agreement”) shall be governed solely by the terms and conditions of the MPB Parent Agreement. This Guarantee may not be modified or amended except by an agreement in writing signed between the parties hereto. MPB Parent represents that the individual signing below has the authorization to bind it to this Guarantee.

8. The validity, construction and enforcement of this Guarantee will be determined in accordance with the laws of California, without reference to its conflicts of laws principles, and any action arising under it will be brought exclusively in California. MPB Parent consents to the personal jurisdiction and venue of the state court located in San Francisco, California.

THIS GUARANTEE HAS BEEN ISSUED AS OF THE DATE INDICATED BELOW.

MCKESSON CORPORATION

By: _____

Name: _____

Title: _____

Date: _____